

**DRAFT Environmental Assessment
Hansen Livestock Company
Beaverhead County, Montana
Montana Sage Grouse Oversight Team
June 29, 2018**

I. Introduction

The Montana Sage Grouse Oversight Team (MSGOT) is preparing an Environmental Assessment (EA) to analyze effects associated with the Hansen Livestock Company Conservation Easement Project (sometimes referred to as Property).

The Nature Conservancy (TNC), an IRS 501(c)(3) non-profit organization, sponsored and presented an application for the Hansen Livestock Company Conifer Reduction and Conservation Easement Project to MSGOT for funding from the Habitat Stewardship Fund (Fund)¹ in 2016. TNC requested a total of \$952,500.00 from the Fund (\$750,000 for the conservation easement and \$202,500 for a conifer reduction project).

On May 24, 2016, MSGOT voted to separate the conservation easement from the conifer reduction efforts and approved funding for only the conifer reduction efforts. In November 2016, TNC requested MSGOT approve funding for the conservation easement portion of the original application and that it reallocate the \$202,500 for the conifer reduction efforts towards the easement.² MSGOT approved the reallocation and the easement funding request contingent on TNC securing adequate matching funds. TNC obtained matching funds in late September 2017.

This conservation easement is funded using multiple sources. MSGOT awarded a \$952,200 grant from the Stewardship Account. These funds would be matched with \$4,950,000 from the Natural Resources Conservation Service (NRCS) Agricultural Lands Easement (ALE) program, \$50,000 from TNC, and a \$647,500 donation from the landowner. The estimated value of the easement is \$6,600,000.

This environmental assessment (EA) is being prepared pursuant to the Montana Environmental Policy Act (MEPA) to solicit public comment and consider potential impacts of the project on the human and natural environment.

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),³ Administrative Rules of Montana

¹ MCA § 76-22-101 et seq.

² TNC informed MSGOT and the Program that the conifer reduction efforts were implemented using other funding sources.

³ MCA § 76-22-101 et seq.

14.6.101 and 102, 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.⁴ 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.⁵ Montana's Conservation Strategy recognizes the mitigation hierarchy of avoidance, minimization, restoration / reclamation, and replacement through compensatory mitigation.⁶ The majority of the Fund dollars must be awarded to projects that generate credits that are available for compensatory mitigation.⁷

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.⁸

A project is eligible if it is located, at least in part, on land identified as Core Area, General Habitat, or Connectivity Area.⁹ Maps delineating these areas are available on the Program's website.¹⁰ 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.¹¹

Eligible projects for grant funding may include:

- reduction of conifer encroachment;¹²
- maintenance, restoration, or improvement of sagebrush health or quality;¹³

⁴ MCA § 76-22-102(2).

⁵ Executive Orders 12-2015 and 21-2015.

⁶ Executive Order 12-2015; Montana Greater Sage Grouse Stewardship Act, MCA §76-11-101 et seq.

⁷ MCA § 76-22-109(4).

⁸ MCA § 76-22-110(3); 14.6.101(1), (5), ARM.

⁹ 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.").

¹⁰ See <http://sagegrouse.mt.gov>.

¹¹ MCA § 76-22-110(1).

¹² MCA § 76-22-110(1)(a).

¹³ MCA § 76-22-110(1)(c).

- incentives to reduce the conversion of grazing land to cropland;¹⁴
- restoration of cropland to grazing land;¹⁵
- modification of fire management to conserve sage grouse habitat or populations;¹⁶
- demarcation of fences to reduce sage grouse collisions;¹⁷
- reduction of unnatural perching platforms for raptors;¹⁸
- reduction of unnatural safe havens for predators;¹⁹
- reduction of the spread of invasive weeds that harm sagebrush health or sage grouse habitat;²⁰
- 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;²¹
- sage grouse habitat enhancement that provides project developers the ability to use improved habitat for compensatory mitigation under MCA § 76-22-111;²²
- establishment of a habitat exchange to develop and market credits consistent with the purposes of the Act so long as other requirements of the Act are met;²³ and
- other project proposals that MSGOT determines are consistent with the purposes of the Act.²⁴

Ineligible projects for grant funding may include:

- for fee simple acquisition of private land;²⁵
- to purchase water rights;²⁶
- to purchase a lease or conservation easement that requires recreational access or prohibits hunting, fishing, or trapping as part of its terms;²⁷
- 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;²⁸
- 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

¹⁴ MCA § 76-22-110(1)(e).

¹⁵ MCA § 76-22-110(1)(f).

¹⁶ MCA § 76-22-110(1)(g).

¹⁷ MCA § 76-22-110(1)(h).

¹⁸ MCA § 76-22-110(1)(i).

¹⁹ MCA § 76-22-110(1)(j).

²⁰ MCA § 76-22-110(1)(b).

²¹ MCA § 76-22-110(1)(d).

²² MCA § 76-22-110(1)(k).

²³ MCA § 76-22-110(1)(l).

²⁴ MCA § 76-22-110(1)(m).

²⁵ MCA § 76-22-109(5)(a).

²⁶ MCA § 76-22-109(5)(b).

²⁷ MCA § 76-22-109(5)(c).

²⁸ MCA § 76-22-109(5)(d).

proposed project does not benefit sage grouse across all of the land included in the project;²⁹

- 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;³⁰
- 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; and
 - 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 of 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;³¹
- to fund a project that does not meet the criteria of MCA § 76-22-110; or
- through a late, incomplete, or improperly submitted application.³²

When considering grant applications, MSGOT may consider proposals involving land owned by multiple land owners, but the majority of the involved acres must be privately held and the benefits of the grant must extend across all of the land included in the proposal.³³

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

III. Description of the Proposed Action

TNC is proposing to purchase 13,535 deeded acres for a perpetual conservation easement with the intent of protecting sage grouse from long-term threats. The Property consists of sagebrush steppe and native rangeland interspersed with montane forest, wet meadow, riparian and wetland, and freshwater streams which provide habitat for a broad range of native species. The Hansen Livestock Company has two Montana State Trust Lands inholdings, is adjacent to Bureau of Land Management (BLM) lands, and there are US Forest Service (USFS) lands nearby, but not adjacent. At the time of this draft EA an NRCS Agricultural Land Easement (ALE) Plan and a NRCS Grassland Plan have been completed for this Property.

²⁹ MCA § 76-22-110(2).

³⁰ MCA § 76-22-110(4).

³¹ MCA § 76-22-112.

³² 14.6.102(1) -(3), ARM.

³³ MCA § 76-22-110(3).

The purpose of this conservation easement is to preserve and protect in perpetuity the Conservation Values or Purpose, as defined below.

The Property is a natural area that consists of “a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,” as that phrase is used in applicable regulations.³⁴ Specifically, the Property consists of sagebrush steppe and native rangeland interspersed with montane forest, wet meadow, riparian and wetland, and freshwater streams which provide habitat for a broad range of native species including: Greater sage-grouse, westslope cutthroat trout, golden eagle, ferruginous hawk, long-billed curlew, sandhill cranes, Brewer’s sparrow, pygmy rabbit, pronghorn antelope, moose, gray wolf, wolverine, grizzly bear, and numerous species of songbirds. The attributes of the Property described in this paragraph are collectively referred to in this conservation easement as the Conservation Values.

The proposed easement area contains a minimum of three active sage grouse leks, and a minimum of four leks are located within a six-mile radius of the proposed easement area boundary. Approximately 20 leks are located within 12 miles of the property boundary.

The easement terms allow or prohibit certain activities, respectively. There is one declared three-acre Building Envelope that contains an existing calving facility. Other key terms are described below (see Appendix C for the draft conservation easement).

- Agricultural and Ranch Use. The provisions of this conservation easement limit the types of agricultural operations that can occur on the Property to those that restore or conserve grassland, and protect grazing uses and related Conservation Values and the Conservation Purposes of this conservation easement, so long as they are consistent with the terms in the conservation easement.
 - *Agricultural Production.* The production, processing, and marketing of livestock and agricultural products compatible with restoration and conservation of grassland, grazing uses, and related conservation values is allowed provided it is consistent with the terms of the ALE Plan.
 - *Grassland Uses of the Property.* The landowner is allowed to graze and conduct common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this conservation easement. Haying, including fertilizing, seeding, and harvesting for hay and non-crop seed production, is permitted only on those areas of the Property currently or previously cultivated or hayed (Cultivated Fields) as shown in Appendix A: Exhibit A-1. Any considerations for possible impacts of haying on nesting birds of concern are addressed in the ALE Plan for the Property.
- Construction of buildings and structures. Construction or placement of any buildings or structures is prohibited except as follows:
 - *Buildings, Structures and Building Envelope.* The construction, maintenance, repair, remodel, or replacement of new buildings or new structures consistent with the permitted uses as described in the easement, or the

³⁴ 26 U.S.C. § 170(h)(4)(A)(ii)

maintenance, repair, remodel, relocation or, in the event of its destruction, reconstruction, replacement, or rebuilding of existing buildings and structures. All new or relocated buildings, structures and improvements must be located within the three-acre Building Envelope, described in Appendix A, Exhibits A-1 and A-2 of the conservation easement.

The boundaries and location of the Building Envelope may be adjusted if TNC and NRCS provide prior written approval of the adjusted boundaries and location, provided, however that the Building Envelope:

- is not located in any riparian area or irrigated hay meadow;
- will have minimal impacts to grazing operation; and
- is located in a manner that does not diminish or impair the Conservation Values or the grazing uses and viability of the Property.

Any existing and documented building outside of the Building Envelope at the time of this easement may be replaced and/or rebuilt with another of similar size in its current footprint.

- *Minor Agricultural Structures.* Agricultural structures that are consistent with the ALE plan and this conservation easement, and do not have an adverse impact on the grassland, grazing uses, and related Conservation Values of the Property, may be built outside of the Building Envelope with prior written approval of TNC.
- *Easements and Utilities.* The granting or modification of easements for utilities is prohibited when the utility will adversely impact the protection of the grazing uses, grassland conservation value, sage grouse, and related Conservation Values of the Property as described in this easement. Utilities that serve approved buildings or structures may be built with prior written approval of TNC, provided that the utilities are consistent with the ALE Plan.
- *Renewable Energy.* Renewable energy production is allowed for the primary purpose of generating energy for the agricultural and residential needs of the Property. Renewable energy sources on the Property must be built and maintained within impervious surface limits set forth in in the easement, with minimal impact on the sage grouse and other Conservation Values of the Property and consistent with the Purposes of the conservation easement. Construction or establishment of a commercial wind farm or commercial solar energy generation facility is prohibited.
- *Water Structures.* New or existing dikes, mainlines, levees, ditches, pasture irrigation, irrigation wells, livestock watering, and irrigation facilities are permitted as defined in the terms of the conservation easement.
- Fences. Existing fences may be maintained and replaced and new fences installed if they are necessary for agricultural operations, or to exclude wildlife from residential areas on the Property, or to mark boundaries of the Property as described in the ALE Plan.

- Roads. A single new, improved road may be constructed, if it is within impervious surface limits described in the easement, approved in advance by TNC, and is necessary to access the Building Envelope. Maintenance of existing roads is allowed, under the terms of the conservation easement. The granting or modification of easements for roads is prohibited.
- Subdivision. Subdivision of a portion of the Property, or division or subdivision of the Property, is prohibited. The Property is considered one parcel for purposes of this conservation easement.
- Industrial or Commercial Activities. Industrial or commercial activities on the Property are prohibited except for the following, which shall be permitted only if they are consistent with the conservation easement:
 - agricultural production and related uses conducted as described in the ALE Plan;
 - the sale of excess power generated in the operation of alternative energy structures and associated equipment or other energy structures that TNC approves in writing as being consistent with the Conservation Purposes of this conservation easement;
 - temporary or seasonal outdoor activities or events that do not harm the grazing uses or grassland restoration, and related Conservation Values of the Property herein protected;
 - commercial enterprises related to agriculture or forestry, including but not limited to agritourism, processing, packaging and marketing of farm or forest products, farm machinery repair, and small-scale farm wineries;
 - small-scale commercial enterprises compatible with agriculture or forestry, including, but not limited to cafés, shops, and studios for arts or crafts, provided that such customary rural enterprises are conducted in permitted buildings and structures; and
 - small-scale commercial recreational, educational, hunting and fishing activities meeting the requirements set forth in the easement.
- Recreational and Educational Activities. Recreational and educational activities that are both non-developed and non-consumptive are permitted if they do not negatively affect the grassland, grazing uses and related Conservation Values and are consistent with the Conservation Purpose of the conservation easement. Recreational uses such as hunting or fishing, horseback riding, cross-country skiing, bicycling, other traditional non-motorized recreational activities, dispersed camping, picnicking, bird watching, wildlife observation, and similar recreational activities are permitted under the terms of the conservation easement.
- Hunting and Fishing. The landowner, landowner's invitees, licensees, and lessees may hunt and fish on the Property, consistent with the Conservation Purpose, provided that all hunting and fishing activities are conducted in compliance with all state and federal laws and regulations and the terms of this conservation easement.
- Vehicles. All permitted vehicle use will be conducted in a manner that minimizes soil erosion, soil compaction, or the interference with vegetation or the natural habitat on the Property. No recreational use and operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles (ATVs) or other types of motorized recreational

vehicles is permitted on the Property, except within the designated Building Envelope or on roadways existing at the time of this conservation easement. Use of cars, trucks, ATVs, motorcycles, snowmobiles, and other ranch vehicles for ranching, agricultural, recreation, or hunting purposes allowed by this conservation easement off existing roads is permitted. The temporary use of vehicular campers owned by landowner or guests on the Property is permitted to accommodate normal visitation.

- Hazardous and Toxic Materials. The dumping or other disposal of toxic and/or hazardous materials on the Property is prohibited. The storage of hazardous materials on the Property is also prohibited, except as lawfully stored and used in accordance with regulations and in connection with the permitted uses of the conservation easement.
- Dumps. Accumulation or dumping of trash, refuse, sewage, or junk is not allowed on the Property, however, a metal scrap pile or other piles of typical ranch/farm related materials intended to be re-used on the Property are not considered refuse. Generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products, or agricultural byproducts generated or used on the Property, are permitted under the terms of the conservation easement.
- Biocides, Biological Agents, and Fertilizers. Application of herbicides, pesticides, fungicides, biocides, defoliants, chemical fertilizers, or other chemicals is prohibited on the Property except as follows:
 - Herbicides, pesticides, fungicides, biocides and defoliants (collectively, “Biocides”) may be used to manage and/or control noxious weeds, invasive plants, non-native plants, pathogens, or pests on the Property, for agricultural, forestry, and personal gardening uses, provided the use of such Biocides is designed to minimize the impact on the Conservation Values of the Property. Indiscriminate broadcast spraying of Biocides is prohibited. Biocides may be used by spot applications (including by gun or boom nozzles) only. Broadcast spraying of Biocides, including aerial applications, may be permitted under the terms of the conservation easement.
 - Biological Agents. Use of biological weed and insect control agents is permitted, subject to prior written approval of TNC.
 - Fertilizers. The use of chemical or organic fertilizers on lands currently or previously used as hayfields (cultivated fields), is permitted. The fertilizer use shall not injure or destroy the naturally occurring ecosystem, beyond the effects associated with reasonable farming practices.
- Introduction of Species. The intentional introduction of species that are not native to the ecological systems in Montana outside the Building Envelopes and cultivated fields is prohibited, except as approved by TNC. Grazing and pasturing of livestock is permitted, and the raising and harvesting of hay on those areas that have been previously cultivated (Cultivated Fields) and depicted in Appendix A, Exhibit A-1, is permitted as described in the ALE Plan.
- Timber and Woody Vegetation Management. Forest management and timber harvesting is allowed, provided best management practices are followed for the

sites, soils, and terrain of the Property. Forest management and timber harvesting must be performed in accordance with a written forest management plan approved by TNC.

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

- cutting of trees for the construction of allowed roads, utilities, buildings and structures on the Property;
- cutting of trees for trail clearing;
- cutting of trees for domestic use as firewood, or for other domestic uses by landowner;
- removal of trees posing an imminent hazard to the health or safety of persons or livestock, or
- removal of invasive species.

The landowner or TNC retain the right to propose a timber removal project to restore sage grouse habitat under the terms of the conservation easement.

- Cutting, Removing, Destruction or Conversion of Native Vegetation. Cutting, removing, or destruction of native vegetation is prohibited, except to the extent necessary to allow for uses and activities permitted under this conservation easement. These include grazing, haying, and restoration activities such as prescribed fire. The landowner has the right and the responsibility to control non-native plants and/or invasive or noxious plants, subject to the provisions of this conservation easement about biocides and biological agents. Grazing and uprooting of native plants by livestock as permitted by this conservation easement are not considered excavation or removal.

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

- gardening for personal use and residential landscaping are permitted within the Building Envelope;
- plowing or other cultivation is permitted where it may be necessary for restoration of the Conservation Values in the event of their degradation or destruction; and
- raising, irrigation and harvesting of hay crops are permitted, provided that those crops are grown only in the Cultivated Fields as shown in Exhibit A-1.
- Mining.
 - *Remoteness Report.* This process was completed in May 2016. The report concluded that mineral (including oil and gas) development potential is considered “so remote as to be negligible”.
 - *Landowner Owned or Leased Minerals.* Any exploration, mining, development, production, extraction or transportation of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by the landowner, using any surface mining, subsurface mining, or dredging

method, from the Property is prohibited, except to the extent described in the conservation easement.

- *Limited Mining Activities.* Limited mining activities are permitted to the extent that the Minerals mined (e.g. sand, gravel, or shale) are non-commercial and used for agricultural operations on the Property or for maintenance of the Property (such as maintaining roads). Mining activities done for agricultural operations or Property maintenance purposes:
 - must be limited to a small, defined area or acreage, collectively no more than one acre in size identified in Exhibit A-1;
 - may not harm the Conservation Values or the agricultural uses of the Property;
 - must be re-vegetated and restored to a natural condition promptly after completion; and
 - provided such rights are permitted under I.R.C. 170(h)(5), and all activities have only a limited, localized impact.
- *Horizontal/Directional Drilling.* Nothing in the conservation easement prohibits mining activities under the Property using slant/horizontal drilling techniques from one or more drilling sites located off the Property.
- *Exploration.* With the written approval of TNC, exploration activities may be conducted provided that they are non-invasive and do not adversely impact the Conservation Values described in the easement. No seismic shot holes or exploratory wells or any type of drilling may occur on the Property, and no explosives may be used.
- *Surface Agreements.* TNC is granted the right (but not the obligation) to negotiate and join in any surface use agreement, or exploration activities, that may be negotiated affecting the surface or subsurface of the Property, for the protection of the Conservation Values.
- *Subsequently Transferred or Acquired Minerals.* Any mineral lease, surface use agreement, or other mineral conveyance or renewal by the landowner to a third party is subject to the restrictions of this conservation easement. In the event the landowner becomes the owner, or controls any minerals that are severed as of the conservation easement date and owned or controlled by a third party, then such minerals are immediately subject to the terms of the conservation easement.
- *Third Party Owned or Leased Minerals.* If a third party owns or leases the minerals at the time this conservation easement is executed, the landowner must require, to the extent possible, that any mining activities conducted by such third party are:
 - not accomplished by any surface mining method;
 - accomplished by a method of extraction that has no more than a limited and localized impact;
 - within the impervious surface limits of the conservation easement; and
 - carried out in accordance with all Federal, state, and local regulations.

- *TNC Rights.* The landowner agrees that by granting this conservation easement to TNC, it has granted to TNC a portion of its rights as owner of the surface of the Property on which mining activities may be conducted. In addition to its interest as a holder of this conservation easement, TNC is granted the right (but not the obligation) to negotiate and join as a party in any surface use agreement or other agreement that may be negotiated with third parties or their lessees for the protection of the Conservation Values.
- Changing the Topography of the Property. Plowing, grading, blasting, filling, sod farming, earth removal or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Property is prohibited, except as follows:
 - dam construction to create ponds for agricultural use, fire protection, wildlife enhancement, or wetland restoration in accordance with an ALE Plan, and the terms of the conservation easement;
 - erosion and sediment control consistent with the terms of the conservation easement;
 - as required in the construction of approved buildings, structures, roads, and utilities consistent with the terms of the conservation easement;
 - grazing uses or grassland restoration and conservation activities conducted in accordance with the ALE Plan and as provided for in the conservation easement; or
 - minor filling, grading, or earth removal related to maintenance of permitted and traditionally practiced flood irrigation as described in ALE Plan.
- Restoration, Enhancement, and Research. The landowner has the right (but not the obligation) to propose activities and projects which prevent the degradation of, restore, and/or enhance and improve the quality of the watershed, wildlife habitat, and ecological health of the Property and/or to propose other research, restoration, and/or enhancement activities. This includes soil erosion prevention and/or restoration activities as well as the filing and creation of new water rights and/or the alteration or change of existing water rights. The landowner also has the right (but not the obligation) to propose research, restoration, and enhancement activities associated with scientific, educational, and/or historic projects.
- Water Courses and Wetlands. Any new and intentional manipulation, diversion, or other alteration of natural water courses, wetlands, or other natural bodies of water, any new practice that degrades or destabilizes their natural banks or shorelines, any new pumping of groundwater whether tributary or not, or any other new development of water resources is prohibited, except as follows:
 - the development, construction, use and maintenance of new well(s) to provide domestic supply to buildings and structures, or new stock watering facilities, including windmills, pipelines, stock tanks, and solar pumps;
 - the landowner has the right to continue the historic use of the water rights on the Property and to maintain, repair, and if destroyed, reconstruct any existing facilities including groundwater wells; and
 - the landowner may engage in activities that prevent the degradation of the Conservation Values, restore, and/or enhance and improve the quality of the

watershed, including wetland creation, filing and creation of new water rights and/or the alteration or change of existing water rights.

- Limitation on Impervious Surfaces. Impervious surfaces will not exceed two percent (2%) of the Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Property; including residential buildings, agricultural buildings or structures with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This does not include public roads or other roads owned and controlled by parties with rights superior to those conveyed to TNC by this conservation easement.
- Feedlots. Establishment and operation of a commercial livestock feedlot, defined for this conservation easement as a permanently constructed confined area within which the land is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the business of the reception and feeding of livestock not owned by landowner for hire, is prohibited. The landowner retains the right to seasonally confine livestock into an area for feeding, or to lease pasture for the grazing of livestock owned by others or for pasture finishing animals for slaughter.
- Other Activities. If any question exists regarding whether historic, current, or new practices or activities are permitted, or would be inconsistent with the Conservation Purposes or diminish or impair the Conservation Values, the landowner has the obligation to notify TNC in writing to obtain written approval, prior to engaging in those practices or activities.

These requirements are consistent with the best available information pertaining to habitat threats and habitat conservation for sage grouse,³⁵ and they are consistent with key requirements of the Policy for Evaluation of Conservation Efforts³⁶ (PECE) of the USFWS when making listing decisions in that the proposed action has a strong likelihood of eliminating key threats to sage grouse.

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

The Report contains:

- an accurate representation of the natural resources and physical condition of the Property at the time of this conveyance;
- a description of the current and historical uses of the Property; and
- a statement signed by the Landowner and a representative of TNC as required by the U.S. Treasury Regulations.³⁷

³⁵ Davies et al. 2011, Smith et al. 2016, and 80 FR 59858 (October 2, 2015).

³⁶ 68 FR 15100 (March 28, 2003).

³⁷ § 1.170A-14(g)(5)(i).

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

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

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

Notice and approval requirements are:

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

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

Additional details regarding the proposed action can be found in Appendices A through C of this document. See:

- Appendix A: Draft Maps. Exhibit A-1: Easement Boundary, Building Envelop, Cultivated Fields, and Gravel Pits. Exhibit A-2: Detail of Building Envelope with Roads.
- Appendix B: Grant Agreement. This document describes the terms of the Grant, Statement of Work, Budget, and its compliance with Executive Order 12-2015.

- Appendix C: 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.

The Program will retroactively calculate and make credits available for compensatory mitigation in the future once a habitat quantification tool has been designated by MSGOT.³⁸

All Montana compensatory mitigation must be taken in consideration of applicable United States fish and wildlife service sage grouse policies, state law, and any rules adopted pursuant to compensatory mitigation.³⁹ 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 TNC.⁴⁰ In this case, eliminating the agricultural conversion threat will conserve habitat through perpetual legal protection and maintenance of high standards for land stewardship.

IV. Project Location

The conservation easement associated with this project would cover activities on a ranch owned by the Hansen Livestock Company in Beaverhead County, Montana. The proposed easement property is located entirely within the Beaverhead 3 Core Area southwest of Dillon, Montana, west of Clark Canyon Reservoir and southeast of Salmon, Idaho. See Appendix A for maps.

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 majority of Montana's breeding birds reside.

The Nature Conservancy has identified The Greater Yellowstone Ecosystem and the adjacent High Divide as a significant whole system representing a vast expanse of biologically diverse intact native ecosystems that link the Greater Idaho Wilderness Complex to the west and the Crown of the Continent Whole System to the north and together support ecosystem resilience and diversity despite a changing climate. The Protected Property is located within the High Divide and this conservation easement will protect a key element of the larger whole system.

Legal descriptions for lands that would be included under the conservation easement proposal are described below.

³⁸ MCA § 76-22-105(3).

³⁹ MCA § 76-22-111(2).

⁴⁰ 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.

Township 10 South, Range 11 West:

Section 7: Lots 1, 2, 3, 4, $W\frac{1}{2}E\frac{1}{2}NW\frac{1}{4}$, $W\frac{1}{2}NW\frac{1}{4}SW\frac{1}{4}$

Section 18: Lots 1, 3, 4, $NE\frac{1}{4}SW\frac{1}{4}$ together with Parcel WH Certificate of Survey 1876BA

Instrument No. 290061 being a parcel of land in $SE\frac{1}{4}SW\frac{1}{4}$ Section 18,
Excepting therefrom Parcel HW Certificate of Survey 1876BA Instrument No 290061

being a parcel of land in $NE\frac{1}{4}SW\frac{1}{4}$ Section 18

Section 19: Lots 1, 2, $SE\frac{1}{4}NW\frac{1}{4}$, $S\frac{1}{2}NE\frac{1}{4}$, $SE\frac{1}{4}$

Section 20: $S\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}$, $W\frac{1}{2}SW\frac{1}{4}$, $SE\frac{1}{4}SW\frac{1}{4}$

Section 29: $N\frac{1}{2}$

Section 31: Lots 2, 3, $SE\frac{1}{4}NW\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$

Township 10 South, Range 12 West:

Section 1: Lot 4, $S\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}$

Excepting therefrom lands previously deeded to the State of Montana in Book 169 of Microfilm, Page 41, records of Beaverhead County, Montana.

Further Excepting therefrom lands previously deeded in Book 247 of Microfilm, Pages 426-7, records of Beaverhead County, Montana.

Section 2: Lots 1, 2, 3, $S\frac{1}{2}NE\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}$, $SE\frac{1}{4}$, $SW\frac{1}{4}$,

Excepting therefrom lands previously deeded to the State of Montana in Book 169 of Microfilm, Page 37, Book 169 of Microfilm, Page 39 and Book 169 of Microfilm, Page 41,

records of Beaverhead County, Montana.

Further Excepting therefrom lands previously deeded in Book 247 of Microfilm, Pages 426-7, records of Beaverhead County, Montana.

Section 3: $SE\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}$

Section 10: $E\frac{1}{2}$

Section 11: All

Section 12: All

Section 13: All

Section 14: All

Section 15: $E\frac{1}{2}$, $S\frac{1}{2}SW\frac{1}{4}$

Section 20: $S\frac{1}{2}SE\frac{1}{4}$

Section 21: $E\frac{1}{2}$, $E\frac{1}{2}SW\frac{1}{4}$, $SW\frac{1}{4}SW\frac{1}{4}$

Section 22: All

Section 23: All

Section 24: All

Section 25: $W\frac{1}{2}$, $SW\frac{1}{4}SE\frac{1}{4}$, $SE\frac{1}{4}SE\frac{1}{4}$, $W\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$, $W\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$, $W\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$

Section 26: $NE\frac{1}{4}$, $E\frac{1}{2}SE\frac{1}{4}$ $W\frac{1}{2}$

Section 27: All

Section 28: All

Section 29: $E\frac{1}{2}E\frac{1}{2}$, $NW\frac{1}{4}NE\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}$, $E\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}NW\frac{1}{4}$

Section 31: Lots 1, 4, 5, 6, 7, 8, 9, 10, $NW\frac{1}{4}SE\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$ $SW\frac{1}{4}NE\frac{1}{4}$

Section 32: Lots 1, 2, 3, 4, 5, $NE\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}$, $NW\frac{1}{4}NW\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$,

Section 33: $N\frac{1}{2}$

Section 34: All

Section 35: E $\frac{1}{2}$, SW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$

V. Purpose and Need for the Proposed Action

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

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

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

The purpose and need for the proposed action to provide Stewardship Fund dollars to assist TNC to enter 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.⁴¹ 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 two leks within the project area, nine leks within a four-mile buffer of the project area, and at least 22 leks within 12 miles of the project area. Conversion of native range to cultivated cropland has been identified as a key threat to sage grouse habitat and population persistence by USFWS.⁴² It was recently shown that lek density may be reduced by more than 50% in the face of a 10% increase in

⁴¹ Montana's Greater Sage Grouse Habitat Conservation Advisory Council. 2014. Greater Sage Grouse Habitat Conservation Strategy. Jan. 29, 2014.

⁴² 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).

cropland within 12.4 miles.⁴³ 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.⁴⁴ Therefore, efforts which conserve intact sagebrush landscapes already having little or no existing cropland contribute favorably to sage grouse persistence, particularly where the risk of conversion exists.

Sage grouse are a landscape scale species. “At distances of up to about 240 kilometers, individual [sage grouse] exhibit greater genetic similarity than expected by chance, suggesting that the cumulative effect of short-range dispersal translates to long range connectivity.”⁴⁵ 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.”⁴⁶ 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.⁴⁷

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.⁴⁸ 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.⁴⁹ Indeed, mitigation efforts ameliorate or prevent threats to sage grouse and sagebrush habitats.

Another purpose and need for the proposed action to enter a grant agreement with TNC is to begin development and implementation of Montana’s mitigation system. Mitigation addresses direct, indirect, and residual impacts of development. In Montana, implementation of the mitigation hierarchy, including compensatory mitigation, is called for in Executive Order 12-2015 and by the Greater Sage Grouse Stewardship Act.⁵⁰

⁴³ 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).

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

⁴⁵ 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>).

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

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

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

⁴⁹ 80 FR 59858 (Oct. 2, 2015).

⁵⁰ See MCA § 76-22-111(1) and EO 12-2015, para. 10, p. 3 (After complying with the sequencing provisions required of this Conservation Strategy (avoid, minimize, reclaim), a project developer may proceed with a

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.⁵¹

The Act sets forth that Montana can implement compensatory mitigation either through establishment of habitat exchange⁵² and/or a conservation bank.⁵³ 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.⁵⁴ Further, MSGOT is required to retroactively calculate and make available credits for leases and conservation easements purchased with funds disbursed after May 7, 2015, but prior to the adoption of administrative rules for compensatory mitigation and the habitat quantification tool used to estimate the number of credits created through conservation actions or the number of debits created by development.⁵⁵

Montana is in the final stages of developing its mitigation policy guidance and habitat quantification tool. By entering this grant agreement and executing a conservation easement, this project will generate conservation credits that will be retroactively calculated and made available in the future, in compliance with the Act.

VI. Public Involvement During the Grant Application Process and During this Environmental Assessment Process

The Act directed MSGOT to promulgate administrative rules to administer a grant program.⁵⁶ MSGOT adopted final rules and Procedures 01-2016 on February 19, 2016,

proposed project which will cause adverse impacts to sage grouse if the developer provides compensatory mitigation for the debits of a project.).

⁵¹ MCA § 76-22-105(1)(g), 111(1)(b).

⁵² MCA § 76-22-103(8) defines habitat exchange as “a market-based system that facilitates the exchange of credits and debits between interested parties.”

⁵³ 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.”

⁵⁴ MCA § 76-22-109(4).

⁵⁵ MCA §§ 76-22-105(3).

⁵⁶ MCA §76-22-104(1)-(7).

consistent with the Montana Administrative Procedures Act. Three hearings were held and public comment was solicited on the proposed rules. All MSGOT meetings are publicly-noticed and comment sought. The final rules took effect March 5, 2016.

Also on February 19, 2016 MSGOT offered the first grant cycle opportunity, contingent on the 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 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, 2016.

All applications were reviewed by the Program and an independent peer review committee. Independent peer reviewers had expertise and unique knowledge of the proposed project areas, sage grouse and sage 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, 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.

During a publicly-noticed MSGOT meeting on May 24, 2016, public comment was invited on any of the proposals. At this meeting MSGOT voted to separate the conservation easement from the conifer reduction project, and approved and funded the conifer reduction component of the project. The conservation easement project was scheduled for reconsideration at the November 18, 2016 meeting. MSGOT selected the Hansen Livestock Company Conservation Easement Project for funding on November 18, 2016, contingent on TNC securing matching funds by September 30, 2017. If matching funds were not confirmed, the requested funds would be freed for other projects.

On September 29, 2017, TNC provided notice to MSGOT and the Program that it had secured matching funds to complete the conservation easement project. A grant agreement was negotiated and then executed in March 2018, pursuant to MSGOT's prior approval.

In anticipation of the executed grant agreement, the Program solicited public scoping comments to initiate this EA, beginning on February 9, 2018 and ending on March 14, 2018. A notice of availability of the conservation easement scoping document was sent to individuals and organizations likely to have an interest in the proposal and project area through the Program's electronic "interested parties" list serve. The scoping notice was also available on the Program's website. The public was invited 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 also submit written comments in person or via postal mail.

Six electronic comments and one written comment were received specific to the proposed Hansen Livestock Company Conservation Easement Project. The comments were evenly divided between support for the agreement, and concerns about the purpose or effectiveness of the conservation easement terms. One comment was neutral, and expressed concern that the terms of the easement would prevent energy resource development contrary to MCA § 76-22-114. Supporting comments included preservation of sagebrush habitat, focusing conservation dollars in Core Areas, preservation of ranching culture, and Program progress towards fulfilling the mitigation mission described in Executive Order 12-2015. Concerns included the dollar amount of the agreement, spending public dollars on private lands that do not allow access to public lands, focus on preservation rather than reclamation and other habitat fragmentation issues, and a perceived loss of local taxes.

In accordance with MEPA, public concerns about the project and potential environmental impacts must be considered and analyzed through preparation of this draft EA.

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

Partners involved in this project include the private landowners, TNC, and MSGOT. Montana Department of Natural Resources and Conservation (DNRC) manages two parcels within the project area boundary, while BLM and the US Forest Service manage nearby lands.

Montana's Core Area approach underlying the Conservation Strategy calls for sage grouse 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.

VIII. Description of Reasonable Alternatives Considered

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

Proposed Action Alternative – Under the Action Alternative, the MSGOT would authorize disbursement of funds from the Stewardship Fund Account to facilitate acquisition of the Hansen Livestock Company Conservation Easement, for sage grouse conservation in Montana. This easement by TNC would generate credits available later to be used as compensatory mitigation for other projects that impact sage grouse and sagebrush habitats. 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 were discussed and negotiated between the private landowner, TNC, and the State. See Appendices A through C.

No Action Alternative – Under the No Action Alternative, the MSGOT would not authorize disbursement of funds in the Stewardship Fund Account to facilitate acquisition of the Hansen Livestock Company Conservation Easement by TNC for sage grouse conservation in Montana. Project mitigation credits generated under the easement would not be realized and would not be available later 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.

IX. Evaluation of Impacts on the Physical Environment and Mitigation

A. Land and Soil Resources

1. **Proposed Action** – Under the Proposed Action no direct effects to land and soil resources would occur in association with authorizing the grant funds for the purchase of the 13,535-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 sagebrush 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, or cultivation outside of the “Cultivated Fields” delineated in Exhibit A-1 are prohibited, except to restore native species. Intentional conversion of native vegetation to exotic species or the introduction of non-native plant species through farming, plowing or any type of cultivation is prohibited.

Buildings and structures are permitted within the Building Envelope as described in Exhibit A-1 and A-2. The newly defined Building Envelope may not exceed three acres in size. 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.⁵⁷

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

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

B. Air Resources

1. Proposed Action – Under the Proposed Action no direct, indirect or cumulative effects to air quality or other resources would occur in association with authorizing the grant funds for the purchase of the 13,535-acre conservation easement.
2. No Action – Under this alternative, grant fund authorization for the purchase of the 13,535-acre conservation easement would not occur. However, no direct, indirect or cumulative effects to air quality or other air-related resources would be anticipated.

⁵⁷ 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.

C. Water Resources

1. Proposed Action – The Property is located in the Red Rock River watershed and straddles several tributaries to Medicine Lodge Creek which drains into Clark Canyon Reservoir. The Hansen Livestock Company 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 13,535-acre conservation easement.
2. No Action – Under this alternative, grant fund authorization for the purchase of the 13,535-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 – 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 13,535-acre conservation easement. However, over the long term, appreciable indirect and cumulative beneficial effects associated with protection and conservation of native vegetation communities would be realized by authorizing funding to secure the conservation easement.

Temporary non-native cover crops are permitted in native prairie and rangeland restoration activities. Farming, irrigation, or cultivation outside of the “Cultivated Fields” delineated in Exhibit A-1 are prohibited, except to restore native species. Intentional conversion of native vegetation to exotic species or the introduction of non-native plant species through farming, plowing or any type of cultivation is prohibited.

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

- limits on the location of allowable additional residential dwelling units and associated outbuildings;
- easement terms to protect the Conservation Values and private rangeland stewardship;
- prohibition on commercial timber operations, while allowing for the personal use of timber resources, including removal of conifers to restore sage grouse nesting habitat;

- prohibition of any cultivation, plowing, or disturbance of native soils and vegetation by mechanical or chemical means;
- prohibition of surface mining;
- prohibition of commercial gravel operations;
- prohibition of rangeland conversion to cropland;
- prohibition of new road construction other than a single road for Building Envelope access;
- the construction of new utilities and granting of utility line rights-of-way except as permitted in the terms of the easement, are prohibited; and
- prohibition of commercial wind and solar development.

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

2. No Action – Under this alternative, grant fund authorization for the purchase of the 13,535-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, Wildlife, and Plant Species of Concern

1. Proposed Action -- A data query of endangered, threatened and sensitive fish, wildlife, and plant species documented in the conservation easement area with a one-mile buffer was conducted by the Montana Natural Heritage Program.⁵⁸ Eight avian, two mammalians, five plant and one fish Species of Concern (SOC) have been documented on the Property.

The avian species are the Sage Thrasher (*Oreoscoptes montanus*), Brewer's Sparrow (*Spizella breweri*), Greater Sage-Grouse (*Centrocercus urophasianus*), Golden Eagle (*Aquila chrysaetos*), Clark's Nutcracker (*Nucifraga columbiana*), Northern Goshawk (*Accipiter gentilis*), McCown's Longspur (*Rhynchophanes mccownii*), Caspian Tern (*Hydroprogne caspia*).

The mammalian species are Pygmy Rabbit (*Brachylagus idahoensis*), and Wolverine (*Gulo gulo*).

The plant species are the Bitterroot Milkvetch (*Astragalus scaphoides*), Whitebark Pine (*Pinus albicaulis*), Red Sage (*Kochia Americana*),

⁵⁸ Montana Natural Heritage Program Species of Concern Report, June 2018.

Hutchinsia (*Hornungia procumbens*), and Slim Larkspur (*Delphinium depauperatum*).

The fish species is the Westslope Cutthroat Trout (*Oncorhynchus clarkii lewisi*).

The easement area also provides habitat for numerous other terrestrial and avian species endemic to central and eastern Montana. The Property is located in the Red Rock River watershed and straddles several tributaries to Medicine Lodge Creek which drains into Clark Canyon Reservoir. 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 13,535-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 terms to protect the Conservation Values and Purposes for private rangeland stewardship and sage grouse;
- prohibition on commercial timber operations, while allowing for the personal use of timber resources including management actions for natural occurrences such as disease, and selective harvest and removal of conifers to restore sage grouse nesting habitat;
- intentional conversion of native vegetation to exotic species or the introduction of non-native plant species; farming, plowing or any type of cultivation is prohibited;
- prohibition of surface mining;
- prohibition of surface mining;
- prohibition of commercial gravel operations;
- prohibition of rangeland conversion to cropland;
- prohibition of new road construction other than for Building Envelope access;
- prohibition of the construction of new utilities and granting of utility line rights-of-way except as permitted in the terms of the easement; and
- prohibition of commercial wind and solar development.

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

2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 13,535-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 and USFS. 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 13,535-acre conservation easement on private land.

In the future, land uses may be indirectly influenced on some neighboring lands due to conservation restrictions in the proposed easement area, such as limitations on new road construction through the easement parcels themselves. The extent that restrictions would limit or influence other land uses on nearby non-easement lands is uncertain and would depend on the resource development potential of each parcel and management objectives of each individual landowner over time. This may be most relevant for the two State Trust Lands parcels (portions of T10S, R12W, S26 and S35), which are within the easement-covered lands. However, it is possible that State Trust Lands may participate in future compensatory mitigation markets and manage those sections 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.

2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 13,535-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.

X. 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 13,535-acre conservation easement.
2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 13,535-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 sagebrush 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, or cultivation outside of the “Cultivated Fields” delineated in Exhibit A-1 are prohibited, except to restore native species. Intentional conversion of native vegetation to exotic species or the introduction of non-native plant species through farming, plowing or any type of cultivation is prohibited. Restrictions on construction of new roads, sagebrush reduction or eradication, no surface occupancy, prohibition of mining etc. are aimed at providing high quality sagebrush/grassland habitat for wildlife into the future. However, several other land uses such as wind development, commercial gravel mining, oil and gas development to the extent the surface owner owns the mineral estate, range conversion, and real estate subdivision would be prohibited on these lands. Impacts related to implementation of these restrictions on the easement-covered lands would be cumulative at the local and statewide level. At the statewide level cumulative increases in easement lands and indirect reductions in other potential land uses would be offset through implementation of a conservation credit/banking program as envisioned under Executive Order 12-2015. In this manner, conservation protections would be

afforded the sage grouse while allowing important land uses and resource development in Montana in a regulated, responsible manner.

2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 13,535-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 13,535-acre conservation easement.
2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 13,535-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 13,535-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 13,535-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 13,535-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 13,535-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 13,535-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 13,535-acre conservation easement. 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 13,535-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.

XI. 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.

XII. Evaluation of Need for an EIS

Based on the above assessment and public comment, neither of which 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.

XIII. Name, Contact Information of Preparers

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

XIV. Public Involvement

The public comment period will run through July 11, 2018.

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 11, 2018.

Submit written comments by 5:00 on July 11, 2018 to:
Montana Sage Grouse Habitat Conservation Program
c/o Montana Department of Natural Resources and Conservation
Attn: Proposed Hansen Livestock Company Conservation Easement
1539 11th Ave.
Box 201601
Helena, MT 59620

XV. Next Steps

After the close of the public comment period, the Program will review comments and prepare a final EA and proposed decision notice. MSGOT would review the Final Hansen Livestock Company Conservation Easement Proposal Environmental Assessment and Proposed Decision Notice and the final Proposed Deed of Conservation Easement.

MSGOT is expected to make a final decision before July 31, 2018 during a publicly-noticed teleconference meeting. If approved by MSGOT, Stewardship funds in the award amount of \$952,500 would be placed into escrow with a neutral, independent closing agent. The parties would provide closing instructions to the closing agent. The actual conservation easement is expected to close by July 31, 2018.

Appendices

Appendix A

**Exhibit A-1: Easement Boundary, Cultivated Fields,
Building Envelope, and Gravel Pits**

**Exhibit A-2: Location of Building Envelope,
Poole Creek, and Roads**

EXHIBIT A-1
Map of Property, Building Envelope, and Cultivated Fields

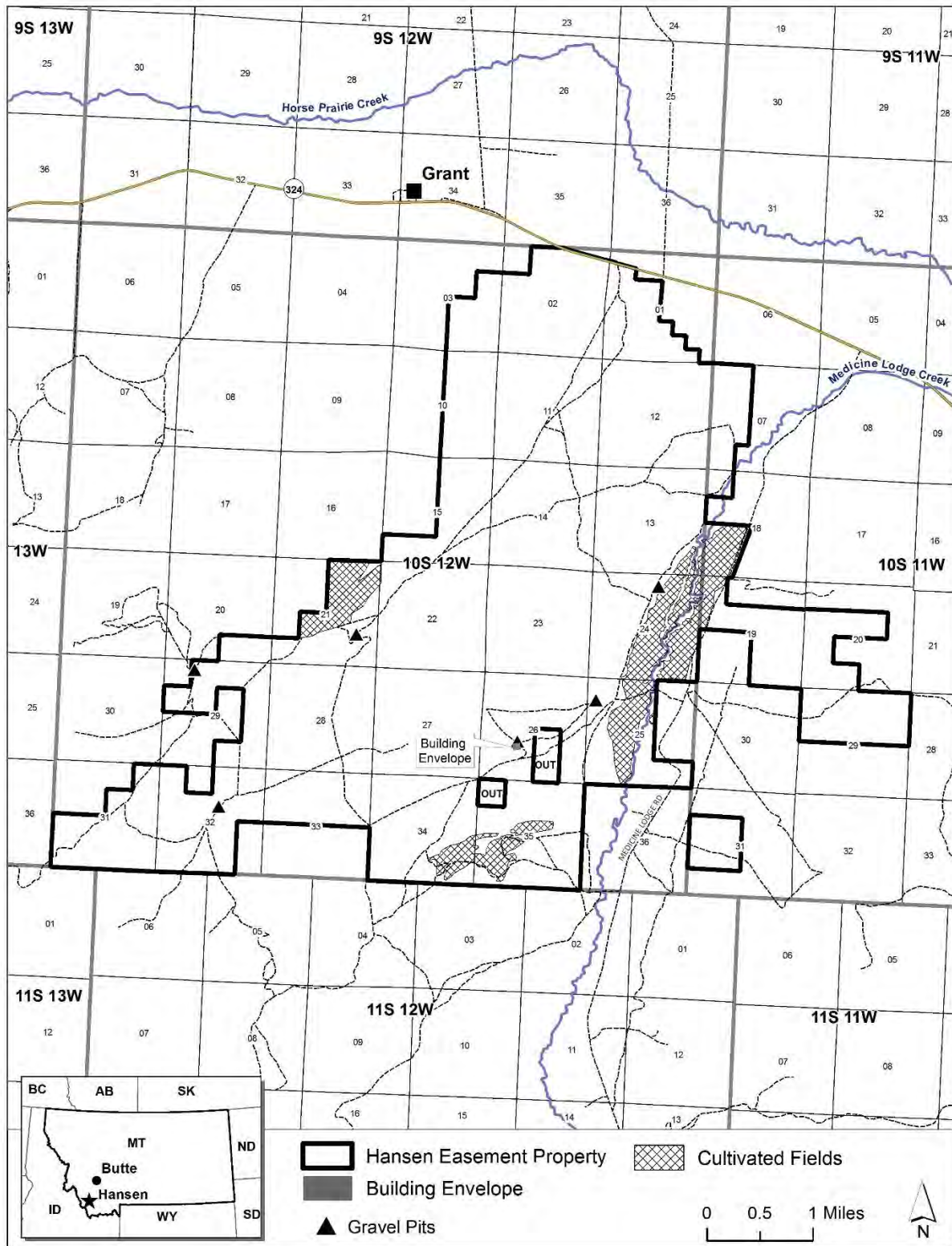
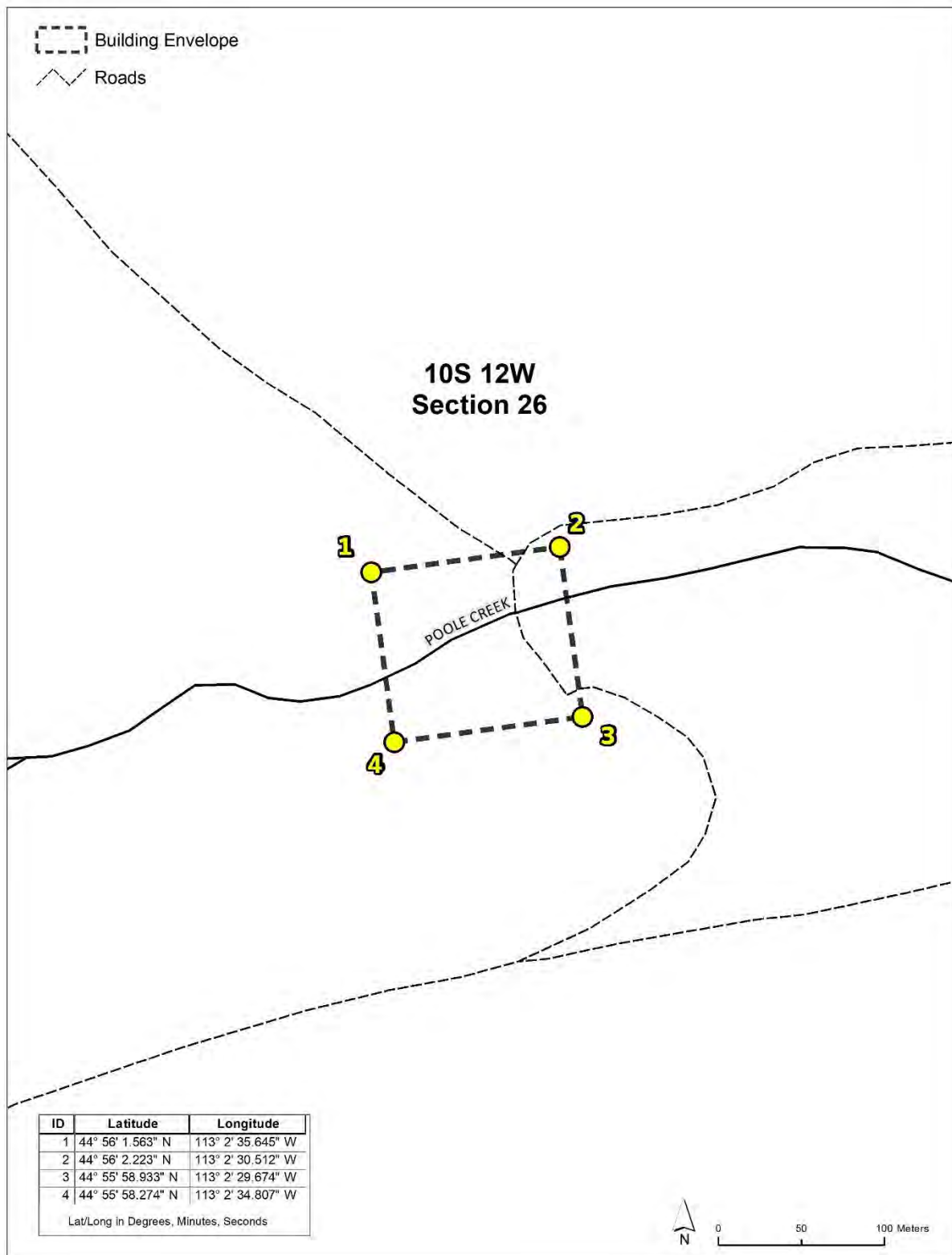


EXHIBIT A-2
Map of Building Envelope



**Appendix B: Grant Agreement and
Executive Order 12-2015**

**SAGE GROUSE HABITAT CONSERVATION FUND GRANT AGREEMENT
CONSERVATION AND RESOURCE DEVELOPMENT DIVISION
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION**

TNC: The Nature Conservancy
Grant Title: The Nature Conservancy Hansen Livestock Company Conservation Easement
Grant Agreement Number: SG-TNC-0006

Declarations

- Section 1. Purpose
- Section 2. Term
- Section 3. Roles
- Section 4. Grant Scope
- Section 5. Grant Budget
- Section 6. Availability of Grant Funds
- Section 7. Grant Disbursements & Closing Date
- Section 8. Reports
- Section 9. Records and Audits
- Section 10. Project Monitoring
- Section 11. Employment Status and Workers' Compensation
- Section 12. Equal Employment
- Section 13. Indemnity and Liability
- Section 14. Compliance with Applicable Laws
- Section 15. Copyright - Government Right to Use
- Section 16. Conservation Credits
- Section 17. Failure to Comply
- Section 18. Assignment and Amendment
- Section 19. Montana Law and Venue
- Section 20. Conditions Subsequent Excusing Performance
- Section 21. Obligation of Funds
- Section 22. Subordination of Existing Liens or Mortgages
- Section 21. Montana Environmental Policy Act Compliance
- Section 22. Costs and Attorney's Fees

Attachments

- Attachment A – Description of Property to be Covered by Conservation Easement
- Attachment B - Statement of Work
- Attachment C – Budget

- Attachment D – Executive Order 12-2015
- Attachment E – Conservation Easement

FOR DNRC USE ONLY

Maximum amount under this Agreement: \$ \$952,500

-Source of Funds -

Fund Name	Fund No.	
Sage Grouse Stewardship	02318	
Subclass	ORG	Percent
540S1	3060	100%

Approved

Agreement No. SG-TNC-0006

Amendment No.

Division

FSO

Legal

MSGOT

Appropriation Authority - HB 261 2016/2017 Biennium and HB 228 2018/2019 Biennium

MONTANA SAGE GROUSE HABITAT STEWARDSHIP GRANT AGREEMENT

WHEREAS, the U.S. Fish and Wildlife Service has identified habitat loss and fragmentation as a primary threat to greater sage grouse in Montana (80 Fed. Reg. 59858-59942 (Oct. 2, 2015)); and

WHEREAS, the 2015 Montana Legislature passed and the Governor signed the Montana Greater Sage Grouse Stewardship Act (MCA § 76-22-101 et seq.) (the "Act") establishing Montana's Sage Grouse Conservation Strategy; and

WHEREAS, the purpose of the Act is to provide competitive grant funding and 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 connective areas (MCA § 76-22-102); and

WHEREAS, there is a Sage Grouse Stewardship Account (the "Account") in the state special revenue fund and the 2015 Montana Legislature appropriated funds to maintain, enhance, restore, expand, or benefit sage grouse habitat and populations for the heritage of Montana and its people (MCA § 76-22-109); and

WHEREAS, the Montana Sage Grouse Oversight Team (MSGOT) reviews and selects projects for funding and the Montana Department of Natural Resources and Conservation (DNRC) disburses funds from the Account as directed by MSGOT (MCA § 76-22-109(3)); and

WHEREAS, the Sage Grouse Habitat Conservation Program provides assistance, input, and guidance to MSGOT on all matters before it and administers and implements Executive Order 12-2015 and the Greater Sage-Grouse Stewardship Act (Executive Order 12-2015, ¶ 5); and

WHEREAS, Executive Order 12-2015 and the Greater Sage Grouse Stewardship Act set forth that development in sage grouse core areas, general habitat, and connectivity habitat shall observe the mitigation hierarchy of avoidance, minimization, reclamation / restoration, and compensation; and

WHEREAS, MSGOT shall retroactively calculate and make available credits for leases and conservation easements purchased with funds disbursed from the Account after May 7, 2015, but prior to the adoption of final administrative rules (MCA § 76-22-105(3));

THEREFORE, this Grant Agreement is entered into to further sage grouse habitat conservation in Montana and create opportunities for compensatory mitigation to offset impacts of development consistent with the Act and Executive Order 12-2015.

THIS GRANT, administered by DNRC for MSGOT and funded by the Montana Legislature implements the policies, procedures and objectives of the Act to maintain, enhance, restore, expand, or benefit sage grouse habitat and populations for the heritage of Montana and its people. Consistent with the Act, conservation credits shall be calculated retroactively based on each Conservation Easement purchased with funds disbursed from the Account, and the credits shall be made available to the ongoing free market mechanism of a credit and debit exchange.

By approval of MSGOT, this grant is made by DNRC, acting on behalf of and under the authority of the State of Montana, to The Nature Conservancy (hereinafter referred to as the "TNC,") a non-profit corporation organized under the laws of the District of Columbia, with a local address of 32 S. Ewing, Suite 215, Helena, MT 59601, according to the following terms and conditions:

SECTION 1. PURPOSE. The purpose of this Grant Agreement (Agreement) is to grant funds to TNC to assist in TNC's purchase of a conservation easement over approximately 13,890 acres of Hansen Livestock Company located in Beaverhead County, Montana, and more particularly described on **Attachment A** which is incorporated by reference (legal descriptions of lands included within the **Conservation Easement**).

SECTION 2. TERM. The effective date of this Agreement is the date of last signature of State or TNC, as reflected below. The term of this Agreement shall be from the effective date until three years after closing, at which time the State and TNC will execute a Notice of Closure of Grant Agreement, memorializing the termination of this Agreement and the parties' mutual fulfillment of all duties, responsibilities and obligations hereunder.

SECTION 3. ROLES.

Montana Sage Grouse Oversight Team (MSGOT) – The MSGOT is authorized by the Act and is administratively attached to the governor's office as prescribed in MCA § 2-15-121. MSGOT's duties, among others, are to evaluate and select applications to the Sage Grouse Stewardship Account for funding. Also, MSGOT is required to review compensatory mitigation plans, track conservation credits, and retroactively calculate and make available credits for leases and conservation easements with funds disbursed from the Sage Grouse Stewardship Account prior to the adoption of the rules named in MCA § 76-22-104.

Sage Grouse Habitat Conservation Program (SGHCP) – The SGHCP is authorized by Executive Order 12-2015 to administer applicable provisions of the Executive Order, the Act, and provide assistance, input, and guidance to MSGOT on all matters before it. The SGHCP is attached to the Department of Natural Resources and Conservation for administrative purposes as prescribed in MCA § 2-15-121.

Department of Natural Resources and Conservation – The DNRC serves as administrative host for the SGHCP. House Bill 2 appropriations for administration of the SGHCP and the Sage Grouse Stewardship Account were made by the 64th Legislature for the 2016/2017 and the 2018/2019 bienniums to the Conservation and Resource Development Division in DNRC. DNRC disburses funds from the Stewardship Account as approved and directed by MSGOT.

Upon request from TNC or its agent, the Program Manager of the SGHCP or her designee will explain or clarify the terms and conditions of this Agreement and may provide limited technical assistance to TNC. The Program Manager of the SGHCP or designee will monitor expenditures to assure payment eligibility. The MSGOT, SGHCP, and DNRC assume no responsibility for TNC's obligation to faithfully perform the tasks and activities necessary to implement this Agreement. Similarly, TNC assumes no responsibility for the State's obligation to faithfully perform the tasks and activities necessary to implement this Agreement.

The SGHCP Program Manager for this Agreement is Carolyn Sime at (406) 444-0554, csime2@mt.gov, SGHCP/CARDD; PO Box 201601, Helena, MT 59620-1601. All requests for information and assistance, claims for grant funds, and reports shall be submitted to the SGHCP Program Manager or her designee.

The TNC contact for this Agreement is Jim Berkey, High Divide Headwaters Director, 32 S. Ewing, Suite 215, Helena, MT 59601, 406-370-6905.

SECTION 4. GRANT SCOPE. The scope of this Agreement is described in **Attachment B** which is herein incorporated by reference. Supporting documents, and attachments from the Montana Greater Sage-Grouse Stewardship Fund Account Grant Application received from TNC, are also herein incorporated by reference.

SECTION 5. BUDGET AMOUNT. An Agreement budget showing anticipated expenditures is provided in Attachment C and incorporated herein by reference. Any transfer of funds between budget categories in an amount exceeding 10 percent of the total grant amount must have prior written approval of the SGHCP Program Manager.

SECTION 6. AVAILABILITY OF GRANT FUNDS. TNC acknowledges and understands that grant funds are made available through appropriation from a state special revenue account. Costs incurred prior to the effective date of this Agreement are not eligible for reimbursement unless approved by MSGOT as part of the grant application or determined by the SGHCP Program Manager to be an emergency. Pre-award costs incurred but not approved by MSGOT may be counted as match funds upon written approval by MSGOT. The SGHCP Program Manager may consider an expenditure to be for an emergency if it is necessary to protect the imminent loss of life or property; or to prevent significant imminent environmental damage.

SECTION 7. GRANT DISBURSEMENTS & CLOSING DATE. Closing of the acquisition of the Conservation Easement shall occur on or before a date which will be mutually agreed upon by the parties (hereafter "Closing" or the "date of Closing"). If necessary, the date of Closing may be extended in writing for a reasonable period by mutual written agreement of the parties. Closing shall occur at First American Title Company of Montana located at 15 South Idaho Street, Ste. 2, Dillon, MT 59725 (the "Closing Agent"). Upon MSGOT approval of the Agreement, including the tasks described in Attachment B, and the Conservation Easement, the grant amount shall be placed into escrow with the Closing Agent in accordance with the parties' closing instructions. The amount placed into escrow shall not be more than the amount approved by MSGOT (\$952,500). Disbursal of the grant funds from escrow shall be in accordance with the parties' Closing instructions.

SECTION 8. REPORTS. Any reports that may be required are set forth in Attachment B and shall be submitted to the State not later than 30 days prior to closing. Closing instructions shall be provided when available.

SECTION 9. RECORDS AND AUDITS. TNC will maintain appropriate and adequate records showing complete entries of all receipts, disbursements and other transactions relating to this Agreement. DNRC, the Legislative Audit Division, or the Legislative Fiscal Division may, at any reasonable time, audit all records, reports, and other documents that TNC maintains under or in the course of this Agreement to ensure compliance with its terms and conditions.

SECTION 10. PROJECT MONITORING. MSGOT or their agent (e.g. SGHCP Program Manager) may monitor and inspect all phases and aspects of TNC's performance to determine compliance with this Agreement, including the adequacy of records and accounts. During the Contract term, MSGOT or their agent (SGHCP Program Manager) may present specific areas of concern to TNC, providing opportunity to better accomplish the goals, objectives, and conditions of this Agreement.

SECTION 11. EMPLOYMENT STATUS AND WORKERS' COMPENSATION. The MSGOT, SGHCP, and DNRC are not owners or general contractors for the project and do not control the work activities or work-site of TNC or any contractors that might be engaged for completion of the project. TNC is independent from and is not an employee, officer or agent of the State of Montana or its agencies. TNC, its employees and contractors are not covered by the Workers' Compensation laws applicable to the state or its agencies. TNC is responsible for making sure that its employees are covered by Workers' Compensation Insurance and that its contractors are in compliance with the coverage provisions of the Workers' Compensation Act.

SECTION 12. EQUAL EMPLOYMENT. Any hiring of employees under this Agreement shall be on the basis of merit and qualifications, and there shall be no discrimination on the basis of race, color, religion, creed, sex, national origin, age, disability, marital status, or political belief. "Qualifications" mean qualifications as are generally related to competent performance of the particular occupational task.

SECTION 13. INDEMNITY AND LIABILITY. TNC shall defend, indemnify and hold harmless the State of Montana, its agencies and agents from and against any and all claims, demands, or actions for damages to property or injury to persons or other damages to persons or entities arising out of or resulting from this Agreement that are attributable to, or arise from, the scope of TNC's duties and responsibilities under this Agreement.

SECTION 14. COMPLIANCE WITH APPLICABLE LAWS. All work must be in accordance with all federal, state and local law, statutes, rules and ordinances.

14.1. It shall be TNC's responsibility to obtain all permits, licenses or authorizations that may be required from government authorities prior to initiation of work to be eligible for funds under this Agreement. Consultation with the Sage Grouse Habitat Program in accordance with the Governor's Executive Order 12-2015 is required prior to entering this Agreement.

14.2. Procurement of labor, services, supplies, materials, and equipment shall be conducted according to applicable federal, state, and local statutes. The execution of this Agreement shall not be taken to imply that any required permits or authorizations issued by DNRC or other state, federal or local agency will be approved.

SECTION 15. COPYRIGHT - GOVERNMENT RIGHT TO USE. Any graphic, photographic, or other material developed under this Agreement may be copyrighted by TNC with the condition that the State of Montana will have a royalty-free, nonexclusive, and irrevocable right to produce, publish or otherwise use, and authorize others to use the work for state government purposes.

SECTION 16. CONSERVATION CREDITS. This Agreement precedes the State's efforts to retroactively calculate and make available conservation credits on the Property, consistent with the Act, particularly M.C.A. §76-22-103(4), 105(3). Such credit calculation shall occur after Closing. TNC acknowledges that generation and maintenance of conservation credits is an indispensable purpose of this Agreement, and a primary reason for the grant to acquire the Conservation Easement. Proceeds from credits generated as a result of this Agreement shall reimburse the Sage Grouse Stewardship Account when they are sold. TNC shall not have any ownership or interest in the conservation credits. Any obligation TNC may have related to conservation credits shall be addressed in the Conservation Easement. TNC makes no representation or warranty that its acquisition of the Conservation Easement will result in the creation of conservation credits.

SECTION 17. FAILURE TO COMPLY. If TNC fails to comply with the terms and conditions of this Agreement, DNRC may terminate the Agreement and refuse disbursement of funds from this grant. Such termination will become a consideration in any future application for grants from the Sage Grouse Habitat Conservation Fund.

SECTION 18. ASSIGNMENT AND AMENDMENT. This Agreement is not assignable. Amendment may be accomplished only by express written agreement of the parties. Amendments will be attached as an integral component of the Agreement.

SECTION 19. MONTANA LAW AND VENUE. Any action brought by any party to this Agreement that is based on enforcement or performance under this Agreement or interpretation of any term or condition of this Agreement, shall be governed by the laws of the State of Montana. Venue shall be in the First Judicial District, Lewis and Clark County, Montana.

SECTION 20: CONDITIONS SUBSEQUENT TO SIGNING OF THIS AGREEMENT. Upon the happening of any one of the following listed events or conditions before Closing, the State or its agent's duty to perform under the Agreement shall be excused, and the State shall be entitled to recover from TNC funds distributed pursuant to this Agreement, if any:

1. TNC's funding sources become unavailable; or
2. The terms of the Conservation Easement, and the other reports described in Section 8 above are not approved by MSGOT or are not agreeable to the State, NRCS, or TNC; or,
3. The parties to this grant agreement cannot successfully negotiate terms of the Conservation Easement that are agreeable to Hansen Livestock Company; or, there has been a significant change in the physical nature of the property, caused by natural disaster or land owner activities, so that the land loses capacity to provide sage grouse habitat and produce credits up to 30 days prior to closing.

SECTION 21: OBLIGATION OF FUNDS. The Sage Grouse stewardship funds are obligated upon execution of this agreement. Should Sage Grouse Stewardship funds not be available, the State shall promptly notify TNC.

SECTION 22: SUBORDINATION OF EXISTING LIENS OR MORTGAGES. The closing instructions will direct the closing agent to ensure that any existing liens or mortgages on the property are either made subordinate to the conservation easement or paid in full and released at closing.

SECTION 23: MONTANA ENVIRONMENTAL POLICY ACT COMPLIANCE. The Program will comply with the requirements of the Montana Environmental Policy Act prior to disbursement of funds from the Stewardship Account. The Program's release of an Environmental Assessment or Environmental Impact Statement will be after negotiation of all terms of the proposed easement is completed.

SECTION 24. COSTS AND ATTORNEY'S FEES. In the event that legal action is brought to enforce the terms and conditions of this Agreement, each Party shall bear its own legal costs.

TNC hereby accepts this Agreement according to the above terms and conditions.

By: Richard Teo Date: 2/21/18
(Signature)

Print name and title Richard Teo, State Director

For: The Nature Conservancy, a Montana non-profit corporation. Tax ID Number 53-0242652

DNRC hereby accepts this Agreement according to the above terms and conditions.

For: The Montana Department of Natural Resources and Conservation

Reviewed and approved by: [Signature] Date: 3/7/18
John Tubbs
Chair, Montana Sage Grouse Oversight Team

[Signature] Date: 3/7/18
Danna Jackson
Chief Legal, Department of Natural Resources and Conservation

Attachment A
Description of Property to be Covered by Conservation Easement

A parcel of land located in Beaverhead County, Montana, more particularly described as follows:

TOWNSHIP 10 SOUTH, RANGE 11 WEST MONTANA PRINCIPAL MERIDIAN:

Section 7: Lots 1, 2, 3, 4, $W\frac{1}{2}E\frac{1}{2}NW\frac{1}{4}$, $W\frac{1}{2}NW\frac{1}{4}SW\frac{1}{4}$

Section 18: Lots 1, 3, 4, $NE\frac{1}{4}SW\frac{1}{4}$

Section 19: Lots 1, 2, $SE\frac{1}{4}NW\frac{1}{4}$, $S\frac{1}{2}NE\frac{1}{4}$, $SE\frac{1}{4}$

Section 20: $S\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}$, $W\frac{1}{2}SW\frac{1}{4}$, $SE\frac{1}{4}SW\frac{1}{4}$

Section 29: $N\frac{1}{2}$

Section 31: Lots 2, 3, $SE\frac{1}{4}NW\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$

TOWNSHIP 10 SOUTH, RANGE 12 WEST MONTANA PRINCIPAL MERIDIAN:

Section 1: Lot 4, $E\frac{1}{2}SW\frac{1}{4}$, $S\frac{1}{2}SE\frac{1}{4}$

EXCEPTING THEREFROM lands previously deeded to the State of Montana in Book 169 of Microfilm, Page 41, records of Beaverhead County, Montana.

FURTHER EXCEPTING THEREFROM lands previously deeded in Book 247 of Microfilm, Pages 426-7, records of Beaverhead County, Montana.

Section 2: Lots 1, 2, 3, $S\frac{1}{2}NE\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}$, $SE\frac{1}{4}$, $SW\frac{1}{4}$,

EXCEPTING THEREFROM lands previously deeded to the State of Montana in Book 169 of Microfilm, Page 37, Book 169 of Microfilm, Page 39 and Book 169 of Microfilm, Page 41, records of Beaverhead County, Montana.

FURTHER EXCEPTING THEREFROM lands previously deeded in Book 247 of Microfilm, Pages 426-7, records of Beaverhead County, Montana.

Section 3: $SE\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}$

Section 10: $E\frac{1}{2}$

Section 11: All

Section 12: All

Section 13: All

Section 14: All

Section 15: $E\frac{1}{2}$, $S\frac{1}{2}SW\frac{1}{4}$

Section 20: $S\frac{1}{2}SE\frac{1}{4}$

Section 21: $E\frac{1}{2}$, $E\frac{1}{2}SW\frac{1}{4}$, $SW\frac{1}{4}SW\frac{1}{4}$

Section 22: All

Section 23: All

Section 24: All

Section 25: All

Section 26: $NE\frac{1}{4}$, $E\frac{1}{2}SE\frac{1}{4}$ $W\frac{1}{2}$

Section 27: All

Section 28: All

Section 29: $E\frac{1}{2}E\frac{1}{2}$, $NW\frac{1}{4}NE\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}$, $E\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}NW\frac{1}{4}$

Section 31: Lots 1, 4, 5, 6, 7, 8, 9, 10, $NW\frac{1}{4}SE\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$ $SW\frac{1}{4}NE\frac{1}{4}$

Section 32: Lots 1, 2, 3, 4, 5, $NE\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}$, $NW\frac{1}{4}NW\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$,

Section 33: $N\frac{1}{2}$

Section 34: All

Section 35: $E\frac{1}{2}$, $SW\frac{1}{4}$, $E\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}NW\frac{1}{4}$

Attachment B – Statement of Work

TNC's responsibilities under this grant agreement are summarized in this Statement of Work.

1. TNC shall develop and finalize a Conservation Easement with Hansen Livestock Company that is approved by TNC, Hansen Livestock Company, NRCS, and MSGOT.
2. TNC shall develop and provide to SGHCP Program Manager the following plans and reports:
 - The TNC-NRCS Grant Agreement in its entirety.
 - A Conservation Easement Baseline Report provided by TNC.
 - The final appraisal.
 - The Agricultural Land Easement Plan and any component plans described in the Conservation Easement with Hansen Livestock Company.
 - A Conservation Easement Stewardship Management Plan which describes TNC's plan to monitor and enforce the Conservation Easement.
 - Closing Instructions, when available.

Attachment C – Budget

Background: On May 24, 2016, MSGOT elected to split The Nature Conservancy's (TNC) Hansen Ranch Conservation Easement and Conifer Reduction Proposal into two separate proposals. MSGOT awarded funding (\$202,500) for the conifer reduction portion of the proposal, but opted to reconsider the conservation easement portion of the proposal at a later date.

On November 18, 2016, MSGOT awarded \$750,000 for the conservation easement, contingent on TNC securing and documenting funds from USDA NRCS or elsewhere by September 30, 2017. See MSGOT's Meeting Archive for meeting materials, Notes, and Minutes for the May 24 and November 18, 2016 meetings, respectively, at: <https://sagegrouse.mt.gov/Team>.

On June 2, 2017, MSGOT approved reallocation of the \$202,500 originally awarded to reduce conifers towards purchase of the conservation easement. TNC had explained that it secured alternative funding for the conifer reduction portion of the overall proposal and that it would proceed. See MSGOT's Meeting Archive for meeting materials, Notes, Audio, and Minutes for the June 2, 2017 at: <https://sagegrouse.mt.gov/Team>.

On September 29, 2017, TNC provided written notice to the Program that funds from NRCS-Agricultural Land Easement (ALE) Program funds were secured. This letter was provided to MSGOT in conjunction with the December 15, 2017 meeting. Additionally, TNC informed the Program that the appraised value of the easement exceeded preliminary expectations, but that it would secure adequate funds from other sources to complete the project.

The following budget is revised from the budget in the grant application originally submitted to the Program and MSGOT in 2016. The Revised Projects Costs/Budget below reflects the final appraisal and allocation across all sources of funding. The total MSGOT award shown is \$952,500, consistent with the approval sequence described above.

Revised Project Costs / Budget (Lease / Conservation Easement Projects)

Revised Budget for Perpetual Conservation Easement on ~13,890 acres

Item	Other Cash Contribution	Other In-Kind Contribution	Requested MSGSFA Contribution	Total Contributions
a. Project Planning and Design				
Engineering Applicant				
Contractor				
Landowner				
Baseline Inventory Report (Environmental Documentation Report)				
Applicant				
Contractor	14,000			14,000
Environmental Hazards Assessment	1,500			1,500
Survey				
Mineral Report Applicant	500			500
Contractor				
Appraisal	15,000			15,000

Title Commitment				
Title Insurance	2,500			2,500
Mortgage Subordination	500			500
Resolution of Legal Access				
Land Trust Transaction Fee				
Closing and Recording Fees	1600			1600
Other Expenses				
Sub-Total	35,600			35,600
b. Project Implementation				
Manpower Applicant				
Contractor				
Landowner				
Equipment Applicant				
Contractor				
Landowner				
Materials (rock, chemicals, etc.) Applicant				
Contractor				
Landowner				
Perpetual Easement Stewardship Fee / Endowment	15,000			15,000
Total Easement Value	5,000,000	647,500	952,500	6,600,000
Other		-		
Sub-Total	5,015,000	647,500	952,500	6,615,000
c. Project Operation/Maintenance				
Manpower Applicant				
Contractor				
Landowner				
Equipment Applicant				
Contractor				
Landowner				
Materials (rock, chemicals, etc.) Applicant				
Contractor				
Landowner				
Monitoring Stewardship				
Other				
Sub-Total				
d. GRAND TOTAL	5,050,600	647,500	952,500	6,650,600

If a Conservation Easement, Summary of Acquisition Budget:

Appraised Value of Conservation Easement: \$6,600,000

Landowner Donation: \$647,500

Purchase Price: \$5,925,500

Source of Easement Funds: (list all sources)

MGSGSFA: \$952,500

Other: NRCS - \$4,950,000

Other: TNC (Private Grant) - \$50,000

Other: _____

Attachment D – Executive Order 12-2015

[To be added prior to execution of this Agreement]

STATE OF MONTANA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NO. 12-2015

**EXECUTIVE ORDER AMENDING AND PROVIDING FOR IMPLEMENTATION OF
THE MONTANA SAGE GROUSE CONSERVATION STRATEGY.**

WHEREAS, the Greater Sage-grouse (*Centrocercus urophasianus*) (hereafter sage grouse) is an iconic species that inhabits much of the sagebrush-grassland habitats in Montana;

WHEREAS, as a result of concerted efforts of wildlife managers, private landowners, and other stakeholders, the State of Montana currently enjoys viable and widespread populations of the species, the second largest abundance of sage grouse among western states;

WHEREAS, the United States Fish and Wildlife Service (USFWS) has determined that the sage grouse species is warranted for listing as a threatened or endangered species under the Endangered Species Act of 1973 (ESA), and by September 30, 2015, the USFWS must make a final determination of the status of the sage grouse;

WHEREAS, the State of Montana has management authority over sage grouse populations in Montana, and in 2005, developed the state's first management plan to address the challenges to sage grouse populations in the state;

WHEREAS, the development of a comprehensive state regulatory strategy in Montana is critical to demonstrate to the USFWS that the sage grouse does not warrant federal protection under the ESA;

WHEREAS, the listing of the sage grouse could have significant adverse effects on the economy of the State of Montana, including private and state lands, which together comprise over 70 percent of all sage grouse habitat;

WHEREAS, in February 2013 Governor Bullock created the Greater Sage Grouse Habitat Conservation Advisory Council (Council), to gather information, and bring stakeholders and experts together in a public process to recommend conservation measures to address the threats to the sage grouse in Montana;

WHEREAS, the Council held ten multi-day public meetings, reviewed and considered relevant scientific information and existing strategies and reports, accepted broad and diverse public comment on draft recommendations, conducted seven public hearings around the state, and formally presented its recommendations and advice to the Governor on January 29, 2014;

WHEREAS, on September 9, 2014, The Governor issued Executive Order No. 10-2014, creating the Montana Sage Grouse Habitat Conservation Program and setting forth the state's

Conservation Strategy for conservation, regulatory protection, and management of sage grouse in Montana.

WHEREAS, recognizing that maintaining the species will require effective conservation strategies across property ownerships, the Montana Program is premised on an “all-threats, all-lands” strategy, and closely follows Wyoming’s Greater Sage-Grouse Core Area Protection Strategy, which has been repeatedly recognized by the USFWS as a sound framework by which to conserve sage grouse;

WHEREAS, the Montana Program is science-based and will adjust appropriately as new science, information and data becomes available regarding the habitats and behaviors of the sage grouse;

WHEREAS, at the request of the Governor, the 2015 Montana Legislature passed the Montana Sage Grouse Stewardship Act, creating the Montana Sage Grouse Oversight Team (MSGTO) and the Montana Sage Grouse Stewardship Fund;

WHEREAS, at the request of the Governor, the 2015 Legislature appropriated \$10 million to the Stewardship Fund for conservation and mitigation projects that benefit sage grouse habitat, and over \$1 million for resources to administer Montana’s Sage Grouse Habitat Conservation Program;

WHEREAS, the investment and commitment to date of the State of Montana to sage grouse conservation has been substantial, and with the recent Executive and Legislative actions described above, Montana’s commitment to sage grouse conservation is anticipated to grow significantly;

WHEREAS, given the aforementioned legislative approvals, ongoing discussions with stakeholders, and the approaching deadline for a decision by the USFWS on the status of sage grouse, additional adjustments and clarifications to Executive Order No. 10-2014 are appropriate; and

WHEREAS, this Executive Order is a supplement to Executive Order 10-2014, and, unless expressly stated herein, is to be read in concert with that previous Executive Order.

NOW, THEREFORE, I, STEVE BULLOCK, Governor of the State of Montana, pursuant to the authority vested in me under the Constitution and the laws of the State of Montana, do hereby amend Executive Order No. 10-2014 and provide for implementation of the Montana Sage Grouse Conservation Strategy as follows:

1. In issuing this Executive Order and Executive Order No. 10-2014, it is my intent that the Montana Sage Grouse Habitat Conservation Program (Program) operate in a manner that is generally consistent, as allowed by law and peer-reviewed science, with the efforts of the State of Wyoming in implementing its Greater Sage Grouse Core Area Strategy. Unless clearly stated otherwise, either in this Executive Order or in Executive Order No. 10-2014, or unless precluded by law or peer-reviewed science, ambiguities regarding interpretation of

this Executive Order or Executive Order No. 10-2014 should be resolved in a manner that is consistent with this intent.

2. Executive Order No. 10-2014 and this Executive Order shall be generally construed in a manner that is consistent with the provisions of Senate Bill 261, passed during the 2015 Montana Legislative Session.
3. The Montana Greater Sage Grouse Habitat Conservation Advisory Council found that the currently delineated Core Areas captured approximately 76 percent of the displaying males in Montana (using 2013 numbers) (Greater Sage-Grouse Habitat Conservation Strategy, p. 8). The Program and MSGOT are directed to conduct a review of the existing Core Areas and recommend changes that may be necessary to ensure that 80 percent of the displaying males in Montana are either in delineated Core Areas or otherwise subject to the Core Area Stipulations contained in Exhibit D to Executive Order No. 10-2014 (as amended herein). Paragraph No. 9 of Executive Order No. 10-2014 is amended accordingly.
4. The State of Montana expects the full cooperation, assistance, and compliance with the Montana Conservation Strategy by all federal agencies operating in Montana, consistent with federal and state laws. To ensure that there is robust communication between the Montana Sage Grouse Habitat Conservation Program and the federal agencies, the Program shall ensure that those agencies are notified of all MSGOT meetings, and afforded the opportunity to participate in those meetings. This is in addition to the Program's duty to ensure that all MSGOT meetings are open to the public, with public notice and participation, consistent with Montana law.
5. Executive Order No. 10-2014 is amended as follows:
 - A. In light of the passage into law of Senate Bill 261 during the 2015 Montana Legislative Session, Paragraph Nos. 1 and 33 of Executive Order No. 10-2014 are stricken.
 - B. In light of the passage into law of Senate Bill 261 during the 2015 Montana Legislative Session, Paragraph No. 2 of Executive Order No. 10-2014 is amended to read as follows:
 2. The function of the Montana Sage Grouse Oversight Team (MSGOT) will be to oversee the administration of the Program, located at the Department of Natural Resources and Conservation (DNRC). This will include: staying abreast of emerging science and developing appropriate guidance, reviewing and troubleshooting the consultation process, addressing issues delineated in applicable Executive Orders and attachments for further consideration, providing input to funding requests for research and land management projects, recommending to the Governor further improvements to the Program, and fulfilling the duties assigned by Senate Bill 261 (2015 Montana Legislative Session). The DNRC shall provide necessary staff assistance for MSGOT until such time as key Program resources are obtained by DNRC.
 - C. In light of the passage into law of Senate Bill 261 during the 2015 Montana Legislative Session, Paragraph No. 3 of Executive Order No. 10-2014 is amended to read as follows:

3. The role of the Program is to: provide guidance to, exchange information with, seek input from, and consult with state agencies and other instruments of state government during permitting and other authorizations, or during consultation, or technical, financial, or other assistance for non-regulated activities; administration of applicable Executive Orders and attachments (including application of the Density Disturbance Calculation Model) and Senate Bill 261, passed during the 2015 Montana Legislative Session (Conservation Strategy); provide assistance, input, and guidance to MSGOT on all matters before it; serve as the principal point of contact for the interested public and stakeholders regarding the Conservation Strategy. Nothing in this Order in any way creates, adds to, or expands the regulatory authority of any state agency.
- D. In light of the transition to full compliance with the Program, as provided below in this Executive Order, Paragraph Nos. 4, 6, and 7 of Executive Order No. 10-2014 are stricken.
- E. Paragraph No. 8 of Executive Order No. 10-2014 is amended to read as follows:
8. The Program shall consist of the Program Manager and other resources determined by DNRC to be necessary to achieve the purposes and objectives of the Sage Grouse Habitat Conservation Program, applicable Executive Orders, and Senate Bill 261 (2015 Montana Legislative Session). The Montana Departments of Fish, Wildlife and Parks, Environmental Quality, and Natural Resources and Conservation shall provide such additional staff resources as necessary to aid in the development of the Program and implement this Conservation Strategy. The Program may contract for services with outside parties or other state agencies to implement the Program.
- F. Paragraph No. 12 of Executive Order No. 10-2014 is amended to read as follows:
12. Where appropriate, and to minimize or streamline the process associated with implementation of this Conservation Strategy, MSGOT should recommend to the Governor the adoption of best management practices.
- G. In light of the passage into law of Senate Bill 261 during the 2015 Montana Legislative Session, Paragraph No. 13 of Executive Order No. 10-2014 is amended to read as follows:
13. MSGOT shall oversee and approve development of a program that provides for appropriate mitigation, including compensatory mitigations (financial, off-set, or off-site). All new land uses or activities that are subject to state agency review, approval, or authorization shall follow the sequencing provisions required herein (avoid, minimize, reclaim, compensate as appropriate). Mitigation shall be required even if the adverse impacts to sage grouse are indirect or temporary. A variety of mitigation tools may be used, including conservation banks, habitat exchanges, and approved conservation plans. All mitigation must be consistent with the United States Fish and Wildlife Service's Greater Sage-Grouse Rangewide Mitigation Framework.

- H. The extent of existing land uses and activities has caused some confusion relating to activities that are authorized under existing permits but which have not yet occurred. Paragraph No. 23 of Executive Order No. 10-2014 is amended to read as follows for the purpose of clarification:
23. Existing land uses and activities (including those authorized by existing permit but not yet conducted) shall be recognized and respected by state agencies, and those uses and activities that exist at the time the Program becomes effective will not be managed under the stipulations of this Conservation Strategy. Examples of existing activities include oil and gas, mining, agriculture, processing facilities, power lines, housing, operations and maintenance activities of existing energy systems within a defined project boundary, (i.e., ROW). Provided these uses and activities are within a defined project boundary (such as a recognized federal oil and gas unit, drilling and spacing unit, mine plan, subdivision plat, etc.) they may continue within the existing boundary, even if they exceed the stipulations of this Conservation Strategy.
- I. In light of the transition to full compliance with the Program, as provided below in this Executive Order, Paragraph No. 30 of Executive Order No. 10-2014 is amended to read as follows:
30. Montana's private landowners are currently managing their lands in a responsible manner, and it is not coincidence that such a high percentage of productive sage grouse habitat is found on private land. It is critical that existing land uses and landowner activities continue to occur in Core Areas and General Habitat, particularly agricultural activities on private lands. Many uses or activities on private lands are not subject to state agency review, approval, or authorization. Only those projects occurring after the date the Program becomes effective which state agencies are vested with discretion by state or federal statute to review, approve, or authorize are subject to consistency review. This Conservation Strategy in no way creates, adds to, or expands the regulatory authority of any state agency.
- J. Consistent with seasonal use limits utilized by the State of Wyoming for Core Areas, and as originally recommended by the Montana Greater Sage-grouse Habitat Conservation Advisory Council, Paragraph No. 3 in the Core Area Stipulations (Executive Order No. 10-2014, p. 14, Attachment D, Core Area Stipulations), is amended to read as follows:
- 3. Seasonal Use:** As authorized by permitting agency or agencies, activities (production, maintenance, and emergency activity exempted) will be prohibited from March 15 – July 15 outside of the NSO perimeter of an active lek in Core Areas where breeding, nesting, and early brood-rearing habitat is present. Discretionary maintenance and production activity will not occur between the hours of 4:00 - 8:00 am and 7:00 - 10:00 pm between March 15 – July 15. In areas used as winter concentration areas, exploration and development activity will be prohibited December 1 – March 15. Activities may be allowed during seasonal closure periods as determined on a case-by-case basis. Activities in unsuitable habitat also may be approved year round on a case-by-case basis.

- K. Finding and siting appropriate corridors for power lines is critical if Montana is to pursue future opportunities associated with diversifying energy production. There has been confusion over the original language addressing overhead power lines and communication towers, contained in Executive Order No. 10-2014. After further discussion with stakeholders and for purposes of clarification, Paragraph No. 6 in the Core Area Stipulations (Executive Order No. 10-2014, p. 15, Attachment D, Core Area Stipulations) is amended to read as follows:

- 6. Overhead Power Lines and Communication Towers:** Power lines and communication towers should be sited to minimize negative impacts on sage grouse or their habitats. When placement is demonstrated to be unavoidable:
- a. If economically feasible, power lines within 4 miles of active leks should be buried and communication towers should be located a minimum of 4 miles from active leks;
 - b. If not economically feasible, then power lines and communication towers should be consolidated or co-located with existing above ground rights of way, such as roads or power lines, at least 0.6 miles from the perimeter of active leks;
 - c. If co-location is not possible, the power lines and communication towers should be located as far as economically feasible from active leks and outside of the 0.6 mile active lek buffer.

If siting of overhead power lines is necessary within 2.0 miles of important breeding, brood-rearing, and winter habitat, follow the measures recommended by the Avian Power Line Interaction Committee (which includes federal agencies and state wildlife agencies) to minimize collision potential and raptor perch sites or bury a portion of the line.

Anti-collision measures should be installed within 0.6 mile of the perimeter of known sage grouse concentration areas such as leks and winter ranges, where icing conditions are unlikely to occur. If effective perch preventers are identified, they should be installed within 0.6 mile of known concentration areas.

Follow USFWS Best Management Practices for tall structures when erecting new communication towers. Communication towers should be constructed to preclude the need for guy wires; where guy wires are necessary, they should be fitted with anti-collision devices.

Burying existing overhead lines that have been identified as contributing to a decline in sage grouse populations will be considered as a mitigation option.

Electric utilities (including electric cooperatives) and the Avian Power Line Interaction Committee, have developed a set of Best Management Practices (BMPs) to guide construction, operation, and maintenance activities by electric utilities in sage grouse habitats. These BMPs should be applied to electric utility projects as appropriate.

The Program should conduct additional research into the challenges posed to sage grouse by overhead lines and communication towers, and should bring that research to MSGOT for further consideration.

- L. Noise levels from activities around leks during breeding season continues to be an area of concern and of additional and evolving research. The intent of the language in Executive Order No. 10-2014 addressing noise was to capture the ongoing work in Wyoming and still allow interim flexibility on a case-by-case basis (Executive Order No. 10-2014, pp. 15 and 19, Attachment D). Some ambiguity has been identified in the existing language and Wyoming has recently further clarified its language on this issue. Accordingly, Paragraph No. 7 in the Core Area Stipulations and Paragraph No. 5 in the General Habitat Stipulations (Executive Order No. 10-2014, pp. 15 and 19, Attachment D, respectively) are amended to read as follows:

Noise: New project noise levels, either individual or cumulative, should not exceed 10 dBA (as measured by L_{50}) above baseline noise at the perimeter of an active lek from 6:00 p.m. to 8:00 a.m. during the breeding season (March 1 – July 15). The Program shall review the emerging science on this issue, including the work being conducted regarding this issue in the State of Wyoming, and bring that research to MSGOT to recommend any further adjustments in this stipulation that may be appropriate.

- M. The understanding of prescribed burning in sagebrush habitat continues to evolve. The intent of the language in Executive Order No. 10-2014 addressing prescribed burning was to strike a balance that allowed prescribed burns, but only in limited instances. (Executive Order No. 10-2014, p. 16, Attachment D, Core Area Stipulations). Some confusion has resulted from the existing language and Paragraph No. 10 in the Core Area Stipulations (Executive Order No. 10-2014, p. 16, Attachment D, Core Area Stipulations) is amended to read as follows:

- 10. Wildfire and Prescribed Burns:** Following wildfire, it is recommended that landowners implement a management plan consistent with the rehabilitation practices in Attachment C, with a goal of returning the area to functional sage-grouse habitat. Burnouts, backfires, and all other public safety measures are appropriate for fighting wildfires. The Program and MSGOT should stay abreast of evolving science regarding post-fire rehabilitation in order to advise landowners. This is specific to wildfire and not intended for other incentive or mitigation situations.

The Program should be consulted in advance for any proposal to conduct prescribed broadcast burns in sagebrush habitat. Prescribed broadcast burns should be prohibited unless it can be demonstrated that they will either result in no loss of habitat or be beneficial to sage-grouse habitat. In reviewing a proposal, the Program should consider why alternative techniques were not selected, how sage grouse goals and objectives would be met by its use, including a review of the COT Report objectives, and a risk assessment to address how potential threats to sage grouse habitat would be minimized. Prescribed fire could be used to meet specific fuels objectives that would protect sage grouse habitat in Core Areas (e.g., creation of fuel breaks that would disrupt the fuel continuity across the landscape in stands where

annual invasive grasses are a minor component in the understory or used as a component with other treatment methods to combat annual grasses and restore native plant communities). Any prescribed broadcast burning in known winter habitat would need to be designed to strategically reduce wildfire risk around and/or in the winter range and designed to protect winter range habitat quality.

- N. In light of the transition to full compliance with the Program, as provided below in this Executive Order, Paragraph No. 15 in the Core Area Stipulations (Executive Order No. 10-2014, p. 17, Attachment D, Core Area Stipulations) is amended to read as follows:

15. Existing Activities: While existing land uses and activities are typically not subject to the Conservation Strategy (Executive Order No. 10-2014, Paragraph No. 23), existing operations may not initiate activities resulting in new surface occupancy within 0.6 miles of an active sage grouse lek. Any existing disturbance will be counted toward the calculated disturbance cap for a new proposed activity. The level of disturbance for existing activity may exceed 5 percent.

- O. The development of new wind power generation in Montana is an important part of the state's ongoing efforts to pursue future opportunities associated with diversifying energy production. The intent of the language in Executive Order No. 10-2014 was to recognize that wind generation should generally be avoided in Core Areas (Executive Order No. 10-2014, p. 18, Attachment D, Industry-Specific Stipulations within Core Areas). The Montana Greater Sage-grouse Habitat Conservation Advisory Council recommended language that excluded wind generation from Core Areas. In both cases, it was recognized that as research and best science evolves, it might be possible to eventually allow wind generation in such areas if it could be demonstrated that it would not cause a decline in sage grouse populations. The use of the term "avoided" in Executive Order No. 10-2014 has caused some confusion, and Paragraph No. 4 in the Industry-Specific Stipulations within Core Areas (Executive Order No. 10-2014, p. 18, Attachment D, Industry-Specific Stipulations within Core Areas) is amended to read as follows:

4. Wind Energy: Wind energy development is excluded from sage grouse core areas. An exception may be made if it can be demonstrated by the project proponent using the best available science that the development will not cause a decline in sage grouse populations.

6. The previous Executive Order created the Montana Sage Grouse Habitat Conservation Program and the Conservation Strategy, but did not expressly include any metric by which to measure success of these efforts. After extensive literature review and public discussion, the Montana Greater Sage Grouse Habitat Conservation Advisory Council recommended a performance standard (6.9-18.78 males/lek) based on the number of displaying males as determined by a statistically-valid analysis over a 10-year period, recognizing that populations vary naturally over time and across regions, and may change based on ongoing evaluation (Greater Sage-Grouse Habitat Conservation Strategy, p. 5). Executive Order No. 10-2014 is further clarified as follows:

Until such time as a different performance standard is determined to be appropriate, this performance standard should guide the Program in its actions and recommendations.

7. This Executive Order and Executive Order 10-2014, unless expressly stated herein, are to be read in concert with each other. For clarity, Executive Order 10-2014, as amended and clarified by this Executive Order, is attached as Exhibit A. This document provides a single reference for the Montana Sage Grouse Habitat Conservation Program, combining both Executive Orders into one document.
8. State agencies shall comply with the Montana Sage Grouse Habitat Conservation Program, as amended and clarified by this Executive Order. Because certain aspects of the Program are still in development, agencies shall comply with the Program to the extent possible until January 1, 2016, at which time compliance with the Program in all respects is required.
9. The Montana Sage Grouse Habitat Conservation Program shall be completed and operational in all respects no later than January 1, 2016.

DURATION

This Order is effective immediately and remains in effect until it is rescinded or superseded by subsequent Executive Order.



GIVEN under my hand and the GREAT SEAL of
the State of Montana this 8TH day of
SEPTEMBER, 2015.


STEVE BULLOCK, Governor

ATTEST:


LINDA MCCULLOCH, Secretary of State

For:

Attachment A

STATE OF MONTANA OFFICE OF THE GOVERNOR

THE MONTANA SAGE GROUSE OVERSIGHT TEAM AND THE MONTANA SAGE GROUSE HABITAT CONSERVATION PROGRAM

The Montana Sage Grouse Habitat Program was created by Executive Order No. 10-2014, dated September 9, 2014. By subsequent Executive Order No. 12-2015, dated September 8, 2015, Executive Order No. 10-2014 was amended and clarified. This document provides a single reference for the Montana Sage Grouse Habitat Conservation Program, combining both Executive Orders into one document.

The Montana Sage Grouse Habitat Conservation Program should operate in a manner that is generally consistent, as allowed by law and peer-reviewed science, with the efforts of the State of Wyoming in implementing its Greater Sage Grouse Core Area Strategy. Interpretation of the applicable Executive Orders should be resolved in a manner that is consistent with this intent, as well as with the provisions of Senate Bill 261 (2015 Montana Legislative Session).

The Montana Sage Grouse Oversight Team and the Montana Sage Grouse Habitat Conservation Program

1. The function of the Montana Sage Grouse Oversight Team (MSGOT) will be to oversee the administration of the Montana Sage Grouse Habitat Conservation Program, located at the Department of Natural Resources and Conservation (Program). This will include: staying abreast of emerging science and developing appropriate guidance, reviewing and troubleshooting the consultation process, addressing issues delineated in applicable Executive Orders and attachments for further consideration, providing input to funding requests for research and land management projects, recommending to the Governor further improvements to the Program, and fulfilling the duties assigned by Senate Bill 261 (2015 Montana Legislative Session). The Department of Natural Resources and Conservation (DNRC) shall provide necessary staff assistance for MSGOT (until such time as key Program resources are obtained by DNRC).
2. The role of the Program is to: provide guidance to, exchange information with, seek input from, and consult with state agencies and other instruments of state government during permitting and other authorizations, or during consultation, or technical, financial, or other assistance for non-regulated activities; administration of applicable Executive Orders and

attachments (including application of the Density Disturbance Calculation Model) and Senate Bill 261, passed during the 2015 Montana Legislative Session (Conservation Strategy); provide assistance, input, and guidance to MSGOT on all matters before it; serve as the principal point of contact for the interested public and stakeholders regarding the Conservation Strategy. Nothing in this Order in any way creates, adds to, or expands the regulatory authority of any state agency.

3. All meetings of the MSGOT shall be open to the public, with public notice and participation, consistent with Montana law. The State of Montana expects the full cooperation, assistance, and compliance with the Conservation Strategy by all federal agencies operating in Montana, consistent with law. To ensure that there is robust communication between the Program and the federal agencies, the Program shall ensure that those agencies are notified of all MSGOT meetings, and afforded the opportunity to participate in those meetings.
4. The Program shall consist of the Program Manager and other resources determined by DNRC to be necessary to achieve the purposes and objectives of the Sage Grouse Habitat Conservation Program, applicable Executive Orders, and Senate Bill 261 (2015 Montana Legislative Session). The Departments of Fish, Wildlife and Parks, Environmental Quality, and Natural Resources and Conservation shall provide such additional staff resources as necessary to aid in the development of the Program and implement this Conservation Strategy. The Program may contract for services with outside parties or other state agencies to implement the Program.
5. Management by state agencies shall give priority to the maintenance and enhancement of sage grouse habitats in Core Population and Connectivity Areas identified in Attachment A. The Montana Greater Sage-grouse Habitat Conservation Advisory Council found that the currently delineated Core Areas captured approximately 76% of the displaying males in Montana (using 2013 numbers) (Greater Sage-Grouse Habitat Conservation Strategy, p. 8). The Program and MSGOT are directed to conduct a review of the existing Core Areas and recommend to the Governor changes that may be necessary to ensure that 80% of the displaying males in Montana are either in delineated Core Areas or otherwise subject to the Core Area Stipulations contained in Exhibit D. Except as provided above, and absent substantial and compelling information, the Core Population Areas in Attachment A should not be altered for at least 5 years.
6. In evaluating progress and as a guide for future actions and recommendations, the Program and MSGOT shall utilize a performance standard (6.9-18.78 males/lek) based on the number of displaying males as determined by a statistically-valid analysis over a 10-year period. This standard recognizes that populations vary naturally over time and across regions, and may change based on ongoing analysis.
7. MSGOT shall develop incentives to accelerate or enhance required reclamation in habitats in and adjacent to Core Areas, including but not limited to stipulation waivers, funding for enhanced reclamation, and other strategies. Incentives shall result in net benefit to, and not cause declines in, sage grouse populations.

8. Where possible, MSGOT shall develop incentives to encourage new land uses and activities in General Habitat to occur in a manner that minimizes impacts to sage grouse populations and habitats.
9. Where appropriate, and to minimize or streamline the process associated with implementation of this Conservation Strategy, MSGOT should recommend to the Governor the adoption of best management practices.
10. MSGOT shall oversee and approve development of a program that provides for appropriate mitigation, including compensatory mitigations (financial, off-set, or off-site). All new land uses or activities that are subject to state agency review, approval, or authorization shall follow the sequencing provisions required herein (avoid, minimize, reclaim, compensate as appropriate). Mitigation shall be required even if the adverse impacts to sage grouse are indirect or temporary. A variety of mitigation tools may be used, including conservation banks, habitat exchanges, and approved conservation plans. All mitigation must be consistent with the United States Fish and Wildlife Service's Greater Sage-Grouse Rangewide Mitigation Framework.
11. Predators can be a threat to localized sage grouse populations and an impediment to efforts to protect sage grouse. Predators have always preyed upon sage grouse, and the best way to minimize this impact is to provide good quality habitat in sufficient quantity. In addition to generally implementing this Conservation Strategy, Attachment B contains specific recommended practices for minimizing the effects of predators on sage grouse.
12. While it is unlikely that predator control is a long-term solution to a general range-wide decline in populations of sage grouse, it may provide beneficial short-term relief to localized decreases in sage grouse populations. For example, the U.S. Fish and Wildlife Service (USFWS) recently granted a permit to the State of Idaho for the lethal removal of ravens in three specific locations to evaluate the impacts of predation on sage grouse. If such localized circumstances are found to exist, MSGOT should involve diverse stakeholders to explore public-private opportunities for field research to examine the predator-prey relationship, the effects of habitat disturbance, and the feasibility and efficacy of a predator management plan.

General Principles

13. Valid rights are legal rights or interests that are associated with a land or mineral estate and cannot be divested from that estate until that interest expires, is relinquished, or acquired. Existing rights shall be recognized and respected, including those associated with state trust lands.
14. Approximately 64% of sage grouse habitat in Montana is in private ownership. Montana's private landowners care about the future of sage grouse and manage their lands productively in this regard. State agencies are directed to work collaboratively with private landowners (and local governments) to maintain and enhance sage grouse habitats and populations, and to the greatest extent possible shall use non-regulatory measures that reflect unique localized

conditions, including soils, vegetation, development type, predation, climate and other local realities. Voluntary incentives designed to conserve sagebrush habitat and grazing lands within identified sage grouse Core Areas and General Habitat areas on private and state lands will be created and encouraged.

15. The success of this Conservation Strategy depends on state and federal agencies, including the U.S. Fish and Wildlife Service, Bureau of Land Management, U.S. Forest Service, Natural Resource Conservation Service, and other federal agencies, working collaboratively to maintain and enhance sage grouse habitats and populations.
16. Funding, assurances (including efforts to develop Candidate Conservation Agreements and Candidate Conservation Agreements with Assurances, etc.), habitat enhancement, reclamation efforts, mapping and other associated proactive efforts to assure viability of sage grouse in Montana shall be focused and prioritized to occur in Core Areas. Formal voluntary agreements between private and federal regulatory entities to address the conservation needs of sage grouse shall be entitled to deference.
17. Fire suppression efforts in Core Areas shall be prioritized, recognizing that other local, regional, and national suppression priorities may take precedent. Coordination among all fire-fighting units is required to implement fire prevention, suppression, and rehabilitation management as detailed in Attachment C. The Department of Natural Resources and Conservation shall follow these recommendations as resources and circumstances allow, and will request cooperation and collaboration from federal agencies on rehabilitation projects after wildfire. Public and firefighter safety remains the number one priority for all fire management activities.
18. MSGOT, Program staff, and all state and federal agencies shall strive to maintain consistency with this Conservation Strategy, recognizing that adjustments may be necessary based upon local conditions and limitations.
19. MSGOT shall regularly reevaluate the effectiveness of this Conservation Strategy, at a minimum annually, as new science, information and data emerge regarding the habitats and behaviors of sage grouse, and shall recommend such changes as are appropriate.

Application of the Conservation Strategy to Land Uses and Activities

20. Existing land uses and activities (including those authorized by existing permit but not yet conducted) shall be recognized and respected by state agencies, and those uses and activities that exist at the time the Program becomes effective will not be managed under the stipulations of this Conservation Strategy. Examples of existing activities include oil and gas, mining, agriculture, processing facilities, power lines, housing, operations and maintenance activities of existing energy systems within a defined project boundary, (i.e., ROW). Provided these uses and activities are within a defined project boundary (such as a recognized federal oil and gas unit, drilling and spacing unit, mine plan, subdivision plat, etc.) they may continue within the existing boundary, even if they exceed the stipulations of this Conservation Strategy.

21. New land uses or activities in Core Areas shall be avoided when possible. New developments or land uses permitted or authorized within Core Areas shall minimize impacts on suitable habitat, and reclaim and restore any disturbance (and mitigation as appropriate). This analysis shall be documented by Program staff for each new activity or use. A similar sequence (avoid, minimize, reclaim/restore) shall also be applicable in General Habitat, under less rigorous standards to be developed by MSGOT.
22. It is recognized that in some locations new uses or activities associated with valid rights, such as some mineral rights, may be in substantial conflict with the stipulations of this Conservation Strategy, and that reasonable exceptions to the Strategy may be necessary. Similarly, the expansion of existing uses and activities not otherwise subject to this Conservation Strategy may necessitate reasonable exception. In all cases the sequencing, stipulation, and mitigation provisions of this Conservation Strategy shall be the benchmark for evaluating such uses or activities and developing alternative operating scenarios.
23. New land uses or activities within Core Areas shall be authorized, approved, or conducted only when it can be demonstrated that the project will not cause declines in sage grouse populations.
24. Land uses or activities that follow the sequencing requirements of this Conservation Strategy (including mitigation as appropriate) and that are consistent with the stipulations set forth in Attachment D shall be deemed sufficient to demonstrate that the project will not cause declines in sage grouse populations.
25. Proposals to deviate from standard stipulations or utilize exceptions from standard stipulations will be considered by the Program (with review by MSGOT) and the appropriate land management and permitting agencies, with input from the Department of Fish, Wildlife and Parks, and the United States Fish and Wildlife Service.
26. A petition may be filed with MSGOT to create a Special Management Area, where planned land uses or activities associated with valid rights cannot be implemented after evaluation against the sequencing, stipulation, and mitigation provisions of this Conservation Strategy. The requirements and objectives for this process are contained in Attachment E, and MSGOT shall recommend such additional requirements and objectives as necessary.
27. Montana's private landowners are currently managing their lands in a responsible manner, and it is not coincidence that such a high percentage of productive sage grouse habitat is found on private land. It is critical that existing land uses and landowner activities continue to occur in Core Areas and General Habitat, particularly agricultural activities on private lands. Many uses or activities on private lands are not subject to state agency review, approval, or authorization. Only those projects occurring after the date the Program becomes effective which state agencies are vested with discretion by state or federal statute to review, approve, or authorize are subject to consistency review. This Conservation Strategy in no way creates, adds to, or expands the regulatory authority of any state agency.

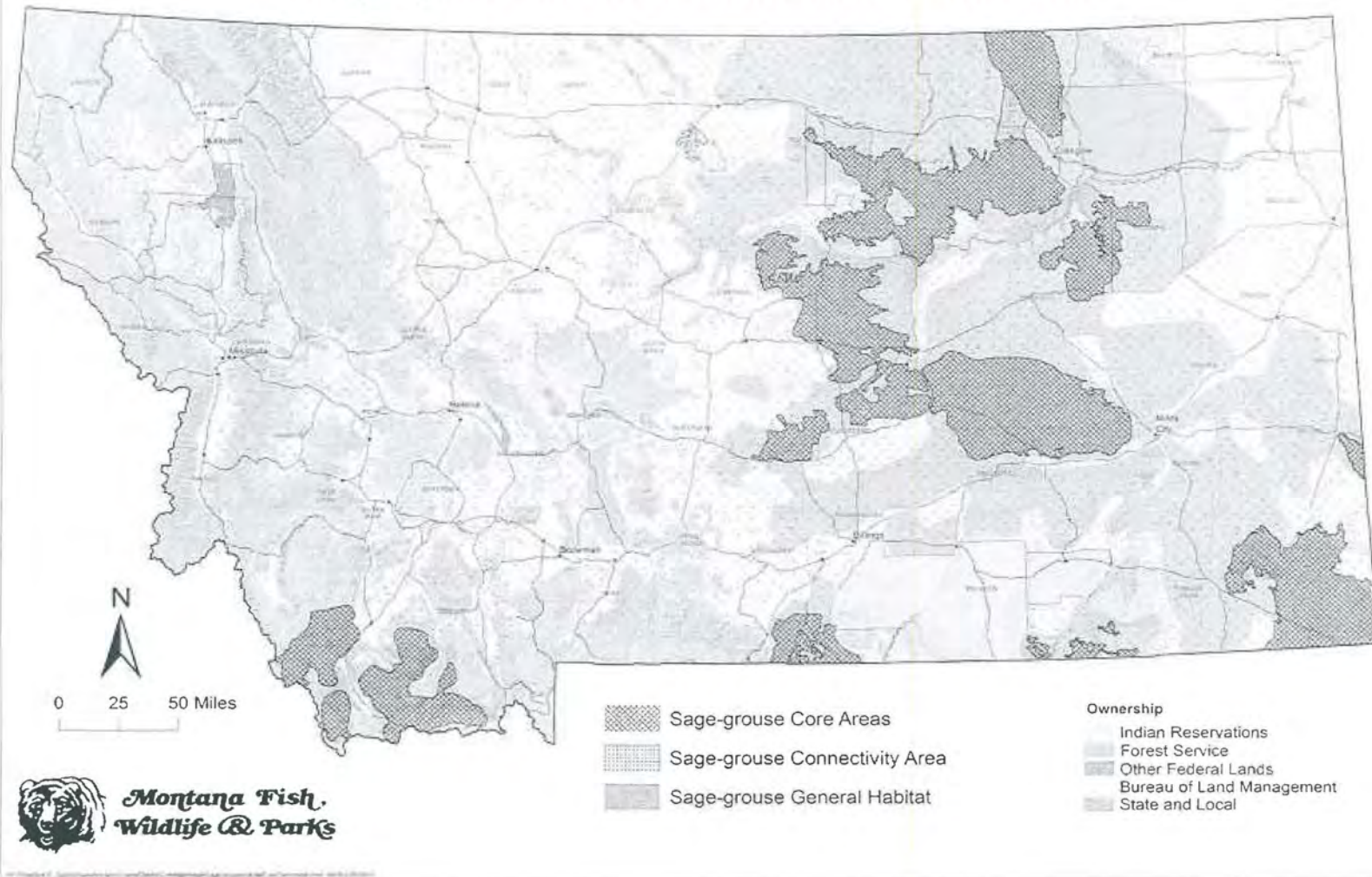
28. Attachment F contains a list of existing land uses and landowner activities that are exempt from this Conservation Strategy.
29. Livestock grazing is the most widespread type of land use across sagebrush country. Proper livestock management is a critical tool for providing and maintaining high quality sage grouse habitat, and recommended best practices are contained in Attachment G.
30. Program staff and state agencies shall adhere to the stipulations contained in this Conservation Strategy when reviewing or providing consultation, or technical, financial, or other assistance for non-regulated activities.
31. The Program staff, before submitting its final recommendation to a state agency for any use or activity it has reviewed, shall comply with the provisions of the Private Property Assessment Act, Title 2, Chapter 10, Part 1, MCA.
32. State Trust Lands are held in trust as provided in The Enabling Act, and the management of those lands is vested in the State Land Board. The Department of Natural Resources and Conservation (DNRC) is directed to bring this Conservation Strategy before the Board for its consideration, with a request that the Board adopt this Strategy or otherwise determine the appropriate application of this Strategy to the management of State Trust Lands in Core or Connectivity Areas, or General Habitat.
33. Cropland conversion and sagebrush eradication on native range are particular threats to sage grouse. The DNRC is directed to bring before the State Land Board for its consideration a prohibition of these two activities on State Trust Lands in Core and Connectivity Areas and General Habitat, with criteria for waivers. The requested prohibitions should be contingent on similar action by federal agencies for lands on which they control the surface rights. The requested prohibition on cropland conversion should also be contingent on commitments by state and federal agencies to work cooperatively with the Bureau of Indian Affairs and tribal governments to address cropland conversion of sage grouse habitat on tribal lands.
34. On State Trust Lands the DNRC will work cooperatively with lessees to maintain healthy sagebrush shrub, native grass, and forb communities on State Trust grazing lands in Core and Connectivity Areas. DNRC shall develop additional lease evaluation criteria to be used for these lands, consistent with the recommendations in Attachment G. The criteria should establish rangeland characteristics that will ensure responsible grazing management practices, consistent with maintaining and improving habitat for sage grouse, while providing for working rangelands. DNRC should also develop a corrective action program for leases that fail to meet the criteria. The criteria and corrective action program shall be brought before the State Land Board for approval.
35. Exotic annual grasses and other invasive plants, and shrubs and trees, alter habitat suitability for sage grouse by reducing or eliminating native forbs and grasses essential for food and cover. Non-native annual grasses also facilitate an increase in mean fire frequency. As resources allow, state agencies should prioritize the eradication of cheatgrass and Japanese brome in Core Areas, through improved management practices, appropriate herbicide

treatments, and biological controls. The Montana Department of Agriculture should review the appropriateness of listing Japanese brome (*Bromus japonicus*) as a regulated species (priority #3) in Montana, and report to MSGOT the results of its evaluation.

36. The hunting of sage grouse is managed by the Department of Fish, Wildlife and Parks (FWP) through the Montana Fish and Wildlife Commission. A framework for conservation action to manage hunting and the viability of sage grouse populations is outlined in the Management Plan and Conservation Strategies for Sage Grouse in Montana – Final (Rev. 2-1-2005, pp. 54-55). That framework shall continue in effect and guide Department and Commission action until such time as the Department or Commission finds that a different approach is warranted. The Program shall consult with FWP when reviewing sage grouse issues in a permit application or other authorization for a use or activity in a Core or Connectivity Area, or General Habitat.
37. State agencies shall report to the Office of the Governor by no later than January 31, 2015, and annually thereafter detailing their actions to comply with this conservation strategy.

Attachment A

Sage-grouse Conservation Areas in Montana



Attachment B

RECOMMENDED PRACTICES TO MINIMIZE EFFECTS OF PREDATORS

- a. Eliminate or minimize external food sources for ravens and small mammals, particularly dumps, landfills, waste transfer facilities, and road kill.
- b. Remove abandoned farmhouses, barns, building debris piles, and other structures that harbor mammalian predators.
- c. Provide adequate buffers (up to 4.0 miles from leks) between placement of new tall structures and nesting and brood-rearing habitat to minimize or eliminate the subsidy of predators. Bury power lines, when economically feasible.
- d. Remove abandoned tall structures, such as fence posts, power line poles, and cell towers that can serve as perching structures for aerial predators.
- e. Apply habitat management practices (e.g., grazing management and vegetation treatments) that improve sage grouse nesting habitat thus decreasing the effectiveness of predators.
- f. Develop strategies for specific, selective, and if needed, assertive short-term predator control based on biological assessments appropriate to local conditions, especially in instances where a sage grouse population has declined from exotic conditions, such as West Nile Virus.
- g. Request the State use localized predator control when permanent anthropogenic features are documented to contribute to unnatural numbers of predators that are reducing local sage grouse populations, and where the impacts from these permanent features will not be eliminated or minimized enough to stabilize the local sage grouse population.
- h. Research and monitor the effects of predator control to determine causal connections with sage grouse survival; modify control strategies accordingly.
- i. Encourage local government to help with small mammal predator control during sage grouse breeding, nesting, and brood-rearing season.

Attachment C

RECOMMENDATIONS FOR WILDFIRE PREVENTION, RESPONSE, AND REHABILITATION

Wildfire temporarily or permanently eradicates sagebrush habitat. Fire, both lightning-caused and human-caused, is a primary risk to sage grouse, not only by deteriorating and often eliminating habitat, but also by increasing future fire frequencies through the promotion of fire-prone vegetation, especially invasive grasses. The replacement of native perennial bunchgrass communities by invasive annuals is a primary contributing factor to increasing fire frequencies in the sagebrush ecosystem. The following recommendations are designed to reduce the potential for fire in sagebrush systems, suppress fires that do ignite, and (re)establish sagebrush and native species in areas that do burn.

- a. Prevention (Pre-fire):
 1. Broaden DNRC, Volunteer Fire Departments, and all fire-fighting unit awareness by providing maps of sage grouse habitat and copies of these recommendations, including every county fire-fighting office.
 2. Prioritize eradication of cheatgrass and Japanese brome and/or address management practices, acquire funding for appropriate herbicide treatments, and explore biological controls.
 3. During high-risk fire seasons, reduce risk of human caused fires as authorized by statute.
- b. Suppression (Fire -Public and firefighter safety remains the number one priority for all fire management activities):
 1. Prioritize initial attack with the goal of immediate suppression in Core Areas, and secondarily in Connectivity Areas and General Habitat, including use of fire retardants and other appropriate tools.
 2. Improve coordination between state agencies (e.g., DNRC) and Montana Association of Counties on all fire suppression activities.
 3. Request federal partners mirror the initial attack program of DNRC.
 4. Prioritize outreach from DNRC to private operators regarding initial attack in sagebrush areas.
 5. Carefully consider the use of backfires within Core and Connectivity Areas and General Habitat to minimize the potential for escape and further damage to sage grouse and sagebrush habitats (a tactical decision made in the field).

6. Identify and establish defensible fire lines in areas where: effectiveness is high; fire risk is likely; and, negative impacts from these efforts (e.g., fragmentation) are minimized. Avoid use of any vegetative stripping in healthy, unfragmented habitats, unless fire conditions and local ecological conditions so warrant.
- c. Rehabilitation (Post-fire):
 1. Use available tools to prevent (re)establishment of cheatgrass and Japanese brome, as necessary.
 2. Ensure most successful restoration strategies are being implemented that (re)establish native sage grouse habitat; develop handbook of methods for most appropriate restoration strategies.
 3. Identify funding options for restoration implementation.
 4. Use locally available seeds where it is most likely to be effective and in areas of high need.
 5. Prioritize Core Areas over sagebrush areas outside of Core Areas for restoration efforts.
 6. Verify that all seeding in Core Areas is certified by an independent contractor as weed-free and free of cheatgrass and Japanese brome.
 7. Explore establishing a state seed bank, if viability of seeds can be maintained; evaluate use of local seed sources (i.e., seed orchards). Report to MSGOT.
 8. Ensure post-fire monitoring for successful reestablishment of sagebrush communities.

Attachment D

STIPULATIONS FOR USES AND ACTIVITIES

REVIEW PROCESS

Point of Contact: The first point of contact for addressing sage grouse issues in a permit application or other authorization for a use or activity in a Core or Connectivity Area, or General Habitat, should be the Montana Sage Grouse Habitat Conservation Program (Program). Project proponents need to have a thorough description of their project and identify the potential effects on sage grouse prior to submitting an application to the permitting agency (details such as draft project area, habitat maps and any other information will help to expedite the project). Project proponents should contact the Program at least 45-60 days prior to submitting their application. More complex projects will require more time. The Program has a role of consultation, recommendation, and facilitation, and has no authority to either approve or deny the project. The purpose of the initial consultation with the Program is to become familiar with the project proposal and ensure the project proponent understands the sequencing, stipulation, and mitigation provisions, and implementation process.

Maximum Disturbance Process: Uses and activities in Core Areas will be evaluated within the context of maximum allowable disturbance (disturbance percentages, location and number of disturbances) of suitable sage grouse habitat within the area affected by the project. The maximum disturbance allowed will be analyzed via a Density/Disturbance Calculation Tool (DDCT) process, similar to that currently utilized by the State of Wyoming. Unsuitable habitat occurring within the project area will not be included in the disturbance cap calculations. Existing disturbances shall be included.

Process Deviations and Exceptions: Any proposals for deviations from these stipulations, undefined activities, or exceptions must demonstrate that the proposed activities will not cause declines in sage grouse populations in core areas. Proposals to deviate from standard stipulations or utilize exceptions from standard stipulations will be considered by the Program (with review by MSGOT) and the appropriate land management and permitting agencies, with input from the Department of Fish, Wildlife and Parks, and the United States Fish and Wildlife Service.

Permitting/Authorization: The complete analysis package developed by consultation and review outlined herein will be forwarded to the appropriate reviewing or permitting agency. The Program recommendations will be included, as will other recommendations from project proponents and other appropriate agencies.

Requirements for Gravel Pits: MSGOT shall review the procedural and substantive permitting requirements contained in state law relating to gravel pits, and shall consider the need for further adjustments to these stipulations to accommodate those requirements while still protecting sage grouse, and shall recommend any further adjustments to these stipulations that may be appropriate.

Excepted Activities: A list of existing land uses and landowner activities that are not subject to these stipulations is provided in Attachment F.

CORE AREA STIPULATIONS

Sage grouse Core Areas were delineated as areas of highest conservation priority. These stipulations are designed to maintain existing levels of suitable sage grouse habitat by regulating uses and activities (hereafter activities) in Core Areas to ensure the maintenance of sage grouse abundance and distribution in Montana. The following stipulations apply to all new activities in Core Areas:

1. **Surface Disturbance:** Surface disturbance will be limited to 5% of suitable sage grouse habitat averaged across the area affected by the project. The DDCT process will be used to determine the level of disturbance (and the relevant area). Distribution of disturbance may be considered and approved on a case-by-case basis, with a goal of consolidating disturbance. Unsuitable habitat should be identified in a seasonal and landscape context, on a case-by-case basis, outside the NSO buffer around leks. This will incentivize proponents to locate projects, where technically feasible, in unsuitable habitat to avoid creating additional disturbance acres. Acres of development in unsuitable habitat are not considered disturbance acres. The primary focus should be on protection of suitable habitats and protection from habitat fragmentation. The calculation of total percent disturbance shall include all existing disturbance (including wildfire), authorized but yet to be implemented activities, and proposed activities that are under consideration by the appropriate reviewing or permitting agency.
2. **Surface Occupancy:** Within 0.6 miles of the perimeter of active sage grouse leks there will be no surface occupancy (NSO) for new activities. NSO, as used in these recommendations, means no surface facilities including roads shall be placed within the NSO area. Other activities may be authorized with the application of appropriate seasonal stipulations, provided the resources protected by the NSO are not adversely affected. For example, and absent such adverse effects, underground utilities and geophysical exploration are permissible if conducted in accordance with seasonal stipulations.
3. **Seasonal Use:** As authorized by permitting agency or agencies, activities (production, maintenance, and emergency activity exempted) will be prohibited from March 15 – July 15 outside of the NSO perimeter of an active lek in Core Areas where breeding, nesting, and early brood-rearing habitat is present. Discretionary maintenance and production activity will not occur between the hours of 4:00 - 8:00 am and 7:00 - 10:00 pm between March 15 – July 15. In areas used as winter concentration areas, exploration and development activity will be prohibited December 1 – March 15. Activities may be allowed during seasonal closure periods as determined on a case-by-case basis. Activities in unsuitable habitat also may be approved year round on a case-by-case basis.
4. **Transportation:** Locate main roads used to transport production and/or waste products > 2 miles from the perimeter of active sage grouse leks. Locate other roads used to provide

facility site access and maintenance > 0.6 miles from the perimeter of active sage grouse leks. Construct roads to minimum design standards needed for production activities.

5. **Pipelines:** Bury pipelines and restore disturbed area with native grasses, forbs and shrubs to achieve cover, species composition, and life form diversity commensurate with the surrounding plant community or desired ecological condition to benefit sage grouse and replace or enhance sage grouse habitat. Seed mixes should include two native forbs and two native grasses with at least one bunchgrass species. Landowners should be consulted on desired plant mix on private lands. The operator is required to control noxious and invasive weed species, including cheatgrass. Co-locate pipelines with roads, transmission lines, and other linear features, when possible.
6. **Overhead Power Lines and Communication Towers:** Power lines and communication towers should be sited to minimize negative impacts on sage grouse or their habitats. When placement is demonstrated to be unavoidable:
 - a. If economically feasible, power lines within 4 miles of active leks should be buried and communication towers should be located a minimum of 4 miles from active leks;
 - b. If not economically feasible, then power lines and communication towers should be consolidated or co-located with existing above ground rights of way, such as roads or power lines, at least 0.6 miles from the perimeter of active leks;
 - c. If co-location is not possible, the power lines and communication towers should be located as far as economically feasible from active leks and outside of the 0.6 mile active lek buffer.

If siting of overhead power lines is necessary within 2.0 miles of important breeding, brood-rearing, and winter habitat, follow the measures recommended by the Avian Power Line Interaction Committee to minimize collision potential and raptor perch sites or bury a portion of the line.

Anti-collision measures should be installed within 0.6 mile of the perimeter of known sage-grouse concentration areas such as leks and winter ranges, where icing conditions are unlikely to occur. If effective perch preventers are identified, they should be installed within 0.6 mile of known concentration areas.

Follow USFWS Best Management Practices for tall structures when erecting new communication towers. Communication towers should be constructed to preclude the need for guy wires; where guy wires are necessary, they should be fitted with anti-collision devices.

Burying existing overhead lines that have been identified as contributing to a decline in sage grouse populations will be considered as a mitigation option.

Electric utilities (including electric cooperatives) and the Avian Power Line Interaction Committee (which includes federal agencies and state wildlife agencies), have developed a set of Best Management Practices (BMPs) to guide construction, operation, and maintenance activities by electric utilities in sage grouse habitats. These BMPs should be applied to electric utility projects as appropriate.

The Program should conduct additional research into the challenges posed to sage grouse by overhead lines and communication towers, and should bring that research to MSGOT for further consideration.

7. **Noise:** New project noise levels, either individual or cumulative, should not exceed 10 dBA (as measured by L_{50}) above baseline noise at the perimeter of an active lek from 6:00 p.m. to 8:00 a.m. during the breeding season (March 1 – July 15). The Program shall review the emerging science on this issue, including the work being conducted regarding this issue in the State of Wyoming, and bring that research to MSGOT to recommend any further adjustments in this stipulation that may be appropriate.
8. **Vegetation Removal:** Vegetation removal will be limited to the minimum disturbance required by the project. All topsoil stripping and vegetation removal in suitable habitat will occur between July 16 and March 14 in areas that are within 4.0 miles of an active lek. Initial disturbance in suitable habitat between March 15 and July 15 may be approved on a case-by-case basis.
9. **Sagebrush Eradication and Treatments:** Sagebrush eradication is considered disturbance and will contribute to the 5% disturbance factor, unless approved by MSGOT. Sagebrush treatments that maintain sagebrush canopy cover at or above 30% total canopy cover within the treated acres will not be considered disturbance. In stands with less than 30% cover, treatment should be designed to maintain or improve sagebrush habitat. Treatments to enhance sagebrush-grassland will be evaluated based upon the existing habitat quality and the functional level post-treatment. Restored sagebrush grassland habitats that provide effective cover and food for sage grouse should be recognized as part of the habitat base. This serves as an incentive for restoring and protecting converted habitats.
10. **Wildfire and Prescribed Burns:** Following wildfire, it is recommended that landowners implement a management plan consistent with the rehabilitation practices in Attachment C, with a goal of returning the area to functional sage-grouse habitat. Burnouts, backfires, and all other public safety measures are appropriate for fighting wildfires. The Program and MSGOT should stay abreast of evolving science regarding post-fire rehabilitation in order to advise landowners. This is specific to wildfire and not intended for other incentive or mitigation situations.

The Program should be consulted in advance for any proposal to conduct prescribed broadcast burns in sagebrush habitat. Prescribed broadcast burns should be prohibited unless it can be demonstrated that they will either result in no loss of habitat or be beneficial to sage-grouse habitat. In reviewing a proposal, the Program should consider

why alternative techniques were not selected, how sage grouse goals and objectives would be met by its use, including a review of the COT Report objectives, and a risk assessment to address how potential threats to sage grouse habitat would be minimized. Prescribed fire could be used to meet specific fuels objectives that would protect sage grouse habitat in Core Areas (e.g., creation of fuel breaks that would disrupt the fuel continuity across the landscape in stands where annual invasive grasses are a minor component in the understory or used as a component with other treatment methods to combat annual grasses and restore native plant communities). Any prescribed broadcast burning in known winter habitat would need to be designed to strategically reduce wildfire risk around and/or in the winter range and designed to protect winter range habitat quality.

- 11. Monitoring/Adaptive Response:** Proponents of new projects are expected to coordinate with the Program and the permitting agency to determine which leks need to be monitored and what data should be collected and reported. Generally, monitoring plans should include an evaluation of affected leks as well as reference leks for control purposes. If declines in affected leks (using a three-year running average during any five-year period relative to trends on reference leks) are determined to be caused by the project, the operator will propose adaptive management responses to increase the number of birds. If the operator cannot demonstrate a restoration of bird numbers to baseline levels (established by pre-disturbance surveys, reference surveys and taking into account regional and statewide trends) within three years, operations will cease until such numbers are achieved. In the interim, the operator, permitting agency, and the Program will create additional adaptive management efforts to restore sage grouse population numbers and baseline numbers, as well as restore project operations. Natural occurrences and their effects on sage grouse and sagebrush habitat will be considered in all cases. The MSGOT shall review the work being conducted around this issue by the State of Wyoming and the U.S. Fish and Wildlife Service, and shall recommend any further adjustments to this stipulation that may be appropriate.
- 12. Reclamation:** Except for reclamation prescribed for coal mines under MSUMRA/SMCRA and their implementing regulations and permits, reclamation should re-establish native grasses, forbs and shrubs during interim and final reclamation to achieve cover, species composition, and life form diversity commensurate with the surrounding plant community or desired ecological condition to benefit sage grouse and replace or enhance sage grouse habitat. Seed mixes should include two native forbs and two native grasses with at least one bunchgrass species. Where sagebrush establishment is prescribed, establishment is defined as meeting the standard prescribed in the individual reclamation plan. Landowners should be consulted on desired plant mix on private lands. The operator is required to control noxious and invasive weed species, including cheatgrass.
- 13. Conifer Expansion:** For government agencies managing sagebrush in Core Areas, there should be a “no net conifer expansion” policy adopted, with criteria for approve waivers. This policy can be enacted through management plans and their implementation; stipulations in permits, leases, and licenses; and similar mechanisms. Conifer removal

should be done manually, unless other methods can be shown to remove conifers without significantly impacting sagebrush. Where conifer encroachment is an issue near leks, land managers should ensure that all conifers are removed within at least 0.6 miles of leks.

- 14. Rangelands:** Rangelands on State Trust Lands will be managed in accordance with criteria to be developed by the Department of Natural Resources and Conservation, consistent with the recommendations in Attachment G, and taking into consideration the existing management practices of the lessee on surrounding non-state lands.
- 15. Existing Activities:** While existing land uses and activities are typically not subject to the Conservation Strategy (Page 4, Paragraph No. 20), existing operations may not initiate activities resulting in new surface occupancy within 0.6 miles of an active sage grouse lek. Any existing disturbance will be counted toward the calculated disturbance cap for a new proposed activity. The level of disturbance for existing activity may exceed 5%.

INDUSTRY-SPECIFIC STIPULATIONS within Core Areas

The following industry-specific stipulations are applicable in addition to the general stipulations, and in the event of conflict, these specific stipulations control.

- 1. Oil and Gas:** Well pad densities are not to exceed an average of 1 per square mile (640 acres), and suitable habitat disturbed not to exceed 5% of suitable habitat within the DDCT. As an example, the number of well pads within a 2.0 mile radius of the perimeter of an active sage grouse lek should not exceed 11, distributed preferably in a clumped pattern in one general direction from the active lek.
- 2. Mining:**
 - a. For development drilling or ore body delineation drilling on tight centers, (approximately 50'x50') the disturbance area will be delineated by the external limits of the development area. For a widely-spaced disturbance pattern (greater than 50' x 50'), the actual disturbance footprint will be considered the disturbance areas.
 - b. Sage grouse monitoring results will be reported in the mine permit annual report, and to the Program. Pre-disturbance surveys will be conducted as required by the appropriate regulatory agency.
 - c. The number of active mining development areas (e.g., operating equipment and significant human activity) are not to exceed an average of one area per square mile (640 acres) within the DDCT. An active mining development area is any single mine site or series of contiguous mine sites that will be mined in a continuous, cast-back fashion.

- d. Surface disturbance and surface occupancy stipulations will be waived when implementing underground mining practices that are necessary to protect the health, welfare, and safety of miners, mine employees, contractors and the general public. The mining practices include but are not limited to bore holes or shafts necessary to: 1) provide adequate oxygen to an underground mine; 2) supply inert gases or other substances to prevent, treat, or suppress combustion or mine fires; 3) inject mine roof stabilizing substances; and 4) remove methane from mining areas. Any surface disturbance or surface occupancy necessary to access the sites to implement these mining practices will also be exempt from any stipulation.
- e. Mining permits will include requirements for mitigation, including, where appropriate, off-site mitigation that enhances or promotes sage grouse genetic diversity, critical habitat, connectivity, and population viability.

3. Coal Mining:

- a. Coal mining operations will be allowed to continue under the terms and conditions included in permits issued by the Montana Department of Environmental Quality under the authority of the Montana Strip and Underground Mine Reclamation Act (MSUMRA) and the federal Surface Mining Control and Reclamation Act (SMCRA) and imposed by those statutes' implementing state and federal regulations.
- b. Coal mining operations are generally governed by MSUMRA and SMCRA under this Conservation Strategy, and those laws are the mechanisms by which this Conservation Strategy is applied to coal mining operations. This Strategy shall not preclude federal leasing.
- c. New coal mining operations, including expansions into or within Core Areas, requires permitting under MSUMRA/SMCRA.

- 4. **Wind Energy:** Wind energy development is excluded from sage-grouse core areas. An exception may be made if it can be demonstrated by the project proponent using the best available science that the development will not cause a decline in sage grouse populations.

GENERAL HABITAT STIPULATIONS

The health of General Habitat areas is a critical element in the effort to maintain the abundance and distribution of sage grouse in Montana. Development scenarios in General Habitat are more flexible than in Core Areas, but should still be designed and managed to maintain populations, habitats, and essential migration routes, since this Conservation Strategy requires habitat connectivity and movement between populations in Core Areas. In all General Habitat areas, the following stipulations apply:

1. **Surface Occupancy:** Within 0.25 miles of the perimeter of an active sage grouse lek there will be no surface occupancy (NSO).
2. **Surface Disturbance:** There are no specific surface disturbance limits in General Habitat. However, as a standard management practice surface disturbance should be minimized, through measures such as co-locating new and existing structures. Structures and associated infrastructure will be removed and areas reclaimed.
3. **Seasonal Use:** Activities (production and maintenance activity exempted) will be prohibited from March 15 – July 15 within 2.0 miles of an active lek where breeding, nesting, and early brood-rearing habitat is present. Discretionary maintenance and production activity will not occur between the hours of 4:00 - 8:00 am and 7:00 - 10:00 pm between March 15 – July 15. In areas used as winter concentration areas, exploration and development activity will be prohibited December 1 – March 15. Activities may be allowed during seasonal closure periods as determined on a case-by-case basis. This stipulation may be modified or waived for areas of unsuitable habitat. Any deviations from this stipulation for unsuitable habitat will be determined by the applicable permitting agency in coordination with the Program.
4. **Overhead Power Lines and Communication Towers:** New overhead power lines and communication towers will be located outside of General Habitat when possible. Where avoidance is not possible, develop a route or siting location that uses topography, vegetative cover, site distance, etc., to effectively protect identified sage grouse habitat in a cost-efficient manner. If siting of overhead power lines is necessary within 2.0 miles of important breeding, brood-rearing, and winter habitat, follow the most current version of the Avian Power Line Interaction Committee guidelines to minimize collision potential and raptor perch sites or bury a portion of the line. Site new lines in existing corridors wherever practicable.
5. **Noise:** New project noise levels, either individual or cumulative, should not exceed 10 dBA (as measured by L₅₀) above baseline noise at the perimeter of an active lek from 6:00 p.m. to 8:00 a.m. during the breeding season (March 1 – July 15). The Program shall review the emerging science on this issue, including the work being conducted regarding this issue in the State of Wyoming, and bring that research to MSGOT to recommend any further adjustments in this stipulation that may be appropriate.
6. **Vegetation Removal:** Vegetation removal as part of permitted activities will be limited to the minimum disturbance required by the project.
7. **Sagebrush Treatments:** Treatments to enhance sagebrush-grassland will be evaluated based upon the existing habitat quality and the functional level post-treatment. Restored sagebrush grassland habitats that provide effective cover and food for sage grouse should be recognized as part of the habitat base. This serves as an incentive for restoring and protecting converted habitats.

8. **Wildfire and Prescribed Burns:** Suppression of wildfire in General Habitat will be emphasized, recognizing that other local, regional, and national suppression priorities may take precedent. Public and firefighter safety remains the number one priority for all fire management activities. The Program should be consulted in advance for any proposal to conduct prescribed burns in sagebrush habitat. Prescribed burns should be prohibited unless it can be demonstrated that they will either result in no loss of habitat or be beneficial to sage grouse habitat. Burnouts, backfires, and all other public safety measures are appropriate for fighting wildfires.
9. **Reclamation:** Reclamation should re-establish native grasses, forbs, and shrubs during interim and final reclamation. The goal of reclamation is to achieve cover, species composition, and life form diversity commensurate with the surrounding plant community or desired ecological condition to benefit sage grouse and replace or enhance sage grouse habitat to the degree that environmental conditions allow. Landowners should be consulted on the desired plant mix on private lands. The operator is required to control noxious and invasive plant species, including cheatgrass (*Bromus tectorum*) and Japanese brome (*Bromus japonicus*).
10. **Rangelands:** When possible, rangelands on State Trust Lands should be managed consistent with the recommendations in Attachment G, taking into consideration the existing management practices of the lessee on surrounding non-state lands.
11. **Oil and Gas, Mining:** Encourage development in incremental stages to stagger disturbance and design schedules that include long-term strategies to localize disturbance and recovery within established zones over a staggered time frame. Remove facilities and infrastructure and reclaim when use is completed, including for exploration activities.
12. **Other Mining:**
- a. Sage grouse monitoring results will be reported in the mine permit annual report, and to the Program. Pre-disturbance surveys will be conducted as required by the appropriate regulatory agency.
 - b. Surface occupancy stipulations will be waived when implementing underground mining practices that are necessary to protect the health, welfare, and safety of miners, mine employees, contractors and the general public. The mining practices include but are not limited to bore holes or shafts necessary to: 1) provide adequate oxygen to an underground mine; 2) supply inert gases or other substances to prevent, treat, or suppress combustion or mine fires; 3) inject mine roof stabilizing substances; and 4) remove methane from mining areas. Any surface disturbance or surface occupancy necessary to access the sites to implement these mining practices will also be exempt from any stipulation.
 - c. Mining permits will include requirements for mitigation, including, where appropriate, off-site mitigation that enhances or promotes genetic diversity, critical habitat, connectivity, and population viability.

13. Coal Mining:

- a. Coal mining operations are generally governed by MSUMRA and SMCRA under this Conservation Strategy, and those laws are the mechanisms by which this Conservation Strategy is applied to coal mining operations. This Strategy should not preclude federal leasing.
- b. Conservation measures will be developed for coal mining operations on a case-by-case basis via the terms and conditions included in permits issued by MDEQ under the authority of the Montana Strip and Underground Mine Reclamation Act (MSUMRA) and in compliance with the federal Surface Mining Control and Reclamation Act (SMCRA).

- 14. Wind Energy:** New wind energy developments are not recommended within 4.0 miles of the perimeter of active sage grouse leks, unless it can be demonstrated that the development cannot reasonably meet this setback and will not cause a decline in sage grouse populations. Any development must adhere to the *U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines*, and project developers should work cooperatively with agencies, utilities, and landowners to use topography, vegetative cover, site distance, etc. to effectively protect identified sage grouse habitat.

CONNECTIVITY HABITAT STIPULATIONS

Connectivity habitat includes those areas that provide important linkages among populations of sage grouse, particularly between Core Areas or priority populations in adjacent states and across international borders. Only one sage grouse connectivity area has been identified (Montana-Saskatchewan Connectivity Area in Valley County). Research continues, based on genetics work, to better define the composition of other possible priority Connectivity Areas. MSGOT shall study and recommend the stipulations that are necessary in Connectivity areas to prevent a decline in sage grouse populations. In the interim, the Valley County Connectivity area shall be subject to the stipulations for General Habitat.

Attachment E

Special Management Areas

A petition may be filed with the Program to create a Special Management Area (SMA), where planned land uses or activities associated with valid rights cannot be implemented after evaluation against this Conservation Strategy.

1. Petitions may be submitted to the Program to create a new SMA. The Petition shall be submitted by the project developer (holder of valid rights).
2. The Petition shall contain: a geographic description of the area proposed to be created and a detailed description of the number and location of the sage grouse lek(s) within the area; an evaluation of how the creation of the proposed SMA would impact the Core Area function relative to the sage grouse; and, an explanation of the rationale for the creation of the SMA.
3. The Petitioner shall submit a proposed conservation plan (including plans for off-set mitigation) and shall work in cooperation with both the Program and reviewing/permitting agency to develop an acceptable plan to be submitted to the MSGOT for review. The conservation goal of the plan is to maintain and restore seasonal sage grouse habitats that support viable sage grouse populations. As industrial activities subside, these populations are expected to expand into vacant functional habitats.
4. All applicable Core Area stipulations will apply to the SMA until the conservation plan has been recommended for approval by MSGOT and subsequently approved by the appropriate agency. The conservation plan will follow the mitigation framework developed by MSGOT and shall include a noise abatement stipulation, a strategy for restoration/reclamation within the Core Area (which results in a long-term reduction in surface disturbance), a proposal for off-set mitigation, and a monitoring component using peer-reviewed scientific methods that is designed to monitor sage grouse populations, the impact of development, and restoration efforts on sage grouse populations, and provide feedback if adjustments are needed in the conservation plan to reduce impacts on sage grouse populations.
5. In evaluating whether to recommend approval of the creation of the new SMA, the MSGOT shall consider how the creation of an SMA will impact the habitat and population of sage grouse both within the Core Area and on a statewide basis.
6. MSGOT shall evaluate the need for a cap on the number of sage grouse impacted by SMAs (i.e., the population of sage grouse impacted by all SMAs may not exceed a specific population, measured by the number and size of leks impacted or a similar population metric), and shall make a recommendation in this regard.
7. The MSGOT must develop a process where designated SMAs can be reclassified. This process should be based on metrics measuring the quantity and quality of sage grouse

habitat restored and/or reclaimed, as well as the documented use of that habitat by sage grouse.

MSGOT should recommend such additional requirements and objectives as necessary.

Attachment F

EXEMPT ACTIVITIES

The following existing land uses and landowner activities are exempt from compliance with this strategy:

- a. Existing animal husbandry practices (including branding, docking, herding, trailing, etc.).
- b. Existing farming practices (excluding conversion of sagebrush/native range to cropland agriculture).
- c. Existing grazing operations that meet rangeland health standards or utilize recognized rangeland management practices (for example, allotment management plans, Natural Resource and Conservation Service grazing plans, prescribed grazing plans, etc.).
- d. Construction of agricultural reservoirs and aquatic habitat improvements less than 10 surface acres and drilling of agriculture and residential water wells (including installation of tanks, water windmills, and solar water pumps) more than 0.6 miles from the perimeter of a lek in Core Areas and more than 0.25 miles from a lek in General Habitat or Connectivity Areas. Within 0.6 miles of a lek in Core Areas and within 0.25 miles of a lek in General Habitat or Connectivity Areas, no review is required if construction does not occur March 15 – July 15 and construction does not occur on the lek. All water tanks shall have bird escape ramps.
- e. Agricultural and residential electrical distribution lines more than 0.6 miles from a lek in Core Areas and 0.25 miles from a lek in General Habitat or Connectivity Areas. Within 0.6 miles of a lek in Core Areas and within 0.25 miles of a lek in General Habitat or Connectivity Areas, no review is required if construction does not occur between March 15 – July 15 and construction does not occur on the lek. Raptor perching deterrents shall be installed on all poles within 0.6 or 0.25 miles, respectively, from leks, if they are proven to be effective according to Avian Power Line Interaction Committee guidance. Other management practices, such as vegetation screening and anti-collision measures, should be applied to the extent possible. Routine maintenance of existing power lines conducted between July 16 – March 14 is also an exempt activity.
- f. Pole fences. Wire fences if fitted with visibility markers where high potential for sage grouse collisions has been documented.
- g. Irrigation (excluding the conversion of sagebrush/grassland to new irrigated lands). Tribal lands under existing and future state water compacts.
- h. Spring development if the spring is protected with fencing and enough water remains at the site to provide mesic (wet) vegetation.

- i. Herbicide and pesticide use except for in the control of sagebrush and associated native forbs. Grasshopper/Mormon cricket control following Reduced Agent-Area Treatments (RAATS) protocol.
- j. County road maintenance.
- k. Production and maintenance activities associated with existing oil, gas, communication tower, and power line facilities in compliance with approved authorizations.
- l. Low impact cultural resource surveys.
- m. Emergency response.

Attachment G

RECOMMENDATIONS FOR RANGE AND DISEASE (West Nile) MANAGEMENT

The following recommendations outline voluntary management practices for private lands to maintain or enhance sage grouse populations and habitats. Whenever possible, adherence to these recommendations is encouraged.

Range Management

Livestock grazing is the most widespread type of land use across the sagebrush biome. Although improper livestock management, as determined by local ecological conditions, may have negative impacts on sage grouse seasonal habitats, proper livestock management is a critical tool for providing and maintaining high quality sage grouse habitat. Range management structures and fences necessary for proper grazing management can also be placed or designed to be neutral or beneficial to sage grouse. The following recommendations are intended to support grazing management as a tool for providing quality sage grouse habitat.

- a. Landowners in sage grouse Core and Connectivity Areas and General Habitat are encouraged to adopt the Sage grouse Initiative grazing practices and range management recommendations, including:
 1. Rotating livestock to different pastures, while resting others to establish a diversity of habitat types.
 2. Changing seasons of use within pastures to ensure all plants have the ability to reproduce.
 3. Leaving residual cover (grass from the past season) to increase hiding and nesting cover for sage grouse.
 4. Managing the frequency and intensity of grazing to sustain native grasses, wildflowers, and shrubs.
 5. Managing livestock access to water to ensure healthy livestock and healthy watersheds.
- b. Range management structures should be designed and placed to be neutral or beneficial to sage grouse.
- c. Structures that are currently contributing to negative impacts to either sage grouse or their habitats should be removed or modified to remove the threat.
- d. Mark fences that are in high risk areas for collision with permanent flagging or other suitable device to reduce sage grouse collisions.
- e. Identify and remove unnecessary fences.

- f. Placement of new fences and livestock management facilities (including corrals, loading facilities, water tanks, and windmills) should consider their impact on sage grouse and, to the extent practicable, be placed at least 0.6 miles from active leks.

Disease Management (West Nile virus)

West Nile virus was a new source of mortality for sage grouse, particularly in low and mid-elevation populations, from 2003 – 2007. If there is a West Nile virus outbreak that significantly reduces sage grouse populations, the MSGOT should look at a local site-specific strategy for enhancing the sage grouse population. Elimination of anthropogenic-created habitat for the mosquito vectors of West Nile virus is an important conservation measure for sage grouse, and the following recommendations are intended to further this objective.

- a. Construct ponds to reduce prevalence of mosquitoes that transmit West Nile virus consistent with current BLM guidance (see, A Report on National Sage grouse Conservation Measures, Appendix C: BMPs for how to make a pond that won't produce mosquitoes that transmit West Nile virus).
- b. Manage ponds to reduce prevalence of mosquitoes that transmit West Nile virus.
- c. Other management actions to reduce prevalence of mosquitoes that transmit West Nile virus include erection of bat houses, and managing containers, wood piles, and tire storage facilities that harbor breeding or overwintering mosquitoes and/or larvae.

Attachment H

DEFINITIONS

Suitable Habitat – is within the mapped occupied range of sage grouse, and:

1. Generally has 5% or greater canopy cover of sagebrush, where “sagebrush” includes all species and sub-species of the genus *Artemisia*. This excludes mat-forming sub-shrub species such as *A. frigida* (fringed sagewort) and *A. pedatifida* (birdfoot sage). Sagebrush canopy cover may be less than 5% when complimented by other shrubs suitable for sage grouse cover requirements; or
2. Is moist meadow containing forbs suitable for brood-rearing within 300 yards of suitable sagebrush cover (as defined above). Introduced species such as alfalfa may be very important on these sites where native forbs are not available.

Vegetation monitoring to determine habitat suitability will follow the Habitat Assessment Framework, available at

http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications_Directorate/public_affairs/sage_grouse_planning/documents.Par.23916.File.dat/SG_HABITATASESSMENT0000669.pdf

Unsuitable Habitat – is land within the historic range of sage grouse that did not, does not, nor will not provide sage grouse habitat due to natural ecological conditions such as badlands or canyons.

Surface Disturbance – includes any conversion of formerly suitable habitat to grasslands, croplands, mining, well pads, roads, or other physical disturbance that renders the habitat unusable for sage grouse.

Lek Status -

- Active - Data supports existence of lek. Supporting data defined as 1 year with 2 or more males lekking on site followed by evidence of lekking within 10 years of that observation.
- Inactive - A confirmed active lek with no evidence of lekking for the last 10 years. Requires a minimum of 3 survey years with no evidence of lekking during a 10 year period.
- Extirpated - Habitat changes have caused birds to permanently abandon a lek as determined by the biologists monitoring the lek.
- Unconfirmed - Possible lek. Sage grouse activity documented. Data insufficient to classify as active status.

Valid Right(s) – legal “rights” or interest that are associated with land or mineral estate and that cannot be divested from the estate until that interest expires, is relinquished, or acquired.

Habitat Exchange - an efficient, effective approach to wildlife conservation in America, developed in partnership by private landowners, industry, environmental groups, academics and

government. In a Habitat Exchange, landowners and industry are given financial incentives to conserve wildlife habitat. Landowners benefit by earning revenue from credit sales and developers benefit by meeting conservation objectives or regulatory requirements with less red tape.

Appendix C: Draft Conservation Easement Agreement

RECORD AND RETURN TO:
The Nature Conservancy
32 South Ewing St, Suite 215
Helena, Montana 59601

Beaverhead County

**DEED OF CONSERVATION EASEMENT
(Bannack-Horse Prairie-Grasshopper Creek (Hansen Livestock Co.))**

This Deed of Conservation Easement (**Conservation Easement**) is made on _____, 2018 (the **Conservation Easement Date**) by Hansen Livestock Company, a Montana corporation, with an address of 4100 Medicine Lodge Road Dillon, MT 59725-9652 (**Landowner**), and The Nature Conservancy, a District of Columbia nonprofit corporation, having a local address of 32 South Ewing Street, Suite 215, Helena, Montana 59601 (**Holder**). Landowner, Holder, the State of Montana on behalf of the Greater Sage Grouse Stewardship Program, and 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**), acknowledge that the Conservation Easement is acquired by Holder to protect grazing uses and related conservation values by restoring and conserving the Property (as defined below). This Conservation Easement gives the United States certain rights as outlined herein for the purpose of forever conserving the grazing uses of the Property and its value for resource preservation and as open space. Additionally, this Conservation Easement gives the State of Montana certain rights as outlined herein for the purpose of protecting sage grouse habitat.

Exhibits to this Conservation Easement include the following:

- Exhibit A -- Property Description**
- Exhibit A-1 -- Map of Property, Building Envelope and Cultivated Fields**
- Exhibit A-2 -- Building Envelopes**

RECITALS

- A. **PROPERTY.** Landowner is the owner in fee simple of the property legally described in **Exhibit A** which consists of approximately 13,535 acres located in Beaverhead County, Montana (the **Property**).
- B. **MISSION.** The mission of The Nature Conservancy is to conserve the lands and waters on which all life depends.
- C. **QUALIFIED ORGANIZATION.** Holder is a qualified organization under MCA Sections 76-6-104(5) and 76-6-204, organized to conserve land for open space purposes, and is a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (hereinafter the “Code”) qualified to receive and hold conservation easements.
- D. **AUTHORIZING STATUTE.** The State of Montana has authorized the creation of conservation easements pursuant to Section 76-6-101, et seq., Montana Code Annotated, and Landowner and Holder wish to avail themselves of the provisions of that law without intending that the existence of this Conservation Easement be dependent on the continuing existence of such law.
- E. **USE OF THE PROPERTY.** The Property may continue to be used for ranching and agricultural purposes. The Conservation Values (defined below) of the Property have not been and are not likely to be adversely affected to any substantial extent by continuing to allow the uses of the Property which are authorized under this Conservation Easement. Also the Conservation Values of the Property have not been and are not likely to be adversely affected to any substantial extent by limited development of the Property through the use and maintenance and/or construction of those Buildings and Structures which presently exist on the Property, as permitted herein or by the limited additional development which is authorized under this Conservation Easement.
- F. **FEDERAL FUNDING.** The Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq., facilitated and provided funding for the purchase of the Conservation Easement on the Property for the purpose of protecting grazing uses and related Conservation Values by restoring and conserving the Property.
- G. **TNC WHOLE SYSTEM.** The Nature Conservancy has identified The Greater Yellowstone Ecosystem and the adjacent High Divide as a significant whole system representing a vast expanse of biologically diverse intact native ecosystems that link the Greater Idaho Wilderness Complex to the west and the Crown of the Continent Whole System to the north and together support ecosystem resilience and diversity despite a changing climate. The Protected Property is located within the High Divide and this Conservation Easement will protect a key element of the larger whole system.
- H. **SAGE GROUSE.** 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, sage grouse habitat on the Property used by sage grouse for both breeding and nesting. In 2017, three (3) active sage grouse leks were located on the Property and an additional four (4) where located within a six (6) mile radius of the Property; and,
- b. Protecting sage brush grassland and other grazing uses by limiting non-agricultural uses of the 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

NOW, THEREFORE, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein, and the sum of Ten Dollars(\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in part as an absolute and unconditional gift, Landowner hereby gives, grants, bargains, sells, warrants as provided herein and conveys unto Holder a Conservation Easement in perpetuity over the Property of the nature and character as follows, and Landowner and Holder and their respective heirs, successors, agents, assigns, lessees and any other person claiming under it must comply with all terms and conditions of this Conservation Easement including the following:

1. PURPOSE.

The purpose of this Conservation Easement is to preserve and protect in perpetuity the Conservation Values (defined below) (the **Conservation Purpose or Purpose**).

The Property is a natural area that consists of "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii) and applicable regulations. Specifically, the Property consists of sagebrush steppe and native rangeland interspersed with montane forest, wet meadow, riparian and wetland, and freshwater streams which provide habitat for a broad range of native species including: Greater sage-grouse, westslope cutthroat trout, golden eagle, ferruginous hawk, long-billed curlew, sandhill cranes, Brewer's sparrow, pygmy rabbit, pronghorn antelope, moose, gray wolf, wolverine, grizzly bear, and numerous species of songbirds.

The attributes of the Property described in this Paragraph are collectively referred to in this Conservation Easement as the **Conservation Values**.

- 2. EASEMENT DOCUMENTATION REPORT.** The parties acknowledge that baseline conditions of the Property are set forth in an Easement Documentation Report (the **Report**) and that the Report has been approved in writing by Holder and Landowner. A copy of the Report is on file with Landowner and is maintained in the files of Holder at their respective addresses for notices set forth below. A copy shall also be filed with the State of Montana. The Report contains (a) an accurate representation of the natural resources and physical condition of the Property at the time of this conveyance, (b) a description of the current and historical uses of the Property, and (c) a statement signed by the Landowner and a representative of Holder as required by Treasury Regulations §1.170A-14(g)(5)(i). The Report may be used to determine compliance

with, and to enforce, the terms of this Conservation Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination or for enforcement of this Conservation Easement. In case of any conflict or inconsistency between the terms of the Conservation Easement and the Report, the terms of this Conservation Easement shall prevail. The Holder shall provide a copy of the Report to the Landowner's successors in title upon written request.

3. **AGRICULTURAL LAND EASEMENT PLAN**. As required by section 16 U.S.C. 3865a agricultural production and related uses of the Property are subject to an ALE Plan, as approved by NRCS to promote the long-term viability of the land to meet the Conservation Purpose. The ALE Plan must also be approved by Landowner and Holder. Landowner agrees the use of the Property will be subject to the ALE Plan on the Property.

This ALE Plan is incorporated by reference and must not include any provisions inconsistent with the Conservation Purpose of this Conservation Easement. The Holder and Landowner agree to update the ALE Plan in the event the agricultural uses of the Property change. A copy of the current ALE Plan is kept on file with the Holder and provided to the State of Montana. For purposes of this **Paragraph 3**, the agricultural uses of the Property shall be deemed to have changed only if such uses on the Property change substantially, as determined by Holder, Landowner, and NRCS.

Holder must take all reasonable steps to secure compliance with the ALE Plan's enforceable requirements. In the event of substantial or ongoing noncompliance with the enforceable requirements of the ALE Plan, if any, or the requirement to update the ALE Plan, NRCS may notify Holder. NRCS will give Holder and Landowner a reasonable amount of time, not to exceed 180 days to take corrective action. If Holder fails to enforce the terms of the Conservation Easement, including, but not limited to compliance with the enforceable requirements of the ALE Plan, if any, the United States or the State of Montana may exercise their right of enforcement.

4. **PROPERTY USES**. The following uses and practices by Landowner are not an exhaustive recital of uses and practices on the Property. Certain of these uses and practices are identified as being subject to specified conditions or to the requirement of and procedures for prior approval by Holder and procedures for such prior approval are provided below. Any activities inconsistent with the Purposes of the Conservation Easement are prohibited.

- 4.1 **Agricultural and Ranch Use**. The provisions of this Conservation Easement limit the types of agricultural operations that can occur on the Property to those that restore or conserve grassland, and protect grazing uses and related Conservation Values and the Conservation Purposes of this Conservation Easement, so long as they are consistent with the terms, conditions and restrictions set forth elsewhere in this Conservation Easement.

- 4.1.1 **Agricultural Production**. The production, processing, and marketing of livestock and agricultural products compatible with restoration and conservation of grassland, grazing uses, and related conservation values is allowed provided it is conducted in a manner consistent with the terms of the ALE Plan described in Paragraph 3, above.

- 4.1.2 **Grassland Uses of the Property**. Landowner is allowed to graze and conduct common grazing practices, including cultural practices, consistent with the

provisions and conservation purposes of this Conservation Easement. The term "common grazing practices" means those practices customary to the region where the Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Property. Haying, including fertilizing, seeding, and harvesting for hay and non-crop seed production, is permitted only on those areas of the Property currently or previously cultivated or hayed, hereafter referred to as "Cultivated Fields", as depicted on Exhibit A-1. Any considerations for possible impacts of haying on nesting birds of concern and related restrictions shall be addressed in the ALE Plan for the Property.

4.2 Construction of Buildings and Structures. Construction or placement of any Buildings or Structures is prohibited except as follows:

- 4.2.1 Buildings, Structures and Building Envelope. The construction, maintenance, repair, remodel, or replacement of new Buildings or new Structures consistent with the permitted uses as provided herein, or the maintenance, repair, remodel, relocation or, in the event of its destruction, reconstruction, replacement, or rebuilding of existing Buildings and Structures as documented in the Report is permitted: provided that (i) all new or relocated Buildings, Structures and improvements must be located within the Building Envelope as hereinafter defined. The **Building Envelope** shall mean the building envelope containing a total of approximately 3 acres as shown on **Exhibit A-1** and more specifically described on **Exhibit A-2**, which Exhibits are appended to and made a part of the Conservation Easement.

The boundaries and location of the Building Envelope may be adjusted if Holder and the Chief of NRCS provide prior written approval of the adjusted boundaries and location, provided, however that the Building Envelope (i) shall not be located in any riparian area or irrigated hay meadow, (ii) shall have minimal impacts to grazing operations, and (iii) shall be located in a manner that does not diminish or impair the Conservation Values or the grazing uses and viability of the Property. Such approval may be withheld in the sole and absolute discretion of Holder and the Chief of NRCS. The Building Envelope may not increase in size, and the adjusted Building Envelope must provide equal or greater protection of the grassland, grazing uses and related Conservation Values of the Property.

Any existing Building documented in the Report that is located outside of the Building Envelope, may be replaced and/or rebuilt with another of similar size in its current footprint. Similarly, any existing Structure documented in the Report that is located outside of the Building Envelope may be replaced and/or rebuilt with another of similar size in its current footprint.

- 4.2.2 Minor Agricultural Structures. Agricultural Structures that neither individually nor collectively have an adverse impact on the grassland, grazing uses, and related Conservation Values of the Property may be built outside of the Building Envelope with prior written approval of Holder provided that the agricultural Structures are consistent with the ALE Plan described in **Paragraph 3** and are otherwise consistent with the Conservation Purposes of this Conservation

Easement. Such new minor agricultural Structures shall not (i) impair sage grouse habitat or other Conservation Values as determined by Holder in its sole and absolute discretion, (ii) no single structure may exceed 1,000 sq. ft. in exterior footprint, or (ii) be used as overnight accommodations. Holder shall notify the State of Montana of any approvals made under this section.

4.2.3 Easements and Utilities. The granting or modification of easements for utilities is prohibited when the utility will adversely impact the protection of the grazing uses, grassland conservation value, sage grouse, and related Conservation Values of the Property as determined by the Holder, in consultation with the Chief of NRCS, in their sole and absolute discretion. Utilities to serve approved Buildings or Structures, including on-farm energy structures allowed in **Paragraph 4.2.4** that neither individually nor collectively have an adverse impact on the grassland, grazing uses and related Conservation Values of the Property may be built with prior written approval of Holder, provided that the utilities are consistent with the ALE Plan described in **Paragraph 3**. Any disturbed areas shall be revegetated and restored to a natural condition with native vegetation as soon as is practicably possible after completion of any utility construction permitted by this Conservation Easement.

4.2.4 Renewable Energy. Renewable energy production is allowed for the primary purpose of generating energy for the agricultural and residential needs of the Property. Renewable energy sources on the Property must be built and maintained within impervious surface limits set forth in **Paragraph 4.20**, with minimal impact on the sage grouse and other Conservation Values of the Property and consistent with the Purposes of the Conservation Easement. Any disturbed areas shall be revegetated and restored to a natural condition with native vegetation as soon as is practicably possible after completion of any utility construction permitted by this Conservation Easement. The construction, maintenance, repair, remodel or replacement of minor Structures related to the renewable energy production described in this Paragraph is permitted provided that nothing in this provision shall be construed as permitting the construction or establishment of a commercial wind farm or commercial solar energy generation facility. Such new minor renewable energy Structures shall not (i) impair the Conservation Values, and (ii) be used as overnight accommodations.

4.2.5 Water Structures. Notwithstanding anything herein to the contrary, for the purposes of this **Paragraph 4.2** the term “**Structure(s)**” shall not be deemed to include water related structures, including without limitation new or existing dikes, mainlines, levees, ditches, pasture irrigation, irrigation wells, livestock watering, and irrigation facilities.

4.3 Fences. Existing fences may be maintained and replaced and new fences installed if they are necessary for agricultural operations on the Property or to mark boundaries of the Property only in accordance with the ALE Plan and must be consistent with species management requirements, if applicable. Any new fencing shall not exclude or unduly restrict wildlife movement or otherwise adversely affect sage grouse or other Conservation Values; provided, however, that fencing may be built to specifically exclude wildlife from residential yard areas, gardens, haystacks, cultivated fields, newly-seeded areas, and temporary vegetative restoration areas.

4.4 Roads. A single new improved road may be constructed if it is within impervious surface limits set forth in **Paragraph 4.20**, approved in advance by Holder, and necessary to access the Building Envelope and/or any permitted Buildings or Structures located within the Building Envelope. Maintenance of existing roads documented in the Report is allowed, however existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Holder, and necessary to carry out the agricultural operations or other allowed uses on the Property. If an existing road is unpaved, it shall only be maintained and repaired without paving, provided, however, that Landowner may pave existing roads when such paving is done to provide an ecological benefit to the Property such as erosion prevention, and Landowner has obtained the Holder's prior written approval. The granting or modification of easements for roads is prohibited.

4.5 Subdivision.
Separate conveyance of a portion of the Property or division or subdivision of the Property is prohibited.

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

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

4.6 Industrial or Commercial Activities. Industrial or commercial activities on the Property are prohibited except for the following, which shall be permitted only to the extent otherwise consistent with the provisions and Purpose of this Conservation Easement:

4.6.1 agricultural production and related uses conducted as described in the ALE Plan;

4.6.2 the sale of excess power generated in the operation of alternative energy Structures and associated equipment or other energy Structures that Holder approves in writing as being consistent with the Conservation Purposes of this Conservation Easement;

- 4.6.3 temporary or seasonal outdoor activities or events that do not harm the grazing uses or grassland restoration, and related Conservation Values of the Property herein protected;
 - 4.6.4 commercial enterprises related to agriculture or forestry, including but not limited to agritourism, processing, packaging and marketing of farm or forest products, farm machinery repair , and small-scale farm wineries; and
 - 4.6.5 small-scale commercial enterprises compatible with agriculture or forestry, including, but not limited to caf  s, shops, and studios for arts or crafts; provided that such customary rural enterprises are conducted in permitted Buildings and Structures.
 - 4.6.6 small-scale commercial recreational, educational, hunting and fishing activities meeting the requirements set forth in Paragraphs 4.7 and 4.8 below.
- 4.7 Recreational and Educational Activities. Recreational and educational activities that are both non-developed and non-consumptive are permitted if they do not negatively affect the grassland, grazing uses and related Conservation Values and are consistent with the Conservation Purpose of the Conservation Easement. Recreational uses such as hunting or fishing in accordance with **Paragraph 4.9** below, horseback riding, cross-country skiing, bicycling, other traditional non-motorized recreational activities, dispersed camping, picnicking, bird watching, wildlife observation, and similar recreational activities are permitted, provided that such activities require no prohibited infrastructure, surface alteration, or development of or on the Property and provided that such activities do not negatively affect the grassland, grazing uses, and related Conservation Values or materially diminish or impair the Conservation Values of the Property and are consistent with the Conservation Purpose of the Conservation Easement.
- 4.8 Hunting and Fishing. Landowner, Landowner’s invitees, licensees, and lessees may hunt and fish on the Property, consistent with the Conservation Purpose, provided that all such hunting and fishing are conducted in compliance with all state and federal laws and regulations and the terms of this Conservation Easement. Hunting and fishing uses permitted by this Paragraph may not require or result in any surface alteration or other development or disturbance of the Property, except that Landowner may erect temporary and portable structures on the Property in association with such hunting activities. For the purpose of this Conservation Easement, “**temporary and portable structures**” are defined as those that are removed seasonally and do not require surface alteration of the Property.
- 4.9 Vehicles. All permitted vehicle use shall be conducted in a manner that minimizes soil erosion, soil compaction, or the interference with vegetation or the natural habitat of animal species or other Conservation Values on the Property. There shall be no recreational use and operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles (ATVs) or other types of motorized recreational vehicles on the Property, except within the designated Building Envelope or on roadways existing at the time of this Conservation Easement or new roadways permitted by this Conservation Easement, or in conjunction with activities otherwise allowed by this Conservation Easement, as described below. Use of cars, trucks, ATVs, motorcycles, snowmobiles, and other ranch

vehicles for ranching, agricultural, recreation, or hunting purposes allowed by this Conservation Easement off of existing roads is permitted as long as such uses do not negatively affect the grassland, grazing uses and related Conservation Values. The temporary use of vehicular campers owned by Landowner or guests on the Property is permitted as appropriate to accommodate normal visitation. Parking of vehicles related to the ranching, residential, and other permitted uses of the Property is permitted.

- 4.10 Hazardous and Toxic Materials. The dumping or other disposal of toxic and/or Hazardous Materials (as such term is defined in **Paragraph 20.3** below) on the Property is prohibited. The storage of Hazardous Materials on the Property is also prohibited, except as lawfully stored and used in necessary quantities exclusively for use on the Property in accordance with applicable state and federal regulations and in connection with the permitted uses set forth herein.

Notwithstanding anything in this Conservation Easement to the contrary, this prohibition does not make Holder an owner of the Property, nor does it permit Holder to control any use of the Property by Landowner which may result in the storage, dumping or disposal of Hazardous Materials; provided, however, that Holder may bring an action to protect the Conservation Values of the Property, as described in this Conservation Easement.

- 4.11 Dumps. Accumulation or dumping of trash, refuse, sewage, or junk is not allowed on the Property, provided however that a metal scrap pile or other piles of typical ranch/farm related materials intended to be re-used on the Property are not considered refuse. This restriction will not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products, or agricultural byproducts generated or used on the Property. Notwithstanding the foregoing, Landowner reserves the right to continue to use only the one (1) site as documented in the Report (the "Ranch Dump Site") for the following: (a) continued disposal of farm-related trash and refuse produced on the Property so long as such materials are not toxic or Hazardous Materials, and (b) continued disposal of inoperable farm-related trucks, vehicles, machinery, and implements, provided that (i) insofar as reasonably possible without complete disassembly and cleaning, all toxic or Hazardous Materials, excepting tires, are first drained or removed from said inoperable equipment, and (ii) said inoperable equipment had been used by Landowner on the Property and has not been brought onto the Property for the sole purpose of disposal. Landowner further agrees that said farm-related trash, refuse, and inoperable equipment may be buried and that the Ranch Dump Site as documented in the Report and shall be limited in size to no more than one (1) acre at any given time.

- 4.12 Biocides, Biological Agents, and Fertilizers. Application of herbicides, pesticides, fungicides, biocides, defoliant, chemical fertilizers, or other chemicals is prohibited on the Property except as follows:

- 4.12.1 Biocides. Herbicides, pesticides, fungicides, biocides and defoliant (collectively, "Biocides") may be used to manage and/or control noxious weeds, invasive plants, non-native plants, pathogens, or pests on the Property, for [agricultural, forestry, and personal gardening uses using accepted farming, silviculture, or range management practices, provided the use of such Biocides is designed to minimize the impact on the Conservation Values of the Property.

Any Biocide use as described in this Paragraph shall be: (i) in compliance with all applicable federal, state, and local statutes and regulations, (ii) in those amounts and with a frequency of application that constitutes the minimum necessary for control; (iii) applied consistent with label instructions, and (iv) consistent with the Conservation Values as determined by Holder. Notwithstanding the foregoing, there shall be no indiscriminate broadcast spraying of Biocides. Without the prior written approval of Holder, Biocides may be used by spot applications (including by gun or boom nozzles) only. Broadcast spraying of Biocides, including aerial applications, may be permitted with prior written approval by the Holder, provided that, at a minimum, the following conditions are met: (a) spot treatment is not practical because of the severity of the infestation or infection; (b) timing of application is scheduled to minimize damage to non-target species; and (c) type of Biocide used has the least impact to non-target species while still being effective in controlling target species or pathogens. The Holder shall have sole and absolute discretion in granting or denying broadcast spraying of Biocides.

4.12.2 Biological Agents. Use of biological weed and insect control agents is permitted, subject to prior written approval of Holder.

4.12.3 Fertilizers. The use of chemical and/or organic fertilizers on lands currently or previously used as hayfields, referred to herein as Cultivated Fields, is permitted, provided that use of fertilizers, including, but not limited to, the amount, frequency, and manner of application, shall be in accordance with the labeling instructions and all applicable laws and regulations, and that fertilizer use shall not injure or destroy the naturally occurring ecosystem, beyond the effects associated with the intended use of such fertilizers, as used in reasonable farming practices.

4.13 Introduction of Species. The intentional introduction of species that are not native to the ecological systems in Montana outside the Building Envelopes and Cultivated Fields is prohibited, except as approved by Holder or pursuant to an approved Restoration Plan as described in Paragraph 4.18. Notwithstanding the foregoing, grazing and pasturing of livestock is permitted, and the raising and harvesting of hay on those areas that have been previously cultivated, referred to as Cultivated Fields and depicted in Exhibit A-1 herein, is permitted subject to any limitations set forth in the ALE Plan.

4.14 Timber and Woody Vegetation Management. 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 Property and is otherwise consistent with the Conservation Purposes of this Conservation Easement as determined by Holder in its sole and absolute discretion. At the time Landowner exercises the rights granted in this **Paragraph 4.14**, the forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, approved by Holder.

A forest management plan will not be required for the following allowed non-commercial activities: (a) cutting of trees for the construction of allowed roads, utilities, Buildings and Structures on the Property, (b) cutting of trees for trail

clearing, (c) cutting of trees for domestic use as firewood, or for other domestic uses by Landowner, (d) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (e) removal of invasive species.

This section shall not limit Grantor or Holder's right to propose a timber removal project to restore sage grouse habitat.

Holder will notify the State of Montana of any forest management plan prepared under this section.

4.15 Cutting, Removing, Destruction or Conversion of Native Vegetation.

4.15.1 Cutting, removing, or destruction of native vegetation is prohibited except to the extent necessary to allow for uses and activities permitted under this Conservation Easement, such as grazing, haying, and restoration activities, such as prescribed fire, permitted pursuant to an approved Restoration Plan as described in **Paragraph 4.18**. Landowner shall have the right and the responsibility to control non-native plants and/or invasive or noxious plants as identified by the agency having jurisdiction over the same, subject to the provisions of this Conservation Easement with regard to biocides and biological agents. Except as permitted under **Paragraph 4.14** (Timber and Woody Vegetation Management), there shall be no excavation and/or removal of native plants on or from the Property, except for those designated as noxious weeds or considered to be an invasive woody plant species, or when, based on consultation with and written permission from the Holder (or as approved in a Restoration Plan as described in **Paragraph 4.18**), it is agreed that excavation and/or removal of other types of native plants would enhance the Conservation Values of the Property. Grazing and uprooting of native plants by livestock as permitted by this Conservation Easement shall not be considered excavation or removal

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

4.15.2.1 Gardening for personal use and residential landscaping are permitted within the Building Envelope.

4.15.2.2 Pursuant to the terms and conditions of a Restoration Plan (as that term is defined in **Paragraph 4.18**), plowing or other cultivation is permitted where it may be necessary for restoration of the Conservation Values in the event of their degradation or destruction.

4.15.2.3 The raising, irrigation and harvesting of hay crops are permitted; provided that said crops are grown only in the Cultivated Fields as depicted in Exhibit A-1.

4.16 Mining.

- 4.16.1 Landowner Owned or Leased Minerals. Any exploration, mining, development, production, extraction or transportation (collectively, “**Mining Activities**”) of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance (collectively, “**Minerals**”) owned by Landowner as of the date of this Conservation Easement or later acquired by Landowner, using any surface mining, subsurface mining, or dredging method, from the Property is prohibited, except to the extent specifically set forth in **Paragraphs 4.16.1.1, 4.16.1.2, and 4.16.1.3** below.
- 4.16.1.1 Limited Mining Activities. Limited mining activities are permitted to the extent that the Minerals mined (e.g. sand, gravel, or shale) are non-commercial and used for agricultural operations on the Property or for maintenance of the Property (such as maintaining roads). In the case of these limited Mining Activities done for agricultural operations or Property maintenance purposes, such Mining Activities (i) must be limited to a small, defined area or acreage, collectively no more than one acre in size identified in **Exhibit A-1**, (ii) may not harm the Conservation Values or the agricultural uses of the Property, as determined by Holder in its sole and absolute discretion, (iii) must be re-vegetated and restored to a natural condition promptly after completion of the Mining Activities and (iv) and provided such rights are permitted only to the extent permitted under I.R.C. 170(h)(5) and applicable Treasury Regulations promulgated thereunder. All extraction permitted under this Paragraph shall have only limited, localized impact.
- 4.16.1.2 Horizontal/Directional Drilling. Nothing herein shall prohibit Mining Activities under the Property using slant/horizontal drilling techniques from one or more drilling sites located off the Property provided that, with the exception of exploration activities conducted on the surface of the Property as permitted in **Paragraph 4.16.1.3** below, the Landowner shall not use or occupy any portion of the surface of the Property or the subsurface within the depth interval of 1000 feet below the surface of the Property, and Landowner hereby waives any rights to the use of the surface and said subsurface interval of the Property in connection with any Mining Activities on or under the Property.
- 4.16.1.3 Exploration. With the advance written approval of Holder, Exploration activities may be conducted provided that they are non-invasive and do not adversely impact the Conservation Values. Without limiting the generality of the foregoing, no seismic shot holes or exploratory wells or any type of drilling may occur on the Property, and no explosives may be used.
- 4.16.1.4 Surface Agreements. Holder is granted the right (but not the obligation) to negotiate and join as a party in any surface use agreement or other agreement that may be negotiated affecting the surface or subsurface of the Property, including without limitation any exploration activities that may be conducted on the surface of the Property, for the protection of the Conservation Values.

4.16.1.5 Subsequently Transferred or Acquired Minerals. Any Mineral lease, surface use agreement, or other Mineral conveyance or renewal by Landowner to a third party subsequent to the date of recording of this Conservation Easement shall be subject to the restrictions of this Conservation Easement and shall so state, shall contain terms consistent with the provisions of this Conservation Easement, and a copy of the same shall be provided to Holder prior to its execution by Landowner for Holder's review and, if Holder so desires, approval. In the event Landowner at any time becomes the owner or controls any Minerals that are severed as of the Conservation Easement Date and owned or controlled by a third party, then such Minerals shall be deemed immediately subject to this **Paragraph 4.16**, and any and all subsequent Mining Activities, Minerals conveyances and Minerals leases shall be bound by the provisions of this Conservation Easement.

4.16.2 Third Party Owned or Leased Minerals. If a third party owns or leases the Minerals at the time this Conservation Easement is executed, and their interests have not been subordinated to this Conservation Easement, the Landowner shall require, to the extent possible, that any Mining Activities conducted by such third party are (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 has the least adverse impact on the Conservation Values of the Property, including but not limited to the Property's use for agriculture; (iii) within the impervious surface limits of the Conservation Easement; and (iv) carried out in accordance with all Federal, state, and local regulations.

4.16.2.1 Holder Rights. Landowner agrees that by granting this Conservation Easement to Holder, it has granted to Holder a portion of its rights as owner of the surface of the Property on which Mining Activities may be conducted (**Surface Owner**). In addition to its interest as a holder of this Conservation Easement, Holder is granted the right (but not the obligation) to negotiate and join as a party in any surface use agreement or other agreement that may be negotiated with third parties or their lessees for the protection of the Conservation Values. Landowner agrees: (i) to provide Holder with any notices Landowner receives related to Mining Activities and (ii) that Holder shall have the right, but not the obligation to approve in advance in writing any lease or agreement pertaining to use of the surface or subsurface of the Property for any Mining Activities, including any agreement permitted or required of a Surface Owner under relevant State law, as amended from time to time, and rules and regulations promulgated thereunder (**Surface Use Agreement**), between Landowner and owners or lessees of Minerals, which approval Holder may withhold in its sole and absolute discretion if it determines that the proposed use would substantially diminish or impair the Conservation Values, is inconsistent with the preservation of the Conservation Values, is inconsistent with the terms of this Conservation Easement, or is not

permitted under the terms of the Minerals reservation or severance or the Minerals lease.

4.16.2.2 Royalty Payments. In the event that an unrelated third party with an interest in the Mineral estate (which interest existed prior to the date of this Conservation Easement) undertakes Mineral development, Landowner may collect proceeds from such development to which Landowner is entitled by Landowner's proportional ownership interest in the Minerals.

4.16.3 This **Paragraph 4.16** shall be interpreted in a manner consistent with § 170(h) of the United States Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto.

4.16.4 Holder will provide the State of Montana with notice of any requests for approval Holder receives from Landowner, and Holder's response, pertaining to this Paragraph 4.16.

4.17 Changing the Topography of the Property. Plowing, grading, blasting, filling, sod farming, earth removal or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Property is prohibited, except as follows:

4.17.1 dam construction to create ponds for agricultural use, fire protection, or wildlife enhancement, or wetland restoration, enhancement or creation, in accordance with an ALE Plan, and a Restoration Plan as provided for in **Paragraph 4.18** is permitted;

4.17.2 erosion and sediment control pursuant to a plan approved by Holder, in its sole and absolute discretion, and a Restoration Plan as provided for in **Paragraph 4.18** is permitted;

4.17.3 as required in the construction of approved Buildings, Structures, roads, and utilities; provided that the required alterations have been approved in writing by Holder as being consistent with the Conservation Purpose of this Conservation Easement; or

4.17.4 grazing uses or grassland restoration and conservation activities conducted in accordance with the ALE Plan, and pursuant to a Restoration Plan as provided for in **Paragraph 4.18** is permitted.

4.17.5 minor filling, grading, or earth removal related to maintenance of permitted and traditionally practiced flood irrigation as described in ALE Plan.

4.18 Restoration, Enhancement, and Research. Landowner shall have the right (but not the obligation) to propose activities and projects which prevent the degradation of, restore, and/or enhance and improve the quality of the watershed, wildlife habitat, and ecological health of the Property and/or to propose other research, restoration, and/or enhancement activities, including but not limited to soil erosion prevention and/or restoration activities as well as the filing and creation of new water rights and/or the alteration or change of

existing water rights in furtherance thereof. Landowner shall also have the right (but not the obligation) to propose research, restoration, and enhancement activities associated with scientific, educational, and/or historic projects. Landowner's activities or projects under this Paragraph 4.18 shall be undertaken only after creation of a comprehensive site specific plan for restoration, enhancement and/or research (the **Restoration Plan**), which has been submitted to and approved by Holder in its sole and absolute discretion. Holder shall provide a copy of the Plan to the State of Montana.

- 4.19 Water Courses and Wetlands. Any new and intentional manipulation, diversion, or other alteration of natural water courses, wetlands, or other natural bodies of water, any new practice that degrades or destabilizes their natural banks or shorelines, any new pumping of groundwater whether tributary or not, or any other new development of water resources is prohibited, except as follows:
- 4.19.1 The development, construction, use and maintenance of new well(s) to provide domestic supply to Buildings and Structures permitted herein, or new stock watering facilities, such as wells, stock ponds and necessary infrastructure for their use, including but not limited to windmills, pipelines, stock tanks, and solar pumps are permitted; provided said wells or facilities are developed and constructed in a manner so as to minimize their impact to the Conservation Values.
- 4.19.2 Landowner shall have the right to continue the historic use of the water rights on the Property (as described in the Report) and to maintain, repair, and if destroyed, reconstruct any existing facilities as documented in the Report related to the water rights (such as ditches, wells and reservoirs) and to construct new facilities as may be required to maintain the historic use of the water rights on the Property (as described in the Report) including, without limitation groundwater wells.
- 4.19.3 Pursuant to the terms and conditions of a Restoration Plan (as that term is defined in **Paragraph 4.18** above), Landowner may engage in activities that prevent the degradation of the Conservation Values, restore, and/or enhance and improve the quality of the watershed, including but not limited to wetland creation, filing and creation of new water rights and/or the alteration or change of existing water rights in furtherance thereof. Holder shall provide a copy of the Plan to the State of Montana.
- 4.20 Limitation on Impervious Surfaces. Impervious surfaces will not exceed two percent (2%) of the Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Property; including, but not limited to, residential buildings, agricultural buildings or structures with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Holder by this Conservation Easement.
- 4.21 Feedlots. Establishment and operation of a commercial livestock feedlot (which shall be defined for purposes of this Conservation Easement as a permanently constructed confined area within which the land is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the business of the reception and feeding of

livestock not owned by Landowner for hire) is prohibited. Nothing in this section shall prevent Landowner from seasonally confining Landowner's livestock into an area for feeding or from leasing pasture for the grazing of livestock owned by others or for pasture finishing animals for slaughter.

- 4.22 Other Activities. If any question exists regarding whether historic, current, or new practices or activities are permitted or would be inconsistent with the Conservation Purposes or would diminish or impair the Conservation Values, Landowner shall notify the Holder in writing and obtain the Holder's written approval, prior to engaging in such practices or activities. Holder shall provide a copy of any written approval to the State of Montana.

5. NOTICE AND APPROVAL REQUIREMENTS.

- 5.1 Notice. For activities for which Holder's prior approval is not expressly required, Landowner hereby agrees to notify Holder in writing fifteen (15) days before exercising any reserved or retained right under this Conservation Easement that may have an adverse impact on the Conservation Values (unless a different time period is otherwise expressly required in this Conservation Easement).
- 5.2 Approval. When Holder's approval is required prior to Landowner engaging in any activity, Landowner's request for approval shall be in writing and contain detailed information regarding the proposed activity. Such a request shall be delivered to Holder at least sixty (60) days prior to the anticipated start date of such activity.

Holder agrees to use reasonable diligence to respond to the request within 60 days; provided, however, that approval shall not be deemed to have been given in the event of Holder's delay in response. Holder will provide a copy of any written approval to the State of Montana.

This Paragraph is only intended to request approval for activities which are expressly allowed in the Conservation Easement but are subject to Holder's approval or consent. It is not intended for any other purpose, including, without limitation, to request approval for activities that are expressly prohibited or activities for which an amendment of this Conservation Easement is needed.

6. HOLDER'S RIGHTS

- 6.1 Holder's Rights. To accomplish the Conservation Purpose, the following rights are granted to Holder (and Holder's agents, representatives and invitees) by this Conservation Easement:
- 6.1.1 Right to Enforce. The right to preserve and protect the Conservation Values of the Property and enforce the terms of this Conservation Easement.
- 6.1.2 Right of Entry. The right to enter the Property at reasonable times for the purposes of: (a) inspecting the Property to determine if there is compliance with the terms of this Conservation Easement; (b) obtaining evidence for the purpose of seeking judicial enforcement of this Conservation Easement; provided, however, that the foregoing rights of Holder shall not relieve Landowner from

any obligations to comply with the terms of this Conservation Easement or waive any of Holder's rights or remedies to enforce this Conservation Easement against any violation.

Holder agrees that entry will be done in a manner that will not interfere unreasonably with Landowner's permitted uses of the Property. Holder also agrees to provide advance notice to Landowner prior to entering the Property, except in any case where immediate entry is necessary or desirable to prevent, terminate, or mitigate damage to, or the destruction of, the Conservation Values, or to prevent, terminate or mitigate a violation of the terms of this Conservation Easement. In the event Landowner elects to maintain gated, locked access to and through the Property, Landowner shall provide Holder with keys for all such locks.

This right of entry shall include the right to access the Property over roads owned by Landowner and any rights-of-way or other access ways now or hereafter available to Landowner for access to the Property.

- 6.1.3 Mineral Rights. As more specifically set forth in **Paragraph 4.16** of this Conservation Easement, to influence and control impacts to the surface of the Property from development of Minerals by third parties who, as of the Conservation Easement Date, already own some or all of the Minerals located beneath the Property.

7. VIOLATION AND REMEDIES.

- 7.1 Notice of Violation; Corrective Action. If Holder determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Holder shall give written notice to Landowner of such violation and demand corrective action sufficient to (a) cure the violation, and (b) where the violation involves injury to the Property resulting from any use or activity inconsistent with the Conservation Purpose, restore the portion of the Property so injured to its condition before the violation occurred, or to a condition otherwise acceptable to Holder, in accordance with a plan approved by the Holder.
- 7.2 Injunctive Relief. If Landowner fails to cure the violation or threatened violation of this Conservation Easement, fails to comply with any affirmative obligation under this Conservation Easement, or fails to cause such other corrective action to be taken as requested by the Holder within forty-five (45) days after receipt of notice thereof from Holder, or under circumstances where the violation cannot reasonably be cured within the forty-five (45) day period, fails to make good faith efforts to initiate and pursue the requested corrective action within the forty-five (45) day period, Holder may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury or to a condition otherwise acceptable to Holder (regardless of whether the costs of restoration exceed the value of the Property). The Holder shall be entitled to seek expedited injunctive relief to enforce its rights with respect to the Property, and the Landowner waives any bond requirement otherwise applicable to any petition for such relief.

- 7.3 Damages. Holder shall be entitled to recover damages for violation of the terms of this Conservation Easement or injury to any Conservation Values protected by this Conservation Easement, including, without limitation, damages for the loss of environmental, ecologic, scenic or aesthetic values.
- 7.4 Emergency Enforcement. If Holder, in its sole and absolute discretion, determines that circumstances require immediate action to prevent, terminate or mitigate significant damage to the Conservation Values of the Property, or to prevent, terminate or mitigate a violation of this Conservation Easement, the Holder may pursue its remedies under this section without prior notice to Landowner and/or without waiting for the period provided for cure to expire.
- 7.5 Scope of Relief. Holder's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. Landowner agrees that Holder's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Holder shall be entitled to the injunctive relief described above, both prohibitive and mandatory, in addition to such other relief to which Holder may be entitled, including without limitation: (a) specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; and (b) the right to enter the Property to undertake any corrective action Holder may elect to complete. Holder's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 7.6 Costs of Enforcement. In any action, suit or other proceeding undertaken to enforce any right or obligation under this Conservation Easement, or to interpret any of the provisions of this Conservation Easement, if the court determines that Landowner has failed to comply with this Conservation Easement, Landowner shall reimburse Holder for any reasonable costs associated with enforcement, including Holder's staff time, costs of restoration, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. However, if Holder initiates litigation and the court determines that Landowner has complied with all the terms of this Conservation Easement and that Holder initiated litigation in bad faith, then Holder shall reimburse Landowner for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees. Any costs incurred by the State in enforcing the terms of this Easement against Grantor, including reasonable costs of suit and attorneys' fees, shall be borne by the non-prevailing party.
- 7.7 Forbearance. Forbearance by Holder, or the State of Montana, to exercise its rights under this Conservation Easement in the event of any violation of any term of this Conservation Easement by Landowner shall not be deemed or construed to be a waiver by Holder, or State of Montana, of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Holder's, or State of Montana's, rights under this Conservation Easement. No delay or omission by Holder, or State of Montana, in the exercise of any right or remedy upon any breach by Landowner shall impair such right or remedy or be construed as a waiver.
- 7.8 Forbearance and Holder Discretion. The State shall have no right to challenge Holder's exercise of reasonable discretionary enforcement authority under this Section 7, paragraphs 7.7 and 7.8 and, therefore, the State hereby releases Holder from claims and

causes of action arising from Holder's reasonable discretionary enforcement decisions. The State shall have no right to bring any action, suit or other proceeding against Holder as a result of Holder's exercise of reasonable discretionary enforcement of the terms of this Easement.

- 7.9 Waiver of Certain Defenses. Landowner hereby waives any defense of laches, estoppel or prescription with respect to any failure to act or any delay by Holder in enforcing any restriction or exercising any rights under this Conservation Easement.
- 7.10 Natural Disasters; Acts Beyond Landowner's Control. Nothing contained in this Conservation Easement shall be construed to entitle Holder to bring any action against Landowner for any injury to or change in the Property resulting from causes beyond Landowner's control, including, without limitation, fire, flood, storm, infestations, natural deterioration, earth movement, climate change, or from any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Landowner shall notify Holder of any natural disaster, emergency conditions, or acts taken in response to such a disaster or emergency that would adversely affect or interfere with the Conservation Purpose or Conservation Values, whether caused by the disaster, the Landowner's acts or omissions, or the acts of a third party or parties. In the event of such a natural disaster or emergency conditions, Landowner and Holder will work together to identify restoration or rehabilitation activities and develop a Restoration Plan as described in **Paragraph 4.18** above to fulfill the Conservation Purpose of the Conservation Easement. Holder shall provide State of Montana a copy of any notice received pursuant to this Paragraph.
- 7.11 Acts of Third Parties. Nothing contained in this Conservation Easement shall be construed to entitle Holder to bring any action against Landowner for any injury to or change in the Property resulting from acts of third parties legally authorized to act by recorded instrument or other legally established rights or the wrongful acts of third parties other than Landowner's agents, employees, invitees or contractors (provided the Landowner has taken reasonable actions to prevent such third parties from trespassing and from causing harm to the Property and has not consented to or participated in the acts of such third parties). Landowner shall notify Holder of any act or occurrence that would adversely affect or interfere with the Conservation Purpose, whether caused by the Landowner's acts or omissions or by a third party or parties. In the event of violations of this Conservation Easement caused by the wrongful acts of a third party, Landowner shall cooperate fully with Holder in enforcement of this Conservation Easement, including but not limited to: gathering facts and information relevant to the violation; assigning its right of action to the Holder; joining in any claim or legal action; and/or appointing the Holder as its attorney-in-fact for purposes of enforcement, all at the election of the Holder. In the event that such third party acts interfere with the Conservation Purpose and Conservation Values of this Conservation Easement, Landowner and Holder will work together to identify restoration or rehabilitation activities and develop a Restoration Plan as described in **Paragraph 4.18** above to fulfill the Conservation Purpose of the Conservation Easement. Holder shall provide a copy of the Restoration Plan to the State of Montana.
- 7.12 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 this Conservation Easement are not enforced by Holder. 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 Holder, or its successors or assigns, fails to enforce any of the terms of this Conservation 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 administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Conservation Easement from Landowner, including, but not limited to, attorney's fees and expenses related to Landowner'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 Conservation Easement from the Holder, including, but not limited to, attorney's fees and expenses related to Holder's violations or failure to enforce the easement against the Landowner.

Holder will annually monitor compliance and provide the United States with an annual monitoring report that documents that Landowner and Holder are in compliance with the Conservation 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. For purposes of inspection and enforcement of the Conservation Easement, the ALE Plan, and the United States Cooperative Agreement with Holder, the United States will have reasonable access to the Property with advance notice to Holder and Landowner or Landowner's representative.

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

- 7.13 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. Holder will provide the State of Montana with a copy of the annual conservation easement monitoring report that documents the status of the Property in relation to the terms of this Easement.
- 7.14 Sagebrush conservation mitigation credits. The Act at MCA Sections 76-22-103, 111, 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 Property pursuant to subparagraph 7.15 below for the purpose of retroactively calculating and making mitigation credits available as a result of the purchase of this Easement with grant funds disbursed from the Sage Grouse Stewardship Account.
- 7.15 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 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 Holder reasonable prior notice of entry, and the State will not unreasonably interfere with Grantor's use and quiet enjoyment of the land. Grantor and Holder may accompany the State or its agents on any non-emergency entry. In the event that the State or its agents determines that an immediate entry is required because of non-enforcement by Holder, the State or its agents shall make reasonable efforts to contact Grantor and Holder prior to entry, but such notice shall not be a prerequisite to entry.

7.16 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 process, credit verification and monitoring processes the State or its agents will execute to ensure complete, consistent, and accurate verification needed to provide the public and credit buyers that the mitigation occurring on the Property is in compliance with State guidelines. The access to the Property provided to the State required to implement this Plan shall not be greater than the access granted in subparagraph 7.15 above. The Plan shall not grant the State any additional enforcement rights, and the Plan shall not grant any additional rights or obligations to the Grantor or Holder. Grantor and Holder shall receive copies of this Plan, but shall have no right to object to its terms or its implementation.

7.17 Enforcement Rights of Others. Nothing in this Conservation Easement is intended to create any right to enforce this Conservation Easement in any third party where no such right otherwise exists under this Conservation Easement or under law.

8. **COSTS AND LIABILITIES.** Landowner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, or the protection of Landowner, the public, or any third parties from risks relating to conditions on the Property. Landowner shall maintain adequate comprehensive general liability insurance coverage on the Property. Landowner shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Landowner.

Landowner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes").

9. **ACCESS.** Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or to use the Property or any portion thereof. Landowner will undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities might diminish or impair the Conservation Values.

10. **TRANSFER OF EASEMENT.** The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable. Holder shall have the right to transfer or assign this Conservation Easement to an entity that: (a) satisfies the requirements of Section 170(h)(3) of the U.S. Internal Revenue Code (or successor provisions thereof) and is qualified to hold the Conservation Easement under applicable state law, and (b) as a condition of transfer, agrees to uphold the Conservation Purpose of this Conservation Easement, as required in

Treasury Regulations Section 1.170A-14, as amended. If Holder ever ceases to exist or no longer qualifies under Sec. 170(h) or applicable state law, a court with jurisdiction shall transfer this Conservation Easement to another qualified organization having similar purposes that agrees to assume the responsibility.

11. **TRANSFER OF PROPERTY.** As set forth below, Landowner agrees that a reference to this Conservation Easement will be inserted by Landowner in any subsequent deed or other legal instrument by which Landowner divests either the fee simple title or possessory interest in the Property, including without limitation a leasehold or mortgage interest. Landowner further agrees to notify Holder of any pending transfer at least thirty (30) days in advance of transfer and to provide Holder with a copy of any legal instrument affecting such transfer within thirty (30) days following its execution. The failure of Landowner to comply with this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any successor in interest of Landowner, by acceptance of a deed or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions and conditions of this Conservation Easement.
12. **PRESUMPTION AGAINST AMENDMENT.** It is the parties' intention that this Conservation Easement will not be amended or modified. In the event of unforeseen circumstances or exceptional situations the Holder may consider an amendment or modification to this Conservation Easement, but in no event shall such amendment be made without compliance with Holder's internal procedures and standards for such modification, and federal, state and local laws regarding the creation and amendment of conservation easements. No amendment shall be allowed that would adversely affect the qualifications of this Conservation Easement as a charitable gift (if applicable) or the status of Holder under any applicable laws, including Section 170 (h) of the Internal Revenue Code or the laws of the State where the Property is located, or that would weaken the Conservation Easement in terms of protection of the Conservation Values or its perpetual duration. This Conservation Easement may be amended only if, in the sole and exclusive judgment of Holder, the State of Montana, and the United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this Conservation Easement and complies with all applicable laws and regulations. Holder must provide timely written notice to the State of Montana and the Chief of NRCS of any proposed amendment(s). Prior to the signing and recordation of the amended Conservation Easement, such amendment(s) must be mutually agreed upon by Holder, Landowner, the State of Montana, and the United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the State of Montana and the United States is null and void. Any such amendment shall be signed by both parties, and shall be recorded in the official records of the county in which the Property is located.
13. **EASEMENT VALUATION, EXTINGUISHMENT, TERMINATION, EMINENT DOMAIN.**
 - 13.1 **Value of Easement and Proceeds.** Landowner hereby agrees that at the time of the conveyance of this Conservation Easement, this Conservation Easement gives rise to a real property right, immediately vested in Holder, with a fair market value that is at least equal to the proportionate value that this Conservation Easement, at that time, bears to the value of the Property as a whole at that time.

Accordingly, if this Conservation Easement is extinguished, terminated, or taken by eminent domain as described below, then prior to the payment of any expenses

reasonably incurred by Holder and Landowner in connection with such eminent domain action, Holder on any sale, exchange or involuntary conversion of the Property shall be entitled to a portion of the proceeds at least equal to that proportionate value. With respect to a proposed extinguishment, termination or condemnation action, the Holder, the State of Montana, and the United States stipulate that the fair market value of the Conservation Easement is fifty percent (50%), hereinafter the "Proportionate Share" of the fair market value of the land unencumbered by this Conservation Easement. The Proportionate Share will remain constant over time.

If this Conservation Easement is extinguished, terminated or condemned, in whole or in part, then the Landowner must reimburse Holder, the State of Montana, and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this Conservation Easement. The fair market value will be determined at the time all or a part of this Conservation Easement is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards of Federal Land Acquisition (USFLA). The appraisal must be completed by a certified general appraiser and approved by the Holder, the State of Montana, and the United States.

The allocation of the Proportionate Share between Holder, the State of Montana, and the United States will be as follows: (a) to Holder or its designee, 12.4 percent (12.4%) of the Proportionate Share; and (b) to the State of Montana 14.1 percent (14.1%) and (c) to the United States 73.5 percent (73.5%) of the Proportionate Share. Until such time as Holder, the State of Montana, and the United States receive the Proportionate Share from Landowner or the Landowner's successor or assign, Holder, the State of Montana, and the United States each have a lien against the Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Holder, Holder must reimburse the State of Montana and the United States for the amount of the Proportionate Share due to the State of Montana and the United States.

Holder shall use any proceeds received in conjunction with this provision and the following provisions in a manner consistent with the Conservation Purpose of this Conservation Easement.

- 13.2 Extinguishment or Termination. This Conservation Easement may be released, terminated or otherwise extinguished, whether in whole or in part, only if (1) a court with jurisdiction determines a subsequent unexpected change in conditions surrounding the Property makes impossible or impractical the continued use of the Property for the Conservation Purpose of this Conservation Easement, (2) any conditions or limitations imposed by federal and state law are also complied with; and (3) the State of Montana, the United States and the Holder consent in writing to such release, termination or extinguishment in its sole and absolute discretion.
- 13.3 Eminent Domain. Whenever all or part of the Property is taken with authority to exercise eminent domain by public, corporate, or other authority so as to terminate or extinguish the restrictions imposed by or so as to make it impossible to fulfill the Conservation Purpose of this Conservation Easement, Landowner, Holder and the State, shall join in appropriate actions and negotiations at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds

shall be divided in accordance with the value of Landowner's, Holder's, the State of Montana, and United States' interests, as described above. Due to the Federal interest in this Conservation Easement, the United States must review and approve any proposed extinguishment, termination or condemnation action that may affect its Federal interest in the Property.

- 13.4 Property Interests Acquired Under Threat of Condemnation. Landowner shall be permitted to convey a real property interest to a third party entity having the power of eminent domain, provided the following conditions are satisfied: a) the condemning authority has indicated in writing by letter, initiation of legal action, or otherwise, its intent to acquire the real property interest using its power of eminent domain; b) Landowner agrees to provide the Holder, the State of Montana, and the United States with their share of any compensation received by the condemning authority in accordance with **Paragraph 13.1** above, and the Holder, the State of Montana, and the United States determine, in their reasonable discretion, that such compensation is reasonable; c) the Holder determines, in its sole and absolute discretion, that such conveyance will not materially diminish or impair the Conservation Values; and d) the State of Montana and the United States consents to such transfer in its sole and absolute discretion.
14. **CHANGED CONDITIONS.** In making this grant, Landowner has considered the possibility that uses prohibited by the terms of this Conservation Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. In addition, the unprofitability of conducting or implementing any or all of the uses permitted under the terms of this Conservation Easement shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. It is the intent of both Landowner and Holder that any such economic changes shall not be deemed to be changed conditions or a change of circumstances justifying the judicial termination, extinguishment or amendment of this Conservation Easement.
15. **INTERPRETATION.** This Conservation Easement shall be interpreted under the laws of the state or commonwealth in which the Property is located, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Conservation Purpose. No remedy or election given by any provision in this Conservation Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party has reviewed and revised this Conservation Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Conservation Easement. In the event of any conflict between the provisions of this Conservation Easement and the provisions of any use and zoning restrictions of the state or county in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply. In the event of any dispute or ambiguity arising under the terms of this Conservation Easement, the parties intend that this Conservation Easement is to be construed as a perpetual interest in land held for conservation purposes and public benefit in conformance with the provisions of the Montana Open-Space Land and Voluntary Conservation Easement Act (Section 76-6-101, et seq., Montana Code Annotated) and is expressly not to be interpreted in accordance with the common law rules regarding restrictive covenants.
16. **INDEMNIFICATION AND GENERAL DISCLAIMER.** Landowner hereby agrees to indemnify, defend (with counsel approved by Holder, which approval will not be unreasonably withheld) and hold harmless Holder and each of its officers, directors, employees, agents,

invitees, and contractors from and against any and all claims, costs, liabilities, penalties, damages, or expenses of any kind or nature whatsoever (including, but not limited to, court costs and reasonable attorneys' fees and expenses) arising or resulting from this Conservation Easement or any activities on the Property, except to the extent caused by the gross negligence or intentional misconduct of Holder.

The United States, its employees, agents, and assigns disclaim and will not be held responsible for Landowner's or Holder's negligent acts or omissions or Landowner's or Holder's breach of any representation, warranty, covenant or agreements contained in this Conservation Easement, or violations of any Federal, State, or local laws, including all Environmental Laws (as that term is defined in **Paragraph 20.2** of this Easement) 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 Property.

17. **TITLE.** Landowner covenants, represents and warrants that Landowner is the sole owner and is seized of the Property in fee simple and has good right to grant and convey this Conservation Easement; that the Property is free and clear of any and all encumbrances, except as approved in writing by Holder and NRCS, including but not limited to, any mortgages or deeds of trust not subordinated to this Conservation Easement and that Holder shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement; and that there is no pending or threatened litigation in any way affecting, involving or relating to the Property.
18. **NOTICES.** Any notices required by this Conservation Easement shall be in writing and shall be served by any of the following means: (i) by delivery in person, in which case notice shall be deemed given upon delivery (or refusal of delivery), (ii) by certified U.S. mail, return receipt requested, postage prepaid, in which case notice shall be deemed given upon the earlier of the date of first attempted delivery or the third day after deposit in the mail, or (iii) by reputable commercial courier service, charges prepaid, in which case notice shall be deemed given upon the earlier of the date of first attempted delivery or the third day after deposit with the courier service. All notices shall be sent to the following addresses, or such other address as either party may hereafter specify by written notice to the other:

To Landowner:	To Holder:	To the United States:
Hansen Livestock Company c/o Eric Hansen 4100 Medicine Lodge Rd. Dillon, MT 59725	The Nature Conservancy 32 So. Ewing St., Suite 215 Helena, Montana 59601 <hr/>	NRCS Bozeman State Office 10 East Babcock Room 443 Bozeman, MT 59715

19. **TRANSFER OF DEVELOPMENT RIGHTS.** To fulfill the Conservation Purpose of this Conservation Easement, Landowner hereby conveys to the Holder all development rights deriving from, based upon or attributable to the Property in any way, including but not limited to mineral development (the **Holder's Development Rights**), except those expressly reserved by Landowner herein, and the parties agree that Holder's Development Rights shall be held by the Holder in perpetuity in order to fulfill the Conservation Purpose of this Conservation Easement, and to ensure that such rights are forever released, terminated and extinguished as to Landowner,

and may not be used on or transferred off of the Property to any other property or used for the purpose of calculating permissible lot yield of the Property or any other property.

20. ENVIRONMENTAL LIABILITY. Landowner is solely responsible, and Holder has no responsibility, for the operation of the Property or the monitoring of hazardous or other conditions thereon.

- 20.1 Landowner covenants, represents and warrants that, after investigation and to the best of its knowledge no Hazardous Materials (as defined below) exist or have been generated, treated, stored, used, disposed of, or deposited in or on the Property except those items described in **Paragraph 4.12** which were used for agricultural operations on the Property, and that there are no underground storage tanks located on the Property. Landowner warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws (as defined below). Landowner 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 Property. Landowner further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.
- 20.2 **Environmental Laws** means 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.
- 20.3 **Hazardous Materials** 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 that may pose a present or potential hazard to human health or the environment. The term "Hazardous Materials" shall also include related materials defined in the CERCLA (42 USC 9601 et seq.), and the Hazardous Materials Transportation Act (49 USC section 6901 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state, or local laws, ordinances, rules, or regulations now in effect or enacted after this date.
- 20.4 Landowner, covenants, represents and warrants that, after investigation and to the best of its knowledge no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.

Moreover, Landowner hereby promises to hold harmless and indemnify Holder and its directors, officers and employees, the State of Montana, 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

Property, or arising from or connected with a violation of any Environmental Laws by Landowner or any other prior owner of the Property. Landowner's indemnification obligation will not be affected by any authorizations provided by Holder, the State of Montana, or the United States to Landowner with respect to the Property or any restoration activities carried out by the Holder at the Property; provided, however, that Holder will be responsible for any Hazardous Materials contributed after this date to the Property by Holder. Landowner also promises to hold harmless and indemnify Holder and its directors, officers and employees against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with Landowners' representations and warranties in this Conservation Easement.

21. **COMPLIANCE WITH APPLICABLE LAWS.** Landowner shall comply with all statutes, laws, ordinances, rules, regulations, codes, orders, guidelines, or other restrictions, or requirements applicable to the Property. Nothing herein shall be construed to allow Landowner to engage in any activity which is restricted or prohibited by law, restrictions or other requirements applicable to the Property.
22. **SEVERABILITY.** If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.
23. **PARTIES.** Every provision of this Conservation Easement that applies to Landowner or Holder shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear. A person's or entity's obligation hereunder as Landowner, or successor owner of the Property, shall be joint and several, and will cease, if and when such person or entity ceases to have any present, partial, contingent, collateral, or future interest in the Property (or pertinent portion thereof), but only to the extent that the Property (or relevant portion thereof) is then in compliance herewith. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer, provided that the new owner shall also be responsible for bringing the Property into compliance.
24. **RE-RECORDING.** In order to ensure the perpetual enforceability of the Conservation Easement, Holder is authorized to re-record this instrument or any other appropriate notice or instrument; for such purpose, Landowner appoints Holder as Landowner's attorney-in-fact to execute, acknowledge and deliver any necessary instrument on Landowner's behalf. Without limiting the foregoing, Landowner agrees to execute any such instruments upon request.
25. **SUBSEQUENT LIENS ON PROPERTY.** No provision of this Conservation Easement should be construed as impairing the ability of Landowner to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing is subordinate to this Conservation Easement and does not violate the restrictions on subdivision of the Property.
26. **ACCEPTANCE & EFFECTIVE DATE.** As attested by the signature of its authorized representative, Holder hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Land Records of the county or parish in which the Property is located.
27. **COUNTERPARTS.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it.

28. **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with the terms of this Conservation Easement.
29. **CAPTIONS, RECITALS AND EXHIBITS.** The captions herein have been inserted solely for convenience of reference, are not a part of this Conservation Easement, and shall have no effect upon its construction or interpretation. The Recitals set forth above and, all Exhibits referred to in this Conservation Easement are an integral part of this Conservation Easement and are incorporated herein by reference.
30. **GOVERNING LAW.** This Conservation Easement will be interpreted in accordance with the laws of the state or commonwealth in which the Property is located.
31. **DISCLAIMER.** **Holder and the State of Montana does not represent the interests of Landowner. Holder and the State of Montana has advised Landowner to have the document reviewed by Landowner's attorney, and Landowner has had ample opportunity to do so. Holder and the State of Montana makes no representation as to whether this Conservation Easement qualifies for a charitable deduction or if it is in the proper form for that purpose, in the event Landowner claims a charitable gift deduction on its federal or state income tax returns.**
32. **SUBSEQUENT ACTIVITIES: NO REPRESENTATIONS OR WARRANTIES.** Permission to carry out any proposed use or activity will not constitute consent to any subsequent use or activity of the same or any different nature, unless explicitly included in said permission. Likewise, permission by the Holder to carry out, or failure by the Holder to object to, or any language in this Conservation Easement that allows any proposed use or activity or designates a specific area of the Property where the use or activity is to be conducted, will not be deemed to constitute any representation or warranty by the Holder regarding the use or activity, including, without limitation, the fitness of the Property for the use or activity or the legality of the use or activity.
33. **MERGER.** The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and conservation easement interests in the Property.
34. **DEFINITIONS.**
- 34.1 **Building.** The term "**Building**" shall mean an enclosed space with walls and a roof that provides shelter or housing or provides working, office, parking, display or sales space and which includes, but is not limited to houses, barns, sheds, cabins, garages, temporary living quarters of any sort, and mobile homes.
- 34.2 **Chief of NRCS.** The term "**Chief of NRCS**" shall mean the Chief of the NRCS or his/her designee.
- 34.3 **Structure.** The term "**Structure**" shall mean a man-made improvement, other than a road improvement, such as a dock, picnic pavilion, well house, sign, billboard or other advertising material, utility tower, etc., that is not a Building, fence, or road.

TO HAVE AND TO HOLD this Conservation Easement, together with all appurtenances and privileges belonging or in any way pertaining thereto, either in law or in equity, either in possession or expectancy, for the proper use and benefit of Holder forever.

IN WITNESS WHEREOF, Landowner and Holder have executed and sealed this document the day and year first above written.

LANDOWNER:
Hansen Livestock Company

HOLDER:
The Nature Conservancy, a District
of Columbia nonprofit corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

Hansen Livestock Company

By: _____
Name: _____
Its: _____

[NOTARY BLOCKS ON FOLLOWING PAGE]

NOTARY BLOCKS FOR LANDOWNER:

STATE OF _____)
: ss.
County of _____)

This instrument was acknowledged before me on this _____ day of _____,
20____, by _____ [name], as _____ [title] of
Hansen Livestock Company, a Montana corporation.

(SEAL) _____
(Notary's Signature)

(Notary's Name, please print/type)
Notary Public for the State of _____
Residing at _____
My commission expires ____/____/20____

STATE OF _____)
: ss.
County of _____)

This instrument was acknowledged before me on this _____ day of _____,
20____, by _____ [name], as _____ [title] of
Hansen Livestock Company, a Montana corporation.

(SEAL) _____
(Notary's Signature)

(Notary's Name, please print/type)
Notary Public for the State of _____
Residing at _____
My commission expires ____/____/20____

NOTARY BLOCK FOR HOLDER:

STATE OF _____)
: ss.
County of _____)

This instrument was acknowledged before me on this _____ day of _____,
20____, by _____ [name], as _____ [title] of
The Nature Conservancy, a District of Columbia nonprofit corporation.

(SEAL) _____
(Notary's Signature)

(Notary's Name, please print/type)
Notary Public for the State of _____
Residing at _____
My commission expires ____/____/20____

EXHIBIT A
Property Description

A parcel of land located in Beaverhead County, Montana, more particularly described as follows:

TOWNSHIP 10 SOUTH, RANGE 11 WEST MONTANA PRINCIPAL MERIDIAN:

Section 7: Lots 1, 2, 3, 4, $W\frac{1}{2}E\frac{1}{2}NW\frac{1}{4}$, $W\frac{1}{2}NW\frac{1}{4}SW\frac{1}{4}$

Section 18: Lots 1, 3, 4, $NE\frac{1}{4}SW\frac{1}{4}$ together with Parcel WH Certificate of Survey 1876BA Instrument No. 290061 being a parcel of land in $SE\frac{1}{4}SW\frac{1}{4}$ Section 18,

EXCEPTING THEREFROM Parcel HW Certificate of Survey 1876BA Instrument No 290061 being a parcel of land in $NE\frac{1}{4}SW\frac{1}{4}$ Section 18

Section 19: Lots 1, 2, $SE\frac{1}{4}NW\frac{1}{4}$, $S\frac{1}{2}NE\frac{1}{4}$, $SE\frac{1}{4}$

Section 20: $S\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}$, $W\frac{1}{2}SW\frac{1}{4}$, $SE\frac{1}{4}SW\frac{1}{4}$

Section 29: $N\frac{1}{2}$

Section 31: Lots 2, 3, $SE\frac{1}{4}NW\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$

TOWNSHIP 10 SOUTH, RANGE 12 WEST MONTANA PRINCIPAL MERIDIAN:

Section 1: Lot 4, $S\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}$

EXCEPTING THEREFROM lands previously deeded to the State of Montana in Book 169 of Microfilm, Page 41, records of Beaverhead County, Montana.

FURTHER EXCEPTING THEREFROM lands previously deeded in Book 247 of Microfilm, Pages 426-7, records of Beaverhead County, Montana.

Section 2: Lots 1, 2, 3, $S\frac{1}{2}NE\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}$, $SE\frac{1}{4}$, $SW\frac{1}{4}$,

EXCEPTING THEREFROM lands previously deeded to the State of Montana in Book 169 of Microfilm, Page 37, Book 169 of Microfilm, Page 39 and Book 169 of Microfilm, Page 41, records of Beaverhead County, Montana.

FURTHER EXCEPTING THEREFROM lands previously deeded in Book 247 of Microfilm, Pages 426-7, records of Beaverhead County, Montana.

Section 3: $SE\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}$

Section 10: $E\frac{1}{2}$

Section 11: All

Section 12: All

Section 13: All

Section 14: All

Section 15: $E\frac{1}{2}$, $S\frac{1}{2}SW\frac{1}{4}$

Section 20: $S\frac{1}{2}SE\frac{1}{4}$

Section 21: $E\frac{1}{2}$, $E\frac{1}{2}SW\frac{1}{4}$, $SW\frac{1}{4}SW\frac{1}{4}$

Section 22: All

Section 23: All

Section 24: All

Section 25: $W\frac{1}{2}$, $SW\frac{1}{4}SE\frac{1}{4}$, $SE\frac{1}{4}SE\frac{1}{4}$, $W\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$, $W\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$, $W\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$

EXHIBIT A
Property Description Continued

Section 26: NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ W $\frac{1}{2}$

Section 27: All

Section 28: All

Section 29: E $\frac{1}{2}$ E $\frac{1}{2}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$

Section 31: Lots 1, 4, 5, 6, 7, 8, 9, 10, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$

Section 32: Lots 1, 2, 3, 4, 5, NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$,

Section 33: N $\frac{1}{2}$

Section 34: All

Section 35: E $\frac{1}{2}$, SW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$

EXHIBIT A-1
Map of Property, Building Envelope, and Cultivated Fields

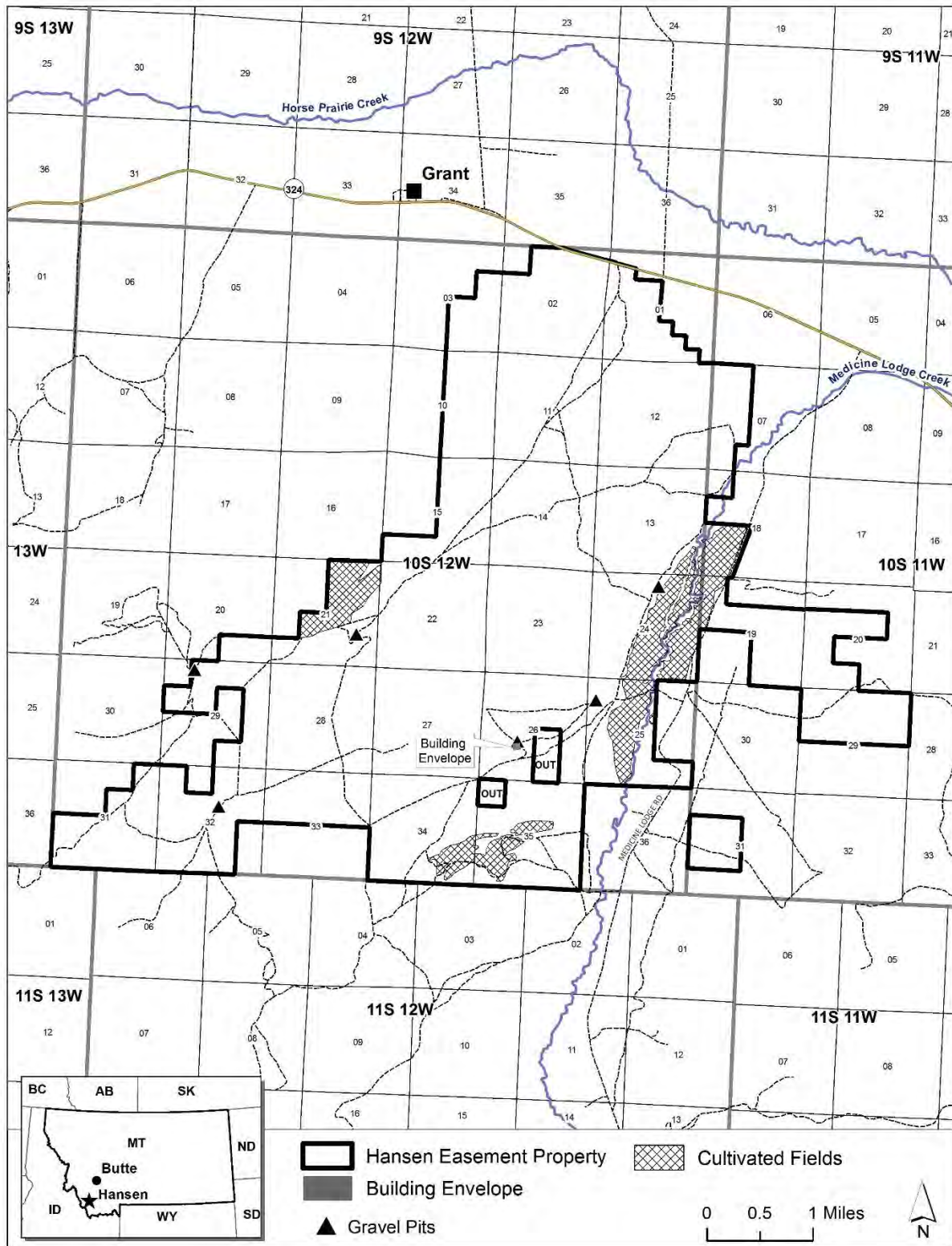


EXHIBIT A-2
Map of Building Envelope

