

DRAFT
Environmental Assessment
Watson Ranch Conservation Easement Proposal
Phillips County, Montana
Montana Sage Grouse Oversight Team
July 5, 2019

I. Introduction

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

The Montana Land Reliance (MLR), an IRS 501(c)(3) non-profit organization, sponsored and presented an application for the Watson Ranch Conservation Easement to MSGOT for funding from the Habitat Stewardship Fund (Fund)¹ during MSGOT's meeting on May 24, 2016. MLR requested \$162,500 from the Fund, which would be matched with \$487,500 from NRCS ALE, and a \$50,600 donation from the landowner. The estimated value of the easement is \$650,000. MSGOT approved the Watson Ranch Conservation Easement proposal to move to the next stages of the granting process, including the completion of an EA under the Montana Environmental Policy Act (MEPA).

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 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.

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

¹ MCA 76-22-101 et seq.

² MCA § 76-22-101 et seq.

³ MCA § 76-22-102(2).

⁴ Executive Orders 12-2015 and 21-2015.

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
- Establishment of a habitat exchange to develop and market credits consistent with

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).

- 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

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.

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 MLR is the holder of the easement.

III. Description of the Proposed Action

MLR is proposing to purchase a 2,833-acre perpetual conservation easement on a ranch owned by the Watson's in Phillips County. The proposed easement is made up of five distinct parcels, all owned by the Watson's. The proposed easement property is located entirely within habitat classified as a core area (South Phillips Core Area), northeast of Sun Prairie, Montana.

The 2,833 acres proposed for easement are a mix of rangeland and grassland. The land is used for livestock grazing, and grass seed is harvested in a meadow in some years. The Watson parcels share common boundaries with the U.S. Bureau of Land Management (BLM) and Montana State Trust Lands. The Watsons lease about 3,100 acres of BLM land and 213 acres of state land. The easement would directly or indirectly affect a total of about 5,157 acres of federal land and 640 acres of state land.

The proposed easement area has no known active leks on the parcels. A minimum of six active leks are located within four miles, and 29 are located within 12 miles of the property. The Watson Ranch has agreed to observe the 0.6-mile no-surface-occupancy and the sagebrush eradication and treatment stipulations of Executive Order 12-2015.

The Watson Ranch includes 2 building envelopes. One is in the north end of the northern parcel, and the other is in the south end of the southern parcel. The terms of the conservation easement would permit the following:³³

- Agricultural activities and grasslands. the provisions of this Easement limit the types of agricultural operations that can occur on the Protected Property to those that maintain, restore, and conserve the sage brush and other rangelands on the Protected Property (approximately 2,529 acres) and protect grazing uses on said rangelands consistent with sage grouse conservation purposes, and related Conservation Values.³⁴
 - The production, processing, and marketing of livestock and agricultural products compatible with restoration and conservation of grassland grazing uses (except commercial feedlots which are expressly prohibited) that are consistent with the ALE Plan.
 - Farming, irrigating, cultivating, and "sodbusting" outside of the "Cropland Area" are prohibited, except to restore native species.
 - Temporary non-native cover crops are permitted in approved native prairie and rangeland restoration activities if consistent with the ALE Plan.

³² MCA § 76-22-110(3).

³³ See Appendix 2.

³⁴ MCA § 76-22-110(3).

For purposes of this easement, “sodbusting” is defined as any cultivation, discing, plowing, or disturbance of native soils and vegetation by mechanical means, including without limitation engine-powered tractors and other farm machinery and horse and mule drawn plows and discs.

- Grazing and livestock production. Landowner retains the right to graze, hay, harvest for hay and non-crop seed production, mow, construct fire breaks, conduct fire pre-suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices. This includes the maintenance, protection, preservation, and enhancement of sagebrush grassland habitat for sage grouse. Landowner must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified in the ALE Plan, or alternatively landowner will adopt haying, mowing, and seed harvest practices that prevent the loss of birds as set forth in the ALE Plan, including the sage grouse.³⁵
- Cropland production. The Watson Ranch retains the right to continue farming and cultivating those areas of the property currently in crop production.³⁶
- Recreational use. The Watson Ranch retains the right to continue undeveloped non-commercial recreation and undeveloped commercial recreation including, but not limited to, hunting, fishing, hiking, and wildlife viewing, provided that all such activities remain consistent with the terms of the easement.
- Water resources. The Watson Ranch retains the right to restore, enhance, and develop water resources, including ponds, for permitted agricultural uses, livestock uses, fish and wildlife uses, domestic needs, and private recreation, in compliance with the ALE Plan.
- Structures and building envelopes. No permanent structures on the Protected Property, including permanent structures, are permitted within six-tenths (0.6) of a mile radius of any active sage grouse lek as depicted in Appendix 1. The one permitted new residential dwelling unit and all its associated outbuildings must be located within either Building Envelope #1 or Building Envelope #2 depicted in Appendix 1. Building Envelope #2 consists of approximately four and a half acres. The landowner can construct, maintain, repair, remodel, and make limited additions to the following structures:
 - The residential dwelling units: At the time of this draft easement, there are two dwelling units and one permitted new residential dwelling unit and replacement thereof.
 - Associated outbuildings: All associated outbuildings must be located within the designated building envelope.
 - Agricultural Structures: Any structures that are not constructed or placed on permanent foundations may be located anywhere, provided they are farther than 0.6 miles from any active sage grouse lek.
 - The purposes of the Building Envelopes are to allow the landowner flexibility in use of the residential dwelling units and associated outbuildings, to cluster residential uses and other structures, and to

³⁵ See Appendix 2

³⁶ See Appendix 2, Exhibit B

protect the Conservation Values. The boundaries and location of the Building Envelopes may be adjusted if the landowner and NRCS provide prior written approval of the adjusted boundaries and location. The boundaries and location of the Building Envelopes may be adjusted if landowner and NRCS provide prior written approval of the adjusted boundaries and location. The Building Envelopes may not increase in size, and the adjusted Building Envelopes must provide equal or greater protection of the grassland, grazing uses, sage grouse habitat, and related Conservation Values of the Protected Property.

- Minerals. The landowner must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction activities by a third party is conducted in accordance with this easement. Subsurface oil and gas exploration and extraction is permitted if it can be demonstrated that such exploration and extraction of oil and gas is:
 - not accomplished by any surface mining method;
 - accomplished by a method of extraction that has no more than a limited and localized impact that does not harm the Conservation Values;
 - within the impervious surface limits of this easement;
 - subject to the ALE Plan that includes provisions for oil and gas exploration and extraction; and
 - consistent with regulations adopted by the State to protect sage grouse and sage grouse habitat, including restrictions on surface occupancy of any sort within a 0.6 of a mile radius of any active sage grouse lek.
- Additional restrictions on mineral exploration, development, and extraction.
 - *Subsurface mining prohibited.* No extraction or removal of any minerals by any surface mining method, within the meaning of Section 170(h)(5)(B) of the Code and the regulations promulgated thereunder; and there shall be no extraction or removal of any non-mineral substance (including, but not limited to, soil, sand, gravel, rock, and peat) by surface mining methods.
 - *Subsurface mining.* No surface occupancy associated with any new subsurface mining or hydrocarbon exploration or extraction within six-tenths (0.6) of a mile from any active sage grouse lek. In addition to the requirements of Treasury Regulation §1.170A-14(g)(4)(i), subsurface mining methods used must adhere to the following conditions:
 - *Water.* No exploration or extraction shall take place within any stream, waterway, or protected wetland, and no mining operation or oil and gas extraction activities may materially degrade the quality of any lake, pond, well, stream, groundwater, or surface water, including, but not limited to, any source of water utilized by Grantor for agricultural or residential purposes. Any waste water resulting from permitted exploration or extraction activities which is of materially poorer quality than existing water supplies must be treated so that its quality is substantially equivalent to existing natural water quality where the waste water is discharged or released into surface waters and when groundwater is reinjected or otherwise disposed of on or

- under the Protected Property.
- *Surface Disturbance.* Any surface disturbance resulting from permitted exploration or extraction activities must be limited, localized, and temporary, and the surface of the land shall be restored upon completion of such activities to a condition similar or equivalent to its state prior to the disturbance.
 - *Reclamation.* All permitted exploration or extraction activities and associated reclamation activities shall be in compliance with other provisions of the draft easement.³⁷
 - *Roads.* Access to exploration or extraction sites shall be by existing roads.
 - *Structures.* The number and kind of structures used in the exploration for or extraction of oil, gas, and other subsurface minerals shall be limited to the minimum necessary to accomplish said exploration or extraction activities.
 - *Notification.* Grantor shall advise Grantee and the State in writing at least sixty (60) days prior to engaging in any exploration for or extraction of oil, gas, and other subsurface minerals (or leasing, selling, or otherwise disposing of the rights thereto) whether or not such exploration or extraction (or leasing, selling, or otherwise disposing of the rights thereto) could result in any surface disturbance.
 - *Surface use agreement and other agreements.* In the case of mineral, oil, gas, or hydrocarbon exploration, extraction, development, production, and removal activities, Grantor hereby grants to Grantee the non-exclusive right to protect Grantee's vested property rights and its obligations under the terms of this Easement to preserve the Conservation Values in perpetuity to negotiate and enter surface-use agreements, right-of-way agreements, leases, and assignments, non-surface occupancy agreements, including agreements for the payment of surface damages, and any other agreements arising from or related to mineral, oil, gas, or hydrocarbon exploration and extraction, development, production, and removal activities.
 - Transfer of land. The Protected Property must not be divided or subdivided into, or separately conveyed as more than two farm or ranch parcels, defined as "North Parcel" and "South Parcel." All building envelopes and development areas must be included in no more than two non-divisible tracts. If Grantor elects to divide the Protected Property as herein provided, Grantor must comply with all federal, state, and local laws, ordinances, and regulations concerning subdivision, including the surveying of the parcel to be sold and the submission of the proposed creation of a separate tract to state and local review. All transfers are expressly subject to all terms, conditions, rights, restrictions, and obligations contained in the easement.
 - Timber removal. Forest management and timber harvest must be carried out to the extent practicable in accordance with current, generally accepted best management

³⁷ See Appendix 2.

practices for the sites, soils, and terrain of the proposed Protected Property. The Protected Property does not contain 40 contiguous acres of forestland, nor is 20 percent of the Protected Property forestland.

- Utilities and other infrastructure. The Watson Ranch retains the right to install utility, communication, and all related structures on or beneath the property, as permitted by the easement. Installation within two miles of a lek must be buried if financially feasible and replanted to enhance sage grouse habitat. If not financially feasible, new infrastructure may not be located within 0.6 miles of an active sage grouse lek. Fences may be maintained and replaced, and new fences installed only in accordance with the ALE Plan and consistent with grassland species management requirements. Existing or new roads may be constructed, repaired, maintained, and improved. Any new roads must be located outside of the No Build Areas.
- Renewable energy production for use on the property. The Watson Ranch retains the right construct solar generation facilities within any building envelope for such uses as are permitted by this easement. Any associated distribution facilities must be buried whenever feasible.
- Residence-based business. The Watson Ranch reserves the right to conduct businesses within their residential dwelling unit, for the purpose of one bed and breakfast business. All other sales or services businesses involving regular visits to the property by the general public or delivery trucks, or the retail sale of goods produced on the property are not permitted. The leasing or rental for consideration of any residential dwelling unit, or portion thereof, on the Property for any term, including, but not limited to, short-term vacation rentals, is expressly permitted.
- Guest ranching business. The Watson Ranch retains the right to use the property, or lease the property to a third party, for a commercial guest ranching business, expressly subject to the terms of the easement.
- Allowed commercial uses. Consistent with the restriction on industrial and commercial uses set forth in Exhibit C, the following uses shall be considered allowed commercial uses, as long as they are conducted in a manner that does not impair or destroy the Conservation Values.
 - The production, processing, and marketing of agricultural products and livestock, except feedlots.
 - The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures, for generating energy for agricultural and residential needs.
 - Temporary or seasonal outdoor activities or events, including recreational activities, that do not harm the agricultural use, future viability, and related Conservation described in the terms of this easement.
 - Commercial enterprises related to agriculture or forestry, such as agritourism, processing, packaging, and marketing of farm products, farm machinery repair, and small-scale farm stands.

The terms of the conservation easement would prohibit the following:³⁸

- Subdivision. The intent of the easement agreement is that the entire Protected Property shall be maintained and granted, sold, exchanged, devised, gifted, transferred, or otherwise conveyed in no more than two parcels. Even if the Protected Property consists 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, divisible in a maximum of two tracts, for purposes of this easement. All of the restrictions and covenants of this easement will apply to the Protected Property as a whole. Except as provided under terms of this easement, the division, subdivision, or de facto subdivision of the property is prohibited. The property may be leased for agricultural purposes under the terms and purposes of the easement.
- Mineral removal. Exploration, removal, or extraction of any mineral substance including but not limited to oil, gas, hydrocarbons, sand, and gravel is prohibited, except as provided in this easement.
- Commercial facilities. The establishment of any commercial or industrial facilities is prohibited, except for those facilities that are necessary in operations that are expressly permitted by the easement and in the ALE Plan.
- Dumping. The accumulation or dumping of trash, refuse, sewage, junk, toxic materials, or other disposal of non-compostable refuse on the Protected Property, except for storage of farm machinery, brush piles, composting sites, biodegradable organic matter, agricultural products, agricultural byproducts, and other materials generally related to agricultural, forestry, and wildlife management as permitted by this Easement.
- Construction. The construction or placement of any buildings, except for those permitted in the terms of this easement, is prohibited.
- Campers, trailers, and recreational vehicles. Placing or use of these vehicles on the property, other than the Grantor's personal vehicles or guest's thereof, is prohibited. Personal campers must be stored within the building envelopes described in the terms of the easement. Grantor or guest's vehicles may be used on the property on a temporary basis, outside of the No Build Areas delineated in the terms of this easement³⁹.
- Billboards. The construction, maintenance, or erection of any billboards is prohibited. Signage may be used only for posting of public access information, property sale, any business on the property, or notification of this easement.
- Roads. Constructions of roads and granting road rights-of-way across or upon the property is prohibited, except as permitted by the terms of this easement.
- Utilities. The granting of utility transmission lines and utility transmission line corridor right-of-way easements, or the expansion of existing utility transmission lines and utility transmission line right-of-way easements is prohibited, except when granted by mutual agreement of the Grantor, Grantee, and the State, and only in cases of eminent domain statutes.

³⁸ Appendix 2, Exhibit C

³⁹ Appendix 2, Exhibit C

- Game, fur, or fish farms. The raising or confinement for commercial purposes of “alternative livestock”, “game animals”, native or exotic fish (except private fish ponds), game birds, furbearers including mink and fox, other “wild animals”, or “non-game wildlife”, is prohibited.
- Commercial timber harvest. The harvest of timber on the property for commercial purposes, including commercial timber harvests or thinning, is prohibited.
- Surface alteration. 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 Protected Property is prohibited, except as described in the easement.⁴⁰

These requirements are consistent with the best available information pertaining to habitat threats and habitat conservation for sage grouse,⁴¹ and they are consistent with key requirements of the Policy for Evaluation of Conservation Efforts⁴² (PECE) of the USFWS when making listing decisions in that the proposed action has a strong likelihood of eliminating key threats to sage grouse.

Additional details regarding the proposed action can be found in the conservation easement agreement. The documentation in Appendix 2 reflects the most current draft as of June 11, 2019, after several months of negotiations among the parties. Minor modifications may occur prior to the parties reaching a final agreement. But significant changes to the material terms of permitted and prohibited uses are unlikely.

Additional details regarding the proposed action can be found in Appendices A through C.

See:

- Appendix 1: Draft maps and project metric tables
- Appendix 2: Draft Conservation Easement Agreement. This document includes Conservation Values, the Purposes, and General Effect of the Easement, Rights Conveyed, and Reserved Rights and Prohibited Uses. Easement specifics are included in Exhibits A through C.

IV. The Habitat Quantification Tool and Application to Watson Ranch

The Program calculated and will make credits available for compensatory mitigation, with the completion of the grant process. All compensatory mitigation credits created based on the ecosystem services provided to sage grouse on the Watson 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.⁴³

All Montana compensatory mitigation must be taken in consideration of applicable United

⁴⁰ Appendix 2, Exhibit C

⁴¹ Davies et al. 2011, Smith et al. 2016, and 80 FR 59858 (October 2, 2015).

⁴² 68 FR 15100 (March 28, 2003).

⁴³ MCA §§ 76-22-109, 110, 111.

States Fish and Wildlife Service sage grouse policies, state law, and any rules adopted pursuant to compensatory mitigation.⁴⁴ 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 private matching funds secured by MLR.⁴⁵ 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.⁴⁶ 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 project⁴⁷. 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 each conservation project proposed for funding from the Stewardship Account, the Program has run the HQT using the spatial data provided by MLR (the grant applicant) for the proposed

⁴⁴ MCA § 76-22-111(2).

⁴⁵ 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.

⁴⁶ MCA § 76-6-109(4).

⁴⁷ MCA § 76-6-103(9)

conservation easement on the Watson Ranch. Results do not include non-deed lands within the perimeter of the proposed easement (i.e. federal, state, and private land inholdings owned by entities other than the Watson Ranch are excluded from results and from the easement itself).

The HQT results show that the proposed easement would conserve quality habitat. The functional acres gained per physical acre of the project per year is 0.27. 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.

The project would generate 28,934.24 total credits after the 40% baseline. This equates to 0.11 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.

Despite the delayed availability of credits, 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 9.03%, which indicates a higher level of existing anthropogenic disturbance before the easement's restrictive terms.⁴⁸ This DDCT result was considered by peer reviewers along with maps independently created by the Program as a surrogate for a habitat quantification tool. See Section VII below (Public Involvement During the Grant Application Process and During Preparation of this Environmental Assessment) and Appendix 1.

V. Project Location

The conservation easement associated with this project would cover activities on a ranch owned by the Watson Family in Phillips County Montana. The proposed easement is made up of five distinct parcels, all owned by the Watsons. The proposed easement property is located entirely within habitat classified as a core area (South Phillips Core Area), northeast of Sun Prairie, Montana. See Appendix 1.

The 2,833 acres proposed for easement are a mix of rangeland and grassland. The land is used for livestock grazing, and grass seed is harvested in a meadow in some years. The Watson parcels share common boundaries with the U.S. Bureau of Land Management (BLM) and Montana State Trust Lands. The Watsons lease about 3,100 acres of BLM land and 213 acres of state land. The easement would directly or indirectly affect a total of about 5,157 acres of federal land and 640 acres of state land.

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

⁴⁸ The DDCT total analysis area is 81,142 acres (easement parcel buffered by 4 miles + a four mile buffer around any leks within that; core area only); total number of disturbed acres within the DDCT analysis area is 2,657 acres.

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 MLR to enter into 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 in private ownership.⁴⁹ 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 29 leks within 12 miles of the project area, 6 of which are within 4 miles. No active leks have been documented on the property. Conversion of native range to cultivated cropland has been identified as a key threat to sage grouse habitat and population persistence by USFWS.⁵⁰ 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.⁵¹ 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.⁵² Therefore, efforts which conserve intact sagebrush landscapes already having little or no existing cropland

⁴⁹ Montana's Greater Sage Grouse Habitat Conservation Advisory Council. 2014. Greater Sage Grouse Habitat Conservation Strategy. Jan. 29, 2014.

⁵⁰ 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).

⁵¹ 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).

⁵² 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).

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.”⁵³ 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.”⁵⁴ 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.⁵⁵

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.⁵⁶ 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.⁵⁷ 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 MLR is to begin development and implementation of Montana’s mitigation framework. Mitigation addresses direct, indirect, and residual 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.⁵⁸ 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.⁵⁹

The Act sets forth that Montana can implement compensatory mitigation either through

⁵³ 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>).

⁵⁴ 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>).

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

⁵⁶ 80 FR 59858, 59870-71 (Oct. 2, 2015).

⁵⁷ 80 FR 59858 (Oct. 2, 2015).

⁵⁸ 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.”).

⁵⁹ MCA §§ 76-22-105(1)(g), 111(1)(b).

establishment of habitat exchange⁶⁰ and/or a conservation bank.⁶¹ 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.⁶² Further, MSGOT is required to calculate and make available credits for leases and conservation easements purchased with funds disbursed after May 7, 2015.

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. 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.⁶³ 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 publically-noticed and comment sought. The final rules took effect March 5, 2016. Additional formal rulemaking related to the Habitat Quantification Tool and Stewardship grants was completed in 2018-2019. Final administrative rules took effect in January, 2019.

MSGOT offered the first grant cycle opportunity in February, 2016, contingent on the first administrative rules taking effect. This enabled the Program to begin soliciting applications. Public involvement opportunities were offered during the actual application process. The timeline was as follows:

- March 17, 2016: the Program issued a media release announcing the first grant cycle and the application deadline of April 8, 2016 at 5:00 p.m.;
- April 8 2016: nine total applications were received (eight proposals for permanent

⁶⁰ MCA § 76-22-103(8) defines habitat exchange as “a market-based system that facilitates the exchange of credits and debits between interested parties.”

⁶¹ 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.”

⁶² MCA § 76-22-109(4).

⁶³ MCA §76-22-104(1)-(7).

- conservation easements and one proposal to mark high risk fences near leks);
- April 14, 2016: all grant applications were published to the Program's website and made available for public review, as required by the Stewardship Act; and
- April 17, 2016: the Program issued a media release announcing a public comment opportunity to review all applications; comment period closed April 29.
- May 24, 2016: MSGOT held a publicly-noticed meeting and ultimately voted to fund the Watson Ranch Conservation Easement Project, warranting the need for this EA.
- July 11, 2016: The Program solicited public scoping comments with a specific project scoping notice 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 through the public comment web application tool located on the MSGOT webpage at <https://sagegrouse.mt.gov/msgot.html>. Interested parties could submit comments electronically or via postal mail. This public scoping comment period ended on July 21, 2016.
- July, 2016 – July 2019: the project had been placed on hold; negotiations resumed in the spring/summer of 2019.

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 riparian habitat availability. 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 V 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. This was also considered as an informal surrogate to a habitat quantification tool. See Appendix 1.

No electronic public scoping comments were received specific to the proposed Watson Ranch Conservation Easement Project. However, several written comments were received. All were supportive of this type of proposed expenditure from the Fund. Several comments suggested improvements to the overall process and requested additional details about the proposed easement location and details about the terms. Several comments stressed the importance of monitoring the results for sage grouse and sagebrush habitats going forward to measure success of Montana's conservation efforts and elucidate areas for improvement.

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 MLR.

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

Partners involved in this project include the private landowners, NRCS, MLR, and MSGOT. State Trust Lands and BLM owned lands also managed near the 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 Proposed Action Alternative, MSGOT would authorize disbursement of funds from the Stewardship Fund Account to facilitate acquisition of the Watson Ranch Conservation Easement, for the purpose of sage grouse conservation in Montana. This easement by MLR 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 Watson Ranch Conservation Easement analyzed in this EA was one proposal selected from nine 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. Various easement terms are being discussed and negotiated between the private landowner, MLR, and the state. They will be made available in the future. Preliminary terms are known and referenced in this Draft EA.⁶⁴

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 Watson Ranch Conservation Easement by MLR 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

⁶⁴ See Appendix 2.

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 2,833-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 crop areas shown in Appendix 1 is 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.

One additional residential dwelling unit and associated outbuildings is permitted within one of the two building envelopes. No residential dwelling units would be constructed within a two mile radius of active sage grouse leks with the exception of the existing 40-acre development area. 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.⁶⁵

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

⁶⁵ 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.

mutually exclusive, and can be conducted in such a way as to be consistent with the terms of the conservation easement.

2. No Action – Under the No Action Alternative, funding support for the Watson 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 occur.

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 2,833-acre conservation easement.
2. No Action – Under this alternative, grant fund authorization for the purchase of the 2,833-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 Musselshell River watershed and the South Fork of Bear Creek drainage. The Watson 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 2,833-acre conservation easement.
2. No Action – Under this alternative, grant fund authorization for the purchase of the 2,833-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 and sensitive plants for the conservation easement area with one-mile buffer was conducted by the Montana Natural Heritage Program.⁶⁶ No records for such plants were located. 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 2,833-acre

⁶⁶ MNHP Watson Ranch SOC Plants Report July 19, 2016.

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.

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 crop areas shown in Appendix 1 is prohibited, except to restore native species with Grantor’s prior approval. Sodbusting is defined as any cultivation, discing, plowing, or disturbance of native soils and vegetation by mechanical means, including without limitation engine powered machinery and horse- mule-drawn plows and discs.

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

- Limits on the number of allowable additional residential dwelling units and associated outbuildings;
- Easement standards required for the grazing management plan developed in coordination with the Natural Resource Conservation Service;
- A 0.6-mile no-surface-occupancy buffer requirement around leks;
- 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;
- Sagebrush eradication and treatment stipulations of Executive Order 12-2015;
- Prohibition of surface mining;
- Prohibition of commercial gravel operations;
- Prohibition of rangeland conversion to cropland;
- Prohibition of new road construction other than for residential access;
- Prohibition of turbine-style wind energy development; 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 2,833-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 one-mile buffer was conducted by the Montana Natural Heritage Program.⁶⁷ No records for federally listed endangered or threatened species were located for this area. However, records were obtained for seven sensitive species associated with sagebrush, and grassland-prairie habitats. These included the greater sage grouse, mountain plover (*Charadrius montanus*), long-billed curlew (*Numenius americanus*), burrowing owl (*Athene cunicularia*), Brewer's sparrow (*Spizella breweri*), and black-tailed prairie dog (*Cynomys ludovicianus*). No sensitive fish species were identified.

The easement area also provides habitat for numerous other terrestrial and avian species endemic to central and eastern Montana. 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 2,833-acre conservation easement. 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 standards required for the grazing management plan developed in coordination with the Natural Resource Conservation Service;
- A 0.6-mile no-surface-occupancy buffer requirement around leks;
- 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

⁶⁷ MNHP Watson Ranch SOC Fish and Wildlife Report July 19, 2016.

- habitat;
- Sagebrush eradication and treatment stipulations of Executive Order 12-2015;
- Prohibition of surface mining;
- Prohibition of commercial gravel operations;
- Prohibition of rangeland conversion to cropland;
- Prohibition of new road construction other than for residential access;
- Prohibition of turbine-style wind energy development; 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 2,833-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 and in the vicinity of the project area are comprised primarily of other private lands, as well as state trust lands and lands managed by the BLM. The Watson Ranch retains leases on these nearby state (640 acres) and federally-managed (5,157 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 2,833-acre conservation easement on private land. However, if this conservation easement were to be purchased, the neighboring lands are likely to continue to be managed in conjunction with the private parcels, providing continuity in resource management that will benefit the sage grouse and its habitat.

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 land owner over time. However, it is possible that State Trust Lands may participate in future compensatory mitigation markets and manage that section to produce credits and sell them to offset impacts of development.

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 sizable block of habitat.

2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 2,833-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 2,833-acre conservation easement.
2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 2,833-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. Temporary non-native cover crops are permitted in native prairie and rangeland restoration activities. Farming, irrigation,

cultivating and “sodbusting” outside of the crop areas shown in Appendix 1 is prohibited, except to restore native species with Grantor’s prior approval. 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- mule-drawn plows and discs.

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, a number of 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 2,833-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 2,833-acre conservation easement.
2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 2,833-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 2,833-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 2,833-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 2,833-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 would occur in association with authorizing the grant funds for the purchase of the 2,833-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 2,833-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 2,833-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 2,833-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

- Anna Chrsitman, Carolyn Sime, Graham Neale
Sage Grouse Habitat Conservation Program Manager, 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 through July 29, 2019.

Submit comments electronically and attach documents through the public comment web application tool located on the MSGOT webpage at <http://sagegrouse.mt.gov.html>. Electronic comments must be received by 11:59 p.m. on July 29, 2019.

Mail written comments to:

Montana Department of Natural Resources and Conservation
Montana Sage Grouse Habitat Conservation Program

Attn: Proposed Watson Ranch Conservation Easement
1539 11th Ave.
Box 201601
Helena, MT 59620

Written comments must be postmarked and mailed on or before July 29, 2019.

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 incorporate public comments and then prepare a final EA;
- At the September 18, 2019 MSGOT meeting, MSGOT will review:
 - Final Watson Ranch Conservation Easement Proposal Environmental Assessment and Proposed Decision Notice; and
 - Proposed Deed of Conservation Easement.

MSGOT is expected to make a final decision during their meeting on September 18, 2019. If approved by MSGOT, MSGOT direct the Program to place Stewardship funds in the award amount of \$162,500 into escrow with a neutral, independent closing agent. The parties would provide closing instructions to the closing agent. The actual conservation easement closing is expected to occur by December 31, 2019.

Appendix 1

List of Maps

- Location
- Lek Proximity
- Breeding Habitat Suitability
- Conserved Lands within 4 Miles
- Lek Vulnerability
- HQT Results Map: Local and Regional Scales


List of Tables



- HQT Metrics
- Overall Project Statistics

EXHIBIT D

WATSON PROPERTY
PROXIMITY TO PROTECTED LANDS

Date: March 15, 2016

 Subject Property
Property Acreage: 2,833

 State Trust
 BLM

RECEIVED

APR 08 2016

Dept. of Natural
Resources & Conservation

Public Lands and Conservation Easement Data
from Montana Department of Revenue database.



0 0.5 1 Miles
1:50,000

Aerial Imagery: 2013 National Ag. Imagery Program (NAIP), USDA

Sage Grouse Habitat Conservation Program

Watson Grant Application

Legend

▲ Leks

Watson Property

12 Mile Buffer

4 Mile Buffer

Sage Grouse Habitat

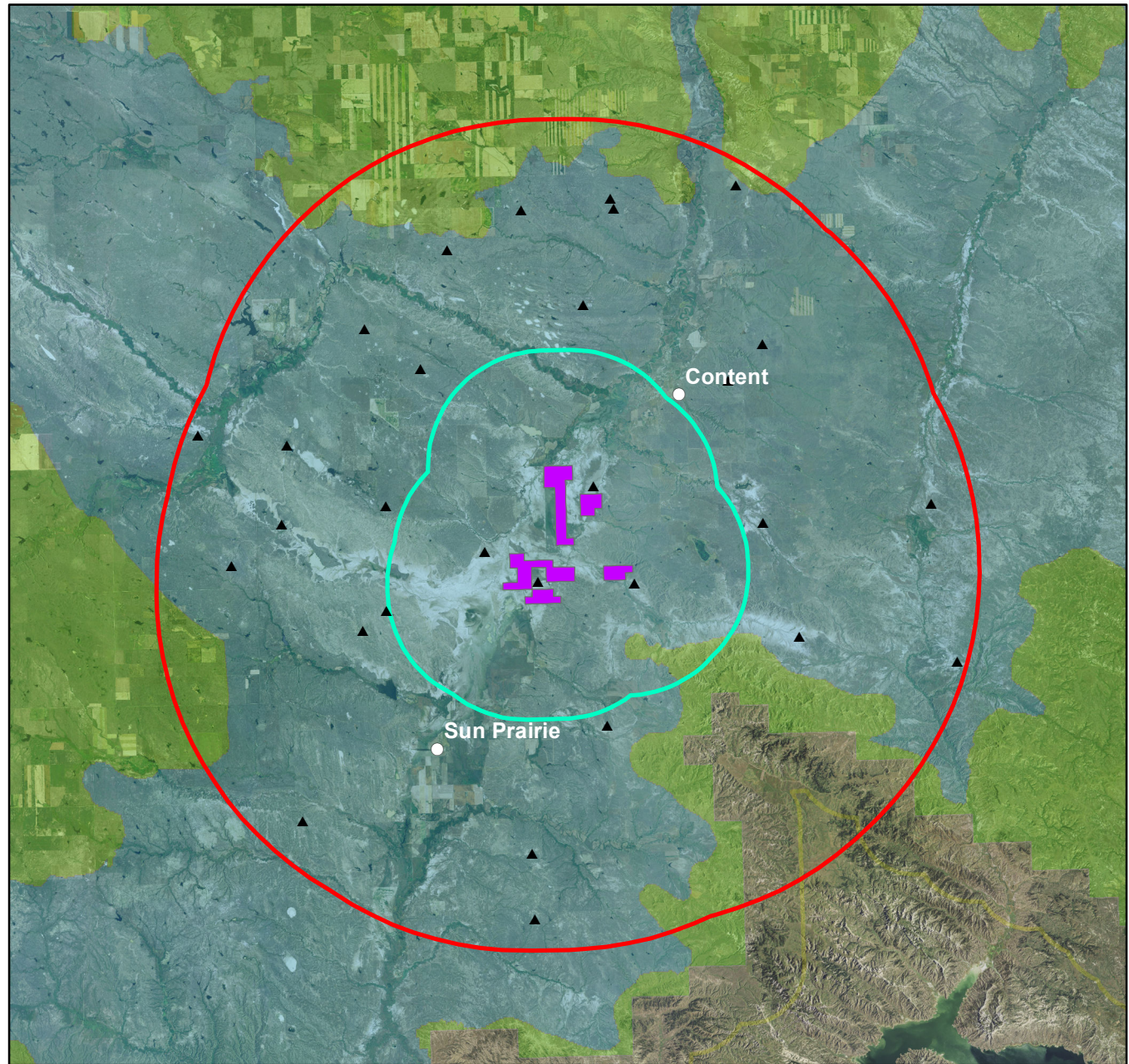
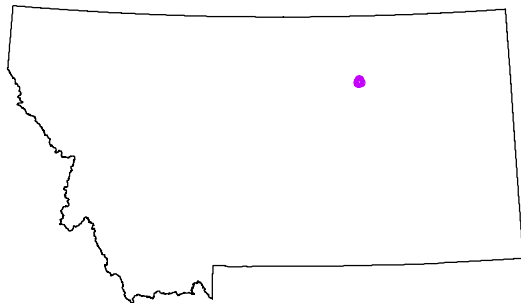
Habitat Type

EO-Connectivity Area

EO-Core Area




EO-General Habitat

Not In EO Area



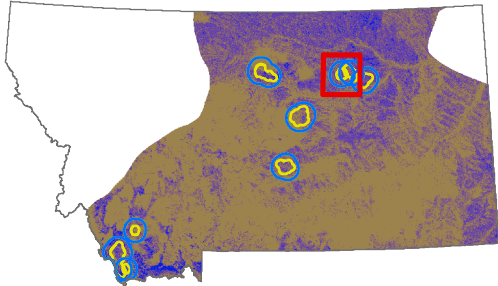
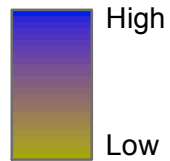
0 2.25 4.5 9 13.5 18 Miles

Breeding Habitat Suitability Surrounding Thomas Watson Project Area

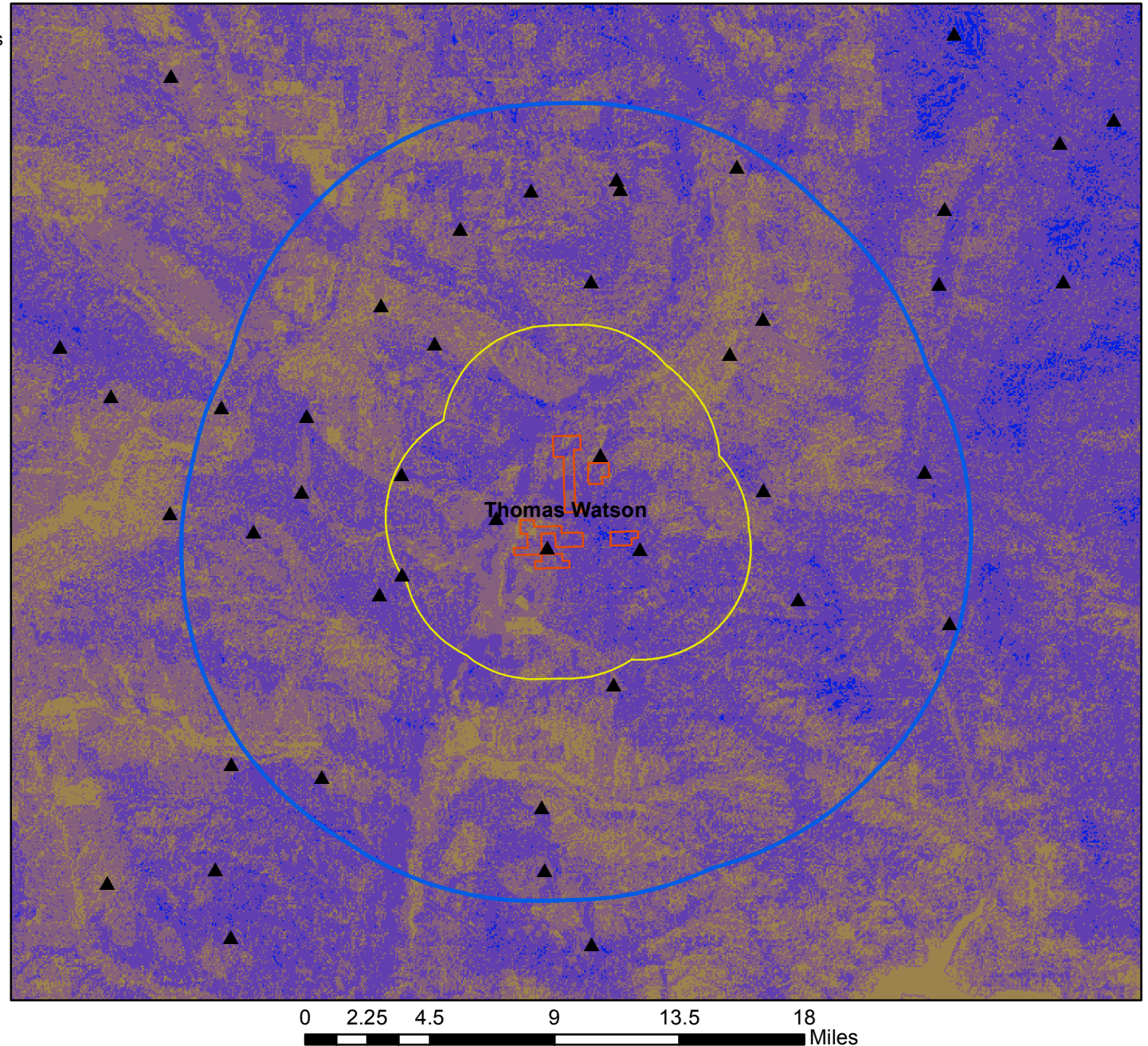
-  Project Area
-  Leks within 4 miles - buffered by 4 miles
-  12 Mile Buffer

▲ Leks

Sage Grouse Breeding Habitat Suitability*



*Doherty, Kevin E., Evans, Jeffrey S., Coates, Peter S., Juliusson, Lara M., Fedy, Brad, 2015, Importance of Regional Variation in Conservation Planning and Defining Thresholds for a Declining Species: A Range-wide Example of the Greater Sage-grouse, USFWS/USGS Technical Report 51 pp. Report available at: https://www.researchgate.net/publication/292970319_Importance_of_Regional_Variation_in_Conservation_Planning_and_Defining_Thresholds_for_a_Declining_Species_A_Range-wide_Example_of_the_Greater_Sage-grouse. Model available at <https://www.sciencebase.gov/catalog/item/56fd2296e4b0a6037df2feb6>.

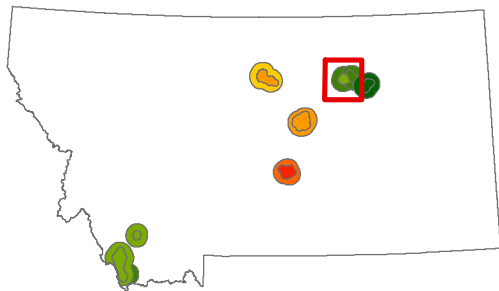
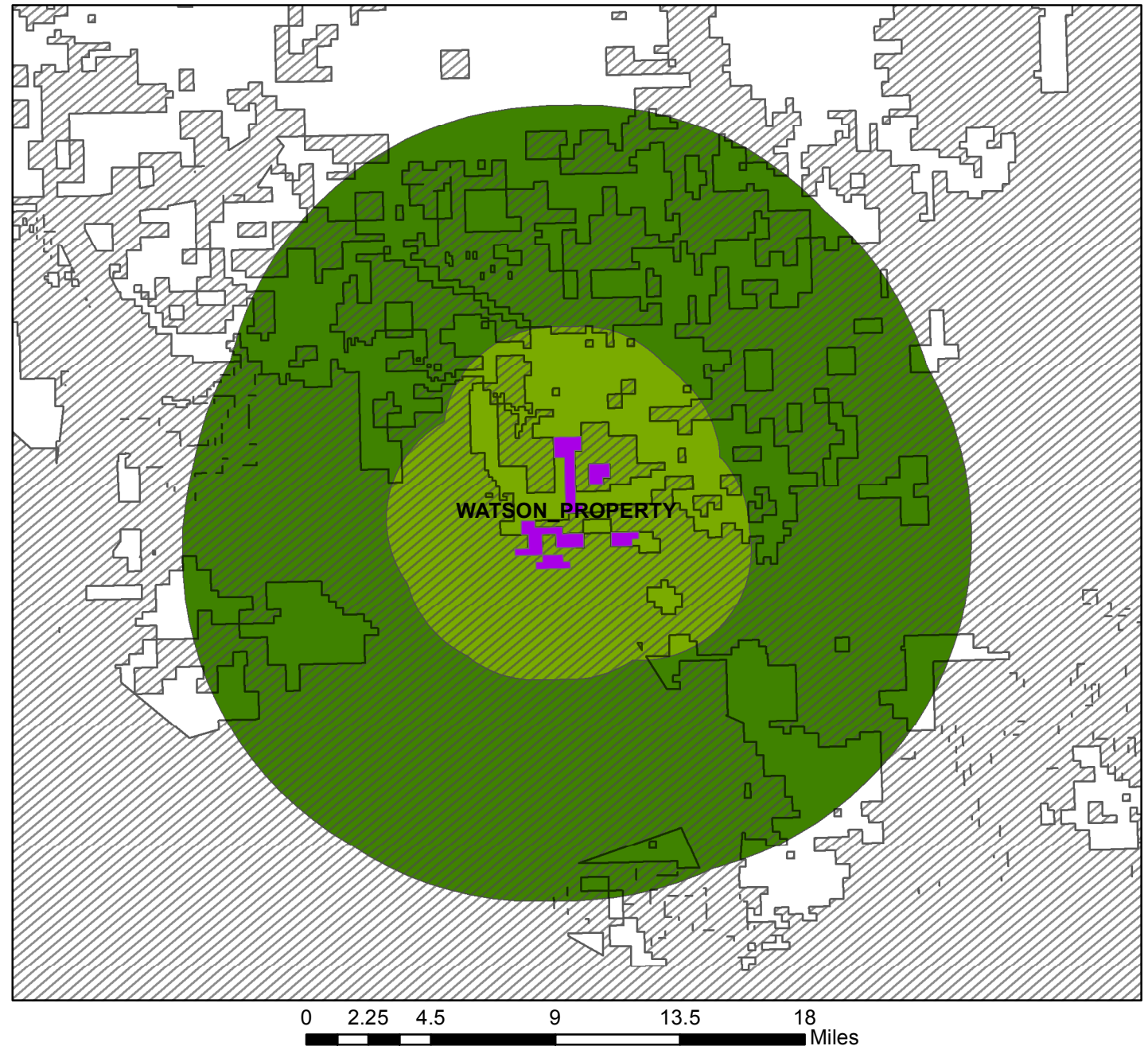


Percentage of Watson Project Area Buffers in Conserved Lands: Leks within 4 Miles of Project Area - Buffered by 4 Miles and 12 Mile Buffer Shown

- Grant Projects
- Conservation Lands

Percent of Project Area in Conservation

- 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 - 100 %



Cultivation Risk and Lek Vulnerability Surrounding Thomas Watson Project Area

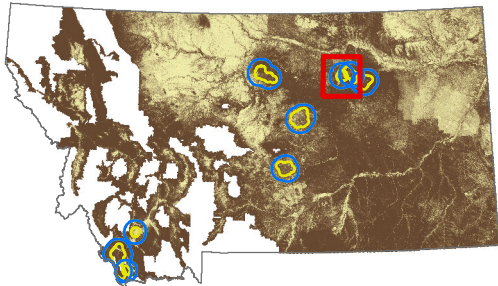
- Project Area
- Leks within 4 miles - buffered by 4 miles
- 12 Mile Buffer

Lek Vulnerability*

- 0% - 10%
- 10.1% - 25%
- 25.1% - 50%
- 50.1% - 75%
- 75.1% - 100%
- No data available

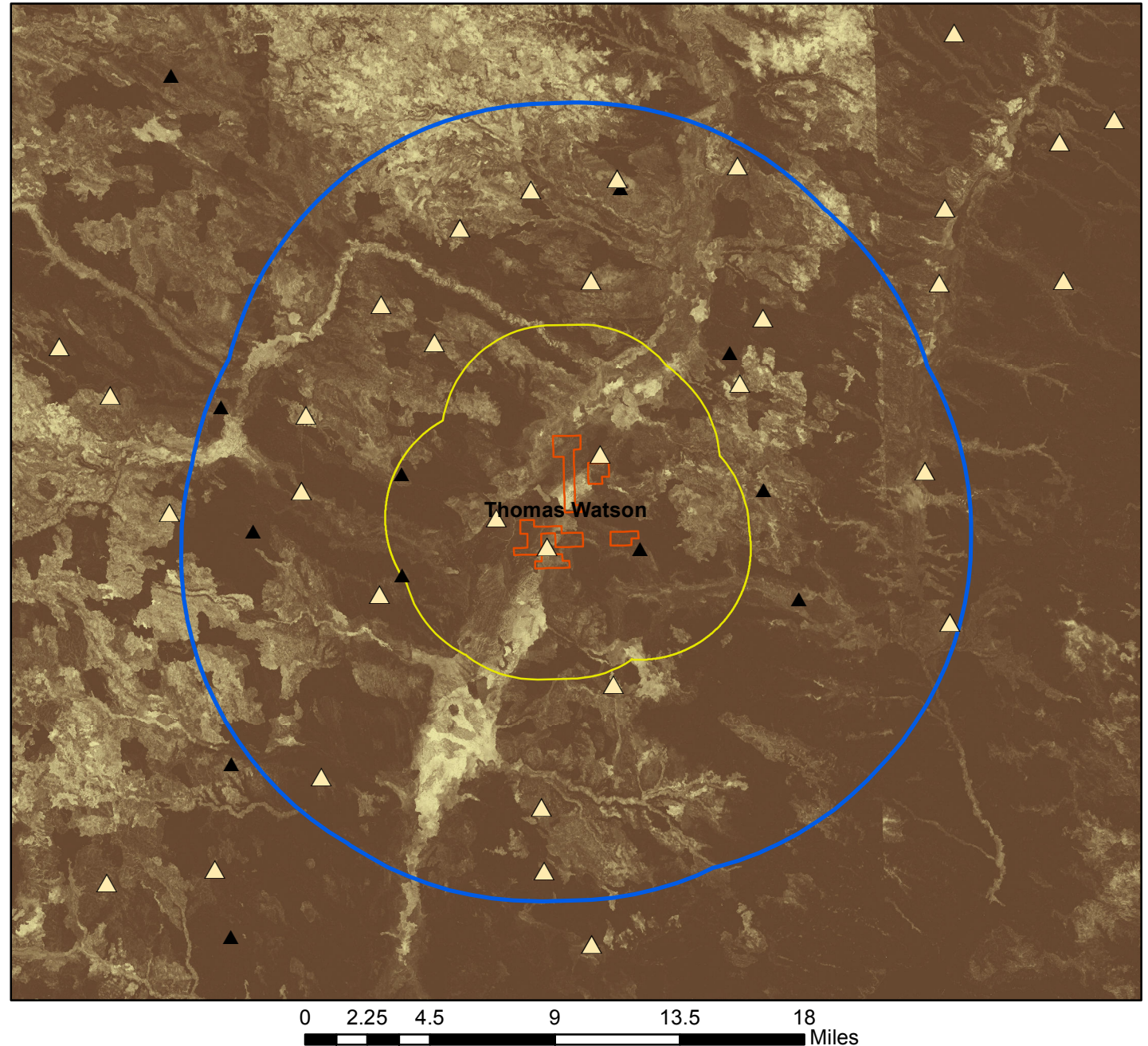
Cultivation Risk**

- High : 1
- Low : 0



*Lek vulnerability from Smith, J. T., Martin, B. H., Baruch-Mordo, S., Naugle, D. E., Evans, J. S., & Kiesecker, J. M. (2016). In review. Reducing cultivation risk for at-risk species: Predicting outcomes of conservation easements for sage-grouse.

** Natural Resource Conservation Service, Sage Grouse Initiative. Cultivation Risk Model: Suitability for cropping based on climate, soils, and topography to assess potential risk of cultivation to sage-grouse habitat. Available at: <http://map.sagegrouseinitiative.com/>

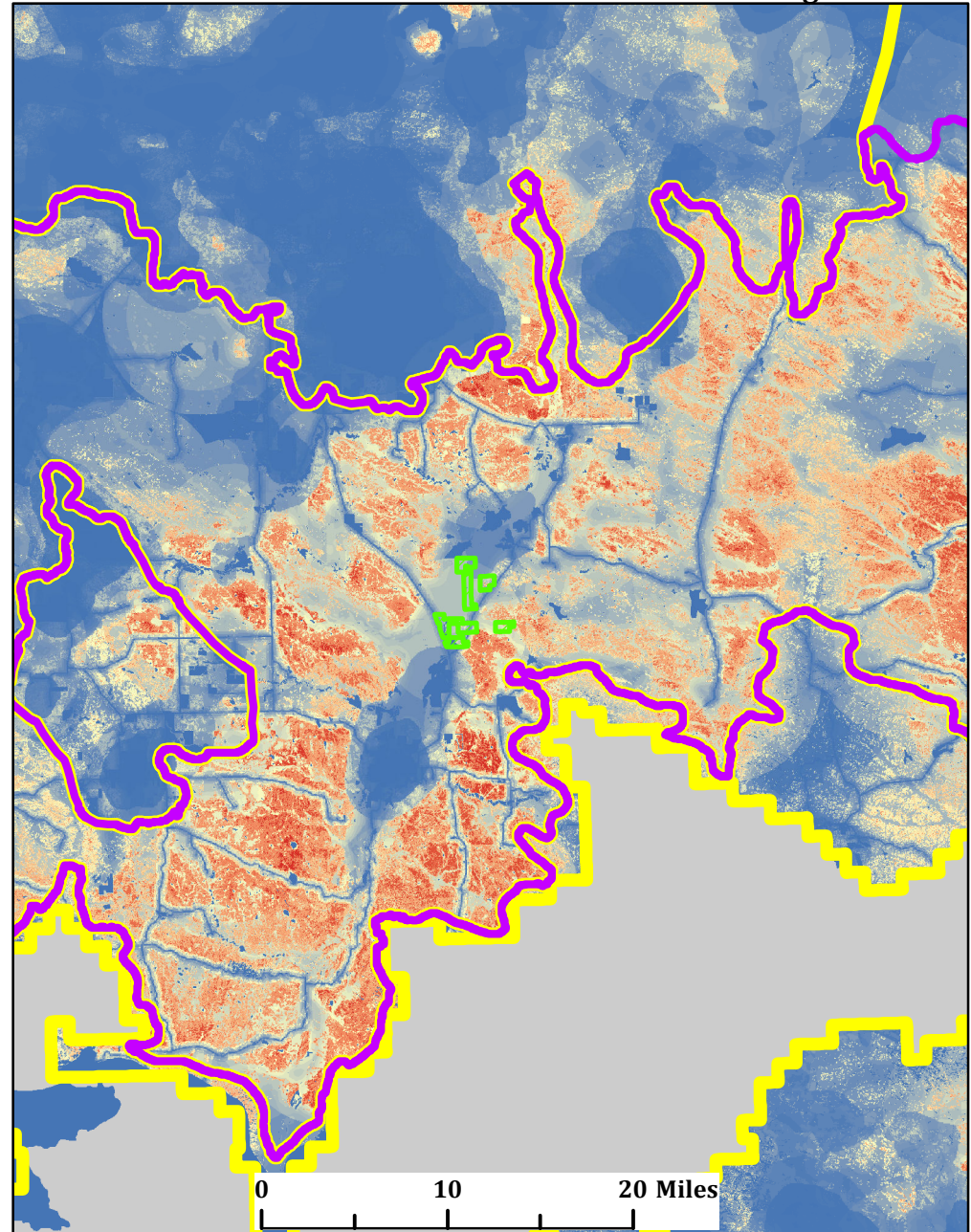
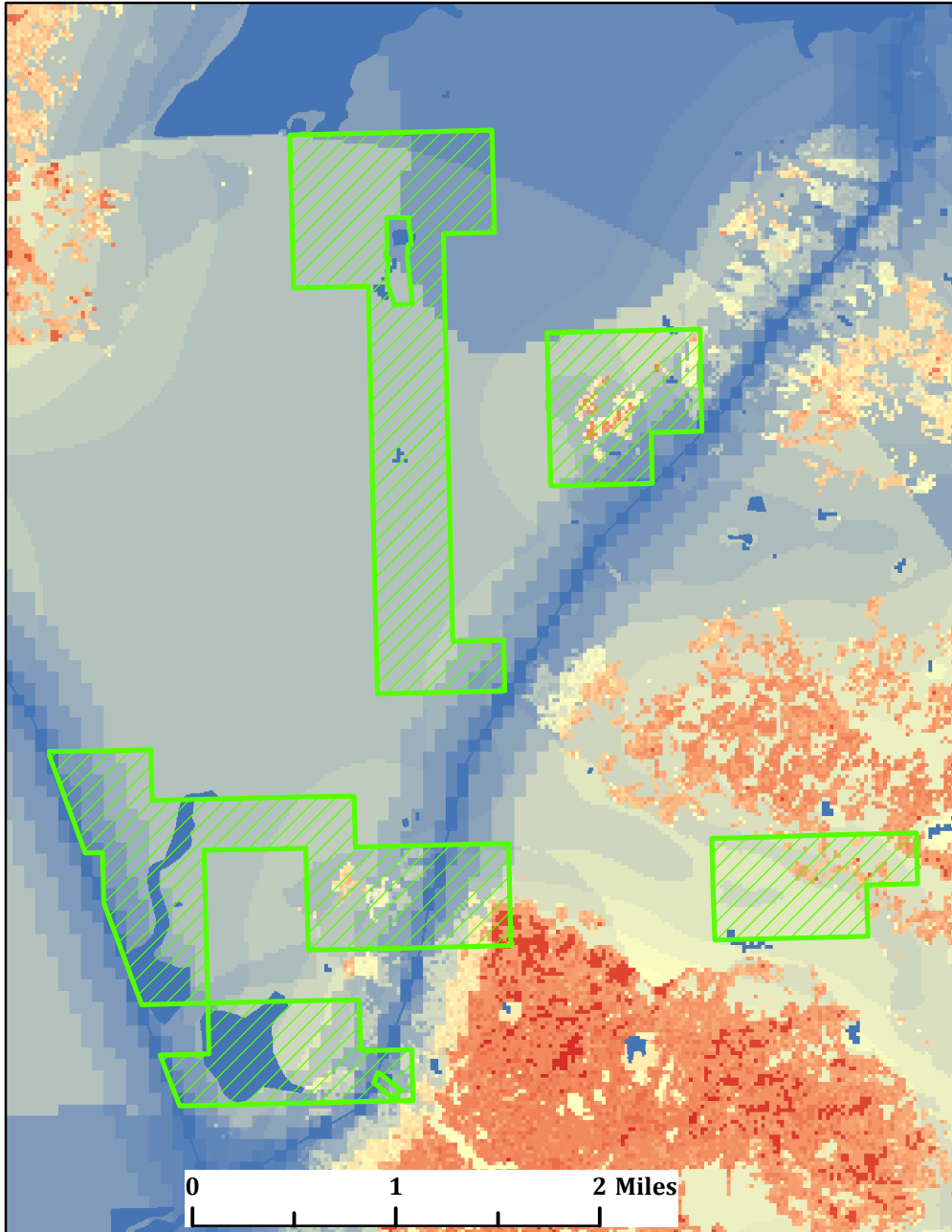


Preliminary HQT Results:

Tom and Lorraine Watson Conservation Easement

Local Scale

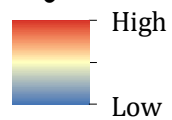
Regional Scale





Project HQT Metadata

HQT Date: 18 June 2019
Years Maintained: 100 Years

HQT Pixel Value



-  Project Direct Impact Footprint
-  Project Assessment Area

-  Core Area
-  General Habitat



MONTANA SAGE GROUSE
Habitat Conservation Program

Project Information						Raw HQT Score		Applicable Policy			Metrics							
Project Name	Project Type	Service Area	# of Years	Price per Credit for Lease Duration	Physical Acres	1 Year	Total (all years)	# of Credits awarded for newly created Fx-A		Baseline at 40%	Total Credits Available / Generated	Fx-A / PA / Yr	Credits / PA / Yr	Estimated Value of Project for Sage Grouse Habitat Conservation	Request Amount	Percent of Project Cost	Matching Sources of Funds	
								Core Area (10%)	General Habitat (5%)								Source	Amount
Tom and Lorraine Watson Conservation Easement	Preservation (Perpetual)	North Central	100	NA	2,657.27	723.36	72,335.60	N/A	N/A	28,934.24	28,934.24	0.272	0.109	NA	\$162,500	25%	NRCS	\$487,500
																	Landowner	\$50,600

Credit results do not include non-deeded lands within the perimeter of the project area (i.e. State Trust Lands other, public lands not included). Integrated land management activities across public and private lands will be acknowledged in other ways.

**Watson Property
Conservation Easement
Project Statistics**

Project Analysis

	Project Area	Project + 4 Mile Buffer	Project + 12 Mile Buffer
Total Acres	2833.30	82146.49	411780.73
Core Acres	2833.30	79941.79	350924.52
General Acres	0	2204.70	42017.21
Connectivity Acres	0	0	0
Outside Habitat	0	0	18838.99
Percent Core	100	97.32	85.22
FWP Lek Count (may be other leks present)	0	6	29
FWP Total Male Count (Most Recent)	0	107	899
FWP Avg. Male Count	0	18	31
Project Cost/acre	57.35	No Data	No Data
Reverse DDCT	No Data	<Null>	No Data
Miles of linear riparian habitat/ mile ²	1.88	3.15	3.33

Conservation Status	Project Area	4 Mile Buffer (%)	12 Mile Buffer (%)
Percent Public	No data	53.72	57.22
Percent Private Conservation	No data	4.65	4.48
Percent Managed Areas	No data	21.12	21.92
Percent Conservation Easement	No data	0.00	1.92
Total in Conservation (some consv. areas overlap)	No data	66.99	70.39
Not in Conservation	No data	33.01	29.61

Lek Vulnerability	Project Area	4 Mile Buffer	12 Mile Buffer
0-10%	0	3	21
10.1-25%			
25.1-50%			
50.1-75%			
75.1-100%			

Other Notes:

Two main parcels proposed for easement connect with two large BLM parcels.

All other smaller parcels completely or nearly surrounded by federal or state-owned land.

See figures in application.

Anticipate closing by December, 2017.

Appendix 2

Draft Deed of Conservation Easement

June 11, 2019

List of Exhibits

- Exhibit A: Legal Description
- Exhibit B: Permitted Uses and Practices
- Exhibit C: Prohibited Uses and Practices
- Exhibit E: Map of parcels, building envelopes and no-surface occupancy areas

AFTER RECORDING RETURN THIS ORIGINAL DOCUMENT TO:

MONTANA LAND RELIANCE
P.O. BOX 355
HELENA, MT 59624

DRAFT

June 11, 2019

WATSON (LORRAINE) CE
2016 NRCS Minimum Deed Terms

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this _____ day of _____, 20____, by Lorraine E. Watson, of 1056 Jones Road, Malta, Montana 59538 (hereinafter together with her heirs, personal representatives, successors, and assigns collectively referred to as "Grantor") and **THE MONTANA LAND RELIANCE**, a nonprofit Montana corporation with a principal office at 324 Fuller Avenue, Helena, Montana 59601 (hereinafter referred to as "Grantee"), with a right of enforcement to the UNITED STATES OF AMERICA (the "United States"), acting by and through the United States Department of Agriculture ("USDA") Natural Resources Conservation Service ("NRCS") on behalf of the Commodity Credit Corporation ("CCC"), and a contingent right of enforcement to the STATE OF MONTANA, as more fully set forth herein.

This Easement has been acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP), 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, for the purpose of protecting grazing uses and related conservation values, by restoring and conserving the Protected Property. Baseline conditions of the Protected Property are set forth in a Resource (Baseline) Documentation Report, the original of which is maintained in the files of Grantee, with copies in the office of the Montana NRCS, as further described in Section IX of this Easement.

R E C I T A L S:

1. Grantor is the owner of certain real property in Phillips County, Montana, more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, (hereinafter referred to as the "Protected Property"), and the Protected Property totals approximately 2,690 acres; and,
2. The Protected Property constitutes a valuable component of the natural habitat, scenic, and open-space lands in the Sage Creek drainage and the Protected Property remains largely undeveloped and retains its agricultural and natural habitat characteristics; and,

3. Preservation of the scenic, open-space, and natural habitat values found on the Protected Property provides substantial benefits to the people of the State of Montana, Phillips County, and the United States by preserving and protecting the following significant resources, in perpetuity, in compliance with the Montana Open Space and Voluntary Conservation Easement Act, Sections 76-6-101, et seq., Montana Code Annotated (“MCA”):

a. Open-space lands, which maintain the rural, agricultural, and natural scenic qualities of the area and provide opportunities to continue traditional farming and ranching practices in perpetuity, and to ensure that such lands remain available for agriculture, in accordance with the provisions of ACEP and clearly delineated state land conservation policies adopted by the State of Montana to protect critical habitat of the greater sage grouse, as set forth in Recital 4 below; and,

b. Scenic views of the parts of the Protected Property that are visible from Sun Prairie Road and Content Road, public roadways that traverses the Protected Property, and the protection of this landscape, portions of which are located immediately adjacent to public lands, will provide public benefits by ensuring the open space will remain relatively undisturbed by prohibiting inconsistent development, including residential subdivision, on the Protected Property in perpetuity; and,

c. Relatively natural habitat that will remain undisturbed by prohibiting residential subdivision on the Protected Property in perpetuity, which will benefit wildlife species, including the greater sage grouse which actively use and nest upon the Protected Property; and,

4. The 64th Montana Legislature created the Montana Greater Sage Grouse Stewardship Act, Section 76-22-101 et seq., MCA (the “Act”), to “establish ongoing free-market mechanisms for voluntary, incentive-based conservation measures that emphasize maintaining, enhancing, restoring, expanding, and benefiting sage grouse habitat and populations on private lands, and public lands as needed, that lie within core areas, general habitat, or connectivity areas,” and the Office of the Governor issued Executive Order 12-2015, implementing purchases of conservation easements pursuant to the Act to accomplish these purposes including, but not limited to:

a. Protecting habitat that is located within the State of Montana’s “Sage Grouse Core Area,” as designated by the U.S. Fish and Wildlife Service, Bureau of Land Management, the Montana Department of Fish, Wildlife and Parks, and the State of Montana’s Sage Grouse Habitat Conservation Advisory Council, and, in particular, protecting, according to 2017 data, three (3) documented sage grouse leks on the Protected Property, and fourteen (14) documented sage grouse leks within a four (4) mile radius of the Protected Property, including one (1) documented sage grouse lek on adjacent lands owned by the State of Montana; and,

b. Protecting sage brush grassland and other grazing uses by limiting non-agricultural uses of the Protected Property, thereby preserving and protecting in perpetuity the multiple, interrelated land features which are critical to agricultural lands, open space, and wildlife habitat protection; and,

5. The conservation purposes that are identified in Recitals 3 and 4 are collectively referred to in this Easement as the “**Conservation Values**” on the Protected Property, and Grantor, Grantee, NRCS, and the State of Montana hereby agree to protect these Conservation Values in perpetuity; and,
6. This Easement, which was selected to receive funds pursuant to the Act, provides that the State is a third-party beneficiary to the Easement, with contingent rights to enforce the agreement if Grantee fails to do so; and,
7. The Phillips County Montana, Commissioners have expressly recognized in the Phillips County Growth Policy, dated 2006 through 2011, the importance of preserving open space and agricultural lands in Phillips County, Montana, as a result of rapid urban and suburban development of formerly rural lands; and,
8. The Phillips County Growth Policy specifically encourages use of conservation easements to preserve open space and agricultural lands in the area; and,
9. The Protected Property is located immediately adjacent to, and shares boundaries with, lands owned and administered by the State of Montana and U.S. Department of Interior (Bureau of Land Management), and protection of the open-space resources on the Protected Property compliments state and federal land management goals in the immediate vicinity of the Protected Property, and provides public benefits; and,
10. Grantor, as the owner of the Protected Property, owns the rights to identify, preserve, and protect in perpetuity the open-space character, scenic values, and significant relatively natural habitat and other Conservation Values of the Protected Property; and,
11. By conveying this Easement and its associated rights to Grantee, freely, voluntarily, and irrevocably, Grantor intends to preserve and protect in perpetuity the Conservation Values of the Protected Property; and,
12. The State of Montana has recognized the importance of private efforts toward voluntary conservation of private lands in the state by the enactment of MCA Sections 76-6-101, et seq., and 76-6-201, et seq.; and,
13. Grantor, Grantee, and NRCS acknowledge that this Easement is acquired to protect grazing uses and related Conservation Values of the Protected Property by restoring and conserving the Protected Property, thereby preserving and protecting in perpetuity the multiple, interrelated land features which are critical to agricultural lands, open space, and wildlife habitat; and,
14. Grantee is a qualified organization under Sections 76-6-104(5) and 76-6-204, MCA, organized to conserve land for open-space purposes, and is an organization described in Section 170(h)(3) of the Internal Revenue Code of 1986 (hereinafter the “Code”) qualified to receive and hold conservation easements.

NOW, THEREFORE, for insert 75% of the appraised value of the easement per appraisal paid by the United States, by and through the NRCS pursuant to the Agricultural Conservation Easement Program; and for insert 25% of the appraised value of the easement per appraisal paid by the State of

Montana, pursuant to the Montana Greater Sage Grouse Stewardship Act; and other good and valuable consideration, and in further consideration of the mutual promises and covenants contained in this Easement, Grantor hereby gives, grants, and conveys to Grantee, and the successors and assigns of Grantee, with warranties of title, this perpetual Easement on, over, and across the Protected Property, and to the United States and the State of Montana third party rights of enforcement, all in accordance with the terms and conditions set forth below.

SECTION I

Purposes and General Effect of Easement

A. Purposes. The purposes of this Easement are to assure that the Conservation Values as identified in Recitals 3 and 4 will be maintained in perpetuity, and to prevent any use of, or activity on, the Protected Property that will significantly impair those Conservation Values or that will violate any term of this Easement. Provisions of this Easement limit the types of agricultural operations that can occur on the Protected Property to those that protect and preserve greater sage grouse habitat, and restore or conserve native sage brush and other grassland ecosystems in conjunction with protection of livestock grazing uses, and related Conservation Values. In achieving these purposes, it is the mutual intention of Grantor and Grantee to permit the continuation of such uses of the Protected Property as may be conducted consistently with the purposes and terms of this Easement and to ensure that the Protected Property remains available for agricultural uses. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purposes of the Easement may be accomplished. Failure to comply with any term of this Easement shall not terminate the Easement. Grantor and Grantee recognize that changes in economic conditions, in technologies, in accepted farm, ranch, and forest management practices, and in the situation of Grantor may result in an evolution of land uses and practices related to the Protected Property, which are allowed, provided that such uses and practices are consistent with the purposes and terms of this Easement.

B. Perpetual restrictions. This Easement shall run with the land and burden title to the Protected Property in perpetuity and shall bind Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them, all of whom must comply with all terms and conditions of this Easement.

C. Dedication. The Protected Property is hereby declared to be open space pursuant to Section 76-6-107, MCA, and may not, except as specifically provided herein and pursuant to statute, be converted from open space.

D. Agricultural land protection. The Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq., facilitated and provided funding for the purchase of the Easement on the Protected Property for the purpose of protecting grazing uses and related conservation values, by restoring and conserving the Protected Property.

Therefore, in order to ensure compliance with the Agricultural Conservation Easement Program, any activities that are inconsistent with the purposes and terms of this Easement are prohibited. The provisions of this Easement limit the types of agricultural operations that can occur on the Protected Property to those that restore or conserve grassland, including greater sage grouse habitat, and protect grazing uses and related Conservation Values, consistent with paragraph A above.

Notwithstanding any other provision of this Easement, Grantor, Grantee, and NRCS agree that all present and future use of the Protected Property is and will remain subject to all of the terms and conditions identified in this Easement, including Exhibits B and C and the ALE Plan (defined in Section III C., below). If any of the terms and conditions in this Easement, including the ALE Plan, are inconsistent with one another, the more restrictive terms and conditions will control.

SECTION II

Rights Conveyed

The rights conveyed by this Easement to Grantee are the following:

A. **Identification and protection.** To identify, preserve, and protect in perpetuity the Conservation Values of the Protected Property, including, but not limited to, its significant wildlife habitat, scenic, and open-space values, subject, however, to Grantor's reserved rights as herein provided and further subject to all third party rights of record in the Protected Property existing at the time of conveyance of this Easement and not subordinated to this Easement. Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose, or if it was acquired previously as separate parcels, it will be considered as no more than two (2) parcels for purposes of real-estate conveyances, which conveyances must be in accordance with the requirements of the ACEP and as provided in Exhibit B, paragraph 6, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole.

B. **Access.** Grantee shall have the right to enter upon the Protected Property to inspect the same and to monitor Grantor's compliance with the terms of this Easement, all in a manner that will not unreasonably interfere with the use of the Protected Property by Grantor. Grantee shall also have the limited right to enter the Protected Property to enforce the rights granted to Grantee in this Easement, and Grantor therefore conveys to Grantee a right of immediate entry onto the Protected Property if, in Grantee's sole judgment, reasonably exercised, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Access is expressly limited to Grantee, as provided in the preceding sentence, and to employees, agents, and contractors of the United States to monitor and enforce its rights pursuant to this Section II and Section V, paragraph F. The Protected Property is accessible, for monitoring and enforcement purposes, by Content Road and Sun Prairie Road, public roadways that traverse the Protected Property. Aside from the rights of access granted to Grantee and the United States in the preceding sentences of this paragraph B, and any access rights granted to the State or its agents pursuant to this Easement in this Section II, paragraphs G and H, and Section V, paragraph H, this Easement does not grant to Grantee, to the United States, to the State or their respective agents, nor to the public, any rights to enter upon the Protected Property.

C. **Injunction and restoration.** To enjoin any activity on, or use of, the Protected Property which is inconsistent with the purposes and terms of this Easement and to enforce the reasonable restoration of such areas or features of the Protected Property as may be damaged by such activity or use.

D. **The United States' right of enforcement.** Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the Easement are not enforced by the holder of this Easement. The Secretary of the United States Department of Agriculture (the "Secretary") or his or her assigns, on behalf of the United States, may exercise this

right of enforcement under any authority available under state or federal law if Grantee, or its successors or assigns, fails to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all related administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce this Easement against Grantor up to the amount of the United States' contribution to the purchase of this Easement.

Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that Grantee and Grantor are in compliance with this Easement and the ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of this Easement, the ALE Plan, and the United States Cooperative Agreement with Grantee, the United States will have reasonable access to the Protected Property with advance notice to Grantee and Grantor or Grantor's representative.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor or Grantor's representative at the earliest practicable time.

E. The United States' rights of inspection and entry. For purposes of inspection and enforcement of this Easement, the Agricultural Land Easement Plan as described in Section III, paragraph C of this Easement, and the United States Cooperative Agreement with Grantee, the United States will have reasonable access to the Protected Property with advance notice to Grantee and Grantor or Grantor's representative. Grantee will annually monitor compliance with the terms and condition of this Easement and will provide the United States with an annual monitoring report that documents that Grantee and Grantor are in compliance with the Easement and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor or Grantor's representative at the earliest practicable time.

F. State of Montana's contingent third-party right of enforcement. The State of Montana, acting by and through DNRC or any other agent, or any successor agency, is hereby granted a contingent right to enforce the terms of this Easement if Grantee fails to do so, pursuant to Section 76-22-112, MCA and described in more detail in Section V, paragraph H below.

G. Sagebrush conservation mitigation credits. The Act, at Sections 76-22-103 and -111, MCA, contemplates that developers may fulfill regulatory requirements to offset impacts of natural resource development through compensatory mitigation in a variety of ways, including by purchasing

credits in a habitat mitigation exchange. The State or its agents are therefore permitted to enter the Protected Property pursuant to paragraph H below for the purpose of retroactively calculating and making mitigation credits (the “Sage Grouse Conservation Mitigation Credits”) available as a result of the purchase of this Easement with grant funds disbursed from the Sage Grouse Stewardship Account. Grantor agrees, at the request of the State, to convey or assign to the State all of its interests in the Sage Grouse Conservation Mitigation Credits that are identified, created, and perfected on the Protected Property. Grantor agrees to execute such deeds, assignments, or other documents as may be necessary to vest the Sage Grouse Conservation Mitigation Credits in the State. Grantor acknowledges that the State may sell, convey, trade, assign, or otherwise dispose of the Sage Grouse Conservation Mitigation Credits in its discretion, so long as the State does not grant to any third party additional rights in or to the Protected Property. Grantor further agrees, within reason and at no cost to Grantor, to cooperate with the State to provide third parties such documentation as may be required to evidence the creation of the credits and their ownership by the State or its successors and assigns.

H. State’s right of inspection. The State of Montana and its agents may, in a reasonable manner and at reasonable times, enter and inspect the Protected 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 conveyance of this Easement. Such entry and inspection may involve, but is not limited to, sage grouse lek surveys, surveys of sage grouse habitat, and verification of credits made available for compensatory mitigation. Except in cases of emergency, the State or its agents must give Grantor and Grantee reasonable prior notice of entry, and the State will not unreasonably interfere with Grantor’s use and quiet enjoyment of the land. Grantor and Grantee may accompany the State or its agents on any non-emergency entry. In the event that the State or its agents determine that an immediate entry is required because of non-enforcement by Grantee, the State or its agents shall make reasonable efforts to contact Grantor and Grantee prior to entry, but such notice shall not be a prerequisite to entry.

I. Compensatory Mitigation Management Plan. Subsequent to finalization and recording of this Easement, the State of Montana or its agents shall develop a Compensatory Mitigation Management Plan. This plan shall describe the credit estimation, verification, and monitoring processes the State or its agents will execute to ensure complete, consistent, and accurate verification needed to provide to the public and credit buyers that the mitigation occurring on the Protected Property is in compliance with State guidelines. The access required to implement this plan shall not be greater than the access granted in paragraph H above. The plan shall not grant the State any additional enforcement rights, and the plan shall not grant any additional rights or obligations to Grantor or Grantee. Grantor and Grantee shall receive copies of this plan, but shall have no right to object to its terms or its implementation unless the terms are not consistent with this paragraph.

SECTION III

Reserved Rights and Prohibited Uses

A. Reserved rights. Grantor reserves to herself and to its her heirs, personal representatives, successors, and assigns, all rights accruing from her ownership of the Protected Property, including the right to engage in or permit or invite others to engage in all uses of the Protected Property that are not expressly prohibited herein, that do not destroy or impair the Conservation Values, and are not inconsistent with the terms and purposes of this Easement. Without

limiting the generality of the foregoing sentence, those uses and practices described in Exhibit B, attached hereto and incorporated by this reference, are expressly permitted.

B. Prohibited uses. *Any activity on, or use of, the Protected Property that is inconsistent with the terms and purposes of this Easement is prohibited.* Without limiting the generality of the foregoing sentence, the activities and uses described in Exhibit C, attached hereto and incorporated by this reference, are expressly prohibited.

C. Agricultural Land Easement Plan. *As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Protected Property are subject to an Agricultural Land Easement Plan ("ALE Plan"), as approved by NRCS, to promote the long-term viability of the land to meet the Easement purposes. The ALE Plan must also be approved by Grantor, Grantee, and the State of Montana. Grantor agrees the use of the Protected Property will be subject to the ALE Plan.*

The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this Easement. Grantee and Grantor agree to update the ALE Plan in the event the agricultural uses of the Protected Property change. A copy of the current ALE Plan is kept on file with Grantee and the State.

Grantee must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NRCS may notify Grantee and the State. NRCS and the State will give Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Grantee fails to enforce the terms of the Easement, including, but not limited to compliance with the ALE Plan, the United States and the State may exercise their respective rights of enforcement.

SECTION IV

Prior Notice by Grantor and Approval of Grantee and the State

Any enterprise, use, or activity proposed to be done or undertaken by Grantor requiring Grantee's approval, consultation, notification, or mutual agreement (including any provision of Exhibit B or Exhibit C expressly requiring the prior approval of Grantee) may be commenced only after satisfaction of the notice and approval conditions of this Section IV.

A. Grantor's written request for approval. Prior to the commencement of any enterprise, use, or activity requiring Grantee's and/or NRCS's approval, Grantor must send Grantee and/or NRCS written notice of Grantor's intention to commence or undertake such enterprise, use, or activity. Said notice must inform Grantee and/or NRCS of all aspects of such proposed enterprise, use, or activity, including, but not limited to, the nature, siting, size, capacity, and number of structures, improvements, facilities, or uses, and the dates and duration of the activity or uses, as appropriate. The request must provide Grantee and/or NRCS with an address to which Grantee's and/or NRCS's responses should be sent, and the names and addresses of persons to contact about the request. Furthermore, copies of Grantor's requests for prior approval should be sent contemporaneously to the State of Montana to ensure that it may have the opportunity, if necessary, to exercise its third-party rights of approval, pursuant to paragraph E below.

B. Grantee's address. Any request for approval of a proposed enterprise, activity, or use shall be either:

(i) delivered in person with a signed and dated proof of delivery, or

(ii) sent by registered or certified mail, return receipt requested, or

(iii) sent by Federal Express or other reputable carrier or delivery service, provided that the sender obtains a signed proof of delivery.

Grantor's requests for approval shall be delivered to Grantee at 324 Fuller Avenue, Helena, MT 59601, or if sent by United States Mail, shall be addressed to Grantee at P.O. Box 355, Helena, MT 59624, or to such other address as Grantor from time to time may be informed of in writing by Grantee. Grantor must also send copies of requests for approval to the State, or any future third-party administrator, at the following address: Chief Legal Counsel, Montana Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, MT 59620-1601, or to such other address as Grantor from time to time may be informed of in writing.

Notification of the United States and/or NRCS (including the Chief of NRCS) is required when the United States has exercised its enforcement rights under this Easement or where specifically required under the provisions of this Easement. Grantor shall address the United States' notice to the State Office of NRCS at Federal Building, Room 443, 10 E. Babcock St., Bozeman, MT 59715, or to such other address as Grantor from time to time may be informed of in writing by NRCS.

C. Time for Grantee's response. Grantee shall have thirty (30) days from Grantee's receipt of a request for approval, as indicated by the date of delivery receipt, to review the proposed enterprise, use, or activity and to notify Grantor of any objection thereto. Nevertheless, the thirty (30) day period shall not begin until such time as Grantee has received adequate information from Grantor to evaluate the proposed activity. If Grantee requires additional information to evaluate the proposed activity, Grantee shall request the information from Grantor as soon as practicable and, in any case, not later than twenty (20) days after receiving the request for approval. Notwithstanding any provision of this Easement that may be construed to the contrary, if Grantor is required to obtain the prior approval of the United States, the time limits for the United States' response, as set forth above in this paragraph shall not be binding upon the United States.

Grantee shall timely confer with the State about any request for approval Grantee receives from Grantor pursuant to this Section IV.

D. Grantee's response to requests for approval. Except as provided in paragraph E of this Section IV, only upon Grantee's express written approval may the proposed enterprise, use, or activity be commenced and/or conducted, and only in the manner explicitly represented by Grantor and approved by Grantee. Grantor and Grantee acknowledge some enterprises may require a State permit or entail State grant funds and may be subject to Executive Order 12-2015 or a subsequent executive order, if any are in effect at the time of the enterprise.

Grantee's decision to approve or disapprove the activity proposed by Grantor shall be sent by registered or certified mail, return receipt requested, or by other delivery or courier service with proof of

delivery, to Grantor at the address provided to Grantee in Grantor's request. A decision by Grantee to disapprove a proposed activity shall be based upon Grantee's reasonable determination that the proposed enterprise, use, or activity is inconsistent with the purposes or terms of this Easement. If, in Grantee's judgment, conformity with the purposes or terms of this Easement is possible, Grantee's response shall inform Grantor of the manner in which the proposed enterprise, use, or activity can be modified to be consistent with this Easement. Grantee shall also mail copies of Grantee's response to Grantor's request for prior approval to the State and the NRCS at the addresses provided in paragraph B.

E. Grantee's failure to respond. If Grantee fails to respond to Grantor's request for approval within the response time set forth in paragraph C above, Grantor must notify the State with a copy of the request initially made to Grantee ("State's Notice"). The State shall then have thirty (30) days from the receipt of the State's Notice, as indicated by the date of delivery receipt, to review the proposed enterprise, use, or activity and to notify Grantor of any objection thereto. Nevertheless, the thirty (30) day period shall not begin until such time as the State has received adequate information from Grantor to evaluate the proposed activity. If the State requires additional information to evaluate the proposed activity, the State shall request the information from Grantor as soon as practicable and, in any case, not later than ten (10) days after receiving the request for approval.

Grantee's, NRCS's and the State's failure to respond to any individual request for approval shall not be deemed to be a waiver of any duty and obligation of Grantor to obtain prior approval for specific activities for which Grantee's approval is necessary. Grantee's failure to respond to any request for approval shall not be deemed to be a waiver of the State's or NRCS's right to enforce the terms of this Easement as set forth herein.

F. Acts beyond Grantor's control. Grantor shall be under no liability or obligation for any failure in the giving of notice with regard to any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property or to any person resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any other cause beyond the control of Grantor similar to those occurrences specified. Grantor shall provide notice to Grantee, NRCS, and the State of any emergency actions taken pursuant to this paragraph.

G. Rejection or refusal. Rejection or other refusal to accept notices, or objections, or approvals by any party hereto shall be deemed receipt thereof.

SECTION V

Breach and Restoration

A. Grantee's remedies. If Grantee determines that Grantor, or third parties under Grantor's authority and control or acting with Grantor's knowledge or approval, are in violation of the terms of this Easement, Grantee shall give written notice to Grantor of such violation. In said notice of violation, Grantee shall demand corrective action by Grantor sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purposes and terms of this Easement, to restore the portion of the Protected Property so injured to the condition that existed prior to the injury. If Grantor:

(i) fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee;
or

(ii) under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within thirty (30) days (or within thirty (30) days of Grantor's receipt of notice from Grantee, fails to agree with Grantee in writing on a date by which efforts to cure such violation will reasonably begin); or

(iii) fails to continue diligently to cure such violation until finally cured,

Grantee may bring an action in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by a temporary or permanent injunction, to require the restoration of the Protected Property to the condition that existed prior to any such injury, and to recover any damages to which it may be entitled for violation of the terms of this Easement.

If Grantee, in its sole discretion, determines that a violation is threatened or imminent or that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Grantee may pursue its remedies under this paragraph without giving notice of violation required above and without waiting for the period provided for a cure to expire.

Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate Grantee and the public for the loss and damage to Grantee's rights, Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of open-space, scenic, aesthetic, or natural resource values. Without limiting Grantor's liability therefore, Grantee, in its sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

B. Costs of enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including reasonable costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor, provided that Grantee is at least, in part, the prevailing party in such action. Any costs incurred by the State in enforcing the terms of this Easement against Grantor, including reasonable costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by the non-prevailing party. In any action brought by the State to enforce the terms of this Easement against Grantor, Grantor's reasonable costs of suit, including reasonable attorneys' fees, and any cost of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor, unless the State's action is adjudicated to be frivolous or pursued in bad faith pursuant to Section 25-10-711, MCA.

C. Grantee's discretion. Enforcement by Grantee of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee in the exercise of its rights under this Easement in the event of any breach of any provision of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such provision or of any subsequent breach of the same or any other provision of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. The State shall have no right to challenge Grantee's exercise of reasonable discretionary enforcement authority under this Section V, paragraph C and, therefore, the State hereby releases Grantee from claims and causes of action arising from Grantee's reasonable discretionary enforcement decisions.

D. Waiver of certain defenses. Grantor hereby expressly waives any defense of laches, estoppel, or prescription.

E. Acts beyond Grantor's control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Protected Property resulting from causes beyond Grantor's control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property or any person resulting from such causes.

F. Enforcement rights of the United States - NRCS. *The United States is granted contingent rights of enforcement of this Easement and of the ALE Plan, as set forth in Section II, paragraph D and in Section III, paragraph C.*

G. Mediation. If a dispute arises between the parties concerning the consistency of any use or activity with the terms or purposes of this Easement, and if Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request in writing to the other that the matter be mediated. Within fifteen (15) days of the receipt of such a request, the two parties may jointly appoint a single independent third-party mediator to hear the matter. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Grantor and Grantee agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this Section V, paragraph G, shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section V.

H. State's third party right of enforcement. The State of Montana, acting by and through DNRC or any other agent, or any successor agency, is hereby granted a contingent right to enforce the terms of this Easement if Grantee fails to do so, pursuant to Section 76-22-112, MCA. In such a circumstance, the State may take legal action to enforce the terms of this Easement. The State may use the contingent enforcement right established in this paragraph to enforce all terms in this Easement.

In accordance with Section X below, the State may exercise its third-party right of enforcement at any time to recover from the proceeds of the transfer for value, sale, termination, or extinguishment, specifically the State's pro rata contribution to the purchase of this Easement.

SECTION VI
Costs and Taxes

Grantor shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including responsibility for the control of noxious weeds in accordance with Montana law. Grantor shall pay any and all taxes, assessments, fees, and charges levied by competent authority on the Protected Property, except any tax or assessment on this Easement. Any lawful tax or assessment on this Easement shall be paid by Grantee. Grantor shall also be responsible for and shall bear all costs associated with ensuring compliance with all federal, state, and local laws, regulations, rules, and ordinances.

SECTION VII

Indemnities

A. Control of risks associated with Protected Property ownership. Grantor and Grantee acknowledge and agree that Grantor retains primary ownership of the Protected Property and therefore Grantor controls day-to-day activities on, and access to, the Protected Property, except for Grantee's and the State's limited rights to monitor the condition of the Conservation Values and to enforce the terms of this Easement. Except as specifically provided in paragraph C of this Section VII, Grantor therefore agrees that general liability for risks, damages, injuries, claims, or costs arising by virtue of Grantor's continued ownership, use, and control of the Protected Property shall remain with Grantor as a normal and customary incident of the right of property ownership.

B. Grantor's obligation to indemnify. Grantor agrees to hold harmless and indemnify Grantee and the State of Montana from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation Grantee's reasonable attorneys' fees and costs of defense, arising from or in any way connected with:

(i) injury to or the death of any person, or physical damage to property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, regardless of cause, except as set forth in paragraph C below;

(ii) the obligations specified in Section VI; and

(iii) the obligations arising from past, present, or future presence of any hazardous substance on the Protected Property, and any obligation associated with the generation, discharge, transport, containment, or cleanup of any such hazardous substance.

C. Grantee's obligation to indemnify. Grantee shall hold harmless and indemnify Grantor from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including reasonable attorneys' fees and costs of defense, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property (collectively, "Grantee Damages"), while Grantee is on the Protected Property in the course of carrying out the duties and obligations of Grantee under the terms of this Easement. Notwithstanding the foregoing, Grantor shall not be liable to Grantee for Grantee Damages caused by the negligence or willful act of any employee or agent of Grantee.

D. Definitions. For the purposes of this Section VII, Grantor's and Grantee's agreement to hold harmless and indemnify will extend to their respective directors, members, partners, officers, employees, and agents and their heirs, personal representatives, successors, and assigns. The term "hazardous substance" shall mean any chemical, compound, material, mixture, or substance that is now or hereafter defined or classified as hazardous or toxic by federal, state, or local law, regulation, or ordinance. Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or managerial control over activities on the Protected Property or to become an "owner" or "operator" of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq.

(“CERCLA”), or the Montana Hazardous Waste Act, Sections 75-10-401, et seq., and 75-10-601 et seq., MCA, and its successor statutes, and similar state and federal statutes.

E. The United States’ general disclaimer and general warranty. *The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee’s or Grantor’s negligent acts or omissions or Grantee’s or Grantor’s breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations of any federal, state, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which the United States may be subject or incur relating to the Protected Property.*

Grantor must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which the United States may be subject or incur relating to the Protected Property (collectively, “U.S. Damages”), which may arise from, but are not limited to, Grantor’s negligent acts, omissions, or breach of any representation, warranty, covenant, or agreements contained in this Easement or violations of any federal, state, or local laws, including all Environmental Laws.

SECTION VIII

Assignment of Easement

Subject to the prior written approval of the United States by and through NRCS and the State of Montana, Grantee may transfer or assign this Easement, provided that any such assignment or transfer must be made to a “qualified organization,” within the meaning of Section 170(h)(3) of the Code, and, furthermore, the assignee must be organized or operated primarily or substantially for one or more of the conservation purposes specified in Section 170(h)(4)(A) of said Code. Any such qualified organization must agree in the assignment instrument to enforce in perpetuity the conservation purposes of this Easement. In the event assignment of this Easement becomes necessary, Grantee shall seek an assignee which is mutually acceptable to Grantee and Grantor. Grantee agrees that it will make a reasonable effort in the event of any assignment to suggest an assignee which is a qualified organization other than a governmental unit referred to in Section 170(c)(1) of the Code, which has conservation of natural habitat, scenic resources, and open space as substantial organizational purposes, and Grantee further represents to Grantor that its present intention is to assign its interest in this Easement only in connection with a dissolution of Grantee.

Nothing in this Section VIII shall be deemed to diminish or be inconsistent with the rights of the United States as set forth in Section II, paragraph D and E, and Section V, paragraph F.

Pursuant to Section 70-17-111(2), MCA, Grantor, Grantee, the State, and the United States expressly acknowledge and agree that merger of ownership of this Easement and the fee interests in the

Protected Property shall not extinguish or terminate any of the terms, conditions, rights, and restrictions in this Easement.

SECTION IX **Documentation**

Grantor has made available to Grantee, prior to the execution of this Easement, information sufficient to document the condition of the Conservation Values of the Protected Property at the time of the grant of this Easement. The parties acknowledge that this information has been developed into a Resource Documentation Report. The parties hereby agree that the information compiled within the Resource Documentation Report accurately represents the condition of the Conservation Values of the Protected Property as of the date of the grant of this Easement. The original Resource Documentation Report is, and shall remain, on file with Grantee, in the offices of Montana NRCS and the State.

The parties intend that the Resource Documentation Report shall be used by Grantee to monitor Grantor's future uses of the Protected Property and practices thereon. The parties agree that, in the event a controversy arises with respect to the condition of the Conservation Values, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. The parties further agree if the Resource Documentation Report contains any summaries of, or representations about the terms or conditions of this Easement, including Exhibits E and F hereof, any conflict or inconsistency between the terms and conditions of this Easement and the Resource Documentation Report shall be governed by the express terms and conditions herein and not in the Resource Documentation Report.

SECTION X **Extinguishment: Grantee's Entitlement to Proceeds**

A. Extinguishment and condemnation – ALE requirements. *The interests and rights under this Easement may only be extinguished, terminated, or condemned with written approval of Grantee, the State, and the United States. Due to the Federal interest in this Easement, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Protected Property.*

*With respect to a proposed extinguishment, termination, or condemnation action, Grantee, the State, and the United States stipulate that the fair market value of the Easement is **insert percentage from appraisal**, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this Easement. The Proportionate Share will remain constant over time.*

If this Easement is extinguished, terminated, or condemned, in whole or in part, then Grantor must reimburse the State and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this Easement. The fair market value will be determined at the time all or a part of this Easement is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by Grantee, the State, and the United States. The allocation of the Proportionate Share between the State and the United States will be as follows: (a) to the State twenty-five (25) percent of the Proportionate Share; and (b) to the United States seventy-five (75) percent of the

Proportionate Share. Until such time as the State and the United States receive the Proportionate Share from Grantor or Grantor's successor or assign, the State and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, Grantee must reimburse the State and the United States for the amount of the Proportionate Share due to the United States and the State.

B. State's pro rata share. The State may take legal action to recover from the proceeds of the transfer for value, sale, extinguishment, or condemnation, the State's pro rata share of the proceeds based on the funds the State provided pursuant to the Montana Greater Sage Grouse Stewardship Act for the creation of this Easement (Section 76-22-112, MCA) in the percentage set forth above.

SECTION XI
Representations and Warranties

A. **General warranties and representations.** Grantor represents and warrants that, after reasonable investigation and to the best of her knowledge, as of the date of the conveyance of this Easement:

1. Grantor has clear title to the Protected Property; that Grantor has the right to convey this Easement to Grantee; Grantor's officers, directors, and shareholders have approved and executed appropriate corporate resolutions authorizing the conveyance of this Easement to Grantee; and that the Protected Property is free and clear of any encumbrances, including leases of mineral and subsurface rights, except those encumbrances that have been expressly approved by Grantee.

2. To the best of Grantor's knowledge, any handling, transportation, storage, treatment, or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Protected Property prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. To the best of Grantor's knowledge, no deposit, disposal, or other release of any hazardous substance has occurred on or from the Protected Property, in violation of applicable law.

3. To the best of Grantor's knowledge, no underground storage tanks are located on the Protected Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Protected Property in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.

4. To the best of Grantor's knowledge, Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use.

5. To the best of Grantor's knowledge, there is no pending or threatened litigation in any way affecting, involving, or relating to the Protected Property, other than the ongoing statewide adjudication of water rights in Montana.

6. To the best of Grantor's knowledge, no civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with any federal, state, or local law, regulation, or requirement applicable to the Protected Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

B. **Environmental warranty.** *Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws with respect to the Protected Property. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with, or any liability under any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it*

has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law. Furthermore, Grantor warrants the information disclosed to Grantee and the United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties, and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath, or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee, or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

For the purposes of this Easement, the terms "Environmental Law" and "Environmental Laws" mean any and all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

For the purposes of this Easement, the term "Hazardous Materials" in addition to any definitions appearing in Section VII above, means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance which may pose a present or potential hazard to human health or the environment.

Nothing in this Easement or in the ALE Plan described in Section III, paragraph C, shall be construed as giving rise to any right or ability in Grantee to exercise physical or managerial control over activities on the Protected Property or to become an "owner" or "operator" of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq. ("CERCLA"), or the Montana Hazardous Waste Act, Sections 75-10-401, et seq., and 75-10-601 et seq., MCA, and its successor statutes, and similar state and federal statutes.

SECTION XII

Miscellaneous Provisions

A. **Partial invalidity.** If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the

application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

B. “Grantor” and “Grantee”. The terms “Grantor” and “Grantee,” as used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantor and its successors in interest and assigns, and The Montana Land Reliance and its successors and assigns, respectively. The term “State” shall mean the State of Montana, and the term “DNRC” shall mean the Montana Department of Natural Resources and Conservation.

C. Titles. Section and paragraph titles and subtitles are for convenience only and shall not be deemed to have legal effect.

D. Subsequent transfers. Grantor agrees that reference to this Easement and reference to its dates and places of recording in the public records of Phillips County will be made in any subsequent deed or other legal instrument by which they convey any interest in the Protected Property, including any leasehold interest. Grantor agrees to incorporate the terms and conditions of this Easement by express recording reference to the Easement in any deed by which Grantor conveys title to the Protected Property.

E. Subordination. No provision of this Easement is to be construed as impairing the ability of Grantor to use the Protected Property as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.

F. Notice of suit. Grantor must immediately provide Grantee, NRCS, and the State with notice of any lawsuit or administrative action involving the Protected Property or which threatens the integrity of this Easement. Notice must be sent to Grantee’s, NRCS’s, and the State’s addresses in Section IV, paragraph B, and must include a copy of any lawsuit or administrative action files. Grantor agrees not to object to Grantee’s, NRCS’s, or the State’s intervention in any such lawsuit or action. Such lawsuit or action can include, but is not limited to, quiet title action, partition, condemnation or eminent domain, foreclosure, environmental clean-up or enforcement, or any other lawsuit or action affecting the Protected Property and/or potentially affecting the Conservation Values protected by this Easement.

G. Governing law. In the event any dispute arises over the interpretation or enforcement of the terms and conditions of this Easement, the laws of the State of Montana and of the United States shall govern resolution of such dispute, without regard to conflict of laws.

H. Amendment. *This Easement may be amended only if, in the sole and exclusive judgment of Grantee, the State, and the United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this Easement and complies with all applicable laws and regulations,* including MCA Section 76-6-101, *et seq.*, and the Code. Any amendment must be consistent with the conservation purposes of this Easement, must not affect its perpetual duration and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in prohibited inurement or private benefit to Grantor or any other parties. *Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recording of the amended Easement in Phillips County, such amendments must be mutually agreed upon by Grantee, Grantor,* the

State, and the United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States and the State will be considered null and void.

I. **Conservation intent.** Any ambiguities in this Easement shall be construed in a manner which best effectuates protection and preservation of the Conservation Values and the policy and purposes of Section 76-6-101, et seq., MCA, and the Governor of the State of Montana’s Executive Order 12-2015. The parties acknowledge that each party and its counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against drafting party shall be employed in the interpretation of this Easement.

J. **Entire agreement.** This Easement, including all Exhibits attached hereto, embodies and constitutes the entire understanding between the parties hereto with respect to Grantor’s grant of this Easement on and over the Protected Property described in Exhibit A, and all prior or contemporaneous negotiations, communications, conversations, understandings, and agreements had between the parties hereto, oral or written, are merged in this Easement.

TO HAVE AND TO HOLD all and singular the above-described Easement unto Grantee and its successors and assigns, in perpetuity.

IN WITNESS WHEREOF, Grantor, Grantee, the United States, and the State have hereunto set their hands.

GRANTOR: _____
LORRAINE E. WATSON

STATE OF _____)

County of _____)

This instrument was signed or acknowledged before me on _____, by Lorraine E. Watson.

(Notary’s Signature)

(SEAL)

Affix seal/stamp as close to signature as possible.

GRANTEE: **THE MONTANA LAND RELIANCE,**
a corporation

By: _____

Its: _____

STATE OF _____)

County of _____)

This instrument was signed or acknowledged before me on
_____, by _____ acting in the capacity of
_____ on behalf of The Montana Land Reliance.

(Notary's Signature) (SEAL)

Affix seal/stamp as close to signature as possible.

**EXHIBIT A
LEGAL DESCRIPTION**

North Parcel: (1,277 acres = 25.54 acres maximum impervious surface)

Township 25 North, Range 32 East, P.M.M., Phillips County, Montana

Section 6: Lot 2, E½ of Lot 3, SW¼NE¼, E½SE¼NW¼, E½NE¼SW¼, N½SE¼

Township 26 North, Range 32 East, P.M.M., Phillips County, Montana

Section 30: Lots 1, 2, 3, E½NW¼, NE¼, NE¼SW¼, NW¼SE¼, E½SE¼SW¼,
SW¼SE¼

Section 31: W½E½, E½E½W½

Section 32: NE¼, E½NW¼, NE¼SW¼, NW¼SE¼

South Parcel: (1,419 acres = 28.38 acres maximum impervious surface)

Township 25 North, Range 31 East, P.M.M., Phillips County, Montana

Section 11: All that part of the E½NE¼ located east of the Sun Prairie Road

Section 12: S½N½, NW¼NW¼, N½SW¼, SE¼SW¼, and all that part of the
SW¼SW¼ lying east of the Sun Prairie Road

Section 13: S½NE¼, NE¼NW¼, N½SE¼, and all those parts of the
NW¼NW¼ and NE¼SW¼ lying east of the Sun Prairie Road

Township 25 North, Range 32 East, P.M.M., Phillips County, Montana

Section 7: Lots 2, 3, 4, W½SW¼, SE¼

Section 9: SW¼, N½SE¼, SW¼SE¼

Section 18: Lots 2, 3, NE¼SW¼

ALL OF THE FOREGOING DESCRIBED PROTECTED PROPERTY IS CONVEYED SUBJECT TO all third party rights of record in the Protected Property existing at the time of conveyance of this Easement and not subordinated to this Easement.

EXHIBIT B PERMITTED USES AND PRACTICES

The following uses and practices, though not an exhaustive recital of consistent uses and practices, are hereby deemed to be consistent with the purposes of this Easement and are expressly permitted:

1. Agricultural activities and grasslands. Consistent with the ALE Plan for the Protected Property, more particularly described in Section III, paragraph C, no uses of the Protected Property are allowed that decrease the Easement's protection for the grazing uses and related Conservation Values or adversely impact the restoration or conservation of the grassland, and related Conservation Values of the Protected Property. Furthermore, the provisions of this Easement limit the types of agricultural operations that can occur on the Protected Property to those that maintain, restore, and conserve the sage brush and other rangelands on the Protected Property (approximately 2,529 acres) and protect grazing uses on said rangelands consistent with sage grouse conservation purposes listed in Section 76-22-110, MCA, and related Conservation Values.

Allowed agricultural uses of the Protected Property include:

- (i) 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 (except commercial feedlots which are expressly prohibited), provided such activities are conducted in a manner consistent with the terms of the ALE Plan. Farming, irrigating, cultivating, and “sodbusting” outside of the “Cropland Area” delineated in Exhibit E, attached hereto and incorporated by reference, are prohibited, except to restore native species after Grantor has obtained Grantee’s prior approval. Temporary non-native cover crops are permitted in approved native prairie and rangeland restoration activities if consistent with the ALE Plan. For purposes of this Easement, “sodbusting” is defined as any cultivation, discing, plowing, or disturbance of native soils and vegetation by mechanical means, including without limitation engine-powered tractors and other farm machinery and horse and mule drawn plows and discs. For the purposes of this Easement, “commercial feedlot” shall be defined as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, for purposes of engaging in the business of the reception and feeding of livestock for hire.
- (ii) Grantor may graze, hay, harvest for hay and non-crop seed production, mow, construct fire breaks, conduct fire pre-suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this Easement, including the maintenance, protection, preservation, and enhancement of sagebrush grassland habitat for greater sage grouse. The term “common grazing practices” means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Protected Property. Grantor must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified in the ALE Plan or alternatively Grantor will adopt haying, mowing, and

seed harvesting practices that prevent the loss of birds as set forth in the ALE Plan, including the greater sage grouse. Alternatively, Grantor, Grantee, the State, and NRCS must incorporate into the ALE Plan haying, mowing, and seed harvesting practices that are intended to mitigate declines in grassland bird populations, including the greater sage grouse. Determinations of nesting seasons for birds whose populations are in significant decline and areas affected by this restriction are set forth in the ALE Plan.

If grassland bird populations that use the Protected Property are later determined in writing by Grantee, the State, and NRCS to have recovered and are no longer in significant decline, Grantee, the State, NRCS, and Grantor may update and amend the ALE Plan to remove the restrictions on mowing, haying, and seed harvesting that were intended to mitigate declines in grassland bird populations.

- (iii) Except for grazing uses and grassland restoration and conservation activities that are approved in the ALE Plan and by Grantee pursuant to Section IV, the cultivation or production of crops, nonperennial forages for human or domestic animal consumption, crop seed production, or planting of orchards, vineyards, berries, tree farms, or other perennial nongrassland agricultural product is prohibited outside of the “Cropland Area” delineated in Exhibit E. Grantor retains the right to farm and cultivate the Cropland Area of the Protected Property (approximately 161 acres) delineated in Exhibit E. Agricultural activities within the Cropland Area must be addressed in the ALE Plan. Conversion of any other lands on the Protected Property to cropland is expressly prohibited.

2. Recreational use. To use the Protected Property for undeveloped non-commercial recreation and undeveloped commercial recreation, including, but not limited to, hunting of game animals and birds, fishing, hiking, wildlife viewing, and quiet enjoyment by Grantor and invitees, provided that all such recreational activities on the Protected Property must remain consistent with protection and preservation of the Conservation Values, including protecting grazing uses and related Conservation Values and must be in accordance with state regulations governing hunting of greater sage grouse. Any agreement between Grantor and outfitters or guides pertaining to the use of the Protected Property for commercial recreation, including hunting and fishing, shall not be considered a prohibited commercial use of the Protected Property pursuant to Exhibit C of this Easement, as long as such agreements are made expressly subject to the terms and conditions of this Easement. The Protected Property may also be used (i) by Grantor and Grantor’s invitees, and (ii) in conjunction with guest ranching businesses if developed in accordance with this Exhibit B, paragraph 13. All existing and subsequently constructed structures and improvements that are permitted by this Easement in the Building Envelopes defined in this Exhibit B, subparagraph 4d, may be used in conjunction with recreational activities permitted under this paragraph 2, and in conjunction with guest ranching activities permitted in this Exhibit B, paragraph 13. Nothing in this Exhibit B, paragraph 2, may be construed to permit construction or development of any recreational facilities in locations outside of the Building Envelopes described in Exhibit B, subparagraph 4d. All uses of the Protected Property pursuant to this paragraph 2 must remain compatible with permitted agricultural operations.

3. Water resources. Subject to the impervious surface limitation referenced in Exhibit C, paragraph 11. Grantor reserves the right to maintain, enhance, and develop water resources on the Protected Property for permitted agricultural uses, fish and wildlife uses, domestic needs, and private recreation, in compliance with the ALE Plan and consistent with the Conservation Values. Permitted uses include, but are not limited to, the following: the right to restore, enhance, and develop water resources, including ponds; to construct, maintain, and repair new and existing dikes anywhere on the Protected Property for irrigation purposes; to locate, construct, repair, and maintain irrigation systems; and to develop stock watering facilities.

4. Structures and Building Envelopes. Subject to the impervious surface limitation referenced in Exhibit C, paragraph 11. to construct, maintain, repair, remodel, and make limited additions to, and in the event of their removal or destruction, to replace the following structures on the Protected Property. No permanent structures on the Protected Property, including permanent structures addressed in this paragraph 4, are permitted within six-tenths (0.6) of a mile radius of any active sage grouse lek as depicted in Exhibit E.

a. Residential dwelling unit. For the purpose of this Easement, the term “residential dwelling unit” means a structure, or a portion thereof, with sleeping accommodations and kitchen facilities that is provided, used, constructed, converted, remodeled, added onto, or replaced for habitation or occupation by one or more people. The definition of such residential dwelling units includes, but is not limited to, residences, apartments or suites that are a part of associated outbuildings and agricultural structures as set forth in subparagraphs 4b and 4c below, guest houses, employee houses, cabins, mobile homes, trailers, and other moveable living units. At the time of this grant there are (2) residential dwelling units on the Protected Property, and after the date of this Easement, no more than three (3) residential dwelling units are permitted on the Protected Property. The two (2) existing residential dwelling units and the one (1) permitted new residential dwelling unit and replacements thereof, if any, must be located within the designated “Building Envelopes” as defined in subparagraph 4d below and must be constructed on permanent foundations. Mobile homes, trailers, or other moveable living units not on permanent foundations and used for human habitation or occupancy are not permitted on the Protected Property.

b. Associated outbuildings. Non-residential outbuildings that are used in association with the permitted residential dwelling units, including, but not limited to, garages, workshops, sheds, and recreational structures (hereinafter “associated outbuildings”). All associated outbuildings must be located within the designated Building Envelope as defined in subparagraph 4d below.

c. Agricultural structures. Non-residential structures and other improvements that are constructed or placed on permanent foundations and used for agricultural purposes, including, but not limited to, barns, shelters, and sheds (hereinafter “agricultural structures”) may be located only within the Building Envelope defined in subparagraph 4d below and do not need the prior approval of Grantee. With prior written approval of Grantee, additional agricultural structures that are not constructed or placed on permanent foundations, including, but not limited to, livestock corrals, three-sided livestock/wind/loafing/calving shelters, and hay storage areas may be located anywhere on the Protected Property, provided that such agricultural structures are consistent with the ALE Plan and that such structures neither individually nor collectively have an adverse impact on the grassland, grazing uses, and related Conservation Values of the Protected Property, and further provided they (i) are located in areas that are farther than six-tenths (0.6) of a mile from any active sage grouse lek as depicted in

Exhibit E, and (ii) are consistent with protection of the Conservation Values, including the scenic resources preserved by this Easement as set forth in Recital 3b. For the purposes of this Easement, the term “agricultural structures” does not include indoor riding arenas, which are expressly prohibited on the Protected Property.

d. Building Envelopes. The two (2) existing residential dwelling units and all of their associated outbuildings are located within “Building Envelope #1” that is depicted in Exhibit E and consists of approximately twenty-nine (29) acres. The one (1) permitted new residential dwelling unit and all its associated outbuildings must be located within either Building Envelope #1 or Building Envelope #2 depicted in Exhibit E. Building Envelope #2 consists of approximately four and one-half (4.5) acres.

The purposes of the Building Envelopes are to allow Grantor flexibility in use of the residential dwelling units and associated outbuildings, to cluster residential uses and other structures on the Protected Property, and to protect the Conservation Values. If necessary, wells and drain fields may be located outside of the Building Envelopes.

The boundaries and location of the Building Envelopes may be adjusted if Grantee and the Chief of NRCS provide prior written approval of the adjusted boundaries and location. The Building Envelopes may not increase in size and the adjusted Building Envelopes must provide equal or greater protection of the grassland, grazing uses, sage grouse habitat, and related Conservation Values of the Protected Property.

5. Minerals. If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and their interests have not been subordinated to this Easement, Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph 5.

a. Oil and gas exploration and extraction. Subsurface oil and gas exploration and extraction on the Protected Property is permitted if approved by Grantee and the Chief of the NRCS in accordance with this paragraph 5, and if Grantor and Grantee demonstrate that such exploration and extraction of oil and gas is:

- (i) not accomplished by any surface mining method;
- (ii) accomplished by a method of extraction that has no more than a limited and localized impact that does not harm the Conservation Values of the Protected Property, including, but not limited to, the Protected Property’s use for agriculture;
- (iii) within the impervious surface limits of this Easement;
- (iv) subject to the ALE Plan that includes provisions for oil and gas exploration and extraction; and
- (v) consistent with regulations adopted by the State to protect sage grouse and sage grouse habitat, including, but not limited to, restrictions on surface occupancy of any sort

within a six-tenths (0.6) of a mile radius of any active sage grouse lek as depicted in Exhibit E.

Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Easement are subordinate to the terms of this Easement and will incorporate these Easement terms into the terms of such leases and conveyances by reference to this Easement. Grantor agrees that Grantee and the Chief of the NRCS must approve in advance, in writing, pursuant to Section IV, any lease or agreement pertaining to use of the surface of the Protected Property for mining, between Grantor and owners or lessees of minerals (including oil and gas), which approval Grantee may withhold in its discretion if it determines that the proposed surface use is not consistent with the Conservation Values of the Protected Property, including but not limited to the Protected Property's use for agriculture or is not consistent with the terms of this paragraph.

Impervious surfaces as defined in Exhibit C, paragraph 11, of this Easement shall include any surface disturbance or impervious surfaces associated with oil and gas exploration and extraction associated with uses allowed by this paragraph.

b. Additional restrictions on mineral exploration, development, and extraction.

Subject to the prior approval of Grantee and notice to the State as provided in Section IV hereof and to the extent Grantor owns the mineral rights on or under the Protected Property, Grantor may explore for and extract oil, gas, and other subsurface minerals (or to lease, sell, or otherwise dispose of the rights thereto) in or under the Protected Property, subject, however, to the following conditions:

- (i) Surface mining prohibited. There shall be no extraction or removal of any minerals by any surface mining method, within the meaning of Section 170(h)(5)(B) of the Code and the regulations promulgated thereunder; and there shall be no extraction or removal of any non-mineral substance (including, but not limited to, soil, sand, gravel, rock, and peat) by surface mining methods.
- (ii) Subsurface mining. There shall be no surface occupancy associated with any new subsurface mining or hydrocarbon exploration or extraction within six-tenths (0.6) of a mile from any active sage grouse lek. Moreover, such activities are prohibited if they would result in the permanent or irreparable destruction or impairment of any other Conservation Value of the Protected Property, regardless of location on the Protected Property. In accordance with Treasury Regulation §1.170A-14(g)(4)(i), subsurface mineral exploration or extraction may be permitted, only after prior approval of Grantee and the State pursuant to Section IV hereof, only if the mining methods used are not irreparably destructive of the Conservation Values and if impacts are limited, localized, and temporary. In addition to the requirements of Treasury Regulation §1.170A-14(g)(4)(i), subsurface mining methods used must adhere to the following conditions:

- A. Water. No exploration or extraction shall take place within any stream, waterway, or protected wetland, and no mining operation or oil and gas extraction activities may materially degrade the quality of any lake, pond, well,

stream, groundwater, or surface water, including, but not limited to, any source of water utilized by Grantor for agricultural or residential purposes. Any waste water resulting from permitted exploration or extraction activities which is of materially poorer quality than existing water supplies must be treated so that its quality is substantially equivalent to existing natural water quality where the waste water is discharged or released into surface waters and when groundwater is reinjected or otherwise disposed of on or under the Protected Property.

- B. Surface disturbance. Any surface disturbance resulting from permitted exploration or extraction activities must be limited, localized, and temporary, and the surface of the land shall be restored upon completion of such activities to a condition similar or equivalent to its state prior to the disturbance by reclaiming land contours, by restoring soils, by replanting native vegetation, and by husbanding replanted native vegetation until the vegetation is mature, established, and self-perpetuating.
- C. Reclamation. All permitted exploration or extraction activities and associated reclamation activities shall be in compliance with other provisions of this paragraph 5 and with applicable state and federal laws. Any surface alteration pursuant to this paragraph 5 must be restored to its original state and approximate contour and revegetated with self-sustaining grasses, forbs, and other plants that are consistent with surrounding areas of the Protected Property.
- D. Roads. Access to exploration or extraction sites shall be by existing roads.
- E. Structures. The number and kind of structures used in the exploration for or extraction of oil, gas, and other subsurface minerals shall be limited to the minimum necessary to accomplish said exploration or extraction. All such structures shall be removed at the termination of exploration and extraction activities and the site shall be restored pursuant to subparagraph C above.
- F. Notification. Grantor shall advise Grantee and the State in writing at least sixty (60) days prior to engaging in any exploration for or extraction of oil, gas, and other subsurface minerals (or leasing, selling, or otherwise disposing of the rights thereto) whether or not such exploration or extraction (or leasing, selling, or otherwise disposing of the rights thereto) could result in any surface disturbance. For the purpose of this paragraph 5, Grantee's period (and, if necessary under Section IV, paragraph E, the State's period) in which to grant or deny prior approval of any mineral exploration or extraction proposal under Section IV, paragraph C, shall be extended to sixty (60) days.
- G. Surface-use agreements and other agreements. In the case of mineral, oil, gas, or hydrocarbon exploration, extraction, development, production, and removal activities, Grantor hereby grants to Grantee the non-exclusive right to protect

Grantee's vested property rights and its obligations under the terms of this Easement to preserve the Conservation Values in perpetuity to negotiate and enter surface-use agreements, right-of-way agreements, leases, and assignments, non-surface occupancy agreements, including agreements for the payment of surface damages, and any other agreements arising from or related to mineral, oil, gas, or hydrocarbon exploration and extraction, development, production, and removal activities.

Grantor and Grantee agree that neither party shall unilaterally enter into oil, gas, or other subsurface mineral exploration and extraction leases, surface-use agreements, or non-surface occupancy agreements with a third party regarding any oil, gas, or mineral development, production, and removal activities.

c. Limited-impact activities. Notwithstanding the foregoing provisions of this paragraph 5, Grantor may conduct limited mining activities for materials (e.g., sand, gravel, or shale) used for agricultural operations on the Protected Property. Extraction of materials used for agricultural operations must be limited to a small, defined area or acreage, and must not harm the Conservation Values or the agricultural uses of the Protected Property. If Grantor engages in such limited mining activities, the surface alteration must be restored to its original state and approximate contour within two (2) years of the cessation of removal of sand and gravel. Any such limited-impact activity shall require Grantor to adhere to the conditions set forth in subparagraph b of this Exhibit B, paragraph 5, and all such sand and gravel extraction must cease during nesting seasons for greater sage grouse on all locations within six-tenths (0.6) of a mile radius of an active sage grouse lek as depicted in Exhibit E.

6. Transfer of land. The Protected Property must not be divided or subdivided into, or separately conveyed as, more than two (2) farm or ranch parcels, defined as "North Parcel" and "South Parcel", the boundaries and the allocation of the impervious surface limitation of which have been identified in Exhibit A, which is appended to and made a part of this Easement. To protect the grassland, grazing uses, and related Conservation Values of the Protected Property, the boundaries of such divisions have been preapproved in writing by Grantee and the Chief of NRCS or authorized designee of the Chief of NRCS. Deviations from the identified boundaries will not be allowed. Grantor must give Grantee and the Chief of NRCS written notice prior to subdividing, dividing, or separately conveying a parcel of the Protected Property.

If Grantor elects to divide the Protected Property as herein provided, Grantor must comply with all federal, state, and local laws, ordinances, and regulations concerning subdivision, including the surveying of the parcel to be sold and the submission of the proposed creation of a separate tract to state and local review.

Grantor shall furnish Grantee and the State with a copy of any document or conveyance utilized to effect the transfer of the Protected Property within thirty (30) days of the execution of said document or conveyance.

7. Timber removal. Forest management and timber harvesting is allowed, provided it is carried out to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property and is consistent with the

Conservation Values. The Protected Property does not contain 40 contiguous acres of forestland, nor is 20 percent of the Protected Property forestland.

8. Fences. Fences may be maintained and replaced and new fences installed only in accordance with the ALE Plan and consistent with grassland species management requirements. Grantor reserves the right to construct fences impassable to wildlife around the Building Envelopes identified in Exhibit B, subparagraph 4d, haystacks, harvested crops, residential gardens, and kennels or enclosures for domestic animals other than pastured livestock. At no time can any new fences be constructed on the Protected Property within six-tenths (0.6) of a mile from any of the active sage grouse leks as depicted in Exhibit E.

9. Roads. Subject to the impervious surface limitation set forth in Exhibit C, paragraph 11, maintenance of existing roads documented in the Resource Documentation Report is allowed, provided that existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

The granting or modification of right-of-way easements for roads is prohibited when the road will adversely impact the protection of the grazing uses, grassland conservation value, and related Conservation Values of the Protected Property as determined by Grantee in consultation with the Chief of NRCS or his or her authorized designee.

10. Utilities. Grantor retains the right to install utility structures, lines, conduits, cables, wires, or pipelines (hereafter “utilities” and “utility services”) upon, over, under, within, or beneath the Protected Property to existing and subsequently constructed structures and improvements that are expressly permitted on the Protected Property by this Easement. Such utility services may neither individually nor collectively have an adverse impact on the grassland, grazing uses, and related Conservation Values of the Protected Property. Utility services may be located outside of the Building Envelopes with prior written approval of Grantee pursuant to Section IV and provided that the utilities are consistent with the ALE Plan described in Section III, paragraph C. Further, new electrical lines and communication infrastructure located within six-tenths (0.6) of a mile radius of any active sage grouse lek as depicted in Exhibit E must be buried where economically feasible and the site must be replanted and restored with native grasses, forbs, and shrubs to achieve cover, species composition, and life form diversity comparable to the surrounding plant community or to enhance sage grouse habitat. If burying such infrastructure is not economically feasible, such new infrastructure may not be located within six-tenths (0.6) of a mile from any of the active sage grouse leks as depicted in Exhibit E.

The granting or modification of right-of-way easements for utilities is prohibited when the utility will adversely impact the protection of the grazing uses, grassland conservation value, and related Conservation Values of the Protected Property as determined by Grantee in consultation with the Chief of NRCS or his or her authorized designee. If Grantor grants any right-of-way easements for utility services to neighboring properties, such utility services across the Protected Property must be buried, when feasible, and located along or adjacent to existing and permitted roads, and shall not significantly impact the Conservation Values protected by this Easement.

11. Off-road activities. To drive off-road on the Protected Property for agricultural purposes and necessary related maintenance activities. Subject to Exhibit C, paragraph 12, limited use of vehicles off-road to carry out permitted recreational use is allowed only if such use does not significantly adversely impact the Conservation Values and access cannot be reasonably achieved on existing roads and trails.

12. Bed and breakfast businesses, residence-based businesses, and rentals. To use the residential dwelling units on the Property, as described in this Exhibit B, paragraph 4, for the operation of bed and breakfast businesses. One (1) bed and breakfast business is permitted on each of the two parcels of the Protected Property as defined in Exhibit A hereof.

Persons living on the Property may also conduct businesses within their residential dwelling units so long as any such businesses remain small in scale and are not sales or service businesses, other than the bed and breakfast business permitted above, involving regular visits to the Property by the general public or by delivery trucks. The retail sale of goods produced and manufactured by such businesses may not take place on the Property.

The leasing or rental for consideration of any residential dwelling unit, or portion thereof, on the Property for any term, including, but not limited to, short-term vacation rentals, is expressly permitted under this Exhibit B, paragraph 12.

All uses of the Protected Property pursuant to this paragraph 12 must remain compatible with permitted grassland and grazing uses.

13. Guest ranching operations. To use the Protected Property, or enter into agreements with third parties to enable them to use the Protected Property for not more than two (2) small scale guest ranching operations (one operations is permitted on each of the parcels described in Exhibit A) provided that the operations remain compatible with grassland and grazing uses. Any agreement between Grantor and others pertaining to the use of the Protected Property for guest ranching activities must be made expressly subject to the terms and conditions of this Easement. Consistent with this paragraph, Grantor may use all existing or subsequently constructed structures and improvements expressly permitted by this Easement or replacements thereof for guest ranching purposes. Grantor and third parties may not construct any facilities or structures on the Protected Property, except as provided for in this Exhibit B, paragraph 4, specifically to accommodate any guest ranching operations.

14. On-farm energy production. Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property, provided that such on-farm energy structures neither individually nor collectively have an adverse impact on grassland or grazing uses of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits set forth in Exhibit C, paragraph 11, and, except as provided in the following sentence, within the Building Envelopes described in Exhibit B, subparagraph 4d, with minimal impact on the Conservation Values of the Protected Property and consistent with the purposes of this Easement. Outside of the Building Envelopes, Grantor retains the right to install and operate small, portable renewable energy production equipment (including, but not limited to, solar/wind generation) for the operation of groundwater wells, stock water tanks, or electrical fencing, provided such equipment will have minimal impact on sage grouse and other Conservation Values of the Protected Property.

15. Allowed commercial uses. Consistent with the restriction on industrial and commercial uses set forth in Exhibit C, paragraph 3, the following uses shall be considered allowed commercial uses, as long as they are conducted in a manner that does not impair or destroy the Conservation Values.

- (i) the production, processing, and marketing of agricultural products and livestock (except feedlots) if conducted as described in the ALE Plan and in Exhibit B, paragraph 1;
- (ii) the sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures, for the purpose of generating energy for the agricultural and residential needs of the Protected Property in accordance with Exhibit B, paragraph 14; the restrictions in Exhibit C, paragraph 11; and Grantee's prior approval under Section IV;
- (iii) temporary or seasonal outdoor activities or events, including recreational activities, that do not harm the agricultural use, future viability, and related Conservation Values of the Protected Property herein protected, as permitted under Exhibit B, paragraph 2;
and,
- (iv) commercial enterprises related to agriculture or forestry, including but not limited to, agritourism, processing, packaging, and marketing of farm products, farm machinery repair, and small-scale farm stands.

----- END EXHIBIT B -----

EXHIBIT C PROHIBITED USES AND PRACTICES

The following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are hereby deemed to be inconsistent with the purposes of this Easement and are expressly prohibited, subject to the qualifications stated below and in Exhibit B:

1. Subdivision. Grantor and Grantee mutually intend that the entire Protected Property described in Exhibit A shall be maintained and granted, sold, exchanged, devised, gifted, transferred, or otherwise conveyed in no more than two (2) parcels. Even if the Protected Property consists 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, divisible in a maximum of two (2) tracts, for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole. Except as expressly permitted in Exhibit B, paragraph 6, prohibited property divisions under this Easement include, but are not limited to, any subdivision, short subdivision into remainder tracts, platting, testamentary division, partitions among tenants-in-common or joint tenants, judicial partitions, partitions in bankruptcy, allocation of title among partners, shareholders, trustees or trust beneficiaries, or members of any business entity, time-share or interval ownership arrangements, or other process by which the Protected Property is divided into lots or in which title to different portions of the Protected Property are held by different owners.

Notwithstanding any provision herein that may be construed to the contrary, the Protected Property may be leased for agricultural purposes, provided any such leases are subordinate to the terms and purposes of this Easement.

2. Mineral removal. Exploration for, or the removal or extraction of any mineral or non-mineral substance, including, but not limited to oil, gas, hydrocarbons, sand, and gravel, by any surface or subsurface mining or extraction method, except as provided in Exhibit B, paragraph 5.

3. Commercial facilities. Except for those facilities that are necessary in the operation or uses of the Protected Property that are expressly permitted by this Easement in Exhibit B and in the ALE Plan, establishment of any commercial or industrial facilities is prohibited, including, but not limited to, commercial feed lot, commercial wind and solar energy development, retail sales businesses, service businesses, restaurants, night clubs, campgrounds, trailer parks, motels, hotels, commercial recreation facilities, gas stations, retail outlets, or facilities for the manufacture or distribution of any product.

4. Dumping. The accumulation or dumping of trash, refuse, sewage, junk, toxic materials, or other disposal of non-compostable refuse on the Protected Property, except for storage of farm machinery, brush piles, composting sites, biodegradable organic matter, agricultural products, agricultural byproducts, and other materials generally related to agricultural, forestry, and wildlife management as permitted by this Easement.

5. Construction. The construction or placement of any buildings or other structures, is prohibited, except for those specifically permitted in Exhibit B.

6. Campers, trailers, and recreational vehicles. The placing or use of campers, trailers, and recreational vehicles is prohibited, provided, however, that Grantor may store personal campers, trailers, and recreational vehicles within the Building Envelopes defined in Exhibit B, paragraph 4; and Grantor and Grantor's guests may park and use campers, trailers, or recreational vehicles on the Protected Property on a temporary basis, so long as any such campers, trailers, or recreational vehicles are not located within six-tenths of a mile radius from any of the active sage grouse leks as depicted in Exhibit E.

7. Billboards. The construction, maintenance, or erection of any billboards on the Protected Property is prohibited. Roadside signs are permitted only for the purposes of posting the name of the Protected Property, advertising any business permitted on the Protected Property, controlling public access, providing public notification of this Easement, or advertising the Protected Property for sale.

8. Roads. The construction of roads and granting of road rights-of-way across or upon the Protected Property is prohibited, except as permitted in Exhibit B, paragraph 9.

9. Utilities. The construction of new utilities and granting of utility line rights-of-way except as permitted in Exhibit B, paragraph 10. Notwithstanding any provision of this Easement that may be construed to the contrary, the granting of utility transmission line and utility transmission corridor right-of-way easements, or the expansion of existing utility transmission lines and utility transmission corridor right-of-way easements is expressly prohibited.

10. Game, fur, or fish farms. The raising or confinement for commercial purposes of (i) "alternative livestock" and "game animals" as defined in MCA Section 87-4-406 or its successor statute, (ii) native or exotic fish, except that "private fish ponds," as defined by MCA Section 87-4-603, or its successor statute, may be maintained for recreational use, (iii) game birds, (iv) furbearers, including mink and fox, or (v) other "wild animals" as defined in MCA Section 87-4-801, or its successor statute, and "non-game wildlife" as defined in MCA Section 87-5-102(6), or its successor statute.

11. Impervious surfaces. *Impervious surfaces may not exceed two (2) percent of the total Easement acreage, excluding NRCS-approved conservation practices developed under the ALE Plan described in Section III, paragraph C. "Impervious surfaces" are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public or other roads owned and controlled by parties with rights superior to the rights conveyed to Grantee by this Easement. Impervious surfaces as defined in this Exhibit C, paragraph 11, include any surface disturbance or impervious surfaces associated with oil and gas exploration and extraction associated with uses allowed in Exhibit B, paragraph 5.*

In the event the Protected Property is divided as provided for in Exhibit B, paragraph 6, the total cumulative impervious surface found on each resulting parcel shall not exceed the two (2) percent impervious limitation referenced above. Grantor, with Grantee's approval, must allocate the impervious surface limit among the divided parcels and ensure said impervious surface limitation is

clearly defined in any recorded deed or other instrument that divides ownership of the Protected Property.

12. Motorized recreation and off-road uses. Motorized recreational use of the Protected Property, except as permitted under Exhibit B, paragraph 11, and provided that all such uses must remain consistent with the protection and preservation of the Conservation Values. Off-road vehicle use for any purposes that results in significant soil erosion, including, but not limited to, moto-cross racing or four-wheeling and off-road racing, is prohibited.

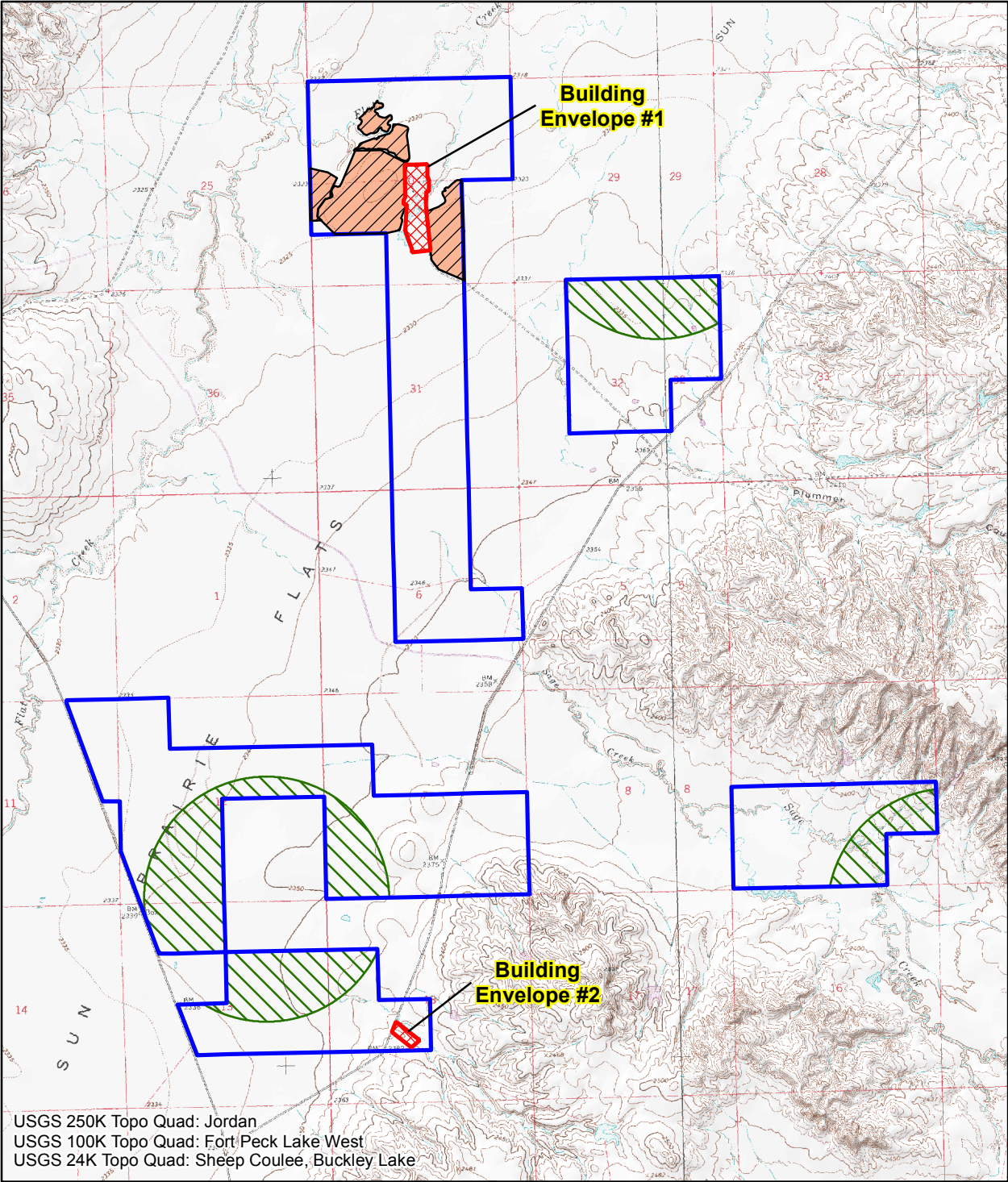
13. Surface alteration. Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:





- (i) dam construction in accordance with the ALE Plan to create ponds for agricultural use, fire protection, or wildlife enhancement including enhancement through wetland restoration, enhancement, or creation and NRCS standards and specifications;
- (ii) erosion and sediment control pursuant to an erosion and sediment control plan approved by Grantee;
- (iii) soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Easement;
- (iv) grazing uses or grassland restoration and conservation activities conducted in accordance with the ALE Plan; and,
- (v) permitted oil and gas and mineral removal pursuant to Exhibit B, paragraph 5.

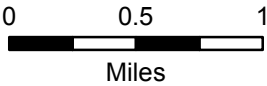
14. Commercial timber harvest. Except as provided in Exhibit B, paragraph 7, the harvest of timber on the Protected Property for commercial purposes. For the purposes of this Easement, the term “commercial timber harvest or thinning” is defined as any timber harvest in which the product of such harvest is sold, traded, exchanged, or used off of the Protected Property.

----- END EXHIBIT C -----

EXHIBIT E



-  Easement Boundary
-  Building Envelopes
-  No-Build Area (0.6 mile lek buffer)
-  Cropland Area



Location: T26N, R32E; T25N, R31E; T25N, R32E

Watson Property
Map Creation Date: June 06, 2019