

DRAFT
Environmental Assessment
Mussard-Barrett Ranch Conservation Easement Proposal
Beaverhead County, Montana
Montana Sage Grouse Oversight Team
January 25, 2021

I. Introduction

The Montana Sage Grouse Oversight Team (MSGOT) is preparing an Environmental Assessment (EA) to analyze effects associated with the Mussard-Barrett Ranch Conservation Easement Project.

The Montana Sage Grouse Habitat Conservation Program (Program) hosted the third application process for Stewardship Account grants in 2020. The Program invited submission of complete applications by October 19, 2020. The Nature Conservancy (TNC) sponsored and submitted a grant application request for funding from the Stewardship Account to support the purchase of a perpetual conservation easement on the Mussard-Barrett Ranch. TNC is an IRS 501(c)(3) non-profit organization and is qualified private organization.¹ TNC is requesting \$527,800 from the Stewardship Account to put towards purchasing the easement. State funds would be matched with \$1,675,000 from the Natural Resources Conservation Service's Agricultural Lands Easement Program and private funding sources. Of the total award, TNC is expected to allocate \$27,800 towards project-related costs. The estimated value of the proposed easement is \$2,165,000. Before the conservation easement can close, the completion of an EA under the Montana Environmental Policy Act (MEPA) is necessary.

II. Authority and Direction

The authority and direction under which this project is being proposed is provided by the Montana Greater Sage Grouse Stewardship Act (Act),² Administrative Rules of Montana 14.6.101 through 106, and MSGOT Grant Procedures 01-2016. Indeed, the Act and associated appropriations are key pillars of Montana's Sage Grouse Conservation Strategy.

The 2015 Montana Legislature created the grant program when it passed the Greater Sage Grouse Stewardship Act and created a special revenue account (Stewardship Fund or Fund). The purpose of the Act is to provide competitive grant funding and establish ongoing free-market mechanisms for voluntary, incentive-based conservation measures that emphasize maintaining, enhancing, restoring, expanding, and benefiting greater sage grouse (*Centrocercus urophasianus*) habitat and populations on private lands, and public lands as needed, that lie within core areas, general habitat, or connectivity areas.³ Implementation of Montana's Conservation Strategy through expenditures from the Fund is an important step in demonstrating Montana's commitment to ameliorate threats and take affirmative actions to conserve important habitats.

¹ MCA § 76-6-204.

² MCA § 76-22-101 et seq.

³ MCA § 76-22-102(2).

Another important aspect of habitat conservation entails mitigating for impacts of disturbance to habitat due to development in habitats designated for conservation as core areas, general habitat, or a connectivity area.⁴ Montana's Conservation Strategy recognizes the mitigation hierarchy of avoidance, minimization, restoration / reclamation, and replacement through compensatory mitigation.⁵ The majority of the Fund dollars must be awarded to projects that generate credits that are available for compensatory mitigation.⁶

Organizations or agencies are eligible to receive grant funding if they hold and maintain conservation easements or leases or that are directly involved in sage grouse habitat mitigation and enhancement activities approved by MSGOT.⁷

A project is eligible if it is located, at least in part, on land identified as Core Area, General Habitat, or Connectivity Area.⁸ Maps delineating these areas are available on the Program's website.⁹ A project is eligible if it will maintain, enhance, restore, expand, or benefit sage grouse habitat and populations for the heritage of Montana and its people through voluntary, incentive-based efforts.¹⁰ Eligible projects may include:

- Reduction of conifer encroachment;¹¹
- Maintenance, restoration, or improvement of sagebrush health or quality;¹²
- Incentives to reduce the conversion of grazing land to cropland;¹³
- Restoration of cropland to grazing land;¹⁴
- Modification of fire management to conserve sage grouse habitat or populations;¹⁵
- Demarcation of fences to reduce sage grouse collisions;¹⁶
- Reduction of unnatural perching platforms for raptors;¹⁷
- Reduction of unnatural safe havens for predators;¹⁸
- Reduction of the spread of invasive weeds that harm sagebrush health or sage grouse habitat;¹⁹
- Purchase or acquisition of leases, term conservation easements, or permanent conservation easements that conserve or maintain sage grouse habitat, protect grazing lands, or conserve sage grouse populations;²⁰
- Sage grouse habitat enhancement that provides project developers the ability to use improved habitat for compensatory mitigation under MCA § 76-22-111;²¹

⁴ Executive Orders 12-2015 and 21-2015.

⁵ Executive Order 12-2015; Montana Greater Sage Grouse Stewardship Act, MCA §76-11-101 et seq.

⁶ MCA § 76-22-109(4).

⁷ MCA § 76-22-110(3); 14.6.101(1), (5), ARM.

⁸ MCA § 76-22-102(2)(Establishing grant funding for sage grouse conservation measures on lands that "lie within core areas, general habitat, or connectivity areas.").

⁹ See <http://sagegrouse.mt.gov>.

¹⁰ MCA § 76-22-110(1).

¹¹ MCA § 76-22-110(1)(a).

¹² MCA § 76-22-110(1)(c).

¹³ MCA § 76-22-110(1)(e).

¹⁴ MCA § 76-22-110(1)(f).

¹⁵ MCA § 76-22-110(1)(g).

¹⁶ MCA § 76-22-110(1)(h).

¹⁷ MCA § 76-22-110(1)(i).

¹⁸ MCA § 76-22-110(1)(j).

¹⁹ MCA § 76-22-110(1)(b).

²⁰ MCA § 76-22-110(1)(d).

²¹ MCA § 76-22-110(1)(k).

- Establishment of a habitat exchange to develop and market credits consistent with the purposes of the Act so long as other requirements of the Act are met;²² and
- Other project proposals that MSGOT determines are consistent with the purposes of the Act.²³

A project is ineligible if it seeks grant funding:

- For fee simple acquisition of private land;²⁴
- To purchase water rights;²⁵
- To purchase a lease or conservation easement that requires recreational access or prohibits hunting, fishing, or trapping as part of its terms;²⁶
- To allow the release of any species listed under MCA § 87-5-107 or the federal Endangered Species Act, 16 U.S.C. 1531, et seq;²⁷
- To fund a habitat exchange that does not meet the requirements of MCA § 76-22-110(1)(l);
- For a project involving land owned by multiple landowners, including state and federal land, in which the majority of the involved acres are not privately held or the proposed project does not benefit sage grouse across all of the land included in the project;²⁸
- To supplement or replace the operating budget of an agency or organization, except for budget items that directly relate to the purposes of the grant;²⁹
- For a lease or conservation easement in which:
 - The state will not be named a third-party beneficiary to the lease or easement with the contingent right to enforce the terms of the lease or easement if the grantee fails to do so
 - The agreement will not provide that the lease or easement may not be transferred for value, sold, or extinguished without consent of the department.
 - Attempts to preclude the State from taking legal action to enforce the terms of the lease or easement or to recover from the proceeds of the transfer for value, sale, or extinguishment the state's pro rata share of the proceeds based on the funds the state provided pursuant to this Act for the creation of the lease or easement;³⁰
- To fund a project that does not meet the criteria of MCA § 76-22-110; or
- Through a late, incomplete, or improperly submitted application.³¹

When considering grant applications, MSGOT may consider proposals involving land owned by multiple land owners, but the majority of the involved acres must be privately held and the benefits of the grant must extend across all of the land included in the proposal.³²

The Act requires that the State retain a 3rd party contingent right to enforce the terms of the easement. Otherwise TNC is the holder of the easement.

²² MCA § 76-22-110(1)(l).

²³ MCA § 76-22-110(1)(m).

²⁴ MCA § 76-22-109(5)(a).

²⁵ MCA § 76-22-109(5)(b).

²⁶ MCA § 76-22-109(5)(c).

²⁷ MCA § 76-22-109(5)(d).

²⁸ MCA § 76-22-110(2).

²⁹ MCA § 76-22-110(4).

³⁰ MCA § 76-22-112.

³¹ 14.6.102(1)-(3), ARM.

³² MCA § 76-22-110(3).

III. Description of the Proposed Action

The Nature Conservancy and the Mussard and Barrett families propose to permanently protect 2,436 acres of traditional family ranchland under a perpetual conservation easement. This property is located in the upper Horse Prairie watershed in Beaverhead County, Montana. The Mussards are in the process of purchasing these lands from the Barretts via a Contract for Deed, and the easement is an intentional part of each party's implementation plan.

The Mussard Ranch Conservation Easement Project is located entirely within the Beaverhead 3 Core Area. The easement property consists of four separate parcels located in the upper Horse Prairie watershed. Three smaller parcels totaling approximately 890 acres are situated along the Horse Prairie Creek floodplain and consist largely of flood irrigated or hayed pasture and riparian shrubland with lesser amounts of sagebrush steppe along upland benches. The southern parcel consists of 1,550 acres of high-quality mountain big sagebrush steppe interspersed with wet meadows, seeps and springs, and two small perennial creeks. The property is set within a remote and relatively undisturbed high elevation intermountain landscape.

The property adjoins both other private ranchland and public lands managed by the BLM and State Trust Lands. Private ranchlands west, east and north of the Mussard property are already protected with conservation easements. The Mussard's hold grazing leases on approximately 15,500 acres of BLM land adjacent to the proposed conservation easement property.

The easement would allow the property to continue to support seasonal grazing, haying, irrigation and recreation and associated practices (fences, stock water, irrigation ditches, etc). This project will help maintain sage grouse habitat.

The proposed easement area has a minimum of 24 sage grouse leks within 12 miles, 19 of which are located within eight miles. See Appendix 1. The Mussard-Barrett Ranch also supports a wide variety of other wildlife species due to habitat diversity, riparian habitats, wet meadows, and native sage brush steppe present on the Ranch.

The terms of the current draft conservation easement under negotiation are summarized below:

- Agricultural and Ranch Use. The provisions of this conservation easement limit the types of agricultural operations that can occur on the Property to those that restore or conserve grassland, and protect grazing uses and related Conservation Values and the Conservation Purposes of this conservation easement, so long as they are consistent with the terms in the conservation easement.
 - *Agricultural Production.* The production, processing, and marketing of livestock and agricultural products compatible with restoration and conservation of grassland, grazing uses, and related conservation values is allowed provided it is consistent with the terms of the ALE Plan.
 - *Grassland Uses of the Property.* The landowner is allowed to graze and conduct common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this conservation easement. The term "common grazing practices" means those practices customary to the region where the property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Property. Haying, including fertilizing, seeding, and harvesting for hay and non-crop seed production, is permitted only on those areas of the Property currently or

previously cultivated or hayed (crop in existing disturbance). See Appendix 1. Any considerations for possible impacts of haying on nesting birds of concern are addressed in the ALE Plan for the Property.

- Construction of buildings and structures. Construction or placement of any buildings or structures is prohibited except as follows:
 - *Buildings, Structures and Building Envelopes.* Maintaining, repairing, remodeling, or replacing the existing cabin, and constructing an associated outhouse, within the building envelope is permitted.

All maintenance, repairs, remodels, or replacements of the cabin and outhouse must be:

- located within the one quarter acre building envelope;
- may not exceed five hundred square feet in exterior footprint; may be used for overnight accommodations but shall not serve as a year-round residence and;
- no utility systems shall be constructed outside the building envelope to service the cabin.

Small scale, onsite power generation, such as a solar or a small generator is allowed within the building envelope. In keeping with the undeveloped nature of the Property, access to the cabin shall be by unimproved, two-track road. Any existing structure documented in the Report that is located outside of the building envelope may be maintained, repaired, remodeled, or replaced with a structure of similar size in its current footprint.

- *Minor Agricultural Buildings and Structures.* Agricultural buildings or structures that neither individually nor collectively have an adverse impact on the grassland, grazing uses, and related conservation values of the Property may be built with prior written approval of TNC provided that the minor agricultural buildings are consistent with the ALE Plan and are otherwise consistent with the conservation purposes of this conservation easement.

Such new minor agricultural buildings shall not:

- impair sage grouse habitat or other conservation values;
- be built within fifty feet of the banks of any body of water, as determined by holder in its sole and absolute discretion, with the exception of water lines or water tanks or well houses;
- exceed 500 square feet exterior footprint; or
- be used as overnight accommodations.

Such new minor agricultural structures shall not:

- impair sage grouse habitat or other conservation values as determined by the holder in its sole and absolute discretion, with the exception of water lines, water tanks, or well houses; or
- be used as overnight accommodations.
- *Easements and Utilities.* The granting or modification of easements for utilities is prohibited when the utility will adversely impact the protection of the grazing uses, grassland conservation value, sage grouse, and related conservation values of the Property as described by TNC, in consultation with the Chief of NRCS, in their sole and absolute discretion. Utilities that serve approved buildings or structures, including on-farm energy structures that neither individually nor collectively have

an adverse impact on the grassland, grazing uses, and related conservation values of the Property may be built with prior written approval of TNC, provided that the utilities are consistent with the ALE Plan.

Any disturbed areas shall be revegetated and restored to a natural condition with native vegetation as soon as is practicably possible after completion of any utility construction permitted by this conservation easement.

- *Renewable Energy.* Renewable energy production is allowed for the primary purpose of generating energy for the agricultural and residential needs of the Property. Renewable energy sources on the Property must be built and maintained within impervious surface limits set forth in the easement, with minimal impact on the sage grouse and other conservation values of the Property and consistent with the purposes of the conservation easement. Any disturbed areas shall be revegetated and restored to a natural condition with native vegetation as soon as practicably possible after completion of any utility construction permitted by this conservation easement. The construction, maintenance, repair, remodel, or replacement of minor structures related to the renewable energy production described in this easement is permitted provided that nothing in this provision shall be construed as permitting the construction or establishment of a commercial wind farm or commercial solar energy facility.

Such new minor renewable energy structures shall not:

- impair the conservation values; or
- be built within 100 feet of the banks of any body of water or within 100 feet of the edge of any wetlands.
- *Water Structures.* Notwithstanding anything herein to the contrary, for the purposes of this easement, the term “structure(s)” shall not be deemed to include water related structures, including without limitation new or existing mainlines, ditches, head gates, pasture irrigation, irrigation wells, livestock watering, and irrigation facilities.
- Fences. Existing fences may be maintained and replaced, and new fences installed if they are necessary for agricultural operations, or to mark boundaries of the property only in accordance with the ALE Plan and must be consistent with species management requirements, if applicable. Any new fencing shall not exclude or unduly restrict wildlife movement or otherwise adversely affect sage grouse or other conservation values; provided, however, that fencing may be built to specifically exclude wildlife from residential yard areas, gardens, haystacks, newly seeded areas, and temporary vegetative restoration areas.
- Roads. A single new, improved road may be constructed, if it is within impervious surface limits described in the easement, approved in advance by TNC, and is necessary to access the buildings or structures on the Property. Maintenance of existing roads is allowed, however existing roads may not be widened or improved unless widening and improving is within impervious surface limits approved in advance by TNC, and necessary to carry out the agricultural operations or other allowed uses on the Property. If an existing road is unpaved, it shall only be maintained and repaired without paving, provided, however, that the landowner may pave existing roads when such paving is done to provide an ecological benefit to the Property such as erosion prevention, and landowner has obtained TNC’s prior written approval. The granting or modification of easements for roads is prohibited.
- Subdivision. Separate conveyance of a portion of the Property, or division or subdivision of the Property, is prohibited.

Notwithstanding the fact that, as of the easement date, the Property might consist of more than one parcel for real estate tax or any other purpose or if it may have been acquired previously as separate parcels, it will be considered one parcel for purposes of this conservation easement, and the restrictions and covenants of this easement shall apply to the Property as a whole, and the Property shall not be sold, transferred, or otherwise conveyed except as a whole, intact, single piece of real estate it being expressly agreed that neither the landowner nor the landowner's personal representative, heirs, successors, or assigns shall sell, transfer, or otherwise convey any portion of the Property that constitutes less than the entire Property. Notwithstanding the foregoing but only in the case of the scrivener's or technical errors in the survey or legal description, boundary line adjustments are permitted with the prior written consent of TNC and the Montana NRCS State Conservationist, which consent shall not be unreasonably withheld.

Regardless of anything to the contrary in the foregoing, ownership of the Property may be held in the form of undivided interests as tenants in common, whether by choice or by operation of any applicable laws, but no owner of an undivided interest in the Property shall have the right to have the Property partitioned in kind, whether pursuant to Montana statute or otherwise.

- Conversion. Conversion of native vegetation to exotic cover species; farming, plowing, discing, chiseling, interseeding, or any type of cultivation is prohibited except as follows:
 - Areas identified in the easement as "cultivated fields" are wild hay fields that may be harvested for hay, fertilized, irrigated and seeded with native or non-native plant species, but may not be plowed or cultivated, subject to any limitations set forth in the ALE Plan.
- Industrial or Commercial Activities. Industrial or commercial activities on the Property are prohibited except for the following, which shall be permitted only if they are consistent with the conservation easement:
 - agricultural production and related uses conducted as described in the ALE Plan;
 - the sale of excess power generated in the operation of alternative energy structures and associated equipment or other energy structures that TNC approves in writing as being consistent with the conservation purposes of this conservation easement;
 - temporary or seasonal outdoor activities or events that do not harm the grazing uses or grassland restoration, and related conservation values of the Property herein protected;
 - commercial enterprises related to agriculture or forestry, including but not limited to agritourism, processing, packaging and marketing of farm or forest products, and farm machinery repair; and
 - small-scale commercial enterprises compatible with agriculture or forestry, including, but not limited to, shops, provided that such customary rural enterprises are conducted in permitted buildings and structures.
- Recreational and Educational Activities. Recreational and educational activities that are both non-developed and non-consumptive are permitted if they do not negatively affect the grassland, grazing uses and related conservation values and are consistent with the conservation purpose of the conservation easement. Recreational uses such as hunting or fishing, horseback riding, cross-country skiing, bicycling, other traditional non-motorized recreational activities, dispersed camping, picnicking, bird watching, wildlife observation, and similar recreational activities are permitted, provided that such activities require no prohibited infrastructure, surface alteration, or development of or on the Property and provided that such activities do not negatively affect the grassland, grazing uses, and related

conservation values or materially diminish or impair the conservation values of the Property and are consistent with the conservation purpose of the conservation easement.

- Hunting, Fishing, and Trapping. The landowner, landowner's invitees, licensees, and lessees may hunt, fish, and trap on the Property, consistent with the conservation purpose, provided that all hunting, fishing, and trapping activities are conducted in compliance with all state and federal laws and regulations and the terms of this conservation easement. Hunting and fishing uses permitted by this easement may not require or result in any surface alteration or other development or disturbance of the Property, except that landowner may erect temporary and portable structures on the Property in association with such hunting activities. For the purpose of this conservation easement, "temporary and portable structures" are defined as those that are removed seasonally and do not require surface alteration of the Property.
 - In controlling predatory and problem animals, the landowner shall comply with all applicable laws and use selective and humane control techniques, including, where practicable, non-lethal deterrents and management, which shall be limited in their effectiveness to specific individual animals that have caused damage to livestock and other property.
- Vehicles. All permitted vehicle use will be conducted in a manner that minimizes soil erosion, soil compaction, or the interference with vegetation or the natural habitat on the property. No recreational use and operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles (ATVs) or other types of motorized recreational vehicles is permitted on the property. Use of cars, trucks, ATVs, motorcycles, snowmobiles, and other ranch vehicles for ranching, agricultural, or hunting purposes allowed by this conservation easement off of existing roads is permitted as long as such uses do not negatively affect the grassland, grazing uses and related conservation values. The temporary use of vehicular campers owned by landowner or guests on the Property is permitted as appropriate to accommodate normal visitation. Parking of vehicles related to the ranching, residential, and other permitted uses of the Property is permitted.
- Hazardous and Toxic Materials. The dumping or other disposal of toxic and/or hazardous materials on the Property is prohibited. The storage of hazardous materials on the Property is also prohibited, except as lawfully stored and used in accordance with regulations and in connection with the permitted uses of the conservation easement.

Notwithstanding anything in this conservation easement to the contrary, this prohibition does not make TNC an owner of the Property, nor does it permit TNC to control any use of the Property by landowner which may result in the storage, dumping or disposal of hazardous materials; provided, however, that TNC may bring an action to protect the conservation values of the Property, as described in this conservation easement.

- Dumps. Accumulation or dumping of trash, refuse, sewage, or junk is not allowed on the Property. This restriction will not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products, or agricultural byproducts generated or used on the Property.
- Biocides, Biological Agents, and Fertilizers. Application of herbicides, pesticides, fungicides, biocides, defoliants, chemical fertilizers, or other chemicals is prohibited on the Property except as follows:
 - *Biocides.* Herbicides, pesticides, fungicides, biocides and defoliants (collectively, "Biocides") may be used to manage and/or control county, state or federally-designated noxious weeds, invasive plants and/or invasive woody species, using accepted range management practices, provided the use of such biocides is designed

to minimize the impact on the conservation values of the Property. Any Biocide use as described in this Paragraph shall be:

- in compliance with all applicable federal, state, and local statutes and regulations;
- in those amounts and with a frequency of application that constitutes the minimum necessary for control;
- applied consistent with label instructions; and
- consistent with the conservation values as determined by TNC.

Notwithstanding the foregoing, there shall be no indiscriminate broadcast spraying of Biocides. Without the prior written approval of TNC, biocides may be used by spot applications (including by gun or boom nozzles) only. Broadcast spraying of Biocides, including aerial applications, may be permitted with prior written approval by TNC, provided that, at a minimum, the following conditions are met:

- spot treatment is not practical because of the severity of the infestation or infection;
- timing of application is scheduled to minimize damage to non-target species; and
- type of biocide used has the least impact to non-target species while still being effective in controlling target species or pathogens.

TNC shall have sole and absolute discretion in granting or denying broadcast spraying of biocides, which approval must be provided in writing

- Biological Agents. Use of biological weed and insect control agents is permitted, subject to prior written approval of TNC.
- Fertilizers. The use of chemical or organic fertilizers on lands currently or previously used as hayfields (cultivated fields), is permitted provided that use of fertilizers, including, but not limited to, the amount, frequency, and manner of application, shall be in accordance with the labeling instructions and all applicable laws and regulations, and that fertilizer use shall not injure or destroy the naturally occurring ecosystem, beyond the effects associated with the intended use of such fertilizers, as used in reasonable farming practices.
- Introduction of Species. The intentional introduction of species that are not native to the ecological systems in Montana outside cultivated fields is prohibited, except as approved by TNC. Grazing and pasturing of livestock is permitted, and the raising and harvesting of hay on those areas that have been previously cultivated (cultivated fields) is permitted as described in the ALE Plan.
- Timber and Woody Vegetation Management. Forest management and timber harvesting is allowed, provided best management practices are followed for the sites, soils, and terrain of the Property and is otherwise consistent with the conservation purposes of this conservation easement as determined by TNC in its sole and absolute discretion. Forest management and timber harvesting must be performed in accordance with a written forest management plan approved by TNC.

A forest management plan will not be required for the following allowed non-commercial activities:

- cutting of trees for the construction of allowed roads, utilities, buildings and structures on the Property;
- cutting of trees for trail clearing;

- cutting of trees for domestic use as firewood, or for other domestic uses by landowner;
- removal of trees posing an imminent hazard to the health or safety of persons or livestock, or
- removal of invasive species.
- Cutting, Removing, Destruction or Conversion of Native Vegetation.
Cutting, removing, or destruction of native vegetation is prohibited, except to the extent necessary to allow for uses and activities permitted under this conservation easement. These include grazing, haying, and restoration activities such as prescribed fire pursuant to an approved restoration plan as described in the conservation easement. The landowner has the right and the responsibility to control non-native plants and/or invasive or noxious plants, subject to the provisions of this conservation easement about biocides and biological agents. Except under timber and woody vegetation management, there shall be no excavation and/or removal of native plants on or from the Property, except for those designed noxious weeds or considered to be an invasive woody plant species, or when, based on consultation with and written permission from TNC, it is agreed that excavation and/or removal of other types of native plants would enhance the conservation value of the property. Grazing and uprooting of native plants by livestock as permitted by this conservation easement are not considered excavation or removal.

Intentional conversion of native vegetation to exotic species or the introduction of non-native plant species; farming, plowing or any type of cultivation is prohibited except as follows:

- plowing or other cultivation is permitted where it may be necessary for restoration of the conservation values in the event of their degradation or destruction;
- except for grazing uses and grassland restoration and conservation, the cultivation or production of crops, nonperennial forages for human or domestic consumption, crop seed production, or planting of orchards, vineyards, berries, tree farms, or other perennial non grassland agricultural product is prohibited. However, the raising, irrigation, and harvesting of hay is permitted only in the cultivated fields identified in the conservation easement.
- Mining.
 - *Landowner Owned or Leased Minerals.* Any exploration, mining, development, production, extraction or transportation of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by the landowner, using any surface mining, subsurface mining, or dredging method, from the Property is prohibited, except to the extent described in the conservation easement.
 - *Limited Mining Activities.* Limited mining activities are permitted to the extent that the minerals mined (e.g. sand, gravel, or shale) are non-commercial and used for agricultural operations on the Property or for maintenance of the Property (such as maintaining roads). Mining activities done for agricultural operations or Property maintenance purposes:
 - must be limited to a small, defined area or acreage, collectively no more than one-half acre in size;
 - may not harm the conservation values or the agricultural uses of the Property;
 - must be re-vegetated and restored to a natural condition promptly after completion; and
 - *Horizontal/Directional Drilling.* Nothing in the conservation easement prohibits mining activities under the Property using slant/horizontal drilling techniques from

one or more drilling sites located off the Property provided that, with the exception of exploration activities conducted on the surface of the Property as permitted in the conservation easement, the landowner shall not use or occupy any portion of the surface of the Property or the subsurface within the depth interval of 1000 feet below the surface of the Property, and landowner hereby waives any rights to the use of the surface and said subsurface interval of the Property in connection with any mining activities on or under the Property.

- *Exploration.* With the written approval of TNC, exploration activities may be conducted provided that they are non-invasive and do not adversely impact the conservation values described in the easement. No seismic shot holes or exploratory wells or any type of drilling may occur on the Property, and no explosives may be used.
- *Surface Agreements.* TNC is granted the right (but not the obligation) to negotiate and join in any surface use agreement, or exploration activities, that may be negotiated affecting the surface or subsurface of the Property, for the protection of the Conservation Values.
- *Subsequently Transferred or Acquired Minerals.* Any mineral lease, surface use agreement, or other mineral conveyance or renewal by the landowner to a third party is subject to the restrictions of this conservation easement and shall so state, shall contain terms consistent with the provisions of this conservation easement, and a copy of the same shall be provided to TNC prior to its execution by the landowner for TNC's review and, if TNC so desires, approval. In the event the landowner becomes the owner or controls any minerals that are severed as of the conservation easement date and owned or controlled by a third party, then such minerals are immediately subject to the terms of the conservation easement.
- *Third Party Owned or Leased Minerals.* If a third party owns or leases the minerals at the time this conservation easement is executed, the landowner must require, to the extent possible, that any mining activities conducted by such third party are:
 - not accomplished by any surface mining method;
 - accomplished by a method of extraction that has no more than a limited and localized impact that has the least adverse impact on the conservation values of the Property, including but not limited to the Property's use for agriculture;
 - within the impervious surface limits of the conservation easement; and
 - carried out in accordance with all federal, state, and local regulations.
- *TNC Rights.* The landowner agrees that by granting this conservation easement to TNC, it has granted to TNC a portion of its rights as owner of the surface of the Property on which mining activities may be conducted. In addition to its interest as a holder of this conservation easement, TNC is granted the right (but not the obligation) to negotiate and join as a party in any surface use agreement or other agreement that may be negotiated with third parties or their lessees for the protection of the Conservation Values. The landowner agrees:
 - to provide TNC with any notices the landowner receives related to mining activities; and
 - that TNC shall have the right, but not the obligation to approve in advance in writing any lease or agreement pertaining to use of the surface or subsurface of the Property for any mining activities, including any agreement permitted or required of a surface owner under relevant state law, as amended from time to time, and rules and regulations promulgated

- between the landowner and owners or lessees of minerals, which approval TNC may withhold if it determines that the proposed use would substantially diminish or impair the conservation values, is inconsistent with the terms of this conservation easement, or is not permitted under the terms of the minerals reservation or severance or the minerals lease.
- *Royalty Payments.* In the event that an unrelated third party with an interest in the mineral estate (which interest existed prior to the date of this conservation easement) undertakes mineral development, the landowner may collect proceeds from such development to which the landowner is entitled by the landowner's proportional ownership interest in the minerals.
 - TNC will provide the State of Montana with notice of any requests for approval that TNC receives from the landowner, and TNC's response.
 - Changing the Topography of the Property. Plowing, grading, blasting, filling, sod farming, earth removal or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Property is prohibited, except as follows:
 - dam construction to create ponds for agricultural use, fire protection, wildlife enhancement, or wetland restoration in accordance with an ALE Plan, and the terms of the conservation easement;
 - erosion and sediment control consistent with the terms of the conservation easement;
 - as required in the construction of approved buildings, structures, roads, and utilities consistent with the terms of the conservation easement;
 - grazing uses or grassland restoration and conservation activities conducted in accordance with the ALE Plan and as provided for in the conservation easement; or
 - minor filling, grading, or earth removal related to maintenance of permitted and traditionally practiced flood irrigation as described in ALE Plan.
 - Restoration, Enhancement, and Research. The landowner has the right (but not the obligation) to propose activities and projects which prevent the degradation of, restore, and/or enhance and improve the quality of the watershed, wildlife habitat, and ecological health of the Property and/or to propose other research, restoration, and/or enhancement activities. This includes soil erosion prevention and/or restoration activities as well as the filing and creation of new water rights and/or the alteration or change of existing water rights. The landowner also has the right (but not the obligation) to propose research, restoration, and enhancement activities associated with scientific, educational, and/or historic projects. The landowner's activities or projects should be undertaken only after the creation of a comprehensive site-specific plan for restoration, enhancement, and/or research, which has been submitted to and approved by TNC. TNC should provide a copy of the plan to the State of Montana.
 - Water Courses and Wetlands. Any new and intentional manipulation, diversion, or other alteration of natural water courses, wetlands, or other natural bodies of water, any new practice that degrades or destabilizes their natural banks or shorelines, any new pumping of groundwater whether tributary or not, or any other new development of water resources is prohibited, except as follows:
 - the development, construction, use and maintenance of new well(s) to provide domestic supply to buildings and structures, or new stock watering facilities, including windmills, pipelines, stock tanks, and solar pumps;
 - the landowner has the right to continue the historic use of the water rights on the Property and to maintain, repair, and if destroyed, reconstruct any existing facilities including groundwater wells;

- the landowner has the right to continue the historic use of the water rights on the Property and to maintain, repair, and if destroyed, reconstruct any existing facilities related to the water rights (such as ditches, wells and reservoirs) and to construct new facilities as may be required to maintain the historic use of the water rights on the Property including, without limitation groundwater wells; and
- the landowner may engage in activities that prevent the degradation of the conservation values, restore, and/or enhance and improve the quality of the watershed, including wetland creation, filing and creation of new water rights and/or the alteration or change of existing water rights.
- Limitation on Impervious Surfaces. Impervious surfaces will not exceed two percent (2%) of the Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Property; including residential buildings, agricultural buildings or structures with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This does not include public roads or other roads owned and controlled by parties with rights superior to those conveyed to TNC by this conservation easement.
- Feedlots. Establishment and operation of a commercial livestock feedlot, defined for this conservation easement as a permanently constructed confined area within which the land is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the business of the reception and feeding of livestock not owned by landowner for hire, is prohibited. The landowner retains the right to seasonally confine livestock into an area for feeding, or to lease pasture for the grazing of livestock owned by others or for pasture finishing animals for slaughter.
- Other Activities. If any question exists regarding whether historic, current, or new practices or activities are permitted, or would be inconsistent with the conservation purposes or diminish or impair the conservation values, the landowner has the obligation to notify TNC in writing to obtain written approval, prior to engaging in those practices or activities.

These requirements are consistent with the best available information pertaining to habitat threats and habitat conservation for sage grouse,³³ and they are consistent with key requirements of the Policy for Evaluation of Conservation Efforts³⁴ (PECE) of the USFWS when making listing decisions in that the proposed action has a strong likelihood of eliminating key threats to sage grouse.

The landowner, TNC and the State agree that baseline conditions of the Property will be described in an Easement Documentation Report (the Report), and that the Report will be approved in writing by TNC and the landowner. A copy of the Report will be on file with the landowner and maintained in the files of TNC for notices. A copy will also be filed with the State of Montana.

The Report will contain:

- an accurate representation of the natural resources and physical condition of the Property at the time of this conveyance;
- a description of the current and historical uses of the Property; and
- a statement signed by the Landowner and a representative of TNC as required by the U.S. Treasury Regulations.³⁵

³³ Davies et al. 2011, Smith et al. 2016, and 80 FR 59858 (October 2, 2015).

³⁴ 68 FR 15100 (March 28, 2003).

³⁵ § 1.170A-14(g)(5)(i).

The Report may be used to determine compliance with, and to enforce, the terms of this conservation easement; however, the parties may use other relevant evidence or information to assist in that determination or for enforcement of the conservation easement. In case of any conflict or inconsistency between the terms of the conservation easement and the Report, the terms of this conservation easement will take precedence. The Nature Conservancy will provide a copy of the Report to the landowner's successors in title with a written request.

The State of Montana may, in a reasonable manner and at reasonable times, enter and inspect the Property to determine compliance with the terms of the easement as a third-party beneficiary, and to calculate and verify in the future any compensatory mitigation credits associated with the easement. These inspections may include sage grouse lek surveys, surveys of sage grouse habitat, and verification of credits made available for compensatory mitigation. If the State determines that an immediate entry is required because of non-enforcement by TNC, the State may make reasonable efforts to contact the landowner and TNC prior to entry, but such notice is not required to enter.

Certain of the uses and practices, as permitted by the conservation easement, are identified as being subject to specified conditions or to the requirement of and procedures for prior approval by TNC.

Notice and approval requirements are:

- Notice. For activities for which TNC's prior approval is not expressly required, the landowner agrees to notify TNC in writing fifteen days before exercising any reserved or retained right under this conservation easement that may have an adverse impact on the Conservation Values.
- Approval. When TNC's approval is required prior to the landowner engaging in any activity, the landowner's request for approval will be in writing and contain detailed information regarding the proposed activity. Such a request must be delivered to TNC at least sixty days prior to the anticipated start date of such activity.

The State of Montana will receive notice from TNC of any requests for approval received from the landowner pertaining to mineral development. TNC will also provide the State of Montana with copies of the annual conservation easement monitoring report documenting the state of the Property.

IV. The Habitat Quantification Tool and Application to Mussard-Barrett Ranch

The Program calculated and will make credits available for compensatory mitigation in the future, pending TNC's closing of this conservation easement. All compensatory mitigation credits created based on the ecosystem services provided to sage grouse on the Mussard-Barrett Ranch belong to the State. Any proceeds generated from their eventual sale is statutorily required to be deposited back into the Sage Grouse Stewardship Fund for reimbursement.³⁶

All Montana compensatory mitigation must be taken in consideration of applicable United States Fish and Wildlife Service sage grouse policies, state law, and any rules adopted pursuant to compensatory mitigation.³⁷ Federal guidance indicates that the landowner's lands would be eligible for compensatory mitigation by eliminating the threat of agricultural conversion through purchase of this easement using funding from the Montana Sage Grouse Stewardship Fund and

³⁶ MCA §§ 76-22-109, 110, 111.

³⁷ MCA § 76-22-111(2).

private matching funds secured by TNC.³⁸ In this case, eliminating the agricultural conversion threat will conserve habitat through perpetual legal protection and maintenance of high standards for land stewardship.

MSGOT and the Program are required to apply the current designated Habitat Quantification Tool (HQT) to any project that is selected for funding from the Stewardship Account.³⁹ The HQT is the scientific method used to evaluate vegetation and environmental conditions related to quality and quantity of sage grouse habitat and to quantify and calculate the number of credits created by a conservation project⁴⁰. MSGOT approved the current version of the HQT and accompanying Policy Guidance Document in October, 2018.

The HQT considers the many biophysical attributes of Greater sage-grouse seasonal habitats to estimate habitat functionality across multiple spatial and temporal scales. The HQT also accounts for existing human disturbances (e.g. roads, cropland, energy development, etc.). These measures of habitat, expressed as functional acres, are used for calculating conservation benefits (i.e., credits) from mitigation projects. Using habitat quality, expressed as functional acres, provides a common “habitat currency” that can be used for both credit and debit projects to ensure accurate accounting of habitat gains and losses and allows comparisons across projects using a common metric that is calculated in the exact same way.

The HQT starts with a baseline map of habitat quality, or presently existing functional acres on the landscape. Next, the HQT calculates the number of functional acres that would be created (or gained) because of the proposed conservation easement. Applicable policy modifiers are applied, based on the number of functional acres gained and calculated by the HQT. Once a conservation project is implemented, the total functional acres created (after application of policy modifiers) is converted to credits at a 1:1 ratio.

High HQT scores correspond to areas of high quality sage grouse habitat and are shown in warm, red colors on HQT maps. These will typically be areas with high levels of intact sagebrush, good brood-rearing habitat, high densities of breeding male sage grouse (i.e., many leks with high numbers of males displaying on them), and low levels of human disturbance. Higher numbers of functional acres gained translates to more credits created per physical acre of conservation.

For purposes of considering the number of credits that might be created by this project, the Program has run the HQT using the spatial data provided by TNC (the grant applicant) for the proposed conservation easement on the Mussard-Barrett Ranch. Results do not include non-deeded lands within the perimeter of the proposed easement (i.e. federal, state, and private land inholdings owned by entities other than the Mussard-Barrett Ranch are excluded from results and from the easement itself).

The HQT results show that the proposed easement on the Mussard-Barrett Ranch would conserve sage grouse habitat. The functional acres gained per physical acre of the project per year for is 0.412. Higher numbers indicate more functional acres would be conserved and the habitat is of higher quality for the physical acres included in the proposed project. See Appendix 1.

³⁸ USFWS, *Greater Sage –Grouse Range-Wide Mitigation Framework*, 13-14 (2014); available at https://www.fws.gov/greatersagegrouse/documents/landowners/USFWS_GRSG%20RangeWide_Mitigation_Framework20140903.pdf.

³⁹ MCA § 76-6-109(4).

⁴⁰ MCA § 76-6-103(9).

A perpetual easement on the Mussard-Barrett Ranch would generate 40,128.22 total credits after the 40% baseline. This equates to 0.165 credits created per physical acre of the project per year. Higher numbers indicate more credits are created per year for each physical acre included in the proposed project. Higher numbers are more favorable, and more credits would be created per dollar expended from the Stewardship Account.

In addition to the credits generated, the resource values associated with this land parcel (for sage grouse) are significant. The amount of existing disturbance assessed by the Density Disturbance Calculation Tool is 2.318% which indicates a low level of existing anthropogenic disturbance even before the easement's restrictive terms.⁴¹ This DDCT result was considered by peer reviewers along with maps independently created by the Program in conjunction with the habitat quantification tool. See Appendix 1.

V. Project Location

The conservation easement associated with this project would cover activities on a ranch owned by the Mussard and Barrett families in Beaverhead County in Montana. The proposed easement property is located entirely within the Beaverhead 3 Core Area southwest of Dillon, Montana. See Appendix 1.

Montana's core areas approach underlying the Conservation Strategy suggests that conservation efforts should be targeted and prioritized for implementation in core areas, where the vast majority of Montana's breeding birds reside.

VI. Purpose and Need for the Proposed Action

One of the keys to conserving sage grouse in Montana is private lands, where most of Montana's sage grouse live. Through their stewardship, Montana landowners have played an important role in conserving sage grouse and sage grouse habitat. They will continue to play an important role in the future by helping to avoid a future listing under the federal Endangered Species Act.

Montanans recognize that it is in the best interest of our state, its economy, and our quality of life to maintain state management of sage grouse. Effective conservation requires an "all hands, all lands" approach where we work together collaboratively across all lands and address all threats to the sage grouse, including habitat loss and fragmentation.

Because loss and fragmentation of habitat is the key issue for sage grouse conservation, the 2015 Montana Legislature appropriated funds through the Stewardship Act to address threats to habitat. The purpose of the Act is to provide competitive grant funding and establish ongoing free-market mechanisms for voluntary, incentive-based conservation measures that emphasize maintaining, enhancing, restoring, and expanding and benefitting sage grouse habitat and populations on private lands, and public lands as needed. A grant-funded project is eligible if it will maintain, enhance, restore, expand, or benefit sage grouse and populations for the heritage of Montana and its people through voluntary, incentive-based efforts.

The purpose and need for the proposed action to provide Stewardship Fund dollars to assist TNC to enter a conservation easement stems from the fact that the USFWS identified habitat loss and fragmentation as key threats in Montana. Approximately 64% of sage grouse habitat in Montana is

⁴¹ The DDCT total analysis area the easement parcel buffered by 4 miles + a four-mile buffer around any leks within that (only including core habitat). The total analysis area acreage is 129,057 acres.

in private ownership.⁴² Montana's Sage Grouse Conservation Strategy proactively addresses this threat in a myriad of ways, but the Stewardship Fund is a key element in providing voluntary incentives to conserve sage grouse habitat and promote beneficial management practices on private lands.

The proposed easement area has a minimum of 24 sage grouse leks within 12 miles, 19 of which are located within eight miles. Conversion of native range to cultivated cropland has been identified as a key threat to sage grouse habitat and population persistence by USFWS.⁴³ It was recently shown that lek density may be reduced by more than 50% in the face of a 10% increase in cropland within 12.4 miles.⁴⁴ Importantly, if one parcel of land is converted, lek persistence in a "landscape ten times the size" of the parcel itself could be "strongly" reduced.⁴⁵ Therefore, efforts which conserve intact sagebrush landscapes already having little or no existing cropland contribute favorably to sage grouse persistence, particularly where the risk of conversion exists.

Sage grouse are a landscape scale species. "At distances of up to about 240 kilometers, individual [sage grouse] exhibit greater genetic similarity than expected by chance, suggesting that the cumulative effect of short-range dispersal translates to long range connectivity."⁴⁶ Even though dispersal distances for sage grouse are relatively short, "the cumulative effect of these [short range dispersals of 7-9 kilometers] translates into long-range connectivity."⁴⁷ Habitat conservation efforts such as conservation easements maintain sagebrush cover and distribution at finer scales, thereby maintaining opportunities for population connectivity, and in turn, population persistence at larger scales.⁴⁸

Sage grouse are sensitive to habitat loss and fragmentation caused by development. Sage grouse are also sensitive to disrupting activities and noise near leks during the breeding season. Population declines have been associated with habitat loss and fragmentation.⁴⁹ Accordingly, mitigation for unavoidable impacts of development is an important aspect of not only Montana's Conservation Strategy, but of conservation efforts by other states and federal land management agencies throughout the range.⁵⁰ Indeed, mitigation efforts ameliorate or prevent threats to sage grouse and sagebrush habitats.

Another purpose and need for the proposed action to enter a grant agreement with TNC is implement Montana's mitigation framework. Mitigation addresses direct, indirect, and residual

⁴² Montana's Greater Sage Grouse Habitat Conservation Advisory Council. 2014. Greater Sage Grouse Habitat Conservation Strategy. Jan. 29, 2014.

⁴³ 80 Fed. Reg. 59858 (Oct. 2, 2015); Smith, J.T., J.S. Evans, .B.H. Martin, S. Baruch-Mordo, J.M. Kiesecker, D.E. Naugle. Reducing cultivation risk for at-risk species: predicting outcomes of conservation easements for sage grouse. 201 Biological Conservation 10-19 (June 2016).

⁴⁴ Smith, J.T., J.S. Evans, .B.H. Martin, S. Baruch-Mordo, J.M. Kiesecker, D.E. Naugle. Reducing cultivation risk for at-risk species: predicting outcomes of conservation easements for sage grouse. 201 Biological Conservation 10-19, 16 (June 2016).

⁴⁵ Smith, J.T., J.S. Evans, .B.H. Martin, S. Baruch-Mordo, J.M. Kiesecker, D.E. Naugle. Reducing cultivation risk for at-risk species: predicting outcomes of conservation easements for sage grouse. 201 Biological Conservation 10-19, 16 (June 2016).

⁴⁶ Cross, Todd B., David E. Naugle, John C. Carlson, and Michael K. Schwartz. 2016. Hierarchical Population Structure in Greater Sage-Grouse Provides Insight into Management Boundary Delineation. *Conserv. Genet.* DOI 10.1007/s10592-016-0872-z (available at <http://link.springer.com/article/10.1007/s10592-016-0872-z>).

⁴⁷ Cross, Todd B., David E. Naugle, John C. Carlson, and Michael K. Schwartz. 2016. Hierarchical Population Structure in Greater Sage-Grouse Provides Insight into Management Boundary Delineation. *Conserv. Genet.* DOI 10.1007/s10592-016-0872-z (available at <http://link.springer.com/article/10.1007/s10592-016-0872-z>).

⁴⁸ 80 Fed. Reg. 59858, 59867 (Oct. 2, 2015).

⁴⁹ 80 Fed. Reg. 59858, 59870-71 (Oct. 2, 2015).

⁵⁰ 80 Fed. Reg. 59858 (Oct. 2, 2015).

impacts of development. In Montana, implementation of the mitigation hierarchy is called for in Executive Order 12-2015 and by the Greater Sage Grouse Stewardship Act.⁵¹ Montana implements mitigation in the following sequential order: avoidance, minimization, restoration or reclamation, and lastly compensation or replacement. Compensatory mitigation is required only if impacts remain after measures are taken to avoid, minimize, and restore disturbed habitats. MSGOT reviews proposed compensatory mitigation plans.⁵²

The Act sets forth that Montana can implement compensatory mitigation either through establishment of habitat exchange⁵³ and/or a conservation bank.⁵⁴ Either way, the common thread for compensatory mitigation is that developers can offset impacts of activities that eliminate or fragment habitat through a free-market where parties conduct transactions. For example, conservation credits are created through efforts to conserve habitat and ameliorate or remove threats to sage grouse or sagebrush habitat. Development debits are created if a project that is implemented in designated sage grouse habitat incurs permanent impacts. Developers can offset impacts by purchasing credits.

A key purpose of the Stewardship Fund grant program is to begin creating a pool of conservation credits, in anticipation of future demand. The Act requires MSGOT to prioritize projects that maximize the amount of credits generated per dollars of funds awarded from the Stewardship Fund.⁵⁵ Further, MSGOT is required to calculate and make available credits for leases and conservation easements purchased with funds disbursed after May 7, 2015.⁵⁶

All compensatory mitigation (framework and habitat quantification tool) is statutorily required to consider the USFWS's Service's 2014 Greater Sage Grouse Range-wide Mitigation Framework.⁵⁷ By entering this grant agreement and executing a conservation easement, this project will generate conservation credits that will be calculated and made available, in compliance with the Act.

VII. Public Involvement During the Grant Application Process and During Preparation of this Environmental Assessment

The Act directed MSGOT to promulgate administrative rules to administer a grant program.⁵⁸ MSGOT adopted final rules and Procedures 01-2016 on February 19, 2016, consistent with the Montana Administrative Procedures Act. Three hearings were held, and public comment was solicited on the proposed rules. All MSGOT meetings are publicly noticed and comment sought. The final rules took effect March 5, 2016. Additional formal rulemaking related to the Habitat Quantification Tool and Stewardship Account grants was completed in 2018-2019. Final administrative rules took effect in January 2019.

⁵¹ See MCA § 76-22-111(1) ("After complying with the sequencing provisions required of this Conservation Strategy (avoid, minimize, reclaim), a project developer may proceed with a proposed project which will cause adverse impacts to sage grouse if the developer provides compensatory mitigation for the debits of a project.").

⁵² MCA §§ 76-22-105(1)(g), 111(1)(b).

⁵³ MCA § 76-22-103(8) defines habitat exchange as "a market-based system that facilitates the exchange of credits and debits between interested parties."

⁵⁴ MCA § 76-22-103(2) defines conservation bank as "a site or group of sites established through an agreement with the U.S. Fish and Wildlife Service to provide ecological functions and services expressed as credits that are conserved and managed for sage grouse habitat and populations and used to offset debits occurring elsewhere."

⁵⁵ MCA § 76-22-109(4).

⁵⁶ MCA §§ 76-22-104(2), 105(3).

⁵⁷ Available at

https://www.fws.gov/greatersagegrouse/documents/Landowners/USFWS_GMSG%20RangeWide_Mitigation_Framework20140903.pdf.

⁵⁸ MCA §76-22-104(1)-(7).

The timeline for the 2020 Stewardship Account grant cycle is as follows:

- September 16, 2020: The Program issued a media release announcing the third grant cycle and the pre-application deadline of September 23, 2021 at 5:00 p.m..
- September 23, 2020: Eight total pre-applications for permanent conservation easements were received.,
- October 19, 2020: Seven total complete applications were received for permanent conservation easements.
- October 19 – November 15: Program and independent peer review of seven applications.
- November 30, 2020: During a publicly-noticed meeting, MSGOT selected projects and funding levels. All seven proposed conservation easements were selected to receive Stewardship Account funding (three were fully funded, remaining funds allocated across other four applications). During the meeting, several public comments were made in support of the projects selected for funding. There were no opposing public comments.
- December 14, 2020: MSGOT reviewed final funding allocations for all seven grants, and there were no changes.
- January 14, 2021: A scoping notice summarizing each grant application, along with accompanying maps of each grant project selected for funding was published to the Program's website and made available for public review.
- January 14, 2021: The Program issued a media release announcing a public scoping comment opportunity. The public was asked to identify concerns or issues to be addressed in this draft EA. The comment deadline was January 22, 2021 at 5:00 p.m.

All applications were reviewed by the Program and an independent peer review committee. Independent peer reviewers have expertise and unique knowledge of the proposed project areas, sage grouse and sagebrush habitats, mitigation, and/or land conservation.

The Program also compiled independent statistics on variables such as number of leks, number of displaying males on leks, amount of existing disturbance using the Density and Disturbance Calculation Tool (DDCT), breeding habitat potential, conservation status of nearby lands, risk of cultivation, and lek vulnerability. The statistics were compiled for the proposed project area, the project area buffered by four miles, and the project area buffered by twelve miles. Four and twelve-mile buffers have biological relevance for nesting distances from leks and response distance to cultivation (see Section VI Purpose and Need for the Proposed Action for a detailed explanation of distance buffers).

These statistics allowed comparison of consistent metrics for sage grouse resource values across all applications to identify those with the greatest benefit and to assist in prioritization and ranking. See Appendix 1.

The Program solicited public scoping comments to initiate this EA, beginning on January 14, 2021 and ending on January 22, 2021. A specific project scoping notice was sent to individuals and organizations likely to have an interest in the proposal and project area (the Program's electronic "interested parties" list). Scoping notices were also available on the Program's website. Accommodations were also made for the public to submit comments electronically via an email to sagegrouse@mt.gov. Interested parties could submit comments electronically or via postal mail.

No electronic or written public scoping comments were received specific to the proposed Mussard-Barrett Ranch Conservation Easement Project.

In accordance with the Montana Environmental Policy Act, public concerns about the project and potential environmental impacts must be considered and analyzed prior to making the decision of whether to grant the funding to TNC.

VIII. Other Cooperators, Partners and/or Agencies with Jurisdiction

Partners involved in this project include the private landowners, TNC, NRCS, and MSGOT. BLM also manages lands adjacent to the proposed project area boundary. There are also large blocks of Montana State Trust Lands adjacent to the proposed project area boundary. Montana's core area approach underlying the Conservation Strategy calls for approaching conservation using an "all hands, all lands, all threats" approach that engages all landowners—both private and public land managing agencies. Executive Order 12-2015 seeks alignment between the state's efforts and those of federal land managing agencies, particularly because of Montana's checkboard ownership patterns.

IX. Description of Reasonable Alternatives Considered

During development of this project two distinct alternatives were considered, which were the Proposed Action Alternative and the No Action Alternative.

Proposed Action Alternative – Under the Action Alternative, MSGOT would authorize disbursement of funds from the Stewardship Fund Account to facilitate TNC's acquisition of the Mussard-Barrett Ranch Conservation Easement, for the purpose of sage grouse conservation in Montana. This easement by TNC would generate credits available at a later time to be used as compensatory mitigation for other projects that impact sage grouse and sagebrush habitats. The Mussard-Barrett Ranch Conservation Easement analyzed in this EA was one proposal from seven total applications for conservation-related projects seeking Stewardship Grant funding through a peer review process. As described in detail in Description of the Proposed Action section above, measures and terms would be required under the conservation easement that would provide measurable contributions for sage grouse conservation in perpetuity. Final easement terms are still being negotiated between the private landowner, TNC, and the state. Near-final terms are known and disclosed in this Draft EA.

No Action Alternative – Under the No Action Alternative, MSGOT would not authorize disbursement of funds in the Stewardship Fund Account to facilitate acquisition of the Mussard-Barrett Ranch Conservation Easement by TNC for the purpose of sage grouse conservation in Montana. Project mitigation credits generated under the easement would not be realized and would not be available at a later time to be used as compensatory mitigation for other projects around the state involving energy or agricultural development etc., which incurred permanent adverse impacts to designated sage grouse habitats. Land use restrictions that would be required under the conservation easement providing measurable contributions for sage grouse habitat conservation in perpetuity would not be required or implemented.

V. Evaluation of Impacts on the Physical Environment and Mitigation

A. Land and Soil Resources

1. Proposed Action – Under the Proposed Action no direct effects to land and soil resources would occur in association with authorizing the grant funds for the purchase of the 2,436-acre conservation easement. The easement itself would contain prohibitions on soil-impacting activities over the long term such as, limits on construction of human developments.

The production, processing, and marketing of livestock compatible with restoration and conservation of sage brush and other grassland, grazing uses, and related conservation values are allowed provided such activities are conducted in a manner consistent with the terms of this easement. Temporary non-native cover crops are permitted in native prairie and rangeland restoration activities. Farming, irrigation, cultivating and “sodbusting” outside of the existing disturbance areas, are prohibited, except to restore native species. Sodbusting is defined as any cultivation, disking, plowing, or disturbance of native soils and vegetation by mechanical means, including without limitation engine powered machinery and horse- or mule-drawn plows and discs. Intentional conversion of native vegetation to exotic species or the introduction of non-native plant species through farming, plowing or any type of cultivation is prohibited.

Buildings and structures are permitted within the one building envelopes. See maps in Appendix 1. Other surface-disturbing activities are prohibited, including surface mining, commercial gravel operations, wind and solar development, and conversion of rangeland to cropland. Thus, lower risk of adverse indirect and cumulative effects to soil and land resources would be expected under this alternative.

In Montana, it is possible for surface lands and the mineral estate to be owned by two separate entities (i.e. split estate). While the law is well settled that the mineral estate is the dominant right and reasonable use of the surface is allowed, split estate does not automatically disqualify a conservation easement from becoming a credit site for mitigation. In other words, the presence of a credit site is not mutually exclusive of mineral development and the two uses can coexist.⁵⁹

In the instance of split estate situations, the mineral estate has the prior existing legal right to reasonable use of the surface lands of a credit site, pursuant to laws governing split estates in Montana. Based on Executive Order 12-2015 guidance, establishing a conservation easement for mitigation credit generation and development of mineral rights are not mutually exclusive, and can be conducted in such a way as to be consistent with the terms of the conservation easement.

No residential dwelling units would be constructed within a two-mile radius of active sage grouse leks. No building will be constructed outside of the approximately one quarter acre building envelope. This building envelope is located in the northern portion of the southernmost easement boundary area, near the existing Gravel Quarry. No buildings may be constructed within a 0.6-mile radius of an active sage grouse lek. Other surface-disturbing activities are prohibited, including surface mining, commercial gravel operations, wind and solar development, and conversion of rangeland to cropland. Thus, lower risk of adverse indirect and cumulative effects to soil and land resources would be expected under this alternative.

⁵⁹ The Internal Revenue Service Code Title 26 Subtitle A Chapter 1 Subchapter B Part VI Section 170 and Montana laws for guidance as to development of mineral resources, preservation of conservation values, and the tax implications.

2. No Action – Under the No Action Alternative, funding support for the Mussard-Barrett Ranch Conservation Easement Project would not be provided. Restrictions on potential soil and land-disturbing activities would not be implemented under the easement terms, and greater risk of indirect and cumulative impacts to soil and land resources over time would be present.

B. Air Resources

1. Proposed Action – Under the Proposed Action no direct, indirect or cumulative effects to air quality or other resources would occur in association with authorizing the grant funds for the purchase of the 2,436-acre conservation easement.
2. No Action – Under this alternative, grant fund authorization for the purchase of the 2,436-acre conservation easement would not occur. However, no direct, indirect or cumulative effects to air quality or other air-related resources would be anticipated.

C. Water Resources

1. Proposed Action – The property is located in the upper Horse Prairie watershed within Beaverhead County, Montana. The higher elevation habitat includes riparian shrubland, sagebrush steppe, wet meadows, seeps and springs, and two small perennial creeks. The Mussard-Barrett Ranch may restore, enhance, and develop water resources, including ponds, for permitted agricultural uses, livestock uses, fish and wildlife uses, domestic needs, and private recreation. No exploration or extraction may take place in a water body, nor may any water quality be degraded by actions undertaken on the property. Under the Proposed Action no direct, indirect or cumulative effects to water quality, streams or other aquatic resources would occur in association with authorizing the grant funds for the purchase of the 2,436-acre conservation easement.
2. No Action – Under this alternative, grant fund authorization for the purchase of the 2,436-acre conservation easement would not occur. However, no direct, indirect or cumulative effects to water quality, streams or other aquatic resources would be anticipated.

D. Vegetation Resources

1. Proposed Action – A data query of endangered, threatened plants for the conservation easement area with one-mile buffer was conducted by the Program. No records of either endangered or threatened plants were returned. Records were also obtained for seven sensitive species associated with sagebrush, subalpine forest, timberline, grassland, and wetland/riparian habitats as described in Table 1 below. Under the Proposed Action no direct effects to existing vegetation on the project area would occur in association with authorizing the grant funds for the purchase of the 2,436-acre conservation easement. However, over the long term, appreciable indirect and cumulative beneficial effects associated with protection and conservation of native vegetation communities would be realized by authorizing funding to secure the conservation easement.

Mussard-Barrett Ranch Species of Concern Report							
FERNS AND FERN ALLIES (PTERIDOPHYTA)							
Scientific Name Common Name	Family (Scientific) Family (Common)	Global Rank	State Rank	USFWS	USFS	BLM	Habitat
<i>Equisetum palustre</i> Marsh Horsetail	Equisetaceae Horsetails	G5	S3				
GYMNOSPERM (CONIFERS)							
<i>Pinus albicaulis</i> Whitebark Pine	Pinaceae Fir/Hemlock/Larch /Pine/Spruce	G3G4	S3	P	Candidate on Forests (BD, BRT, CG, HLC, KOOT, LOLO)	Sensitive	Subalpine forest, timberline
FLOWERING PLANTS - DICOTS (MAGNOLIOPSIDA)							
<i>Astragalus scaphoides</i> Bitterroot Milkvetch	Fabaceae Pea Family	G3	S3		Sensitive - Known on Forests	Sensitive	Sagebrush- grassland
<i>Eriogonum soliceps</i> Railroad Canyon Wild Buckwheat	Polygonaceae Buckwheat Family	G3	S3			Sensitive	Ridges/slopes (Open, Montana)
<i>Plagiobothrys leptocladus</i> Slender-branched Popcorn- flower	Boraginaceae Borage Family	G4	S2S3				Wetland/Riparian (low-elevation)
<i>Sphaeromeria argentea</i> Chicken-sage	Asteraceae Aster/Sunflowers	G3G4	S3			Sensitive	Sagebrush steppe (low-elevation)
FLOWERING PLANTS - MONOCOTS (LILIOPSIDA)							
<i>Puccinellia lemmonii</i> Lemmon's Alkaligrass	Poaceae Grasses	G4	S1S2				Wetland/Riparian

Table 1. Results of the Montana Species of Concern record search for the Mussard-Barrett Ranch (January 2021).

Farming, irrigation, or cultivation outside of the existing disturbance are prohibited, except to restore native species. Intentional conversion of native vegetation to exotic species or the introduction of non-native plant species through farming, plowing or any type of cultivation is prohibited.

Specific measures addressed in the easement that would provide protections for vegetation communities include:

- limits on the location of allowable additional residential dwelling units and associated outbuildings;
- easement terms to protect the conservation values and private rangeland stewardship;
- prohibition on commercial timber operations, while allowing for the personal use of timber resources, including removal of conifers to restore sage grouse nesting habitat;
- prohibition of any cultivation, plowing, or disturbance of native soils and vegetation by mechanical or chemical means;
- prohibition of surface mining;
- prohibition of commercial gravel operations;
- prohibition of rangeland conversion to cropland;

- prohibition of new road construction other than for building envelope access;
- the construction of new utilities and granting of utility line rights-of-way except as permitted in the terms of the easement, are prohibited; and
- prohibition of commercial wind and solar development.

This suite of measures would minimize the potential for destruction, disturbance, removal, and conversion of sagebrush and grassland vegetation communities in perpetuity, which would provide considerable protection and certainty.

2. No Action – Under this alternative, grant fund authorization for the purchase of the 2,436-acre conservation easement would not occur. Thus, no protective restrictions would be established under the easement at this time. Over time, greater risk of adverse indirect and cumulative effects to existing vegetation communities would be present due to numerous land uses and choices made by the present and future landowners and public land managers.

E. Fish and Wildlife Resources

1. Proposed Action -- A data query of endangered, threatened and sensitive species for the conservation easement area with a one-mile buffer was conducted by the Program. Records for federally listed endangered or threatened species were located for this area. These species include Canada Lynx (*Lynx canadensis*), Grizzly Bear (*Ursus arctos horribilis*), and Northern American Wolverine (*Gulo gulo luscus*). Records were also obtained for twelve sensitive species associated with sagebrush, grassland-prairie habitats, and mountain streams, rivers, and lakes, as described in Table 2 below.

The easement area also provides habitat for numerous other terrestrial and avian species endemic to Southwestern Montana. The project is located the upper Horse Prairie Watershed, with multiple nearby wet meadows. Under the Proposed Action, no direct effects to existing habitats on the project area would occur in association with authorizing the grant funds for the purchase of the 2,436-acre conservation easement.

Mussard-Barrett Ranch Species of Concern Report										
MAMMALS (MAMMALIA)										
Scientific Name Common Name	(Scientific) Family (Common)	Global I Rank	State Rank	USFW S	USFS	BLM	FWP Swap	Global Breeding Range in	that's in Breeding Range	Habitat
<i>Brachylagus idahoensis</i> Pygmy Rabbit	Leporidae Rabbits	G4	\$3		Sensitive - Known on Forests (BD)	Sensitive	\$GCN3	2	4	Sagebrush
<i>Gulo gulo</i> Wolverine	Mustelidae Weasels	G4	\$3		Proposed on Forests (BD, BRT, CG, HLC, KOOT, LOLO)	Sensitive	\$GCN3	0	37	Boreal Forest and Alpine Habitats
<i>Myotis lucifugus</i> Little Brown Myotis	Vespertilionidae Bats	G3	\$3				\$GCN3	3	100	Generalist
BIRDS (AVES)										
<i>Aquila chrysaetos</i> Golden Eagle	Accipitridae Hawks/Kites/Eagles	G5	\$3	BGEPA; MBTA; BCC17		Sensitive	\$GCN3	3	100	Grasslands
<i>Ardea herodias</i> Great Blue Heron	Ardeidae Bitterns/Egrets/Herons/Night-Herons	G5	\$3	MBTA			\$GCN3	3	100	Riparian forest
<i>Buteo regalis</i> Ferruginous Hawk	Accipitridae Hawks/Kites/Eagles	G4	\$3B	MBTA; BCC10; BCC17		Sensitive	\$GCN3	11	35	Sagebrush grassland
<i>Centrocercus urophasianus</i> Greater Sage-Grouse	Phasianidae Upland Game Birds	G3G4	\$2		Sensitive - Known on Forests (BD) Suspected on Forests (CG, HLC)	Sensitive	\$GCN2	17	75	Sagebrush
<i>Numenius americanus</i> Long-billed Curlew	Scolopacidae Sandpipers	G5	\$3B	MBTA; BCC10; BCC11; BCC17		Sensitive	\$GCN3	13	100	Grasslands
<i>Oreoscoptes montanus</i> Sage Thrasher	Tyrannidae Thrashers/Mockingbirds/Catbirds	G4	\$3B	MBTA; BCC10; BCC17		Sensitive	\$GCN3	3	84	Sagebrush
<i>Spizella breweri</i> Brewer's Sparrow	Passerellidae New World Sparrows	G5	\$3B	MBTA; BCC10; BCC18		Sensitive	\$GCN3	12	100	Sagebrush
FISH (ACTINOPTERYGII)										
<i>Oncorhynchus clarkii lewisi</i> Westslope Cutthroat Trout	Salmonidae Trout	G5T4	\$2		Sensitive - Known on Forests (BD, BRT, CG, HLC, KOOT, LOLO)	Sensitive	\$GCN2		34	Mountain streams, rivers, lakes
INVERTEBRATES (MOLLUSKS)										
<i>Margaritifera falcata</i> Western Pearlshell	Margaritiferidae Margaritiferid Mussels	G5	\$2		Sensitive - Known on Forests (BD, BRT, CG, HLC, KOOT, LOLO)	Sensitive	\$GCN2	10	26	Mountain streams, rivers

Table 2. Results of the Montana Species of Concern record search for the Mussard-Barrett Ranch (January 2021).

However, over the long term, appreciable indirect and cumulative beneficial effects associated with protection and conservation of native sagebrush/grassland habitat would be realized by authorizing funding to secure the conservation easement.

Specific measures addressed in the easement that would provide protections for fish and wildlife, and sage grouse in particular include:

- limits on the number of allowable additional residential dwelling units and associated outbuildings;
- easement terms to protect the conservation values and purposes for private rangeland stewardship and sage grouse;

- prohibition on commercial timber operations, while allowing for the personal use of timber resources including management actions for natural occurrences such as disease, and selective harvest and removal of conifers to restore sage grouse nesting habitat;
- intentional conversion of native vegetation to exotic species or the introduction of non-native plant species; farming, plowing or any type of cultivation is prohibited;
- prohibition of surface mining;
- prohibition of commercial gravel operations;
- prohibition of rangeland conversion to cropland;
- prohibition of new road construction other than for building envelope access;
- prohibition of the construction of new utilities and granting of utility line rights-of-way except as permitted in the terms of the easement; and
- prohibition of commercial wind and solar development.

This suite of measures would minimize the potential for destruction, disturbance, removal, and conversion of sagebrush and grassland vegetation communities in perpetuity, which would provide considerable protection and certainty for sage grouse and other associated sagebrush/rangeland species into the future.

2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 2,436-acre conservation easement would not occur. Thus, no protective restrictions would be established under the easement at this time. Over time, greater risk of adverse indirect and cumulative effects to existing sagebrush and grassland-prairie habitats would be present due to numerous land uses and choices made by present and future landowners and public land managers.

F. Adjacent Lands

1. Proposed Action –In general, land uses outside of the proposed conservation easement area would not be affected. Lands adjacent to the project area are comprised primarily of other private lands, as well as state trust lands and lands managed by the BLM. The Mussard-Barrett Ranch retains leases on the nearby federally managed (about 15,500 acres) lands and implements the same grazing management plan as is practiced on the ranch. This landscape-scale land stewardship approach is advantageous for overall range health and sage grouse conservation efforts. Under the Proposed Action no direct effects to management of neighboring lands within, or in the nearby vicinity of the project area, would occur in association with authorizing the grant funds for the purchase of the 2,436-acre conservation easement on private land.

However, in the future, land uses may be indirectly influenced on some neighboring lands due to conservation restrictions in the proposed easement area, such as limitations on new road construction through the easement parcels themselves. The extent that restrictions would limit or influence other land uses on nearby non-easement lands is uncertain and would depend on the resource development potential of each parcel and management objectives of each individual landowner over time.

As with cumulative conservation benefits obtained by funding and granting the conservation easement, some indirect cumulative restrictions on future resource development would occur on the parcel itself and to some extent the neighboring lands. Alternatively, in the future, neighboring lands may be viewed as having greater conservation opportunity potential, and become a priority for combining additional conservation lands, given the presence of this easement and investment in this block of habitat.

2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 2,436-acre conservation easement would not occur. Thus, no protective restrictions would be established under the easement at this time, and no direct, indirect or cumulative effects associated with adjacent or nearby lands would occur.

VI. Evaluation of Impacts on the Human Environment

A. Noise

1. Proposed Action -- Under the Proposed Action no direct, indirect or cumulative effects associated with noise or similar disturbance would occur in association with authorizing the grant funds for the purchase of the 2,436-acre conservation easement.
2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 2,436-acre conservation easement would not occur. No direct, indirect or cumulative effects associated with noise or similar disturbance would occur.

B. Land Use

1. Proposed Action -- Under the Proposed Action the easement terms would allow and promote traditional agricultural and ranching uses of the project area. The production, processing and marketing of livestock compatible with restoration and conservation of sage brush and other grassland, grazing uses, and related conservation values are allowed provided such activities are conducted in a manner consistent with the terms of this easement.

Restrictions on construction of new roads, sagebrush reduction or eradication, no surface occupancy, prohibition of mining etc. are aimed at providing high quality sagebrush/grassland habitat for wildlife into the future. However, several other land uses such as wind development, commercial gravel mining, oil and gas development to the extent the surface owner owns the mineral estate, range conversion, and real estate subdivision would be prohibited on these lands. Impacts related to implementation of these restrictions on the easement-covered lands would be cumulative at the local and statewide level. At the statewide level cumulative increases in easement lands and indirect reductions in other potential land uses would be offset through implementation of a conservation credit/banking program as envisioned under Executive Order 12-2015. In this manner, conservation protections would be afforded the sage grouse while allowing important land uses and resource development in Montana in a regulated, responsible manner.

2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 2,436-acre conservation easement would not occur. Thus, no direct, indirect or cumulative effects associated with current or future land uses would occur.

C. Human Health and Safety

1. Proposed Action -- Under the Proposed Action no foreseeable direct, indirect or cumulative effects associated with human health or safety would occur in association with authorizing the grant funds for the purchase of the 2,436-acre conservation easement.
2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 2,436-acre conservation easement would not occur. No direct, indirect or cumulative effects associated with health and human safety would occur.

D. Community – Social

1. Proposed Action -- Under the Proposed Action no foreseeable direct, indirect or cumulative effects involving the disruption of native or traditional lifestyles or communities would occur in association with authorizing the grant funds for the purchase of the 2,436-acre conservation easement. Ultimate approval and acquisition of the conservation easement would, over time, be expected to foster the maintenance of traditional ranching land uses and lifestyles in the local area.
2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 2,436-acre conservation easement would not occur. Thus, no direct, indirect or cumulative effects associated with the alteration of native or traditional lifestyles or communities would occur.

E. Taxes and Local Services

1. Proposed Action -- Under the Proposed Action no foreseeable direct, indirect or cumulative effects involving changes in state and federal taxes are anticipated on the easement property. Future tax rates would be assessed based on market land values for the land use terms required by the easement agreement.
2. No Action -- Under the No Action Alternative, state and federal taxes for the 2,436-acre parcel would continue to be assessed at the present value without the easement. Thus, no direct, indirect or cumulative effects would occur.

F. Aesthetics and Recreation

1. Proposed Action -- Under the Proposed Action there would be no foreseeable direct, indirect or cumulative effects in aesthetics or recreational opportunities that would occur in association with authorizing the grant funds for the purchase of the 2,436-acre conservation easement. Ultimate approval and acquisition of the conservation easement would over time, be expected to foster the maintenance of existing open space views and aesthetics in the local area, and potentially contribute to hunting and wildlife watching activities on adjacent properties.

2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 2,436-acre conservation easement would not occur. Thus, no direct, indirect or cumulative effects involving changes in aesthetics or recreational opportunities would occur.

G. Cultural / Historic Resources

1. Proposed Action -- Under the Proposed Action no foreseeable direct, indirect or cumulative effects involving changes in cultural or historic resources would occur in association with authorizing the grant funds for the purchase of the 2,436-acre conservation easement. A cultural resource evaluation was not conducted for this easement. Considering the non-ground disturbing nature of this project, no additional archaeological investigative work will be required. The easement will not modify current land use, and therefore will have no potential to physically or visually impact any kind of cultural or paleontological resources that may be present within the Area of Potential Effects (APE).
2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 2,436-acre conservation easement would not occur. The project area is largely semi-arid, sagebrush covered steppe/foothills, and the topography is characteristically gentle to moderately steep, therefore the cultural and paleontological resources will continue to persist in the rather dry and stable environment. No direct, indirect or cumulative effects involving cultural resources would be anticipated.

X. Summary Evaluation of Significance and Mitigation

Under the proposed action, none of the impacts are severe, enduring, geographically widespread, or frequent. The quantity and quality of the natural resources, including any that may be considered unique or fragile, will not be adversely affected to a significant degree. There would be no precedent for the actions that would cause significant impacts, and there are no conflicts with local, State, or federal laws, requirements, or formal plans. Adverse impacts would be avoided, controlled, or mitigated by the design and implementation of the project to an extent that they are not significant.

XI. Evaluation of Need for an EIS

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

XII. Name, Contact Information of Preparers

- Erin Reather, Carolyn Sime
Sage Grouse Habitat Conservation Program, Department of Natural Resources and Conservation. PO Box 201601, 1539 11th Ave, Helena, MT 59620.
E-mail: csime2@mt.gov; Work: (406) 444-0554.

XIII. Public Involvement

The public comment period will run January 25, 2021 through February 8, 2021.

Submit comments electronically to sagegrouse@mt.gov. Electronic comments must be received by 5:00 p.m. on February 8, 2021.

Comments can also be submitted electronically through the online Public Comment tool located on the Stewardship Account Grants webpage: <https://sagegrouse.mt.gov/Grants>. Electronic comments must be submitted by 5:00 p.m. on February 8, 2021.

Mail written comments to:

Montana Department of Natural Resources and Conservation
Montana Sage Grouse Habitat Conservation Program
Attn: Proposed Mussard-Barrett Ranch Conservation Easement
1539 11th Ave.
Box 201601
Helena, MT 59620

Written comments must be received on or before February 8, 2021.

XIV. Next Steps

After the close of the public comment period, the Program will take the following next steps:

- Public comments on the Draft EA will be reviewed.
- The Program will prepare a final EA and Record of Decision.

MSGOT approved funding of the Mussard-Barrett Ranch Conservation Easement during their November 30, 2020 meeting. MSGOT has executed a grant agreement with TNC. Stewardship Account funds in the award amount of \$527,800 would be placed into escrow with a neutral, independent closing agent within two days of the expected closing date agreed upon by the parties. The parties would provide closing instructions to the closing agent. The actual conservation easement closing is expected to occur by February 24, 2021.

Appendix 1

List of Maps

- Location
- Aerial Imagery
- Surrounding Public Lands
- Conserved Lands within 4 Miles
- Lek Proximity
- Existing Disturbance
- HQT Results Map: Local and Regional Scales

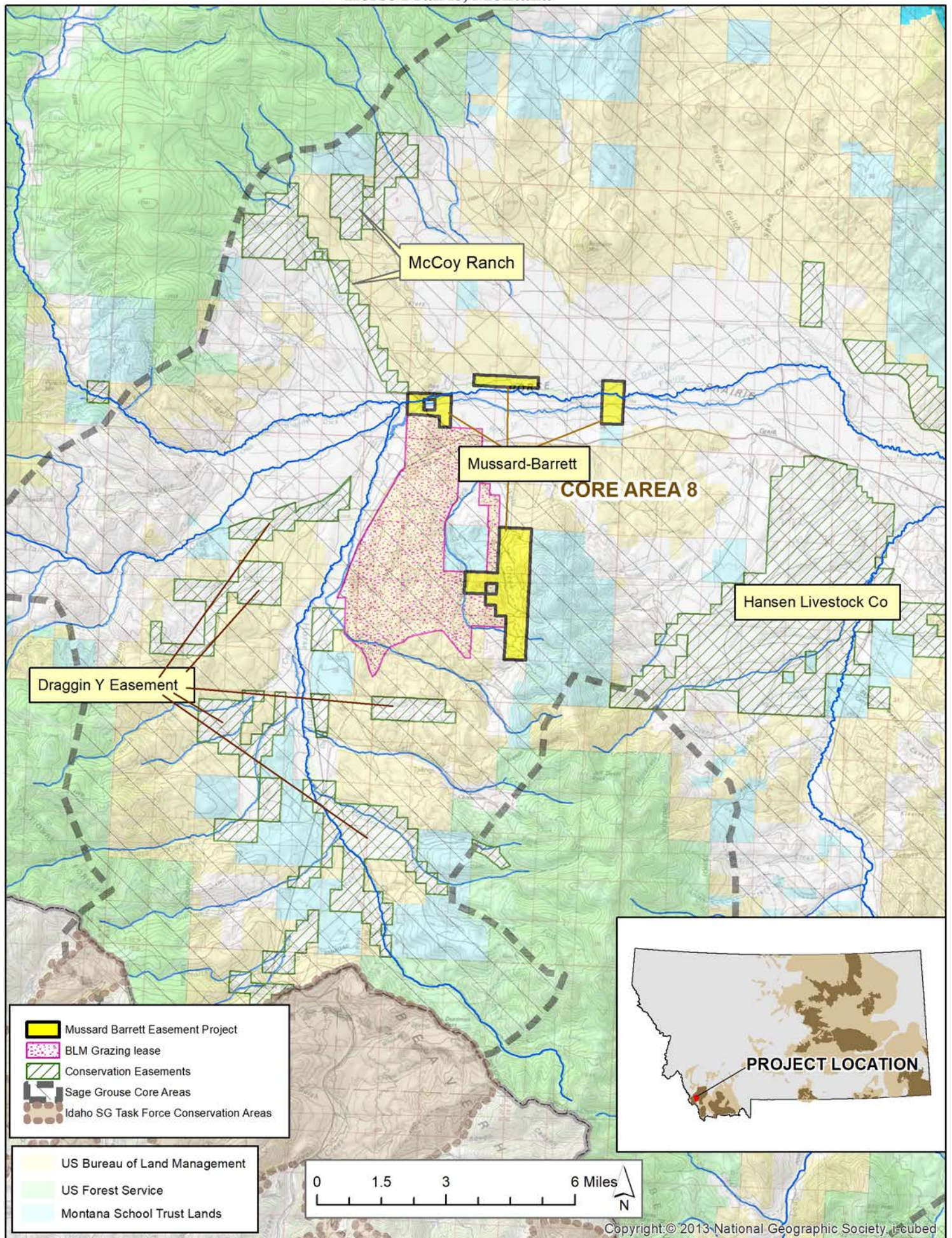
List of Tables

- Overall Project Statistics

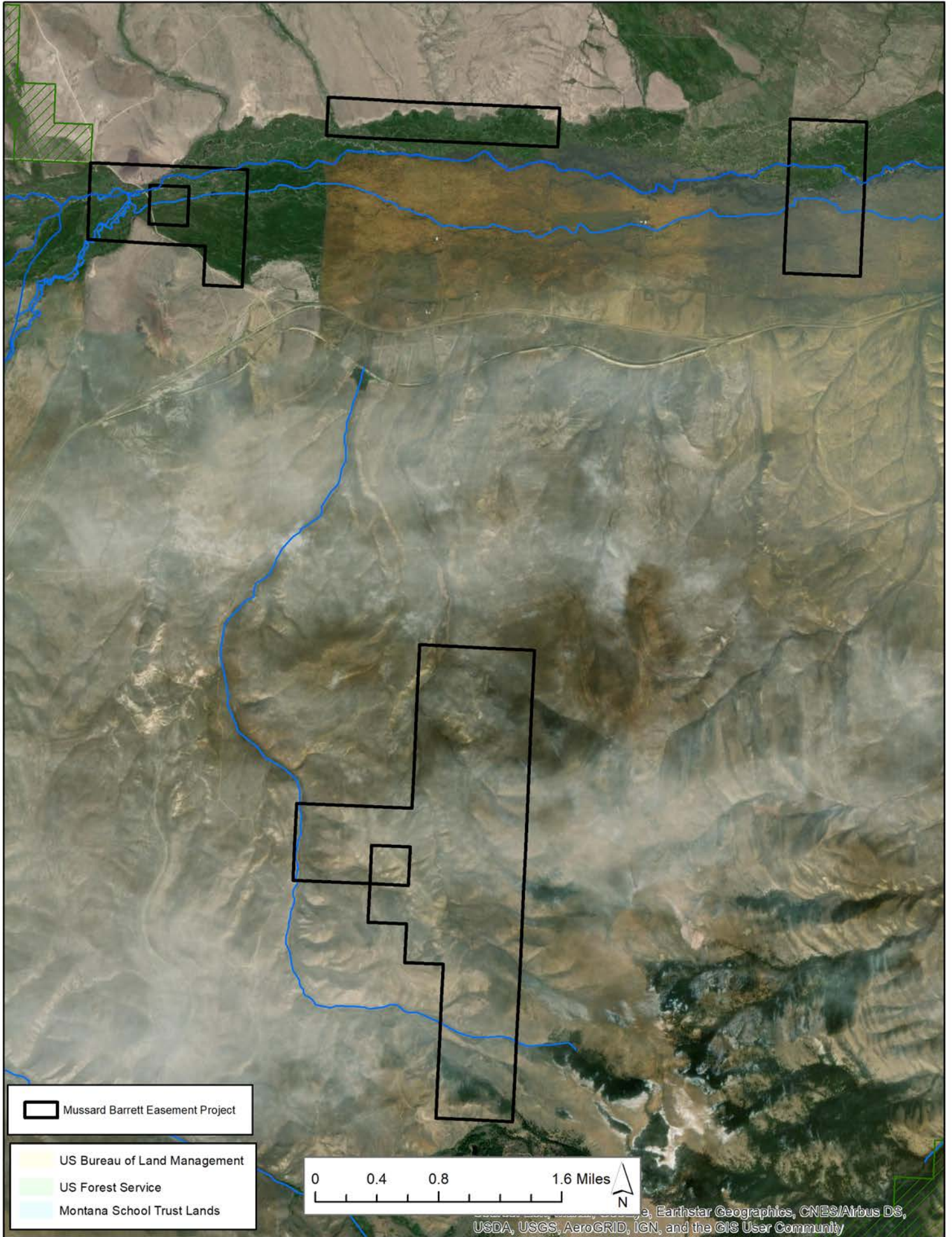
Mussard-Barrett Ranch CE Draft EA

Appendix 1

Mussard Barrett Conservation Easement Horse Prairie, Montana



Mussard Barrett Conservation Easement Horse Prairie, Montana

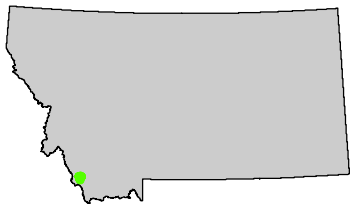


Mussard Ranch TNC Conservation Easement



MONTANA SAGE GROUSE
Habitat Conservation Program

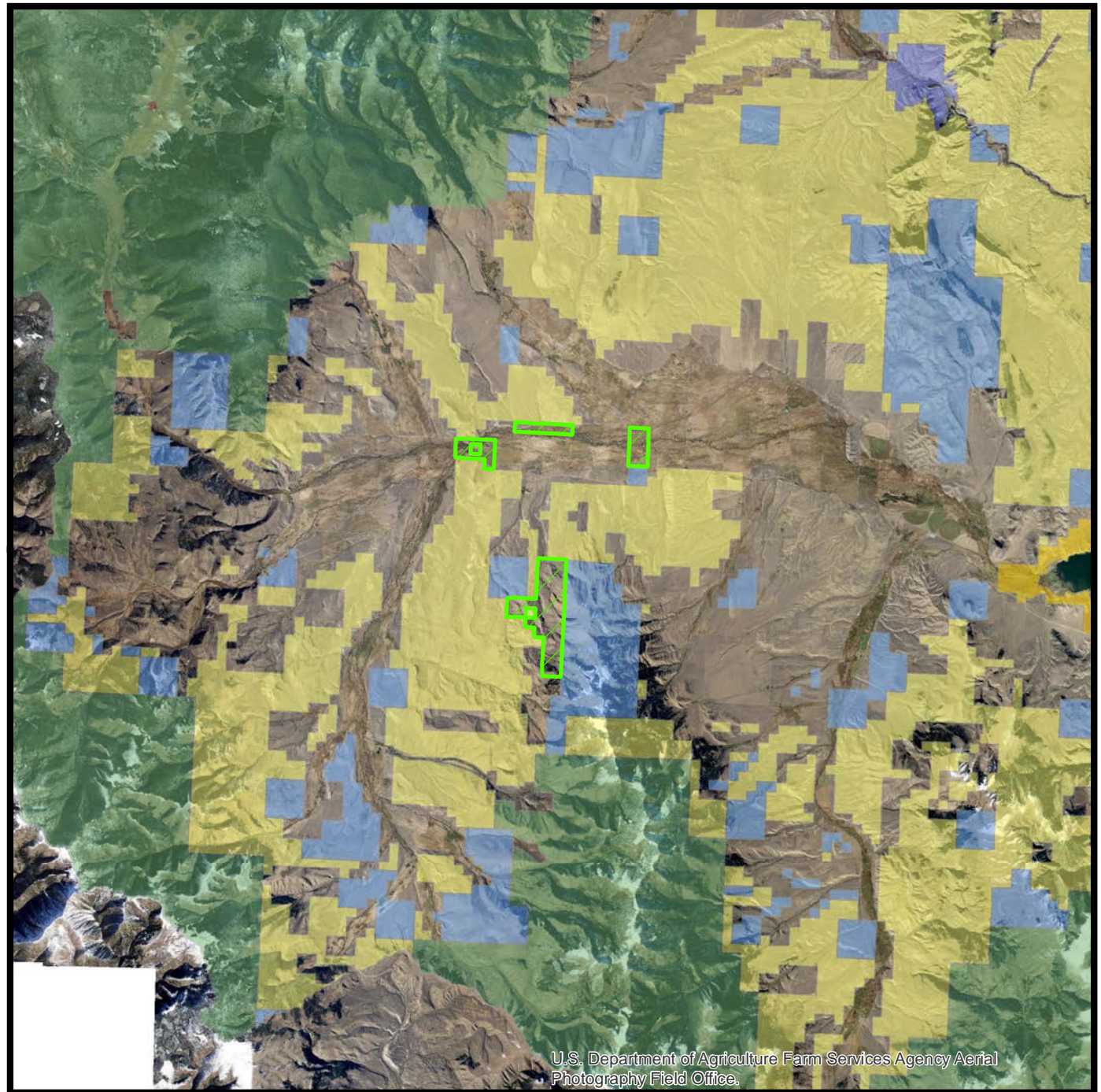
-  **Project Boundary**
-  **County Government**
-  **Montana Fish, Wildlife, and Parks**
-  **Montana State Trust Lands**
-  **US Bureau of Land Management**
-  **US Bureau of Reclamation**
-  **US Forest Service**



Project Information:

Map Date: 23 October 2020
Path File: G:\CARD\10 Sage Grouse HCP\
Grant Program\Third Cycle - November 2020\
GIS\Mussard - TNC\maps
publicLands_landscape.mxd

Service Layer Credits: U.S. Department of Agriculture Farm Services Agency
Aerial Photography Field Office.



U.S. Department of Agriculture Farm Services Agency Aerial
Photography Field Office.

0 7.5 15 Miles

Percentage Conserved Lands within 4 Miles of the Mussard-Barrett Ranch Conservation Easement (The Nature Conservancy)













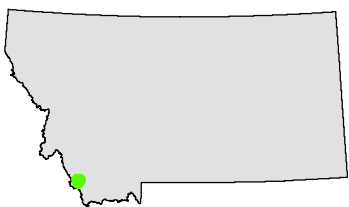
MONTANA SAGE GROUSE
Habitat Conservation Program

Project Information

-  Direct Project Footprint
-  Conserved Lands

Percent of Conserved Lands within 4 Miles of Project Area

-  0% - 10%
-  10.1% - 20%
-  20.1% - 30%
-  30.1% - 40%
-  40.1% - 50%
-  50.1% - 60%
-  60.1% - 70%
-  70.1% - 80%
-  80.1% - 90%
-  90.1% - 100%

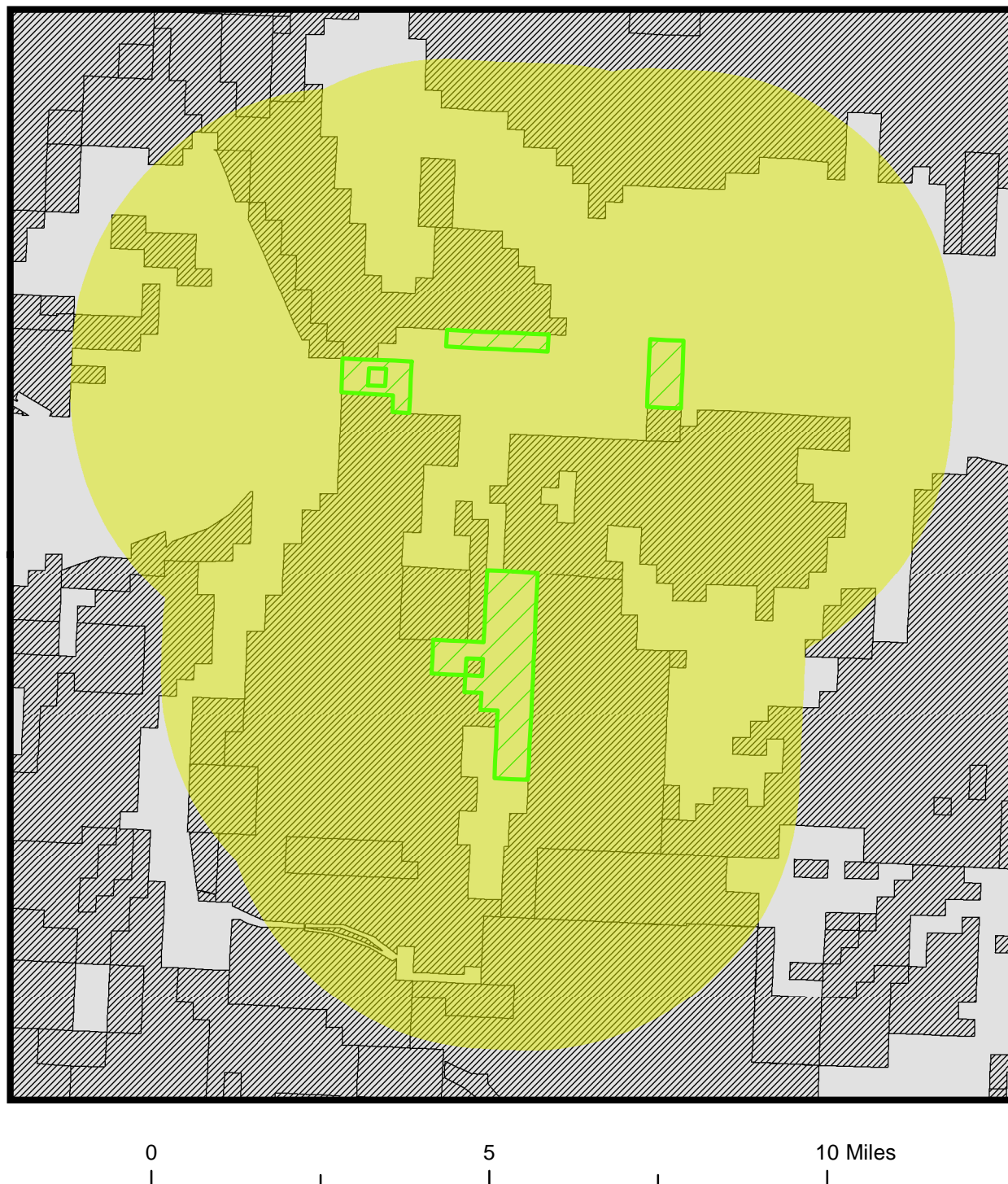


Map Information:

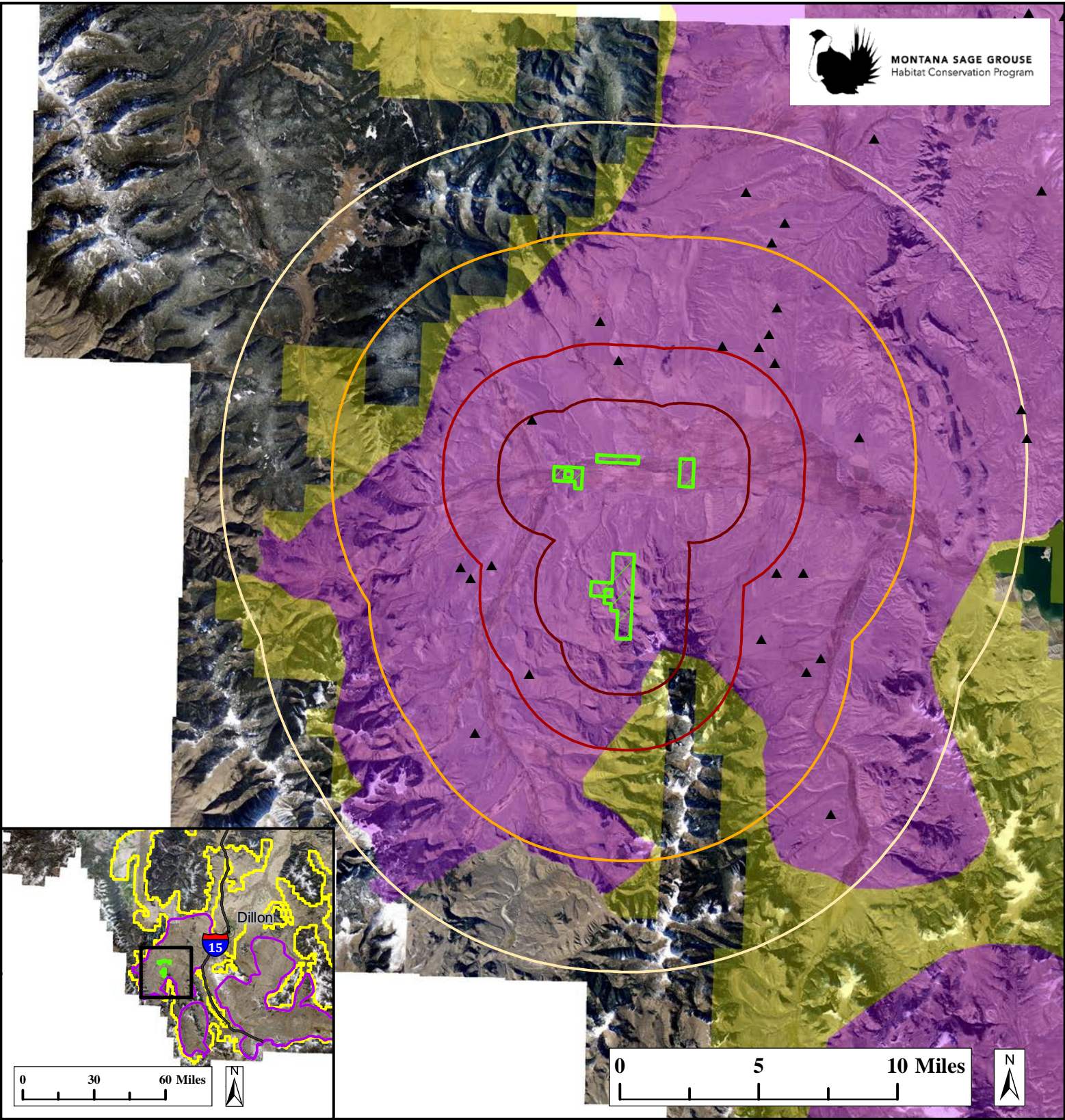
Map Date: 26 October 2020

File Path: G:\CARD\10 Sage Grouse HCP\Grant
Program\Third Cycle - November
2020\GIS\Mussard - TNC\maps\
4MileConservedLands.mxd

Land Management Dataset from: <http://mtnhp.org/stew.asp>



Mussard Ranch TNC Conservation Easement - Lek Proximity



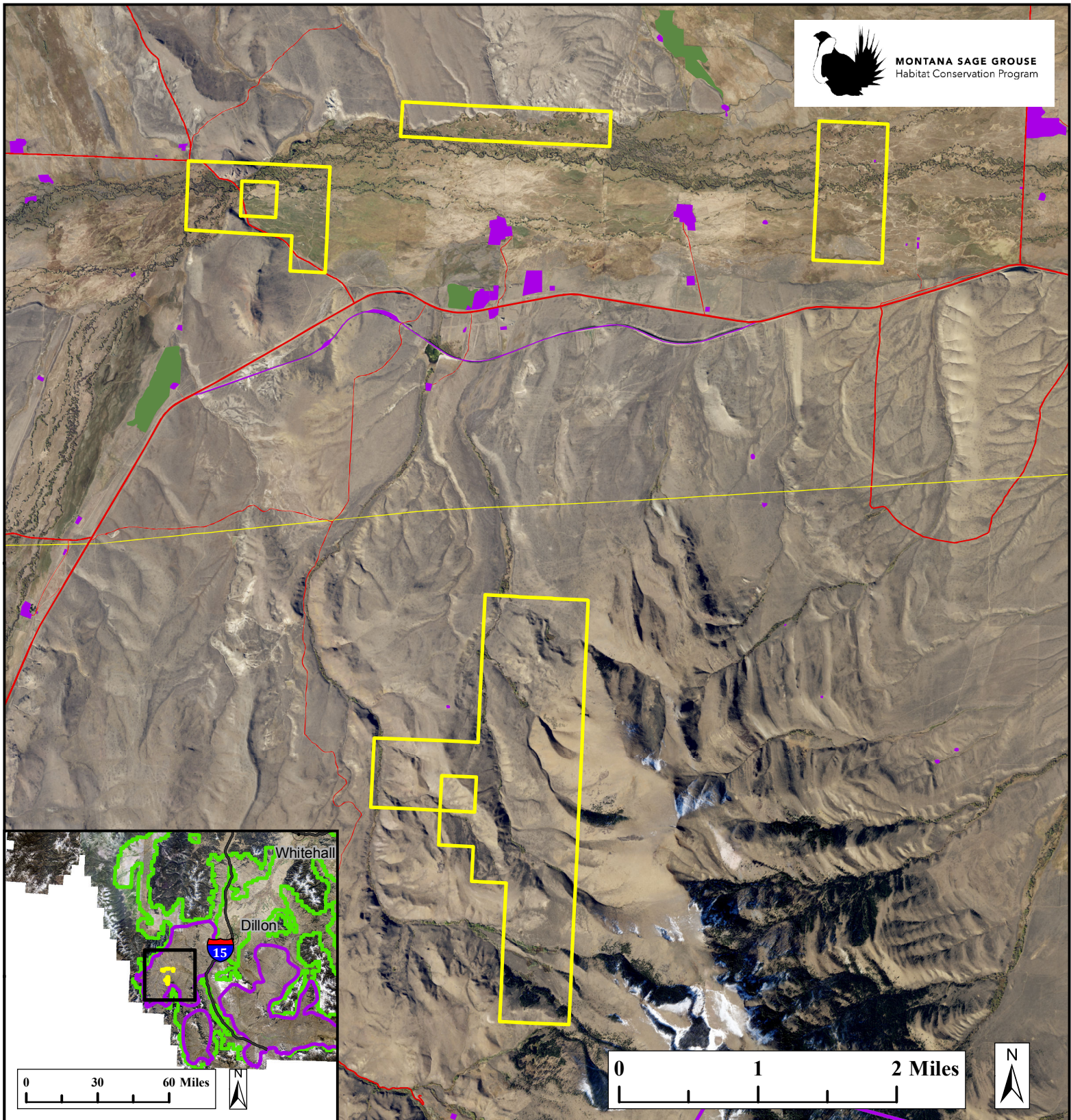
Project Information:

Map Date: 23 October 2020
PathFile: G:\CARD\10 Sage Grouse HCP\Grant
Program\Third Cycle - November
2020\GIS\Mussard - TNC\maps\
ProximityToSGLeks.mxd

Service Layer Credits: U.S. Department of Agriculture Farm Services Agency
Aerial Photography Field Office.

▲	ActiveLeks		Buffer Distances		# Leks Within Buffer
	Project Boundary		2 Mile Buffer		2 Mile: 1
	Core Area		4 Mile Buffer		4 Mile: 4
	General Habitat		8 Mile Buffer		8 Mile: 19
	Connectivity Area		12 Mile Buffer		12 Mile: 24

Mussard Ranch TNC Conservation Easement Existing Disturbance



Project Information:

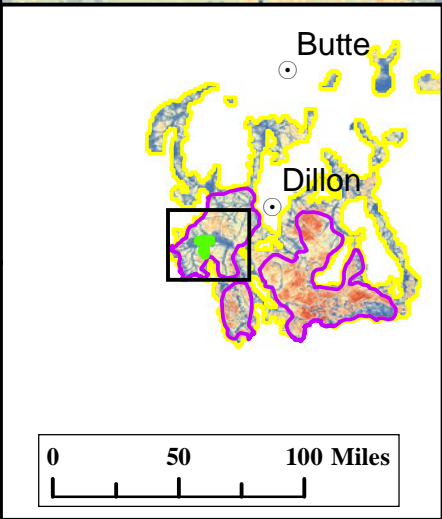
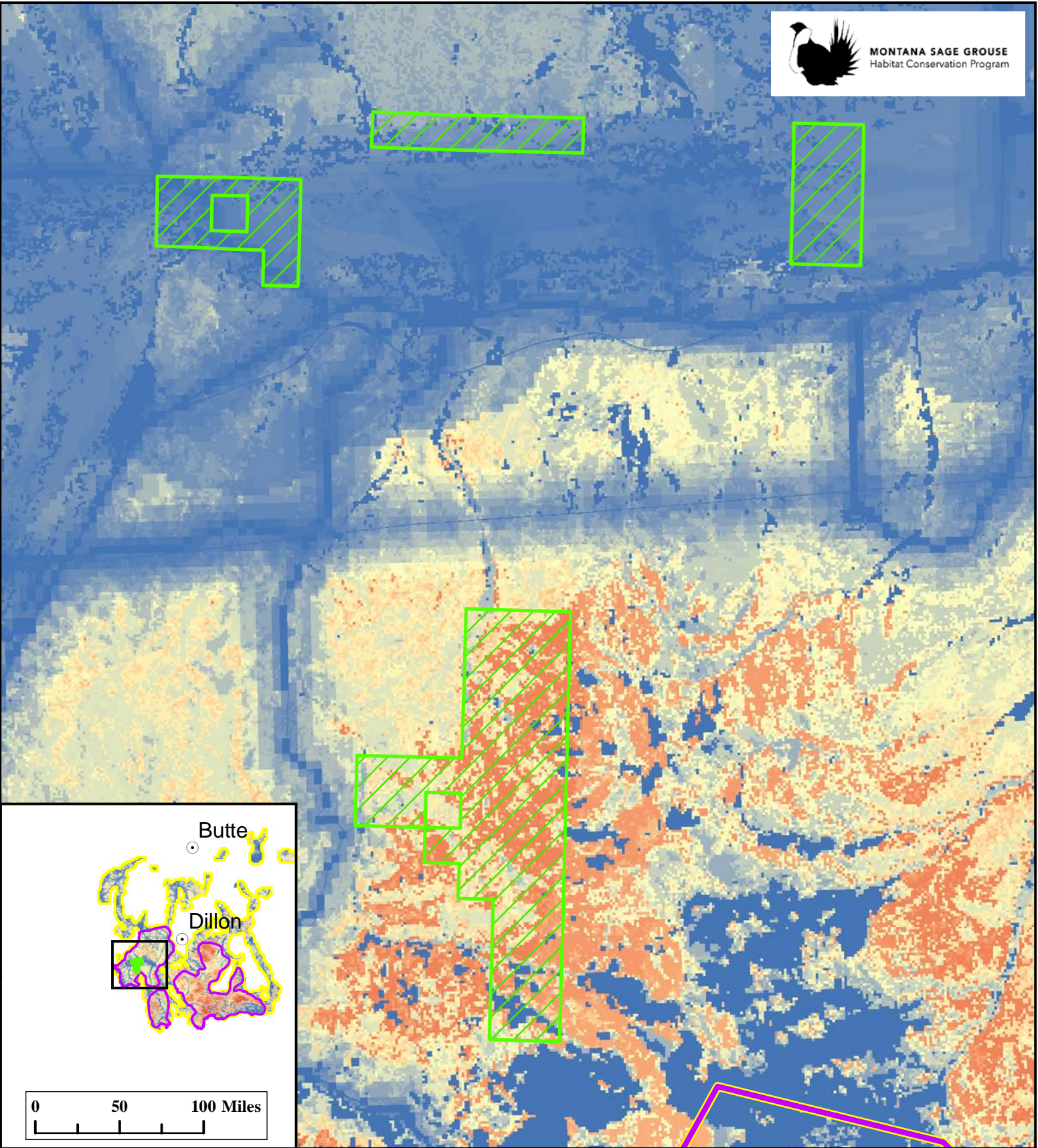
Map Date: 08 October 2020

PathFile:G:\CARD\10 Sage Grouse HCP\Grant
Program\Third Cycle - November 2020\Pre-
Applications\Mussard Ranch - TNC\maps\
Disturbances.mxd

Service Layer Credits: U.S. Department of Agriculture Farm Services Agency
Aerial Photography Field Office.

	Project Boundary		Existing Disturbances
	Core Area		Building; Livestock Area; Other; Stock Pond; Storage Yard
	General Habitat		Crop; Cropland
	Connectivity Area		Mine
			Power Line
			Road; Road - County; Road - Two Track

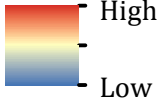
HQT Results: Mussard Ranch - TNC



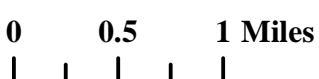
Project & HQT Information

Date of HQT Results: 09 Oct. 2020
Number of Years: 100 Years

HQT Habitat Quality

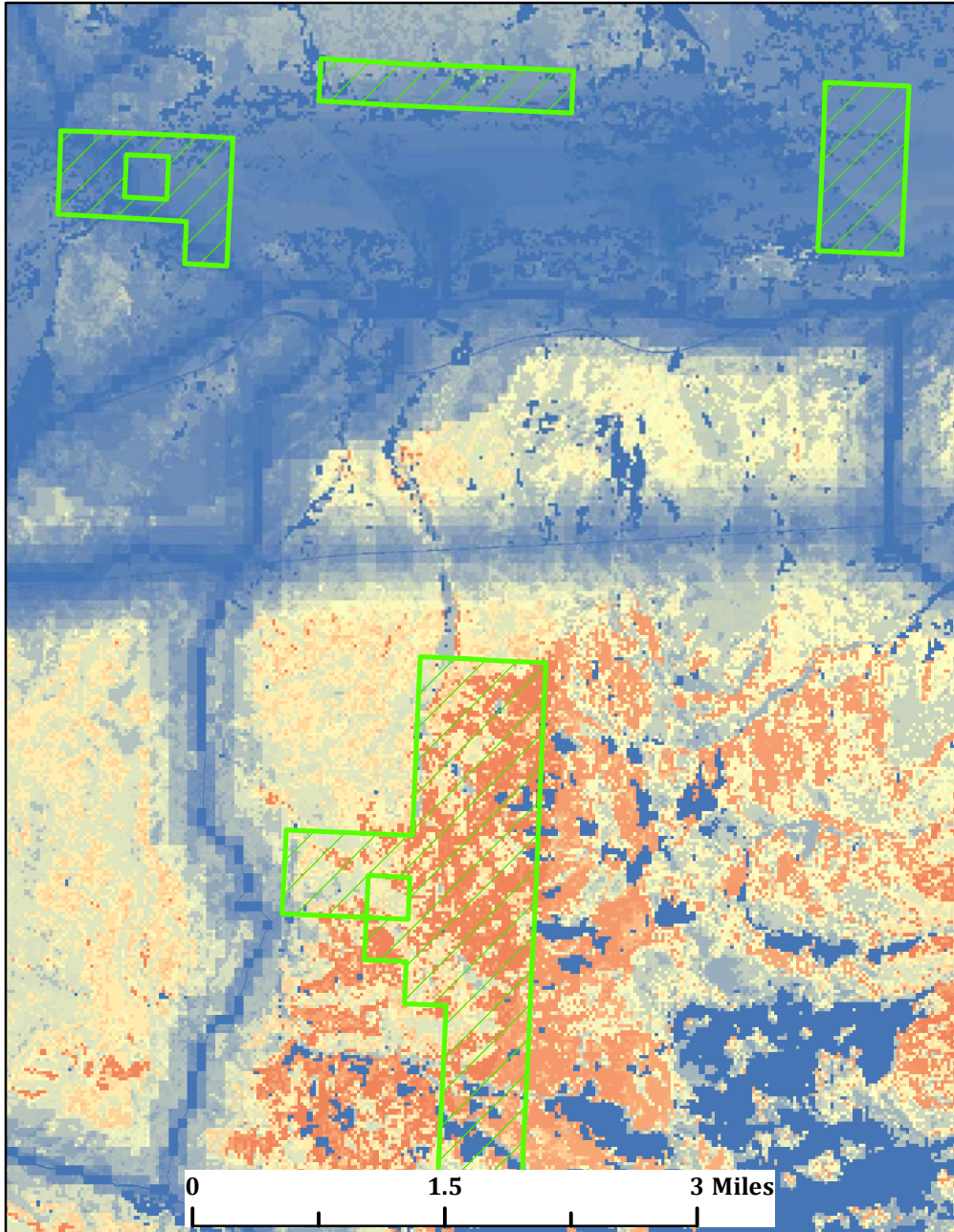


- Project Direct Footprint
- Core Area
- General Habitat
- Major Towns

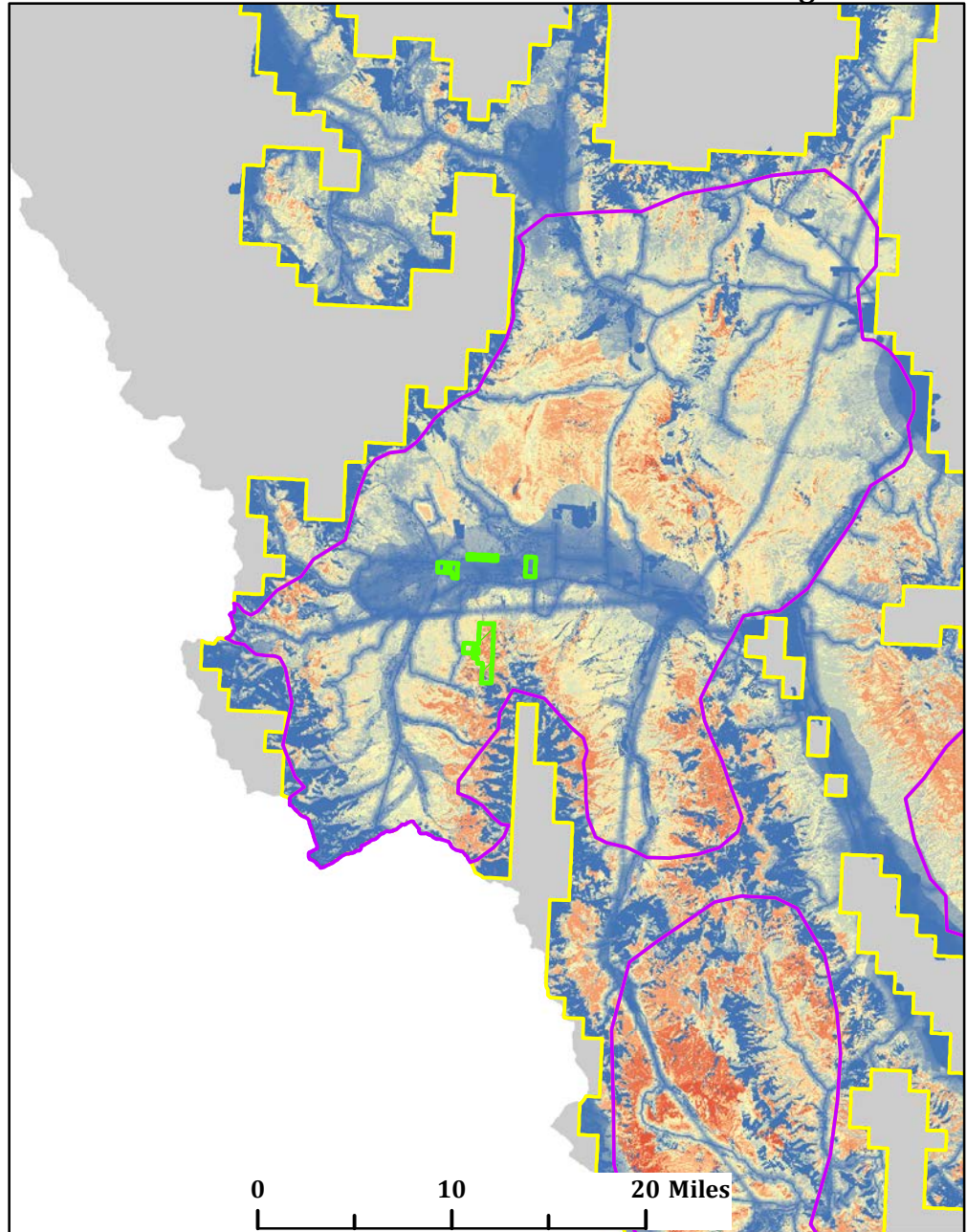


HQT Results: Mussard Ranch - TNC

Local Scale



Regional Scale

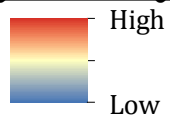


Project HQT Metadata



HQT Date: 09 Oct. 2020

Years Maintained: 100 Years

HQT Habitat Quality



-  Project Direct Impact Footprint
-  Project Assessment Area

-  Core Area
-  General Habitat



MONTANA SAGE GROUSE
Habitat Conservation Program

Mussard Ranch Conservation Easement Project Analysis			
	Project Area	Project + 4 Mile Buffer	Project + 12 Mile Buffer
Total Acres included in Easement Area	2,436	92,752	449,596
Core Acres	2,436	87,052	308,758
General Acres	0	4,116	53,524
Connectivity Acres	0	0	0
Outside Habitat	0	1,583	87,313
Percent Core	100%	94%	69%
FWP Lek Count (May be other Leks present)	0	4	24
FWP Total Male Count (Most Recent)	0	51	269
FWP Avg. Male Count	0	13	11
Project Cost/Acre	\$216.63	NA	NA

Conservation Status	Project Area	4 Mile Buffer (%)	12 Mile Buffer (%)
Percent Public (MT FWP, STL, BLM, US Bureau of Reclamation, USFS)	0%	49.19%	63.25%
Percent Private Conservation	0%	0%	0%
Percent Managed Areas (Beaverhead - Deerlodge National Forest, BLM, MT FWP)	0%	4.71%	27.07%
Percent Conservation Easement (TNC, FWP)	0%	4.36%	7.03%
Total in Conservation	0%	53.98%	70.52%
Not in Conservation	100%	46.02%	29.48%

Some Managed Areas are also Public Lands.

Lek Vulnerability	Project Area	4 Mile Buffer	12 Mile Buffer
No Data	0	0	0
0 - 10%	0	4	23
10.1 - 25%	0	0	0
25.1 - 50%	0	0	1
50.1 - 75%	0	0	0
75.1 - 100%	0	0	0

Existing Disturbance Composition (Percent Area)	Project Area	Project + 4 Mile Buffer	Project + 12 Mile Buffer
Building	0.00%	0.22%	0.10%
Crop	0.00%	1.69%	1.02%
Livestock Area	0.01%	0.04%	0.04%
Power Line	0.00%	0.05%	0.04%
Road	0.27%	0.49%	0.30%
Stock Pond	0.00%	0.001%	0.001%
Storage Yard	0.00%	0.04%	0.02%
Other	0.00%	0.43%	0.14%