AGENDA

Montana Sage Grouse Oversight Team (MSGOT)

April 25, 2019: 3:30 p.m. – 5:00 p.m.

DNRC Headquarters, Montana Room
1539 11th Ave., Helena

3:30: Call to Order, John Tubbs, MSGOT Chair and DNRC Director

- Introductions
- Administrative Matters: 2019 Proposed Meeting Dates

3:45 – 4:00: Denbury Resources' Proposed Permittee Responsible Credit Project: Ringling Ranch Limited Partnership (Paul D. Ringling Ranch) Conservation Easement

- Introduction: Carolyn Sime Program Manager
- Public Comment
- MSGOT Discussion and Potential Executive Action

4:00 – 4:25: Mud Springs Wind Facility Voluntary Mitigation Plan

- Introduction: Carolyn Sime Program Manager
- Public Comment
- MSGOT Discussion and Potential Executive Action

4:25 – 4:50: DY Junction Communication (Cell) Tower Mitigation Plan and Triangle Communication System Inc.'s Mitigation Obligation Waiver Request

- Introduction: Carolyn Sime Program Manager
- Public Comment
- MSGOT Discussion and Potential Executive Action

4:50 – 5:00: Public Comment on Other Matters

NOTE: Agenda item times are approximate. Actual times may vary by up to one hour. Attendees who may need services or special accommodations should contact Carolyn Sime (406-444-0554 or csime2@mt.gov) at least 5 working days before the meeting.

MONTANA SAGE GROUSE OVERSIGHT TEAM AGENDA ITEM BRIEF SHEET
APRIL 25, 2019

AGENDA ITEM: DENBURY RESOURCES' PROPOSED PERMITTEE RESPONSIBLE CREDIT PROJECT: RINGLING RANCH LIMITED PARTNERSHIP (PAUL D. RINGLING RANCH) CONSERVATION EASEMENT

ACTION NEEDED: REVIEW AND APPROVAL OF THE CREDIT SITE PLAN AND CONSERVATION EASEMENT

SUMMARY:
Denbury proposes to purchase a perpetual conservation easement on the Ringling Ranch Limited Partnership (Paul D. Ringling Ranch) in Carter County. This would be a permittee responsible credit project to provide additional offset mitigation credits for Denbury's future development projects in eastern Montana. MSGOT is being asked to review and approve the Credit Site Plan and the easement at this time so that the parties can close the easement with the certainty that the project fulfills all the requirements. Closing is expected late this spring or early summer.

Denbury has worked with the Montana Land Reliance to secure a perpetual conservation easement with a willing landowner. The Montana Land Reliance would hold the conservation easement. The easement itself covers approximately 19, 195 acres of General Habitat. About 128 acres were reserved in four building envelopes, and about 1000 acres is currently in cropland. Two separate parcels would be included in the easement, and the two parcels are joined by a half section of BLM land. Three small parcels of BLM land and one section of State Trust Land occur within the perimeter of the easement. The easement is located in the Southeastern Montana Mitigation Service Area and about 3-4 miles to the west of Denbury's earlier permittee responsible easement previously approved by MSGOT on September 14, 2018.

Lands within the easement boundaries are largely undeveloped and are managed for traditional agriculture uses, native rangeland for the majority of the acreage subject to the easement in this case. Within four miles of the parcels, there are seven confirmed active sage grouse leks and one unconfirmed lek. Several creeks and mesic areas exist on the property and provide brood-rearing habitat.

Under the terms of the easement, traditional agricultural uses could continue, but restricted activities would include: new crop cultivation/sodbusting beyond the existing cultivated footprint, construction of new utilities or structures, and subdivision. The terms are similar to easements MSGOT has funded in the past and in accordance with the Natural Resources Conservation Service Agricultural Conservation Easement Program.

The Program ran the Habitat Quantification Tool (MSGOT-approved v1.0, October 2018). The Raw HQT Score for one year was 8,732.97. The total number of credits created, after adjusting for a 40% baseline is 349,318.83. The in-holding parcels within the perimeter of the easement are excluded from the HQT results. While the Program has not conducted a third-level site visit in addition to Montana Land Reliance's baseline report, aerial imagery confirmed the undeveloped nature of the property. Brood-rearing mesic habitat is especially prevalent within the perimeter of the easement.

The proposed credit site plan outlines how the proposed credit project fulfills the requirements outlined in the Montana Mitigation System Policy Guidance Document (Oct. 2018, v1.0), including: additionality, duration and durability, and financial assurances. Montana Land Reliance will monitor the site and provide reports to the Program to assure the ongoing ecological integrity of the credits.

PROGRAM RECOMMENDATION:
The Program Manager recommends MSGOT approve Denbury Resources' permittee responsible credit project for a perpetual conservation easement on the Ringling Ranch Limited Partnership Paul D. Ringling Ranch, which will be held and managed by the Montana Land Reliance.

Credit Site Plan

Ringling Ranch Limited Partnership
(Paul Ringling Ranch)
Conservation Easement

Project ID 3354 -1548368060788

April 15, 2019

PROPERTY DESCRIPTION

The Paul Ringling Ranch in Carter County, Montana has been identified as a compensatory mitigation property by Denbury. The approximately 19,195-acre property is located partially within Township 4 North, Range 55 East, Township 4 North, Range 56 East, Township 3 North, Range 55 East and Township 3 North, Range 56 East. It is approximately 23 miles west of the proposed CCA pipeline within BLM designated sage-grouse GHMA and Montana EO 12-2015 General Habitat. The land is largely undeveloped with eight known sage-grouse leks within 4 miles (seven confirmed active leks, one unconfirmed lek) of the property boundary.

Denbury is proposing to purchase a perpetual conservation easement on the Paul Ringling Ranch property to provide additional offset mitigation credits for future development projects. The easement will protect the sage-grouse habitat on the property from future development and threats as well as provide land use and monitoring requirements to maintain the existing habitat quality. The annual monitoring of the property will be completed by the Montana Land Reliance in accordance with Natural Resources Conservation Service (NRCS) Agricultural Conservation Easement Program (ACEP) requirements.

The largest threats to sage-grouse habitat in Carter County are conversion to agricultural uses and fragmentation due to development. Restricted activities on the easement include, but are not limited to, crop cultivation, construction of new utilities or structures, commercial recreation, commercial timber harvest, and development of a subdivision. Permitted activities on the easement property include responsible livestock grazing (compatible with the preservation of conservation values), haying, non-commercial recreation, maintenance and upkeep of existing infrastructure, and non-commercial timber removal.

ADDITIONALITY

This permanent easement provides additionality by protecting and avoiding loss of sage-grouse habitat that otherwise might not be provided protection. As outlined in the Montana Mitigation System Policy Guidance Document, a permanent easement itself satisfies the additionality requirement (though the baseline HQT score is adjusted if no restoration or enhancement measures are proposed) and provides the protection instrument for the credit site.

DURATION AND DURABILITY

Denbury has worked with the Montana Land Reliance to secure this permanent easement which will provide the proper duration and durability by protecting sage-grouse habitat in perpetuity; this ensures that the mitigation credits provided will be effective as long or greater than any impacts they are used to offset. The easement document outlines the exact land uses permitted under the agreement as well as those which are not allowed. Additionally, the Montana Land Reliance will provide annual monitoring of the property to ensure that the land uses and management practices remain consistent with maintaining sage-grouse habitat. The results of the annual monitoring will be provided to the MSGHCP to assure that the site is still providing the credits calculated.

FINANCIAL ASSURANCES

Denbury has provided the funding to execute the conservation easement and will provide additional funding to monitor the property in perpetuity by using an endowment/fund. The impacts associated with unforeseen events (wildfire, drought, etc.) that may negatively impact the sage-grouse habitat protected are addressed through the MSGCP's credit reserve account.

APPROPRIATE SITE AND CONSERVATION ACTION

The conservation easement is located within Montana EO designated General Habitat (and BLM designated GHMA) with eight sage-grouse leks within 4 miles of the property. The property provides suitable breeding and nesting sage-grouse habitat characterized by sagebrush flats. Numerous streams, including O'Fallon Creek, Dugout Creek, Hay Creek and Antelope Creek, and stock ponds provide late-brood rearing, mesic habitat for sage-grouse. In general, the property is largely undeveloped though two county roads, Mizpah Road and Ismay Road, and a number of smaller two tracks are present on the property; small portions of the property have also been cultivated for crops in the past. Though a mineral development potential review of the property has not yet been completed, a previous review of the eastern parcel of the Ringling Ranch (not included in this property) by a Denbury geologist showed that the lack of significant underlying geologic structure and lack of previous oil and gas production or studies in the area makes the prospects for future oil and gas exploration, or development, low.

PRELIMINARY HQT RESULTS
02 January 2019

Project ID: 3354
Project Name: Denbury Conservation Project-Ringling Ranch Limited Partnership (Paul Ringling Ranch)
Credit Project Type: Easement
Duration of Project: Perpetual (100 years)

Date of HQT Results: 02 January 2019
Version of HQT: v1 – Oct 2018

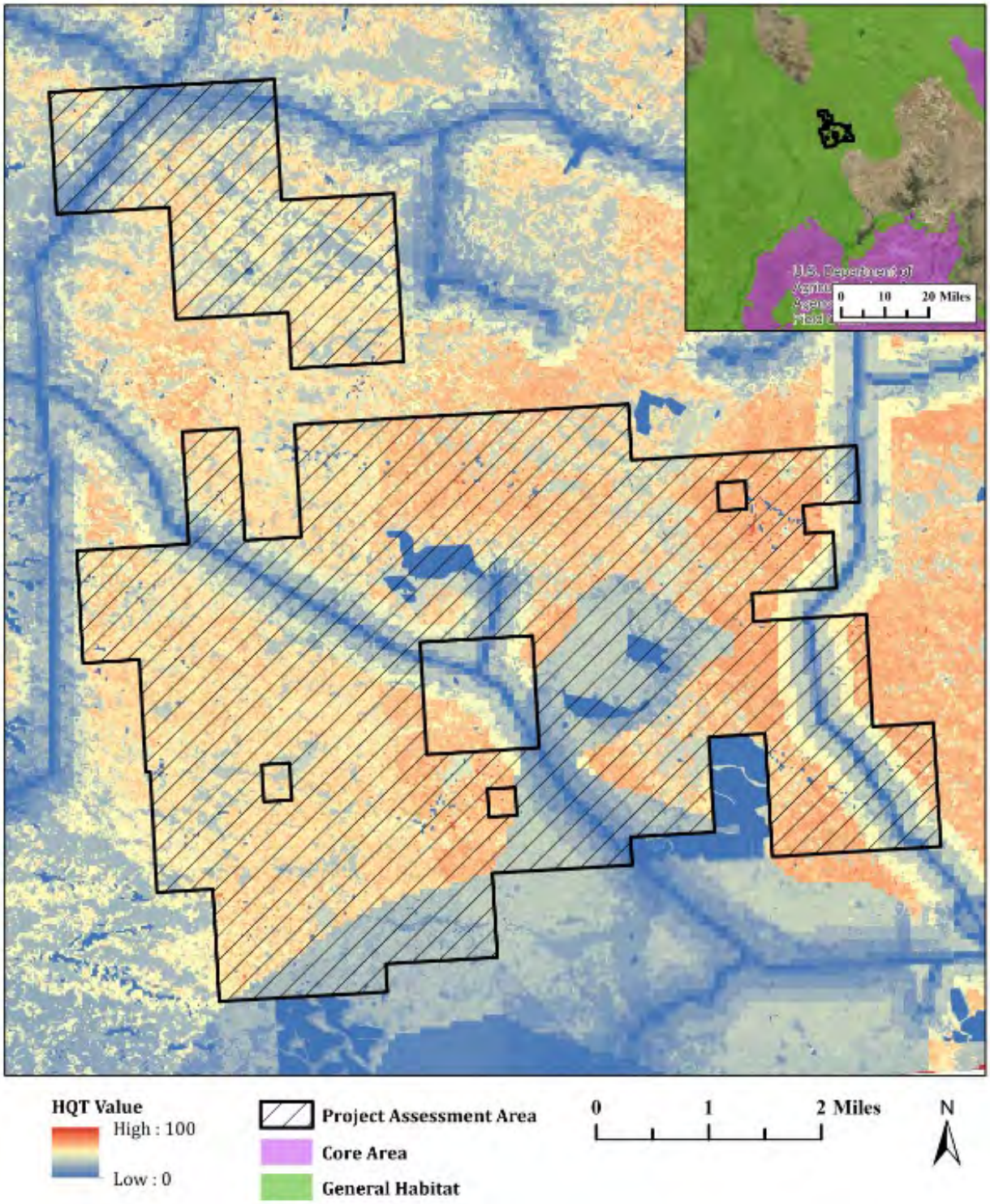
Project ID	3354
Habitat Type	General Habitat
Physical Acres	19,194.89
Raw HQT Score for 1 Year	8,732.97
Raw HQT Score for 100 Years	873,297.07
Total Credits – 40% Baseline†	349,318.83

† $Total\ Credits = (0.4 * Raw\ HQT\ Score_{1\ Year}) * 100\ Years$

3354-Denbury Conservation Project

Ringling Ranch Limited Partnership

(Paul Ringling Ranch)



AFTER RECORDING RETURN THIS ORIGINAL DOCUMENT TO:

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

DRAFT

February 22, 2019 RINGLING III (HOME) CE

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") is made this _____ day of _____, 20_____, by **RINGLING RANCH LIMITED PARTNERSHIP**, a Montana limited partnership, also known as RINGLING RANCH, a limited partnership, of P.O. Box 1029, Miles City, MT 59301-1029 (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 Carter County, Montana, more particularly described in Exhibit A attached hereto and incorporated by this reference (hereinafter the "Property"), and the Property totals approximately 19,195 acres; and,

2. The Property consists of significant open-space land, as defined in the Open-Space Land and Voluntary Conservation Easement Act, Montana Code Annotated (MCA) Section 76-6-101, et seq.; and,

3. Preservation of the Property by this Easement will yield significant public benefits to the people of the State of Montana, Carter County, and the United States by protecting, preserving, and providing the following significant resources, in perpetuity, in compliance with Section 170(h)(4)(A) of the Internal Revenue Code of 1986 (hereinafter the "Code") and 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 Code, and clearly delineated land conservation policies of the federal government, and of the State of Montana, and local land conservation policies adopted in Carter County, Montana, as set forth in more detail below; and,

b. Scenic views of historic Montana landscapes and working agricultural lands in the East Fork of O'Fallon Creek drainage that are enjoyed by members of the general public traveling on Ismay Road, Road 439, and Miles City Cutoff Road, public roadways that traverse portions of the Property, and recreating on adjacent State lands; and,

c. Retention of significant open space for a variety of other uses, including for the benefit of fish and wildlife, including but not limited to mule deer, greater sage grouse, and pronghorn antelope, all of which use the Property;

(hereinafter collectively referred to as the "Conservation Values"); and,

4. The Carter County Montana, Commissioners have expressly recognized in the Carter County Comprehensive Plan and Growth Policy, adopted in November, 2010, the importance of preserving open space and agricultural lands in Carter County, Montana, as a result of rapid urban and suburban development of formerly rural lands; and,

5. The Carter County Comprehensive Plan and Growth Policy specifically identifies the use of conservation easements to preserve open space and agricultural lands in the area; and,

6. The Property directly adjoins public lands administered by the State of Montana and the U.S. Bureau of Land Management, which are managed for public recreation and conservation purposes, and therefore this Easement complements public programs for conservation in the region and provides significant public benefits consistent with Treasury Regulation '1.170A-14(d)(4)(iv)(A)(*3*); and,

7. Grantor, as the owner of the Property, owns the rights to identify, preserve, and protect in perpetuity the Conservation Values of the Property, which are of great importance to Grantor and to the public, and are worthy of preservation in perpetuity; and,

8. 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,

9. The State of Montana has recognized the importance of private efforts toward voluntary conservation of private lands in the state by the enactment of MCA Sections 76-6-101, et seq., and 76-6-201, et seq.; and,

10. Grantee is a qualified organization under MCA Sections 76-6-104(5) and 76-6-204, organized to conserve land for open-space purposes, and is an organization described in Section 170(h)(3) of 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, the receipt and sufficiency of which is hereby acknowledged by Grantor, and in further consideration of the mutual promises and covenants contained in this Easement, Grantor hereby 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.

SECTION I
Purposes and General Effect of Easement

A. Purposes. The purposes of this Easement are to assure that the Conservation Values will be maintained in perpetuity and to prevent any use of, or activity on, the Property that will significantly impair the 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. 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. 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.

C. Dedication. The Property is hereby declared to be open space pursuant to MCA Section 76-6-107, and may not, except as specifically provided herein and pursuant to statute, be converted or diverted 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 open-space and scenic 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, this Easement does not grant to Grantee, 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.

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

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.

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.

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. 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.

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, the proposed enterprise, use, or activity shall be deemed consistent with the purposes of this Easement, Grantee 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.

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.

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.

C. Grantee's discretion. Enforcement 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.

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.

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 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 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

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 a "qualified private organization," within the meaning of Sections 76-6-104(5) and 76-6-204, MCA, 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 open space as a substantial organizational purpose, 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.

SECTION IX
Documentation

Grantor has made available to Grantee, prior to the execution of this Easement, information sufficient to document the condition of the Property, including the condition of its Conservation Values, at the time of the grant of this Easement. This information is based in part upon a site visit to the Property by Grantee or Grantee's agents on _____, , and consists of mapping of physical features and resources, photographs of structures, developments, and improvements, and gathering of other appropriate information to document the Conservation Values of the Property as of the date of this Easement. The parties have signed a written acknowledgment, attached hereto as Exhibit D and incorporated by this reference, that the information gathered accurately represents the condition of the Property as of the date of the grant of this Easement in accordance with Treasury Regulation '1.170A-14(g)(5)(i). This information shall be compiled and developed into a final Resource Documentation Report, supplemented with aerial photographs, historical, archival, and government documents, as

appropriate and available, as soon as is practically feasible after the grant of this Easement. The Resource Documentation Report shall be maintained on file with Grantee. 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 Exhibit 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 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 '1.170(A-14(g)(6)(ii). Grantee shall 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 values referred to in the preceding sentence shall be those values established by the Conservation Easement Acquisition Real Estate Appraisal prepared by Terra Western Associates, with an effective date of_____. For the purpose of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement at the time of this grant is established by said appraisal to be twenty-three and nine/tenths percent (23.9%), which ratio shall remain constant. The original of said acknowledgment shall be held on file with Grantee at Grantee's normal place of business.

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 and Grantee 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 Grantee's Easement as it pertains to the condemned property at the time of the taking or condemnation. Grantor and Grantee 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 and Grantee in proportion to their interest in the Property, or portion thereof, as established by paragraph B of this Section X, and Grantee shall 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

Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge, as of the date of the conveyance of this Easement:

A. Grantor has clear title to the Property; Grantor has the right to convey this Easement to Grantee; Grantor=s partners approved and executed appropriate resolutions authorizing the conveyance of this Easement to Grantee, and the Property is free and clear of any encumbrances, except those encumbrances that have been expressly approved by Grantee.

B. 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. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Property, in violation of applicable law.

C. 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.

D. Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use.

E. 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.

F. 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
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.

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 Carter County 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 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 address 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 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 MCA Section 76-6-101, et seq., and the Code. Any amendment must be consistent with the conservation purpose 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 both parties, and recorded in the public records of Carter County.

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 MCA Section 76-6-101, et seq. The parties acknowledge that each party and its counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against drafting party shall be employed in the interpretation of this Easement.

J. Entire agreement and merger of previous understanding. This Easement, including all Exhibits attached hereto, 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, understanding, and agreements had between the parties hereto, oral or written, are merged in this Easement.

K. Disclaimer. Grantee does not warrant, guarantee, or otherwise offer any assurance as to the deductibility, if any, of the contribution of this Easement, or its qualification under any applicable state or federal laws. Grantor has been advised by Grantee to secure qualified independent legal and tax advice, and Grantor has had ample opportunity to do so.

L. Separate counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

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: **RINGLING RANCH LIMITED PARTNERSHIP**

By: _____
Ann B. Ringling, Co-Personal Representative
Estate of Paul T. Ringling, General Partner

STATE OF _____)
: ss.
County of _____)

This instrument was signed or acknowledged before me on _____, by Ann B. Ringling, acting in the capacity of Co-Personal Representative, Estate of Paul T. Ringling, General Partner, of Ringling Ranch Limited Partnership.

_____
(Notary's Signature) (SEAL)

Affix seal/stamp as close to signature as possible.

{signatures continue on the following page}

By: _____
Paul "Rock" D. Ringling, Co-Personal Representative
Estate of Paul T. Ringling, General Partner

STATE OF _____)
: ss.
County of _____)

This instrument was signed or acknowledged before me on _____, by Paul "Rock" D. Ringling, acting in the capacity of Co-Personal Representative, Estate of Paul T. Ringling, General Partner, of Ringling Ranch Limited Partnership.

_____
(Notary's Signature) (SEAL)

Affix seal/stamp as close to signature as possible.

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

By: _____
[Name and title]

STATE OF _____)
: ss.
County of _____)

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

_____ (SEAL)
(Notary's Signature)

Affix seal/stamp as close to signature as possible.

EXHIBIT A
LEGAL DESCRIPTION

Township 3 North, Range 55 East, M.P.M., Carter County, Montana

Section 1:	Lots 1, 2, 3, 4; S½N½, S½
Section 2	Lots 1, 2, 3; S½N½; S½
Section 3:	Lots 1, 2, 3, 4; S½N½, S½
Section 10:	E½
Section 11:	All
Section 12:	N½, N½S½

Township 4 North, Range 55 East, M.P.M., Carter County, Montana

Section 3:	Lots 1, 2, 3, 4; S½N½, S½
Section 4:	Lots 1, 2, 3, and 4; S½N½, S½
Section 10:	All
Section 11:	All
Section 14:	N½
Section 22:	W½
Section 23:	All
Section 24:	All
Section 25:	All
Section 26:	All
Section 27:	All
Section 28:	All
Section 33:	E½
Section 34:	All
Section 35:	All

Township 3 North, Range 56 East, M.P.M., Carter County, Montana

Section 3:	Lots 1, 2, 3, 4; S½N½, S½
Section 4:	Lots 1 and 2, S½NE¼, SE¼
Section 5:	Lots 1, 2, 3, 4; S½N½, N½S½, SW¼SW¼
Section 6:	Lots 1, 2, 3 4, S½NE¼, SE¼NW¼, S½

Township 4 North, Range 56 East, M.P.M., Carter County, Montana

Section 19:	Lots 1, 2, 3, 4; E½W½; E½
Section 20:	N½S½; S½SW¼; SW¼SE¼
Section 21:	S½
Section 28:	SW¼NE¼; NW¼; N½SW¼; NW¼SE¼
Section 29:	All
Section 30:	Lots 1, 2, 3, 4; E½W½; E½
Section 31	Lots 1, 2, 3, 4; E½W½; E½
Section 32:	All
Section 33:	All

SUBJECT TO the following:

a. All prior oil, mineral and royalty reservations and conveyances of record;
b. Recorded easements and rights-of-way;
c. Reservations and exceptions in patents and other conveyances of record;
d. Federal, state, and local laws and regulations affecting this property, including zoning and land use regulations; and,
e. Adjudications, re-adjudications, or determinations in accordance with Montana law regarding any water rights appurtenant to the subject property which are currently before the Montana Water Courts or may be brought before the Montana Water Courts at some future time.

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 17,623 acres of the 19,195 acre Property) and protect grazing uses on said rangelands consistent with sage grouse conservation purposes listed in Section 76-22-110, MCA, and related Conservation Values.

Allowed agricultural uses of the Property include:

(i) The production, processing, and marketing of livestock and agricultural products, compatible with restoration and conservation of grassland, grazing uses, and related Conservation Values is allowed (except commercial feedlots which are expressly prohibited), provided such activities are conducted in a manner consistent with the terms of this Easement. Farming, irrigation, cultivating, and "sodbusting" outside of the "Cropland Area" delineated in Exhibit E, attached hereto and incorporated by reference, are prohibited, except to restore native species after Grantor has obtained Grantee's prior approval. Temporary non-native cover crops are permitted in approved native prairie and rangeland restoration activities if consistent with this Easement. For purposes of this Easement, "sodbusting" is defined as any cultivation, discing, plowing, or disturbance of native soils and vegetation by mechanical means, including without limitation, engine-powered tractors and other farm machinery and horse and mule drawn plows and discs. For the purposes of this Easement, "commercial feedlot" shall be defined as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, for purposes of engaging in the business of the reception and feeding of livestock for hire.

(ii) Grantor may graze, hay, harvest or hay for non-crop seed production, mow, construct fire breaks, conduct fire pre-suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this Easement, including the maintenance, protection, and preservation, and enhancement of sagebrush grassland habitat for greater sage grouse. The term "common grazing practices" means those practices customary to the region where the Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Property.

(iii) The cultivation or productions of crops, non-perennial forages for human or domestic animal consumption, crop seed production, or planting of orchards, vineyards, berries, tree farms, or other perennial non-grassland agricultural product is prohibited outside of the "Cropland Area" delineated in Exhibit E and the Building Envelopes provided for below in subparagraph 4d. Grantor retains the right to continue farming and cultivating those areas of the Property currently in crop production

(approximately 1,086 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. 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 may be used in conjunction with recreational activities permitted under this paragraph 2. 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.

3. Water resources. Grantor retains the right 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:

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, cabins, mobile homes, trailers, and other moveable living units if they contain kitchens and sleeping accommodations. No more than nine (9) residential dwelling units, including the three (3) existing residential dwelling units and six (6) additional residential dwelling units, are permitted on the Property. The residential dwelling units, and replacements thereof, if any, must be located within the designated Building Envelopes as provided for and defined in subparagraph 4d below. No other permanent habitations, living or sleeping quarters are 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 the designated Building Envelopes as defined in subparagraph 4d. For the purposes of this Easement, the term "associated outbuildings" does not include indoor riding arenas. The one (1) existing indoor riding arena is the only indoor riding arena permitted on the Property and is located within Building Envelope #1, delineated in Exhibit E.

c. Agricultural structures. Non-residential structures and other improvements that are constructed or placed on permanent foundations and used for agricultural purposes, including, but not limited to, barns, shelters, and sheds may be located only within the Building Envelopes defined in subparagraph 4d below and do not need the prior approval of Grantee. Structures used for agricultural purposes 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 that is consistent with protection of the Conservation Values, including the scenic resources preserved by this Easement as set forth in Recital 3b. For the purposes of this Easement, the term "agricultural structures" does not include indoor riding arenas, which are expressly prohibited on the Property except as provided in subparagraph 4b above.

d. Building Envelopes. The three (3) existing residential dwelling units, and all their associated outbuildings are located within Building Envelope #1. Building Envelope #1 consists of approximately ninety-eight (98) acres and is delineated in Exhibit E. The five permitted additional residential dwelling units, and all its associated non-residential outbuildings must be located as follows:

i) One (1) additional residential dwelling unit, and all its associated outbuildings, must be located within Building Envelope #1 (Home), delineated in Exhibit E; and,

ii) One (1) additional residential dwelling unit, and all its associated outbuildings, must be located within "Building Envelope #2" (Billy) delineated in Exhibit E. Building Envelope #2 consists of approximately ten (10 acres.

iii) Two (2) additional residential dwelling units, and all their associated outbuildings, must be located within one (1) newly defined "Building Envelope #3" that is located within the "Development Area (Cook Place) " delineated in Exhibit E. The newly defined Building Envelope #2 is limited to ten (10) acres in size.

iv) Two (2) additional residential dwelling units, and all their associated outbuildings, must be located within one (1) newly defined "Building Envelope #4" that is located within the "Development Area (Price Place)" delineated in Exhibit E. The newly defined Building Envelope #3 is limited to ten (10) acres in size.

To ensure that the two newly defined Building Envelopes are the appropriate size and located within the designated Development Areas, Grantor shall be responsible for designating the specific boundaries of each newly defined Building Envelope by legal survey or other mutually agreeable method of delineation on the ground. Delineation of each newly defined Building Envelope's boundaries by Grantor shall be subject to prior approval of Grantee, 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 residence or any associated structure. After Grantee approves a Building Envelope, Grantor and Grantee agree that Grantee may file in the public records of Carter County notices of the location and description of the Building Envelope, as applicable, at no cost to Grantor.

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

c. Structural remains. At the time of this grant, there are dilapidated homestead structures on the Property that are located outside of the Building Envelopes designated in subparagraph 4d above. At no time may these structures be repaired, replaced, or utilized. Grantor reserves the right to remove these structures from the Property.

5. Minerals. Subject to the prior approval of Grantee as provided in Section IV hereof, to explore for and extract oil, gas, and other subsurface minerals (or to lease, sell, or otherwise dispose of the rights thereto) in or under portions of 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 exploration for or extraction of oil, gas, or other subsurface minerals by any subsurface mining method if such activity would result in the permanent or irremediable destruction or impairment of any Conservation Value of the Property. In accordance with Treasury Regulation '1.170A-14(g)(4)(i), subsurface mineral exploration or extraction may be permitted, after prior approval of Grantee, only if the mining methods used are not irremediably 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 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. Subject to the prohibition on surface mining in Exhibit C, paragraph 2 and Section 170(h)(5)(B), Grantor may extract sand and gravel for use solely on the Property, provided that any surface disturbance resulting from permitted extraction activities may not use surface mining methods; must be limited, localized, and not irremediably destructive of any Conservation Value; and the surface alteration must 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 replacing vegetation, and by husbanding replanted vegetation until the vegetation is mature, established, and self-perpetuating. Sale or transport of sand, gravel, rock or other materials or minerals off of the Property is expressly prohibited pursuant to Exhibit C, paragraph 2. Any such limited-impact activity shall require Grantor to adhere to the conditions set forth in subparagraph b of this Exhibit B, paragraph 5.

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 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 in unified title and as no more than three (3) parcels. The parcels that may be independently transferred must consist of twelve hundred (1,200) or more acres. The three (3) designated Building Envelopes provided for in this Exhibit B, paragraph 4, may be wholly transferred with separate parcels, but at no time may a Building Envelopes be divided or split by the boundary line between parcels that are separately owned.

In the event the Property is divided once into two (2) separate tracts, Grantor must expressly allocate the right to further divide one of the parcels again to create a third parcel, as permitted by this Exhibit B, paragraph 6. If Grantor does not allocate the foregoing right between separate parcels transferred pursuant to this paragraph 6, as provided above, all rights not designated at the time of transfer shall remain with the retained parcel unless Grantor is completely divested of title when the separate parcels are created and transferred and therefore there is no "retained" parcel." In such an event, allocation of unallocated rights between parcels may occur only with the prior written approval of Grantee pursuant to Section IV hereof and with the written consent of all of Grantor's successors-in-interest currently owning a portion of the Property. Grantor and Grantee agree that Grantee may file in the public records of Carter County notices of Grantor's exercise of the conveyance of property transfer and division rights pursuant to the terms of this Easement, as such conveyances and transfers occur at no cost to Grantor.

Whether transferred as a single tract or whether transferred as separate parcels pursuant to this paragraph 6, the Property shall 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 shall furnish Grantee with a copy of any document or 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.

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.

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 farming, ranching, and other agricultural uses; (b) in connection with mineral activities as permitted in this Exhibit B, (c) access to the residential dwelling units and other structures, as permitted in this Exhibit B, and (d) access to neighboring properties. Any new road that is constructed pursuant to this paragraph 9, must be sited and maintained consistently with the preservation and protection of the Conservation Values.

Grantor may grant right-of-way easements 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 right-of-way easements 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 easement 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. Grantor retains the right to construct wind, solar, hydroelectric, geothermal, and other types of renewable energy generation facilities (hereafter "renewable energy production") solely for uses on the Property as such uses are permitted by this Easement, except that any incidental surplus energy may be sold commercially for use off of the Property or credited to Grantor=s utility service (net metering). 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 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 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 Carter County, signed by Grantor, Grantee, and the utility service provider prior to beginning construction.

11. Bed and breakfast businesses, rental, and/or residence-based businesses. To use the residential dwelling units on the Property, as described in this Exhibit B, paragraph 4, for the operation of bed and breakfast businesses.

Grantor retains the right to lease or rent the residential dwelling units, or portion thereof, on the Property for any term, including, but not limited to, short-term vacation rentals.

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

12 Guest ranching businesses. To use the Property, or to enter into agreements with third parties to enable them to use the Property for commercial guest ranching businesses. 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. Grantor and Grantee mutually intend that the entire Property described in Exhibit A shall be maintained and granted, sold, exchanged, devised, gifted, transferred, or otherwise conveyed in unified title as not more than three (3) parcels. Even if the Property consists of more than one (1) parcel for real estate tax or any other purpose or if it may have been acquired previously as separate parcels, it will be divisible in a maximum of three (3) tracts, and the restrictions and covenants of this Easement will apply to the Property as a whole. Therefore, except for divisions expressly permitted under Exhibit B, paragraph 6, the following activities are expressly prohibited: The division, subdivision, or de facto subdivision of the Property. 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, except as provided in Exhibit B, paragraph 5.

3. Commercial facilities. The establishment of any commercial or industrial facilities (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, retail sales businesses, service businesses (except as provided in Exhibit B, paragraphs 11 and 12), 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, 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, 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 to accommodate normal visitation.

7. Billboards. The construction, maintenance, or erection of any billboards. 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 or reservation of right-of-way easements across or upon the Property, 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 and Grantee 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. Subject to Section X, paragraph C, such right-of-way easements may only be granted by mutual agreement of Grantor and Grantee 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 MCA Section 87-4-406 or its successor statute, (ii) native or exotic fish, except that "private fish ponds," as defined by MCA Section 87-4-603, or its successor statute, may be maintained for recreational use, (iii) game birds, (iv) furbearers, including mink and fox, or (v) other "wild animals" as defined in MCA Section 87-4-801, or its successor statute, and "non-game wildlife" as defined in MCA Section 87-5-102(6), or its successor statute.

11. 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. 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
ACKNOWLEDGMENT OF DOCUMENTATION SITE VISIT

KNOW ALL MEN BY THESE PRESENTS, that RINGLING RANCH LIMITED PARTNERSHIP of Miles City, 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 mutually acknowledge, declare, and agree as follows:

1. Grantor has made available to a representative of Grantee prior to the grant of this Easement, information sufficient to document the condition of the Property which shall be subject to this Easement.

2. A representative of Grantee has collected and compiled documentation sufficient to establish the condition of the Property as of the date of the grant of this Easement and has shared this documentation with Grantor.

3. The documentation was compiled by a representative of Grantee on a site visit to the Property on _____, and consists of mapping of physical features and resources, photographs of structures, developments and improvements, and gathering of other appropriate information to document the Conservation Values of the Property.

4. Grantor and Grantee mutually acknowledge and agree that this information constitutes an accurate representation of the condition of the Property to be subject to this Easement at the time of its grant.

5. Additional information and documentation will be gathered as historical, government, and archival documents and aerial photographs are made available to Grantor and Grantee.

6. Grantor and Grantee further agree that a final Resource Documentation Report shall be completed from the above mentioned information as soon as practicable after the grant of this Easement to Grantee. Upon its completion, the final Resource Documentation Report shall be reviewed and approved in final form by both Grantor and Grantee, and shall be on file with Grantee in Grantee's normal place of business.

DATED this _____ day of _____, 20_____.

GRANTOR: **RINGLING RANCH LIMITED PARTNERSHIP**

By: _____
Ann B. Ringling, Co-Personal Representative
Estate of Paul T. Ringling, General Partner

By: _____
Paul "Rock" D. Ringling, Co-Personal Representative
Estate of Paul T. Ringling, General Partner

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

By: _____
[Name and title]

EXHIBIT E

CROPLAND AREA

BUILDING ENVELOPE #1 (HOME)
BUILDING ENVELOPE #2 (BILLYS)
DEVELOPMENT AREA (COOK PLACE)
DEVELOPMENT AREA (PRICE PLACE)

MONTANA SAGE GROUSE OVERSIGHT TEAM AGENDA ITEM BRIEF SHEET
APRIL 25, 2019

AGENDA ITEM: DY JUNCTION COMMUNICATION (CELL) TOWER MITIGATION PLAN AND TRIANGLE COMMUNICATION SYSTEM INC.'S MITIGATION OBLIGATION WAIVER REQUEST

ACTION NEEDED: REVIEW AND APPROVAL OF THE MITIGATION PLAN AND DECISION ON TRIANGLE'S MITIGATION WAIVER REQUEST

SUMMARY:
Triangle Communication System, Inc. (Triangle) proposes to build a communications tower (cell tower) at the DY Junction (Highways 191 and 66) in southern Phillips County (a Core Area). The project includes a small permanent footprint for the actual tower site, which is located on existing disturbance. The project also includes 430 feet of buried electrical line and 253 feet of buried fiber optic cable. The 199-foot tower would be managed as a non-nest facilitating structure.

Triangle had originally provided MSGOT with a proposed mitigation plan and waiver request during the December, 2018 meeting. Adequate public notice requirements had not been observed in order for MSOGT to take executive action. Since then, the Program, Triangle, and Triangle's consultant have worked together to revise the earlier plan into the plan now before MSGOT. The plan itself describes the project, affected sage grouse leks and habitat, HQT results, adherence to the mitigation hierarchy, and the compensatory mitigation obligation.

The Program ran the Habitat Quantification Tool (MSGOT-approved v1.0, October 2018). The total Raw HQT Score (before multipliers) is 19,089.67 functional acres lost. Of the total functional acres lost, 99.99% is attributed to indirect impacts within 6 km (3.72 mi; the indirect assessment area for tall structures located less than four miles from the nearest active sage grouse lek).

Triangle was unable to create any permittee-responsible credits of its own accord or obtain any credits from third parties. Triangle's remaining option is to make a contribution to the Stewardship Account. Therefore, the total number of debits (including multipliers) is 24,816.57. After applying the 3% credit discount for a project life of 24 years corresponding to the surface use agreement with the private landowner, the contribution to the Stewardship Account would be $231,459.62.

Additionally, the Mitigation Plan includes a request that MSGOT waive 100% of the calculated mitigation obligation (24,816.57 debits or $231,459.62). Section 5 of the Plan includes Triangle's reasoning and supporting information to address the criteria listed in the Montana Mitigation System Policy Guidance Document October 2018, v1.0. Those pages from the Policy Guidance Document were included in the meeting materials.

While the Program takes no position on the waiver request itself, the Program does encourage MSGOT to refresh its memory on the relevant pages in the Policy Guidance Document. MSGOT is also encouraged to bear in mind Montana's stated goal of "no net loss, net gain preferred" and that any relief or reduction in Triangle's obligation (see Plan Tables 3 and 4, page 13) would need to be offset by credits secured by other means (e.g. created by Stewardship Account grants). See the Adaptive Management pages from the Policy Guidance Document included in the meeting materials.

PROGRAM RECOMMENDATION:
The Program Manager recommends MSGOT approve the proposed mitigation plan itself through Section 4.

Separately, the Program recommends MSGOT make a decision on Triangle's request for MSGOT consideration of economic feasibility constraints (see Section 5 of the Plan, requesting waiver of 100% of the obligation).

DY Junction – Communication Tower
Sage Grouse Mitigation Plan

Project ID: 2385

April 12, 2019

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Attachment A. Triangle Communication Bird Site Policy

Attachment B: Map of Existing Communications and Highway Safety Data in the DY Junction Area

Attachment C: Photos of Site 1 at DY Junction

Attachment D: DNRC Letter of Support for DY Junction Tower

1.0 Introduction

1.1 Project Description

Triangle Communication System, Inc. (Triangle) proposes to build a communications tower at the DY Junction in southern Phillips County. The Triangle DY Junction Tower (Project) site is located within an existing commercial development and at the intersection of two highways, U.S. Highway 191 and State Highway 66 (Figure 1). The tower height will not exceed 199 feet and the permanent footprint of the tower site is 75 feet by 75 feet, with a temporary construction footprint of 100 feet by 100 feet. The tower would be serviced by 430 feet of underground electrical and 253 feet of underground fiber optic cables, both supplied from within the commercial development.

Project construction will last approximately one month. The tower will be constructed to be approximately 190 feet in height with up to 9 feet of additional height from antennas and other hardware attached to the tower. The tower is a self-supporting lattice structure that will be co-located with a pre-fabricated communication hut, generator, and propane tanks. The 75 ft by 75 ft tower compound will be enclosed within a chain link fence. Other construction includes the burial of a fiber optic cable and a powerline from the existing source to the tower compound. Routine operations and maintenance work would consist of two to three visits per year.

The Project site was selected to provide cellular phone service to a portion of rural Montana as part of Triangle's commitments to fulfill Federal Communication Commission (FCC) directives for improved communication infrastructure in rural areas. The landscape covered by this Project would include parts of U.S. Highway 191 and State Highway 66 travel corridors. Both of these highways provide major travel arteries to Billings from communities in north-central Montana. Once the Project is constructed, travelers along these highways would have much-needed access to cellular coverage, including for emergency communication.

The Project site was selected by Triangle to balance site performance, construction impacts, and economic concerns with ecological impacts, including those to sage grouse.

The Site 1 Project location was originally submitted to the Montana Sage Grouse Habitat Conservation Program (Program) on July 11, 2016. At that time the Program identified concerns about the project type, duration and proximity to active leks. One active lek is approximately 2 miles from the junction, which is why Site 2 was proposed and reviewed in November/December 2016 (Figure 2). The Program completed a consultation letter on December 5, 2016 for Site 2, but Site 2 was ultimately unavailable for development due to landowner issues. Another alternate location, Site 3 was provided to the Program and reviewed in April 2017 (Figure 2). The Program consultation letter for Site 3 was provided on April 17, 2017. However, as explained later in this document development at Site 3 is not feasible due to substantially higher development and maintenance costs.

Following consultation with the Program the proposed Project was resubmitted for Site 1 on February 6, 2018 and confirmed to be a non-nest facilitating tower in October 2018. The tower was designed to follow the directives provided in Executive Order No. 12-2015 (EO), when economically feasible.

The Project includes the following measures to reduce sage grouse impacts:

- A non-nesting tower design.

- Free-standing tower that does not utilize guy-wires or other ancillary support structures.
- Located within a degraded area and co-located with existing rights-of-way for two paved highways.
- Total tower height less than 200 feet that would not require lighting, per Federal Aviation Administration (FAA) regulations.
- Tower is not located on a ridgetop or within a wetland.

The Project is located within four miles of one active sage grouse lek in a Core Area, but outside of the 0.6-mile No Surface Occupancy (NSO) buffer requirement provided in the EO.

Descriptions of the Project were prepared by Triangle and have previously been submitted to the Montana Sage Grouse Oversight Team (MSGOT), most recently as a handout at the December 2018 meeting.

1.2 Local Sage Grouse Population Description

There are three active sage grouse leks within the four-mile buffer used for the Density Disturbance Calculation Tool (DDCT) analysis for the Project area, as shown on Figure 3. The leks in the analysis area are SG11-56, SG11-41, and SG11-31.

The communication tower and associated infrastructure are located 2.01 miles from Lek SG11-56. The Montana Fish, Wildlife and Parks (FWP) lek database shows Lek SG11-56 was first counted in 2001-2002. The high male count of the lek has varied from 24 to 77, with a total of 43 males counted in 2018.

Lek SG11-41 is located 4.01 miles from the Project and was first counted in 1999-2000. The high male count of the lek has varied from an estimate of 20 to 69, with a total of 57 males when it was last surveyed by FWP in 2015.

Lek SG11-31 is 4.49 miles from the Project and was first counted in 1999-2000. The high male count of the lek has varied from 16 to 60, with a total of 37 males counted by FWP in 2018.

Figure 1. DY Junction Tower Project Location Map – 1:6,000 Scale

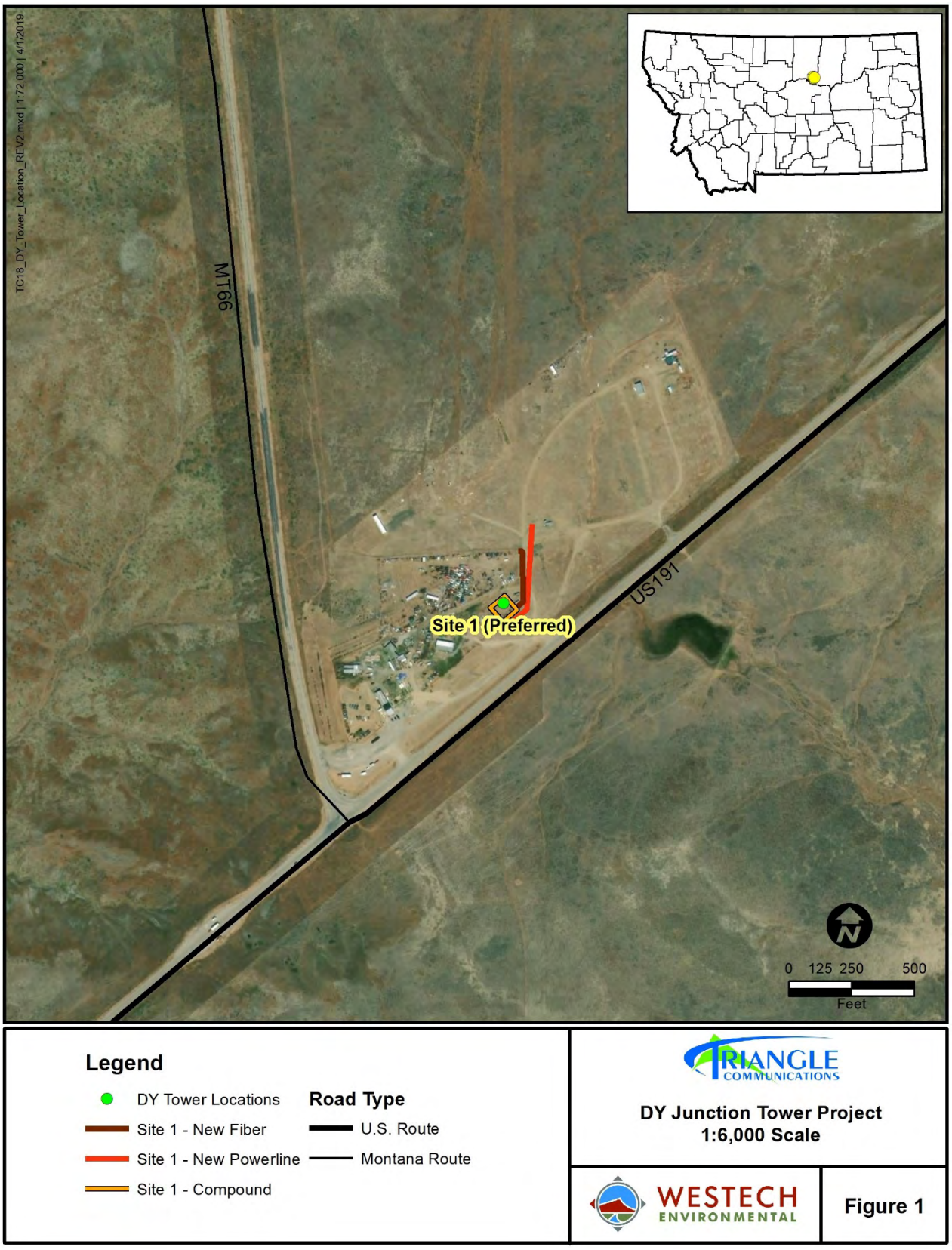


Figure 2. DY Tower Project Site Alternatives Map – 1:75,000 Scale

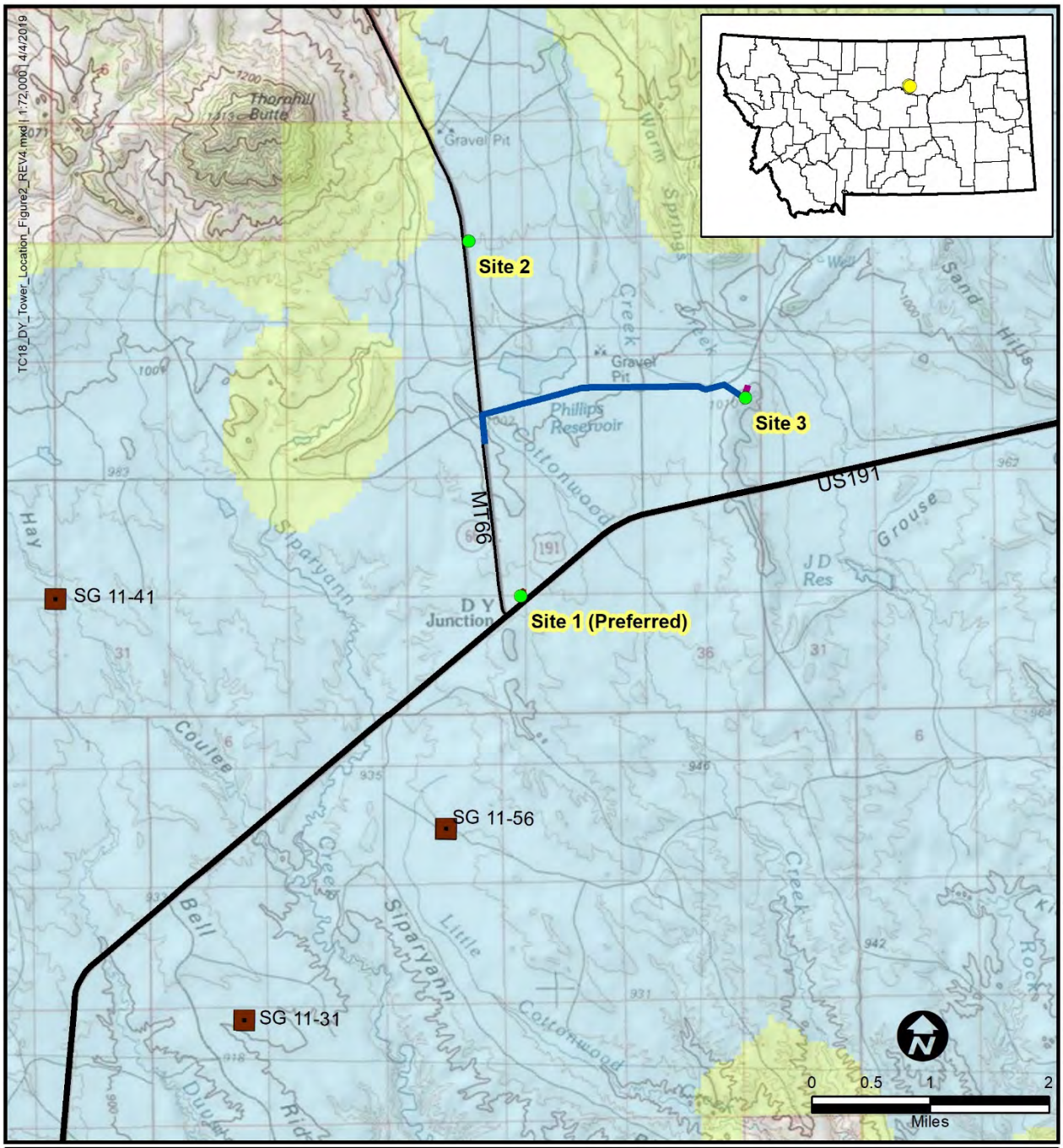
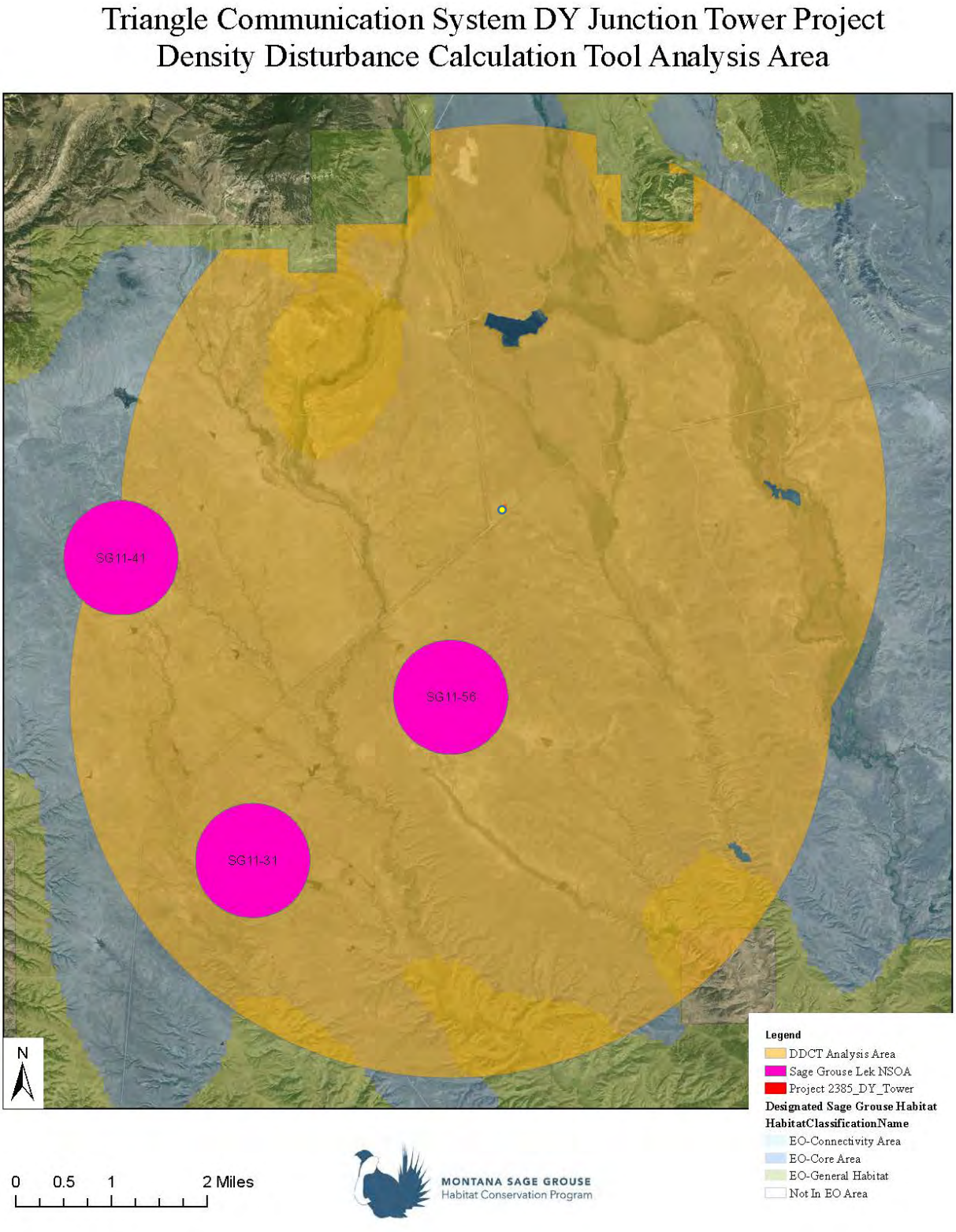


Figure 3. DDCT Map and Analysis Area



2.0 Executive Order 12-2015 Consistency Review

The following sections describe specific components of the Project and how these components address the guidance and stipulations provided in EO.

The Project is located within a designated Core Area for sage grouse. Core Areas were delineated as habitats of highest conservation priority. The stipulations for these areas are designed to maintain existing levels of suitable sage grouse habitat by guiding uses and activities in Core Areas. These measures are to ensure the maintenance of sage grouse abundance and distribution in Montana. The stipulations referenced below are provided in the EO under the Core Area Stipulations - Stipulations for Uses and Activities.

2.1 Stipulations That Apply to the Project

2.1.1 Density Disturbance Calculation Tool Analysis Surface Disturbance

The Program calculated the disturbance levels within the Density Disturbance Calculation Tool (DDCT) analysis area on January 2, 2018. The DDCT analysis area included 41,383.31 acres. The results were compared to allowable thresholds set forth in the EO. The DDCT result was 2.66%.

2.1.2 Overhead Powerlines and Communication Towers

The powerline and fiber-optic cable required for the Project will be buried and are co-located with existing commercial disturbances or rights-of-way.

In order to clarify stipulations for power lines and communication towers, the following text from the EO is provided below, followed by Project-specific statements of compliance.

"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;
- The Project is within 4 miles of one active lek.
- The powerline and fiber-optic lines will be buried.

b. If not economically feasible, the 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;
- It is not economically feasible to locate the Project further than 4 miles from an active lek, as described in Section 5.2.1.
- The Project is co-located with existing above ground rights of way.
- The Project is more than 0.6 mile from the perimeter of an active lek.

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."
- Not applicable.

The EO also states, "Follow United States Fish and Wildlife Service (USFWS) Best Management Practices (BMPs) 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."

- The Project would not use guy wires.

The following USFWS-recommended measures will be implemented to construct a tower that:

- is less than 200 feet in height and would not require safety lighting, per FAA requirements;
- is located within a degraded area;
- would not be placed on a ridgeline or wetland;
- minimizes habitat loss due to small foot print and located on previously disturbed land; and
- uses a free-standing lattice tower design.

2.1.3 Noise

Noise levels from the Project would not exceed 10 dBA above baseline noise at the perimeter of an active lek from 6 pm – 8 am during the breeding season (March 1 – July 15).

2.1.4 Vegetation Removal

Surface disturbance is limited to the minimum disturbance required by the project. All surface vegetation removal will occur within previously disturbed areas. All soil stripping and vegetation removal in suitable habitat will occur between July 16 and March 14 in areas within 4 miles of an active lek. Initial disturbance in suitable habitat between the referenced dates may be approved on a case-by-case basis.

2.1.5 Monitoring/Adaptive Response

Triangle will develop a lek monitoring plan in collaboration with the Program and FWP, if requested by MSGOT.

2.1.6 Reclamation

Project disturbances will be reclaimed to pre-disturbance conditions, consisting of a mixture of grasses and gravel.

2.1.7 Existing Activities

No new or existing activities associated with the Project will result in new surface occupancy within 0.6 mile of an active lek.

2.2 Project Activities That Deviate from EO Guidance and Stipulations

The project is located within four miles of an active lek. Due to the fact that no other sites are economically feasible, no other activities associated with the Project are expected to deviate from EO guidance and stipulations.

3.0 Adherence to the Mitigation Hierarchy

As stated in the EO, "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)". The following sections address how the four sequencing provisions are applied to the Project.

3.1 Avoidance

The Project is located within 4 miles of an active sage grouse lek, within a designated Core Area, therefore the Project does not avoid impacts to sage grouse habitat.

3.2 Minimization

The following minimization measures are incorporated into the tower design for Site 1.

3.2.1 Project Design

The Project location complies with the stipulations of the EO and tower design follows the guidance provided by the USFWS, as referenced in the EO. Specifically, the tower would be:

- Located more than 0.6 mile from an active lek;
- Free standing structure that does not utilize guy wires;
- Less than 200 feet in height and would not require FAA regulated lighting;
- Located within a degraded area;
- Located away from a ridgeline or wetland; and
- Constructed with a small footprint within an existing disturbance.

3.2.2 Co-location

The Project is co-located with two highway rights of way and an existing powerline right of way.

3.2.3 Non-nest Facilitating Structure

The tower design incorporated a lattice structure and perch deterrents to minimize the potential for predatory bird nesting. The potential for nest construction will be further reduced by the implementation of Triangle's Bird Site Policy (Attachment A). This policy states that the Project will be monitored on a daily basis either by residents at the site or by Triangle staff. Triangle field personnel will also conduct a more comprehensive review on a monthly basis during nesting season. Triangle has established communication with USFWS personnel in the event a take permit becomes necessary to remove an active nest, although nest removal prior to completion is the preferred course of action.

3.2.4 Seasonal Use

Project construction would occur outside of the March 15 – July 15 prohibited activity timing restriction. During the March 15 – July 15 time period, discretionary maintenance activity will not occur between the hours of 4 am and 8 am or between 7 pm and 10 pm.

3.2.5 Transportation

No new roads are proposed as part of the Project. Roads used during construction will consist of existing highways and established parking lots.

3.3 Reclamation

The Project site is co-located within a previously disturbed commercial development. Therefore, the reclamation of surface disturbances associated with the direct footprint at this location will be negligible. The construction footprint is 0.23 acres and the footprint during operations is 0.13 acres. The remaining 0.10 acres will be reclaimed with a mixture of introduced grasses and interspersed gravel to match the adjacent commercial yard. Noxious weeds will be controlled within the construction footprint for one year following construction and within the permanent compound for the life of the project.

3.4 Compensatory Mitigation

The following paragraphs summarize the Habitat Quantification Tool (HQT) output data for tower construction at Site 1.

3.4.1 Habitat Quantification Tool Results

The HQT Model was run for the Project on January 24, 2019 using HQT Model Dev_1.4, the October 2018 v1.0 HQT Basemap, and a 3.75-meter pixel resolution (MMS, 2018a). Model inputs for the Project were based on one year of construction, 24 years of operation, and 75 years of reclamation. The physical direct footprint of the project is 0.02 functional acres lost construction, 0.33 functional acres lost during operations, and 0.04 functional acres for reclamation, all of which occur in Core Habitat. The HQT Raw Score incorporates a 6 km indirect impact buffer since the Project is within 4 miles of an active lek and a 50 percent discount for use of a non-nesting tower design.

The HQT Raw Score for the DY Tower totals a loss of 19,089.67 functional acres (Table 1). The functional acre score for Core Habitat impacts were calculated to be 0.38 functional acres for direct impacts and 18,439.32 functional acres for indirect impacts. In General Habitat, the scores were 0.00 functional acres of direct impacts and 649.97 functional acres of indirect impacts.

Table 1. DY Tower Site 1 - Raw HQT Output

Raw HQT Score - Preliminary Results			
Habitat Type	Project Phase	Impact Area	Raw HQT Score
Core Area	Construction	Direct Impact	0.02
		Indirect Impact	739.27
	Operations	Direct Impact	0.33
		Indirect Impact	17,700.05
	Reclamation	Direct Impact Only	0.04
	ALL Phases	Direct Impact	0.38
		Indirect Impact	18,439.32
General Habitat &/or Connectivity Area	Construction	Direct Impact	0.00
		Indirect Impact	26.00
	Operations	Direct Impact	0.00
		Indirect Impact	623.97
	Reclamation	Direct Impact Only	0.00
	ALL Phases	Direct Impact	0.00
		Indirect Impact	649.97
ALL Habitat	ALL Construction	Direct Impact	0.02
		Indirect Impact	765.27
	ALL Operations	Direct Impact	0.33
		Indirect Impact	18,324.02
	ALL Reclamation	Direct Impact Only	0.04
	ALL Phases	Direct Impact	0.38
		Indirect Impact	19,089.29
TOTAL Raw HQT Score			**19,089.67**

3.4.2 Direct and Indirect Impacts

Direct impacts are effects that are caused by a development activity. Direct effects are the footprint of a project and usually occur from construction and/or operation activities, or project infrastructure. The direct impacts from the project generated 0.02 functional acres lost during Construction, 0.33 functional acres lost during Operations, and 0.04 functional acres lost during Reclamation (Table 1). A total of 0.38 functional acres are lost for the direct impacts for the life of the project. This score reflects the preexisting condition of the proposed site (i.e. previously disturbed and low quality) and the direct footprints for the tower, enclosure, power line and fiber optic-line according to the spatial data provided.

Indirect impacts are effects that are caused by or will ultimately result from a development activity. Indirect effects usually occur later in time or are removed in distance compared to direct impacts, but are still reasonably foreseeable. The indirect impacts resulted in a total of 765.27 functional acres lost for one year of Construction. The Operations phase resulted in a total of 18,324.02 functional acres lost due to the indirect impacts. The total functional acres lost due to indirect impacts for the life of the project is 19,089.29 (Table 1). Indirect impacts account for 99.998% of the total functional acres lost for the life of the project. The indirect impact score reflects the higher quality habitat and density of breeding sage grouse in the area within 6 km (3.71 miles) of the proposed tower site and the long duration of the project (25 years).

See Appendix C and Table C.1 of the Habitat Quantification Tool Technical Manual October 2018 v l.0 for the most current scientific literature, summarized as follows (MMS, 2018a).

- Anthropogenic structures, such as cooling towers, communication towers, and weather stations, provide perching and nesting subsidies for avian predators. Ravens have demonstrated a preference for nesting on anthropogenic structures over natural features (Coates 2014, Howe et al. 2014). Triangle communications has committed to maintain the tower as non-nest facilitating for the life of the project. A 50% decrease was made to the anthropogenic score to capture the tower design as non-nest facilitating.
- Negative trends have been detected within 18.0-km of communication towers (Johnson et al. 2011) and Wisdom et al (2011) reported extirpated ranges within 12.0-km of communication towers. The HQT model applies a 6.0-km buffer (3.72 miles) for tall structures located within four miles of an active sage grouse lek.
- Leks experience negative impacts with 1 or more towers located within 5 km of the lek (Johnson et al. 2011). Additionally, recognizing the scale of the figures and accounting for the logarithmic transformation of the explanatory variables, there were negative impacts on Lek Trends when tower densities exceeded 1 tower within 18-km of a lek (pers. comm. M. Holloran, Operational Conservation LLC, 20 September 2018). Knick et al. (2013), which corroborates findings from Johnson et al. (2011), found leks were absent where communication towers exceeded 0.08-towers/km.

3.4.3 Application of Policy Modifiers

The policy modifiers applied to this project include a 20 percent contribution to the Reserve Account and a 10 percent Advance Payment modifier (MMS, 2018b). The Reserve Account contribution for the Project is 20 percent of 19,089.67, or 3,817.93 debits (Table 2).

Triangle Communications has indicated it would not have any credits available through permittee-responsible projects. Triangle Communications has also indicated it was not working with any third parties. A contribution to the Stewardship Account is the remaining option and is Triangle's selected method of mitigation. The Advance Payment modifier is 10 percent of 19,089.67, or 1,908.97 debits.

Triangle Communications seeks a complete waiver for the entire mitigation obligation (see Section 5 below), which shifts the burden to secure an equal number of credits to offset the project to the State. A 10% Advance Payment Policy Modifier is applied whenever the responsibility to secure adequate compensatory mitigation to the State, the Program, and/or federal agencies.

3.4.4 Total Mitigation Debit Obligation

The total number of debits for a project equals the HQT Raw Score, plus the Policy modifiers (Table 3). For the DY Project, the total debits are 24,816.57, calculated from 19,089.67 (HQT Raw Score), plus 3,817.93 (Reserve Account modifier), plus 1,908.97 (Advance Payment modifier).

A contribution to the Stewardship Account is the only feasible mitigation option available for this Project. Therefore, the total mitigation cost to offset the debits is a contribution of $231,459.62 to the Stewardship Account. This total cost includes a 3 percent financial discount and a rate of $13 per debit (Table 4).

3.4.5 Service Area

The Project is located in the North Central Service Area for sage grouse mitigation.

3.5 Additional Locations and Program Review

The Program reviewed two alternative locations in association with the Project, shown as Site 2 and Site 3 on Figure 2. The Project Site (Site 1) and an alternative site (Site 2) were first submitted together for consultation with the Program in July 2016.

Site 1 was found to be within 2 miles of one active lek in Core Area, therefore the Program determined that the location would have negative impacts to sage grouse. The Program then recommended that Triangle seek an alternate location farther away from sage grouse leks and Site 1 was withdrawn from review in December 2016. Site 1 was withdrawn at the request of the Program and following Triangle's decision to proceed with the Site 2 location. The Program completed consultation for Site 2 and a letter was sent on December 5, 2016. Site 2 was later withdrawn from consideration due to landowner issues in December 2016.

An alternate location, Site 3, was proposed on November 17, 2016 with additional project information updated on April 12, 2017 (Figure 2). Site 3 was proposed after Site 2 was withdrawn. The Program review found that Site 3 would be over 4 miles from the nearest lek. This site would be accessed via 2.25 miles of existing dirt road from Highway 66 and the tower would be proposed in a grazing pasture. Tower construction at this site would require installation of 2.5 miles of buried fiber-optic cable and 560 feet of powerline. While the fiber-optic line was proposed within the four-mile lek buffer for SG 11-56, the line would result in temporary impacts. The Program concluded that Site 3 was the most consistent with the EO and a completed consultation letter was sent on April 17, 2017.

In December 2017, Triangle re-requested that the Program conduct a review for Site 1, after other alternative sites had been evaluated and were determined to be infeasible for construction.

Table 2. Policy Modifier Summary

Policy Multiplier			
Policy Application (Conversion from Functional Acres Lost to Debits)			
Multiplier Type	Specific Multiplier		Debits
Programmatic Multipliers (Construction Operation and Reclamation)	Reserve Account (20%)	1	3817.93
	Adv. Payment (10%)	1	1,908.97
Total Debits from Programmatic Multipliers			5,726.90
Deviations in Core Habitat		# of Deviations	
Site-Specific EO Stipulation Deviations. Multipliers in Core Area (10%)	NSOs	0	0.00
	Seasonal Use	0	0.00
	Veg Removal	0	0.00
	Noise	0	0.00
Total Debits from Site-Specific Deviations			0.00
Total Policy Multiplier Debits			**5,726.90**

Table 3. Total Debits

Total Debits		
Total Raw HQT Score		19,089.67
Total Policy Multiplier Debits		5,726.90
Total Debit Obligation		**24,816.57**

Table 4. Total Amount of Contribution to Stewardship Account

Total Costs	
Total Debit Obligation	24,816.57
Total cost at $13 per Debit	$322,615.41
Cost After Applying Credit Discount Method	**$231,459.62**

4.0 Mechanism Selected to Fulfill the Compensatory Mitigation Obligation

4.1 Compensatory Mitigation Mechanism

Triangle attempted to attain mitigation credits through a variety of options, including submitting habitat restoration projects to the Program for review and purchasing credits from third parties. None of these options provided any applicable mitigation credits. As a result, Triangle has no options left but to offset debits through a payment to the Stewardship Account.

5.0 Request for MSGOT Consideration of Economic Feasibility Constraints

Triangle is requesting a waiver for the sage grouse mitigation obligation of 24,816.57 debits associated with the construction of a cellular communication tower at Site 1, located in DY Junction. Triangle was unable to identify projects that would generate mitigation credits or negotiate the purchase of mitigation credits from a third party. The resulting obligation for a contribution to the Stewardship Account is $231,459.62, which includes Policy Multipliers and the discount rate. The requirements for this waiver request are provided in the October 2018 draft of the Montana Mitigation System Policy Guidance Document for Greater Sage-Grouse under Section 3.6.1 – Consideration of Economic Feasibility Constraints when Mitigation Obligations are High.

Over the past two and half years Triangle has allocated significant resources towards consultations with the Program to develop a mitigation solution for the DY Junction tower. Unfortunately, a mutually agreeable mitigation resolution has not yet been reached and Triangle has elected to utilize the financial policy option to seek a financial waiver from MSGOT. Triangle recognizes that mitigation is an important element of the species conservation and has made voluntary efforts to promote conservation. Consequently, this waiver request is supported by: 1) the acknowledgement of minimization measures made to-date and 2) the mitigation practices that will be implemented during tower construction and operations, as described in Section 3.2. The following paragraphs of the mitigation plan provides a detailed summary of the DY Project development, mitigation measures, and financial considerations to support the mitigation waiver request.

5.1 Introduction

Triangle supports the concept of sage grouse mitigation and has willingly participated in a changing mitigation landscape, although the prolonged consultation with the Program has impacted company scheduling and budgets and required significant Program resources. The evaluation of sage grouse impacts at this location has involved numerous calculation procedures, resulting in highly variable mitigation results. As methods became increasingly refined, the subsequent mitigation results for all sites

considered decreased. The Program has waived mitigation costs at both of the alternate sites near DY Junction because consultation had already been completed and review letters sent to Triangle, but not for Triangle's preferred location (i.e. consultation was never completed for Site 1 when it was submitted in 2016 and no letter was sent because the project was withdrawn).

Site 1 was designed within the regulations of the EO, including consultation with the Program that began in July 2016. The Program initially reviewed a project proposed at Site 1, stating concerns about the fact that part of the project was within 2 miles of active sage grouse leks and requested that Triangle develop and review alternative sites in the area. After several conference calls that included Triangle's consultant at the time, Triangle agreed to withdraw the project and look for alternatives that met their technical requirements. Triangle investigated several alternative sites in good faith. Ultimately, none of the alternative sites proved to be feasible due to real estate or financial reasons.

Site 2 was removed from consideration once it was determined that a lease agreement could not be reached for the property.

Site 3 is an alternate site that is preferred by the Program because it is more than 4 miles from an active lek, though it is still located in Core Habitat. The topography and geography of the DY area were analyzed by Triangle as part of a standard radio-frequency evaluation for identifying basic tower design at a given location. This analysis determines factors such as tower orientation, coverage area calculations, and recommended tower height. When these analyses were conducted for Site 1 and Site 3, it was discovered that Site 1 could cover a larger portion of the service area with a 199-foot tall tower than Site 3 could with a 250-foot tall tower. Also, Site 3 would not provide sufficient coverage of the southern portion of the service area, therefore a second tower would be required. Site 3 would also be substantially more expensive to construct and maintain due to the additional costs required to develop and maintain a remote site and a much taller and lighted tower. For these reasons, Triangle has determined that Site 3 is not a feasible alternative site for tower construction.

In November 2018, the Program offered to waive all mitigation for Site 3 because the consultation review was completed in 2017. In January of 2018, Triangle submitted a revised project layout for Site 1 that involved a realignment of the fiber optic cable route. The revised layout was entirely outside the 2-mile-buffer from an active lek. The location of the tower at Site 1 has remained unchanged since the original submittal in 2016.

5.1.1 Details of the Economic Feasibility Request

Triangle determined that the preferred Site 1 location is the most technically and financially feasible location for the tower. In particular, Triangle emphasizes that Site 1 meets the EO stipulations for towers that cannot be located beyond the 4-mile lek buffer from an economic feasibility standpoint because it is:

- co-located with existing above ground rights-of-way, and
- is located at least 0.6-mile from a lek.

Site 1 has proven to be the most logical placement for a tower based on economic and direct impacts reasoning. Triangle has designed and sited the tower to minimize direct impacts to sage grouse habitat, to follow the measures provided in the EO and the USFWS manuals. Triangle implemented these minimization measures as part of a pro-active strategy to reduce sage grouse impacts while providing an essential public service. Despite these efforts, the Program has determined if Triangle were to make a contribution to the Stewardship Account, the Project should carry a mitigation cost that is more than half of the entire project development budget, which is $400,000. This magnitude of mitigation is not feasible to most organizations, certainly not a subsidiary of a member-funded cooperative.

This waiver request was developed because Triangle has exhausted all viable options for creating or acquiring mitigation credits to offset the 24,816.57 total debits; and the financial payment of $231,459.62 to the Stewardship Account for mitigation offsets is not financially feasible.

5.1.2 Description of Essential Public Benefit, Utility, or Service in Underserved Rural Area

The Project is designed to provide much needed wireless communication coverage to rural areas within and surrounding two major transportation corridors. Despite the prevalence of highway traffic, the low population density within the area does not make construction of the tower a profitable endeavor. However, Triangle's Board of Directors and company management have prioritized the development of wireless communication along the major highways within their licensed area. Part of their mission is to fulfill obligations by the FCC to provide wireless communication to rural areas of Montana. In the area of DY Junction this FCC guidance includes establishing broadband communication to help rural Montana bridge the digital divide. Such a communication network improves safety for travelers, residents, and first responders in these remote, sparsely populated areas. Triangle's managing bodies adhere to the philosophy that public safety should factor into the economics of development; although, reasonable costs must be maintained in fairness to other Triangle customers.

The locations of landline telephone communication lines in the vicinity of DY Junction are provided on the map in Attachment B. The Antoine Butte tower provides the closest cell phone source at 11 miles away, but coverage of the area is severely limited due to distance and topography. People travelling through the area would have extremely limited phone access, including the use of local ranchers' land lines in this sparsely populated area. The map in Attachment B also identifies the locations of over 50 automobile crash sites in the area, obtained from MDT for 2014 through 2017 (MDOT 2017). Those who've had emergency medical training can speak to the "golden hour" following an accident when must be utilized in order to save lives. Lack of 911 access through cell phone coverage hampers that ability when time is lost finding and using land lines.

Mike Traynor is a 911 Dispatcher for Phillips County. He is responsible for coordinating the response when crashes occur in the vicinity of the DY Junction. EMS response may come out of Hays, Malta or Lewistown, depending on the location. He generally estimates the response is going to take at least an hour. One of the issues responders often encounter is that the person reporting the accident must leave the site in order to get phone coverage. This sometimes means leaving victims who need immediate care, or waiting

until someone else comes along who can report it. Those reporting, if they've left the scene of the accident, are then unable to give vital details needed to organize the response.

Due to the remoteness of the area, emergency personnel tend to "over respond" by sending more equipment than is necessary. This approach is used so that another hour is not taken up by finding that rescue teams need additional rescue tools upon arriving at the accident scene. This also ties up resources that may be needed in other areas of the county at the same time. These situations cause volunteer fatigue since most responders donate their time to perform these vital functions. To be called out and then not needed causes frustration, irritation and burnout among responders. The Philips county dispatcher then went on to say, "Triangle towers save lives. They have provided a wonder of assistance to us since they started being built. They've kept me from going completely crazy."

Data published by MDT illustrates that daily traffic counts at DY Junction have increased from 550 per day in 2014 to 613 per day in 2017, an 11% increase in traffic on daily basis (MDOT, 2017). Such evidence of increases in human population at DY Junction are representative of the increased demand placed upon the existing infrastructure of rural Montana.

5.2 Developer Statements to Support Request

5.2.1 No Alternative Sites are Practicable or Economically Feasible

At least seven other locations besides the submitted project site were considered and have been discarded because they are not viable. The list below includes three of the options that were developed as part of consultation with the Program.

- The hill immediately south of the DY Junction. While this would best serve the needs of cell phone users because it gives the greatest amount of height (and therefore coverage area), Triangle opted not to attempt building on this location.
- Site 2 was considered but is no longer a viable alternative. During the process of acquiring right of way the land became involved in a trade and is not available for lease. Since access cannot be acquired, this is not considered a potential tower site.
- Site 3 was submitted to the Program in November, 2016 with additional information provided for the Program to complete its review in April, 2017. Site 3 has since proven to be more expensive to build. Namely Site 3 would require a lighted tower, is located on a ridgetop, is not co-located with other disturbances, and the need for an additional tower in the area. Estimates of the additional expense would have increased the cost of the DY tower construction by fifty percent. These expenses include the increased cost of maintaining a lighted tower and the additional road/site maintenance required for a remote site.

5.2.2 There is an Economic Need for Relief from Compensatory Mitigation Obligations

Triangle Communication System, Inc. is owned by Triangle Telephone Cooperative Association, Inc., a nonprofit cooperative developed to provide telecommunications to rural areas that for-profit business would not provide. All revenues currently generated are used to pay down debt and develop infrastructure within rural Montana. Even though cooperatives have been charged with helping

Montanans bridge the "Digital Divide" and must deliver broadband service to rural areas, the cost of developing infrastructure within these sparsely populated regions is very expensive due to the long distances and relatively few customers. Ironically, any funds expended towards mitigation of habitat make it more difficult to deliver those services to some of the very people who've been responsible for the successful stewardship of sage grouse habitat and secured Montana's role in the species' recovery efforts.

5.2.3 The Cost of the Total Mitigation Obligation Poses a Disproportionate Economic Impact

The mitigation cost for Site 1 is approximately half of the total cost for design and construction of the tower. At the Program's preferred alternative, Site 3, construction is cost-prohibitive due to the additional costs associated with construction and maintenance of a remote, undisturbed site. Triangle's Board of Directors wants to ultimately provide wireless coverage to the communities and highways within its service area as a matter of public safety. However, substantial mitigation costs preclude accomplishment of these objectives. The cost of constructing the tower and bringing it online at the DY Junction is estimated to be $400,000; the last mitigation amount calculated was $231,459.62, adding an additional 57% to the cost of the tower.

Permitting of this tower has now extended far beyond the initial time frame for when it was expected to be constructed. As a result, it was not included in a business agreement that would have aided in generating revenue to offset the costs of construction for this tower. While Triangle has explored trying to find other revenue sources, there has been no success, nor any indication of a situation developing in the future, that would aid in cost recovery. As a result, this tower will be built at a financial loss in order to fulfill FCC responsibilities and provide a gain in public safety.

5.2.4 All Available Tools in the Policy Guidance have been Exhausted or are Unsuitable

All available tools within the Policy Guidance have been considered and Triangle has utilized the mitigation hierarchy. Tower sites were removed from consideration when the benefits of the site location were overridden by proximity to sage grouse habitat or determined to be financially infeasible to construct.

Phased payments, discount adjustments and credit matching are options for policy tools provided in the Policy Document. However, these tools are all based on the assumption that the initial mitigation requirement is fair and proportionate to the severity of impacts a project will have on sage grouse habitat. Mitigation for the alternate tower locations have been excused by the Program because consultation was completed and Triangle was in possession of the Program's review letters.

At the suggestion of the Program, Triangle identified projects constructed between September 8, 2015 (issuance date of the EO) and December 31, 2019 within sage grouse habitat that could potentially provide mitigation credits for areas where existing aerial fiber optic cable distribution lines were converted to buried lines or older, obsolete towers were removed. These potential credit projects were constructed by Triangle Telephone Cooperative Association, Inc. (TTCA), of which Triangle is a subsidiary. Triangle worked with TTCA to acquire all or part of the mitigation credits for the North Central service area in order

to offset a portion of the debits incurred for the DY Junction Tower. Ultimately, TTCA elected to retain all of the credits for use as mitigation offsets on future development projects.

5.2.5 There is Some Capacity to Fulfill Some Portions of the Mitigation Obligation, so that Fulfilling the Entire Obligation becomes a Joint Public-Private Endeavor

Triangle continues to utilize design, construction, and operational methods that reduce impacts to sage grouse habitat as a part of standard business operations. A couple of these measures are described in Section 5.3, including voluntarily removing unused communication towers and providing mobile cell service to fire crews in the DY Junction area. The removal of the tower near the town of Wagner is an excellent example of Triangle's land stewardship and removing potential impacts from the landscape. These actions were completed out of sense of responsibility, which unfortunately for Triangle, does not translate to sage grouse mitigation credits for this Project because it was undertaken prior to the effective date of Executive Order 12-2015.

The final and most relevant mitigation measure is that the DY Tower was sited and designed following the guidance provided in the EO. Specifically, it was located at a site of previous disturbance, between two paved highways, as illustrated by the photos provided in Attachment C. This site was located within 4 miles of an active lek, but outside of the 0.6-mile no surface occupancy buffer. Sites outside of the 4-mile buffer were identified and evaluated, but ultimately were not financially feasible to construct. Triangle initiated consultation with the Program for a tower at Site 1 two and half years before the HQT model was formally adopted by MSGOT, portions of which were within 2 miles of an active lek. A revised project layout was re-submitted at the DY Junction location which followed the stipulations provided in the EO. The Program has clarified that mitigation for Sites 2 and 3 would be waived because Program reviews for these sites were completed with Program letters. Site 1 was originally submitted prior to either of the alternative sites; therefore, Triangle believes that all compensatory mitigation should also be waived for the preferred location at Site 1.

5.2.6 All Relevant Tools in the Policy Guidance have been Considered

All available tools within the Policy Guidance have been considered and Triangle has utilized the mitigation hierarchy. To avoid redundancy, please refer to responses provided in Section 5.2.4 of this plan.

5.2.7 Other Steps in the Mitigation Hierarchy have been Observed and Incorporated into the Mitigation Plan

Avoidance -- Multiple other sites visited, analyzed and engineered – see Section 5.2.1.

Minimization -- Site at the preferred location chosen to minimize direct impact by utilizing the following measures:

- Reduced visibility of the tower by avoiding FAA lighting requirements;
- Located on heavily disturbed ground that provides very low-quality sage grouse habitat within the direct project footprint;

- Co-located with two major highways and a commercial business development;
- Use of non-nesting design, perch deterrents, and nest removal plan to avoid use of tower by avian predators; and
- No surface disturbance of native sagebrush habitat and minimal direct project footprint.

Reclamation – Direct impacts occur within previously disturbed commercial development.

5.3 Additional Voluntary Efforts

Triangle conducts business operations in a manner consistent with the "good neighbor policy" of considering the public and the environment through minimal impact development and removing outdated infrastructure. This philosophy extends to other voluntary design and maintenance tasks that benefit a variety of habitats, including that of sage grouse. However, none of these actions are quantified into "credits" under the current framework of sage grouse mitigation in Montana.

Two examples of voluntary efforts completed by Triangle are described below to provide perspective on standard business operations. Neither of these examples produced any mitigation credits that could be applied to offset the Project debits.

5.3.1 Tower Removal

In 2014, Triangle removed a decommissioned communications tower outside of the town of Wagner, in Phillips County. This tower was approximately 45 feet tall and was constructed in 1965. Deconstruction of the tower involved removing all of the aboveground structures, leaving only grass at the site. The tower site is within EO General Habitat for sage grouse and within 2.5 miles of Core Habitat. Since this tower was removed prior to the issuance of the EO it is ineligible to receive mitigation credits; however, it is presented here as an example of Triangle's policy of voluntarily removing unneeded infrastructure.

5.3.2 DNRC Fire Communications

During the July Fire in 2017, Triangle provided temporary cellular service to support critical communication coverage in DY Junction area. That fire destroyed over 11,000 acres of wildlife habitat, both adjoining and within sage grouse habitat area. During fire-fighting efforts Triangle provided a "cell on wheels" (COW), which is a mobile cell phone tower for use by fire-fighting personnel deployed in this area. When contacted, the fire chiefs were unreserved in saying that the cell towers aided the cause and helped them get the fire under control more quickly. For many fire fighters their primary communications ability was reliant on the cell tower signal.

No bill was sent to the DNRC for this fire; however, Don Pyrah with DNRC fire management said that mobile communications were vital to their efforts and became essential after the Type One Interagency Fire Management Team had left. A letter of support from DNRC fire management is provided as Attachment D. Although an exact number would be difficult to define, the donation of cell service on this fire potentially saved thousands of acres of sage grouse habitat and permanent cellular coverage in the area could prove equally critical on future fires.

6.0 Summary and Conclusions

Triangle initiated consultation with the Program on July 11, 2016 regarding construction of a communication tower at DY Junction, shown as Site 1 on Figure 1. In response, the Program requested that Triangle identify alternative tower sites since the original site was within 4 miles of an active sage grouse lek. Triangle identified several alternative sites and eventually developed designs for two sites, shown as Sites 2 and 3 on Figure 2. However, access issues or development costs associated with both of these sites precludes them from being economically feasible for tower construction. The layout for buried fiber optics at site 1 were realigned to be more than 2 miles from a lek and the Project was resubmitted to the Program in January 2018. The tower at Site 1 has been sited and designed to follow the stipulations required by the EO and the guidance for tower construction provided by the USFWS.

Through the course of standard business practices Triangle has demonstrated a willingness to minimize construction impacts and remove unnecessary infrastructure from the landscape. These actions provide benefits for landowners impacted by infrastructure and reduce environmental impacts, including those to sage grouse. Unfortunately, Triangle's prior sage grouse mitigation actions could not be translated into mitigation credits that could offset debits for the DY Tower project. Paying even a discounted rate for mitigation does not negate the fact that such costs could impact the same people who are providing stewardship for sage grouse habitat. As a result, Triangle must rely on Policy Tools such as this waiver request to move forward with infrastructure development projects in rural Montana.

In this document, Triangle has presented several voluntary measures that are offered as alternative mitigation to offset the compensatory mitigation for the communication tower at DY Junction. Triangle has also presented evidence that the communication services they provide to rural Montana are essential benefits to the public. The member-owned financial structure of Triangle's business operations does not provide large real-estate holdings that could be used for conservation credits. Furthermore, Triangle does not generate large profits that can be utilized for substantial out-of-scope development costs, such as sage grouse mitigation.

The Program has indicated that mitigation is not required for the alternate tower locations, Sites 2 and 3, because reviews of those sites were completed in 2017. Following this precedence, Triangle believes that mitigation for Site 1 should also be waived since Site 1 was first submitted to the Program for review in July 2016 (same time as Site 2).

For the reasons provided in this document Triangle requests a waiver from MSGOT for the $231,459.62 compensatory mitigation costs required to construction a communication tower at Site 1 in DY Junction.

7.0 References

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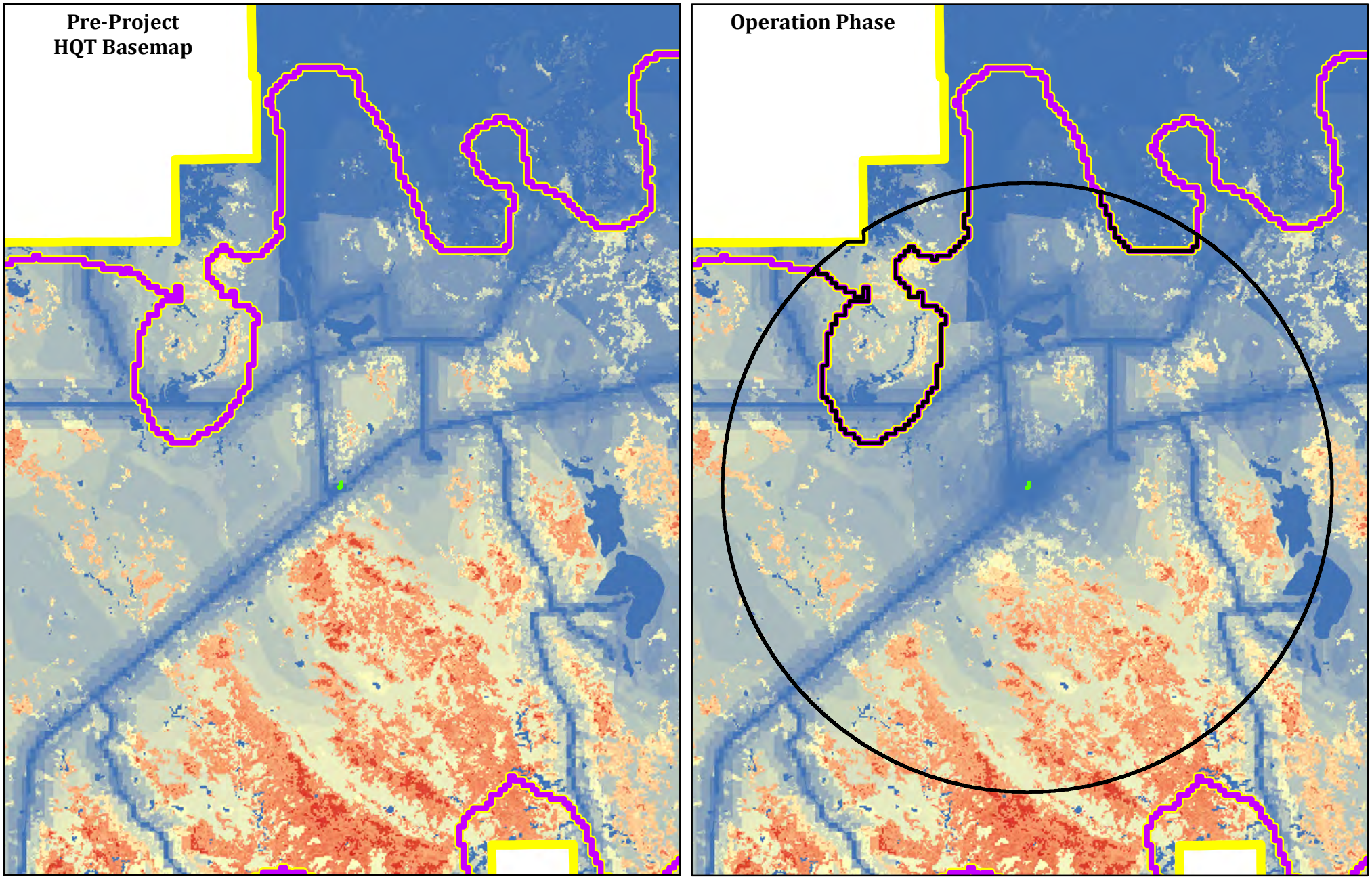
2385 - Triangle Communication System DY Junction Tower
New Corrected Location Submitted on January 2, 2018: NON-Nest Facilitating



Project HQT Metadata

HQT Date: 24 January 2019
Years for Construction: 1 Year
Years for Operations: 24 Years

HQT Pixel Value

High: 100

Low: 0

Project Direct Impact Footprint

Project Indirect Impact Area

Core Area

General Habitat

0 1.5 3 Miles

N

DY JUNCTION – COMMUNICATION TOWER

MITIGATION PLAN

ATTACHMENT A

TRIANGLE COMMUNICATION
BIRD SITE POLICY

Bird Site Policy

Many bird species in the U.S. are protected by the Migratory Bird Treaty Act ("MBTA"). The MBTA makes it illegal to: "pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird, included in the terms of this Convention… for the protection of migratory birds… or any part, nest, or egg of any such bird." (16 U.S.C. 703) Other regulation protecting birds that may be encountered at TCS sites include the Endangered Species Act and the Bald and Golden Eagle Protection Act.

TCS's No Kill Policy:

1. TCS does not allow destruction of active nests on our assets without approval and direction from USFWS.
2. TCS will attempt to accommodate maintenance and colocation activity in consultation with either the USFWS or USDA Wildlife Services without a direct kill of the birds.
3. TCS requires its employees, contractors, customers and their contractors to be alert to bird activity at TCS sites at all times throughout the year. TCS employees, contractors and customers should observe the tower site for indicators of bird activity including the presence of a nest, birds roosting on the tower, or bird evidence around the tower site.
4. Absolutely no work can occur on or near the structure used as a nest site or roosting site until clearance is received from TCS. TCS employees, contractors, customers and their contractors must promptly report any bird activity observed at any TCS site or governmental contacts regarding wildlife activity to TCS. The sooner TCS receives notification of the bird activity, the sooner we can evaluate and resolve the wildlife situation.
5. Violation of the Bird Site Policy will result in removal from TCS's Approved Vendors list if the violation occurs from a TCS employee, appropriate disciplinary action will be taken.

If you encounter or are notified of bird activity at a TCS site, please contact TCS at colocation@itstriange.net so we can help you complete the project and protect the environment.

POWER LINE SENTRY™

RAPTOR GUARD™ WILDLIFE PERCHING EXCLUDER SOLUTIONS FOR PROTECTED SPECIES HABITAT

Continued →

These products are designed specifically for excluding perching events on structures that are located in areas where protected species are known to populate, or have breeding grounds. In these cases extra measures must be taken to prevent raptors from using power line structures as hunting platforms. Power Line Sentry has developed a set of products that extend our deterrent's capabilities to not only protect birds from being electrocuted but also discourage these same predators from using the structure entirely.

SPECIFICATIONS

- UV resistant Fiberglass Uprights
- UV resistant Polymer saddles
- Withstands >100 mph winds for sustained periods
- Designed to cover the entire cross-arm
- Modular design
- Multiple attachment saddle options including round pole, fiberglass, steel, wood, angle iron, and flat pad mounts

Product Number	Description	Attachment Type	Installation Method	Box Qty
RGSP-12	12" Fiberglass Spike Perching Excluder with Flat Base	Flat	Gloved	20
RGSP-12-EC	12" Fiberglass Spike Perching Excluder with Flat Base and angled spikes to block perching on insulators	Flat	Gloved	20
RGSP-16	16" Fiberglass Spike Perching Excluder with Flat Base	Flat	Gloved	20
RGSP-24	24" Fiberglass Spike Perching Excluder with Flat Base	Flat	Gloved	20
RGSP-24-EC	24" Fiberglass Spike Perching Excluder with Flat Base and angled spikes to block perching on insulators	Flat	Gloved	20
RGSP-36	36" Fiberglass Spike Perching Excluder with Flat Base	Flat	Gloved	10
RGSP-36-EC	36" Fiberglass Spike Perching Excluder with Flat Base and angled spikes to block perching on insulators	Flat	Gloved	10
RGSP-48	48" Fiberglass Spike perching excluder with Flat Base	Flat	Gloved	10
RGSP-48-EC	48" Fiberglass Spike Perching Excluder with Flat Base and angled spikes to block perching on insulators	Flat	Gloved	10


RGSP-36-EC


RGSP-48

Continued →

POWER LINE SENTRY™

RAPTOR GUARD™ WILDLIFE PERCHING EXCLUDER SOLUTIONS FOR TRANSMISSION STRUCTURES

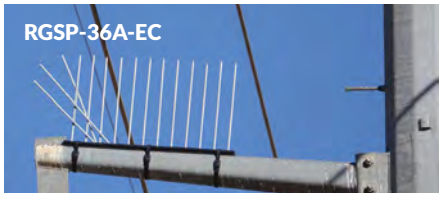
This products is designed specifically for excluding perching events on structures. This solves two major problems that can occur on transmission structures. The first relates to the contamination of hanging insulator strings. When birds perch above these insulator strings, they often defecate or "stream" on to the insulators below them. Over time, this material will build up and cause flashovers, damaged equipment, and outages. The second reason relates to areas where protected species are known to populate, or have breeding grounds. In these cases extra measures must be taken to prevent raptors from using power line structures as hunting platforms.

SPECIFICATIONS

- UV resistant Fiberglass Uprights
- UV resistant Polymer saddles
- Withstands >100 mph winds for sustained periods
- Designed to cover the entire cross-arm
- Modular design
- Multiple attachment saddle options including mult-sided arms, fiberglass, steel, wood, and angle iron

Product Number	Description	Attachment Type	Installation Type	Box Qty
RGSP-12-AN	12" Fiberglass Spike Perching Excluder fir Angle Iron applications	Angle Iron	Gloved	20
RGSP-12-10-AN	12" Fiberglass Spike Perching Excluder with 10" tall spikes for Angle Iron applications	Angle Iron	Gloved	20
RGSP-24A	24" Fiberglass Spike Perching Excluder for multi-sided steel arms	Multi-sided Arm	Gloved	20
RGSP-24A-EC	24" Fiberglass Spike Perching Excluder with angled spikes for multi-sided steel arms	Multi-sided Arm	Gloved	20
RGSP-24A-EC-PRP	24" Fiberglass Spike Perching Excluder with 4" x 1" notch in end and angled spikes to block perching on multi-sided steel arms	Multi-sided Arm	Gloved	20
RGSP-24-AN	24" Fiberglass Spike Perching Excluder for Angle Iron applications	Angle Iron	Gloved	10
RGSP-36A	36" Fiberglass Spike Perching Excluder for multi-sided steel arms	Multi-sided Arm	Gloved	20
RGSP-36A-EC	36" Fiberglass Spike Perching Excluder with angled spikes for multi-sided steel arms	Multi-sided Arm	Gloved	10
RGSP-48A	48" Fiberglass Spike Perching Excluder for multi-sided steel arms	Multi-sided Arm	Gloved	10
RGSP-48A-EC	48" Fiberglass Spike Perching Excluder with angled spikes for multi-sided steel arms	Multi-sided Arm	Gloved	10
RGSP-48 -AN	48" Fiberglass Spike Perching Excluder for Angle Iron applications	Angle Iron	Gloved	10
RGSP-48-10-AN	48" Fiberglass Spike Perching Excluder with 10" tal spikes for Angle Iron applications	Angle iron	Gloved	10

NOTE: Custom saddles and lengths can be made to fit your needs. Please call for more information.



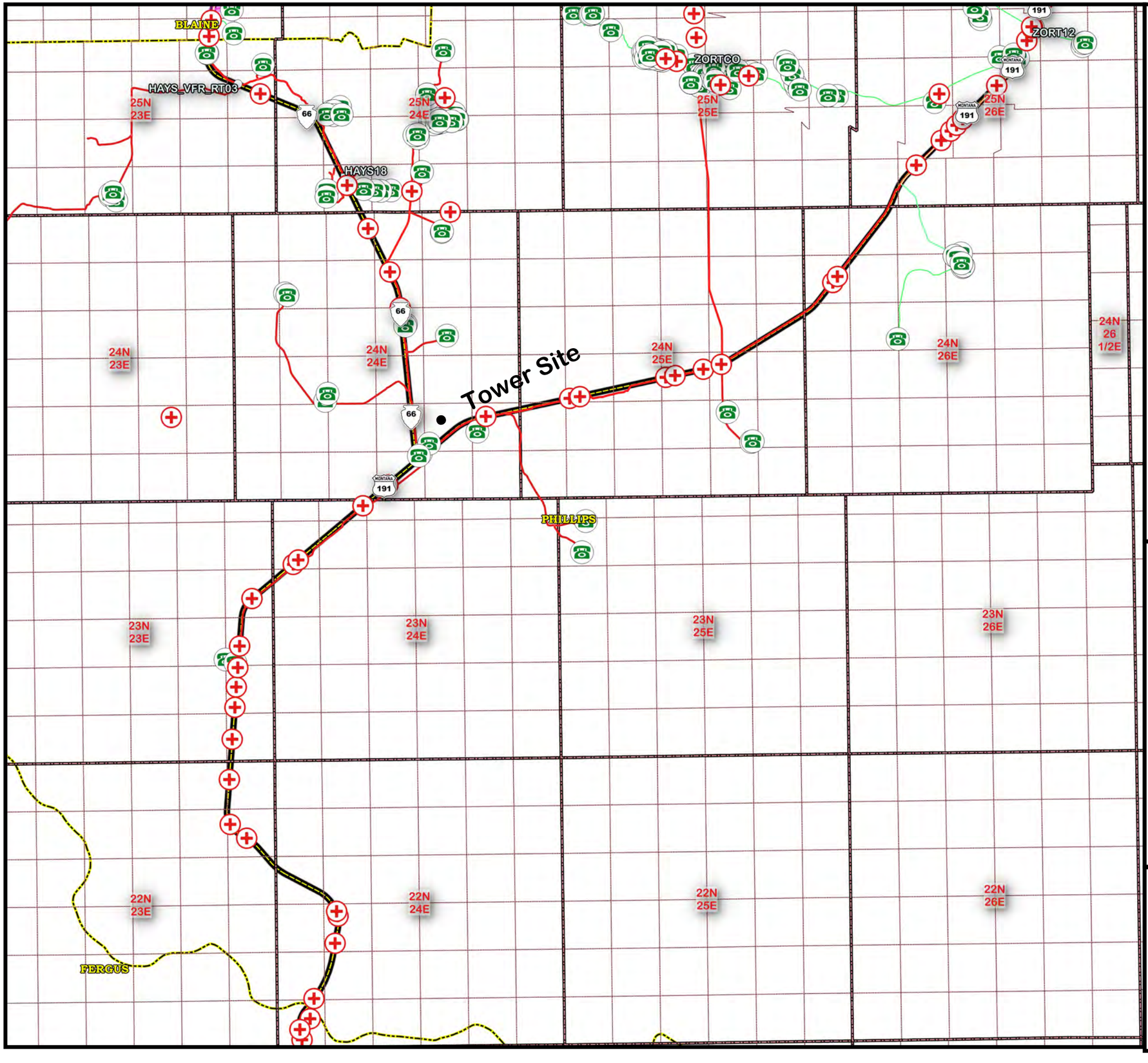
DY JUNCTION – COMMUNICATION TOWER

MITIGATION PLAN

ATTACHMENT B

MAP OF EXISTING COMMUNICATIONS AND HIGHWAY SAFETY DATA IN THE DY JUNCTION AREA

2013 - 2017 Montana D.O.T. Vehicle Crashes Reported DY Junction



Legend

- 2013 to 2017 MDOT Crashes Reported

Triangle Communications Cable

- Copper
- FIBER
- Landline Telephone Locations

DY JUNCTION – COMMUNICATION TOWER

MITIGATION PLAN

ATTACHMENT C

PHOTOS OF SITE 1
at DY JUNCTION

View to north

View to southeast (closest lek 2.0 miles in this direction)

View to northwest.

View to northeast.

DY JUNCTION – COMMUNICATION TOWER

MITIGATION PLAN

ATTACHMENT D

DNRC LETTER OF SUPPORT FOR DY JUNCTION TOWER

DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION
NORTHEASTERN LAND OFFICE

STATE OF MONTANA

(406) 538-7789 Telephone
(406) 538-7780 FAX

613 NE MAIN
PO BOX 1021
LEWISTOWN, MONTANA 59457-1021

September 25, 2018

Mike Zook
Triangle Communications
2121 US Highway 2 NW
Havre, MT 59501

RE: Cellular Communications Needs in Firefighting Activities

Dear Mike,

Thanks for the email a couple of weeks ago asking for supporting documentation of the importance of cellular communications associated with firefighting activities.

In two instances during the 2017 fire season, communications challenges demonstrated an increased need for reliable cellular communications for firefighting incidents in northeastern Montana. There are two very different incident communication needs for cellular communications, and they remain quite distinct - under normal circumstances. Those are incident suppression needs and incident support needs.

Incident communications via established radio communication systems remain the "gold standard" for incident suppression operations. Federal and state firefighting agencies rely heavily on radio communication systems for their initial attack efforts and are adequate for nearly all our *interagency* needs. Suppression operations become a bit more complicated when you have a large fire that involves a robust local response which involves volunteer fire organizations that often utilize a radio system that may have differing capabilities. Another problem is MANY of the volunteer resources who are responding lack radios, and that presents an increased reliance on reliable cellular communications.

Secondly, and equally important, are those incident support needs that are not normally transmitted via radio frequencies, but instead use phone line communications of some sort — i.e., the need for cellular connectivity, or access to "hard lines." Incident support needs include the access to lines of communications with capabilities of both sending and receiving voice and data transmissions. Even on small incidents, it is important that this level of support is met.

This problem is compounded during large fire events such as during the July Fire in Phillips County, and the East Fork Fire in Hill County of 2017 Montana Fire Season.

Reliable communication needs stretch well beyond simple initial attack events. When Incident Management Teams respond to larger fires, they come with robust support mechanisms that provide an array of incident support needs which require large amounts of voice and data capability at times both simultaneously and constantly, during various stages of the incident.

During the July Fire, a Cell on Wheels (COW) was mobilized to the Zortman-area due to poor cellular connectivity. The COW proved to be invaluable to meeting the incident support needs of the July Fire. Unfortunately, that COW was not placed during the emerging stages of the July Fire. Having a cellular tower established in that area prior to that would been beneficial for the initial suppression and support needs of the incident.

During the East Fork Fire, lack of reliable communications - either via cell phone or radio frequency resulted in the ordering of multiple COWs through Triangle Communications during the emerging days of the incident and were utilized throughout the duration of the East Fork Fire event. This valuable resource was provided by Triangle Communications and was greatly needed for both fire suppression and fire support activities of the East Fork Fire.

I am supportive of the efforts to expand Triangle Cooperatives cellular efforts in the area due to the needs of those critical communication capabilities associated fire response.

If you have any questions, please contact me at 406-538-7789 or dpyrah@mt.gov.

Sincerely,

DON E. PYRAH, Area Fire Management Officer
Northeastern Land Office, Montana DNRC

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listed under ESA in the future and Montana elected to become consistent in the future. The Program and MSGOT will require an affirmative decision and commit to working with developers to ensure that the benefits are recognized should they seek to implement compensatory mitigation to satisfy the requirements of the voluntary prelisting policy.

The Program notifies state and/or federal permitting agencies and the project developer when a compensatory mitigation plan has been approved by MSGOT, after the Program has worked with the developer and preliminarily concluded that the plan meets the requirements outlined in this Policy Guidance document and other State policies, rules or law. The Program may also brief and request guidance from MSGOT while developing more complex mitigation plans. The project developer must then purchase or create the needed credits within the designated timeframe, usually prior to habitat impacts. Proposed projects may also be subject to other agency-specific permitting requirements.

Once project developers have secured credits, the Program should be provided with documentation to show the credit location, duration, and any other information required to update the credit registry. The price of credits secured from independent third parties (where Stewardship Account funds are not involved) need not be disclosed.

The Program or its designee will maintain a registry to track debiting (development) and crediting actions (conservation) affecting sage grouse habitat, including all permittee-responsible and other mechanisms of compensatory mitigation projects.

Credits created by MSGOT through Stewardship Account fund grants will be assigned serial numbers and included in the statewide registry. As credits are utilized by project developers for specific projects, the credits will be withdrawn from the pool of available credits and the registry will be updated.

Credits must be released before they are available to offset an impact, although some credits may be released in advance of a project being fully implemented, as described in Section 2.3.3.

3.6.1 Consideration of Economic Feasibility Constraints when Mitigation Obligations are High

Montana's Conservation Strategy seeks to balance economic development activity that may impact sage grouse habitat and populations with conservation. In 2013-2014, the original Governor's Advisory Council acknowledged that there will be impacts to sage grouse habitat even if all recommendations of Executive Order 12-2015 are followed. The Council viewed mitigation as an integral tool to offset impacts so that Montana can continue to issue permits for economic development, resource extraction, and infrastructure projects, even in Core Areas. Mitigation was viewed as a viable alternative to denying permits.

Executive Order 12-2015 stems from the work of the original Governor's Advisory Council and incorporates development stipulations, as well as the mitigation hierarchy. Importantly, Executive Order 12-2015 also acknowledged that questions of economic feasibility may be presented, especially for utility-related and communications infrastructure in rural and historically underserved areas.[73]

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[73] Executive Order 12-2015, Attachment D Core Area Stipulations, paragraph 6, page 14.

For example, communications (cellular) towers and rural transmission lines provide essential services that are foundational to local rural communities and especially in remote agricultural settings. Executive Order 12-2015 specifically recognizes the economic feasibility of siting these new features. These utility services are provided by non-profit cooperatives, which are classified as 501(c)(12) organizations in the federal tax code. Depending on the project type, its duration, and location, the mitigation obligations associated with a project could pose socioeconomic hardships to individual coop members when costs cannot be fully attributed to and passed along to new industrial users. Likewise, small businesses that are privately owned, for-profit entities may find the economic feasibility of a development project affected by mitigation obligations, even when undertaking permittee-responsible actions to create credits to offset their debits.

Policy-based tools can help address and alleviate economic feasibility constraints when the current HQT and application of policy modifiers results in high mitigation obligations and economic infeasibility, while at the same time ensuring that development projects move forward and mitigation is timely and effective. Policy-based tools could also be applied when a developer uses a combination of mitigation mechanisms (i.e., permittee-responsible and/or in-lieu fee contribution to the Stewardship Account). Policy-based tools stand for the premise that the state has a responsibility to share in efforts to offset impacts of development and create flexible policy approaches that are responsive to economic feasibility constraints.

To avail themselves of these additional policy tools, developers work with the Program initially to determine the overall mitigation obligation. The developer then works with the Program, MSGOT, and possibly other third parties to develop a mitigation plan that provides relief when economic feasibility constraints are demonstrated. As discussed in Section 3, MSGOT retains discretion to approve mitigation plans.

The policy tools are described more fully below, along with an overview of the process and criteria MSGOT would consider when making its decision. They could be categorized as: (1) financial; (2) credit-based; or (3) waiver. Each situation is unique and MSGOT encourages creativity on the part of developers to find innovative ways to mitigate impacts. MSGOT seeks to provide the greatest degree of flexibility to developers so they can determine the best way of fulfilling mitigation obligations. Policy-based tools can be used individually, or in combination. Each is described below. See Section 4.2 for closely related information concerning MSGOT credits.

3.6.1.1 Financial Approaches: Phased Contributions or Adjusting the Discount Percentage

The Stewardship Act allows developers to opt out of taking permittee-responsible actions to offset impacts and instead work with a third-party credit provider or make a contribution to the Stewardship Account. If the developer decides to contribute to the Stewardship Account, two financial policy-based tools could be used to alleviate economic feasibility constraints;

1. **Phased Contributions to the Stewardship Account or Phased Payments to Third Party Credit Providers.**

   Contributions could be phased or made periodically, rather than as a lump sum payment up-front. Phased payments were previously discussed in Section 3.3.2 with respect to accelerated reclamation. However, the concept could also be applied to any phase of a development project: construction, operations, or reclamation (even when not employing accelerated reclamation methods). A payment schedule could be devised on other intervals.

For each phase (or year) throughout the life span of a development project, the HQT can calculate the number of functional acres lost. After application of the multipliers, the total mitigation obligation for each phase (or individual year) can be determined. Each project has a unique number of years of construction, operations, and reclamation. Detailed results from the HQT can inform business decisions by developers, in consideration of the project type, its duration, and other the economic or operational factors associated with the project.

While observing the requirement that offsets be in place for each project phase prior to its initiation, developers could make a contribution immediately prior to the beginning of each project phase or at some interval identified in the mitigation plan approved by MSGOT. The 3% discounting method would be applied (see Section 4.2). Once negotiated, the phased payment schedule would lock-in the amount of each payment and when it was due. An agreement would be developed and would be binding on the parties.

Alternatively, a developer could work directly with an independent third party to obtain the number of credits needed. The third party could be an individual private landowner, a habitat exchange administrator, a conservation banker, or another developer. The state is not a party to the transaction. The third party and the developer are free to negotiate the terms of the credit transaction, including phased payments. The state will seek documented assurances that the phased payments are still consistent with other parameters of this Policy Guidance, particularly the requirement that the offsets are in place prior to the impact or initiation of the next project phase. This requirement could be met if the third-party credit provider shows that unused credits are presently available and would immediately offset the number of credits needed to offset the next project phase.

Ultimately, any phased Stewardship Account contribution or third-party payment approach would be described in the mitigation plan and approved by MSGOT. See Section 4.2.

2. Adjusting the Discount Percentage Rate for Contributions to the Stewardship Account.

Section 4.2 describes a 3% discounting method to determine the cost of credits in future years, which accounts for the time value of money. The initial credit price is determined by the cost of creating the credit, respectively, whether restoration, enhancement, or preservation. Statutorily, the average cost of the credits created through Stewardship Account is the starting price. The percentage discount applied to the cost for each future year is set at 3% initially. This is considered a more relevant figure given currently low yields on U.S. Treasury Notes and concurrently low inflation.

MSGOT may exercise its discretion to increase the discount percentage rate to more closely synchronize the duration of a project (and its impacts) with the time value of money. For above-ground projects with particularly long durations and high HQT scores (i.e., high number of functional acres lost), such as transmission lines or wind facilities, economic feasibility constraints are more likely to manifest. While still a true and proportionate accounting of the functional acres lost due to the project, how the obligation is fulfilled financially and/or through credit purchases can be addressed through policy, so long as the functional acres lost are fully offset with an equivalent number of functional acres gained.

MSGOT could increase the discount rate to lower the overall total cost, while at the same time assuring that the overall mitigation obligation is met. Developers seeking to apply this policy tool should consider what an appropriate modified discount percentage might be and provide a

rationale supporting it, along with any additional information and facts specific to the particular project for which a higher discount rate is requested.

Under this scenario, MSGOT will remain mindful of the solvency of the Stewardship Account and the capability to continue to create new credits through Stewardship grants to replace those that are tapped and retired.

3.6.1.2 MSGOT Credits: a Credit-Matching Approach

The State of Montana has taken the initiative to implement the Conservation Strategy to preclude the need for federal Endangered Species Act protections. By taking an "all hands" approach, Montana enlists industry, private landowners, federal land management agencies, land trust organizations, conservationists, and others to work collaboratively to balance development with conservation through the mitigation hierarchy, creating incentives for private land stewardship, and other aspects of the Strategy. This ensures the best outcomes for all Montanans.

MSGOT has credits at its disposal that could be used to match and help fulfill the total number of credits a developer must secure. MSGOT can exercise its discretion to dedicate some of its credits to match those secured by a developer. MSGOT will take a case by case approach and work with individual development project proponents.

Sources of credits that developers could use to match those secured of their own accord are:

1. **Credits created through Stewardship Account Grants.**

A foundational purpose of Stewardship Account grants is to create credits which can then be used to offset impacts of development. Credits can be transferred to a third-party habitat exchange operator or can remain on the registry as "available" until a developer chooses to make a contribution to the Stewardship Account in lieu of implementing their own permittee-responsible conservation actions or seeking credits from third parties. At that time, MSGOT would accept a contribution to the Stewardship Account and retire the appropriate number of credits for that particular project.

Through the grant process, MSGOT will have a supply of credits from prior Stewardship Account grant awards. These will be included in the registry. MSGOT has discretion to allocate credits it created and could allocate some it its own credits to match credits secured by a developer when economic feasibility constraints are demonstrated.

Under this scenario, MSGOT could allocate credits it expects to develop through future grants. Through subsequent adaptive management reviews, MSGOT can consider whether it is meeting is adaptive management objectives, and particularly the standard of no net loss, net gain preferred. Through time, this ensures that mitigation offsets are timely and in place prior to the start of a development project.

2. Credits Set Aside in the Reserve Account.

As discussed previously in Section 3, developers will be required to contribute 20% of the Raw HQT Score (direct footprint plus indirect effects for the full life of the project) to the reserve account, regardless of the mechanism to obtain credits selected by the developer. Contributions to the reserve account allow: (1) project developers to transfer responsibility for remedying credit project impairment or failure to the credit provider through the reserve account; and (2) credit providers to avoid responsibility for unavoidable or force majeure credit failure.

The reserve account ledger in the statewide registry will be managed so that 5% of each individual contribution is set aside and available as a source of matching credits for other developers where economic feasibility constraints are demonstrated. MSGOT can exercise its discretion to allocate some of the credits set aside in the reserve account so they can be matched with what a developer secures and the mitigation obligation as a whole is fulfilled.

The remaining 15% of the reserve account contribution will be managed separately. It will remain segregated and available to replace lost or impaired credits, as described in Sections 2.4.3 and 3.3.1.

3.6.1.3 Waiver

MSGOT may exercise its discretion to waive some or all of the mitigation obligations for a particular development project. In seeking a waiver, a developer should give careful consideration to its capacity to contribute towards fulfilling the obligation. MSGOT will expect some contribution on the part of developers so any waivers granted can legitimately show a meaningful public-private partnership in achieving the twin aims of: (1) adequate conservation and effective mitigation to avoid a listing; and (2) economic development and the sustaining the viability of rural communities consistent with the "all hands" approach.

3.6.1.4 Process to Take Advantage of Policy-Based Tools

Developers first work with the Program to determine the overall mitigation obligation using the HQT and other facets of the Policy Guidance. For example, a project could have very high mitigation obligations because a very high number of functional acres would be lost. This would be the case for large projects that are located above ground, have a long duration, and are located in very high quality habitat. Additional impacts could accrue due to close proximity to active sage grouse leks and deviations from the stipulations of Executive Order 12-2015 for some or all of the project's life span. In these types of situations, mitigation obligations provide clear market-based signals to developers, the Program, and MSGOT to weigh and balance the economic feasibility of a project with the potential for significant and long-term impacts.

The developer then works with the Program and possibly other third parties to develop a request for relief through policy-based tools where economic feasibility constraints are demonstrated. Preliminary consultation with MSGOT may occur during the development process. Once the developer has finalized the request for relief, the Program will refer the request to MSGOT. MSGOT will exercise its discretion to consider and approve the incorporation of policy-based tools into individual mitigation plans.

Developers seeking relief from economic feasibility constraints will be expected to explicitly consider and show MSGOT that:

- no alternative sites are practicable or economically feasible;

- there is an economic need for relief from compensatory mitigation obligations;
- the cost of the total mitigation obligation poses a disproportionate economic impact;
- all available tools in the Policy Guidance have been exhausted or are unsuitable;
- there is some capacity to fulfill some portions of the mitigation obligation, either in credits or as a financial contribution to the Stewardship Account to match with one or more policy-based tools (e.g. financial tools, credit-matching tools, and/or waiver) so that fulfilling the entire mitigation obligation because a joint public-private endeavor;
- all relevant tools in the Policy Guidance have been considered; and
- other steps in the mitigation hierarchy have been observed and incorporated into the mitigation plan, including avoidance, minimization, and reclamation measures.

In addition to information provided by the developer, MSGOT can also consider, for example, whether the project provides an essential public benefit, utility, or service in historically underserved rural areas that support the majority of Montana's sage grouse.

MSGOT will review the information provided. Upon demonstration by the developer that there are no other alternatives, that the mitigation obligations for a particular project pose a disproportionate economic impact, other public benefits accrue as a result of the project that outweigh impacts to sage grouse or habitats or allocation of matching credits, and that there is a need to apply one or more of the policy-based tools to alleviate the feasibility constraints, MSGOT may approve the request.

Application of these policy tools fall within MSGOT's discretion and ensures that MSGOT will make decisions in light of the Mitigation System provisions as a whole and all specific parameters, with particular attention paid to achieving the overall policy goal of no net loss, net gain preferred and Service Areas to ensure that mitigation is timely, ecologically meaningful in space and through time, and effectively balances economic development and conservation. Attention must also be paid to the trends in sage grouse populations and other adaptive management metrics and objectives.

MSGOT will also remain mindful and vigilant to discern circumstances where mitigation obligations are legitimately very high because impacts and deviations from Executive Order 12-2015 are significant.

MSGOT may apply various policy-based tools, with flexibility commensurate with its considerable discretion. MSGOT may approve incorporation of policy-based tools independent of the availability of Stewardship Account credits. Through the adaptive management review process, MSGOT will consider the track record of when and how the policy-based tools are exercised with respect to solvency of the Stewardship Account, specific adaptive management objectives related to habitat and populations, and other considerations related to rural communities, economics, and the broader public interest.

3.7 Enforcement

Permitting agencies, in conjunction with MSGOT, are responsible for enforcing the mitigation obligations associated with debiting projects consistent with applicable law and regulations. If the debit project developer fails to comply with mitigation obligations, permitting agencies may, consistent with applicable law and regulations, suspend or terminate permit authorization. Additional information is available in agency-specific policy and guidance. Sections 2.4.3, 3.7, and 3.8 further describe how mitigation obligations are monitored through time.

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In instances where Stewardship Account funds are not involved in creating credits, credit providers and project developers freely negotiate credit prices and determine all financial transaction details. MSGOT is not a party to the transaction but will seek confirmation that all requirements of this Policy Guidance are met.

4.4 Adaptive Management

Adaptive management is a fundamental principle of the Montana Mitigation System. When it comes to conserving GRSG populations, much is known about the species' habitat preferences and population responses to the loss and fragmentation of sagebrush habitats. However, less is known about how GRSG populations respond to some specific anthropogenic disturbance types and more generally to mitigation measures which are intended to offset anthropogenic disturbance. Furthermore, Montana's Mitigation System includes assumptions in both the Policy Guidance and the HQT Technical Manual in the absence of perfect knowledge or experience in implementation. For these reasons and others, the Montana Mitigation System implements an adaptive management approach to periodically evaluate whether mitigation effectively offsets impacts in space and through time, sage grouse populations are sustained, and to assure Montana achieves the standard of no net loss of habitat.

As importantly, implementation of mitigation presents both new opportunities for conservation, as well as a new way of approaching development and economic activity in sage grouse habitats. Montana has historically not required mitigation for habitat impacts to aid conservation of sensitive species. Adaptive management principles are particularly well suited to considering the how mitigation affects regulated industries.

This Section describes a process for transparent, science-based, and inclusive adaptive management of the Policy Guidance, HQT Technical Manual, and associated products. Adaptive management is fundamental to making sure that the Montana Mitigation System is effective and successful, as is the broader conservation strategy. Adaptive management is also fundamental to making sure that Montana is effectively balancing conservation needs with its economic development goals and the broader public interest.

Adaptive management is a systematic, but dynamic approach for improving natural resource management, with an emphasis on learning from management outcomes and incorporating what is learned into ongoing management. Uncertainty in management outcomes is addressed through the incorporation of procedures that seek to periodically review, revise, and update tools, strategies, and approaches in response to changing conditions or new information.

Adaptive management strategies allow for changes to the overall conservation strategy to occur in response to changing conditions or new information, including those identified through monitoring. The power of adaptive management lies in its ability to provide a viable path forward for management when information is lacking. By recognizing that management or implementation questions initially remain unanswered, information may be gained through this cyclical process of continuous evaluation and improvements with the goal to resolve outstanding questions and uncertainties through time through transparent processes based on the best available science. By definition, adaptive management requires a commitment to change approaches when appropriate and necessary in response to the previous cycle's acquisition of new information.

To ensure Montana meets the goals outlined in Section 1.1 of this document and specific measurable objectives that arise from those goals, an adaptive management review will occur

annually. Adaptive management will require consideration of both habitat outcomes and population status and trends over time, in concert and at multiple spatial scales. The Program will focus on habitat outcomes, while sage grouse population monitoring, population estimation and reporting, and harvest management will remain the purview of MFWP.[85] The Program will collaborate with MFWP and others as described more fully below.

Specific habitat-based objectives can be stated as follows:

- Meet the mitigation standard of no net loss, net gain preferred.
    - The number of functional acres created should be equal to or greater than the number of functional acres lost (i.e., HQT results prior to application of modifiers).
    - The number credits created should be greater than or equal to the number of debits.
- Maintain sufficient credits in the reserve account to replace lost or impaired credits.
    - The reserve account should have a sufficient number of reserve credits to replace lost or impaired credits listed and already used and assigned to offset debits.
- Produce and maintain an adequate credit supply, regardless of the entity who creates them.

Specific metrics that will be summarized include: (1) the number of functional acres gained compared to the number of functional acres lost; (2) the number of credits created compared to number of debits created; (3) the number of credits available in the reserve account to replace impaired or lost credits; and (4) the supply of credits already developed and available in the registry, as well as those that could potentially be developed. Sources of data for habitat metrics can include: the registry, development projects reviewed by the Program, data contributed by other participants in the Mitigation System, other state and federal agencies, universities, non-governmental organizations, and conservation projects funded using funds from the Stewardship Account.

Consideration of population trends at multiple scales and through time with respect to conservation habitat efforts, development, and mitigation will enhance Montana's understanding about how populations at multiple scales are doing and may be influenced by changes in habitat quality and quantity (both development and conservation).

Specific population-based objectives are listed below. It is recognized that populations will vary naturally over time and across regions.

- Maintain a stable population within the range of natural variation.
- Reverse or stabilize negative population trends.
- Maintain a performance standard of 6.9 – 18.78 males / active lek, based on the number of displaying males determined by a statistically-valid analysis over a 10 year-period, as required by EO 12-2015.
- Maintain at least as many active sage grouse leks as documented in 2015 when the Strategy was first implemented.

Sources of sage grouse population and lek information include the FWP lek database, the Montana Greater Sage-grouse Population Report prepared annually by MFWP, data contributed by participants in the Mitigation System, and other state and federal agencies, universities, private landowners, and non-governmental organizations.

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[85] *See* Mont. Code Ann. 87-1-201(11) (2017) (requiring MFWP to report sage grouse population numbers, including number of leks on an annual basis, seasonal and historic population data).

Habitat and population metrics will be analyzed, summarized and reported at several scales, including: statewide, Western Association of Fish and Wildlife Management Zones, each respective Mitigation System Service Area, MFWP harvest management zones, within and among Core Areas, and between Core Areas and non-Core Areas, and any report unit relevant to BLM and USFS managers and land use plans. Site-specific, project-level scale analyses may also be conducted.

Human dimensions and social science metrics may also be considered for inclusion in adaptive management reviews in the future. For example, obtaining feedback directly from participating private landowners regarding their experience, interest, and satisfaction with the Mitigation System should also inform adaptive management changes since the primary source of credits is expected to be private lands.

Industry participation in the annual review process will be solicited. Information regarding the number of projects, mitigation costs relative to capital costs, or other business-oriented economic metrics will be specifically requested. While the Program can glean some basic information from its consistency review database (e.g. number of mining projects reviewed and associated mitigation vs. number of pipeline projects), the Program and MSGOT lack the economic and fiscal insights for specific industries and particularly how mitigation obligations may be affecting businesses. MSGOT will need data to determine whether Montana is appropriately considering public benefits and public safety in its efforts to balance conservation and development. Absent that data and industry insights, MSGOT cannot fully or properly assess whether or not mitigation is posing excessive hardships and if so, what revisions may be warranted.

Similarly, participation by individual landowners or third party credit providers will be solicited. Their information and suggested economic metrics will provide useful insights into how effectively Montana is incentivizing private land stewardship. Recognizing that the state is not a party to these types of private credit transactions, data availability may be limited.

Future adaptive management reviews will also focus on other areas of this Policy Guidance where there was specific uncertainty, where assumptions were made or stakeholders disagreed, and where public comment or peer review identified potential areas for future improvement. Examples include:

- more explicit incorporation of full cost accounting methods;
- baseline for perpetual preservation credits and whether it significantly and/or negatively skews credit supply too high or too low and whether there should be a baseline adjustment for term leases or easements;
- multipliers and whether they are too high, too low, or present disparate enough policy incentives to encourage or discourage development and/or conservation actions in Core Areas vs. General Habitat appropriately;
- the initial price of $13.00 for perpetual preservation credits given the uncertainty about whether this price will provide a sufficient revenue stream that is adequate to set an initial price signal to incentivize private landowners to voluntarily participate; and
- the discounting method and percentage discount where the cost of a credit is discounted into the future for each year of a development project corresponding to the total number of years for the life of the project.

The Program will host adaptive management workshops to gather information and to present results and discuss ideas with stakeholders, Mitigation System Participants, and interested publics.

The Program will prepare an adaptive management report, assessing whether the Program is meeting goals and objectives, including, as a part of fulfilling its other reporting requirements:[86]

- a report of performance and operational findings, including a synthesis of monitoring and tracking of pre-project and post-project conditions for both crediting and debiting projects based on the Program's own experience and those of others engaged in the Mitigation System;
- identification of any overarching lessons learned;
- a quantification of the total debit impacts and credit project benefits provided by mitigation projects in terms of functional habitat acres;
- a summary of sage grouse monitoring information and populations at multiple spatial scales;
- a summary of economic metrics and more specifically about the economic impacts of mitigation by industry type;
- a summary of economic metrics associated with private credit activity, commensurate with available data;
- consideration of how Montana is balancing conservation with the economics of mitigation and incentivizing private land stewardship (i.e., both debit and credit side) and the broader public interest;
- a list of recommended changes to the Policy Guidance and HQT Technical Manual and associated documents, processes, and tools needed to meet (or continue to meet) program goals and objectives;
- a list of monitoring and research findings and needs to better guide mitigation efforts, developed in collaboration with MSGOT, scientific experts, and stakeholders; and
- a prioritized list of recommendations.

On an annual basis, the MSGOT will review the adaptive management report at a publicly noticed meeting to share the results of the adaptive management review and report, describe suggested changes, processes, or tools, and receive stakeholder feedback. There will be an assessment of whether major or minor changes to the approach are needed, and the recommendations will be prioritized. Progress towards meeting goals and objectives will be considered.

Changes deemed to be necessary or beneficial should be considered for possible adoption by MSGOT. MSGOT must provide public notice of any major or minor changes it is contemplating and provide the opportunity for written and oral comment prior to making final decisions. MSGOT has discretion to initiate rulemaking at any time.

Within five years, the Program and MSGOT will review progress towards meeting the objectives and determine whether significant changes to the mitigation approach are needed. This review would be more thorough and recommendations for more substantive changes may emerge. Because changes at the five-year mark are likely to be more substantive and material, MSGOT will be required to undertake new administrative rulemaking to formally update the Policy Guidance Document and the HQT Technical Manual to subsequent versions.

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[86] For example, see the State of Nevada Conservation Credit System 2017/2018 Findings and Improvement Recommendations Report, March 13, 2018, available at: https://www.enviroaccounting.com/NVCreditSystem/News/Display/1077.

GOVERNOR

CHAPTER 6

SAGE GROUSE STEWARDSHIP

Subchapter 1

Sage Grouse Stewardship Act

Subchapter 1

Sage Grouse Stewardship Act

14.6.101 DEFINITIONS Unless the context clearly requires otherwise, to aid in the implementation of the Montana Greater Sage-Grouse Stewardship Act and as used in these rules:

(1) "Agency" for the purposes of the act means a department, agency, or instrumentality of the state of Montana; a political subdivision of the state; or a tribe. "Agency" is not a private individual, private entity, or private organization recognized by the laws of the state of Montana.

(2) "Department" means the Department of Natural Resources and Conservation.

(3) "HQT" means Habitat Quantification Tool, a geo-spatial based application designed to implement 76-22-103(9), MCA, as documented in the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse.

(4) "Invasive weed" means a grass, forb, shrub, or tree (weed) listed on the Montana Invasive and Noxious Weed list or other weed designated by MSGOT as invasive and which has: a known quantifiable negative impact on the quality or quantity of general, core or connectivity sage grouse habitat; or negatively impacts sage grouse populations other than through habitat impacts.

(5) "Major Version" is a means to track revisions to the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse or Montana Mitigation System Policy Guidance for Greater Sage-Grouse. Major Versions are identified as 1.x, 2.x, 3.x, etc.

(6) "Minor Version" is a means to track routine inputs to the HQT made by the program to the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse or Montana Mitigation System Policy Guidance for Greater Sage-Grouse. Minor Versions are identified as x.1, x.2, x.3, etc. Examples of routine inputs include updates to Geographic Information System layers used in the HQT and editorial changes.

(7) "Mitigation Hierarchy or Sequence" means taking steps to:

(a) avoid impacts by not taking a certain action or parts of an action;

(b) minimize impacts by limiting the degree or magnitude of the action and its implementation;

(c) rectify impact by repairing, rehabilitating, or restoring the affected environment;

(d) reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action; and

(e) compensate for impact by replacing or providing substitute resources or environments.

(8) "Mitigation System" means implementation of the mitigation hierarchy, as defined by (7) and as directed by (9) the Montana Habitat Quantification Tool Technical Manual for Greater Sage-Grouse and (10) the Montana Mitigation System Policy Guidance for Greater Sage-Grouse.

(9) "Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse" describes the scientific methods used to evaluate vegetation and environmental conditions related to the quality and quantity of sage grouse habitat.

(10) "Montana Mitigation System Policy Guidance for Greater Sage-Grouse" describes the policies, procedures, and methods of the Mitigation System to quantify and calculate the value of credits and debits.

(11) "MSGOT" means the Montana Sage Grouse Oversight Team.

(12) "Organization" means a private entity registered with the Montana Secretary of State authorized to conduct business in the state of Montana. (History: 76-22-104, MCA; IMP, 76-22-105, 76-22-109, 76-22-110, 76-22-112, 76-22-118, MCA; NEW, 2016 MAR p. 458, Eff. 3/5/16; AMD, 2019 MAR p. 41, Eff. 1/12/19.)

14.6.102 GRANTS (1) An applicant shall file an application for a grant under Title 76, chapter 22, part 1, MCA, on a form approved by MSGOT. MSGOT shall publish grant application deadlines on the department's web site.

(2) Completed applications must be submitted with any supporting documentation through the online WebGrant tool on the department web page; or, by other means which MSGOT approves and establishes for submission of applications. Applications submitted by e-mail will not be accepted.

(3) Incomplete applications may be returned.

(4) Applications shall be evaluated at a regularly scheduled meeting of MSGOT.

(5) Evaluation of applications by MSGOT shall be in accordance with Title 76, chapter 22, part 1, MCA.

(6) Applicants for projects approved by MSGOT must enter into an agreement with the department and MSGOT prior to disbursement of funds from the Sage Grouse Stewardship Account.

(7) Grant recipients will be subject to project reporting requirements pursuant to the terms of the agreement.

(8) Monitoring and review of projects will be pursuant to the terms of the agreement

(9) MSGOT will give greater priority to applications for conservation activities eligible for funding under 76-22-110, MCA, which would be implemented in core areas. MSGOT may still consider funding conservation activities in general habitat and connectivity areas where high resource values for sage grouse exist and credits could be generated consistent with 76-22-109, MCA. (History: 76-22-104, MCA; IMP, 76-22-105, 76-22-109, 76-22-110, 76-22-112, 76-22-118, MCA; NEW, 2016 MAR p. 458, Eff. 3/5/16; AMD, 2019 MAR p. 41, Eff. 1/12/19.)

14.6.103 HABITAT QUANTIFICATION TOOL DESIGNATION

(1) Designation of major versions of the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse shall prompt the initiation of rulemaking to incorporate the new major version by reference.

(2) MSGOT shall review all proposed changes to major versions of its designated Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse after a publicly announced MSGOT meeting and after accepting written and oral public comment.

(3) Minor versions of the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse shall be recorded by the program after a publicly announced meeting of the Montana Sage Grouse Oversight Team and after accepting public comment.

(4) Once the current Montana Mitigation System HQT has been applied to calculate the functional acres gained on a proposed mitigation site, or the functional acres lost on a proposed development site; the program has completed its review; and the project developer obtains the necessary state or federal permits, any subsequent versions of the HQT will not apply to the project except as provided in (b).

(a) Once the HQT has been applied to calculate the number of functional acres gained or lost for a project and MSGOT has approved, the number of calculated functional acres gained or lost will not be changed without written approval from every party to the mitigation transaction for the project, including, but not limited to:

(i) MSGOT;

(ii) the project developer; and

(iii) the credit provider.

(b) Permit amendments will be subject to the current version of the HQT to calculate functional acres lost resulting from new activities associated with the amendment.

(c) Amendments to credit sites will be subject to the current version of the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse at the time of the proposed amendment.

(5) The current version of the MSGOT designated Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse is the version made available to the public on the program's web site. Past versions of HQT and the technical manual will be blocked from further use except as allowed in (4)(a) and preserved in archive by the program.

(6) MSGOT or any other third party must apply the current version of the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse to calculate functional acres gained or lost as provided on the program's website and applied by the program to perform the calculations for the following:

(a) a conservation bank;

(b) participation in a habitat credit exchange approved by the U.S. Fish and Wildlife Service (USFWS);

(c) making a financial contribution to the Sage-Grouse Stewardship Account if sufficient credits are not available;

(d) implementing stand-alone mitigation actions to offset impacts to sage grouse habitat;

(e) calculating functional acres gained by funding from the Sage-Grouse Stewardship Account; or

(f) calculating functional acres gained through stand-alone efforts to create mitigation credit sites. (History: 76-22-104, MCA; IMP, 76-22-105, 76-22-109, 76-22-110, 76-22-111, 76-22-112, 76-22-113, 76-22-114, 76-22-118, MCA; NEW, 2019 MAR p. 41, Eff. 1/12/19.)

14.6.104 COMPENSATORY MITIGATION SYSTEM (1) The mitigation sequence is applicable to all activities within sage grouse core areas, general habitat and connectivity habitat subject to agency review, approval, or authorization including temporary impacts that are later rectified through reclamation and restoration activities, unless exempted by MSGOT.

(2) Designation of major versions of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse shall prompt the initiation of rulemaking to incorporate the new major version by reference.

(3) MSGOT shall review major proposed changes to its designated Montana Mitigation System Policy Guidance for Greater Sage-Grouse after a publicly announced MSGOT meeting, and after accepting written and oral public comment.

(4) Minor versions of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse shall be recorded by the program after a publicly announced meeting of the Montana Sage Grouse Oversight Team and after accepting public comment.

(5) The current version of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse is the version made available to the public on the program's website. Past versions of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse will be blocked from further use except as allowed in ARM 14.6.103(4)(a) and preserved in an archive by the program.

(6) Once the current Montana Mitigation System Policy Guidance for Greater Sage-Grouse has been applied to calculate the credits of a proposed mitigation site, or the debits of a proposed development site; the program has completed its review; and the project developer obtains the necessary state or federal permits, any subsequent versions of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse will not apply.

(7) Once the current Montana Mitigation System Policy Guidance for Greater Sage-Grouse has been applied to calculate credits or debits:

(a) the number of calculated credits or debits will not be changed without written approval from every party to the mitigation transaction for the project, including, but not limited to:

(i) MSGOT;

(ii) the project developer; and

(iii) the credit provider.

(b) Permit amendments will be subject to the current version of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse to calculate debits resulting from new activities associated with the amendment.

(c) amendments to credit sites will be subject to the current version of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse at the time of the proposed amendment.

(8) MSGOT or any other third party shall use the current Montana Mitigation System Policy Guidance for Greater Sage-Grouse provided on the program's web site and applied by the program to determine the number of debits or credits for the following:

(a) a conservation bank;

(b) participation in a habitat credit exchange approved by USFWS;

(c) making a financial contribution to the Sage-Grouse Stewardship Account if sufficient credits are not available;

(d) implementing stand-alone mitigation actions to offset impacts to sage grouse habitat;

(e) calculating credits created by funding from the Sage-Grouse Stewardship Account; or

(f) calculating credits through stand-alone efforts to create mitigation credit sites.

(9) MSGOT will approve compensatory mitigation plans that involve sage grouse habitat restoration, habitat enhancement, or habitat preservation through participation in one or more of the following:

(a) a conservation bank;

(b) participation in a habitat credit exchange;

(c) making a financial contribution to the Sage-Grouse Stewardship Account if sufficient credits are not available; or

(d) funding stand-alone mitigation actions to offset impacts to sage grouse habitat.

(10) All compensatory mitigation plans involving habitat restoration, enhancement, or preservation, and approved by MSGOT, must:

(a) meet the applicable standards provided in the Montana Mitigation System Policy Guidance for Greater Sage-Grouse;

(b) be in consideration of applicable USFWS Greater Sage-Grouse policies; and

(c) apply the current version of the HQT that implements the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse designated by MSGOT.

(11) Research or education shall not be used to fulfill mitigation sequence obligations. (History: 76-22-104, MCA; IMP, 76-22-105, 76-22-109, 76-22-110, 76-22-111, 76-22-112, 76-22-113, 76-22-114, 76-22-118, MCA; NEW, 2019 MAR p. 41, Eff. 1/12/19.)

14.6.105 METHOD TO TRACK AND MAINTAIN THE NUMBER OF CREDITS AND DEBITS AVAILABLE AND USED (1) MSGOT or its designee shall assign a unique identifier for each credit created through funds disbursed from the Sage-Grouse Stewardship Account.

(2) MSGOT or its designee shall assign a unique identifier for each credit created through conservation activities funded or implemented independently from the Sage-Grouse Stewardship Account.

(3) MSGOT or its designee shall assign a unique identifier for each debit created by a project developer.

(4) MSGOT or its designee shall establish a database and tracking system that contains, but is not limited to:

(a) the number of credits generated by conservation activities funded, at least in part, by funds disbursed from the Sage-Grouse Stewardship Account;

(b) the number of credits generated by conservation activities not funded through the Sage-Grouse Stewardship Account and approved by MSGOT for use as compensatory mitigation by project developers;

(c) the number of debits attributed to a development project;

(d) the location of all credits generated and debits generated;

(e) credit transactions between parties; and

(f) service area of the debits and credits, respectively.

(5) The information within the tracking system will be available to the public on the program's web site. (History: 76-22-104, MCA; IMP, 76-22-104, 76-22-105, 76-22-109, 76-22-110, 76-22-111, 76-22-112, 76-22-118, MCA; NEW, 2019 MAR p. 41, Eff. 1/12/19.)

14.6.106 METHOD TO ADMINISTER THE REVIEW AND MONITORING OF MSGOT FUNDED PROJECTS (1) MSGOT, through the program, will establish a database and tracking system to review and monitor projects funded by MSGOT using the Sage-Grouse Stewardship Account.

(2) The database and tracking system shall contain information including, but not limited to:

(a) the name of the Sage-Grouse Stewardship Account grant recipient(s);

(b) the amount awarded;

(c) the date the state funds were transferred to the grant recipient(s) if a one-time lump sum grant, or

(d) the dates state funds were transferred to the grant recipient(s) if the award was a reimbursable grant;

(e) a description of characteristics of the project including, but not limited to:

(i) type of project;

(ii) number of acres; and

(iii) land ownership;

(f) the duration of the project;

(g) any expected conservation benefits of the project;

(h) the geospatial location and/or legal description of where the project was implemented;

(i) the number of credits generated, and their characteristics;

(j) the unique identifier assigned to each of those credits;

(k) transactions of credits created;

(l) progress and final reports submitted by the grant recipient(s);

(m) annual monitoring reports;

(n) sage grouse leks on and in the vicinity of the project area, and trend data on the number of breeding males on those leks;

(o) the grant agreement number assigned by the Program and any amendments to the original grant; and

(p) service area. (History: 76-22-104, MCA; IMP, 76-22-104, 76-22-105, 76-22-109, MCA; NEW, 2019 MAR p. 41, Eff. 1/12/19.)

MONTANA CODE ANNOTATED TO ADMINISTRATIVE RULES OF MONTANA

MCA	ARM
39-11-201	14.4.101 - 14.4.106
39-11-202	14.4.103 - 14.4.106
76-22-104	14.6.101 - 14.6.106
76-22-105	14.6.101 - 14.6.106
76-22-109	14.6.101 - 14.6.106
76-22-110	14.6.101 - 14.6.105
76-22-111	14.6.103 - 14.6.105
76-22-112	14.6.101 - 14.6.105
76-22-113	14.6.103 & 14.6.104
76-22-114	14.6.103 & 14.6.104
76-22-118	14.6.101 - 14.6.105
90-4-305	14.8.203
	14.8.205
	14.8.301
	14.8.303 & 14.4.304
	14.8.311
90-4-307	14.8.204
90-4-308	14.8.206
	14.8.210
90-4-309	14.8.103 - 14.8.110
	14.8.211 - 14.8.214
90-4-310	14.8.103
	14.8.121 - 14.8.128
	14.8.210 & 14.8.211
	14.8.218 - 14.8.221
	14.8.225 - 14.8.230
90-4-311	14.8.105
	14.8.108
	14.8.122
	14.8.126
	14.8.128
	14.8.213 & 14.8.214
	14.8.220
90-4-312	14.8.219 - 14.8.221
	14.8.227

MCA	ARM
90-4-314	14.8.123 & 14.8.124
	14.8.127
	14.8.214
	14.8.220 & 14.8.221
	14.8.225 - 14.8.230
90-4-316	14.8.101 - 14.8.110
	14.8.121 - 14.8.128
	14.8.201 - 14.8.206
	14.8.210 - 14.8.214
	14.8.218 - 14.8.221
	14.8.225 - 14.8.230
	14.8.301 - 14.8.311

Montana Sage-Grouse Conservation Program

2017-18 ACHIEVEMENTS

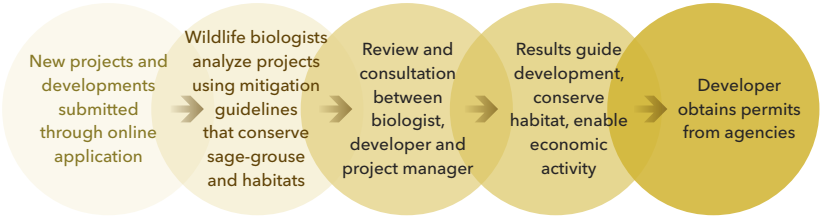
The Greater Sage-Grouse in 2015 was a candidate for federal listing as an endangered species. The US Fish and Wildlife Service determined that listing was not warranted at that time. Population trends and the progress of state conservation programs will be assessed in 2020.

Now in its third year, the Montana Sage-Grouse Habitat Conservation Program is fully implemented and provides an effective, efficient process for balancing conservation of sage-grouse habitat while maintaining Montana's economic vitality in sage-grouse country.

Greater sage-grouse *Centrocercus urophasianus*

A personalized, timely review process

Montana's approach conserves sage-grouse and their habitat while maintaining the state's economic life.



97.5% COMPLETION RATE

Balancing conservation and development

Montana's Sage-Grouse Conservation program is an objective, transparent and scientifically-defensible program developed by a coalition of Montanans. Landowners, developers, and businesses control many of the impacts associated with a project through proactive planning. And the program offers flexibility when needed to address the unique circumstances of a project. Between January 1, 2017, and October 31, 2018, the Program completed reviews on 919 of 925 submitted projects, forwarding them to agencies for permitting.

925 Projects Submitted | **919** Project Reviews Completed

103 miles of water pipelines

30 new cell towers

56 new oil/gas wells

486 MW wind/ solar projects

995 miles of road projects

605 miles new fiber optic cable

The Mitigation Marketplace is working

Montana's Sage-Grouse Habitat Conservation Program is based on the tent of no net loss of existing sage grouse habitat. Mitigation is the scale that balances habitat lost or impacted with habitat gained or conserved.

The mitigation analysis is performed by a Habitat Quantification Tool—a GIS application built specifically for Montana's Program. After receiving their score, developers have a range of options to mitigate the impacts of their activities. They may opt to purchase the state's credits, or buy credits from third parties. Revenue from state credits goes into the Stewardship Fund, which supports new habitat projects.

Habitat Quantification Tool

Impacted habitat generates debits, conservation projects generate credits

Mitigation Market

Developers buy credits to offset impacts in sage-grouse habitats

Stewardship Fund

Revenue from purchased credits supports new conservation work

The **Stewardship Fund** has conserved **43,148 acres** of Sage-grouse habitat to date. These conservation projects used **$2.8 million** from the Fund and leveraged an additional **$6.6 million** in matching funds from federal and private sources.

In all, Stewardship Fund projects have created **958,353 mitigation credits** to offset future development.

43,148 acres
Sage-grouse habitat conserved

958,353 credits
to offset development impacts

A range-wide assessment is coming in 2020

Montana is well-positioned for an assessment of conservation efforts across 11 western states, set to take place in 2020. No immediate changes to Montana's program are necessary. Funding for the program was settled during the 2017 Legislative session and remains sufficient. By continuing to implement its own conservation program, Montanans can best maintain control of their lands, wildlife, and economy.

TRANSPARENT ★ BIPARTISAN ★ STRATEGIC ★ SCIENTIFIC ★ COLLABORATIVE

The future of Sage-grouse in Montana will depend on our collective efforts. We can avoid the far-reaching impacts of an Endangered Species listing and maintain control of our lands, wildlife, and economy by continuing to implement the state's conservation strategy.

sagegrouse.mt.gov

Montana Sage-Grouse Habitat Conservation Program

Carolyn Sime, Program Manager

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This public document was produced at state expense. For details on cost and distribution, contact John Grassy, DNRC Public Information Officer at (406) 444-0465 or jgrassy@mt.gov

Credits: Page 1: Male sage-grouse on lek: John Carlson; sagebrush habitat: Joel Maes; sage-grouse chick: U.S. Fish & Wildlife Service. Page 2: Sage-grouse nest: Montana Fish, Wildlife & Parks. Page 4: Male sage-grouse: Joel Maes. Graphic design by Luke Duran

Materials Handed Out During the MSGOT Meeting

April 25, 2019

1. **MSGOT survey for potential meeting dates in 2019.**

2. **Table comparing mitigation calculations for three different sites considered for the proposed cellular tower at the DY Junction prepared by the Sage Grouse Habitat Conservation Program.**

3. **Mud Springs Wind Project Description and Sage-Grouse Mitigation Commitments document provided to MSGOT by the project sponsors. No Executive Action was taken by MSGOT.**

Survey of Potential 2019 MSGOT Meeting Dates

Please indicate your availability and preferences for the day and the time block by checking the box. (Additional, shorter conference call meetings may be scheduled between the primary meetings of 2019.)

	8:30 - 12:00	10:00 - 2:00 w/ lunch	1:30 - 4:30	2:00 - 5:00
Thursday, June 13				
Friday, June 14				
Wednesday, June 19				
Friday, June 21				
Wednesday, July 3				
Tuesday, July 9				
Wednesday, July 10				
Thursday, Aug. 22				
Friday, Aug. 23				
Thursday, Aug. 29				
Friday, Aug. 30				
Friday, Sept. 6				
Friday, Sept. 13				
Monday, Sept. 16				
Wednesday, Sept. 18				
Thursday, Nov. 7				
Friday, Nov. 8				
Wednesday, Nov. 13				
Thursday, Nov. 14				
Friday, Nov. 15				
Tuesday, Dec. 17				
Wednesday, Dec. 18				
Thursday, Dec. 19				
Friday, Dec. 20				

Comparison of mitigation calculations for three different sites analyzed by applying the MSGOT-approved Policy Guidance Document and the Habitat Quantification Tool Technical Manual, v1.0 Oct. 2018.

Refer to Figure 2, page 4: DY Junction Communication Tower Sage Grouse Mitigation Plan Project ID 2385, April 12, 2019		Site 1 - Triangle (Preferred) * ^		Site 2 - Hwy 66 ^^		Site 3 to the East ^^^	
		Mitigation Required		Mitigation Not Required, Consultation Letter Completed Dec. 5, 2016 (Site No Longer Available; Project Withdrawn)		Mitigation Not Required, Consultation Letter Completed April 17, 2017; Triangle re-initiated consultation at Site 1 (Preferred)	
		DEBITS ~	**CONTRIBUTION ~~**	**DEBITS ~**	**CONTRIBUTION ~~**	**DEBITS ~**	**CONTRIBUTION ~~**
Functional Acres Lost	direct footprint	0.38		0.11		9.05	
	indirect impact area	19,089.67		5205.42		8,734.59	
	Total Raw Score	**19089.67**	**$178,045.86**	**5,205.54**	**$48,556.53**	**8,743.64**	**$81,760.80**
Multipliers							
	20% Reserve Act	3817.93		1041.11		1,748.73	
	10% Advance Payment	1908.97		520.55		874.36	
	Total Multipliers	**5726.9**	**$53,413.76**	**1561.66**	**$14,566.96**	**2,623.09**	**$24,528.24**
	Total	***24,816.57***	***$231,459.62***	***6767.2***	***$63,123.49***	***11,366.73***	***$106,289.04***

~ All HQT calculations based on: a 25-year project duration, non-nest facilitating management practices, indirect impact area buffer of 3.72 miles. Because cellular towers have small direct footprints, nearly all the impacts occur within the indirect analysis area. Habitat quality within the indirect impact area drives HQT results.

~~ Contribution amount after applying 3% discount for project duration of 25 years.

***** A different project layout for Site 1 (Preferred) was first reviewed in 2016. Elements of the Project were within 2 miles of an active sage grouse lek. The project was withdrawn by mutual agreement and Triangle began investigating alternative sites. Site 2 was submitted for review and review was completed Dec. 5, 2016. Access to implement the Project at Site 2 could not be secured ultimately, and the project was withdrawn. Site 3 was submitted and the Program completed a consultation review letter on April 17, 2017. In October 2017, Triangle submitted a new Project at Site 1 having a different project layout than proposed in 2016. Elements of the new proposed project layout occur within 2.02 miles of an active lek. Complete information and correct spatial data were finalized on February 9, 2018.

^ Project geometry located within 2.02 of an active lek; both direct and indirect impact area almost entirely within Core habitat; direct footprint co-located on top of existing disturbance. See page 22 of the Mitigation Plan.

^^ Project geometry located greater than 4 miles from active leks and at the edge of the Core Area boundary; parts of the indirect impact area occurring outside the boundaries of designated habitat were omitted from HQT calculations and results. Access could not be obtained so this location was abandoned.

^^^ Project geometry nearly all located greater than 4 miles from the nearest lek; direct footprint lies within Core habitat; indirect impact area includes Core and General habitat; any surface disturbance within 4 miles of the nearest active lek involves buried fiber along an existing right-of-way resulting in temporary surface disturbance.

Mud Springs Wind Project
Project Description and Sage-Grouse Mitigation Commitments

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April 24, 2019

1.0 Introduction and Project Description

1.1 Introduction

Sunrise Wind Holdings, LLC, and any of its affiliates, successors and assigns (collectively, "Sunrise"), is considering construction of the Mud Springs Wind Energy Project (Project) in Carbon County, Montana. If the voluntary Mud Springs Wind Project Greater Sage-Grouse Mitigation Plan (Plan) contained within this document is approved by the Montana Sage-Grouse Oversight Team (MSGOT), the Plan will be tied to the Project and the commitments within the Plan will become the responsibility of any future successors or assignees. In addition, this Plan would encompass the entirety of sage grouse requirements for the Project.

1.2 Project Ownership

The Mud Springs Wind Project is owned by Sunrise and has an approved Conditional Use Permit (CUP) and Stormwater Pollution Prevention Plan (SWPPP) to build a 240 MW wind facility with 69 wind turbine generators (WTG) in the Project area, as shown on the Sunrise Option 1 map. Sunrise is currently in negotiations to potentially sell the Project to an Assignee, which could occur in May 2019. The Assignee has a proposed project layout for a 240 MW wind project with 119 WTGs as well as three different interconnection options, including two options within the state of Montana, as shown on the Assignee Layout map. The Assignee is currently working to obtain project equipment, construction contracts, and state, county, and federal permits that would allow for the project to be fully commercially operational by year end 2020. If approved, the Project, Sunrise, the Assignee, and/or any future assignees would be bound by the conditions in this voluntary mitigation plan.

1.3 Grandfathered Status

The Mud Springs Wind Project obtained a Conditional Use Permit from Carbon County and coverage under the General Permit for Storm Water Discharges Associated with Construction Activity (MPDES General Permit) from the State of Montana in 2014, prior to the issuance of Executive Order (EO) 12-2015. A letter from the Montana Sage Grouse Habitat Conservation Program (SGHCP) Manager confirms the Project has grandfathered status and is not subject to the requirements of EO 12-2105 and EO 21-2015. The Project has entered into coordination with the SGHCP to attempt to minimize impacts to sage grouse within and near the Project area.

1.4 2019 Revised Project Area

The Project is providing updated 2019 maps (Appendices 1 and 2) and legal description (Appendix 3) of the property within the Project area that can accommodate the Sunrise Option 1 layout and the Assignee Option 2 layout options. The 2019 revised Project area is based upon the existing 2017 SWPPP Project map, adds lands that are included in the legal description of the project in the Carbon County permits, adds parcels of land that might be needed for alternative construction access, includes three sections of lands owned by the State of Montana and administered by the Trust Lands Management Division, and deletes other lands within the 2017 SWPPPP map that are not under lease to the Project. The revised Project area also designates which areas of the Project allow the construction of WTGs and which areas will be used exclusively for transmission lines, collector lines, and roads. The additional lands are needed to accommodate the Assignee's goals to minimize the Project's sage grouse impacts, specifically to avoid locating new infrastructure within the Bowler sage grouse lek non surface occupancy (NSO) area, and to locate the interconnection substation close to the collector substation and minimize the construction of new transmission lines. The State of Montana Trust Lands were included in the 2019 Revised Project area based upon a request from the Trust Land Management Division of the DNRC with the condition that the Project Assignee would make commercially reasonable efforts to lease the lands from the State of Montana and that the Project would not build any Project infrastructure on the lands unless a lease agreement was reached. The Project requests the 2019 revised Project area map and legal description be recognized as the grandfathered Project area going forward.

1.5 Project Definition

The Project is defined by the following:

1. The Project will be built within the 2019 revised Project area maps and legal descriptions.
2. The Project will have a maximum nameplate capacity of 240 MW.
3. The Project will include a maximum of 120 Wind Turbine Generators (WTG).

1.6 Project Commitments

If this Plan and the 2019 revised Project area are approved by MSGOT, the Project voluntarily makes the following commitments:

1. All Project infrastructure built within the State of Montana will be within the 2019 revised Project area.
2. WTG will only be built within the wind lease area of the Project.
3. All WTGs will be built outside of the no surface occupancy (NSO) areas within 0.6 miles of Confirmed Sage Grouse Leks, as defined in Appendix 4.
4. Vegetation removal within two miles of a Confirmed lek will only occur between July 16 and March 14. Vegetation removal will be prohibited during breeding, nesting, and early brood rearing seasons of March 15 to July 15 as described in the Montana Mitigation System Policy Guidance Document.
5. The Project will voluntarily commit to providing funding of $320,000 to the MSGHCP Stewardship account.
6. The Project will have a maximum of 120 WTGs.
7. The hub heights of the Project's wind turbines will be between 79 and 110 meters high, with a high probability the hub heights will be between 79 meters and 91 meters high.
8. The blade length of the Project's wind turbines will be between 50 meters and 70 meters and the blade diameter of the Project's wind turbines will be between 100 meters and 140 meters.

9. The Project will provide notice of layout changes to the SGHCP during development and construction and will provide a map and shape files of the final as-built Project layout after the commercial operation date.
10. The Project will monitor any of the Confirmed Sage Grouse Leks within two miles of any new WTGs or transmission lines constructed for the Project for 6 years after the Project's commercial operation date, provided the Project is granted access to the lek by the landowner or via its Project leased area.

Satisfaction of the voluntary Project commitments listed above will complete the mitigation requirements for the Project and will allow the project to move the location of WTGs and associated infrastructure within the 2019 revised Project boundary.

1.7 Assignee Efforts

If this Plan and the 2019 revised Project area are approved by the MSGOT, the Assignee commits to taking commercially reasonable efforts to meet the following goals:

1. Move the interconnection point from Wyoming to Montana, thereby eliminating approximately 10 miles of new 230 kV transmission line within sensitive sage grouse areas.
2. Locate the interconnection substation and the collector substation as close as economically feasible to minimize the length of new transmission line.
3. Construct all new Project infrastructure outside of Confirmed sage grouse lek NSO areas.
4. Attempt to lease State of Montana Trust lands in Section 36, T7S R24E and Section 16 T8S R25E for inclusion in the wind Project
5. Attempt to lease State of Montana Trust lands in Section 16, T9S R25E for construction, operation and access of a new transmission line if the interconnection point for the Project remains in Wyoming.

1.8 Project Options and Descriptions

The Option 1 plan allows for the Project to be eligible for Qualified Facilities status. Options 2, 3, and 4 relate to a potential assignee that is considering purchasing the Project. Options 2, 3, and 4 use the same wind turbine layout and are very similar, with the only differences being the location of the interconnection substation and length of gen-tie transmission line needed to connect the collector substation to the interconnection substation.

Option 1 – Appendix 1. Sunrise would construct the Project using a total of 69 wind turbine locations. The Project would include an approximately 11.8 mile long, 230 kV gen-tie transmission line to connect the Project to the interconnection substation located in Wyoming. For this option there would be approximately 0.7 miles of temporary roads, 23.25 miles of new roads, 31.41 miles of buried collector lines, 5 acres for the collector substation, 5 acres for the interconnection substation, and 10 acres of laydown areas.

Option 2a – Appendix 2. The Project may also be constructed using a total of 119 2.0 to 2.3 MW wind turbines. The Project would include an approximately 14 mile long, 230 kV transmission line to connect the Project to the interconnection substation located in Wyoming. For this option there would be approximately 30 miles of new roads, 54 miles of buried collector lines, and 4 acres each for collector substation, interconnection substation, and laydown areas.

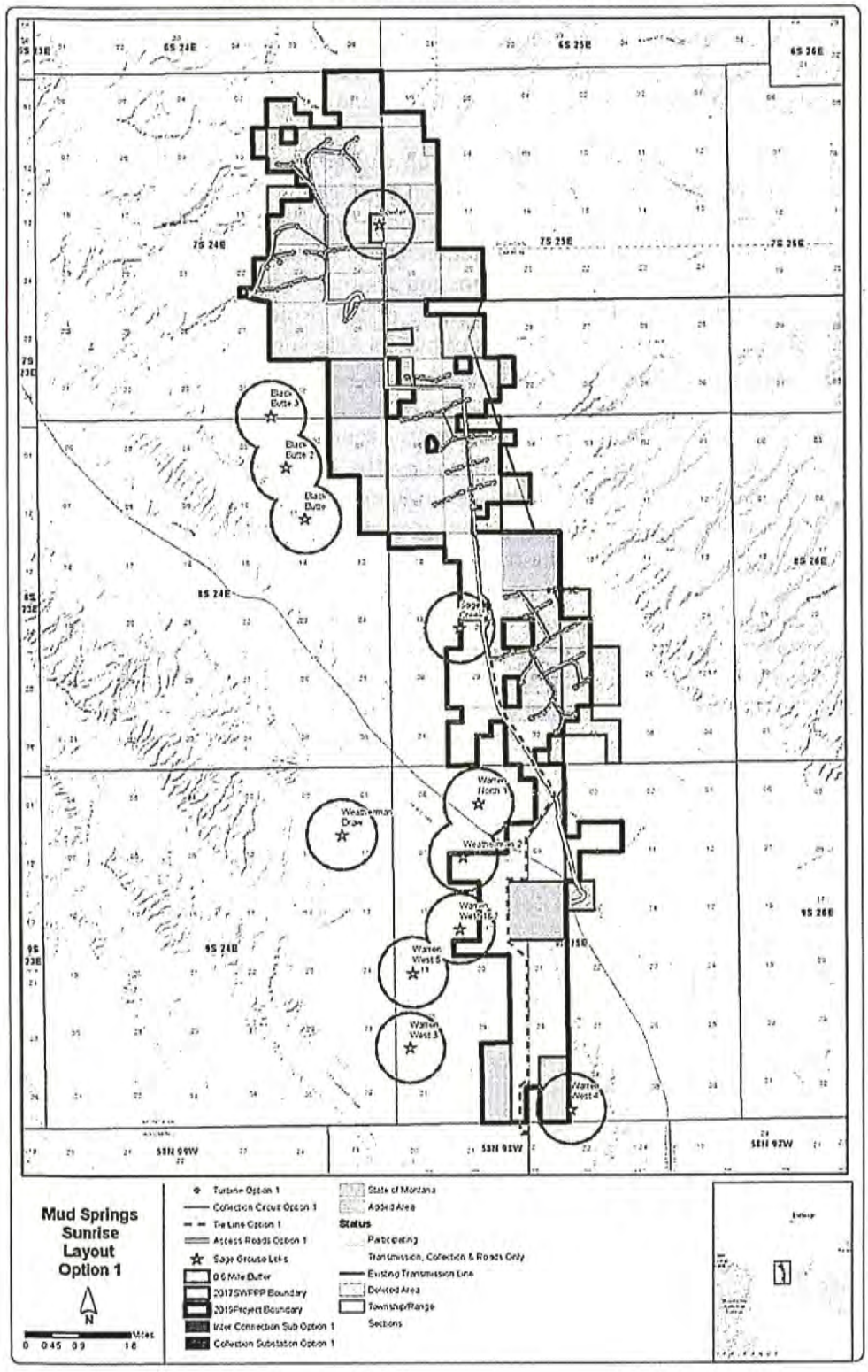
Option 2b – Appendix 2. The Project may also be constructed using a total of 119 2.0 to 2.3 MW wind turbines. The interconnection point would be moved from Wyoming to Montana and an approximately 5

mile long, 230 kV transmission line would be built to connect the Project to the interconnection substation. The movement of the interconnection point would be dependent upon a request that would be made to the transmission service provider after the assignee takes ownership of the Project. For this option there would be approximately 30 miles of new roads, 54 miles of buried collector lines, and 4 acres each for collector substation, interconnection substation, and laydown areas.

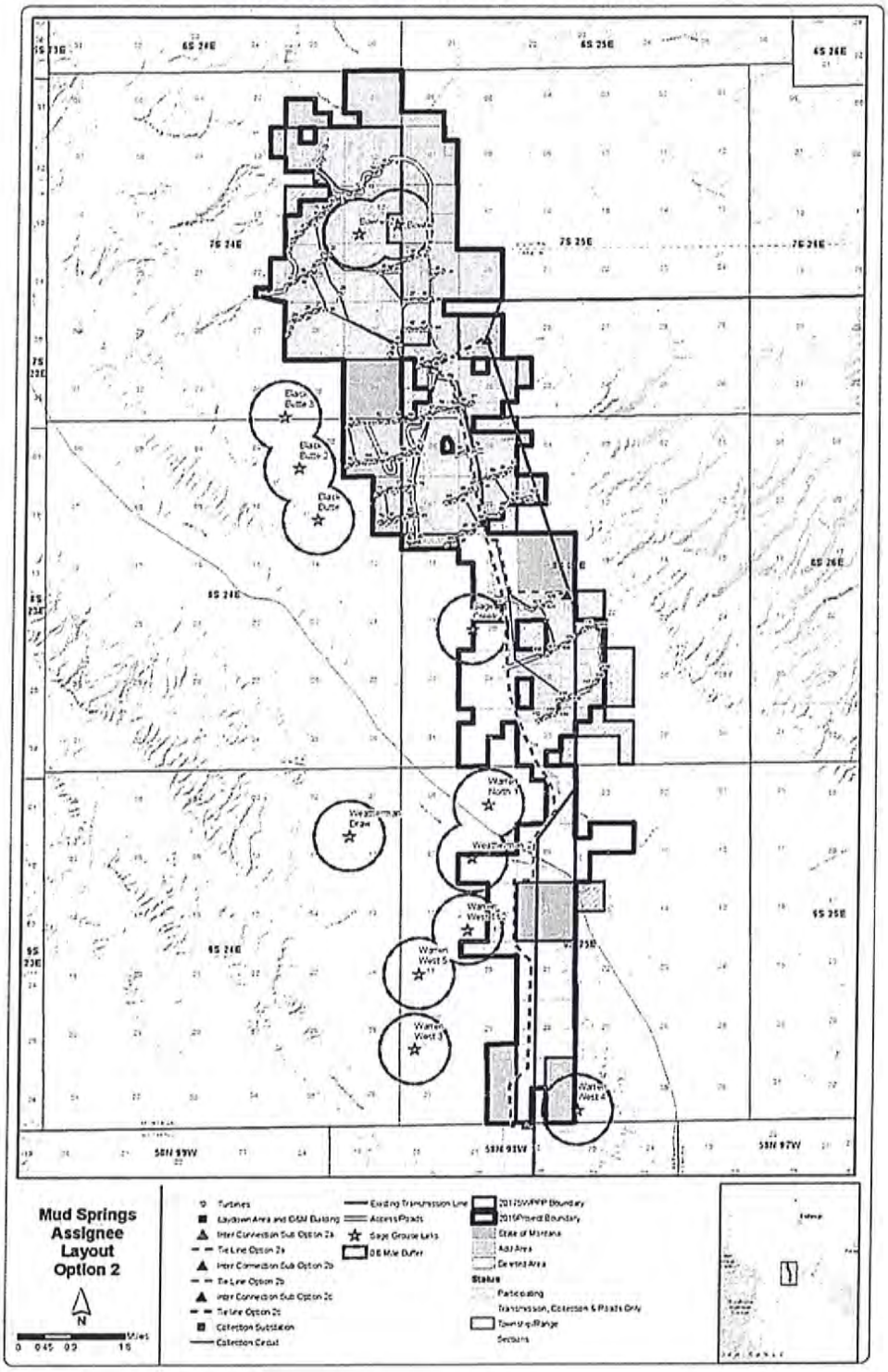
Option 2c – Appendix 2. The Project may also be constructed using a total of 119 2.0 to 2.3 MW wind turbines. The interconnection point would be moved to a location in close proximity to the collector substation in Montana and an approximately 1 mile long, 230 kV transmission line would be built to connect the Project to the interconnection substation. The movement of the interconnection point would be dependent upon future real estate negotiations and a request that would be made to the transmission service provider after the assignee takes ownership of the Project. For this option there would be approximately 30 miles of new roads, 54 miles of buried collector lines, and 4 acres each for collector substation, interconnection substation, and laydown areas.

Sunrise wishes to state in the clearest terms possible the four options presented are the current layouts at this time. There is a high probability that minor changes to the layout will need to be made in the future based upon geotechnical study results, potential environmental/wildlife impacts, construction contractor requirements, landowner requests, and equipment procurement. There is also the possibility that major changes to the Project layout, such as the relocation of a string of five wind turbines or changes to the size of the wind turbines, could be necessary in the future. If this Plan is approved by the MSGOT, Sunrise and any future assignees would be obligated to adhere to the following conditions and would have sole authority to change the project layout without any additional SGHCP requirements provided they adhere to the following conditions: setback of 0.6 miles between wind turbines and any of the confirmed leks listed in Appendix 4 of this Plan, complete vegetation removal between July 16 and March 14 within 2 miles of any of the confirmed leks listed in Appendix 4 of this Plan, build all wind turbines within the Township, Range, and Section definitions listed in Appendix 3 of this Plan, and maintain the 240 MW maximum size limit of the Project. The Project will provide notice of the final Project layout design to the SGHCP.

Appendix 1 – Sunrise Layout – Option 1



Appendix 2 – Assignee Layout – Option 2



Appendix 3 – Legal Description of Mud Springs Project Area

Appendix 4 – Confirmed Sage Grouse Leks

Confirmed Sage Grouse Leks is a defined term within this Plan that is set to mean all leks located at the specified longitude and latitude coordinates. The Bowler 2 lek was unknown at the time the layout was prepared for Option 1 and does not apply as a Confirmed Sage Grouse Lek for that Option. The Confirmed Sage Grouse Leks near the Project area are:

Bowler: Located at Latitude 45.22411 and Longitude -108.720526
The Bowler lek was first counted in 1996-1997. The high male count of the lek has varied from an estimate of 4 to 35 males, with a total of 24 males when it was last surveyed by FWP in 2018.

Bowler 2: Located at Latitude 45.2219 and Longitude -108.734
The Bowler 2 lek was unknown during the layout phase of Option 1, but was known during the layout phase of Option 2 and setbacks were applied accordingly for Option 2.

Black Butte 3: Located at Latitude 45.17665 and Longitude -108.75962

Black Butte 2: Located at Latitude 45.16388 and Longitude -108.75455

Black Butte: Located at Latitude 45.151 and Longitude -108.748
The Black Butte Lek was first counted in 2003-2004. The high male count of the lek has varied from an estimate of 3 to 36 males, with a total of 27 males when it was last surveyed by FWP in 2018.

Sage Creek 1: Located at Latitude 45.12318 and Longitude -108.69403
The Sage Creek 1 Lek was first counted in 1996-1997. The high male count of the lek has varied from an estimate of 17 to 54 males, with a total of 26 males when it was last surveyed by FWP in 2018.

Warren North 1: Located at Latitude 45.07953 and Longitude -108.68829
The Warren North 1 Lek was first counted in 2015-2016. The high male count of the lek has varied from an estimate of 1 to 3 males, with a total of 3 males when it was last surveyed by FWP in 2018.

Weatherman Draw: Located at Latitude 45.0721 and Longitude -108.737
The Weatherman Draw Lek was first counted in 1998-1999. The high male count of the lek has varied from an estimate of 1 to 34 males, with a total of 14 males when it was last surveyed by FWP in 2018.

Weatherman 2: Located at Latitude 45.0664 and Longitude -108.694
The Weatherman 2 Lek was first counted in 1999-2000. The high male count of the lek has varied from an estimate of 1 to 8 males, with zero males counted when it was last surveyed by FWP in 2018.

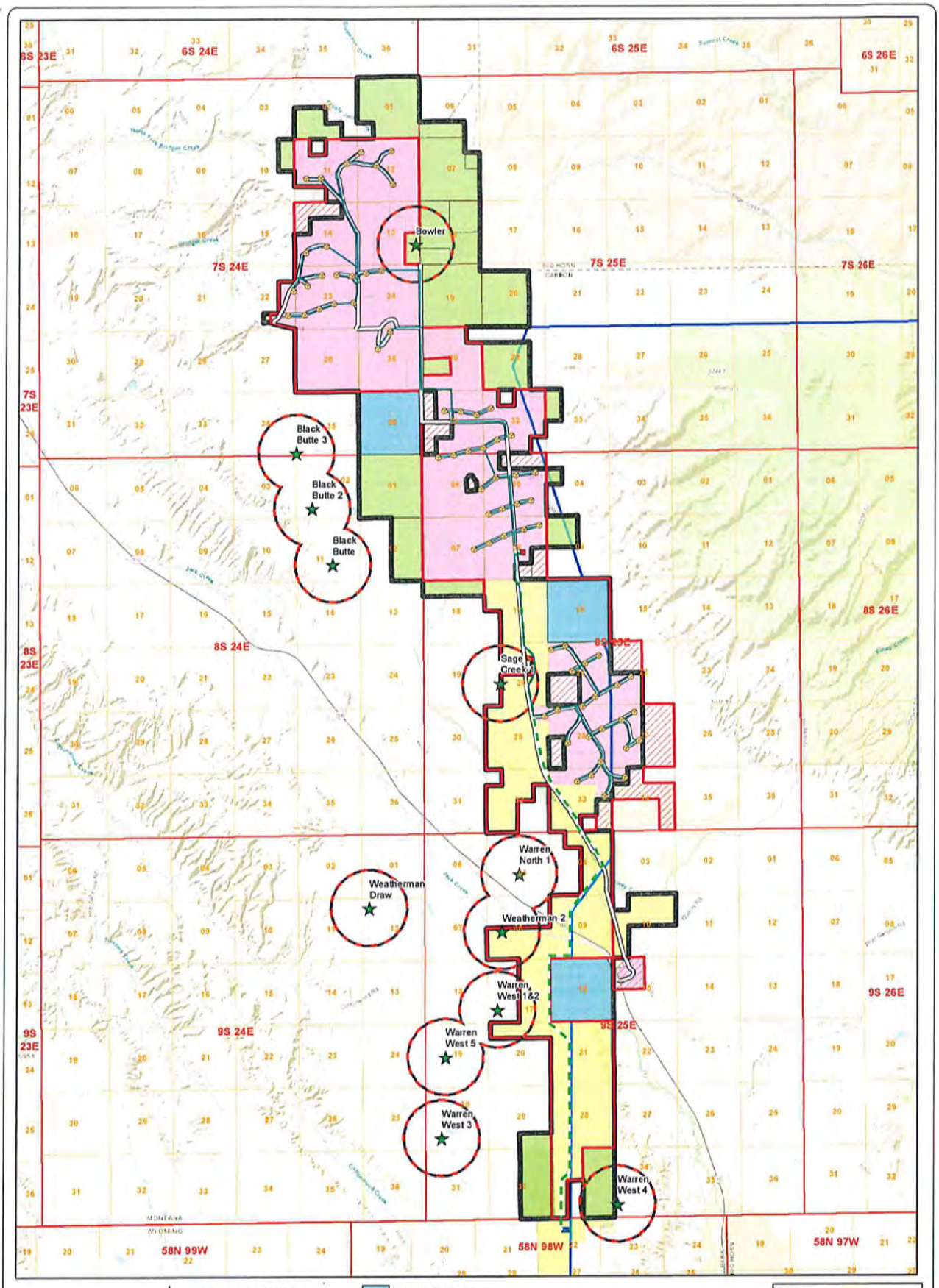
Warren West 1&2: Located at Latitude 45.04844 and Longitude -108.69563

The Warren West 1 & 2 Lek was first counted in 1977-1978. The high male count of the lek has varied from an estimate of 1 to 84 males, with a total of 32 males when it was last surveyed by FWP in 2018.

Warren West 5: Located at Latitude 45.03775 and Longitude -108.71256
The Warren West 5 Lek was first counted in 2003-2004. The high male count of the lek has varied from an estimate of 3 to 43 males, with a total of 6 males when it was last surveyed by FWP in 2018.

Warren West 3: Located at Latitude 45.0191 and Longitude -108.714
The Warren West 3 Lek was first counted in 1978-1979. The high male count of the lek has varied from an estimate of 18 to113 males, with a total of 73 males when it was last surveyed by FWP in 2018.

Warren West 4: Located at Latitude 45.0035 and Longitude -108.657



Mud Springs Sunrise Layout Option 1

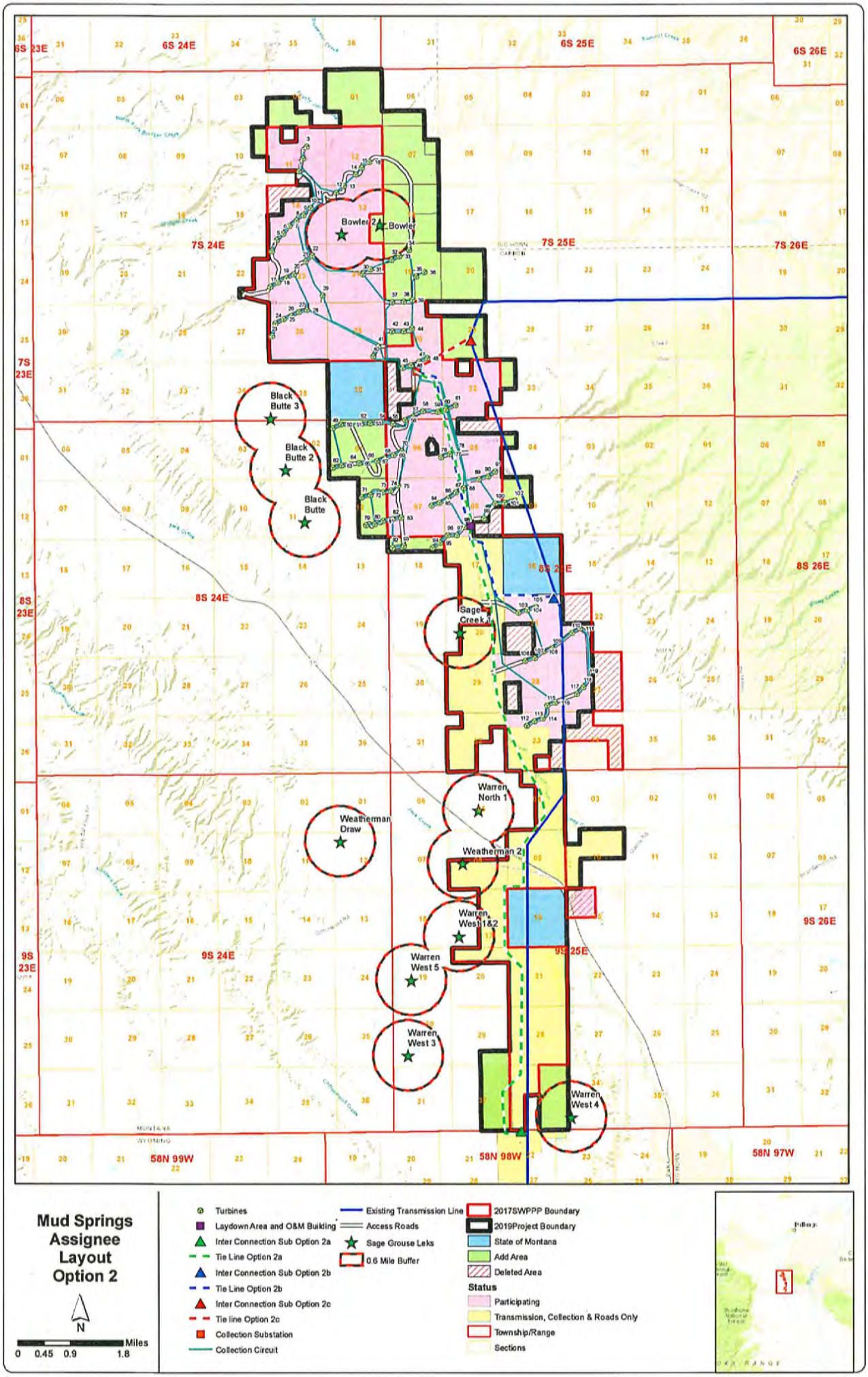
N

0 0.45 0.9 1.8 Miles

- Turbine Option 1
- Collection Circuit Option 1
- Tie Line Option 1
- Access Roads Option 1
- Sage Grouse Leks
- 0.6 Mile Buffer
- 2017SWPPP Boundary
- 2019Project Boundary
- Inter Connection Sub Option 1
- Collection Substation Option 1
- State of Montana
- Added Area

Status

- Participating
- Transmission, Collection & Roads Only
- Existing Transmission Line
- Deleted Area
- Township/Range
- Sections


6S 23E
6S 24E
6S 25E
6S 26E
7S 24E
7S 25E
7S 26E
7S 23E
8S 24E
8S 25E
8S 26E
8S 23E
9S 24E
9S 25E
9S 26E
9S 23E
58N 99W
58N 98W
58N 97W
Bowler 2
Bowler
Black Butte 3
Black Butte 2
Black Butte
Sage Creek 1
Warren North 1
Weatherman Draw
Weatherman 2
Warren West 1&2
Warren West 5
Warren West 3
Warren West 4
MONTANA
WYOMING
Mud Springs Assignee Layout Option 2
N
Miles
0 0.45 0.9 1.8
Turbines
Laydown Area and O&M Building
Inter Connection Sub Option 2a
Tie Line Option 2a
Inter Connection Sub Option 2b
Tie Line Option 2b
Inter Connection Sub Option 2c
Tie line Option 2c
Collection Substation
Collection Circuit
Existing Transmission Line
Access Roads
Sage Grouse Leks
0.6 Mile Buffer
2017SWPPP Boundary
2019Project Boundary
State of Montana
Add Area
Deleted Area
Status
Participating
Transmission, Collection & Roads Only
Township/Range
Sections