

**FINAL Environmental Assessment**  
**44 Ranch Inc. Conservation Easement Proposal**  
**Grass Range, Montana**  
**Montana Sage Grouse Oversight Team**  
**November 8, 2016**

**I. Introduction**

The Montana Sage Grouse Oversight Team (MSGOT) is preparing an Environmental Assessment (EA) to analyze effects associated with the 44 Ranch Inc. Conservation Easement Project.

The Montana Land Reliance (MLR), an IRS 501(c)(3) non-profit organization, sponsored and presented an application for the 44 Ranch Inc. Conservation Easement to MSGOT for funding from the Habitat Stewardship Fund (Fund)<sup>1</sup> during MSGOT's meeting on May 24, 2016. MLR requested \$1,500,000 from the Fund, which would be matched with \$375,000 from a private source, and a \$527,971 donation from the landowner. The estimated value of the easement is \$2,366,831. MSGOT approved the 44 Ranch Inc. Conservation Easement proposal to move to the next stages of the granting process, including the completion of an EA under the Montana Environmental Policy Act (MEPA).

**II. Authority and Direction**

The authority and direction under which this project is being proposed is provided by the Montana Greater Sage Grouse Stewardship Act (Act),<sup>2</sup> Administrative Rules of Montana 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.<sup>3</sup> 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.

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<sup>1</sup> MCA 76-22-101 et seq.

<sup>2</sup> MCA § 76-22-101 et seq.

<sup>3</sup> MCA § 76-22-102(2).

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

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.<sup>7</sup>

A project is eligible if it is located, at least in part, on land identified as Core Area, General Habitat, or Connectivity Area.<sup>8</sup> Maps delineating these areas are available on the Program's website.<sup>9</sup> 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.<sup>10</sup> Eligible projects may include:

- Reduction of conifer encroachment;<sup>11</sup>
- Maintenance, restoration, or improvement of sagebrush health or quality;<sup>12</sup>
- Incentives to reduce the conversion of grazing land to cropland;<sup>13</sup>
- Restoration of cropland to grazing land;<sup>14</sup>
- Modification of fire management to conserve sage grouse habitat or populations;<sup>15</sup>
- Demarcation of fences to reduce sage grouse collisions;<sup>16</sup>
- Reduction of unnatural perching platforms for raptors;<sup>17</sup>
- Reduction of unnatural safe havens for predators;<sup>18</sup>
- Reduction of the spread of invasive weeds that harm sagebrush health or sage grouse habitat;<sup>19</sup>
- 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;<sup>20</sup>

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<sup>4</sup> Executive Orders 12-2015 and 21-2015.

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

<sup>6</sup> MCA § 76-22-109(4).

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

<sup>8</sup> 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.").

<sup>9</sup> See <http://sagegrouse.mt.gov>.

<sup>10</sup> MCA § 76-22-110(1).

<sup>11</sup> MCA § 76-22-110(1)(a).

<sup>12</sup> MCA § 76-22-110(1)(c).

<sup>13</sup> MCA § 76-22-110(1)(e).

<sup>14</sup> MCA § 76-22-110(1)(f).

<sup>15</sup> MCA § 76-22-110(1)(g).

<sup>16</sup> MCA § 76-22-110(1)(h).

<sup>17</sup> MCA § 76-22-110(1)(i).

<sup>18</sup> MCA § 76-22-110(1)(j).

<sup>19</sup> MCA § 76-22-110(1)(b).

<sup>20</sup> MCA § 76-22-110(1)(d).

- Sage grouse habitat enhancement that provides project developers the ability to use improved habitat for compensatory mitigation under MCA § 76-22-111;<sup>21</sup>
- 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;<sup>22</sup> and
- Other project proposals that MSGOT determines are consistent with the purposes of the Act.<sup>23</sup>

A project is ineligible if it seeks grant funding:

- For fee simple acquisition of private land;<sup>24</sup>
- To purchase water rights;<sup>25</sup>
- To purchase a lease or conservation easement that requires recreational access or prohibits hunting, fishing, or trapping as part of its terms;<sup>26</sup>
- 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;<sup>27</sup>
- To fund a habitat exchange that does not meet the requirements of MCA § 76-22-110(1)(l);
- For a project involving land owned by multiple landowners, including state and federal land, in which the majority of the involved acres are not privately held or the proposed project does not benefit sage grouse across all of the land included in the project;<sup>28</sup>
- 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;<sup>29</sup>
- For a lease or conservation easement in which:
  - The state will not be named a third-party beneficiary to the lease or easement with the contingent right to enforce the terms of the lease or easement if the grantee fails to do so
  - The agreement will not provide that the lease or easement may not be transferred for value, sold, or extinguished without consent of the department.
  - Attempts to preclude the State from taking legal action to enforce the terms of the lease or easement or to recover from the proceeds of the transfer for value, sale, or extinguishment the state's pro rata share of the proceeds based on the funds the state provided pursuant to this Act for the creation of the lease or easement;<sup>30</sup>
- To fund a project that does not meet the criteria of MCA § 76-22-110; or

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<sup>21</sup> MCA § 76-22-110(1)(k).

<sup>22</sup> MCA § 76-22-110(1)(l).

<sup>23</sup> MCA § 76-22-110(1)(m).

<sup>24</sup> MCA § 76-22-109(5)(a).

<sup>25</sup> MCA § 76-22-109(5)(b).

<sup>26</sup> MCA § 76-22-109(5)(c).

<sup>27</sup> MCA § 76-22-109(5)(d).

<sup>28</sup> MCA § 76-22-110(2).

<sup>29</sup> MCA § 76-22-110(4).

<sup>30</sup> MCA § 76-22-112.

- Through a late, incomplete, or improperly submitted application.<sup>31</sup>

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.<sup>32</sup>

The Act requires that the State retain a 3<sup>rd</sup> party contingent right to enforce the terms of the easement. Otherwise MLR is the holder of the easement.

### **III. Description of the Proposed Action**

MLR is proposing to purchase 18,033 acres for a perpetual conservation easement with the intent of protecting greater sage grouse from long-term threats. Of the 18,033 acres proposed for easement, about 15,864 acres are rangeland, and 2,092 acres are crop land near the perimeter of the property. For the purposes of the easement, cropland is defined as land used primarily for the production and harvest of annual or perennial field, food, fiber, horticultural, orchards, vineyards, and/or energy crops. An additional 640 acres of Montana State Trust Land and 240 acres of U.S. Bureau of Land Management (BLM) are located within the perimeter of the 44 Ranch Inc. property boundaries as inholdings. The 44 Ranch Inc. also leases 1,011 acres of BLM land and 2,954 acres of Montana State Trust Land in the immediate vicinity.

The proposed easement area contains a minimum of five leks, and a minimum of 30 leks are located within four miles of the proposed easement area boundary. Approximately 53 leks are located within 12 miles of the property boundary. All existing ranch infrastructure is located outside a 2-mile buffer of active leks. 44 Ranch Inc. has agreed to observe the 0.6-mile no-surface-occupancy and the sagebrush eradication and treatment stipulations of Executive Order 12-2015.

The terms of the conservation easement would permit the following:<sup>33</sup>

- Agricultural activities. The provisions of the easement limit the types of agricultural operations that can occur on the property to those that maintain, restore, and conserve the sagebrush and other grasslands on the property consistent with sage grouse conservation purposes and related Conservation Values.<sup>34</sup>
- Grazing and livestock production. The 44 Ranch is currently enrolled in the Natural Resource Conservation Service (NRCS) Conservation Stewardship Program (CSP) Grazing Management Plan until 2019. This plan was originally developed under the NRCS Sage Grouse Stewardship Initiative (SGI). Upon expiration of that Plan in 2019, the 44 Ranch is eligible to apply for one more five year term, subject to Grantee's prior review and approval for consistency with this easement.

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<sup>31</sup> 14.6.102(1)-(3), ARM.

<sup>32</sup> MCA § 76-22-110(3).

<sup>33</sup> See Appendix C, Exhibit B for details.

<sup>34</sup> MCA § 76-22-110(3).



The 44 Ranch is expected to continue implementing similar grazing management plans consistent with the Values and Purposes of the conservation easement. The Program will receive copies of the current grazing plans and any that would be implemented in the future. The Grantor may graze, hay, harvest for hay and non-crop activities, and conduct common grazing practices, including cultural practices, provided that such activities are conducted consistently with the conservation purposes of this conservation easement. 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.

- Cropland production. The 44 Ranch retains the right to continue farming and cultivating those areas of the property currently in crop production.<sup>35</sup>
- Recreational use. The 44 Ranch retains the right to continue undeveloped non-commercial recreation and undeveloped commercial recreation including, but not limited to, hunting, fishing, hiking, and wildlife viewing, provided that all such activities remain consistent with the terms of the easement.
- Water resources. The 44 Ranch retains the right to restore, enhance, and develop water resources, including ponds, for permitted agricultural uses, livestock uses, fish and wildlife uses, domestic needs, and private recreation.
- Structures and building envelopes. No more than five total residential dwelling units, located within designated building envelopes, including the two existing residential dwelling units (building envelope sizes are 50 acres and 11 acres) and three additional residential dwelling units (building envelope sizes are three acres, three acres, and 10 acres) are permitted on the property (no residential dwelling units would be constructed within a two mile radius of active sage grouse leks). Associated outbuildings and agricultural structures that are constructed or placed on a permanent foundation must be located, individually or together, only within the building envelopes. Those agricultural structures not on permanent foundations may be located anywhere on the property, but not within a 0.6 mile radius of an active sage grouse lek, provided they are consistent with protection of the Conservation Values, including the scenic resources preserved by this Easement.
- Minerals. Subject to approval of Grantee and to the extent that the Grantor owns the mineral rights on or under the property, the Grantor may explore for and extract oil, gas, and other subsurface minerals with certain conditions.<sup>36</sup>
- Transfer of land. Transfer of land may include no more than four parcels, and are subject to restrictions. All building envelopes and development areas must be included in no more than two non-divisible tracts. The two remaining parcels may not include any portion of the building envelopes or development areas, except agricultural structures, which may be constructed on any part of the property. All transfers are expressly subject to all terms, conditions, rights, restrictions, and obligations contained in the easement.

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<sup>35</sup> See Appendix A for details.

<sup>36</sup> See Appendix C, Exhibit B for details.

- Timber removal. Personal use of timber resources, and permission to deal with natural occurrences such as disease. Selective harvest and removal of conifers to restore sage grouse nesting habitat is permitted.
- Utilities and other infrastructure. The 44 Ranch retains the right to install utility, communication, and all related structures on or beneath the property, as permitted by the easement.<sup>37</sup> Installation within two miles of a lek must be buried if financially feasible, and replanted to enhance sage grouse habitat. If not financially feasible, new infrastructure may not be located within 0.6 miles of an active sage grouse lek. Fences may be constructed, maintained, and repaired, but not within 0.6 miles of an active sage grouse lek. Existing or new roads may be constructed, repaired, maintained, and improved. Any new roads must be located outside of the No Build Areas.<sup>38</sup>
- Renewable energy production for use on the property. The 44 Ranch retains the right construct solar generation facilities within any building envelope for such uses as are permitted by this easement. Any associated distribution facilities must be buried whenever feasible. But any energy that would be produced on the property, except any incidental surplus energy may be credited to the landowner's utility service. Commercial development is prohibited.
- Residence-based business. The 44 Ranch reserves the right to conduct businesses within their residential dwelling unit, with the exception of sales or services business involving regular visits to the property by the general public or delivery trucks, or the retail sale of goods produced on the property.
- Guest ranching business. The 44 Ranch retains the right to use the property, or lease the property to a third party, for a commercial guest ranching business, expressly subject to the terms of the easement.

The terms of the conservation easement would prohibit the following:

- Sagebrush eradication and treatment. Farming, irrigation, cultivating and "sodbusting" outside of the "Farmed and Irrigated Areas" delineated in Exhibit E are prohibited, except to restore native species. Sodbusting is defined as any cultivation, discing, plowing, or disturbance of native soils and vegetation by mechanical means, including without limitation engine powered machinery and horse- or mule-drawn plows and discs.
- Subdivision. Except as provided under terms of this easement, the division, subdivision, or de facto subdivision of the property is prohibited. The property may be leased for agricultural purposes under the terms and purposes of this easement.
- Mineral removal. Exploration, removal, or extraction of any mineral substance including but not limited to oil, gas, hydrocarbons, sand, and gravel is prohibited, except as provided in this easement.<sup>39</sup>
- Commercial facilities. The establishment of any commercial or industrial facilities is prohibited.

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<sup>37</sup> See Appendix C, Exhibit B for details.

<sup>38</sup> See Appendix A, Exhibit E for details.

<sup>39</sup> See Appendix C, Exhibit C for details.

- Dumping. The dumping or disposal of non-compostable refuse on the property, except non-hazardous wastes as permitted in the terms of this easement, is prohibited.
- Construction. The construction or placement of any buildings, except for those permitted in the terms of this easement, is prohibited.
- Campers, trailers, and recreational vehicles. Placing or use of these vehicles on the property, other than the Grantor's personal vehicles or guest's thereof, is prohibited. Grantor or guest's vehicles may be used on the property on a temporary basis, outside of the No Build Areas delineated in the terms of this easement.
- Billboards. The construction, maintenance, or erection of any billboards is prohibited. Signage may be used only for posting of public access information, property sale, any business on the property, or notification of this easement.
- Roads. Constructions of roads and granting road rights-of-way across or upon the property is prohibited, except as permitted by the terms of this easement.
- Utilities. The granting of utility transmission lines and utility transmission line corridor right-of-way easements, or the expansion of existing utility transmission lines and utility transmission line right-of-way easements is prohibited, except when granted by mutual agreement of the Grantor, Grantee, and the State, and only in cases of eminent domain statutes.
- Game, fur, or fish farms. The raising or confinement for commercial purposes of "alternative livestock", "game animals", native or exotic fish (except private fish ponds), game birds, furbearers including mink and fox, other "wild animals", or "non-game wildlife", is prohibited.
- Commercial timber harvest. The harvest of timber on the property for commercial purposes, including commercial timber harvests or thinning, is prohibited.

These requirements are consistent with the best available information pertaining to habitat threats and habitat conservation for sage grouse,<sup>40</sup> and they are consistent with key requirements of the Policy for Evaluation of Conservation Efforts<sup>41</sup> (PECE) of the USFWS when making listing decisions in that the proposed action has a strong likelihood of eliminating key threats to sage grouse.

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

See:

- Appendix A: Maps
- Appendix B: Final Grant Agreement. This document describes the terms of the grant, Statement of Work, Budget, and its compliance with Executive Order 12-2015.
- Appendix C: Final Conservation Easement Agreement. This document includes Conservation Values, the Purposes, and General Effect of the Easement, Rights Conveyed, and Reserved Rights and Prohibited Uses. Easement specifics are included in Exhibits A through E.

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<sup>40</sup> Davies et al. 2011, Smith et al. 2016, and 80 FR 59858 (October 2, 2015).

<sup>41</sup> 68 FR 15100 (March 28, 2003).

The Program will retroactively calculate and make credits available for compensatory mitigation in the future once a habitat quantification tool has been developed, adopted by MSGOT and approved by the USFWS.<sup>42</sup> The 44 Ranch is currently enrolled in a Conservation Stewardship Program (CSP) contract with the USDA Natural Resources Conservation Service (NRCS) for 18,033 acres, after having participated in the NRCS Sage Grouse Initiative Program from 2011-2015.

All Montana compensatory mitigation must be consistent with the USFWS Range-wide Mitigation Framework (2014).<sup>43</sup> Federal guidance indicates that the 44 Ranch conservation easement lands would be eligible for compensatory mitigation-- additional conservation benefits will be provided above and beyond the terms and conditions of the CSP contract by eliminating the threat of agricultural conversion through purchase of this easement using funding from the Montana Sage Grouse Stewardship Fund and private matching funds secured by MLR.<sup>44</sup> The State likely cannot make credits available in a mitigation marketplace from this 18,033-acre parcel until the current NRCS contract expires on December 31, 2019.<sup>45</sup> This assures consistency with the compensatory mitigation principles of resource and financial additionality.<sup>46</sup>

In this case, eliminating the agricultural conversion threat is additional to the resource benefits created by the NRCS CSP program and will provide net conservation gain through perpetual legal habitat protection and maintenance of high standards for land stewardship. All compensatory mitigation credits created based on the ecosystem services provided to sage grouse on the 44 Ranch belong to the State. MLR and the 44 Ranch have agreed that the State may sell, convey, trade, assign, or otherwise dispose of compensatory mitigation credits at its discretion. Any proceeds generated from their eventual sale is statutorily required to be deposited back into the Sage Grouse Stewardship Fund for reimbursement.<sup>47</sup> The State, MLR and the 44 Ranch have also agreed that the landowner will allow reasonable access and to cooperate in its endeavor to generate credits and make them available in the future.

Despite the potential delayed availability of credits or any *pro rata* accounting for the portion of the total easement value donated by the 44 Ranch, the resource values associated with this land parcel for sage grouse) are significant. The amount of existing

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<sup>42</sup> MCA § 76-22-105(3).

<sup>43</sup> MCA § 76-22-111(2).

<sup>44</sup> USFWS, *Greater Sage –Grouse Range-Wide Mitigation Framework*, 13-14 (2014); available at [https://www.fws.gov/greatersagegrouse/documents/Landowners/USFWS\\_GRS%20RangeWide\\_Mitigation\\_Framework20140903.pdf](https://www.fws.gov/greatersagegrouse/documents/Landowners/USFWS_GRS%20RangeWide_Mitigation_Framework20140903.pdf).

<sup>45</sup> USFWS, *Greater Sage –Grouse Range-Wide Mitigation Framework*, 13-14 (2014) (see reference to expiration of NRCS contracts as a requirement for a landowner to participate in compensatory mitigation opportunities); available at [https://www.fws.gov/greatersagegrouse/documents/Landowners/USFWS\\_GRS%20RangeWide\\_Mitigation\\_Framework20140903.pdf](https://www.fws.gov/greatersagegrouse/documents/Landowners/USFWS_GRS%20RangeWide_Mitigation_Framework20140903.pdf).

<sup>46</sup> Resource and financial additionality requirements are fulfilled when the conservation resource benefits are demonstrably new and improve upon the baseline, would not have occurred without the compensatory mitigation measure, and generate additional conservation values beyond those that were the subject of the publicly funded project [e.g. NRCS SGI, NRCS CSP, USFWS Partners for Fish and Wildlife].

<sup>47</sup> MCA §§ 76-22-109, 110, 111.

disturbance assessed by the Density Disturbance Calculation Tool is 0.9%, which indicates an extremely low level of existing anthropogenic disturbance even before implementation of the easement's restrictive terms.<sup>48</sup> This DDCT result was considered by peer reviewers along with maps independently created by the Program as a surrogate for a habitat quantification tool. See Section VI below (Public Involvement During the Grant Application Process and During Preparation of this Environmental Assessment) and Appendix D.

#### IV. Project Location

The conservation easement associated with this project would cover activities on a ranch owned by the Delaney Family in Petroleum and Fergus counties in Montana. The proposed easement property is located entirely within the Fergus Sage Grouse Core Area north of Grass Range and southeast of Roy, Montana. See Appendices A and D 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 vast majority of Montana's breeding birds reside.

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

<b>Fergus County</b>
<b>T17N, R23E</b>
Section 9: E2SE4
Section 10: W2
Section 13: SW4
Section 14: S2SW4, N2, NW4SE4, NE4SW4, SE4SE4
Section 15: E2, W2NW4, SE4NW4, N2SW4, SW4SW4
Section 21: N2NE4
Section 22: N2, E2SE4
Section 23: E2NE4, SW4NE4, W2, SE4
Section 24: All
Section 25: N2, N2SW4, NW4SE4
Section 26: All
Section 27: E2NE4
Section 35: All
<b>T18N, R24E</b>
Section 22: SE4
Section 23: SE4
Section 24: SW4
Section 25: S2, E2NW4

<sup>48</sup> The DDCT total analysis area is 225,580 acres (easement parcel buffered by 4 miles + a four mile buffer around any leks within that); total number of disturbed acres within the DDCT analysis area is 2,056 acres.

Section 27: NE4
Section 34: E2
Section 35: N2, E2SE4

<b>Petroleum County</b>
<b>T17N, R24E</b>
Section 1: SE4NE4, N2SE4, NE4SW4
Section 2: Lots 2,3,4; S2NW4; SW4NE4; S2
Section 3: All
Section 4: Lots 2,3,4; S2N2; S2
Section 5: Lots 1,2; S2; S2NE4
Section 6: Lot 2, SE4, W2
Section 7: N2, SE4
Section 8: N2NE4, W2, S2SE4
Section 9: E2, E2W2, NW4NW4, W2SW4
Section 10: N2N2, S2NE4, S2NW4, SW4, W2SE4, NE4SE4, SE4SE4
Section 11: E2, E2W2, W2NW4, NW4SW4, SW4SW4
Section 14: NE4, E2NW4, W2NW4
Section 15: N2S2, NW4, NE4, SW4SW4
Section 17: ALL
Section 18: ALL
Section 19: ALL
Section 20: N2, SW4, W2SE4
Section 21: NW4, NW4SW4, NW4SE4, W2NE4, NE4NE4
Section 22: NW4NW4
Section 28: NW4
Section 29: NW4, N2S2, W2NE4, SE4NE4, S2SE4
Section 30: N2
Section 32: NE4, W2SE4, SE4SE4
Section 33: NW4, SW4SW4

## **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 in the future by helping to avoid a future listing under the federal Endangered Species Act.

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



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

The purpose and need for the proposed action to provide Stewardship Fund dollars to assist MLR to enter into a conservation easement stems from the fact that the USFWS identified habitat loss and fragmentation as key threats in Montana. Approximately 64% of sage grouse habitat in Montana is in private ownership.<sup>49</sup> 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 five leks within the project area, 30 leks within a four mile buffer of the project area, and at least 53 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.<sup>50</sup> It was recently shown that lek density may be reduced by more than 50% in the face of a 10% increase in cropland within 12.4 miles.<sup>51</sup> 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.<sup>52</sup> 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."<sup>53</sup> Even though dispersal distances for sage grouse are relatively short, "the

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

<sup>50</sup> 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).

<sup>51</sup> 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).

<sup>52</sup> 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).

<sup>53</sup> 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.*



cumulative effect of these [short range dispersals of 7-9 kilometers] translates into long-range connectivity.<sup>54</sup> 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.<sup>55</sup>

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.<sup>56</sup> 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.<sup>57</sup> Indeed, mitigation efforts ameliorate or prevent threats to sage grouse and sagebrush habitats.

Another purpose and need for the proposed action to enter a grant agreement with MLR is to begin development and implementation of Montana's mitigation framework. Mitigation addresses direct, indirect, and residual impacts of development. In Montana, implementation of the mitigation hierarchy is called for in Executive Order 12-2015 and by the Greater Sage Grouse Stewardship Act.<sup>58</sup> 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.<sup>59</sup>

The Act sets forth that Montana can implement compensatory mitigation either through establishment of habitat exchange<sup>60</sup> and/or a conservation bank.<sup>61</sup> 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

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Genet. DOI 10.1007/s10592-016-0872-z (available at <http://link.springer.com/article/10.1007/s10592-016-0872-z>).

<sup>54</sup> 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>).

<sup>55</sup> 80 Fed. Reg. 59858, 59867 (Oct. 2, 2015).

<sup>56</sup> 80 FR 59858, 59870-71 (Oct. 2, 2015).

<sup>57</sup> 80 FR 59858 (Oct. 2, 2015).

<sup>58</sup> See MCA § 76-22-111(1) ("After complying with the sequencing provisions required of this Conservation Strategy (avoid, minimize, reclaim), a project developer may proceed with a proposed project which will cause adverse impacts to sage grouse if the developer provides compensatory mitigation for the debits of a project.").

<sup>59</sup> MCA §§ 76-22-105(1)(g), 111(1)(b).

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

<sup>61</sup> 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."

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.<sup>62</sup> 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.<sup>63</sup>

Montana is in the early stages of developing its mitigation framework and habitat quantification tool. Some clear guidance is provided in the Act and formal administrative rules will be developed in the near future. All compensatory mitigation (framework and habitat quantification tool) is statutorily required to be consistent with the USFWS's Service's 2014 Greater Sage Grouse Range-wide Mitigation Framework<sup>64</sup> and approved by USFWS. 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 and USFWS approvals.

## **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.<sup>65</sup> MSGOT adopted final rules and Procedures 01-2016 on February 19, 2016, consistent with the Montana Administrative Procedures Act. Three hearings were held and public comment was solicited on the proposed rules. All MSGOT meetings are publically-noticed and comment sought. The final rules took effect March 5, 2016. 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: 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: nine total applications were received (eight proposals for permanent conservation easements and one proposal to mark high risk fences near leks);

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<sup>62</sup> MCA § 76-22-109(4).

<sup>63</sup> MCA §§ 76-22-104(2), 105(3).

<sup>64</sup> Available at

[https://www.fws.gov/greatersagegrouse/documents/Landowners/USFWS\\_GRS%20RangeWide\\_Mitigation\\_Framework20140903.pdf](https://www.fws.gov/greatersagegrouse/documents/Landowners/USFWS_GRS%20RangeWide_Mitigation_Framework20140903.pdf).

<sup>65</sup> MCA §76-22-104(1)-(7).

- April 14: 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: the Program issued a media release announcing a public comment opportunity to review all applications; comment period closed April 29.

Between April 29 and May 10, 2016, all applications were reviewed by the Program and an independent peer review committee. Independent peer reviewers had expertise and unique knowledge of the particular 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, amount of existing disturbance using the Density and Disturbance Calculation Tool (DDCT), breeding habitat potential, conservation status of nearby lands, risk of cultivation, and riparian habitat availability. The statistics were compiled for the proposed project area, the project area buffered by four miles, and the project area buffered by twelve miles. Four and twelve-mile buffers have biological relevance for nesting distances from leks and response distance to cultivation (see Section V Purpose and Need for the Proposed Action for a detailed explanation of distance buffers). These statistics allowed comparison of consistent metrics for sage grouse resource values across all applications to identify those with the greatest benefit and to assist in prioritization and ranking. This was also considered as an informal surrogate to a habitat quantification tool. See Appendix D.

During a publically-noticed MSGOT meeting on May 24, 2016, public comment was invited on any of the proposals. Ultimately, MSGOT selected the 44 Ranch Conservation Easement Project for funding.

The Program then solicited public scoping comments to initiate this EA, beginning on July 11, 2016 and ending on July 21, 2016. A specific project scoping notice was sent to individuals and organizations likely to have an interest in the proposal and project area (the Program's electronic "interested parties" list). Scoping notices were also available on the Program's website. Accommodations were also made for the public to submit comments electronically through the public comment web application tool located on the MSGOT webpage at <https://sagegrouse.mt.gov/msgot.html>. Interested parties could submit comments electronically or via postal mail.

No electronic comments were received specific to the proposed 44 Ranch Conservation Easement Project. However, several written comments were received. All were supportive of this type of proposed expenditure from the Fund. Several comments suggested improvements to the overall process, and requested additional details about the proposed easement location and details about the terms. Several comments stressed the importance of monitoring the results for sage grouse and sagebrush habitats going forward to measure success of Montana's conservation efforts and elucidate areas for improvement.

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

MSGOT prepared and released a Draft Environmental Assessment for public comment on October 19, 2016. A notice was sent to the interested parties list maintained by the Program. The Draft Environmental Assessment was published on the Program's Grants web page. The Draft described the 44 Ranch, Inc. Conservation Easement proposal and analyzed its potential impacts. A working drafts of the grant agreement and conservation easement were included as appendices, which reflected negotiations as of October 19. The public comment period closed on November 2, 2016.

Seven written comments were received, five of which supported the proposed action to contribute funds from the Stewardship account for purchase of the 44 Ranch, Inc. conservation easement. Two comments opposed the proposed action. A comment summary and responses to public comment are included in the companion Decision Notice document.

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

Partners involved in this project include the private landowners, the MLR, and the MSGOT. Montana Department of Natural Resources and Conservation (DNRC) and BLM also manage lands in and near the project area boundary. Montana's core area approach underlying the Conservation Strategy calls for approaching conservation using an "all hands, all lands, all threats" approach that engages all landowners—both private and public land managing agencies. Executive Order 12-2015 seeks alignment between the state's efforts and those of federal land managing agencies, particularly because of Montana's checkboard ownership patterns.

## **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 44 Ranch Inc. Conservation Easement, for the purpose of sage grouse conservation in Montana. This easement by MLR would generate credits available at a later time to be used as compensatory mitigation for other projects that impact sage grouse and sagebrush habitats. The 44 Ranch Inc. Conservation Easement analyzed in this EA was one proposal selected from nine total applications for conservation-related projects seeking Stewardship Grant funding through a peer review process. As described in detail in Description of the Proposed Action section above, measures and terms would be required under the conservation easement that would provide measureable contributions for sage grouse conservation in perpetuity. Various easement terms were discussed and negotiated between the private landowner, MLR, 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 44 Ranch Inc. Conservation Easement by MLR for the purpose of sage grouse conservation in Montana. Project mitigation credits generated under the easement would not be realized and would not be available at a later time to be used as compensatory mitigation for other projects around the state involving energy or agricultural development etc., which incurred permanent adverse impacts to designated sage grouse habitats. Land use restrictions that would be required under the conservation easement providing measureable 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 18,033-acre conservation easement. The easement itself would contain prohibitions on soil-impacting activities over the long term such as, limits on construction of human developments.

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

No more than five residential dwelling units, located within designated building envelopes, including the two existing residential dwelling units and three additional residential dwelling units are permitted on the property. No residential dwelling units would be constructed within a two mile radius of active sage grouse leks. No buildings may be constructed within a 0.6 mile radius of an active sage grouse lek. Other surface-disturbing activities are prohibited, including surface mining, commercial gravel operations, wind and solar development, and conversion of rangeland to cropland. Thus, lower risk of adverse indirect and cumulative effects to soil and land resources would be expected under this alternative.

2. No Action – Under the No Action Alternative, funding support for the 44 Ranch Inc. 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 18,033-acre conservation easement.
2. No Action – Under this alternative, grant fund authorization for the purchase of the 18,033-acre conservation easement would not occur. However, no direct, indirect or cumulative effects to air quality or other air-related resources would be anticipated.

#### **C. Water Resources**

1. Proposed Action – The Property is located in the Musselshell River watershed and the South Fork of Bear Creek drainage. The 44 Ranch may restore, enhance, and develop water resources, including ponds, for permitted agricultural uses, livestock uses, fish and wildlife uses, domestic needs, and private recreation. No exploration or extraction may take place in a water body, nor may any water quality be degraded by actions undertaken on the property. Under the Proposed Action no direct, indirect or cumulative effects to water quality, streams or other aquatic resources would occur in association with authorizing the grant funds for the purchase of the 18,033-acre conservation easement.
2. No Action – Under this alternative, grant fund authorization for the purchase of the 18,033-acre conservation easement would not occur. However, no direct, indirect or cumulative effects to water quality, streams or other aquatic resources would be anticipated.

#### **D. Vegetation Resources**

1. Proposed Action – A data query of endangered, threatened and sensitive plants for the conservation easement area with one-mile buffer was conducted by the Montana Natural Heritage Program.<sup>66</sup> No records for such plants were located. Under the Proposed Action no direct effects to existing vegetation on the project area would occur in association with authorizing the grant funds for the purchase of the 18,033-acre conservation easement. However, over the long term, appreciable

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<sup>66</sup> MNHP 44 Ranch SOC Plants Report July 19, 2016.



indirect and cumulative beneficial effects associated with protection and conservation of native vegetation communities would be realized by authorizing funding to secure the conservation easement.

The production, processing and marketing of livestock compatible with restoration and conservation of 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, cultivating and “sodbusting” outside of the “Farmed and Irrigated Areas” delineated in Exhibit E are prohibited, except to restore native species with Grantor’s prior approval. Sodbusting is defined as any cultivation, discing, plowing, or disturbance of native soils and vegetation by mechanical means, including without limitation engine powered machinery and horse- mule-drawn plows and discs.

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

- Limits on the number of allowable additional residential dwelling units and associated outbuildings;
- Easement terms to protect the Conservation Values and Purposes of the easement and private rangeland stewardship;
- A 0.6-mile no-surface-occupancy buffer requirement around leks;
- Prohibition on commercial timber operations, while allowing for the personal use of timber resources including management actions for natural occurrences such as disease, and selective harvest and removal of conifers to restore sage grouse nesting habitat;
- Sagebrush eradication and treatment stipulations of Executive Order 12-2015;
- Prohibition of surface mining;
- Prohibition of commercial gravel operations;
- Prohibition of rangeland conversion to cropland;
- Prohibition of new road construction other than for residential access;
- Prohibition of turbine-style wind energy development; and
- Prohibition of commercial wind and solar development.

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



2. No Action – Under this alternative, grant fund authorization for the purchase of the 18,033-acre conservation easement would not occur. Thus, no protective restrictions would be established under the easement at this time. Over time, greater risk of adverse indirect and cumulative effects to existing vegetation communities would be present due to numerous land uses and choices made by the present and future landowners and public land managers.

#### **E. Fish and Wildlife Resources**

1. Proposed Action -- A data query of endangered, threatened and sensitive species for the conservation easement area with one-mile buffer was conducted by the Montana Natural Heritage Program.<sup>67</sup> No records for federally listed endangered or threatened species were located for this area. However, records were obtained for seven sensitive species associated with sagebrush, and grassland-prairie habitats. These included the greater sage grouse, ferruginous hawk (*Buteo regalis*), long-billed curlew (*Numenius americanus*), Sprague's pipit (*Anthus spragueii*), loggerhead shrike (*Lanius ludovicianus*), Brewer's sparrow (*Spizella breweri*), and Baird's sparrow (*Ammodramus bairdii*). No sensitive fish species were identified.

The easement area also provides habitat for numerous other terrestrial and avian species endemic to central and eastern Montana. The project is located in the Musselshell River watershed and the South Fork of Bear Creek drainage. Four creeks and several stock ponds also occur within the easement area that provide aquatic habitat. 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 18,033-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;
- A 0.6-mile no-surface-occupancy buffer requirement around leks;
- Prohibition on commercial timber operations, while allowing for the personal use of timber resources including management actions for natural occurrences such as disease, and selective

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<sup>67</sup> MNHP 44 Ranch SOC Fish and Wildlife Report July 19, 2016.

harvest and removal of conifers to restore sage grouse nesting habitat;

- Sagebrush eradication and treatment stipulations of Executive Order 12-2015;
- Prohibition of surface mining;
- Prohibition of commercial gravel operations;
- Prohibition of rangeland conversion to cropland;
- Prohibition of new road construction other than for residential access;
- Prohibition of turbine-style wind energy development; and
- Prohibition of commercial wind and solar development.

This suite of measures would minimize the potential for destruction, disturbance, removal, and conversion of sagebrush and grassland vegetation communities in perpetuity, which would provide considerable protection and certainty 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 18,033-acre conservation easement would not occur. Thus, no protective restrictions would be established under the easement at this time. Over time, greater risk of adverse indirect and cumulative effects to existing sagebrush and grassland-prairie habitats would be present due to numerous land uses and choices made by present and future landowners and public land managers.

## **F. Adjacent Lands**

1. Proposed Action –In general, land uses outside of the proposed conservation easement area would not be affected. Lands adjacent to the project area and in the vicinity of the project area are comprised primarily of other private lands, as well as state trust lands and lands managed by the BLM. The 44 Ranch retains leases on these nearby state (2,954 acres) and federally-managed (1,011 acres) lands, and implements the same grazing management practices and plan as is practiced on the ranch. This landscape-scale land stewardship approach is advantageous for overall range health and sage grouse conservation efforts. Under the Proposed Action no direct effects to management of neighboring lands within, or in the nearby vicinity of the project area, would occur in association with authorizing the grant funds for the purchase of the 18,033-acre conservation easement on private land. However, if this conservation easement were to be purchased, the neighboring lands are likely to continue to be managed in conjunction with the private parcels, providing continuity in resource management that will benefit the sage grouse and its habitat.

However, in the future, land uses may be indirectly influenced on some neighboring lands due to conservation restrictions in the proposed easement area, such as limitations on new road construction through the easement parcels themselves. The extent that restrictions would limit or influence other land uses on nearby non-easement lands is uncertain and would depend on the resource development potential of each parcel and management objectives of each individual land owner over time. This may be most relevant for state trust section 16 (T17N, R24E), which would be completely surrounded by easement-covered lands. However, it is possible that State Trust Lands may participate in future compensatory mitigation markets and manage that section to produce credits and sell them to offset impacts of development.

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

2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 18,033-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 18,033-acre conservation easement.
2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 18,033-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, cultivating and “sodbusting” outside of the “Farmed and Irrigated Areas” delineated in Exhibit E are prohibited, except to restore native species with Grantor’s prior approval. Sodbusting is defined as any cultivation, discing, plowing, or disturbance of native soils and vegetation by mechanical means, including without limitation engine powered machinery and horse- mule-drawn plows and discs.

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

2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 18,033-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 18,033-acre conservation easement.
2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 18,033-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 18,033-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 18,033-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 18,033-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 18,033-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 18,033-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 18,033-acre conservation easement. A cultural resource evaluation was not conducted for this easement. Considering the non-ground disturbing nature of this project, no additional archaeological

investigative work will be required. The easement will not modify current land use, and therefore will have no potential to physically or visually impact any kind of cultural or paleontological resources that may be present within the Area of Potential Effects (APE).

2. No Action -- Under the No Action Alternative, grant fund authorization for the purchase of the 18,033-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 Manager, Department of Natural Resources and Conservation. PO Box 201601, 1625 11th Ave, Helena, MT 59620. E-mail: [csime2@mt.gov](mailto:csime2@mt.gov); Work: (406) 444-0554.
- Ross Baty  
Fish and Wildlife Biologist, Department of Natural Resources and Conservation. 2775 Spurgin Rd, Missoula, MT 59804. E-mail: [rbaty@mt.gov](mailto:rbaty@mt.gov); Work: (406)542-4300.

# Appendices



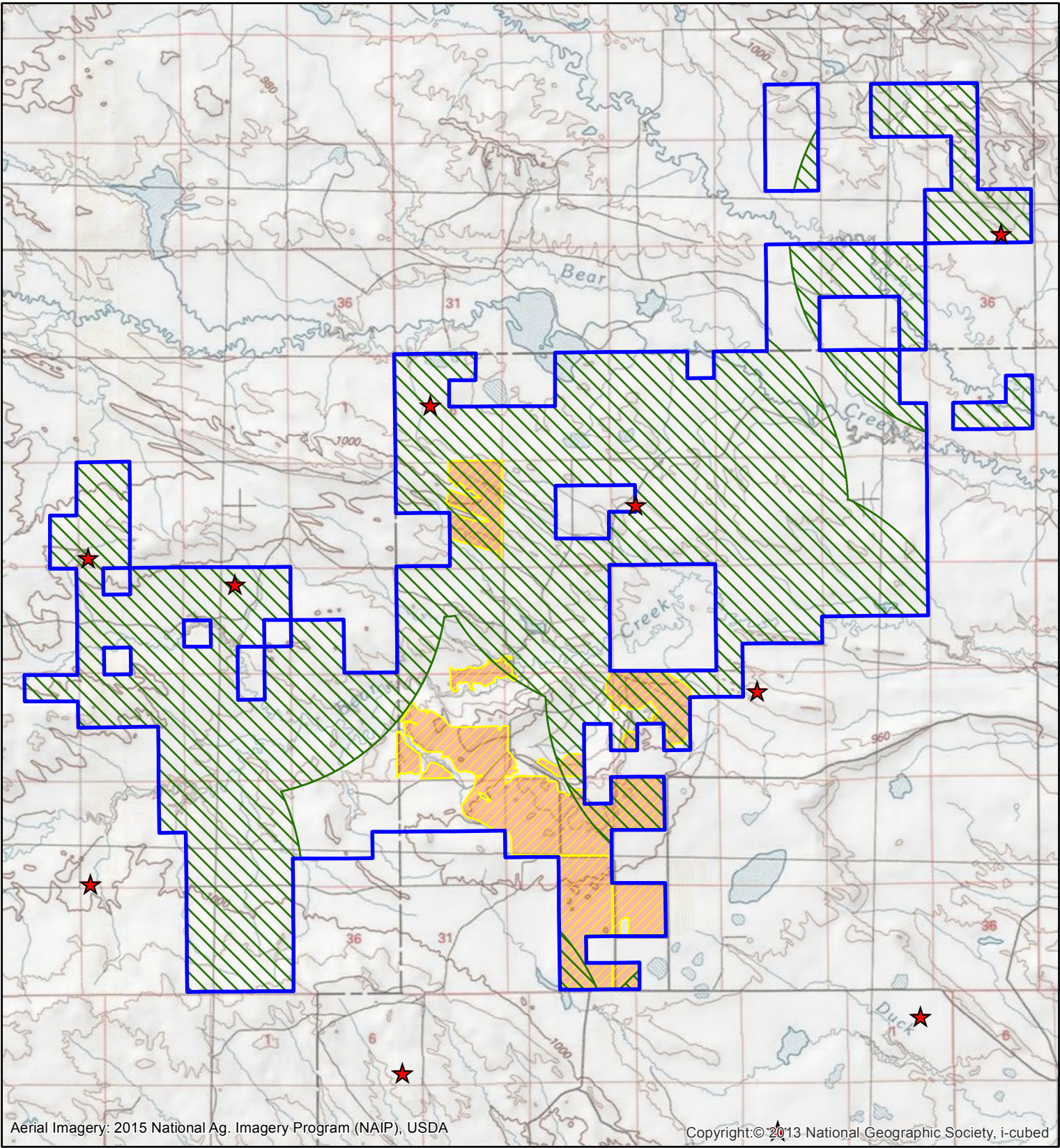
## **Appendix A**





**Maps as of October 19, 2016**

**Exhibit E: Easement Boundary, Cropland,  
No Build Areas, Lek Locations**

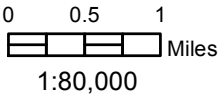
**Exhibit F: Easement Boundary,  
Development Area/Existing Buildings**

EXHIBIT E



-  Easement Boundary
-  Cropland (2,091.63)
-  No-Build Area (2 mile radius)
-  Sage Grouse Active Lek Location

Date: October 19, 2016

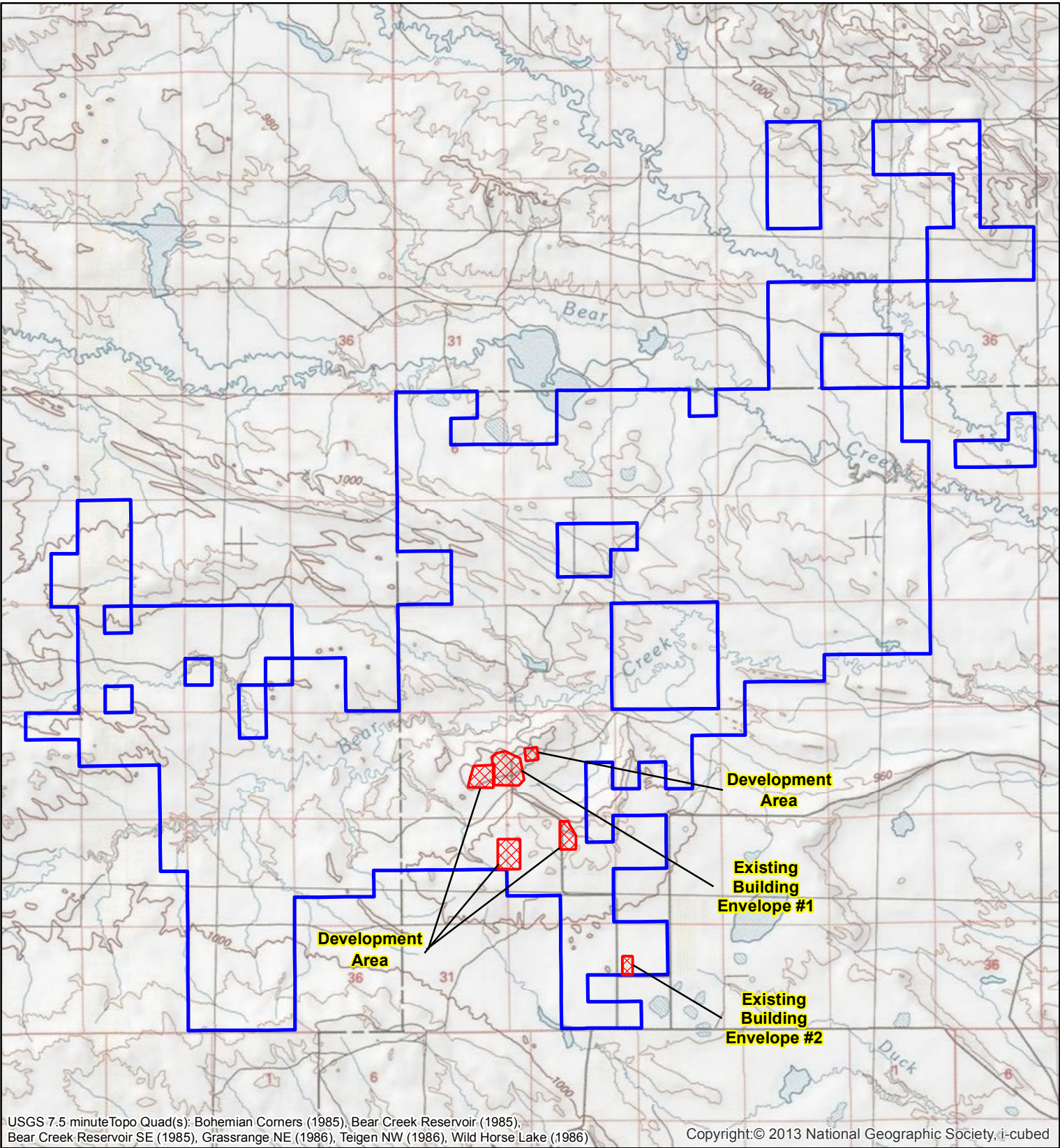




*The Montana* LAND RELIANCE

Disclaimer: information provided on this map is for illustrative purposes only and should not be relied upon to identify legal boundaries

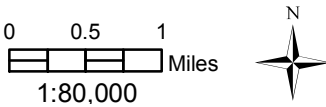


EXHIBIT F



-  Easement Boundary
-  Development Area / Existing Building Envelope

Date: July 25, 2016



*the Montana* LAND RELIANCE

Disclaimer: information provided on this map is for illustrative purposes only and should not be relied upon to identify legal boundaries

map author: Matt

## **Appendix B: Grant Agreement**

**SAGE GROUSE HABITAT CONSERVATION PROGRAM**

**SAGE GROUSE HABITAT STEWARDSHIP FUND GRANT AGREEMENT REVIEW ROUTE SLIP**

Agreement Number: SG-MLR-0003

MLR: Montana Land Reliance -- 44 Ranch, Inc. Conservation Easement

Program Contact: Carolyn Sime Phone: (406) 444-0554

<u>Reviewer</u>	<u>Date In</u>	<u>Date Out</u>	<u>Initials</u>
Amy Personette	<u>          </u>	<u>          </u>	<u>          </u>
Joan Specking	<u>          </u>	<u>          </u>	<u>          </u>
Carolyn Sime	<u>          </u>	<u>          </u>	<u>          </u>
Mark Bostrom	<u>          </u>	<u>          </u>	<u>          </u>
Anna Miller	<u>          </u>	<u>          </u>	<u>          </u>
Danna Jackson	<u>          </u>	<u>          </u>	<u>          </u>
Tim Baker	<u>          </u>	<u>          </u>	<u>          </u>
FSO	<u>          </u>	<u>          </u>	<u>          </u>
Amy Personette	<u>          </u>	<u>          </u>	<u>          </u>

Contract Specific Sections: Section 1, 2, 3, 4, 7, 11  
List below any changes to Standard Sections:

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Please review the enclosed Grant Agreement and pass it on to the next reviewer when finished. Please return the document back to the Sage Grouse Habitat Conservation Program as soon as possible.

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

MLR: Montana Land Reliance  
Grant Title: Montana Land Reliance, 44 Ranch, Inc. Conservation Easement  
Grant Agreement Number: SG-MLR-0003

**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
- 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. Costs and Attorney's Fees

**Attachments**

- Attachment A – Statement of Work
- Attachment B – Budget
- Attachment C – Executive Order 12-2015
- Attachment D – Conservation Easement

**FOR DNRC USE ONLY**

**Approved Agreement**

**Maximum amount under this Agreement: \$**

**No.** SG-MLR-0003

**-Source of Funds -**

**Amendment No.** \_\_\_\_\_

**Fund Name**

**Fund No.**

**Division** \_\_\_\_\_

Sage Grouse Stewardship

02318

**FSO** \_\_\_\_\_

**Subclass**

**ORG**

**Percent**

**Legal** \_\_\_\_\_

540J2

3060

100%

**MSGOT** \_\_\_\_\_

**Appropriation Authority - HB2 2016/2017 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 Montana Land Reliance (hereinafter referred to as the "MLR,") a nonprofit Montana corporation with a principal office at 324 Fuller Avenue, Helena, Montana 59601 and with a mailing address of P.O. Box 355, Helena, MT 59624, according to the following terms and conditions:

**SECTION 1. PURPOSE.** The purpose of this Grant Agreement (Agreement) is to establish mutually agreeable terms and conditions, specifications, and requirements to grant funds to MLR to assist in MLR's purchase of the Conservation Easement at a bargain-sale price.

**SECTION 2. TERM.** The effective date of this Agreement is the date of last signature of State or MLR, as reflected below. The term of the agreement shall be from the effective date until three years after closing, at which time the State and MLR 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 64<sup>th</sup> Legislature for the 2016/2017 biennium 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 MLR 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 MLR. The Program Manager of the SGHCP or designee will monitor expenditures to assure payment eligibility. The MSGOT, SGHCP, and DNRC assume no responsibility for MLR's obligation to faithfully perform the tasks and activities necessary to implement this Agreement. Similarly, MLR 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](mailto: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.

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

SECTION 5. GRANT BUDGET. An Agreement budget showing anticipated expenditures is provided in Attachment B 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. MLR 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. Closing of the acquisition of the Conservation Easement shall occur on November 29, 2016 (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 the offices of Realty Title Company, Inc., 201 6<sup>th</sup> Ave. South, Lewistown, MT 59457 (the "Closing Agent"). Upon MSGOT approval of this Agreement and the Conservation Easement, and upon the State's receipt of all plans described in Section 8 of this Agreement, the grant amount approved by MSGOT on May 24, 2016, may 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 (\$1,500,000). Disbursal of the grant funds from escrow shall be in accordance with the parties' Closing instructions.

SECTION 9. RECORDS AND AUDITS. MLR 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 MLR 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 MLR'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 MLR, 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 MLR or any contractors that might be engaged for completion of the project. MLR is independent from and is not an employee, officer or agent of the State of Montana or its agencies. MLR, its employees and contractors are not covered by the Workers' Compensation laws applicable to the state or its agencies. MLR 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. MLR 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 MLR'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 MLR'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 MLR 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. MLR 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. Credits generated as a result of this Agreement shall reimburse the Sage Grouse Stewardship Account when they are sold.

SECTION 17. FAILURE TO COMPLY. If MLR fails to comply with the terms and conditions of this Agreement, DNRC may terminate the Agreement and refuse disbursement of any additional 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 MLR funds distributed pursuant to this Agreement, if any:

1. MLR's matching sources become unavailable; or
2. The terms of the Conservation Easement, including but not limited to all reports described in Section 8 above, are not approved by MSGOT or are not agreeable to State or MLR; or
3. The land loses capacity to provide sage-grouse habitat and produce credits; or
4. The landowner withdraws or denies access to the property subject to the Conservation Easement; or
5. Stewardship account funds are no longer available.
6. Existing liens and mortgages on the property subject to the Conservation Easement have not been subordinated to the Conservation Easement at the time of closing.

SECTION 21. 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.

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

By: \_\_\_\_\_ Date \_\_\_\_\_  
(Signature)

Print name and title \_\_\_\_\_

For: The Montana Land Reliance, a Montana non-profit corporation. Tax ID Number \_\_\_\_\_

**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:

\_\_\_\_\_ Date: \_\_\_\_\_

John Tubbs  
Director, Montana Department of Natural Resources and Conservation

\_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

Danna Jackson  
Chief Legal, Department of Natural Resources and Conservation

\_\_\_\_\_

## **Attachment A – Statement of Work**

MLR's responsibilities under this grant agreement are summarized in this Statement of Work. This list of responsibilities is not exhaustive, but it defines SGHCP's primary expectations of MLR.

1. MLR shall develop and finalize a Conservation Easement with 44 Ranch, Inc. that is approved by MLR, 44 Ranch, Inc., and MSGOT.
2. MLR shall develop and provide to SGHCP Program Manager the following plans and reports:
  - The current CSP grazing plan on the property.
  - A Conservation Easement Stewardship Management Plan which describes MLR's plan to monitor and manage the Conservation Easement. Although MLR's model stewardship guidance may be used to draft this plan, the final plan MLR provides must contain language sufficient enough to indicate the Conservation Easement specifically protects sage grouse habitat.
  - A Conservation Easement Baseline Report.



## **Attachment B – Budget**

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

Item		Matching In-Kind Contribution		Total Contributions
<b>a. Project Planning and Design</b>				
Engineering Applicant				
Contractor				
Landowner				
Baseline Inventory Report (Environmental Documentation Report) Applicant	0	7,500	0	7,500
Contractor				
Environmental Hazards Assessment Survey				
Mineral Report Applicant	0	5,000	0	5,000
Contractor				
Appraisal	0	20,000	0	20,000
Title Commitment	0	1,140	0	1,140
Title Insurance	0	1,500	0	1,500
Mortgage Subordination				
Resolution of Legal Access				
Land Trust Transaction Fee				
Appraisal				
Closing and Recording Fees	0	1,000	0	1,000
Other Expenses				
<b>Sub-Total</b>	<b>0</b>	<b>36,140</b>	<b>0</b>	<b>36,140</b>
<b>b. Project Implementation</b>				
Manpower Applicant				
Contractor				
Landowner				
Equipment Applicant				
Contractor				
Landowner				
Materials (rock, chemicals, etc.) Applicant				
Contractor				
Landowner				
Perpetual Easement Stewardship Fee / Endowment				
<b>Total Easement Value</b>		<b>491,831</b>		<b>2,366,831</b>

**RECEIVED**

APR 08 2016

Dept. of Natural  
Resources & Conservation



April 8, 2016

Other				
<b>Sub-Total</b>		<b>491,831</b>		<b>2,366,831</b>
<b>c. Project Operation/Maintenance</b>				
Manpower Applicant				
Contractor				
Landowner				
Equipment Applicant				
Contractor				
Landowner				
Materials (rock, chemicals, etc.) Applicant				
Contractor				
Landowner				
Monitoring Stewardship				
Other				
<b>Sub-Total</b>				
<b>d. GRAND TOTAL</b>		<b>527,971</b>		<b>2,402,971</b>

RECEIVED

APR 08 2016

Dept. of Natural  
Resources & Conservation**If a Conservation Easement, Summary of Acquisition Budget:**

Appraised Value of Conservation Easement: \$2,366,831

Landowner Donation: \$527,971 (donation value &amp; in-kind, project costs)

Purchase Price: \$1,875,000

Source of Easement Funds: (list all sources)

Other: Landowner \$527,971 (partly in-kind, project costs)

Other: \_\_\_\_\_

**Project Readiness / Implementation Schedule:** List time line including month and year when project is expected to be initiated and completed.

Month/Year overall project begins: Project has begun

Month/Year overall project ends: Anticipated Closing November, 2016

Month/Year of MGSFSFA Grant funding begins: October, 2016

Month/Year MGSFSFA Grant funding ends: November, 2016

**Attachment C – Executive Order 12-2015**

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

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

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**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 8<sup>th</sup> day of  
SEPTEMBER, 2015.

  
STEVE BULLOCK, Governor

ATTEST:

  
LINDA MCCULLOCH, Secretary of State

For:

## Attachment A

### STATE OF MONTANA OFFICE OF THE GOVERNOR

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

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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

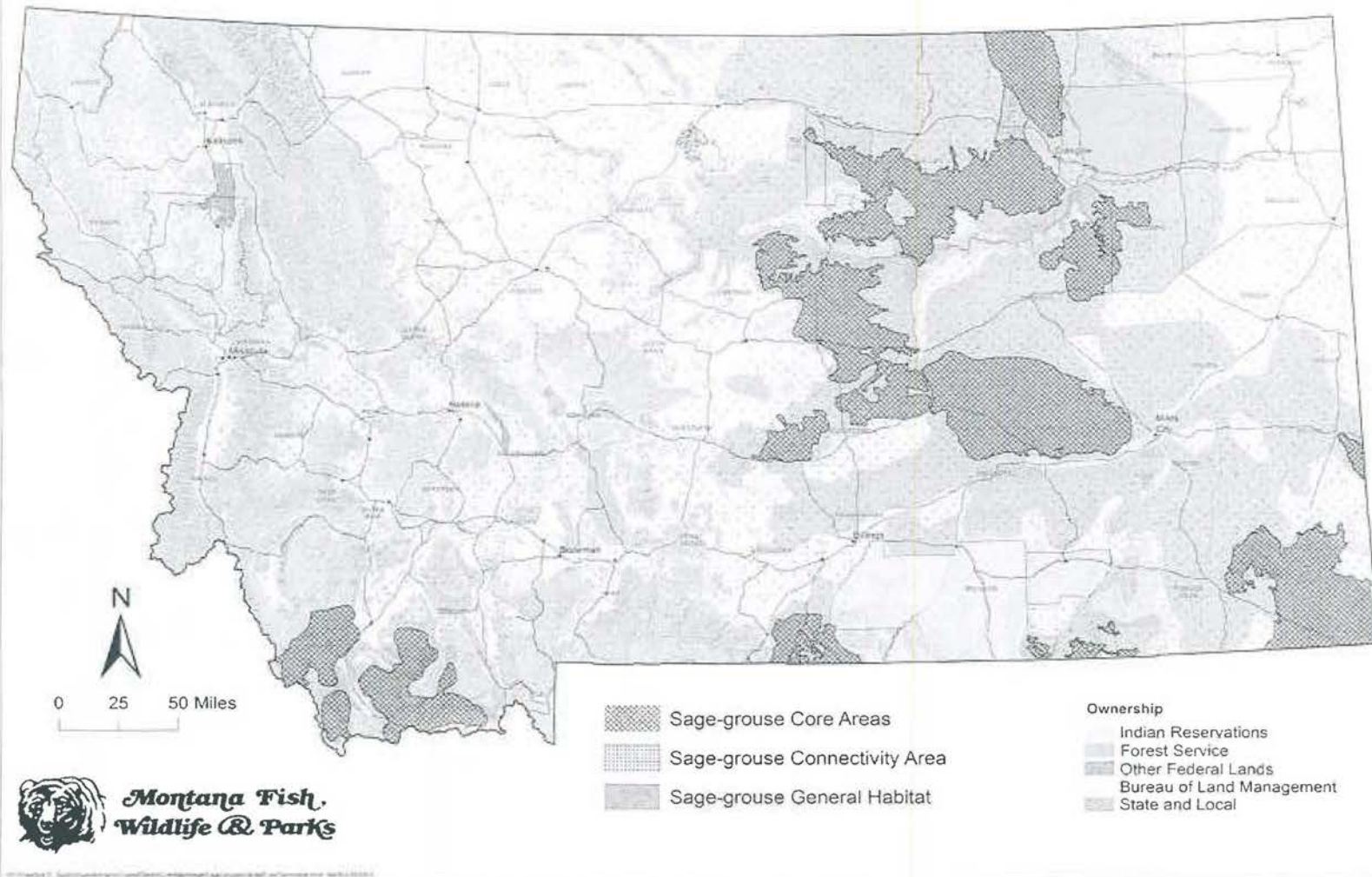
treatments, and biological controls. The Montana Department of Agriculture should review the appropriateness of listing Japanese brome (*Bromus japonicus*) as a regulated species (priority #3) in Montana, and report to MSGOT the results of its evaluation.

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 L<sub>50</sub>) 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\\_HABITATASSESSMENT0000669.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications_Directorate/public_affairs/sage_grouse_planning/documents.Par.23916.File.dat/SG_HABITATASSESSMENT0000669.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.

**STATE OF MONTANA  
OFFICE OF THE GOVERNOR  
EXECUTIVE ORDER No 21-2015**

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**EXECUTIVE ORDER 12/2015 *ERRATUM***

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**WHEREAS**, Executive Order 10-2014 signed on September 9, 2014, included a map entitled “Sage-grouse Conservation Areas in Montana” as Attachment A;

**WHEREAS**, the Montana Department of Fish, Wildlife & Parks (FWP) has since completed a more thorough review of sage brush habitat suitable for sage grouse occupancy and created a more current and accurate map entitled “Sage-grouse Core Areas and General Habitat in Montana” and dated 9/4/2015 for purposes of implementing Executive Order 12-2015;

**WHEREAS**, the methodology and total number of acres designated as core habitat has not changed from the 2014 map to the map dated 9/4/15;

**WHEREAS**, Executive Order 12-2015 was signed on September 8, 2015, and erroneously included the 2014 map instead of the 9/4/15 map and this was a ministerial clerical mistake; and,

**WHEREAS**, Executive Order 12-2015 should have contained the map dated 9/4/15 at the time of signature on September 8, 2015.

**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 issue this *erratum* as follows:

1. The 2014 map entitled Sage-grouse Conservation Areas in Montana included as Attachment A in Executive Order 12-2015 is hereby withdrawn and replaced with the map entitled Sage-grouse Core Areas and General Habitat in Montana dated 9/4/15 and attached to this Executive Order as Exhibit A.
2. Executive Order 12-2015 and all its requirements apply within the sage grouse core areas, general habitat, and connectivity area as depicted on the map entitled Sage-grouse Core Areas and General Habitat and dated 9/4/2015.
3. The Sage Grouse Habitat Conservation Program is directed to make the Sage-grouse Core Areas and General Habitat map dated 9/4/15 available on the Program’s website.
4. FWP is directed to make the spatial shapefile data used to create the 9/4/15 map available on its website, to remove from its website the spatial shapefile data used to create the now withdrawn 2014 map, and make other changes necessary to correct the error and facilitate implementation and compliance.



5. State agencies shall comply with Executive Order 12-2015 and apply the 9/4/15 map, as corrected by this *erratum*. The scope of this Executive Order is strictly limited to replacing the map where Executive Order 12-2015 applies. Compliance in all other respects is as set forth previously in Executive Order 12-2015.

#### 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 31<sup>st</sup> day of  
December, 2015.



STEVE BULLOCK, Governor

ATTEST:

  
For: \_\_\_\_\_

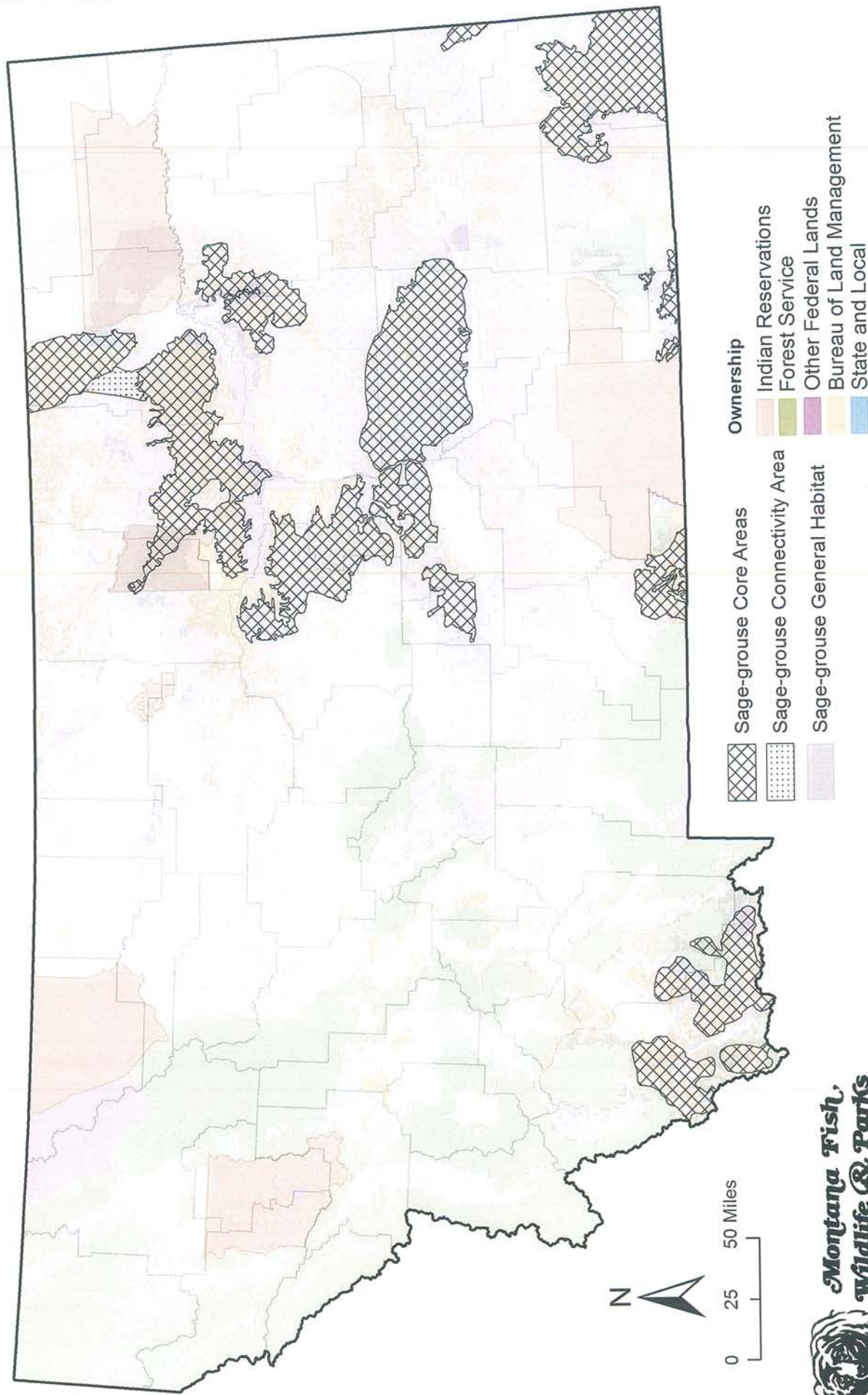
LINDA MCCULLOCH, Secretary of State





- EXHIBIT A -

# Sage-grouse Core Areas and General Habitat in Montana



**Attachment D – Conservation Easement**  
**[we will attach Easement when the Easement is finalized]**

**Appendix C: Draft Easement Agreement as of  
November 16, 2016**

AFTER RECORDING RETURN THIS ORIGINAL DOCUMENT TO:

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

### DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by 44 RANCH, INC., a Montana corporation, with a mailing address of P.O. Box 116, Grass Range, Montana 59032-0116 (hereinafter together with its successors and assigns collectively referred to as "Grantor") and THE MONTANA LAND RELIANCE, a nonprofit Montana corporation with a principal office at 324 Fuller Avenue, Helena, Montana 59601 (hereinafter referred to as "Grantee");

### R E C I T A L S:

1. Grantor is the owner of certain real property in Fergus County and Petroleum County, Montana, more particularly described in Exhibit A attached hereto and incorporated by this reference (hereinafter the "Property"), and the Property totals approximately 18,033 acres; and,
2. The Property constitutes a valuable component of the natural habitat, scenic, and open-space lands in the Musselshell River watershed and the South Fork of Bear Creek drainage, and the Property remains largely undeveloped and retains its agricultural and natural habitat characteristics; and,
3. Preservation of the scenic, open-space, and natural habitat values found on the Property provides substantial benefits to the people of the State of Montana, Fergus County, Petroleum County, and the United States by preserving and providing the following significant resources, in perpetuity, in compliance with Section 170(h)(4)(A) of the Internal Revenue Code and the Montana Open Space and Voluntary Conservation Easement Act, Sections 76-6-101, et seq., MCA:
  - a. Open-space lands, which maintain the rural, agricultural, and natural scenic qualities of the area, and provide opportunities to continue traditional farming and ranching practices in perpetuity, as encouraged and supported by federal tax policies, including Section 170(b)(1)(E) of the Internal Revenue Code; clearly delineated state land conservation policies adopted by the State of Montana to protect critical habitat of the greater sage grouse, as set forth in Recitals 4 below; and local land conservation policies adopted in Fergus County, Montana, as set forth in Recital 7 below; and,



b. Scenic views of the part of the Property that are visible from State Route #19 and Blakeslee Road, public roadways that border and/or traverse the Property, and the protection of this landscape, portions of which are located immediately adjacent to state and federal public lands, will provide public benefits by ensuring the open space will remain relatively undisturbed by prohibiting inappropriate development, including residential subdivision, on the Property in perpetuity;

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

4. The 64<sup>th</sup> 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 benefitting sage grouse habitat and populations on private lands, and public lands as needed, that lie within core areas, general habitat, or connectivity areas," and the Office of the Governor issued Executive Order 12-2015, implementing purchases of conservation easements pursuant to the Act to accomplish these purposes including, but not limited to:

a. Protecting habitat that is located within the State of Montana's "Sage Grouse Core Area," as designated by the U.S. Fish and Wildlife Service, Bureau of Land Management, the Montana Department of Fish, Wildlife and Parks, and the State of Montana's Sage Grouse Habitat Conservation Advisory Council, and, in particular, protecting, according to 2015 data, four (4) documented sage grouse leks on the Property, and eight (8) documented sage grouse leks within a four (4) 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,

5. The conservation purposes that are identified in Recitals 3 and 4 are collectively referred to in this Easement as the "Conservation Values" that occur on the Property, and Grantor, Grantee, and the State of Montana hereby agree to protect these Conservation Values in perpetuity; and,

6. This Easement, which was selected to receive funds pursuant to the Act, provides that the State is a third-party beneficiary to the Easement, with contingent rights to enforce the agreement if Grantee fails to do so; and,

7. The Fergus County, Montana, Commissioners have expressly recognized in the Fergus County Land Use Policy, adopted on August 17, 1992, and restated on October 15, 2007, the importance of preserving open space and agricultural lands in Fergus County, Montana, as a result of urban and suburban development of formerly rural lands; and,

8. The Property is located immediately adjacent to, and shares boundaries with, lands owned and administered by the State of Montana and the U.S. Bureau of Land Management,

and protection of the open-space resources on the Property compliments state and federal land management goals in the immediate vicinity of the Property, and provides public benefits recognized in Treasury Regulation 1.170A-14(d)(4)(iv)(A) (3); and,

9. This Easement is in the vicinity of other private lands on which Grantee holds other conservation easements, and this Easement therefore complements the protection of the Conservation Values held for the benefit of the public under the terms of those conservation easements, as endorsed by Treasury Regulation Section 1.170A-14(d)(4)(iv)(A)(4); and,

10. Grantor, as the owner of the Property, owns the rights to identify, preserve, and protect in perpetuity, the open-space character, scenic values, and significant relatively natural features and other Conservation Values of the Property; and,

11. By conveying this Easement and its associated rights to Grantee, freely, voluntarily, and irrevocably, Grantor intends to preserve and protect in perpetuity the Conservation Values of the Property; and,

12. Grantee is a qualified organization under Sections 76-6-104(5) and 76-6-204, MCA, organized to conserve land for open space purposes, and is an organization described in Section 170(h)(3) of the Internal Revenue Code of 1986 (hereinafter the "Code") qualified to receive and hold conservation easements;

NOW, THEREFORE, for Ten Dollars and No 100's (\$10.00) and other good and valuable consideration paid by the State of Montana, and in further consideration of the mutual promises and covenants contained in this Easement, including Grantor's express intention and agreement to make an absolute, unconditional, unrestricted, and voluntary gift of part of the value of this Easement, Grantor hereby gives, grants, and conveys to Grantee, and the successors and assigns of Grantee, with warranties of title, this perpetual Easement on, over, and across the Property in accordance with the terms and conditions set forth below. Except for the bargain purchase consideration paid to Grantee as set forth in Section X, paragraph B, Grantee acknowledges that no goods or services were received in consideration of the grant of this Easement, which Grantee received as of the date noted on page 1 of this Easement.

## SECTION I

### Purposes and General Effect of Easement

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

and in the situation of Grantor, may result in an evolution of land uses and practices related to the Property, which are allowed, provided that such uses and practices are consistent with the purposes and terms of this Easement.

B. Perpetual restrictions. This Easement shall run with, and burden title to, the Property in perpetuity, and shall bind Grantor and all future owners and tenants of the Property.

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

## SECTION II Rights Conveyed

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

A. Identification and protection. To identify, preserve, and protect, in perpetuity, the Conservation Values of the Property, including, but not limited to, its significant wildlife habitat, scenic, and open-space values, subject, however, to Grantor's reserved rights as herein provided and further subject to all third party rights of record in the Property existing at the time of conveyance of this Easement and not subordinated to this Easement.

B. Access. To enter upon the Property to inspect the same and to monitor Grantor's compliance with the terms of this Easement, all in a manner that will not unreasonably interfere with the use of the Property by Grantor. Grantee shall also have the right to enter the Property to enforce the rights granted to Grantee in this Easement, and Grantor therefore conveys to Grantee a right of immediate entry onto the Property if, in Grantee's sole judgment, reasonably exercised, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted to Grantee in the preceding sentences of this paragraph B, and any access rights granted to the State or its agents pursuant to this Easement at Section II, paragraphs E and F, and Section V, paragraph G, this Easement does not grant to Grantee, to the State or its agents, nor to the public, any rights to enter upon the Property.

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

D. State of Montana's contingent third-party right of enforcement. In compliance with the Act at Section 76-22-112, MCA, if Grantee fails to enforce the terms of this Easement in the event of a violation or threatened violation of the terms hereof, Grantor and Grantee expressly agree that the State of Montana shall have the right to enforce all of the terms and conditions of this Easement in accordance with Section V, paragraph G.

E. Sagebrush conservation mitigation credits. The Act at Sections 76-22-103, 111, MCA, contemplates that developers may fulfill regulatory requirements to offset impacts of natural resource development through compensatory mitigation in a variety of ways, including by purchasing credits in a habitat mitigation exchange. The State or its agents are therefore permitted to enter the Property pursuant to paragraph F below for the purpose of retroactively

calculating and making mitigation credits (the "Sage Grouse Conservation Mitigation Credits") available as a result of the purchase of this Easement with grant funds disbursed from the Sage Grouse Stewardship Account. Grantor agrees, at the request of the State, to convey or assign to the State all of its interests in the Sage Grouse Conservation Mitigation Credits that are identified, created, and perfected on the Property. Grantor agrees to execute such deeds, assignments, or other documents as may be necessary to vest the Sage Grouse Conservation Mitigation Credits in the State. Grantor acknowledges that the State may sell, convey, trade, assign, or otherwise dispose of the Sage Grouse Conservation Mitigation Credits in its discretion. Grantor further agrees, within reason and at no cost to Grantor, to cooperate with the State to provide third parties such documentation as may be required to evidence the creation of the credits and their ownership by the State or its successors and assigns.

F. 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 Grantee reasonable prior notice of entry, and the State will not unreasonably interfere with Grantor's use and quiet enjoyment of the land. Grantor and Grantee may accompany the State or its agents on any non-emergency entry. In the event that the State or its agents determines that an immediate entry is required because of non-enforcement by Grantee, the State or its agents shall make reasonable efforts to contact Grantor and Grantee prior to entry, but such notice shall not be a prerequisite to entry.

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

H. Credit impairment and credit project failure. It is possible for credits generated on this Property to be impaired in the future. Harmful impacts to habitat within the Property can impair the value of credits in the future. Credit impairment can result from breaches or violations of the terms of this Easement, in which case Section V of this Easement provides remedies that require restoration of habitat or payment of compensation if the violation causes irreparable damage to greater sage grouse habitat. Grantor and Grantee agree that the State may pursue its third-party right of enforcement as set forth in paragraph D above, for breach and violation of this Easement to recover lost values associated with credit impairment or failure in accordance with Section V.

Credit impairment may also result from habitat changes that are not a result of a breach or violation of the terms of this Easement. The State agrees that Grantor and Grantee shall not be liable for credit impairments which do not arise from a breach or violation of the terms of this Easement.



**SECTION III**  
**Reserved Rights and Prohibited Uses**

A. Reserved rights. Grantor reserves to itself and to its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein, that do not destroy or impair the Conservation Values, and that are not inconsistent with the terms and purposes of this Easement. Without limiting the generality of the foregoing sentence, those uses and practices described in Exhibit B, attached hereto and incorporated by this reference, are expressly permitted.

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

**SECTION IV**  
**Prior Notice by Grantor and Approval of Grantee and the State**

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

A. Grantor's written request for approval. Prior to the commencement of any enterprise, use, or activity requiring Grantee's approval, Grantor must send Grantee written notice of Grantor's intention to commence or undertake such enterprise, use, or activity. Said notice must inform Grantee of all aspects of such proposed enterprise, use, or activity, including, but not limited to, the nature, siting, size, capacity, and number of structures, improvements, facilities, or uses, and the dates and duration of the activity or uses, as appropriate. The request must provide Grantee with an address to which Grantee's response should be sent, and the names and addresses of persons to contact about the request.

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

- (i) delivered in person with a signed and dated proof of delivery, or
- (ii) sent by registered or certified mail, return receipt requested, or
- (iii) sent by Federal Express or other reputable carrier or delivery service, provided that the sender obtains a signed proof of delivery.

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

C. Time for Grantee's response. Grantee shall have thirty (30) days from Grantee's receipt of a request for approval, as indicated by the date of delivery receipt, to review the proposed enterprise, use, or activity and to notify Grantor of any objection thereto. Nevertheless, the thirty (30) day period shall not begin until such time as Grantee has received adequate information from Grantor to evaluate the proposed activity. If Grantee requires additional information to evaluate the proposed activity, Grantee shall request the information from Grantor as soon as practicable and, in any case, not later than twenty (20) days after receiving the request for permission.

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

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

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

E. Grantee's failure to respond. If Grantee fails to respond to Grantor's request for approval within the response time set forth in paragraph C above, Grantor must notify the State with a copy of the request initially made to Grantee ("State's Notice"). The State shall then have fifteen (15) days from the receipt of the State's Notice, as indicated by the date of delivery receipt, to review the proposed enterprise, use, or activity and to notify Grantor of any objection thereto. Nevertheless, the fifteen (15) day period shall not begin until such time as the State has received adequate information from Grantor to evaluate the proposed activity. If the State requires additional information to evaluate the proposed activity, the State shall request the information from Grantor as soon as practicable and, in any case, not later than ten (10) days after receiving the request for permission.

If both Grantee and the State fail to respond in the response times set forth above, the proposed enterprise, use, or activity shall be deemed consistent with the purposes of this Easement, Grantee and the State having no further right to object to the enterprise, use, or activity identified by such notice. Grantee's failure to respond to any individual request for approval shall not be deemed to be a waiver of any other duty and obligation of Grantor to seek prior approval for other specific activities for which Grantee's approval is necessary. Grantee's failure to respond to any request for approval shall not be deemed to be a waiver of the State's right to enforce the terms of this Easement as set forth herein.

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

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

## SECTION V

### Breach and Restoration

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

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

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

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

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

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

Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate Grantee and the public for the loss and damage to Grantee's rights, Grantee shall be entitled to recover damages for violation of

the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of open-space, scenic, aesthetic, or natural resource values. Without limiting Grantor's liability therefore, Grantee, in its sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

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

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

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

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

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



often preferable to litigation. Nevertheless, mediation pursuant to this Section V, paragraph F, shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section V.

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

In accordance with Section X below, the State may exercise its third-party right of enforcement at any time to recover from the proceeds of the transfer for value, sale, or extinguishment the State's pro rata share of the proceeds based on the funds the State provided for the creation of the Easement.

## **SECTION VI**

### **Costs and Taxes**

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

## **SECTION VII**

### **Indemnities**

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

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

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

(ii) the obligations specified in Section VI; and

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

C. Grantee's obligation to indemnify. Grantee shall hold harmless and indemnify Grantor from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including reasonable attorneys' fees and costs of defense, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, while Grantee is on the Property in the course of carrying out the duties and obligations of Grantee under the terms of this Easement.

D. Definitions. For the purposes of this Section VII, Grantor's and Grantee's agreement to hold harmless and indemnify will extend to their respective directors, members, partners, officers, employees, and agents and their heirs, personal representatives, successors, and assigns. The term "hazardous substance" shall mean any chemical, compound, material, mixture, or substance that is now or hereafter defined or classified as hazardous or toxic by federal, state, or local law, regulation, or ordinance. Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or managerial control over activities on the Property or to become an "owner" or "operator" of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 *et seq.* ("CERCLA"), or the Montana Hazardous Waste Act, Sections 75-10-401, *et seq.*, and 75-10-601 *et seq.*, MCA, and its successor statutes, and similar state and federal statutes.

## SECTION VIII Assignment of Easement

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

The State may take legal action to recover from the proceeds of the transfer for value, sale, or extinguishment the State's pro rata share of the proceeds based on the funds the State provided pursuant to the Montana Greater Sage Grouse Stewardship Act for the creation of the easement. Section 76-22-112, MCA.

## SECTION IX Documentation

Grantor has made available to Grantee, prior to the execution of this Easement, information sufficient to document the condition of the Conservation Values of the Property at the time of the grant of this Easement. The parties acknowledge that this information has been developed into a final Resource Documentation Report. The parties hereby agree that the information compiled within the Resource Documentation Report accurately represents the condition of the Conservation Values of the Property as of the date of the grant of this Easement in accordance with Treasury Regulation §1.170A-14(g)(5)(i). The original Resource Documentation Report is, and shall remain, on file with Grantee and the State. The parties intend that the Resource Documentation Report shall be used by Grantee to monitor Grantor's future uses of the Property and practices thereon. The parties agree that, in the event a controversy arises with respect to the condition of the Conservation Values, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. The parties further agree that if the Resource Documentation Report contains any summaries of, or representations about, the terms or conditions of this Easement, including Exhibits E and F hereof, any conflict or inconsistency between the terms and conditions of this Easement and the Resource Documentation Report shall be governed by the express terms and conditions herein and not in the Resource Documentation Report.

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

A. Extinguishment. If circumstances arise in the future which render the purposes of this Easement impossible or impractical to accomplish, this Easement may be terminated or extinguished (as provided for in Treasury Regulation §1.170A-14(g)(6)(i)), whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which Grantee and the State of Montana shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property, subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Montana law at the time, in accordance with paragraph B of this Section X and Treasury Regulation §1.170A-14(g)(6)(ii). Grantee must use any such proceeds received from easement termination in a manner consistent with the conservation purposes of this Easement.

B. Compensation. This Easement constitutes a real property interest immediately vested in Grantee, which, for purposes of paragraph A of this Section X, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The parties agree that the value of this Easement is nineteen percent (19%) of the unencumbered, fair market value of the Property (FMV) at the time of the grant of this Easement. The Parties agree that the State of Montana's contribution toward the purchase of the Easement is seventy percent (70%); and that the remaining thirty percent (30%) of the Easement value represents Grantee's interest in the Easement. The values referred to in the preceding sentence shall be those values established by Grantor's qualified appraisal (pursuant to Treasury Regulation §1.170A-13 and §1.170A-14(h)) for federal income, gift, or estate tax

purposes. For the purpose of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement, as established at the time of this grant, shall remain constant.

C. Eminent domain. If all or a portion of the Property is taken for a public purpose in the exercise of eminent domain so as to abrogate the restrictions imposed by this Easement, Grantor, Grantee, and the State of Montana may join in appropriate actions to recover the value of each party's interest in the Property (or portion thereof) taken, as established in paragraph B of this Section X, including the value of the Easement as it pertains to the condemned property at the time of the taking or condemnation. Grantor, Grantee, and the State of Montana shall be entitled to any incidental or direct damages resulting from such taking or condemnation, in proportion to their interest in the rights which are taken or condemned and for which such damages are awarded. Proceeds shall be divided between Grantor, Grantee, and the State of Montana in proportion to their interest in the Property, or portion thereof, as established by paragraph B of this Section X, and Grantee must use any such proceeds received from easement condemnation in a manner consistent with the conservation purposes of this Easement.

## SECTION XI

### Grantor's Representations and Warranties

Michael R. Delaney, as President of Grantor, represents and warrants that, after reasonable investigation and to the best of his knowledge, as of the date of the conveyance of this Easement that:

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

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

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

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



5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property, other than the ongoing statewide adjudication of water rights in Montana.

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

## Section XII

### Mortgage Subordination

At the time of conveyance of this Easement, the Property is subject to a mortgage in favor of First Bank of Montana, a division of Glacier Bank ("Lienholder"). Said mortgage was recorded on April 9, 2013, as Document No. 111360, records of Fergus County, Montana, and on April 19, 2013, as Doc. No. 052227, records of Petroleum County, Montana. In accordance with Treasury Regulation §1.170A-14(g)(2), the Lienholder has agreed by separate "Mortgage Subordination Agreement" which will be recorded contemporaneously with this Easement that in the event of foreclosure of the Mortgage, under judicial or non-judicial proceedings, or in the event of other sale, transfer, exchange, or conveyance of title to the Property, the Property shall be foreclosed, sold, transferred, exchanged, or otherwise conveyed subject to Grantee's rights to enforce the conservation purposes of this Deed of Conservation Easement in perpetuity and subject to Grantee's rights to proceeds in the event of termination or extinguishment of this Easement, in whole or in part, in accordance with Treasury Regulation §1.170A-14(g)(6)(ii). All provisions contained in this Section XII shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

## SECTION XIII

### Miscellaneous Provisions

A. Partial invalidity. If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

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

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

D. Subsequent transfers. Grantor agrees that reference to this Easement and reference to its dates and places of recording in the public records of Fergus and Petroleum counties will be made in any subsequent deed or other legal instrument by which they convey

any interest in the Property, including any leasehold interest. Grantor agrees to incorporate the terms and conditions of this Easement by express recording reference to the Easement in any deed by which Grantor conveys title to the Property.

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

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

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

H. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualifications of this Easement under any applicable laws, including Section 76-6-101, et seq., MCA, and the Code. Any amendment must be consistent with the conservation purposes of this Easement, must not affect its perpetual duration, and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in prohibited inurement or private benefit to Grantor or any other parties. Any Easement amendment must be in writing, signed by Grantor and Grantee, and approved in writing by the State, and recorded in the public records of Fergus and Petroleum counties.

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

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

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

IN WITNESS WHEREOF, Grantor and Grantee have hereunto set their hands.

GRANTOR:                                44 RANCH, INC.,  
a corporation

By: \_\_\_\_\_  
Michael R. Delaney, President

STATE OF \_\_\_\_\_ )  
  : ss.  
County of \_\_\_\_\_ )

          This instrument was acknowledged before me on this \_\_\_\_ day of  
\_\_\_\_\_, 2016, by Michael R. Delaney, as President, of 44 Ranch, Inc.

\_\_\_\_\_  
(Notary's Signature)

(SEAL)

Affix seal/stamp as close to signature as possible.

GRANTEE: THE MONTANA LAND RELIANCE,  
a corporation

By: \_\_\_\_\_  
George S. Olsen, President

STATE OF \_\_\_\_\_ )  
 : ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2016, by George S. Olsen, as President, of The Montana Land Reliance.

(Notary's Signature)

(SEAL)

Affix seal/stamp as close to signature as possible.



The Montana Department of Natural Resources Conservation, an agency of the State of Montana, hereby acknowledges, accepts, and approves of the foregoing Deed of Conservation Easement for the Property described in Exhibit A on behalf of the State of Montana.

Its: \_\_\_\_\_

Affix seal/stamp as close to signature as possible.

**EXHIBIT A  
LEGAL DESCRIPTION**

Township 17 North, Range 23 East, M.P.M., Fergus County, Montana

Section 9:	E $\frac{1}{2}$ SE $\frac{1}{4}$
Section 10:	W $\frac{1}{2}$
Section 13:	SW $\frac{1}{4}$
Section 14:	N $\frac{1}{2}$ ; S $\frac{1}{2}$ SW $\frac{1}{4}$ ; NE $\frac{1}{4}$ SW $\frac{1}{4}$ ; NW $\frac{1}{4}$ SE $\frac{1}{4}$ ; SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 15:	E $\frac{1}{2}$ ; W $\frac{1}{2}$ NW $\frac{1}{4}$ ; SE $\frac{1}{4}$ NW $\frac{1}{4}$ ; N $\frac{1}{2}$ SW $\frac{1}{4}$ ; SW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 21:	N $\frac{1}{2}$ NE $\frac{1}{4}$
Section 22:	N $\frac{1}{2}$ ; E $\frac{1}{2}$ SE $\frac{1}{4}$
Section 23:	E $\frac{1}{2}$ NE $\frac{1}{4}$ ; SW $\frac{1}{4}$ NE $\frac{1}{4}$ ; W $\frac{1}{2}$ ; SE $\frac{1}{4}$
Section 24:	All
Section 25:	N $\frac{1}{2}$ ; N $\frac{1}{2}$ SW $\frac{1}{4}$ ; NW $\frac{1}{4}$ SE $\frac{1}{4}$
Section 26:	All
Section 27:	E $\frac{1}{2}$ NE $\frac{1}{4}$
Section 35:	All

Township 17 North, Range 24 East, M.P.M., Petroleum County, Montana

Section 1:	SE $\frac{1}{4}$ NE $\frac{1}{4}$ ; NE $\frac{1}{4}$ SW $\frac{1}{4}$ ; N $\frac{1}{2}$ SE $\frac{1}{4}$
Section 2:	Lots 2, 3 and 4; SW $\frac{1}{4}$ NE $\frac{1}{4}$ ; S $\frac{1}{2}$ NW $\frac{1}{4}$ ; S $\frac{1}{2}$
Section 3:	All
Section 4:	Lots 2, 3 and 4; S $\frac{1}{2}$ N $\frac{1}{2}$ ; S $\frac{1}{2}$
Section 5:	Lots 1 and 2; S $\frac{1}{2}$ NE $\frac{1}{4}$ ; S $\frac{1}{2}$
Section 6:	Lot 2; W $\frac{1}{2}$ ; SE $\frac{1}{4}$ ;
Section 7:	N $\frac{1}{2}$ ; SE $\frac{1}{4}$
Section 8:	N $\frac{1}{2}$ NE $\frac{1}{4}$ ; W $\frac{1}{2}$ ; S $\frac{1}{2}$ SE $\frac{1}{4}$
Section 9:	E $\frac{1}{2}$ ; E $\frac{1}{2}$ NW $\frac{1}{4}$ ; NW $\frac{1}{4}$ NW $\frac{1}{4}$ ; SW $\frac{1}{4}$
Section 10:	All
Section 11:	All
Section 14:	N $\frac{1}{2}$
Section 15:	N $\frac{1}{2}$ ; N $\frac{1}{2}$ S $\frac{1}{2}$ ; SW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 17:	All
Section 18:	All
Section 19:	All
Section 20:	N $\frac{1}{2}$ ; SW $\frac{1}{4}$ ; W $\frac{1}{2}$ SE $\frac{1}{4}$
Section 21:	NE $\frac{1}{4}$ NE $\frac{1}{4}$ ; W $\frac{1}{2}$ NE $\frac{1}{4}$ ; NW $\frac{1}{4}$ ; NW $\frac{1}{4}$ SW $\frac{1}{4}$ ; NW $\frac{1}{4}$ SE $\frac{1}{4}$
Section 22:	NW $\frac{1}{4}$ NW $\frac{1}{4}$
Section 28:	NW $\frac{1}{4}$
Section 29:	W $\frac{1}{2}$ NE $\frac{1}{4}$ ; SE $\frac{1}{4}$ NE $\frac{1}{4}$ ; NW $\frac{1}{4}$ ; N $\frac{1}{2}$ SW $\frac{1}{4}$ ; SE $\frac{1}{4}$
Section 30:	N $\frac{1}{2}$
Section 32:	NE $\frac{1}{4}$ ; W $\frac{1}{2}$ SE $\frac{1}{4}$ ; SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 33:	NW $\frac{1}{4}$ ; SW $\frac{1}{4}$ SW $\frac{1}{4}$

Township 18 North, Range 24 East, M.P.M., Fergus County, Montana

Section 22: SE $\frac{1}{4}$   
Section 23: SE $\frac{1}{4}$   
Section 24: SW $\frac{1}{4}$   
Section 25: S $\frac{1}{2}$ ; E $\frac{1}{2}$ NW $\frac{1}{4}$   
Section 27: NE $\frac{1}{4}$   
Section 34: E $\frac{1}{2}$   
Section 35: N $\frac{1}{2}$ ; E $\frac{1}{2}$ SE $\frac{1}{4}$

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

## EXHIBIT B PERMITTED USES AND PRACTICES

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

1. Agricultural activities. The provisions of this Easement limit the types of agricultural operations that can occur on the Property to those that maintain, restore, and conserve the sage brush and other rangelands on the Property (approximately 15,864 acres) and protect grazing uses on said rangelands consistent with sage grouse conservation purposes listed in Section 76-22-110, MCA, and related Conservation Values. Allowed uses of the Property include the following activities, subject to the qualifications stated below:

a. Agricultural production. The production, processing, and marketing of livestock compatible with restoration and conservation of sage brush and other grassland, grazing uses, and related Conservation Values are allowed provided such activities are conducted in a manner consistent with the terms of this Easement. Farming, irrigating, cultivating and “sodbusting” outside of the “Cropland” delineated in Exhibit E, attached hereto and incorporated by reference, are prohibited, except to restore native species after Grantor has obtained Grantee’s prior approval. Temporary non-native cover crops are permitted in native prairie and rangeland restoration activities. For purposes of this Easement, “sodbusting” is defined as any cultivation, discing, plowing, or disturbance of native soils and vegetation by mechanical means, including without limitation engine-powered tractors and other farm machinery and horse and mule drawn plows and discs.

b. Grazing uses of the Property. Consistent with subparagraphs a and c of this paragraph 1, Grantor may graze, hay, harvest for hay and non-crop seed production, mow, construct fire breaks, conduct fire pre-suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, provided that all such grazing activities must be conducted consistently with the conservation purposes of this Easement including the maintenance, protection, preservation, and enhancement of sagebrush grassland habitat for the greater sage grouse. The term “common grazing practices” means those practices customary to Fergus and Petroleum counties related to livestock grazing, forage management, and maintenance of infrastructure as required to conduct permitted livestock grazing on the Property.

c. Cropland conversion. Grantor retains the right to continue farming and cultivating those areas of the Property currently in crop production (approximately 2,091.63 acres) as delineated in Exhibit E. Conversion of any other lands on the Property to cropland is expressly prohibited.

2. Recreational use. To use the Property for undeveloped non-commercial recreation and undeveloped commercial recreation, including, but not limited to, hunting of game animals and birds, fishing, hiking, wildlife viewing, and quiet enjoyment by Grantor and invitees, provided that all such recreational activities on the Property must remain consistent with protection and preservation of the Conservation Values and must be in accordance with state regulations governing hunting of sage grouse. Any agreement between Grantor and outfitters or guides pertaining to the use of the Property for commercial recreation, including



hunting and fishing, shall not be considered a prohibited commercial use of the Property pursuant to Exhibit C of this Easement, as long as such agreements are made expressly subject to the terms and conditions of this Easement. All existing and subsequently constructed structures and improvements that are permitted by this Easement in the Building Envelopes defined in this Exhibit B, subparagraph 4d, and Exhibit F, attached hereto and incorporated by reference, may be used in conjunction with recreational activities permitted under this paragraph 2, and in conjunction with guest ranching activities permitted in this Exhibit B, paragraph 13. Nothing in this Exhibit B, paragraph 2, may be construed to permit construction or development of any recreational facilities in locations outside of the Building Envelopes described in Exhibit B, subparagraph 4d, and Exhibit F.

3. Water resources. To maintain, enhance, and develop water resources on the Property for permitted agricultural uses, fish and wildlife uses, domestic needs, and private recreation. Permitted uses include, but are not limited to, the following: the right to restore, enhance, and develop water resources, including ponds; to locate, construct, repair, and maintain irrigation systems; and to develop stock watering facilities.

4. Structures and Building Envelopes. To construct, maintain, repair, remodel and make limited additions to, and in the event of their removal or destruction, to replace the following structures on the Property. No permanent structures on the Property, including permanent structures addressed in this paragraph 4, are permitted within the "No Build Areas" that are located within a two (2) miles radius of any active sage grouse lek as depicted in Exhibit E.

a. Residential dwelling units. For the purpose of this Easement, the term "residential dwelling unit" means a structure, or a portion thereof, with sleeping accommodations and kitchen facilities that is provided, used, constructed, converted, remodeled, added onto, or replaced for habitation or occupation by one or more people. The definition of such "residential dwelling units" includes, but is not limited to, residences, apartments or suites that are a part of associated outbuildings and agricultural structures as set forth in subparagraphs 4b and 4c below, guest houses, employee houses, and cabins if they contain kitchens and sleeping accommodations. No more than five (5) residential dwelling units, including the two (2) existing residential dwelling units and three (3) additional residential dwelling units are permitted on the Property. All residential dwelling units, and replacements thereof, if any, must be located within designated Building Envelopes as defined in subparagraph 4d below and must be constructed on permanent foundations. Mobile homes, trailers, or other moveable living units used for human habitation or occupancy are not permitted on the Property.

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

c. Agricultural structures. Non-residential structures and other improvements that are constructed or placed on permanent foundations and used for agricultural purposes, including, but not limited to, barns, shelters, riding arenas and sheds (hereinafter "agricultural structures") may be located only within the Building

Envelopes defined in subparagraph 4d below and do not need the prior approval of Grantee. Agricultural structures that are not constructed or placed on permanent foundations, including, but not limited to, livestock corrals, three-sided livestock/wind/loafing/calving shelters, and hay storage areas may be located anywhere on the Property, provided that they are located in areas that are six-tenths (0.6) of a mile from any active sage grouse lek as depicted in Exhibit E, and are consistent with protection of the Conservation Values, including the scenic resources preserved by this Easement as set forth in Recital 3b.

d. Building Envelopes. One (1) existing residential dwelling unit and all of its associated outbuildings are located within "Existing Building Envelope #1", and one (1) existing residential dwelling unit and all of its associated outbuildings are located within "Existing Building Envelope #2", as such Building Envelopes are delineated in Exhibit F. Existing Building Envelope #1 consists of approximately fifty (50) acres. Existing Building Envelope #2 consists of approximately eleven (11) acres.

The three (3) new permitted residential dwelling units and all their associated outbuildings must be located, individually or together, within Building Envelopes as follows:

- i) within Existing Building Envelope #1 or Existing Building Envelope #2, as delineated in Exhibit F; or,
- ii) within no more than three (3) newly defined Building Envelopes that are located within the "Development Areas" delineated in Exhibit F. Two (2) of the permitted newly defined Building Envelopes may not consist of more than three (3) acres. One (1) permitted newly defined Building Envelope may not consist of more than ten (10) acres.

The purpose of the "Development Areas" as depicted on Exhibit F is to delineate those portions of the Property in which Grantor, Grantee, and the State agree future residential development within smaller Building Envelopes located within the Development Areas will have no significant impact on the Conservation Values, while permitting Grantor flexibility to choose where to locate additional residential dwelling units on the Property.

The purposes of the Building Envelopes are to allow Grantor flexibility in use of the residential dwelling units and associated outbuildings and to cluster residential uses and other structures on the Property to protect the Conservation Values. If necessary, wells and drain fields may be located outside of the Building Envelopes, but not within the No Build Areas delineated in Exhibit E. To ensure that any newly defined Building Envelope is the appropriate size and located within one of the Development Areas delineated in Exhibit F, Grantor shall be responsible for designating the specific boundaries of each Building Envelope by legal survey or other mutually agreeable method of delineation on the ground. Delineation of the boundaries of each newly defined Building Envelope by Grantor shall be subject to prior approval of Grantee and notice to the State, as provided in Section IV hereof, which approval shall not be unreasonably withheld. Such approval must be obtained prior to beginning construction of any new residential dwelling unit or associated structure. After Grantee approves

each new Building Envelope, Grantor and Grantee agree that Grantee may file in the public records of Fergus and Petroleum counties a notice of the location and description of the Building Envelope, as applicable, at no cost to Grantor.

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

a. Surface mining prohibited. There shall be no extraction or removal of any minerals by any surface mining method, within the meaning of Section 170(h)(5)(B) of the Code and the regulations promulgated thereunder; and there shall be no extraction or removal of any non-mineral substance (including, but not limited to, soil, sand, gravel, rock, and peat) by surface mining methods.

b. Subsurface mining. There shall be no surface occupancy associated with any new subsurface mining or hydrocarbon exploration or extraction within six-tenths (0.6) of a mile from any active sage grouse lek. Moreover, such activities are prohibited if they would result in the permanent or irreparable destruction or impairment of any other Conservation Value of the Property, regardless of location on the Property. In accordance with Treasury Regulation §1.170A-14(g)(4)(i), subsurface mineral exploration or extraction may be permitted, only after prior approval of Grantee and notice to the State pursuant to Section IV hereof, only if the mining methods used are not irreparably destructive of the Conservation Values and if impacts are limited, localized, and temporary. In addition to the requirements of Treasury Regulation §1.170A-14(g)(4)(i), subsurface mining methods used must adhere to the following conditions:

(i) Water. No exploration or extraction shall take place within any stream, waterway, or protected wetland, and no mining operation or oil and gas extraction activities may materially degrade the quality of any lake, pond, well, stream, groundwater, or surface water, including, but not limited to, any source of water utilized by Grantor for agricultural or residential purposes. Any waste water resulting from permitted exploration or extraction activities which is of materially poorer quality than existing water supplies must be treated so that its quality is substantially equivalent to existing natural water quality where the waste water is discharged or released into surface waters and when groundwater is reinjected or otherwise disposed of on or under the Property.

(ii) Surface disturbance. Any surface disturbance resulting from permitted exploration or extraction activities must be limited, localized, and temporary, and the surface of the land shall be restored upon completion of such activities to a condition similar or equivalent to its state prior to the disturbance by reclaiming land contours, by restoring soils, by replanting native vegetation, and by husbanding replanted native vegetation until the vegetation is mature, established, and self-perpetuating.

(iii) Reclamation. All permitted exploration or extraction activities and associated reclamation activities shall be in compliance with other provisions of this paragraph 5, and with applicable state and federal laws. Any surface

alteration pursuant to this paragraph 5 must be restored to its original state and approximate contour and revegetated with self-sustaining grasses, forbs, and other plants that are consistent with surrounding areas of the Property.

(iv) Roads. Whenever possible, access to exploration or extraction sites shall be by existing roads. Any new road shall be sited and maintained in accordance with this Exhibit B, paragraph 9, so as to minimize adverse impact to the Conservation Values and shall be reclaimed after exploration and extraction activities are concluded.

(v) Structures. The number and kind of structures used in the exploration for or extraction of oil, gas, and other subsurface minerals shall be limited to the minimum necessary to accomplish said exploration or extraction. All such structures shall be removed at the termination of exploration and extraction activities and the site shall be restored pursuant to subparagraph (ii) above.

(vi) Notification. Grantor shall advise Grantee and the State in writing at least sixty (60) days prior to engaging in any exploration for or extraction of oil, gas, and other subsurface minerals (or leasing, selling, or otherwise disposing of the rights thereto) whether or not such exploration or extraction (or leasing, selling, or otherwise disposing of the rights thereto) could result in any surface disturbance. For the purpose of this paragraph 5, Grantee's period in which to grant or deny prior approval of any mineral exploration or extraction proposal under Section IV, paragraph C, shall be extended to sixty (60) days.

c. Limited impact activities. Notwithstanding the foregoing provisions of this paragraph 5, Grantor may extract sand and gravel from sites located outside of the No Build Areas depicted in Exhibit E, for non-commercial purposes and for use solely on the Property, provided such activities have temporary, limited, and localized impacts on the Conservation Values and that such activities are not irretrievably destructive of any Conservation Value, within the meaning of Treasury Regulation §1.170A-14(g)(4)(i) or its successor provision, and further provided the surface alteration is restored to its original state and approximate contour. Any such limited-impact activity shall require Grantor to adhere to the conditions set forth in subparagraph b of this Exhibit B, paragraph 5, and all such sand and gravel extraction must cease during nesting seasons for greater sage grouse on all locations within a two (2) mile radius of any active sage grouse lek as depicted in Exhibit E.

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



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

6. Transfer of land. To grant, sell, exchange, devise, gift, dispose of, or otherwise convey or transfer (collectively "transfer") all or any portion of Grantor's right, title, estate, and interest in the Property as no more than four (4) parcels, subject to the following restrictions:

a. All Building Envelopes and Development Areas that are described in Exhibit B, paragraph 4, and depicted in Exhibit F, must be included in no more than two (2), non-divisible tracts;

b. Accordingly, the two (2) remaining parcels may not include any portion of the Building Envelopes or Development Areas described in this Exhibit B, paragraph 4 and delineated in Exhibit F (agricultural transfers), except that agricultural structures as set forth in Exhibit B, subparagraph 4c, may be constructed on any part of the Property.

c. If the Property is initially transferred in less than four parcels, Grantor must specify in deeds of conveyance, contracts for sale, and other conveyance documents whether Building Envelopes and Development Area, the right or rights to further divide the Property, and the right to operate one (1) guest ranch as set forth in this Exhibit B, paragraph 13, are allocated to the transferred parcel or are reserved to Grantor's retained portion of the Property.

If said deeds, contracts, or other conveyance documents are silent with respect to additional unexercised transfer rights, further division and transfer of title to the Property, or any part thereof, will not be permitted and will be deemed a violation of this Easement without an express written agreement among the owners of the Property, which is approved by Grantee pursuant to Section IV, that allocates the remaining reserved property division rights as set forth in this paragraph 6.

Whether transferred as a single tract or whether transferred as separate parcels pursuant to this paragraph 6, the Property must be transferred expressly subject to all terms, conditions, rights, restrictions, and obligations contained in this Easement. Furthermore, if Grantor elects to divide the Property as herein provided, Grantor must comply with all federal, state, and local laws, ordinances, and regulations concerning subdivision, as applicable, including the surveying of the parcel to be sold and the submission of the proposed creation of a separate tract to state and local review.

Grantor, on behalf of itself and its successors and assigns, agrees to furnish Grantee and the State with a copy of any document of conveyance utilized to effect the transfer of the Property within thirty (30) days of the execution of said document or conveyance.

7. Timber removal. To remove select trees that present a hazard to persons or property, and to cut firewood, posts, and poles for non-commercial use. Except as provided in the following paragraph, all timber removed by Grantor pursuant to this paragraph 7, must be used or disposed of on the Property. All such timber removal activities must be conducted in a manner that protects and minimizes impact on the Conservation Values. In connection with the

upkeep, maintenance, and repair of permitted structures, Grantor specifically reserves the right to clear brush, and prune, trim, and remove trees, and to plant trees, shrubs, flowers, and other native or non-native species for landscaping or gardening purposes, all within the Building Envelopes described in paragraph 4 of this Exhibit B, without obtaining any approval from Grantee. This section shall not limit Grantor or Grantee's right to propose a timber removal project to restore sage grouse habitat.

In the event of natural occurrences, such as disease, infestation, wildfire, or windthrow, or the threat of such occurrences, which may jeopardize the overall forest health and may require more than limited, selective harvest and will result in removal of the timber harvest product from the Property, Grantor must provide for the review and approval of Grantee and notify the State, pursuant to Section IV of this Easement, a timber harvest plan. The provisions of such a timber harvest plan must be designed to preserve and protect the Conservation Values and must be approved by Grantee in accordance with the terms and conditions of Section IV of this Easement. If approved by Grantee as part of a timber harvest plan, the product of any timber harvest may be removed from the Property and sold commercially in accordance with the terms of such plan.

Notwithstanding any provision of this paragraph 7 that may be construed to the contrary, all timber harvest and cutting activities must be suspended during the nesting seasons for greater sage grouse on all parts of the Property within a two (2) mile radius of any active sage grouse lek as depicted in Exhibit E.

8. Fences. To construct, maintain, and repair fences, including livestock corrals, loading chutes, holding pens, and other enclosed fencing for temporary livestock management and transport, on the Property. At no time can any new fences be constructed on the Property within six-tenths (0.6) of a mile from any active sage grouse lek as depicted in Exhibit E.

9. Roads. To repair, maintain, and improve existing roads on the Property. Grantor also reserves the right to construct, repair, improve, and maintain new roads: (a) in connection with access to the residential dwelling units and other structures, as permitted in this Exhibit B; and (b) for access to parcels transferred in accordance with paragraph 6. Any new road that is constructed pursuant to this paragraph 9 must be located outside of the No Build Areas depicted in Exhibit E.

Grantor may grant rights-of-way to neighbors over existing roads or over new roads that are constructed pursuant to the terms of this paragraph 9, and Grantor may also grant rights-of-way to appropriate governmental entities for the improvement and/or expansion of public roads bordering and/or traversing the Property, provided the governmental entity seeking the right-of-way easement documents the public necessity of such roadway easements in accordance with the provisions of Title 70, Chapter 30 of the Montana Code Annotated and other applicable laws pertaining to condemnation of real property interests for public uses.

10. Utilities. Grantor retains the right to install utility structures, lines, conduits, cables, wires, or pipelines (hereafter "utilities" and "utility services") upon, over, under, within, or beneath the Property to existing and subsequently constructed structures and improvements that are expressly permitted on the Property by this Easement, provided that new electrical lines and communication infrastructure located within a two (2) mile radius of any active sage grouse lek as depicted in Exhibit E must be buried where economically feasible and the site must be replanted and restored with native grasses, forbs, and shrubs to achieve cover, species

composition, and life form diversity comparable to the surrounding plant community or to enhance sage grouse habitat. If burying such infrastructure is not economically feasible, such new infrastructure may not be located within six-tenths (0.6) of a mile from any active sage grouse lek as depicted in Exhibit E.

Grantor also retains the right to grant right-of-way easements for utility services to neighboring properties, provided that any such new right-of-way easements are located along or adjacent to existing and permitted roads, are buried whenever economically feasible, and do not significantly impair the Conservation Values protected by this Easement, pursuant to Treasury Regulation §1.170A-14(e)(2).

With the prior approval of Grantee and notice to the State pursuant to Section IV of this Easement, Grantor may also permit the expansion of existing utility distribution services running through the Property, including the construction of new electrical utility distribution lines (but not electrical transmission lines which are prohibited by Exhibit C, paragraph 9), and may grant associated right-of-way easements, if Grantor's exercise of these reserved rights does not significantly impair the Conservation Values protected by this Easement, pursuant to Treasury Regulation §1.170A-14(e)(2). Grantee's prior approval of new or upgraded utility distribution services and right-of-way easements will require submission by Grantor of a construction/installation plan. Grantor shall contact Grantee prior to the preparation of the construction/installation plan to obtain the required information to be included in any such plan. Grantor and Grantee will mutually determine the completeness of the utility construction/installation plan and its adherence to the general and specific intentions of this Easement prior to the approval of such plan. Any construction/installation, if approved by Grantee as provided in Section IV hereof, shall be conducted in accordance with said plan. Any new and expanded utility services and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of Fergus and Petroleum counties, signed by Grantor, Grantee, and the utility service provider prior to beginning construction.

11. Renewable energy production for use on the Property. Grantor retains the right to construct solar and wind energy generation facilities within any Building Envelope designated in this Exhibit B, subparagraph 4d for uses on the Property, as such uses are permitted by this Easement, except that any incidental surplus energy may be credited to Grantor's utility service. Any solar and wind energy production for use on the Property and associated distribution facilities, including power lines and pipelines, permitted hereunder must be consistent with protection and preservation of the Conservation Values, including the scenic resources protected by this Easement, and must be buried whenever feasible.

12. Residence-based businesses. Persons living on the Property may conduct businesses within their residential dwelling unit so long as any such businesses are not sales or service businesses involving regular visits to the Property by the general public or delivery trucks. The retail sale of goods produced and manufactured by such businesses shall not take place on the Property.

13. Guest ranching business. To use the Property, or to enter into agreements with third parties to enable them to use the Property for one (1) commercial guest ranching business. Any agreement between Grantor and others pertaining to the use of the Property for commercial guest ranching activities must be made expressly subject to the terms and conditions of this Easement. Consistent with this paragraph, Grantor may use all existing or subsequently

constructed structures and improvements that are expressly permitted by this Easement or replacements thereof for guest ranching purposes. Notwithstanding any provision in this Easement that may be construed to the contrary, however, Grantor and third parties may not construct any facilities or structures on the Property, except as provided for in this Exhibit B, paragraph 4, specifically to accommodate guest ranching operations. Grantor and third party operators may use only permitted residential dwelling units for guest ranch lodging purposes.

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



## EXHIBIT C PROHIBITED USES AND PRACTICES

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

1. Subdivision. Except as provided in Exhibit B, paragraph 6, the division, subdivision, or de facto subdivision of the Property is prohibited. Prohibited property divisions under this Easement include, but are not limited to, any subdivision, short subdivision into remainder tracts, platting, testamentary division, partitions among tenants-in-common or joint tenants, judicial partitions, partitions in bankruptcy, allocation of title among partners, shareholders, trustees or trust beneficiaries, or members of any business entity, time-share or interval ownership arrangements, or other process by which the Property is divided into lots or in which title to different portions of the Property are held by different owners. Notwithstanding any provision herein that may be construed to the contrary, the Property may be leased for agricultural purposes, provided any such leases are subordinate to the terms and purposes of this Easement.

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

3. Commercial facilities. The establishment of any commercial or industrial facilities is prohibited (other than those necessary in the operation or uses of the Property expressly permitted by this Easement) including, but not limited to, commercial feed lot, commercial wind and solar energy development, retail sales businesses, service businesses, restaurants, night clubs, campgrounds, trailer parks, motels, hotels, commercial recreation facilities, gas stations, retail outlets, or facilities for the manufacture or distribution of any product (other than products to be grown or produced on the Property in connection with purposes expressly permitted in Exhibit B hereto).

4. Dumping. The dumping or other disposal of non-compostable refuse on the Property is prohibited, except nonhazardous wastes generated by activities permitted in Exhibit B and provided such dumping does not harm the Conservation Values.

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

6. Campers, trailers, and recreational vehicles. The placing or use of campers, trailers, and recreational vehicles is prohibited, provided, however, that Grantor may store personal campers, trailers, and recreational vehicles within the Building Envelopes defined in Exhibit B, paragraph 4; and Grantor and Grantor's guests may park and use campers, trailers, or recreational vehicles on the Property on a temporary basis, so long as any such campers, trailers, or recreational vehicles are located outside of the No Build Areas delineated in Exhibit E.

7. Billboards. The construction, maintenance, or erection of any billboards on the Property is prohibited. Roadside signs are permitted only for the purposes of posting the name

of the Property, advertising any business permitted on the Property, controlling public access, providing public notification of this Easement, or advertising the Property for sale.

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

Subject to Section X, paragraph C, right-of-way easements may be granted by mutual agreement of Grantor, Grantee, and the State only in cases where eminent domain statutes apply and clear public necessity has been demonstrated to Grantor and Grantee, pursuant to the standards set forth in Title 70, Chapter 30 of the Montana Code Annotated, and other applicable laws pertaining to condemnation of real property interests for public uses.

9. Utilities. The granting of utility transmission lines and utility transmission corridor right-of-way easements, or the expansion of existing utility transmission lines and utility transmission corridor right-of-way easements is prohibited. Subject to Section X, paragraph C, such right-of-way easements may be granted by mutual agreement of Grantor, Grantee, and the State only in cases where eminent domain statutes apply and clear public necessity has been demonstrated to Grantor and Grantee, pursuant to the standards set forth in Title 70, Chapter 30 of the Montana Code Annotated, and other applicable laws pertaining to condemnation of real property interests for public uses.

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

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

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

## EXHIBIT D

In accordance with Treasury Regulation §1.170A-14(g)(5)(i), 44 RANCH, INC., of Grass Range, Montana, as Grantor of the Easement to which this Exhibit D is attached and into which it is incorporated by reference, and THE MONTANA LAND RELIANCE of Helena, Montana, as Grantee of said Easement, hereby acknowledge, declare, and agree that they have reviewed the information contained in the Resource Documentation Report dated August 29, 30, 31, 2016, and that the Resource Documentation Report is an accurate representation of the real property to be protected by this Easement at the time of this grant.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

GRANTOR: 44 RANCH, INC.,  
a corporation

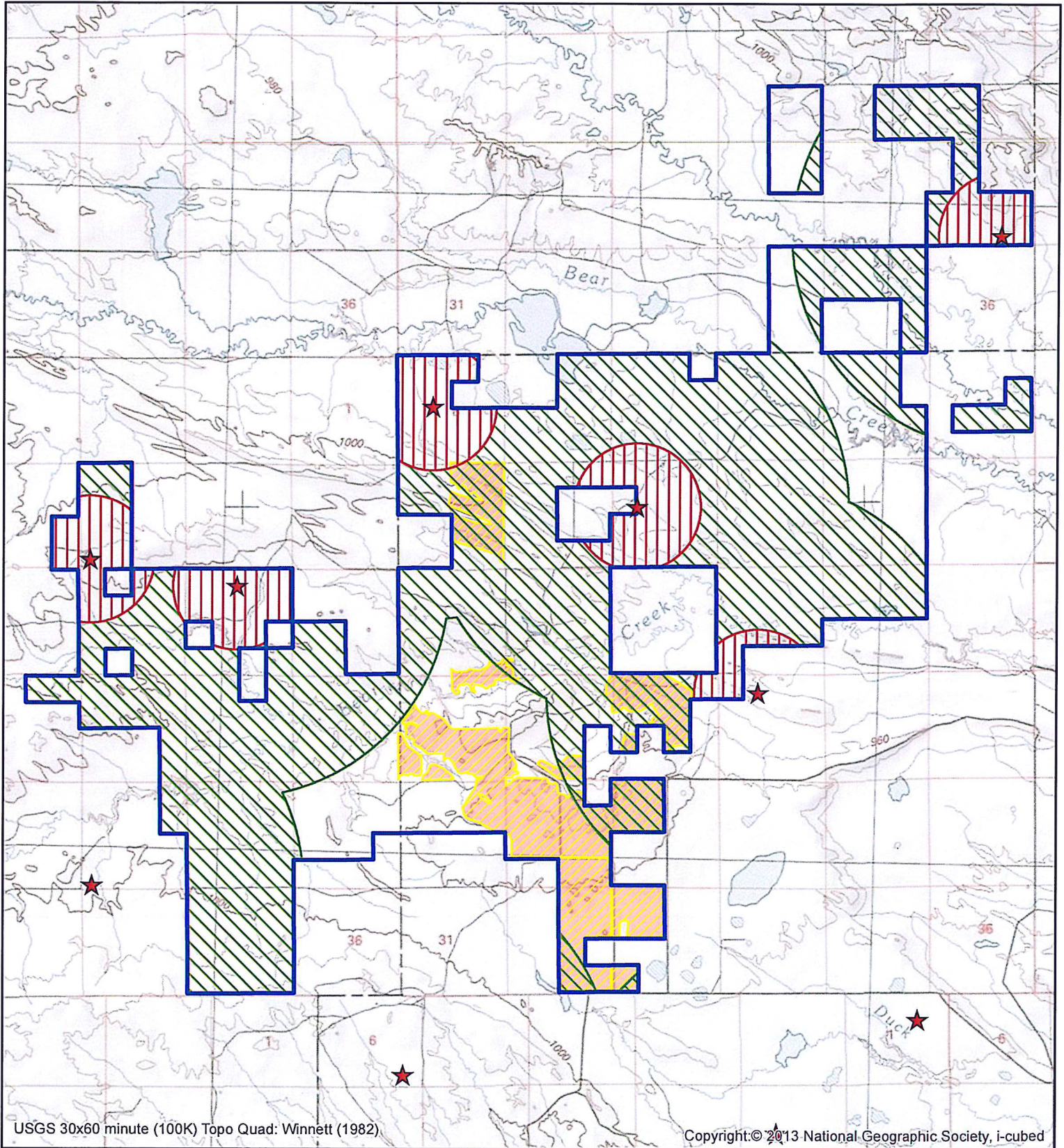
By: \_\_\_\_\_  
[Name and title]

GRANTEE: THE MONTANA LAND RELIANCE,  
a corporation






By: \_\_\_\_\_  
[Name and title]

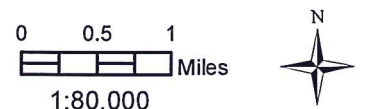


# EXHIBIT E



Date: October 19, 2016

-  Easement Boundary
-  Cropland Area (2,091.63)
-  No-Build Area (0.6 mile radius)
-  No-Build Area (2 mile radius)
-  Sage Grouse Active Lek Location

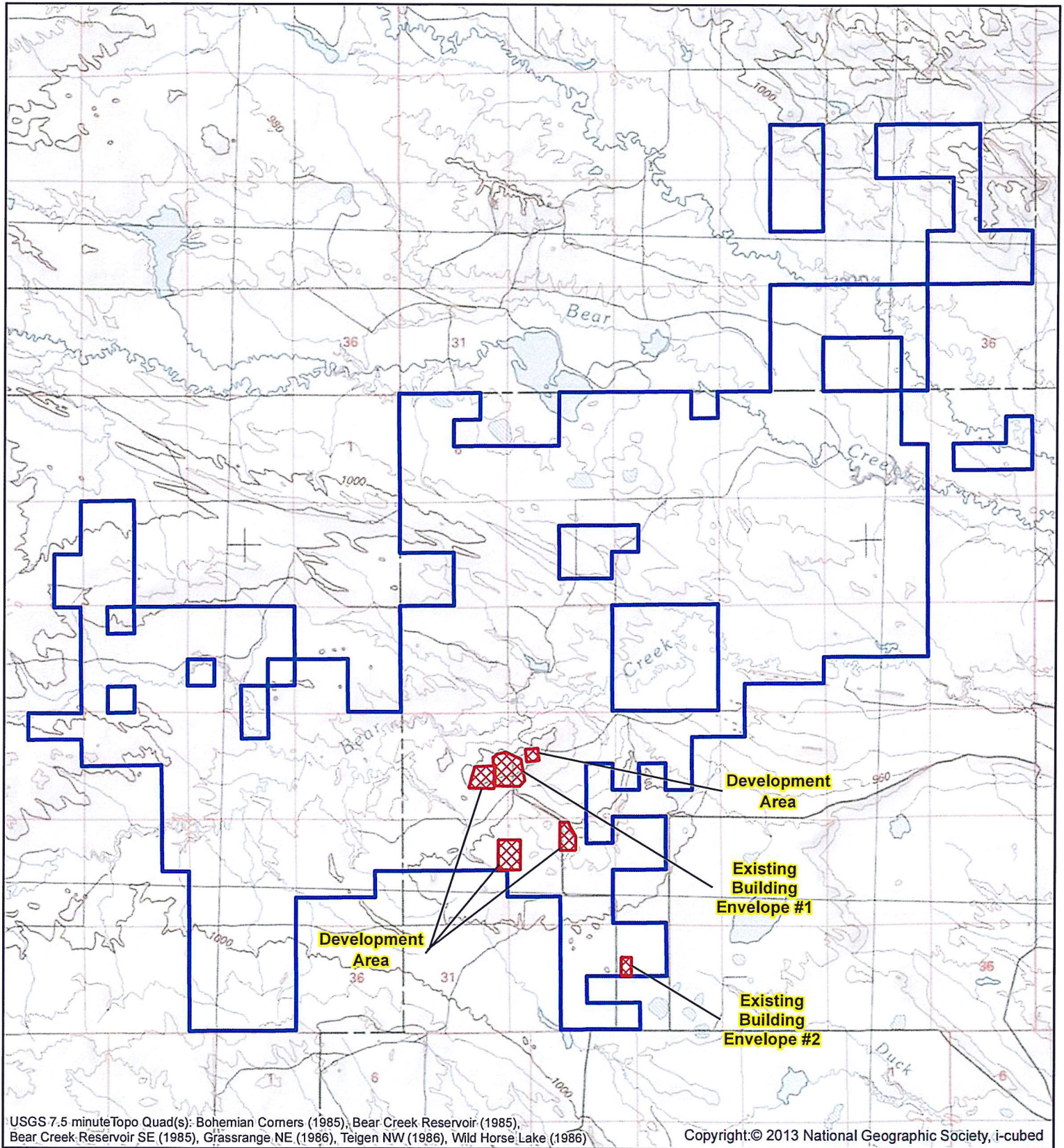


*the Montana* LAND RELIANCE

Disclaimer: information provided on this map is for illustrative purposes only and should not be relied upon to identify legal boundaries



# EXHIBIT F



- Easement Boundary
- Development Area / Existing Building Envelope

Date: July 25, 2016

0 0.5 1  
Miles  
1:80,000



*The Montana* LAND RELIANCE

Disclaimer: information provided on this map is for illustrative purposes only and should not be relied upon to identify legal boundaries

## **DECISION NOTICE**

### **44 RANCH INC. CONSERVATION EASEMENT**

Montana Sage Grouse Oversight Team  
November 18, 2016

#### **PROPOSAL**

The Montana Sage Grouse Oversight Team (MSGOT) is proposing to utilize Sage Grouse Habitat Stewardship Funds (Fund) to purchase a perpetual conservation easement on 18,033 acres owned by 44 Ranch, Inc., in Fergus and Petroleum Counties. Montana Land Reliance (MLR), an IRS 501(c)(3) non-profit organization, sponsored the application. The authority and direction under which this project is being proposed is provided by the Montana Greater Sage Grouse Stewardship Act (Act), Administrative Rules of Montana 14.6.101 and 102, and MSGOT Grant Procedures 01-2016.

MLR requested \$1,500,000 from the Fund, which would be matched with \$375,000 from a private source, and a \$527,971 donation from the landowner. The estimated value of the easement is \$2,366,831. The property in Fergus County consists of 13 Sections in Township 17 North, Range 23 East, and seven Sections in Township 17 North, Range 24 East. The property in Petroleum County consists of 24 Sections in Township 17 North, Range 24 East.

The proposed easement area has a minimum of five leks within the project area, 30 leks within a four mile buffer of the project area, and at least 53 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. It was recently shown that lek density may be reduced by more than 50% in the face of a 10% increase in cropland within 12.4 miles. 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. 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.

Another purpose for the proposed action to enter a grant agreement with MLR is to begin development and implementation of Montana's mitigation framework. Mitigation addresses direct, indirect, and residual impacts of development. In Montana, implementation of the mitigation hierarchy is called for in Executive Order 12-2015 and by the Greater Sage Grouse Stewardship Act, and this conservation easement agreement will contribute to development of compensatory mitigation credits in the future.

#### **MONTANA ENVIRONMENTAL POLICY ACT (MEPA) REVIEW**

The Montana Environmental Policy Act (MEPA) directs State agencies to assess the impacts of their proposed actions on the human and natural environment. Consistent with

this MEPA requirement, MSGOT described the 44 Ranch, Inc. Conservation Easement proposal and analyzed its potential impacts in an Environmental Assessment (EA) released to the public on October 19, 2016. The EA was open to public comment through November 2, 2016.

## **SUMMARY OF PUBLIC COMMENTS**

Seven written comments were received, five of which supported the proposed action to contribute funds from the Stewardship account for purchase of the 44 Ranch, Inc. conservation easement. Two comments opposed the proposed action.

Themes reflected in the supporting comments are as follows:

1. Protects critical greater sage-grouse habitat.
2. Important value in cost-sharing structure with the State of Montana.
3. Reduces chances of listing under the Endangered Species Act.
4. Will contribute to greater sage-grouse conservation.
5. Is a benefit to the state of Montana.

Themes reflected in the opposing comments are as follows:

1. This conservation easement agreement could reduce habitat minimum standards.
2. The best science is not being used to evaluate this conservation agreement.
3. No copies of the draft Conservation Easement Agreement were provided for review.
4. This agreement is not the most effective use of Habitat Stewardship Funds.

## **RESPONSE TO PUBLIC COMMENTS**

Themes identified in the supporting comments:

*Response: MSGOT and the Program agree that this easement would contribute significantly to habitat protection efforts in the core areas mapped in Fergus and Petroleum counties. Preservation of working, in-tact landscapes through voluntary, collaborative means is a key component of Montana's Conservation Strategy and an absolute requirement for its success. Executive Order 12-2015 recognizes that Montana's private landowners have been good land stewards and that it is not a coincidence that such a high percentage of productive sage grouse habitat is found on private land. Perpetual conservation easements eliminate the threat of cultivation completely. Elimination of threats to habitat reduces the chance that sage grouse.*

*It was envisioned, if not preferred that dollars from the Stewardship Fund would be matched with other sources of funding. Indeed, it is a statutory requirement that proposals be given greater priority during the evaluation process when: (1) the*

*proposal involves partnerships between public and private entities; (2) when the proposal is provided with matching funds; and (3) when matching funds can be used consistent with the Act. Here, the proposal entails a partnership between a non-profit land conservation organization, a willing private landowner, and the state. State dollars are being matched with private sources. The state is grateful that MLR and the 44 Ranch, Inc. have been willing to work with the state to implement the Conservation Strategy in this way. The state agrees this conservation easement would maintain, enhance, restore,*

Themes identified in the opposing comments:

This conservation easement agreement could reduce habitat minimum standards.

*Response: The purpose of the Act is to encourage incentive-based conservation measures that emphasize maintaining, enhancing, restoring, expanding, and benefiting sage grouse habitat and populations on private lands. This approach promotes habitat conservation and enhancement so that conservation net gain can be achieved through the direct elimination of key threats to sage grouse habitat (e.g. cultivation, energy infrastructure). Habitat conservation efforts and private land stewardship, such as would be accomplished through the 44 Ranch, Inc. conservation easement, will maintain sagebrush cover and important seasonal habitats at the landscape scale and for the sage grouse in the localized area, thereby protecting breeding, nesting, brood-rearing and winter habitats. The requirements set forth in this conservation agreement describe definitions for meeting those habitat standards, and are based on the best available science.*

This agreement will potentially allow structures to be built outside of existing building areas, and oil and gas resources to be developed on this property. We therefore believe that the best science is not being used in this conservation easement agreement, and therefore is not the best use of state funds. Lek buffer distances are not based in science. No copies of the draft conservation agreement were included for public review.

*Response: 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. The conservation easement agreements pursued by the Program, including the 44 Ranch, follow the best available science and are rigorously analyzed to make sure they meet the criteria set forth in the Executive Order, with particular attention given to conservation measures that emphasize maintaining, enhancing, restoring, expanding, and benefiting sage grouse habitat and populations on private lands that lie within core areas, general habitat, and connectivity areas. The specific actions that are permitted or prohibited, and therefore describe the adherence of the 44 Ranch, Inc. conservation easement agreement to these principles, can be found in Section III: Description of the Proposed Action.*

*The Draft Conservation Agreement reflecting negotiations as of October 19, 2016, was included in the public review document published on the Program's website, identified as*



*Appendix C. Copies of the Draft Grant Agreement were published in Appendix B.*

*Foregoing this voluntary collaborative conservation easement on 18,033 acres of private lands in central Montana core areas would be a missed opportunity. The terms of the easement strike a reasonable balance between the level of flexibility needed to maintain an agricultural working landscape, habitat protection, and the easement's perpetual duration. No more than three new residential dwelling units will be permitted in designated building envelopes. The easement contains many sage grouse related explicit terms such as lek buffer distances and other aspects of surface disturbance, consistent with Executive Order 12-2015 and to the maximum extent of the Program's authority.*

Based on comments received through the public comment period, no substantive changes were made to the draft EA. The final EA contains the final documents, as negotiated and agreed to by the parties.

## **DECISION**

The authority and direction for this proposal is provided by the Montana Greater Sage Grouse Stewardship Act (Act), Administrative Rules of Montana 14.6.101 and 102, and MSGOT Grant Procedures 01-2016. The 2015 Montana Legislature created the grant program when it passed the Greater Sage Grouse Stewardship Act and created a special revenue account. 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 habitat and populations on private lands that lie within core areas, general habitat, or connectivity areas. 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, thereby meeting the ultimate goal of avoiding the loss of state management authority of greater sage grouse and their habitats due to future federal listing under the Endangered Species Act.

Another important aspect of greater sage grouse habitat conservation entails mitigating for impacts of disturbance due to development in habitats designated for conservation as core areas, general habitat, or connectivity areas. Montana's Conservation Strategy recognizes the mitigation hierarchy of avoidance, minimization, restoration or reclamation, and replacement through compensatory mitigation. The majority of the Fund dollars must be awarded to projects that generate credits that are available for compensatory mitigation. All compensatory mitigation credits created based on the ecosystem services provided to greater sage grouse on the 44 Ranch, Inc. belong to the State. Any proceeds generated from their eventual sale are statutorily required to be deposited back into the Sage Grouse Stewardship Fund for reimbursement.

Despite the delayed availability of credits, the resource values associated with this land parcel for sage grouse) are very significant. The amount of existing disturbance assessed by the Density Disturbance Calculation Tool (DDCT) is 0.9%, which indicates an extremely low

level of existing anthropogenic disturbance even before the easement's restrictive terms. This DDCT result was considered by peer reviewers along with maps independently created by the Program as a surrogate for a habitat quantification tool. Based on the quality of the habitat protected, the range of threats avoided based on the prohibition of future activities, and the comprehensive approach to range management set forth in the easement, MSGOT has determined that this conservation easement agreement will provide net conservation gain for greater sage grouse through perpetual legal habitat protection and maintenance of high standards for land stewardship.

After reviewing the merits of this proposal and the public comments, MSGOT has decided to move forward to contribute dollars from the Stewardship Fund so they can be matched with other sources to enable MLR to purchase the 44 Ranch Inc. Conservation Easement.

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Tim Baker, Chair  
Montana Sage Grouse Oversight Team