

AGENDA
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, August 18, 2014, at 9:00 a.m.
State Capitol, Room 303
Helena, MT

ACTION ITEMS

- 814-1 **FWP: Conservation Easement Acquisition – Buffalo Coulee**
 Benefits: N/A
 Location: Valley County
 APPROVED 5-0
- 814-2 **Timber Sales**
 A. Combest Parcels
 Benefits: Common Schools, Public Buildings
 Location: Sanders County
 APPROVED 5-0
- B. Off Center Salvage**
 Benefits: Common Schools
 Location: Gallatin County
 APPROVED 5-0
- 814-3 **Communitization Agreement: Stateline 13-3635H Well**
 Benefits: Common Schools
 Location: Roosevelt County
 APPROVED 5-0
- 814-4 **Commercial Lease: Proposed Agreement – Victory Commons – TKG Lease**
 Benefits: Common Schools
 Location: Flathead Commons
 APPROVED 5-0
- 814-5 **Land Banking Acquisition: Preliminary Approval for Purchase**
 Benefits: Common Schools
 Location: Pondera County
 APPROVED 5-0
- 814-6 **Easements**
 Benefits: Common Schools
 Location: Prairie, Fergus, Phillips Counties
 APPROVED 5-0

PUBLIC COMMENT

814-1

FWP: CONSERVATION EASEMENT
ACQUISITION – BUFFALO COULEE

**Land Board Agenda Item
August 18, 2014**

814-1 FWP: Conservation Easement Acquisition – Buffalo Coulee**Location: Valley County****Trust Benefits: N/A****Trust Revenue: N/A****Item Summary**

The Department of Fish, Wildlife and Parks (FWP) proposes to purchase a perpetual conservation easement on 2,825 acres owned by Potter Brothers Farms in Valley County, Montana. The property, referred to as Buffalo Coulee, consists of three separate parcels located within 15 miles of each other northwest of Glasgow. Buffalo Coulee consists of two miles of Milk River frontage and associated cottonwood bottoms. The property also includes riparian habitats associated with two drainages that run through the property and sagebrush grassland uplands, including primary antelope winter range. The cost to FWP to acquire this conservation easement would be \$450,000. FWP would also commit to cost sharing on grazing land infrastructure improvements and grass cover plantings totaling approximately \$78,000.

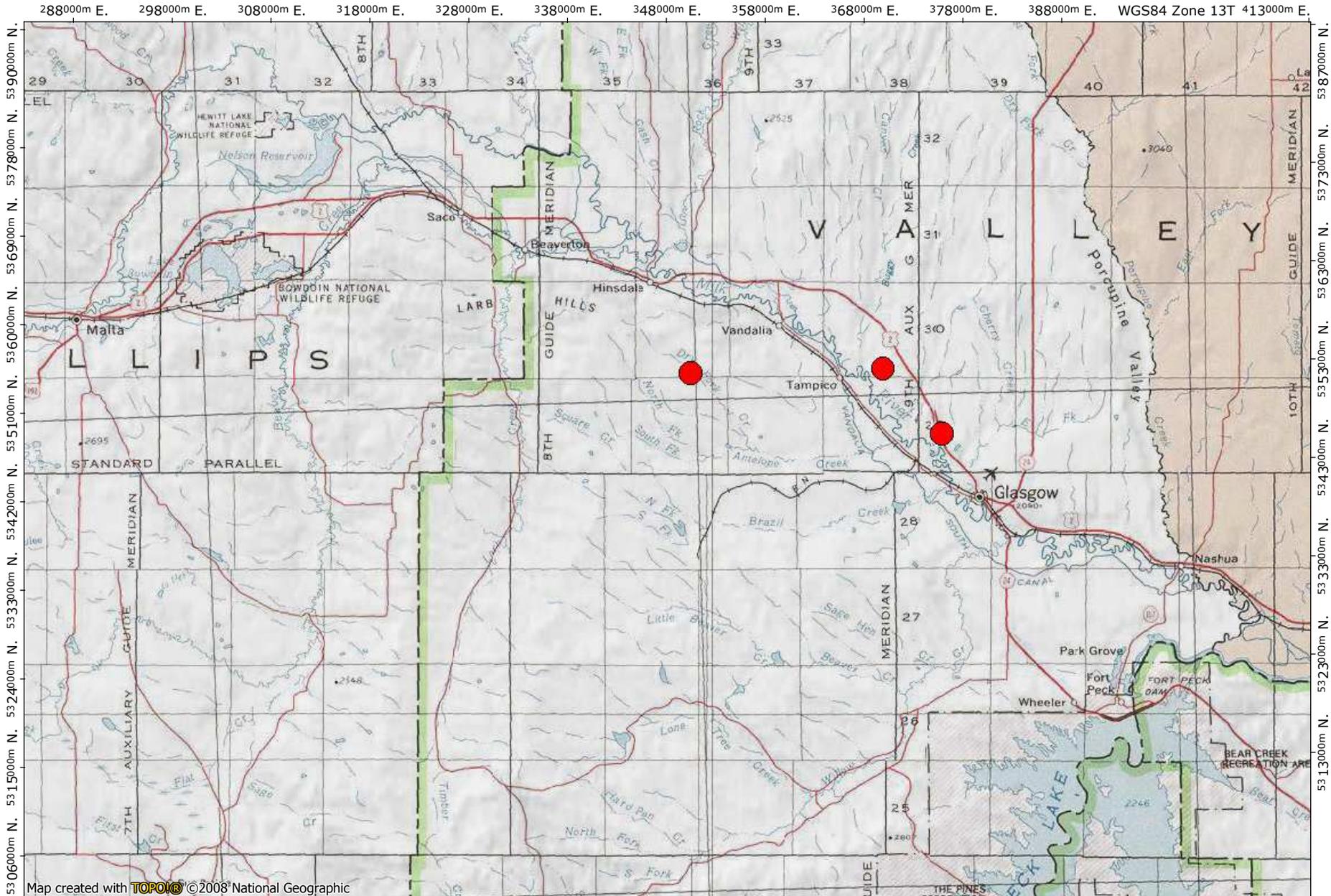
The purchase of this conservation easement gives FWP the opportunity to work cooperatively with the Potter family to enhance and manage native habitats for the benefit of wildlife and agriculture; increase public recreational opportunities; protect healthy blocks of riparian and sagebrush habitats from habitat conversion; and support sustainable agriculture. The property provides the public with a number of recreational opportunities including hunting, fishing, and wildlife viewing. Management activities would include development and implementation of a rest rotation grazing system, the reseeding and restoration of permanent cover, and permanent protection of high wildlife value habitat along the Milk River.

Rationale for Land Board Action

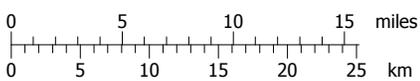
The environmental assessment (EA) was open to public comment from October 17, 2012 through November 9, 2012, during which a public hearing was held in Glasgow, Montana, on November 7, 2012 with nine people in attendance. A total of sixteen comments were received, fifteen of which were in favor of FWP acquiring the conservation easement. One comment was neutral, and there were no comments opposed to this project.

FWP Recommendation

FWP recommends the Land Board approve the FWP acquisition of the Buffalo Coulee conservation easement from Potter Brothers Farms.



Map created with **TOPOIC** ©2008 National Geographic



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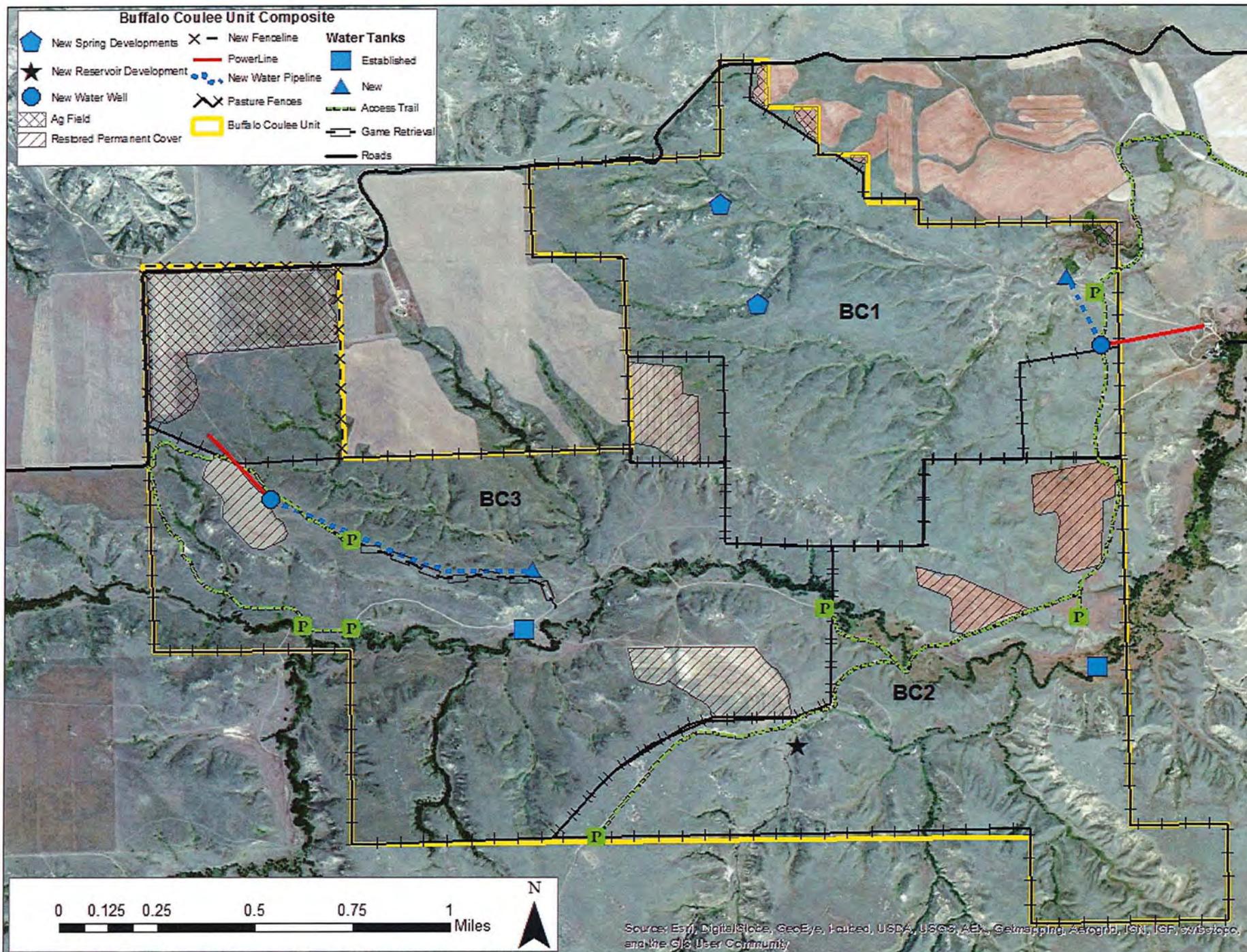
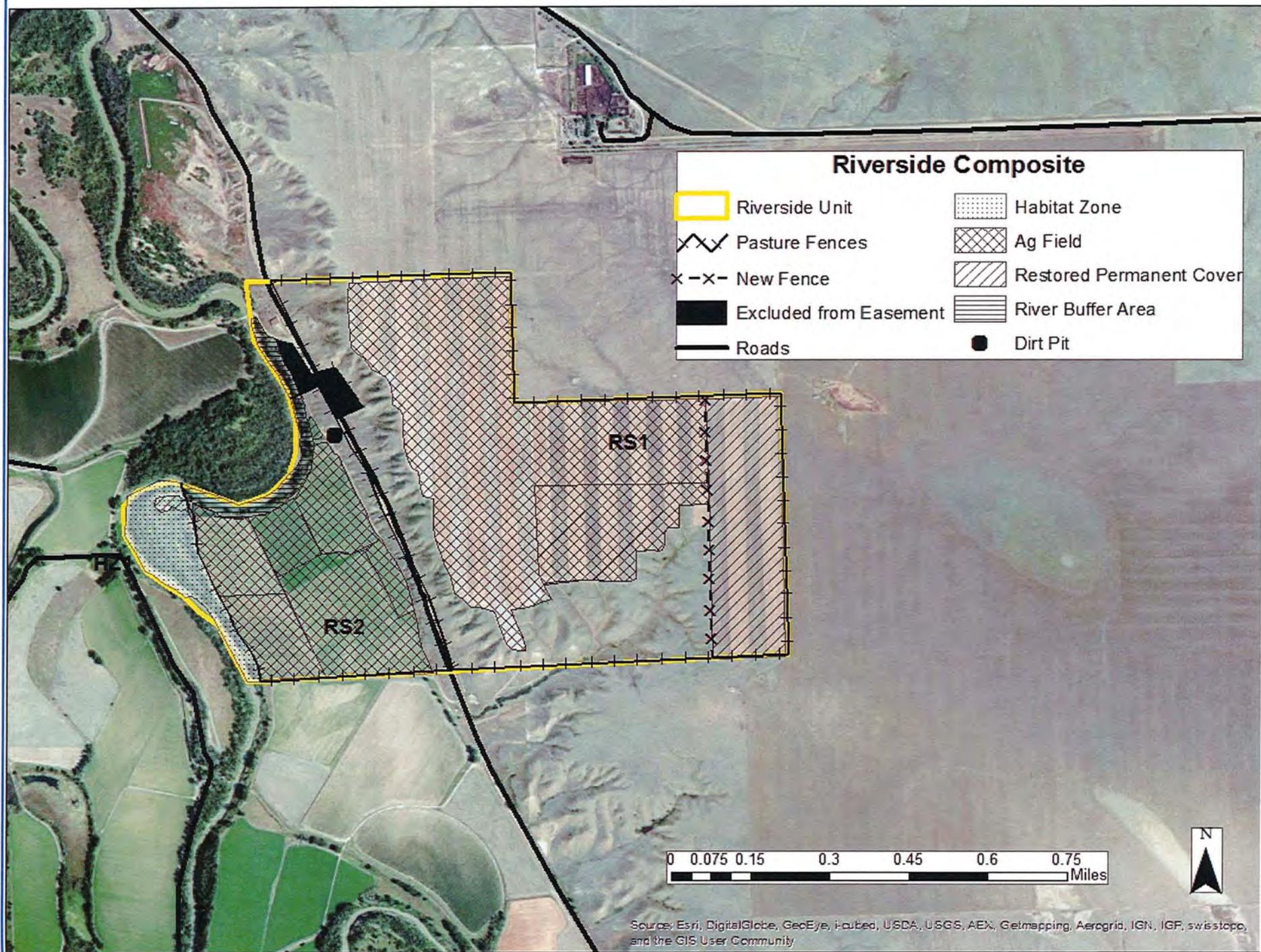
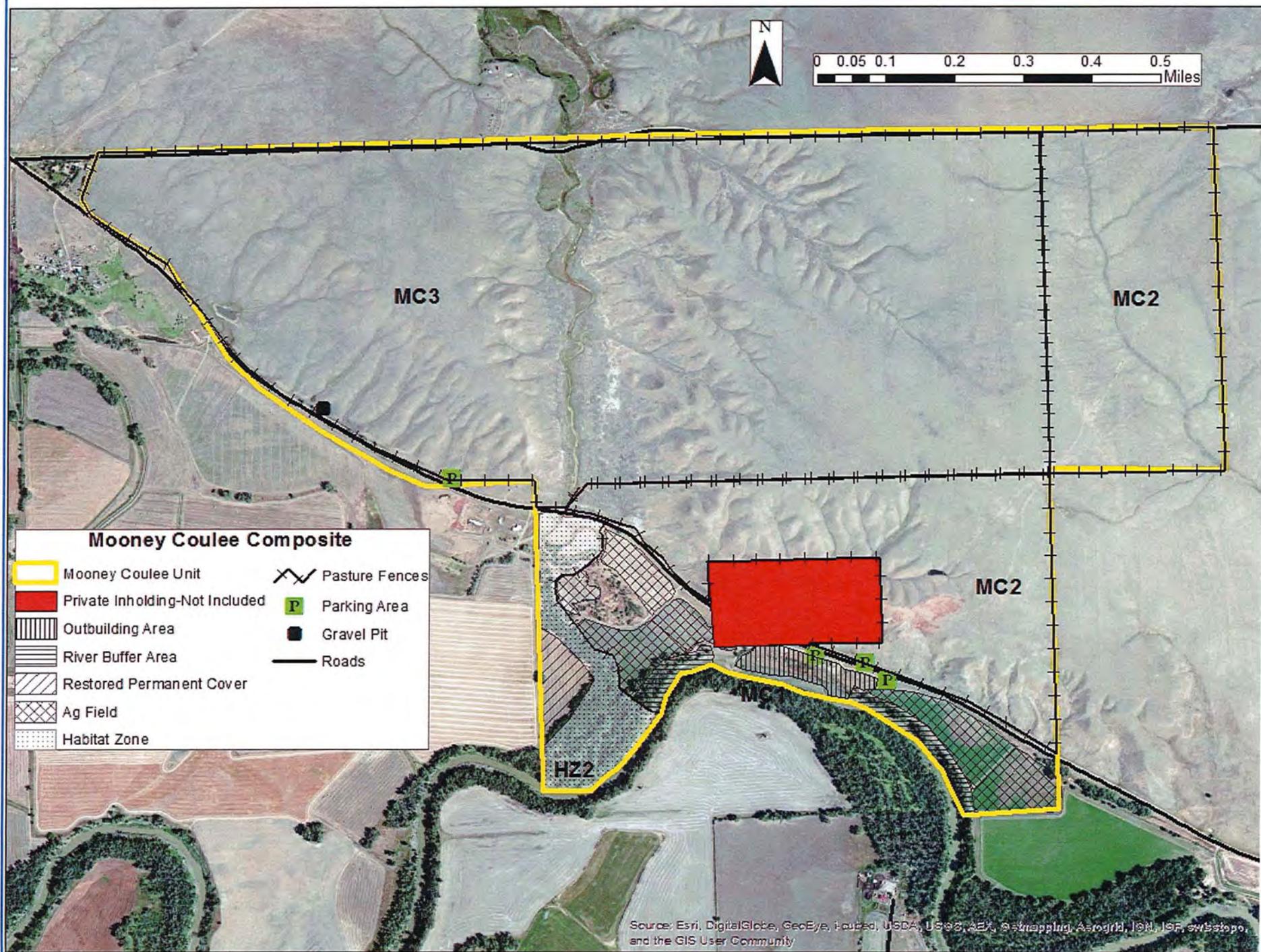


Exhibit B – Unit Composites | C14 and Field Maps



Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGF, swisstopo, and the GIS User Community



Source: Esri, DigitalGlobe, GeoEye, iSat, USDA, USGS, AER, GeoMapping, AeroGRID, IGN, IFR, swisstopo, and the GIS User Community

DECISION NOTICE

BUFFALO COULEE CONSERVATION EASEMENT

Montana Fish, Wildlife & Parks
Region 6 - Glasgow
July 11, 2014

PROPOSAL

Montana Fish, Wildlife & Parks (FWP) is proposing to purchase a perpetual conservation easement on 2,825 acres owned by Potter Brothers Farms in Valley County. The property, referred to as Buffalo Coulee, consists of three separate parcels located within 15 miles of one another, northwest of Glasgow. The cost to FWP to acquire the conservation easement will be \$450,000, the figure determined by an independent appraisal to be the fair market value. Funds will be provided by FWP's Habitat Montana program.

The Buffalo Coulee Conservation Easement is proposed to protect, enhance and preserve the integrity of native riparian and upland habitats associated with the Milk River Valley for present and future generations, while preserving traditional agricultural use and ownership. The Milk River riparian corridor is critical to maintaining stable wildlife populations, primarily because of the high quality year-round habitat. The terms of the easement are directed at conserving the primary habitats represented on the property, including riparian corridors, sagebrush and shrub grasslands, and plains grasslands. Critical winter range for migrating antelope, and habitat that serves as a migratory linkage for sage grouse, will be protected and enhanced. The easement also assures that free public hunting will continue to be the tool used to manage game populations and provide recreation to sportsmen and women.

MONTANA ENVIRONMENTAL POLICY ACT (MEPA) REVIEW

The Montana Environmental Policy Act (MEPA) directs State agencies to assess the impacts of their proposed actions on the human and natural environment. Consistent with this MEPA requirement, FWP described the Buffalo Coulee Conservation Easement proposal and analyzed its potential impacts in an Environmental Assessment (EA) released to the public on October 17, 2012. The EA was open to public comment through November 9, 2012. During this period, a public hearing was held at the Valley County Courthouse in Glasgow on November 7, 2012.

SUMMARY OF PUBLIC COMMENTS

Nine people attended the public hearing on November 7, 2012. Only one person gave formal comment at the hearing, and this comment was neither in favor or opposition to

the conservation easement, but referenced language in the easement concerning the introduction of wildlife. FWP reviewed that comment, and determined that the proposed language is appropriate and consistent with previous conservation easements.

In addition, sixteen written comments were received, fifteen of which were in favor of FWP acquiring the conservation easement. One written comment did not indicate opposition or support, but requested that the citizens of Montana be allowed to vote before a decision was made. There were no comments opposed to this project.

FWP EVALUATION

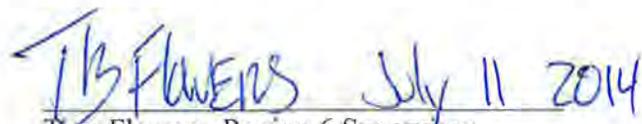
Based on the project's merits and the large majority of support given during the public process, FWP was prepared to issue a decision notice recommending approval of the project by the Montana Fish and Wildlife Commission in late 2012. However, due to a temporary funding shortage, the Buffalo Coulee project was put on hold and was not forwarded to the Commission for consideration at that time.

By October 2013, the funding situation had been resolved and the Buffalo Coulee project was again reviewed by FWP's Wildlife Division through its statewide ranking process for habitat conservation projects. At that time, the project was given approval to continue.

DECISION

For more than 30 years, Montana Fish, Wildlife & Parks has effectively utilized conservation easements to protect wildlife habitat from development, subdivision and human encroachment; to provide public recreational opportunities; and to work cooperatively with private landowners to maintain compatible agricultural land uses. Approximately 75 % of the Milk River Valley and associated riparian and shrub grassland habitats have been developed for agriculture and livestock production purposes. The proposed Buffalo Coulee Conservation Easement will ensure that important native habitats in the Milk River Valley will be protected and enhanced, while keeping the land in agricultural production and providing public hunting and other recreational opportunities. The conservation easement will achieve these important conservation goals while having no identified adverse impacts to the natural or human environment.

After reviewing the merits of this proposal and the strong public support, it is my decision that Montana Fish, Wildlife & Parks move forward to purchase the Buffalo Coulee Conservation Easement. This decision is made subject to the approval of the Montana Fish and Wildlife Commission and the Montana Board of Land Commissioners.


Tom Flowers, Region 6 Supervisor

Smith, Kathy

From: Michael bryson [mb4531@hotmail.com]
Sent: Thursday, November 01, 2012 6:05 AM
To: Smith, Kathy
Subject: FWP Easements

This is to inform you that I support the proposals that include the 1050 acres at Spring Coulee 13 mile SW of Big Sandy. The area consisting of 2992 acres on the Milk river that is 42 miles NW of Havre. And also the 2825 acres owned by the Potter Brothers located 2 miles SW of Vandalla, 4 miles NW of Glasgow and the area east of Tampico on the Milk River.
Michael B. Bryson

Smith, Kathy

From: janet cortese [rjcortese@bresnan.net]
Sent: Friday, November 02, 2012 9:31 AM
To: Smith, Kathy

I am in favor of the three easements the FW&P is looking at. Along the missouri river, the Milk river north of Havre and by Vandalia. Thank you, Ron Cortese

Smith, Kathy

From: knowlesmontana@juno.com
Sent: Friday, November 02, 2012 9:08 AM
To: Smith, Kathy
Subject: Public Comment: Buffalo Coulee Conservation Easement EA - Draft

Any property that can be secured for public use, especially if that land provides access to rivers, lakes, streams or other bodies of water, is a precious commodity that should be secured.

This e-mail was generated from the 'Buffalo Coulee Conservation Easement EA - Draft' Public Notice Web Page.

Smith, Kathy

From: jdaugherty@windturbinetools.com
Sent: Tuesday, November 06, 2012 10:37 AM
To: Smith, Kathy
Subject: Public Comment: Buffalo Coulee Conservation Easement EA - Draft

I fully support this effort and think it would be a great accomplishment to have the easement put in place. It would be a win-win for all concerned.

This e-mail was generated from the 'Buffalo Coulee Conservation Easement EA - Draft' Public Notice Web Page

Smith, Kathy

From: tdh_3131@yahoo.com
Sent: Tuesday, November 06, 2012 2:43 PM
To: Smith, Kathy
Subject: Public Comment: Buffalo Coulee Conservation Easement EA - Draft

I think permanent easements are a great thing.
However, after spending some time on the Beckman WMA, east of Denlon, MT, it is looks like the area was way too much grazing by cattle on the property.
You can hardly find any deer and almost impossible to find elk.
Which has not always been the case.
We have been there a total of 8 hunter days with a total of 7 mule deer spotted, no whitetail or elk.
Grazing is an issue that should be looked at very closely.
Thank you
Tim Hartford

This e-mail was generated from the 'Buffalo Coulee Conservation Easement EA - Draft' Public Notice Web Page.

Smith, Kathy

From: Hemmer, Scott
Sent: Thursday, November 01, 2012 8:39 AM
To: Smith, Kathy
Subject: FW: Approval of these "fwp-Region 6, issues"...

Kathy-

Here was a comment that included the Buffalo Coulee land project

Scott Hemmer

From: John Waldron [<mailto:john.waldron@mygalt.com>]
Sent: Wednesday, October 31, 2012 8:13 AM
To: Hemmer, Scott
Subject: Approval of these "fwp-Region 6, issues"...

I "recommend passage of these "issues=FWP-Region 6-"Spring Coulee Acquisition, Big Sandy, Buffalo Coulee, (Conservation Easement,Glasgow), Milk River Ranch Proposal, (Havre); Ft. Peck-Fisheries Mgmt. Plan."

undefined

Smith, Kathy

From: Ernie Lundberg [erlundberg@linctel.net]
Sent: Monday, November 05, 2012 5:05 PM
To: Smith, Kathy
Subject: Buffalo Coulee Project Conservation Easement

I have hunted several years along the Milk River and have found a variety of wildlife present. The purchase of this easement would be a benefit to the public and wildlife.

Smith, Kathy

From: mplagenz@fs.fed.us
Sent: Wednesday, October 31, 2012 9:37 AM
To: Smith, Kathy
Subject: Public Comment: Buffalo Coulee Conservation Easement EA - Draft

Preserves habitat and enhances public access. Sounds like a great investment for our future wildlife and Sportmen/woman. Thank you.

This e-mail was generated from the 'Buffalo Coulee Conservation Easement EA - Draft' Public Notice Web Page.

Smith, Kathy

From: vinceluparell@hotmail.com
Sent: Tuesday, October 30, 2012 4:37 PM
To: Smith, Kathy
Subject: Public Comment: Buffalo Coulee Conservation Easement EA - Draft

I think this would be a great easement. The diversity of the game is great. I am all for pursuing this easement. Thanks for your hard work.

This e-mail was generated from the Buffalo Coulee Conservation Easement EA - Draft Public Notice Web Page.

Smith, Kathy

From: Johnson, Donald [Donald.Johnson@northwestern.com]
Sent: Tuesday, October 30, 2012 4:44 PM
To: Smith, Kathy

Kathy,

I encourage the purchase of a conservation easement for the Buffalo Coulee property .
I live in Great Falls, but I have always enjoyed hiking in this part of valley county.

I wish I could comment on the Big Sandy and Havre property , but I 'm in support for all three easements.

Smith, Kathy

From: mtduckhunter@gmail.com
Sent: Tuesday, October 30, 2012 3:10 PM
To: Smith, Kathy
Subject: Public Comment: Buffalo Coulee Conservation Easement EA - Draft

I fully support the conservation easement on Buffalo Coulee.

Steve Christian

This e-mail was generated from the 'Buffalo Coulee Conservation Easement EA - Draft' Public Notice Web Page.

Smith, Kathy

From: Steve & Annette Schindler [sas@nemont.net]
Sent: Friday, October 26, 2012 5:52 PM
To: Smith, Kathy
Subject: Support for Buffalo Coulee

Please accept this as my support for the purchase of a conservation easement for the Buffalo Coulee area south of Vandalia.

Steve Schindler
Glasgow, Mt.

Smith, Kathy

From: katsmith@mt.gov
Sent: Saturday, October 27, 2012 7:02 AM
To: Smith, Kathy
Subject: Public Comment: Buffalo Coulee Conservation Easement EA - Draft

Please accept this message as my support for the proposed Buffalo Coulee Conservation Easement. I've spent many years hunting on this property and believe it would be a very valuable easement. Thanks, Richard Traeger 735 10th St Glasgow, MT.

This e-mail was generated from the 'Buffalo Coulee Conservation Easement EA - Draft' Public Notice Web Page.

**Buffalo Coulee Conservation Easement Proposal - Public Scoping
Process**

COMMENT FORM

**Comments must be postmarked no later than November 9, 2012*

Name Harold J. Wentland
 Address (Street/ P.O. Box) 437 6th Ave. North
 Town, State ZIP Glasgow, MT 59230
 Phone 406-238-2227 Email address _____
 Affiliation Retired

Please submit your comments, questions, and relevant ~~issue~~ related issues in the following space. Attach additional information to this form if you wish. Thank you for your interest in this project.

I support the Buffalo Coulee Conservation Easement. The easement will preserve and enhance Milk River bottom and upland wildlife habitats. I suggest the easement documents also guarantee perpetual access for hunting, fishing and other recreational pursuits by Montana citizens.

Upland and river bottom habitats seem to be under increasing stress from intensive grazing, farming and out-of-state recreational buyers. In most cases the non-resident owners exclude access to the Montana public.

Email comments to: dhenry@mt.gov

Harold J. Wentland



MONTANA AUDUBON

P.O. Box 595 • Helena, MT 59624 • 406-443-3949 • www.mtaudubon.org

November 9, 2012

Mr. Patrick Gunderson
Regional Wildlife Manager
MT Fish, Wildlife & Parks
54078 US Hwy 2 West
Glasgow, MT 59230

Dear Mr. Gunderson,

Please accept the following comments on behalf of Montana Audubon on the draft Environmental Assessment to purchase a conservation easement on the Buffalo Coulee Project property.

Montana Audubon is the coordinating entity for the nine Audubon Society Chapters in Montana. Currently there are approximately 3,800 Audubon members in the state. Although our membership is diverse, there is a consistent deep concern for the continuing loss of vital wildlife habitat in the state. Protection and enhancement of Montana's wildlife habitat is the mission of Montana Audubon. You may receive comments from other members of the Society.

We support the preferred 'Proposed Action' alternative chosen by Montana Fish, Wildlife & Parks that allow purchase of the conservation easement.

Our main reasons for supporting this conservation easement include:

- **Protecting wetlands and riparian areas.** This easement will help protect 15 miles of riparian habitat along the Milk River, which provides critical habitat for numerous species of birds and other wildlife, including habitat for species of conservation concern. Wetland and riparian habitat is critical in this state. In fact:
 - Over *one third* (196 species) of our state's terrestrial wildlife species—mammals, birds, reptiles, and amphibians—are considered "riparian/wetland obligates," which means they depend upon these areas for some part of their life cycle (MCFWCS 2005);
 - Almost *half* (265 species) of Montana's terrestrial wildlife species are known to use or frequent wetland or riparian habitats (MCFWCS 2005); and
 - *All* of Montana's 85 fish species depend on water bodies, especially rivers, streams, and lakes (Holton and Johnson 2003).
- **Protecting grasslands and sagebrush habitats.** Important grassland and sagebrush habitats provide habitat for species of conservation concern such as the Baird's Sparrow, Brewer's Sparrow, and Mountain Plover. This area may also contain important habitat for Sprague's Pipit and Greater Sage-grouse, which are both Candidate species under the federal Endangered Species Act. Protection for these two areas is critical because:
 - Native grasslands and native shrub habitats are important to protect from new development because many of the wildlife species associated with these habitats occupy large territorial ranges, are vulnerable to human disturbances, and disappear from the landscape if habitat patches become too small or fragmented. In fact, approximately 21 percent of the mammals, birds, reptiles, and amphibians associated with these two habitat types are considered Species of Concern in the State of Montana (MT Field Guide 2012).

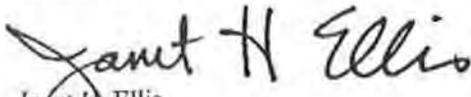
- These habitats are difficult—if not impossible—to restore once native vegetation has been removed. Consequently, it is important to prevent important native grassland and sagebrush habitats from being cultivated.
- **Protecting habitat for many game species.** This area provides important habitat for elk, white-tailed deer, mule deer, pronghorn antelope, as well as several upland game birds.

As one final comment, we noticed that the Management Plan's Objective 3 calls for "maintaining healthy wildlife populations within the available habitats." Curiously, virtually all the strategies for this objective are oriented towards game animals. Please consider adding several strategies that are not oriented towards game animals, such as the following:

- Maintain grassland and shrubland bird populations, especially Species of Concern.
- Maintain riparian vegetation to include key plant communities, including native overstory and understory species.

Thank you for the opportunity to comment on this project. Montana Audubon believes that this is an important project. We strongly urge FWP to complete the 'Proposed Action' alternative.

Sincerely,


Janet H. Ellis
Program Director

Smith, Kathy

From: Sullivan, Mark
Sent: Monday, November 05, 2012 6:55 AM
To: BENF@NEMONT.NET
Subject: FW: Buffalo Coulee

Hi Ben,

Montana Fish Wildlife and Parks has been directed by the Legislature to pursue lands projects, like Buffalo Coulee. The 1987 Montana Legislature saw the introduction of HB 526, which would be funded by fees from hunting licenses. The debate in the legislature was between those who did not want the Department buying land and those who saw habitat as the foundation for the future. The compromise by the legislature was authority given to the Department to acquire interests in land, with the legislature directing the agency to attempt conservation easements or lease before fee title purchase. Fee title purchase was still allowed because the legislature understood the seller of land would determine which method was in his best interests. HB 526 became reality and approximately 92% of revenue for this program comes from nonresident hunting licenses.

Please note that the Buffalo Coulee project is not a purchase, but would be a conservation easement so it would stay a working ranch, but would have managed grazing to improve range conditions and would be open for hunting in perpetuity. Also the landowner would continue to pay taxes on this land.

Mark Sullivan
 Wildlife Program Manager
 Montana Fish, Wildlife & Parks

From: Ben [<mailto:benf@nemont.net>]
Sent: Thursday, November 01, 2012 8:57 PM
To: Smith, Kathy
Subject: Buffalo Coulee

Dear Kat,

2012 has been a new beginng for montana's, nothing new, no more poisoning coyotes, no more off trail to retrieve game, people selling out to fwp for veiwing areas, areas being closed becaure of FWP, and other out of state interest that will always continue, because of MT's low persons per acre..

I Would only like to know one thing, When did MT gov give the FWP the right to start purchasing land ? WHEN DID FWP BECOME OWNER OF MT PROPERTY WITH THE MONEY FROM MONTANA FISH WILD LIFE AND PARKS, without asking voters. We're the ones that have paid for the last 50 years to 400 years, this is one of the worst things that have happened to MT residents. Please send me an email as to what FWP was formed for orginal IN FACT DOCUMENTS, , It was not for purchasing property, so the MT fishing and hunting residents would pay your property taxes thourh license and fees, to see our licensce fees' continue to go up.

IN SHORT, YOU HAVE NO RIGHT TO PURCHASE THIS PROPERTY UNTIL THE VOTERS OF MONTANA HAVE THE RIGHT TO VOTE ON THIS.

PLEASE SHOW ME WHERE THE VOTERS OF MONTANA IN IT'S GLORY, HAVE EVER GIVEN FWP THE RIGHT TO USE OUR MONEY, AND PROCEEDS FOR OUTERSTATE REVENUE TO PURCHASE LAND WITHOUT VOTER CONSENT.

PLEASE REPLY,

814-2

TIMBER SALES

- A. Combest Parcels
- B. Off Center Salvage

**Land Board Agenda Item
August 18, 2014**

814-2A Timber Sale: Combest Parcels

**Location: Sanders County
Sections 6, 14 & 22, T19N-R26W**

Trust Benefits: Common Schools, Public Buildings

Trust Revenue: \$360,906.00 (estimated, minimum bid)

Item Summary

The Combest Parcels timber sale is approximately five miles south of Plains, Montana. The sale includes 12 harvest units totaling 393 acres with an estimated sale volume of 19,830 tons (2,705 MBF) of sawlogs and contains no old growth. The minimum bid value is \$18.20 per ton which would generate approximately \$26,754 for the Common Schools trust, \$334,152 for the Public Buildings trust, and \$68,017 in forest improvement fees. The sale is within the Habitat Conservation Plan (HCP) project area and complies with the HCP.

Harvest prescriptions would promote timber types historically found in the area and promote natural regeneration. Seed tree and shelterwood harvest prescriptions with regeneration retention will be utilized, promoting regeneration of ponderosa pine and western larch. Harvest activities have been designed to maintain and improve overall forest health, reduce fuel loadings, and increase forest productivity.

The proposed action would include approximately 3.3 miles of new road construction and approximately one mile of existing road reconditioning. Additionally, approximately 13.4 miles of existing system roads would be maintained and improved as needed to meet Forestry Best Management Practices.

In March 2008, scoping letters were mailed to interested parties, and public notice was published in area newspapers including the *Clark Fork Valley Press*. Foresters and specialists of the Department of Natural Resources and Conservation (DNRC) have reviewed the proposal and comments, analyzed conditions, and recommended harvest mitigation measures to reduce the potential for impacts. Those mitigations include: timing restrictions on a portion of the sale area for black-backed woodpecker nesting; retaining dense patches of shade tolerant sub-merchantable trees for lynx habitat; 50-foot no harvest buffers along fish bearing streams and allowing operations only on dry, frozen, or snow covered conditions.

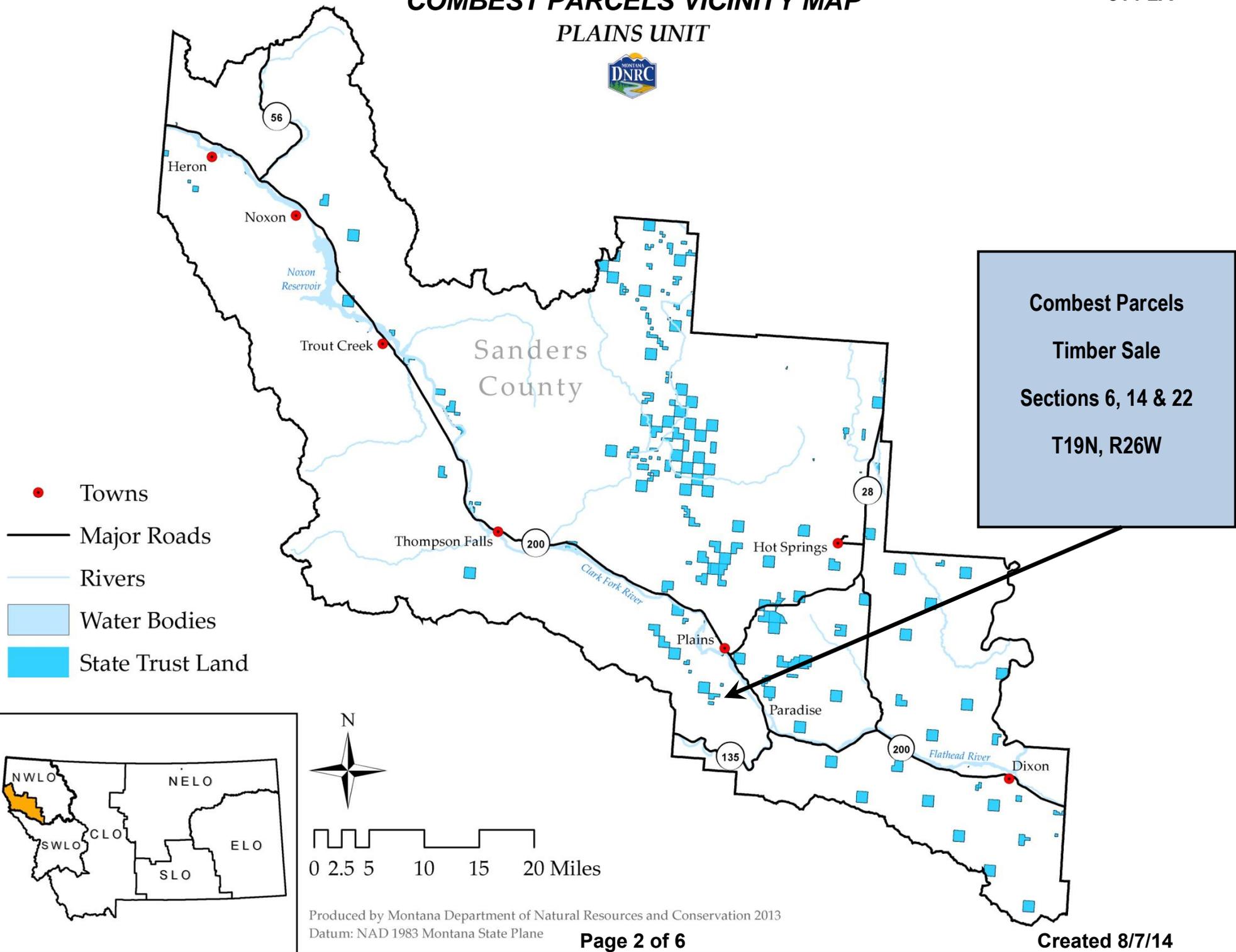
DNRC Recommendation

The director recommends the Land Board direct DNRC to sell the Combest Parcels timber sale.

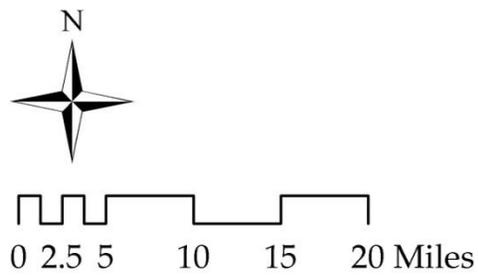
COMBEST PARCELS VICINITY MAP

814-2A

PLAINS UNIT

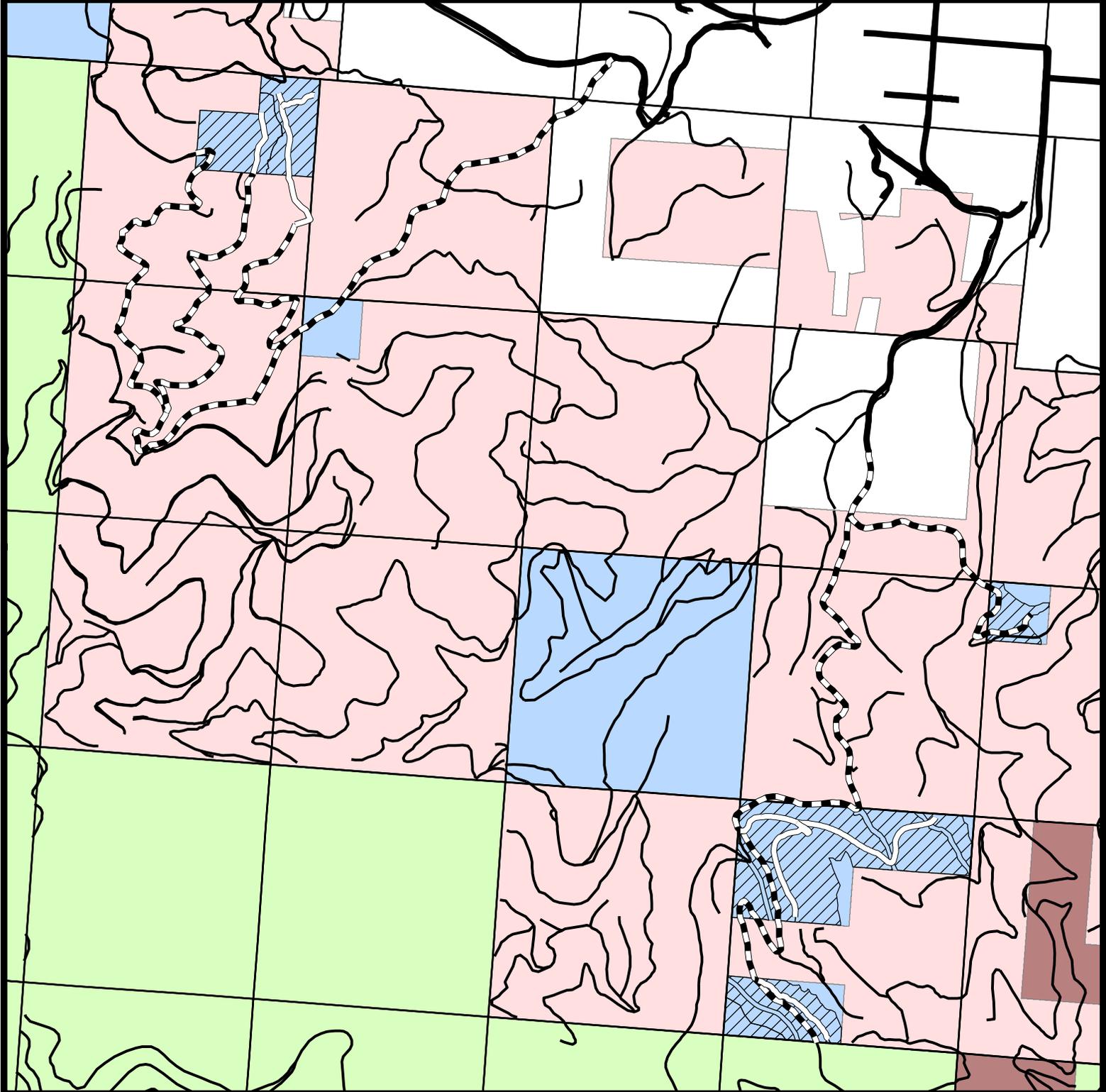


Combest Parcels
Timber Sale
Sections 6, 14 & 22
T19N, R26W



Produced by Montana Department of Natural Resources and Conservation 2013
Datum: NAD 1983 Montana State Plane

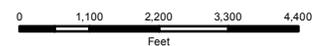
Combust Parcels-Haul Route Map Sec 6, 14, 22, T19N, R16W



Legend

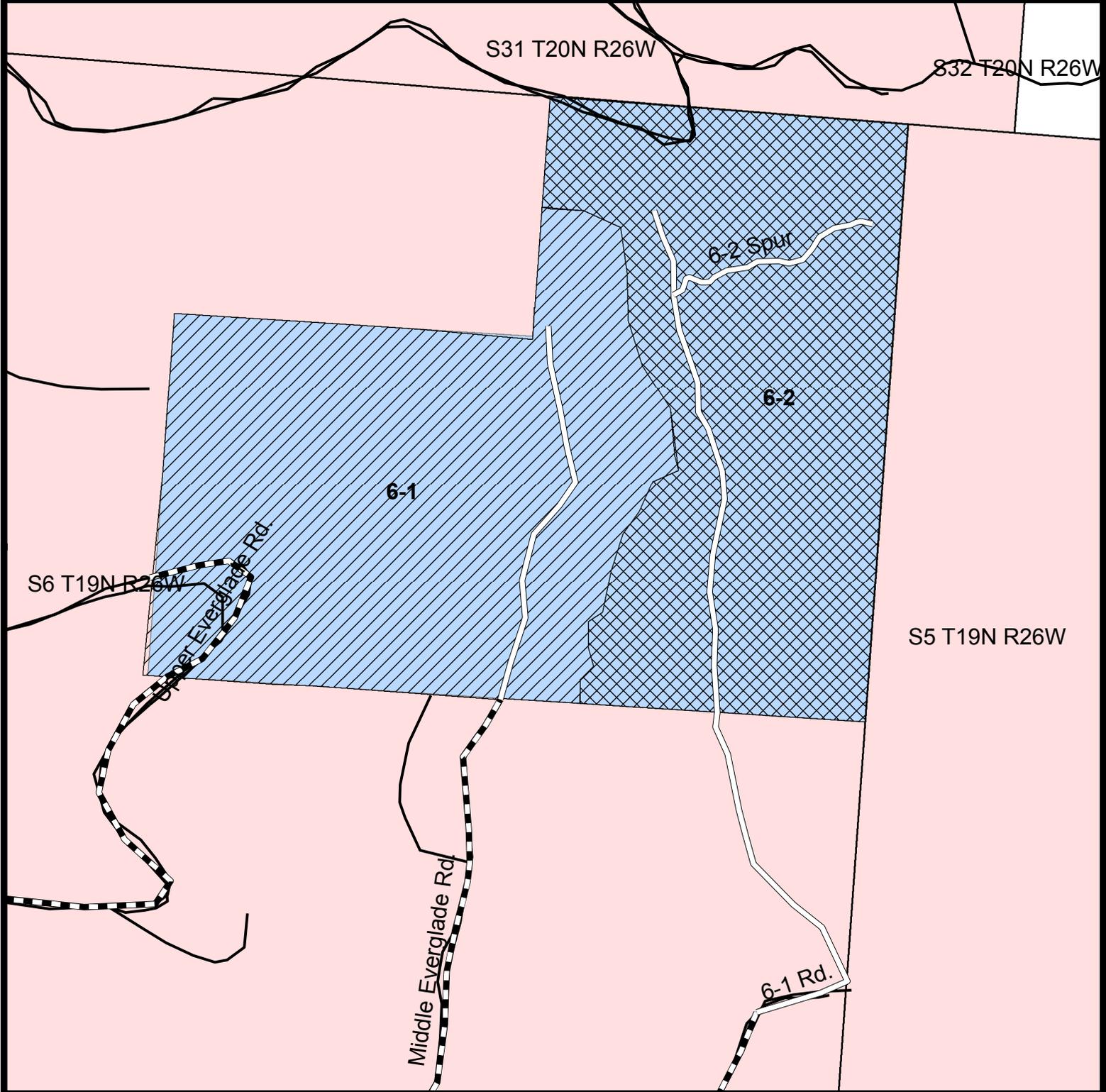
- | | |
|-------------------|----------------------|
| Haul Route | Combust_Units |
| Road_Type | Combust_Units |
| Existing | |
| New Construction | |
| County Roads | |

Montana DNRC
Northwestern Land Office
Timber-TFC 07/14



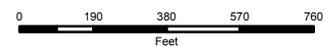
Combest Parcels-Harvest Map

Sec 6, T19N, R16W



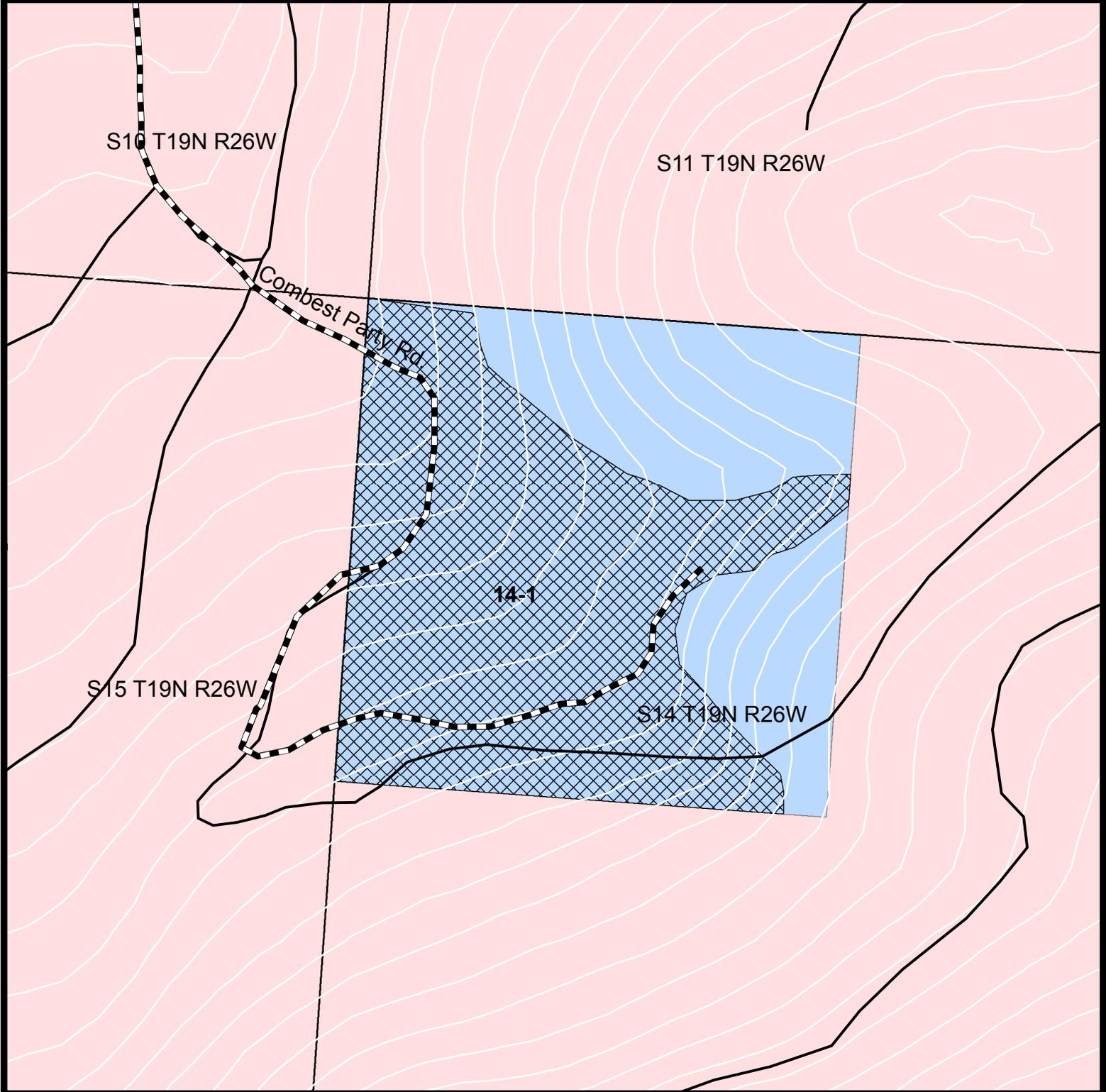
Legend	
Haul Route	Combest_Units
Road_Type	Method
Existing	Cable
New Construction	Optional
	Tractor

Montana DNRC
 Northwestern Land Office
 Timber-TFC 07/14



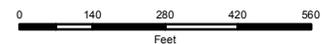
Combest Parcels-Harvest Map

Sec 14, T19N, R16W



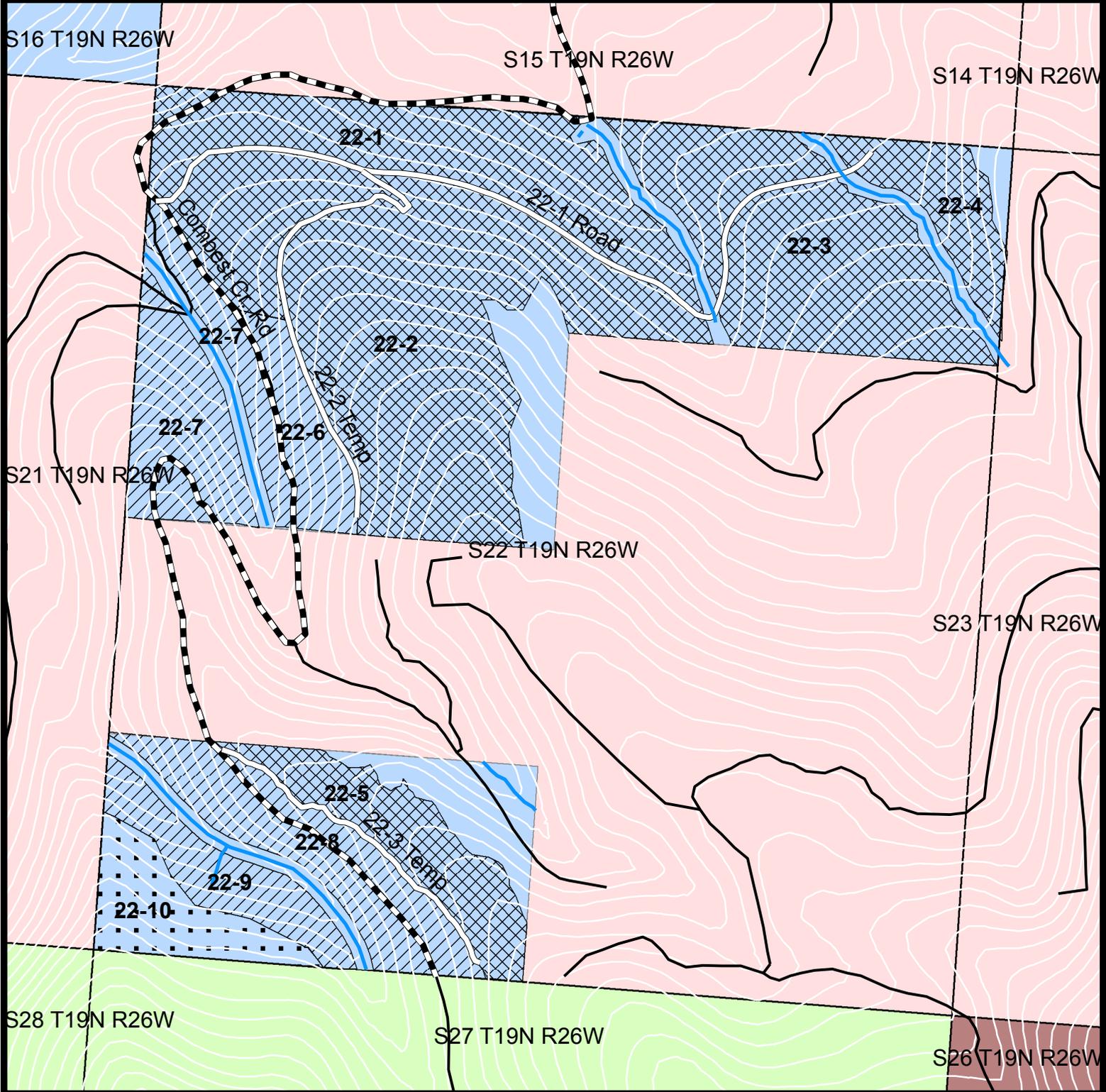
Legend	
Haul Route	Combest_Units
Road_Type	Method
Existing	Cable
New Construction	Optional
	Tractor

Montana DNRC
 Northwestern Land Office
 Timber-TFC 07/14



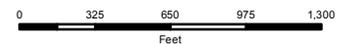
Combest Parcels-Harvest Map

Sec 22, T19N, R16W



Legend	
Haul Route	Combest_Units
Road_Type	Method
Existing	Cable
New Construction	Optional
	Tractor

Montana DNRC
 Northwestern Land Office
 Timber-TFC 07/14



**Land Board Agenda Item
August 18, 2014**

814-2B Timber Sales: Off Center Salvage

**Location: Gallatin County
Section 36, T2S-R7E**

Trust Benefits: Common Schools

Trust Revenue: \$74,286.00 (estimated, minimum bid)

Item Summary

The Off Center Salvage timber sale is approximately 12.5 air miles southeast of Bozeman, Montana. The sale includes four harvest units totaling 107 acres with an estimated sale volume of 4,127 tons (650 MBF) of sawlogs and contains no old growth. The minimum bid value is \$18.00 per ton, which would generate approximately \$74,286.00 for the Common Schools trust and \$5,324 in forest improvement fees. The sale is not within the Habitat Conservation Plan (HCP) project area.

Lodgepole pine stands in the project area have been affected by mountain pine beetle and all dead, dying, and at-risk trees will be removed. Douglas fir stands would be light to moderately harvested utilizing group selection/selection cuttings to reduce basal area and overstocking. Prescriptions would capture value while improving the health, vigor, and productivity of the residual forest stands and reduce susceptibility to fire and additional insect and disease.

The state lands would be accessed using a private road system. The landowner allowing access has imposed a restricted contractor pool of two potential bidders as a condition of use. In addition, harvest must be completed by March 1, 2015.

Approximately 1.7 miles of minimum standard new spur road construction would be required to access the proposed harvest units. Upon completion of the sale, the new road construction on state lands would be reclaimed and made impassible by placing slash and debris on the road surface. All roads would have long-term drainage features installed and reseeded with site-adapted grass.

Public involvement was solicited through legal publications in the *Bozeman Chronicle* and the *Livingston Enterprise*. Letters were also sent to individuals and interested parties. The project leader communicated with many of the respondents. Comments were received from adjacent landowners and the Department of Natural Resources and Conservation (DNRC). The main issues identified were aesthetics/viewshed, impacts to recreation, roads/access, and wildlife/big game habitat.

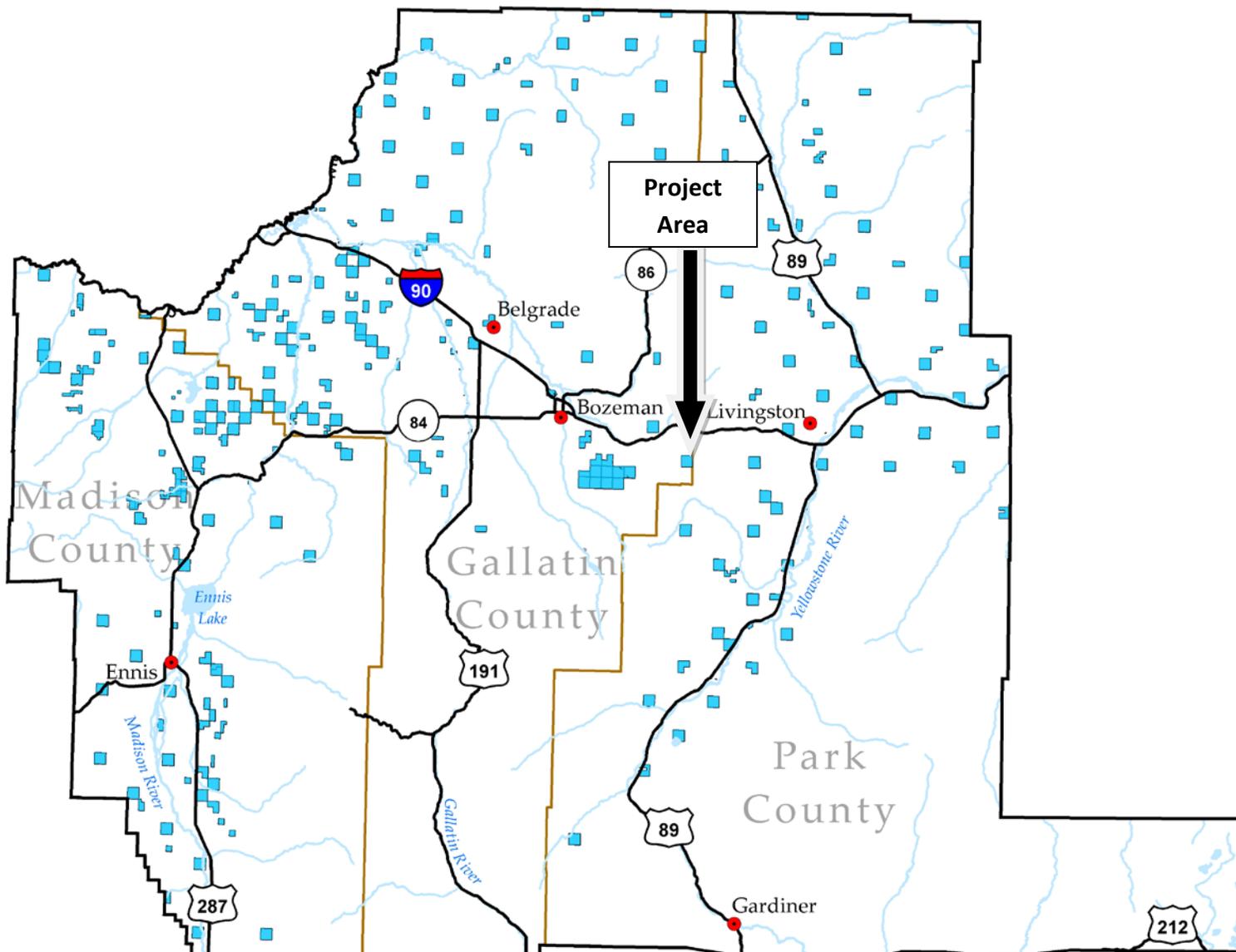
DNRC has reviewed the proposal and comments, analyzed conditions, and developed and recommended harvest mitigation measures to address concerns including but not limited to: retaining vegetation to maintain hiding cover, visual screening, and habitat corridors for wildlife movement; reclaiming new roads and making them impassible; continuing to restrict motorized public recreational use; conduct harvest and hauling activities during the winter months; controlling weed spread during and after the timber sale and restricting operations during the grizzly bear spring period.

DNRC Recommendation

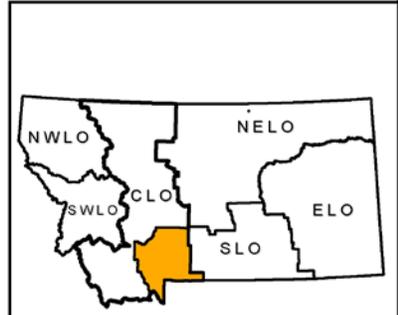
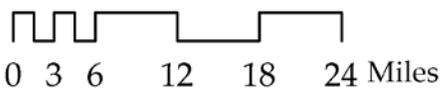
The director recommends the Land Board direct DNRC to sell the Off Center Salvage timber sale.

OFF CENTER SALVAGE VICINITY MAP BOZEMAN UNIT

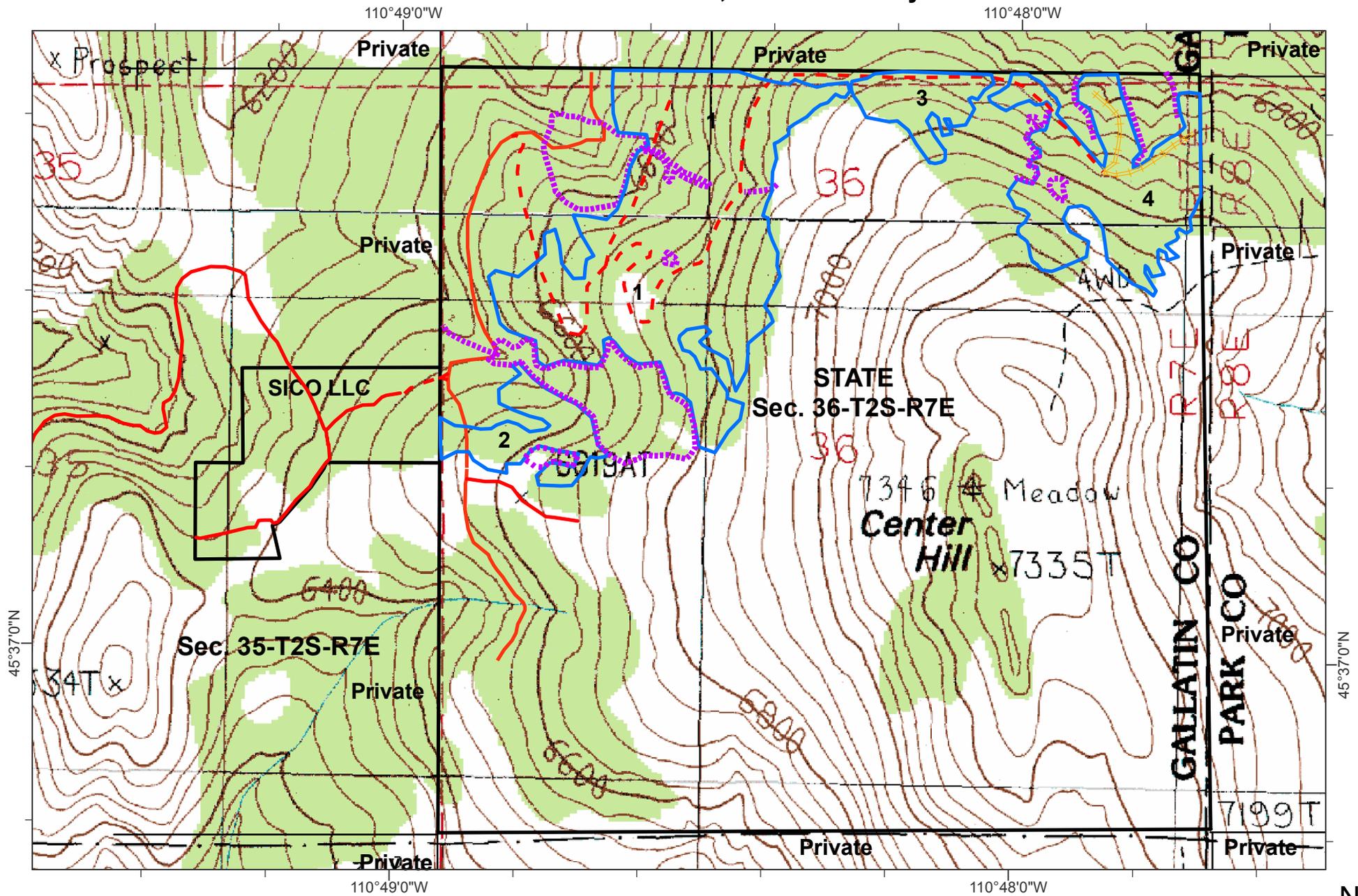
814-2B



- Towns
- Major Roads
- Rivers
- Water Bodies
- County Border
- State Trust Land



ATTACHMENT Off Center Salvage Timber Sale Section 36-T2S-R7E, Gallatin County



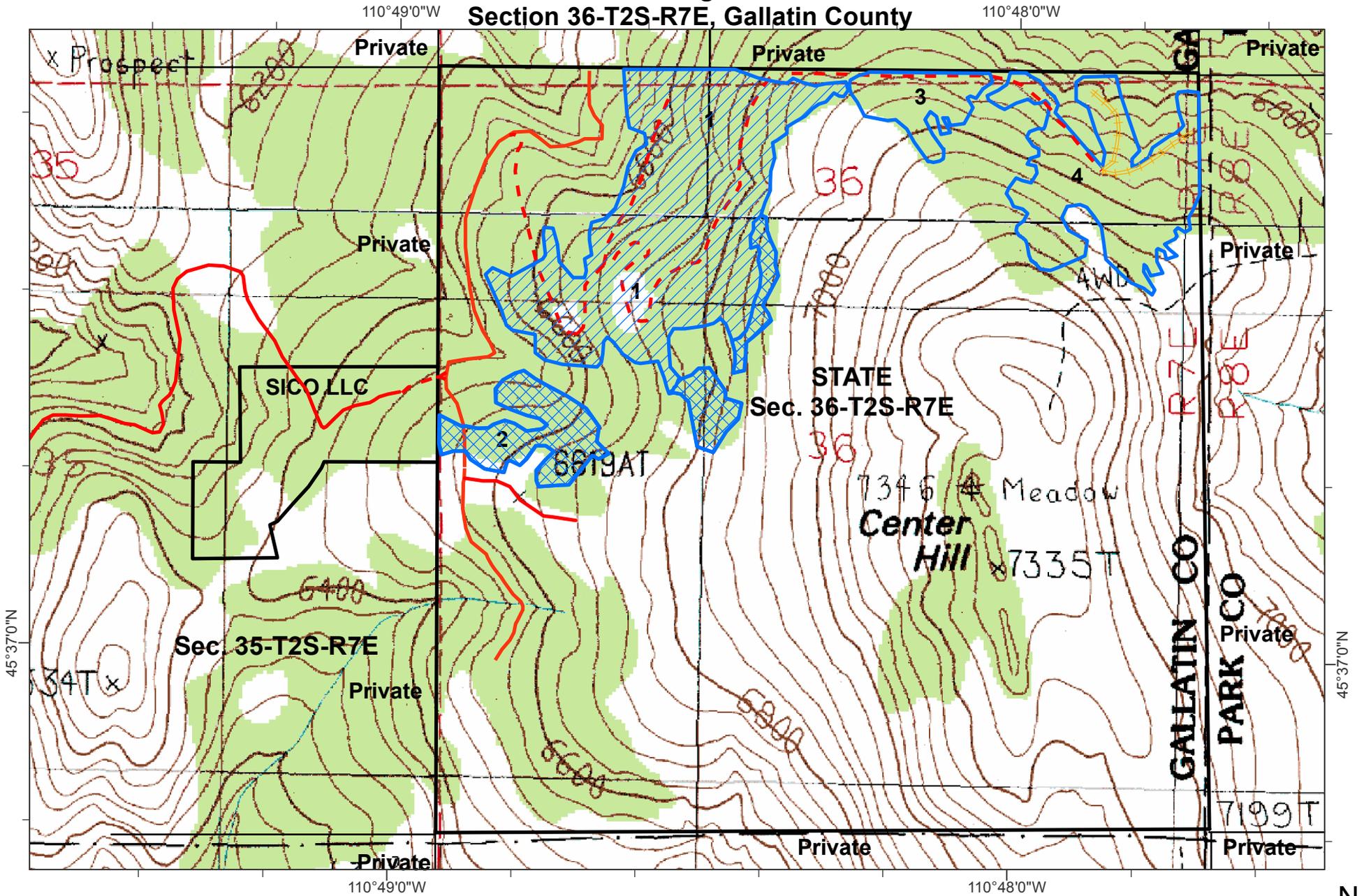
1:11,000

- Existing Road
- New Road
- Designated Skid Trail

- Harvest Areas
- SMZ/Wetland Area



ATTACHMENT Douglas Fir Harvest Restrictions Off Center Salvage Timber Sale Section 36-T2S-R7E, Gallatin County

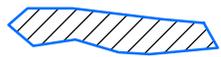


1:11,000

- Existing Road
- New Road
- Designated Skid Trail



Douglas Fir Removal
25% Maximum



Douglas Fir Removal
40% Maximum



814-3

COMMUNITIZATION AGREEMENT:
STATELINE 13-3635H WELL

Land Board Agenda Item
August 18, 2014

814-3 Communitization Agreement: Stateline 13-3635H Well

**Location: Roosevelt County
T28N R59E Sections 35 & 36**

Trust Benefits: Common Schools

Trust Revenue: Unknown

Item Summary

EOG Resources has filed a request with the Department of Natural Resources and Conservation (DNRC) for the approval of a communitization agreement to communitize state owned acreage in conformity with Montana Board of Oil and Gas Conservation Commission (BOGC) regulations.

A communitization agreement brings together small tracts sufficient for the granting of a well permit under applicable spacing rules. The agreement allows the state to receive its proper share of production from the spacing unit and must be approved by the Land Board and DNRC for state lands.

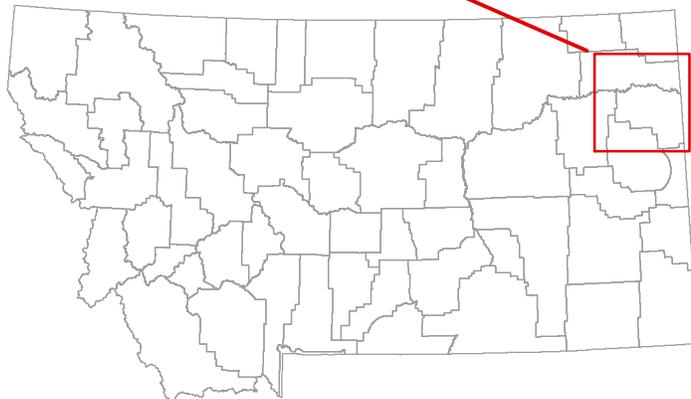
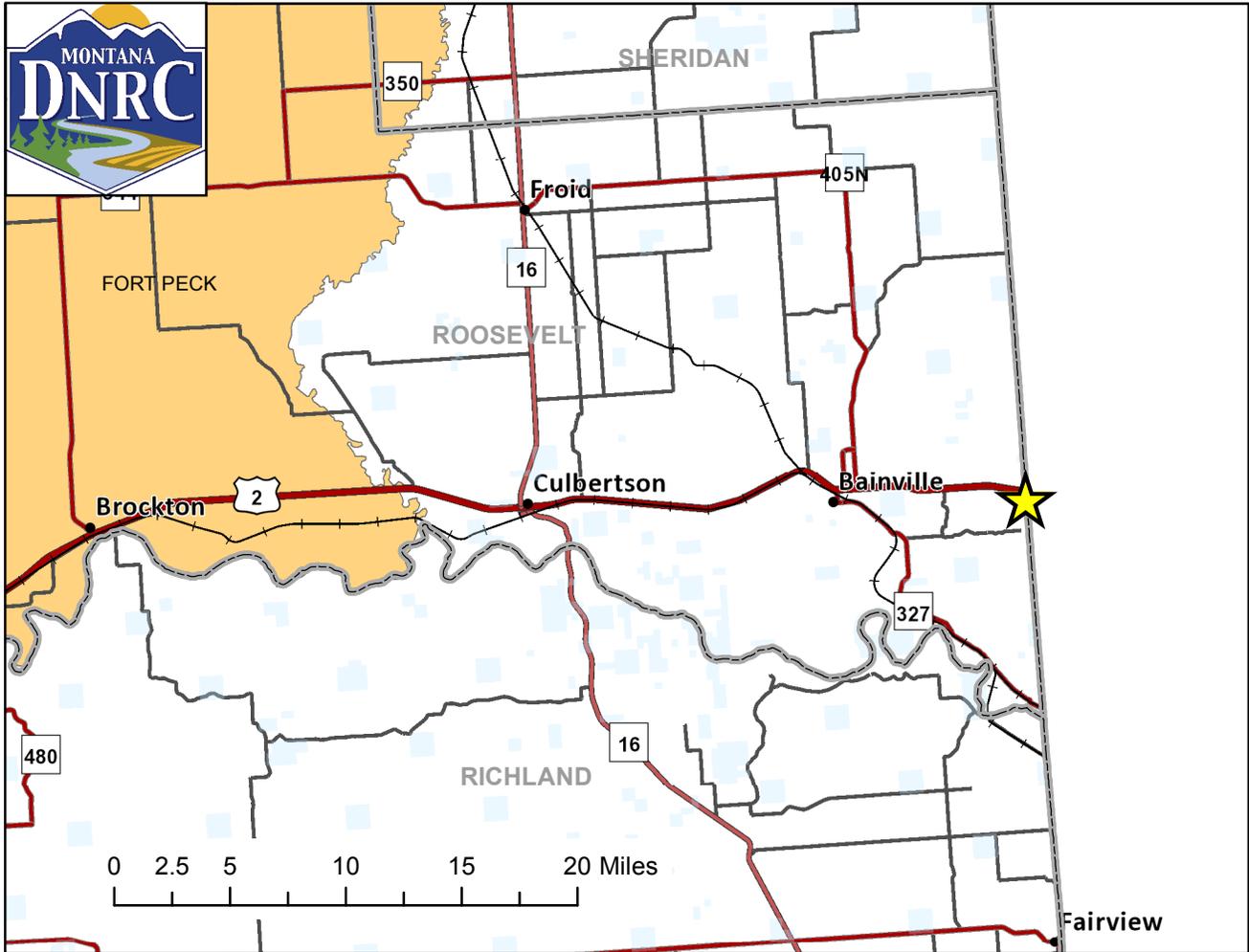
The Stateline 13-3635H well is a horizontal Bakken/Three Forks formation oil well. The well is located along the North Dakota border, approximately eight miles east of Bainville, Montana, and was drilled on state land on Lot 3 of Section 36. DNRC owns 196.96 acres of the 836.96 mineral acres in the permanent spacing unit that will be communitized. The agreement encompasses the Bakken/Three Forks Formation in Sections 35 and 36 of T28N R59E.

DNRC's tract comprises 23.532785 percent of the communitized area. DNRC will consequently receive 3.922915 percent of all oil production (16.67 percent royalty rate x 23.532785 percent tract participation).

DNRC Recommendation

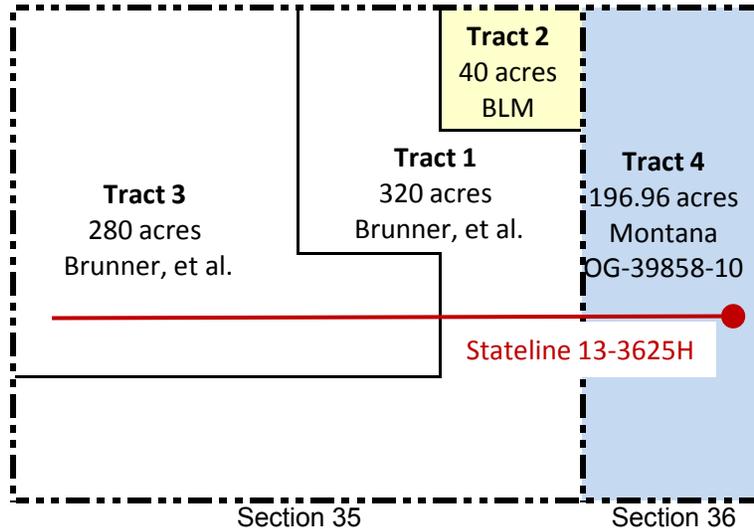
The director recommends the Land Board approve this communitization agreement.

Vicinity Map Stateline 13-3635H Well



Township 28 North 59 East

Sections 35 & 36



Recapitulation

Tract No.	Type	Acres	Tract Participation	Royalty %	Owners Interest Decimal
1	Brunner, et al.	320.00	38.233607%	various	0.07168801
2	BLM	40.00	4.779201%	12.50%	0.00597400
3	Brunner, et al.	280.00	33.454406%	18.75%	0.06272701
4	State of Montana	196.96	23.532785%	16.67%	0.03922915
Total		836.96	100.000000%		

* The operator of the communitized area is EOG Resources, Inc.

814-4

COMMERCIAL LEASE:
PROPOSED AGREEMENT –
VICTORY COMMONS – TKG LEASE

**Land Board Agenda Item
August 18, 2014**

814-4 Commercial Lease: Proposed Agreement – Victory Commons – TKG Lease

Location: Flathead County

Trust Benefits: Common Schools

Trust Revenue: \$170,838 annually

Item Summary

This item was previously brought before the Land Board for its review and approval at the board's April 21, 2014 meeting. The board had approved this lease for execution by June 1, 2014. The lease was not executed as expected because the proposed lessee required additional time to conduct an environmental investigation and review of the local site conditions. The Department of Natural Resources and Conservation (DNRC) recognized that such an investigation was a prudent request by the proposed lessee and issued to the proposed lessee a land use license authorizing it to conduct its environmental investigation on site for a three-month period of time in return for the licensee's payment of a fee of \$15,000. This land use license expires August 31, 2014. The prospective lease presented by this agenda item is proposed to become effective September 2, 2014.

Due to the delay in issuing this lease, and to ensure that the trust beneficiary will receive the full market value of this lease, DNRC sought an update to the appraisal for this property. This update to the appraisal was conducted by Barrie Appraisal & Consulting and found the land value had increased from \$2.50 per square foot to \$2.53 per square foot. This resulted in a slight increase to the proposed lease fee and subsequent language in the lease document. DNRC is bringing this item again to the board for its review and approval based upon the changes to the effective date of the lease and the revised lease rental fee calculation.

DNRC is requesting approval to issue a long term lease for 28.236 acres within the southeast quarter of Section 36, Township 29 N, Range 22 W, in Flathead County. The lease area is commonly referred to as the Victory Commons Commercial Lot and is composed of lands that were formerly the old DNRC Northwestern Land Office site and a portion of the Kidsports lease. The site is located on the corner of US Highway 93 and Reserve Loop in Kalispell, Montana.

TKG Spring Prairie Development Four, LLC, whose address is 211 North Stadium Boulevard, Suite 201, Columbia, Missouri, 65204, plans to develop, lease, and manage the Victory Commons Project. The project is envisioned as the leading shopping, dining, and entertainment destination in Kalispell.

The proposed use conforms to uses deemed appropriate for this location by the City of Kalispell and conforms to city zoning, which is P-1 Public; however, the developer will be responsible for making application to the City of Kalispell for site plan review and will be subject to design and construction standards of the city.

Lease Area: 28.236 acres

Term: 25 years with options to renew for 14 additional five-year terms and one four-year term, for a maximum lease term of 99 years.

Rent: Base rent will be 5.49 percent of market value, or \$170,838 per year for year 2 through year 10. For years 11 through 20, annual rents will be \$187,922. A market adjustment to rent will be made in year 21 when a reappraisal occurs. Year 1 rent will be \$64,064, and the lessee will be allowed to apply the 10 percent bid deposit against the rent due.

- Improvements:** TKG Spring Prairie Development Four, LLC will be responsible for extension and construction of all improvements with no cost obligations to DNRC. All improvements will revert to the lessor (DNRC) at termination.
- Utilities:** Lessee will install water, sewer, and utilities to serve the planned development.
- Taxes:** Lessee will pay taxes and specials assessments assessed by the City of Kalispell, and/or Flathead County.
- Insurance:** Lessee is required to obtain and maintain liability, property, and worker's compensation insurance.
- Financing:** The state trust land cannot be hypothecated. The lessee has the right to execute leasehold mortgages for the above ground improvements.
- Liens:** Lessee liens may not be recorded, filed, claimed, or asserted against the premises
- Security Deposit:** Lessee agrees to pay the lessor a security deposit of \$50,000.

DNRC Recommendation

The director recommends that the Land Board approve the issuance of a commercial lease agreement to TKG Spring Prairie Development Four, LLC.

**Commercial Lease Location Map
Kalispell, Montana**



BARRIE APPRAISAL & CONSULTING, LLC

359 North Main Street

P. O. Box 1235

Kalispell, MT 59903-1235

Phone: 406.257.8921 Fax: 406.257.8949

lbarrie@bresnan.net

July 16, 2014

Mr. Steve Lorch
Department of Natural Resources and Conservation
Northwestern Land Office
655 Timberwolf Parkway, Suite 1
Kalispell, Montana 59901

Re: Victory Commons
Reserve Loop & Highway 93
Kalispell, Montana

Dear Steve:

It was requested that we determine a value per sq.ft for the above referenced appraisal at 28.236 acres or 1,229,960 sq.ft. Using the chart in the report and deducting the cost to remove the buildings produced the following rounded opinion of market value:

Final Opinion of Market Value: 1,229,960 sq.ft: \$2.53/sq.ft.

The revision to the actual report will be maintained in my file and will be furnished upon request.

If you have any questions, or are in need of any further information, please contact me.

Respectfully submitted,



Lloyd S. Barrie, MAI, SRA
Montana Certified General Appraiser
License #: REA-RAG-LIC-148

**VICTORY COMMONS
COMMERCIAL LEASE
KALISPELL, MONTANA
LEASE NO. 3053444**

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VICTORY COMMONS COMMERCIAL GROUND LEASE

KALISPELL, MONTANA

THIS COMMERCIAL LEASE (this “Lease”) is entered into as of this _____ day of _____, 2014, by and between the Montana State Board of Land Commissioners, whose address is P.O. BOX 201601 Helena, MT 59620-1601 (hereinafter referred to as “Lessor”), and TKG Spring Prairie Development Four, LLC, whose address is 211 North Stadium Boulevard, Suite 201, Columbia, Missouri 65203, hereinafter referred to as the “Lessee”.

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. In this Lease, the following defined terms have the meanings set forth for them below or in the section of this Lease indicated below:

“Adjacent Property” is defined in Section 4.7.

“Affiliates” means, with respect to any party, any entities or individuals that control, are controlled by, or are under common control with such party, together with its and their respective partners, members, venturers, directors, officers, shareholders, trustees, trustors, beneficiaries, agents, employees and spouses.

“Approvals” means all governmental and quasi-governmental approvals and permits necessary for Lessee’s development of the Land and Improvements acceptable to Lessee, including, without limitation, all governmental and quasi-governmental land use and other approvals and permits.

“Approval Documents” is defined in Section 4.1.

“Base Rent” means that rental defined in Section 3.1 and calculated per **Exhibit B**, Rental Schedule.

“Base Rent Commencement Date” means the date occurring one year after the commencement of the lease.

“Building” means any enclosed building constructed or installed upon the Land.

“Commencement Date” means date that this Lease has been duly executed by Lessee and Lessor.

“Commercial Purpose” means an industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated recreational use, multifamily residential development, and other similar business. The term does not include the following uses: (i) agriculture; (ii) grazing; (iii) exploration or development of oil and gas, mineral, and geothermal resources; (iv) single-family residences, home sites, and cabin sites; and (v) utility rights-of-way.

“Default by Lessee” has the meaning set forth in Section 15.

“Default by Lessor” has the meaning set forth in Section 16.

“Default Rate” is 12% per year calculated monthly.

“Deliveries” is defined in Section 2.7.

“Environmental Claims” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations or proceedings relating in any way to any Environmental Law (hereafter, “Claims”) or any permit issued under any such Environmental Law, including, without limitation (a) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Substances or arising from alleged injury or threat of injury to health, safety or the environment.

“Environmental Laws” means any existing and future Laws relating to, or imposing liability or standards of conduct concerning the protection of human health, the environment or natural resources, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling, Releases or threatened Releases of Hazardous Substances, including, without limitation, The Comprehensive Environmental Cleanup and Responsibility Act, 75-10-701, et seq., MCA; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; and the Safe Drinking Water Act, 42 U.S.C. § 300(f), et seq.

“Expiration Date” means the last day of the 25th Lease Year, or the day on which Term otherwise ends.

“Hazardous Substances” means any and all substances, materials or wastes that are declared to be, or defined or regulated as, hazardous or toxic in CECRA, Section 75-10-701, et seq., MCA, or under any Environmental Law.

“Improvements” mean any Buildings, structures, pavement, landscaping, lighting fixtures or other improvements now or later installed or constructed upon the Land.

“Indemnified Matters” is defined in Section 5.3(b).

“Land” means the real property consisting of approximately 28.2 acres located within Section 36 in Township 29 North, Range 22 West, MPM, in the City of Kalispell, Flathead County, Montana, that is more particularly described on **Exhibit A**, together with all reversions, remainders, easements, rights-of-way, appurtenances, agreements, licenses,

tenements and hereditaments appertaining to or otherwise benefiting or used in connection with said real property, and together with possession of any strips of land, rights-of-way, streets and alleys running through or abutting or adjoining such real property, and together with any and all sanitary or storm sewer capacity, and without limitation, all development rights and approvals, and as amended by any Subdivision Plat approved by the City of Kalispell.

“Late Fee” means a fee equal to 10% of the portion of any rental which the Lessee fails to remit in a timely manner.

“Laws” means, subject to Section 5.2, any and all present or future federal, state or local laws (including common law), statutes, ordinances, rules, regulations, orders, decrees or requirements of any and all governmental or quasi-governmental authorities having jurisdiction over the Land described in this Lease.

“Lease Rate” is 5.49%; the percentage of market value that the successful bidder offered for the lease that meets or exceeds the minimum rent in accordance to 77-1-905, MCA.

“Lease Year” means: The first “Lease Year” means up to a one-year period starting on the Commencement Date and ending on the first occurrence of the last day of February. Each successive “Lease Year” is the one-year period during the Term from March 1 to the last day of February.

“Leasehold Mortgage” means any mortgage, deed of trust, assignment of rents, assignment of leases, security agreement or other hypothecating instrument encumbering Lessee’s interest under this Lease or the leasehold estate in the Premises hereby created, Lessee’s rents and other sums due from any Sublessees, Lessee’s rights under Subleases and any other agreements executed in connection with Lessee’s operation of the Premises, or Lessee’s interest in any fixtures, machinery, equipment, Land, Buildings, Improvements or other property constituting a part of the Premises.

“Leasehold Mortgagee” means the holder(s) of any promissory note or the obligee(s) of any other obligation secured by a Leasehold Mortgage.

“Lessee’s Address” means:

TKG Spring Prairie Development Four, LLC
Attention: Jason Gannon
211 North Stadium Boulevard, Suite 201
Columbia, Missouri 65203)

“Lessor’s Address” means:

Montana Department of Natural
Resources and Conservation
Attn: Real Estate Management Bureau Property Mgmt Section
1625 Eleventh Avenue
PO BOX 201601
Helena, MT 59620-1601

With copies to:

DNRC – Kalispell Unit Office, Attn: RE Planner
655 Timberwolf Parkway Suite 2
Kalispell, MT 59901-1215

“Market Adjustment” is defined in **Exhibit B, Schedule 1**.

“Major Amendment” is defined in Section 4.1.

“Premises” means the Land and all Improvements.

“Project” means a Commercial Purpose development to be constructed on the Premises.

“Proof” is defined in Section 8.5.

“Property” is defined as real property owned by the Lessor and described under the “Land” definition.

“Qualified Mortgagee” means any Leasehold Mortgagee who notifies Lessor in writing of its name, its address for notices and the fact that it is a Leasehold Mortgagee and includes with such notice a copy of any Leasehold Mortgage by virtue of which it became a Leasehold Mortgagee. Notwithstanding the foregoing or any other provision of this Lease to the contrary, Lessor will have no obligation to recognize more than three Leasehold Mortgagees as Qualified Mortgagees at any given time. If more than three Leasehold Mortgagees exist, then Lessee will notify Lessor in writing of the three Leasehold Mortgagees that Lessor should recognize. If Lessee fails to notify Lessor of the three Leasehold Mortgagees that Lessor should recognize, then Lessor will recognize the three first in time Leasehold Mortgagees that have notified Lessor.

“Quarter” means a those portions of a Lease Year, as follows: Quarter 1 March 1st – May 31st, Due March 1; Quarter 2 June 1st – August 31st, Due June 1st; Quarter 3 September 1st - November 30th, Due September 1; and Quarter 4 December 1st – February 28th, Due December 1.

“Reduced Rent” means an amount equal to three-eighths of the Base Rent. The \$16,881 bid deposit, which has been prepaid by or assigned to The Kroenke Group or its Affiliate to the Lessor as part of a Proposal for a Commercial lease on the South half of Section 36, Twp. 29 North, Rge. 22 West may be applied to the reduced rent payment obligation, with the approval of The Kroenke Group. The terms of payment of Reduced Rent are more particularly set forth in Section 3.2.

“Reduced Rent Term” is a period starting at the commencement of the Lease and continuing for one year.

“Release” means disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing or the like, into or upon any land, surface water, groundwater or air, or otherwise entering into the environment.

“Renewal Terms” is defined in Section 2.2.

“Rent” means Reduced Rent, Base Rent, and all other amounts required to be paid by Lessee under this Lease.

“Requested Activities” is defined in Section 4.5.

“Required Changes” is defined in Section 4.7.

“Required Changes Costs” is defined in Section 4.7.

“Required Changes Invoice” is defined in Section 4.7.

“Required Changes Notice” is defined in Section 4.7.

“Security Deposit” means \$50,000, together with all interest thereon, and is further defined in Section 17.1.

“Sublease” means a sublease, license, concession or other agreement (whether written or oral) according to which Lessee grants any party the right to possess all or any portion of the Premises.

“Sublessee” means any party to whom Lessee grants the right to possess all or any portion of the Premises according to a Sublease.

“Substantial Damage” means any damage or destruction which, in Lessee’s and Lessor’s reasonable judgment, will materially and adversely interfere with any development or use of the Premises or improvements existing thereon from time to time; with any access or parking for the Premises, the use of any Building, or will cause the Premises to be in violation of Laws or any Design Guidelines, or which entitles Sub-lessee to terminate its Sublease.

“Substantial Taking” means a Taking of at least 15% of the Land area, or a Taking which, in Lessee’s and Lessor’s reasonable judgment, will materially and adversely interfere with any development or use of the Premises that Lessee is then conducting; with any access or parking for the Premises, the use of any Building, or will cause the Premises to be in violation of Laws or any Design Guidelines, or which entitles Sub-lessee to terminate its Sublease.

“Taking” means the taking of all or any portion of the Premises as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use or the sale or conveyance of all or part of the Premises under the threat of condemnation.

“Taking Date” means, with respect to any Taking, the date on which physical possession of the portion of the Premises that is the subject of such Taking is transferred to the condemning authority.

“Taxes” means all general ad valorem real and personal property taxes and assessments levied upon or with respect to the Premises or the personal property used in operating the Premises, and all taxes, levies and charges which may be assessed, levied or imposed in addition to, or in replacement of, all or any part of ad valorem real or personal property taxes or assessments as revenue sources, and which in whole or in part are measured or calculated by or based upon the Premises, the leasehold estate of Lessor, Lessee or the Sublessees, or the rents and other charges payable by Lessee or the Sublessees. Taxes will not include any net income taxes of Lessor. Taxes shall also include any so-called “beneficial” use taxes imposed by Laws.

“Tax Year” means a 12-month period for which Taxes are assessed by the applicable taxing authority.

“Term” means the duration of this Lease, beginning on the Commencement Date and ending on the Expiration Date, unless terminated earlier or extended further as provided in this Lease.

“Utility Lines” means water, sanitary sewer, storm sewer, electric, telephone and natural gas transmission lines.

1.2 Exhibits. The Exhibits listed below are attached to and incorporated in this Lease. In the event of any inconsistency between such Exhibits and the terms and provisions of this Lease, the terms and provisions of the Exhibits will control. The Exhibits to this Lease are:

- A. Legal description of the land
- B. Base Rent Exhibit, with Schedule 1 – Market Adjustment Provisions
- C. Power of Attorney
- D. Ground Lessor Non-Disturbance and Attornment Agreement
- E. Action Authorizing Lessor

2. LEASE TERM.

2.1 Lease. Subject to the terms, covenants, conditions and provisions of this Lease, Lessor leases to Lessee and Lessee leases from Lessor the Premises for the Term of 25 years. However this lease shall automatically terminate should Lessee fail to begin construction of commercial improvements within 24 months of the commencement date of this Lease.

2.2 Lessee’s Renewal Option. Subject to the terms and provisions of this Section 2.2, Lessee, at its option, may extend the Term of this Lease for 14 additional 5-year terms and one 4-year term, collectively, the “Renewal Terms”) as more particularly set forth in

Exhibit B; provided, however, that in no event shall the Term be extended by the last of such Renewal Terms to a date that is later than 99 years after the Commencement Date, per MCA 77-1-904 (1). To exercise each such option, Lessee must deliver notice of the exercise thereof to Lessor no later than 120 days prior to the expiration of (a) the initial Term as described in Section 2.1, in the case of Lessee's option with respect to the first Renewal Term, or (b) the Term as extended by the previously exercised Renewal Term. Should Lessee fail to give said timely notice, and Lessor gives notice to Lessee that the lease is therefore terminated, Lessee shall have thirty days to cure notice provision and to exercise extension option.

2.3 Termination Right. At any time prior to the first anniversary of the date of this Lease, Lessee may give Lessor written notice setting forth Lessee's election to terminate this Lease, whereupon the Security Deposit will be returned to Lessee, this Lease shall terminate and both parties shall be relieved from any further liability hereunder, except for any liabilities and obligations which by their terms survive any termination of this Lease.

2.4 Notice of Sale Lessor will notify Lessee of any effort by Lessor to sell Lessor's interest in the Premises consistent with all land sale regulations as authorized by statute in effect at that time.

2.5 Lessor and Lessee Covenants. Lessor covenants to observe and perform all of the terms, covenants and conditions applicable to Lessor in this Lease. Lessee covenants to pay the Rent when due, and to observe and perform all of the terms, covenants and conditions applicable to Lessee in this Lease.

2.6 Quiet Enjoyment. Lessor covenants that during the Term Lessee will have quiet and peaceful possession of the Premises, subject only to the terms and conditions of this Lease.

2.7 Lessor's Deliveries. Except as otherwise provided below, Lessor will, within 10 days after the Commencement Date, allow the Lessee to examine the Lessor's business records during regular business hours, and copy at the Lessee's sole expense, the following documents (collectively, the "Deliveries"):

(a) Any land title status reports or title insurance policies in Lessor's possession or control together with any copies of documents referenced therein and any surveys of the Land currently in Lessee's possession or control, copies of any annual real estate tax bills, copies of all plats, plans, specifications, architectural drawings, engineer's drawings and any street improvement specifications currently in Lessee's possession or control.

(b) All environmental studies, reports and information in Lessor's possession or control, including, without limitation, correspondence from any governmental or quasi-governmental authorities having jurisdiction over the Land, concerning the environmental condition of the Land.

(c) Any other documents in any way related to the development, usage, operation or marketability of the Land which are in the possession or control of Lessor, including, any surveys, any environmental tests soils tests and engineering- tests, and any appraisals, reports and other studies ordered or performed at the direction of Lessor.

2.8 Representations, Warranties and Certifications.

(a) Authority. To the best of Lessor's knowledge, information, and belief, Lessor represents, warrants and covenants to Lessee that Lessor (i) is a lawfully constituted board, duly organized, validly existing, and in good standing under the laws of the State of Montana; (ii) has the authority and power to enter into this Lease and to consummate the transaction contemplated herein; and (iii) upon execution hereof will be legally obligated to Lessee in accordance with the terms and provisions of this Lease; and that, by the Commencement Date, all necessary and appropriate action will have been taken by Lessor to authorize the execution of and entry into this Lease, the execution and delivery by Lessor of all documents and instruments to be executed by Lessor by the Commencement Date and the performance by Lessor of Lessor's duties and obligations under this Lease and of all other acts necessary and appropriate for the consummation of the lease of the Premises as contemplated herein. Without limiting the foregoing, Lessor represents and warrants that the execution and terms of this Lease have been duly approved by the Montana State Board of Land Commissioners. A copy of the resolution, consent or other action authorizing Lessor's execution and delivery of this Lease is attached hereto as Exhibit E.

(b) Conflicts. Lessor represents, warrants and covenants to Lessee that, to the best of Lessor's knowledge, information and belief, the execution and entry into this Lease, the execution and delivery of the documents and instruments to be executed and delivered by Lessor by the Commencement Date and the performance by Lessor of Lessor's duties and obligations under this Lease and of all other acts necessary and appropriate for the full consummation of the lease of the Premises as contemplated herein are consistent with and not in violation of, and will not create any adverse condition under, any contract, agreement or other instrument to which Lessor is a party, or any judicial order or judgment of any nature by which Lessor is bound.

(c) Condemnation. Lessor represents and warrants to Lessee that Lessor has received no notice of, nor is Lessor aware of, to the best of Lessor's knowledge, information, and belief any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in any part of the Premises being taken by condemnation or conveyed in lieu thereof.

(d) Title Matters. Lessor certifies to Lessee that, to the best of Lessor's knowledge, information, and belief no easement, encumbrance or other matters of record or other agreement which will be binding on the Premises or any tenant or occupant thereof during the Term has been granted by Lessor, except for matters disclosed by the land title status reports or title insurance policies delivered to Lessee pursuant to Section 2.7(a).

2.9 Condition of Premises. Except as expressly set forth in this Lease, Lessee accepts possession of the Premises on the Commencement Date in their then-current condition on an "AS IS, WHERE IS AND WITH ALL FAULTS" basis.

3. RENT.

3.1 Reduced Rent and Base Rent. On or before Commencement of the Lease, the Lessee shall pay Reduced Rent to the Lessor. Thereafter, commencing on the Base Rent Commencement Date and then throughout the Term, Lessee agrees to pay Lessor, without deduction or offset of any kind or prior notice or demand, Base Rent according to the following provisions: Base Rent during each Lease Year will be payable in quarterly installments in an amount equal to 1/4 of the annual amount specified in the Base Rent Schedule (as hereinafter discussed) for such Lease Year, in advance, on or before the first day of each and every Quarter during the Term commencing on the Base Rent Commencement Date. However, if the Base Rent Commencement Date is not the first day of a Quarter or the Term ends on other than the last day of a Quarter, Base Rent for such Quarter will be appropriately prorated based on the number of days in such Quarter, and the applicable payment that involves such Quarter will correspondingly be appropriately prorated. All rent will be calculated according to the Rental Schedule, Exhibit B and Schedule 1 thereto.

3.2 Terms of Payment. Pursuant to Section 77-1-905(1), MCA, the First Year's annual rental payment for state trust land leased for Commercial Purposes in the amount \$47,183 (representing \$64,064 of Reduced Rent minus the \$16,881 bid deposit) is being paid concurrently with the execution of this Lease by Tenant. All Rent will be paid to Lessor in lawful money of the United States of America, at Lessor's Address, without notice or demand and without right of deduction, abatement or setoff, or to such other person or at such other place as Lessor may from time to time designate by 30 days' prior written notice to Lessee. Lessee hereby acknowledges that late payment by Lessee to Lessor of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any installment of Rent shall not be physically received by Lessor at Lessor's address when such amount is due, then, without further notice, Lessee shall pay to Lessor a late charge equal to 10% of the overdue amount within 10 days thereafter. The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that Lessor will incur by reason of a late payment by the Lessee.

3.3 Net Lease; Additional Rent. It is the intent of the parties that the Base Rent provided in this Lease will be a net payment to Lessor and that, except as expressly provided in this Lease, Lessor will not be required to pay any costs or expenses or provide any services in connection with the Premises and Lessee will bear all costs and expenses relating to the Premises, unless the same arise from Lessor's gross negligence, willful misconduct or breach of this Lease or other legal duty. Accordingly, Lessee covenants and agrees to pay, in addition to Base Rent, as additional Rent, but subject to the foregoing and the other provisions of this Lease, all costs and expenses relating to the Premises which accrue during or are allocable to the Term, including, without limitation: (a) the entire cost of designing, constructing or altering the Improvements; (b) insurance costs; (c) taxes and special assessments; (d) utility charges; and (e) maintenance and repair expenses and responsibilities, as provided in this Lease.

4. IMPROVEMENTS AND ALTERATIONS.

4.1 Lessor's Approvals Under Lease. Lessor has the right to review and approve matters relating to the development, operation, maintenance, repair, replacement or modification

of the Premises by Lessee or the installation, construction, change or alteration of, addition to or removal or demolition of, any Improvements, or the use or enjoyment of the Premises, if the same (a) is not in compliance with any design guidelines which may be imposed upon the Premises by the Approvals (the “Design Guidelines”); or (b) requires a Major Amendment to any P.U.D. implemented as a part of the Approvals. For purposes of this Section 4.1, “Major Amendment” means an amendment that requires (by applicable Laws in effect as of the Commencement Date) an official vote by the City Council of the City of Kalispell, Montana (the “City Council”) or, if the City Council delegates or is required to delegate by Laws its authority to a commission or other governmental or quasi-governmental authority, an amendment that would have required an official vote by the City Council as of the Commencement Date. Any approval of Lessor hereunder will not be unreasonably withheld, conditioned or delayed. In the event that Lessor’s approval is required for Lessee’s activities, as set forth above and as determined in the reasonable business judgment of Lessee, Lessee will prepare and furnish to Lessor, at Lessee’s cost and expense, the necessary documents or plans and specifications, as applicable, that are subject to Lessor’s approval (the “Approval Documents”). After Lessee submits the Approval Documents to Lessor, Lessor will have 10 business days to approve or disapprove them, and in the event Lessor does not approve the same, Lessor will immediately advise Lessee of Lessor’s comments to the Approval Documents. If Lessor fails to approve or disapprove the Approval Documents within the time limits prescribed herein, Lessee must provide Lessor with a written reminder notice (the “Reminder Notice”). Failure of Lessor to approve or disapprove the Approval Documents within 10 business days after Lessor’s receipt of the Reminder Notice will constitute an approval by Lessor. In the event Lessor disapproves the Approval Documents, Lessee will incorporate Lessor’s comments into revised Approval Documents within 10 business days from receipt thereof and resubmit the same to Lessor, who will have 10 business days to approve or disapprove the revised Approval Documents. In the event Lessor does not approve the same, the procedures set forth herein will be followed until such time as Lessor has approved the revised Approval Documents.

4.2 Improvements and Alterations. Pursuant to Section 77-1-906(1), MCA, the lessee shall be solely responsible for the expense of maintenance and operation of the enterprise, business, or venture and all improvements made and constructed in support of any Commercial Purpose during the term of the lease. Subject to the terms and conditions of Section 4.1, Lessee, may at any time and from time to time during the Term, without securing any consent or approval from Lessor (except as provided in Section 4.1), cause or permit any Buildings, structures, utilities, roadways or other Improvements to be demolished, installed or constructed on, over, under or across the Land or any part thereof and may cause or permit any Improvements now or later installed or constructed on the Land to be changed, altered, added to or removed or demolished in whole or in part. Subject to Sections 5.2 and 14.2, Lessee will pay all costs and expenses arising out of the installation, construction, change or alteration of, addition to or removal or demolition of, any Improvements by Lessee and will cause all Improvements to be installed, constructed, changed, altered, added to, removed or demolished in accordance with applicable Laws. Lessor will have the right to post notices of non-responsibility or similar notices on the Premises in order to protect the Premises against any liens resulting from such work. Upon completion of the initial Improvements for the Premises or thereafter at the same time as the City of Kalispell may require the same, Lessee shall deliver to Lessor an engineer’s certificate for the Premises and an “as-built” survey/drawings (both electronic and paper) of the Premises as soon as reasonably practicable. Lessor will reasonably cooperate with

Lessee by providing Lessee and its agents, employees and contractors with any necessary temporary construction and slope licenses on property that Lessor has authority to provide, and that are necessary for Lessee to construct the Premises as set forth herein.

4.3 Governmental Approvals and Permits. Subject to the terms and conditions of Section 4.1, Lessee will have the right to apply for and secure, in Lessor's name if necessary, such governmental approvals, permits or other authorizations (including, without limitation, re-zonings, master or final site plans, subdivision or P.U.D. plats and agreements, building permits, grading permits, sign permits and certificates of occupancy) as may be necessary or appropriate in connection with the development of the Premises or the installation, construction, change or alteration of, addition to or removal or demolition of, any Improvements, or the use or enjoyment of the Premises. Lessor will fully cooperate with Lessee's efforts to obtain such approvals, permits and other authorizations, including, without limitation, the execution by Lessor of any and all required submissions or applications within 10 days after Lessee submits the same to Lessor. Without limitation on Lessor's obligations set forth above, Lessor may agree to execute a revocable power of attorney appointing Lessee as its true and lawful attorney-in-fact to execute and deliver any such instruments and documents in Lessor's name or Lessee's name or otherwise, consistent with the terms, conditions, and restrictions set out in this Lease. The Lessor, in its sole discretion, shall decide whether such a Power of Attorney shall be issued and shall decide its term. In any event, any such Power of Attorney shall terminate upon the expiration or termination of the Term of this Lease.

4.4 Signage. Subject to the terms and conditions of Section 4.1, Lessee may establish and from time to time modify a set of standard sign criteria for the purpose of regulating signage on the Premises, provided that all such signage complies with all applicable Laws.

4.5 Easements.

(a) Lessee may from time to time request that Lessor join with Lessee and each with respect to its own interest in the Premises to perform any of the following activities (collectively, "**Requested Activities**"): (i) to sell, assign, convey or otherwise transfer an interest in the Premises to any person legally empowered to take such interest under the power of eminent domain; (ii) to grant, in the ordinary course of business for the operation of the Premises, easements, licenses, rights-of-way and other rights and privileges in the nature of easements; (iii) to release, in the ordinary course of business, existing easements and appurtenances which benefit the Premises; (iv) to dedicate or transfer unimproved portions of the Land for road, highway or other public purposes; (v) to execute covenants and restrictions affecting the Premises or any amendments thereto; (vi) to execute and deliver any instrument necessary or appropriate to make or confirm such grants or releases to any person, with or without consideration; and (vii) to execute petitions to have the Premises annexed to or incorporated in any municipal corporation, special district, special improvement district or utility district.

(b) No payment of Base Rent due for any portion of the Term will be reduced by subtracting any ground area of the Land that is the subject to any of the foregoing easements, dedications licenses and other rights and privileges in the nature of easements.

(c) Lessor will not unreasonably withhold, condition or delay its consent to or joinder in any of the Requested Activities, will not impose any additional cost on Lessee or the party benefiting from any of the Requested Activities, and will provide such consent or joinder within 10 days after Lessee's request for the same, provided that such Requested Activities do not create any financial obligation on the part of Lessor with respect to any municipal corporation, special district, special improvement district or utility district and are either:

(i) required by a governmental or quasi-governmental authority or agency in connection with Lessee's submittals for the Approvals required for the initial development of the Premises or as a condition to the granting of such Approvals, or

(ii) required by a governmental or quasi-governmental authority or agency after the issuance of the Approvals required for the initial development of the Premises if such Requested Activities are consistent with either the Approvals for the initial development of the Premises and the Design Guidelines, on the one hand, or any Major Amendment approved by Lessor under Section 4.1, on the other hand.

4.6 Title to Improvements. During the Term, Lessee or its designated Sub-lessees will be deemed to own, and will hold title to, all Improvements and will be entitled to all depreciation deductions, investment tax credits, deductions for taxes and any other tax advantages resulting from the ownership of the Improvements, subject to the Lessor's reversionary interest upon the expiration or termination of the Lease. On the expiration or earlier termination of the Term: (a) title to all Improvements then held by Lessee, except moveable personal property not constituting fixtures, will automatically vest in Lessor without representation or warranty per Montana Code Annotated 77-1-906 (2); and (b) title to all Improvements then held by any Sub-lessee will remain in such Sub-lessee until the expiration or earlier termination of the term of such Sublessee's Sublease, at which time title to such Improvements will automatically vest in Lessor without representation or warranty.

4.7 Utility and Road Infrastructure.

(a) Lessee hereby agrees that Lessor shall have the right, for the benefit of Lessor's property adjacent to the Premises (the "Adjacent Property") and at Lessor's cost and expense to connect into the Utility Lines and roads.

(b) In the event that Lessor requests an increase the size and capacity of the Utility Lines or requires a change in the location, manhole frequency, depth or construction method of the same in accordance with Section 4.7(d) (collectively, the "Required Changes") to accommodate Lessor's extension of the Utility Lines or roads to the Adjacent Property, Lessor shall be responsible for the following (collectively, the "Required Changes Costs"):

(i) all costs and expenses associated with the Required Changes; and

(ii) all fees, impositions and charges related to Lessor's connections into the Utility Lines or roads or related to the Required Changes (including Lessor's proportionate share of fees, impositions and charges attributable to the requested increase in size and capacity).

(c) Prior to any application for subdivision approval, the Lessee agrees to submit to Lessor a Map in GIS format of the utility and road infrastructure which Lessee proposes to construct in connection with the Project (the "Infrastructure Map").

(d) Within ten (10) days after Lessor's receipt of the Infrastructure Map, Lessor may, by notice (the "Required Changes Notice") to Lessee, identify locations at which Lessor will connect into any Utility Lines or roads and set forth any Required Changes.

(e) If Lessor timely provides a Required Changes Notice to Lessee, Lessee will:

(i) modify the Infrastructure Map and related plans in accordance with the Required Changes Notice;

(ii) obtain bids or estimates for the Required Changes Costs; and

(iii) deliver to Lessor an invoice (the "Required Changes Invoice") for the Required Changes Costs together with copies of such bids or estimates and a statement of whether the Required Changes would impact the then-current rate structure for utility consumption charges.

(f) Within ten (10) days after Lessor's receipt of the Required Changes Invoice, Lessor will notify Lessee that Lessor either (i) approves the Required Changes, or (ii) disapproves the Required Changes. Lessor's failure to provide such approval or disapproval within such ten (10)-day period will constitute Lessor's disapproval of the Required Changes.

(g) If Lessor approves the Required Changes, Lessor will pay the amount reflected in the Required Changes Invoice to Lessee on or before the earlier of (i) sixty (60) days after Lessee's delivery of the Required Changes Invoice to Lessor, or (ii) the date on which Lessee commences site work on the Premises.

(h) If Lessor timely provides a Required Changes Notice and timely pays the amount reflected in the Required Changes Invoice, Lessee will install Utility Lines in accordance with the Infrastructure Map as affected by the Required Changes Notice.

(i) If either (i) Lessor does not timely provide a Required Changes Notice, (ii) Lessor provides a Required Changes Notice but subsequently disapproves or is deemed to have disapproved the Required Changes in accordance with Section 4.7(f), or (iii) Lessor provides a Required Changes Notice and approves the Required Changes in accordance with Section 4.7(f) but does not timely pay the amount reflected in the

Required Changes Invoice, then Lessee may install Utility Lines in accordance with its original Infrastructure Map without regard to the Required Changes Notice.

(j) Lessor will not perform any construction activities on the Premises. Lessor agrees to use best efforts to minimize any interference or damage to the Premises during Lessor's extension of the Utility Lines or roads to the Adjacent Property. Lessor also agrees to immediately repair and/or pay for any and all damages to the Premises caused by Lessor's connection of into the Utility Lines or roads or extension of the Utility Lines or roads to the Adjacent Property.

(k) Lessee agrees, at Lessor's cost, to reasonably cooperate with Lessor in creating the necessary easements for Lessor's extension of the Utility Lines or roads to the Adjacent Property.

5. USE AND OCCUPANCY.

5.1 Use. Subject to the requirements of Section 4.1, Lessee may use the Premises for any and all lawful uses and purposes. Lessee shall maintain the Premises in a clean, orderly and neat fashion, ordinary wear and tear and damage by casualty and condemnation excepted. Lessee shall keep the Premises in good repair and shall not commit waste or permit impairment or deterioration of the Premises, ordinary wear and tear and damage by casualty and condemnation excepted.

5.2 Compliance. Lessee will comply with all Laws applicable to Lessee's use and occupancy of the Premises and will keep and maintain the Premises in compliance with all applicable Laws. Lessee covenants and agrees that Lessee will not modify any document encumbering the Land that will (a) cause Lessee to be in violation of the terms of this Lease, and/or (b) materially increase the financial obligations of Lessor that exist in the documents encumbering the Land as of the date of execution of this Lease. Lessee will have the right, however, to contest or challenge by appropriate proceedings the enforceability of any Law or its applicability to the Premises or Lessee's use or occupancy thereof provided that Lessee complies with such Law during the pendency of Lessee's contest or challenge of it, so long as Lessee diligently prosecutes the contest or challenge to completion and, in the event Lessee loses the contest or challenge, thereafter continues to abide by and conform to such Law. Lessor and Lessee shall reasonably cooperate with one another and shall in no event attempt to hinder the other's efforts or take a position adverse to one another and their rights under this Lease. Lessee agrees to defend (with attorneys reasonably satisfactory to Lessor), protect, indemnify and hold harmless Lessor and its Affiliates from and against any and all liabilities, obligations, losses, damages (including foreseeable and unforeseeable damages, but excluding consequential damages and punitive damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against any of them directly or indirectly based on, or arising or resulting from Lessor joining in any contest pursuant to this Section 5.2. Notwithstanding anything contained in this Lease to the contrary, Lessor and Lessee specifically acknowledge and agree that this Lease is subject to the further provisions of Title 77 of the Montana Code Annotated. The Lessee agrees to comply with all applicable laws, rules, and regulations in effect upon the Commencement Date of this

Lease and those laws, rules, and regulations which may be enacted or adopted thereafter from time to time and which do not (a) contradict or contravene the specifically negotiated terms and conditions of this Lease, (b) impose more restrictive or additional requirements or burdens on Lessee, (c) impair or adversely affect the rights of Lessee under the Lease, or (d) otherwise deprive Lessee of the property right and the specific terms and conditions of the same that are created by this Lease.

5.3 Environmental Matters.

(a) Compliance with Environmental Laws. Unless notice to the contrary is given to the Lessor by the Lessee prior to the Lessee's completion of grading activities upon the Premises, the Lessee hereby acknowledges and agrees that, to the best of its knowledge, information, and belief, no Toxic or Hazardous Substances within the definition of CECRA exist on the Land. Further, subject to the provisions of Section 5.3(c), the Lessee agrees as follows:

(i) Lessee will (A) comply with all Environmental Laws applicable to the operation or use of the Premises by Lessee or the construction, installation, alteration or demolition of any Improvements by Lessee; (B) use reasonable efforts to cause all Sub-lessees and other persons occupying the Premises to comply with all Environmental Laws; (C) immediately pay or cause to be paid all costs and expenses incurred in such compliance; and (D) keep or cause the Premises to be kept free and clear of any liens imposed thereon pursuant to any Environmental Laws.

(ii) Lessee will not generate, use, treat, store, Release or dispose of, or permit the generation, use, treatment, storage, Release or disposal of, any Hazardous Substances on the Premises, or transport or permit the transportation of any Hazardous Substances to or from the Premises, in each case in any quantity or manner which violates any Environmental Law.

(iii) If Lessor has knowledge of any pending or threatened Environmental Claim against Lessee or the Premises or has reason to believe that Lessee or the Premises are in violation of any Environmental Law, at Lessor's written request, at any time and from time to time, Lessee will provide to Lessor an environmental site assessment report concerning the Premises, prepared by an environmental consulting firm reasonably approved by Lessor, indicating the presence or absence of Hazardous Substances and the potential cost of any removal or remedial action required by Environmental Laws in connection with any Hazardous Substances on the Premises. Any such environmental site assessment report will be conducted at Lessee's sole cost and expense. If Lessee fails to deliver to Lessor any such environmental site assessment report within 90 days after being requested to do so by Lessor pursuant to this Section 5.3(a)(iii), Lessor may obtain the same, and Lessee hereby grants to Lessor and its agents access to the Premises and specifically grants to Lessor an irrevocable non-exclusive license to undertake such an assessment, and the cost of such

assessment (together with interest thereon at the Default Rate) will be payable by Lessee on demand.

(iv) Lessor may, at its option, at any time and from time to time, obtain at its sole cost and expense an environmental site assessment report for the Premises, and Lessee hereby grants to Lessor and its agents access to the Premises and specifically grants to Lessor an irrevocable non-exclusive license to undertake such an assessment.

(v) At its sole expense, Lessee will conduct any investigation, study, sampling or testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Substances from the Premises which must be so removed or cleaned up in accordance with the requirements of any applicable Environmental Laws, to the reasonable satisfaction of a professional environmental consultant selected by Lessor, and in accordance with all such requirements and with orders and directives of all governmental authorities.

(b) Indemnity. Lessee agrees to defend (with attorneys reasonably satisfactory to Lessor), protect, indemnify and hold harmless Lessor and its Affiliates from and against any and all liabilities, obligations (including removal and remedial actions), losses, damages (including foreseeable and unforeseeable damages, but excluding punitive damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements) including reasonable attorneys' and consultants' fees and disbursements of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against any of them directly or indirectly to the extent based on, or arising or resulting from: (i) the actual or alleged presence of Hazardous Substances on the Premises Released by Lessee or anyone acting, by, through, or under Lessee in any quantity or manner which violates Environmental Law, or the removal, handling, transportation, disposal or storage of such Hazardous Substances by Lessee or anyone acting by, through or under Lessee; or (ii) any Environmental Claim with respect to Lessee or the Premises resulting from a Release by the Lessee or anyone acting by, through, or under Lessee (collectively, the "Indemnified Matters"), regardless of when such Indemnified Matters arise, but excluding any Indemnified Matter with respect to Hazardous Substances first placed or Released on the Premises after the later of (A) the expiration or earlier termination of this Lease, or (B) the date neither Lessee nor any of its Affiliates holds title to or any other interest in or lien on the Premises.

(c) Exemption for hazardous materials declared to exist prior to completion of grading. Notwithstanding anything to the contrary in this Section 5.3, Lessee shall have no responsibility for the presence, investigation or clean-up of, or for any Environmental Claim related to, or to indemnify, defend or hold harmless Lessor or its Affiliates with respect to, any Hazardous Substances which (i) the Lessee discovers and declares to Lessor to exist on the Premises or improvements thereon prior to the Lessee's completion of grading activities upon the Premises, or (ii) are permitted under Environmental Laws to remain on the Premises or any portion thereof based on Lessee's particular use of the Premises or the portion thereof, as applicable.

5.4 Survival. Lessee's remedial, indemnification and reimbursement obligations under Section 5.3 will survive the expiration or earlier termination of this Lease.

6. UTILITIES AND REPAIRS.

6.1 Utilities. Lessee will pay before delinquency all water, sewer, natural gas, electricity, telephone and any other utility charges related to the Premises including, without limitation, those which, if not paid, may be asserted as a lien or charge against the Premises under applicable Laws.

6.2 Repairs. Lessee will maintain, repair, replace and keep any Improvements or landscaping on the Land from time to time in reasonably good condition and repair in accordance with all applicable Laws, including necessary repairs to the interior, exterior and structure of any Buildings, mowing of grass and care of shrubs and general landscaping; pay all costs and expenses in connection therewith (subject to Section 14.2); and contract for the same in Lessee's own name. The foregoing will not be construed to limit Lessee's rights under Section 4.2.

7. TAXES.

7.1 Payment of Taxes. Subject to Section 7.3, Lessee will pay before delinquency, directly to the taxing authority, all Taxes that accrue during or are attributable to any part of the Term including Privilege taxes, also known as beneficial use taxes, per MCA 15-24-1203. Lessee will deliver to Lessor reasonable evidence of payment of all Taxes within 60 days after Lessee pays all Taxes.

7.2 Proration at Beginning and End of Term. If the Term begins on other than the first day of a Tax Year or if the Term expires or otherwise terminates on other than the last day of a Tax Year, Taxes for the Tax Year in which the Term begins or ends, as the case may be, will be prorated between Lessor and Lessee, based on the most recent levy and most recent assessment. Such proration will be subsequently adjusted when the actual bills become available for Taxes for the Tax Year for which Taxes were prorated. Any Taxes payable in the first Lease Year prior to the Commencement Date shall be the sole responsibility of Lessor.

7.3 Special Assessments. Except as set forth below, Lessee will pay all special assessments (including those attributable to private extension agreement) and other like impositions levied or imposed for improvements commenced, installed and assessed during the Term; provided, however, that Lessee may pay in installments any such special assessments or like impositions that may be so paid according to applicable Law and, in such event, Lessee will only be required to pay those installments of any such assessments or impositions that become due and payable during the Term. Lessor will pay its proportionate share of all special assessments (including those attributable to private extension agreement) and other like impositions levied or imposed to the extent related to or in connection with the Required Changes (including fees, impositions and charges related to Lessor's requested increase in size and capacity of any Utility Line).

7.4 Tax Contests. Lessee will have the right to contest any Taxes or special assessments payable by Lessee, provided Lessee (a) provides Lessor with written notice of such

contest, and (b) makes timely payment of the contested Taxes or special assessments if the Lessee loses the contest. In connection with any such contest, Lessee will have the right, at its sole expense, to institute and prosecute, in good faith and with due diligence and in Lessor's name if necessary, any appropriate proceedings. Lessor may, at Lessee's expense, reasonably cooperate with and join in Lessee's efforts to contest any such Taxes or special assessments. Lessee agrees to defend (with attorneys reasonably satisfactory to Lessor), protect, indemnify and hold harmless Lessor and its Affiliates from and against any and all liabilities, obligations, losses, damages (including foreseeable and unforeseeable damages, but excluding consequential damages and punitive damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against any of them directly or indirectly based on, or arising or resulting from Lessor joining in any contest pursuant to this Section 7.3.

8. WAIVERS; LIABILITY AND CASUALTY INSURANCE.

8.1 Lessor's Waiver. Except to the extent caused by the willful or negligent act or omission by the Lessee or anyone for whom Lessee is legally responsible, neither Lessee nor any of its Affiliates will be liable or in any way responsible to Lessor for, and Lessor waives all claims against Lessee and its Affiliates for, any damage to or destruction of any Improvements, and Lessor waives its insurers' right of subrogation consistent with this waiver.

8.2 Lessee's Waiver. Except to the extent caused by the willful or negligent act or omission by Lessor or anyone for whom Lessor is legally responsible, neither Lessor nor any of its Affiliates will be liable or in any way responsible to Lessee for, and Lessee waives all claims against Lessor and its Affiliates for, any damage to or destruction of any Improvements, and Lessee waives its insurers' right of subrogation consistent with this waiver.

8.3 Acquisition of Insurance Policies. Lessee shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the insurance described in this Section 8 (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of Montana that are reasonably satisfactory to Lessor.

8.4 Types of Required Insurance. Lessee shall procure and maintain, or cause one or more of its Sublessees to provide and keep in force and name Lessee as an additional insured, the following during the Term:

(a) Liability Insurance. Comprehensive or commercial general liability insurance covering claims arising out of the ownership, operation, maintenance, condition or use of the Premises, for personal and bodily injury and death, and damage to others' property, with limits of not less than \$2,000,000.00 for any one accident or occurrence. Lessor will be named as an additional insured in the policy providing such liability insurance, which will include cross liability and severability of interests clauses.

(b) Property Insurance. All risk fire and extended coverage insurance (including standard extended endorsement perils, leakage from fire protective devices

and other water damage) covering loss or damage to the Improvements on a full replacement cost basis, excluding existing architectural and engineering fees, undamaged excavation, footings and foundations. Some or all of such property coverage with respect to any Building or other Improvements subject to a Sublease may be maintained through self-insurance by the Sublessee, provided that in Lessee's reasonable judgment such Sublessee has sufficient financial capacity to self-insure such Building or Improvements.

(c) Workers' Compensation Insurance. Workers' compensation and employer's liability insurance (with limits satisfying applicable Laws) covering Lessee's employees, officers, agents and representatives.

8.5 Terms of Insurance. The policies required under Section 8.4 above, shall name Lessor as additional insured and Lessee shall provide promptly to Lessor certificates of insurance evidencing the policies obtained by Lessee hereunder as hereinafter described. Proof of insurance ("Proof") shall consist of either (a) an insurance binder or premium payment receipt, (b) a copy of the policy, or (c) an "ACORD 27 Evidence of Property Insurance" or "ACORD 25 Certificate of Liability Insurance," whichever is appropriate (or such other similar certificates), issued by Lessee's insurer with respect to each policy. If Lessee does not deliver the evidence required by the preceding sentence before taking possession of the Premises, then Lessee will deliver the same within 30 days after taking possession of the Premises. Thereafter, during the Term, within 30 days after the renewal date of each policy, the issuance of a new policy or on such other date as Lessor reasonably requires, Lessee will deliver a copy of the latest Proof to Lessor. Each policy of insurance will require the issuer of the insurance policy to give Lessor 30 days' advance written notice of the termination or modification of the policy. Further, all policies of insurance described in Section 8.4 above, shall:

(a) Be written as primary policies not contributing with and not in excess of coverage that Lessor may carry.

(b) Contain an endorsement providing that such insurance may not be materially changed, amended or canceled except after 30 days' prior written notice from insurance company to Lessor.

(c) Expressly provide that Lessor shall not be required to give notice of accidents or claims and that Lessor shall have no liability for premiums.

(d) Any deductibles must be approved in writing by Lessor, provided that Lessor shall approve the same within 10 days of request using its commercially reasonable business judgment, which for purposes hereof, shall be measured by taking into consideration the opinions of three independent insurance companies having at least five years of experience insuring projects that are substantially similar to Lessee's project at the Premises.

9. DAMAGE OR DESTRUCTION. In the event of any Substantial Damage to the Improvements, Lessee will promptly cause the Premises to be put in a safe condition and either (a) reconstruct or cause to be reconstructed the Improvements in accordance with the terms of this Lease, or (b) raze the existing Improvements and seed the former location of the damaged

Improvements. Notwithstanding Lessee's election under (a) or (b) in the previous sentence, Lessee shall have the right to terminate this Lease if any Anchor Sublease is terminated because of such substantial destruction or if such substantial destruction occurs within the last 10 years of the initial Term or during any Renewal Term. Such termination shall be given by notice to Lessor prior to Lessee's election to raze and clear the existing Improvements and shall be effective upon the completion of such work.

10. CONDEMNATION.

10.1 Notice. If either Lessor or Lessee learns that all or any portion of the Premises has been or is proposed to be subjected to a Taking, such party will immediately notify the other of such Taking.

10.2 Termination Option on Substantial Taking. If a Substantial Taking occurs during the Term, Lessee may, at its option, terminate this Lease by giving notice to Lessor on or before 60 days after the Taking Date. In such event this Lease will terminate effective as of the Taking Date, Lessee will surrender the Premises according to Section 13 on or before 30 days after the date of Lessee's notice of termination and all Base Rent and other Rent will be apportioned to the Taking Date, except that Lessee will also pay Lessor for the reasonable value Lessee's occupancy of the Premises, if any, from the Taking Date until the date Lessee so surrenders possession.

10.3 Continuation of Lease. If a Taking occurs during the Term that is not a Substantial Taking, then this Lease will remain in full force and effect according to its terms, except that effective as of the Taking Date this Lease will terminate automatically as to the portion of the Premises that is the subject of such Taking with no reduction in Base Rent. If a Substantial Taking occurs but Lessee does not exercise its termination option according to Section 10.2, then this Lease will remain in full force and effect according to its terms, except that effective as of the Taking Date: (a) this Lease will terminate automatically as to the portion of the Premises that is the subject of such Taking; and (b) each payment of Base Rent due for any portion of the Term after the Taking Date will be reduced by subtracting from the amount that each such payment would otherwise have been required to be a percentage thereof equal to the percentage obtained by dividing the ground area of the portion of the Land that is the subject of such Taking by the ground area of all of the Land prior to such Taking.

10.4 Awards. If there is an award, compensation, damages or consideration paid or payable as a result of or in connection with any Taking or condemnation, the award will be allocated as follows: First, Lessee will be entitled to the current value of the Improvements, net of the current value of the reversionary interest in favor of Lessor, as set forth in this Lease. Second, Lessee will be entitled to the present value of the unexpired Term (calculated using a discount rate of eight percent). Third, Lessor will be entitled to the value of the Land comprising the Premises (giving due effect to the Rent income in favor of Lessor hereunder, as if this Lease had not been terminated) and the value of Lessor's reversionary interest in the Improvements. Fourth, Lessee will be entitled to business relocation expenses, moving expenses and loss of fixtures that Lessee is entitled to remove pursuant to the terms hereof, to the extent it is a separate measure of damages available under applicable Laws. Fifth, Lessor will be entitled to any other portion of the award not allocated pursuant to the foregoing provisions.

10.5 Settlement. Lessee and Lessor shall jointly negotiate with, litigate or enter into any settlement with any governmental or other condemning authority in connection with any Taking; provided, however, that the portion of the award attributable to the net of the value of the reversionary interest in favor of Lessor, shall be subject to Lessor's prior written approval. Lessor and Lessee will fully cooperate in connection with any such negotiation, litigation or settlement, including, without limitation, the execution by Lessor and Lessee of any and all required documents or instruments.

11. ASSIGNMENT, SUBLETTING AND FINANCING.

11.1 Assignment. Throughout the Term, Lessee may from time to time with Lessor's consent (as provided in this sentence and in the next sentence) assign its interest under this Lease so long as the proposed assignee (a) has five years or more of experience in owning and/or operating commercial retail properties substantially similar to the Premises, (b) has net assets worth equal to or greater than \$10,000,000.00 in Constant Dollars (measured from and after the assignment of this Lease or portion thereof), as demonstrated by the proposed assignee's most recent income tax return and financial statements certified by an officer or member of the proposed assignee and prepared in accordance with accounting principles generally used by commercial developers in the marketplace (the "**Financials**") or, in the alternative, has a principal with assets worth equal to or greater than \$10,000,000.00 in Constant Dollars, as demonstrated by the principal's most recent income tax return and financial statements certified by the principal, who provides Lessor with a guaranty of one year's Base Rent under the Lease, (c) does not have a criminal record or a history or pattern of criminal activity or administrative malfeasance, and (d) has an acceptable credit history, as reasonably indicated by any of the national credit reporting agencies. Lessee will provide Lessor with notice of each such proposed assignment and will also provide Lessor with a copy of the assignment, reasonable evidence demonstrating the proposed assignee's experience, records concerning criminal and administrative history, credit reports and copies of the most recent income tax return and the Financials (collectively, the "**Assignment Documentation**"). Lessor will have a period of 30 days to review the Assignment Documentation to verify that the proposed assignee satisfies the experience and financial criteria set forth above. Lessor will act reasonably and in good faith in verifying of the Assignment Documentation. If Lessor has an objection to the proposed assignee, Lessor must express such objection in writing and in reasonable detail to Lessee within 30 days after Lessor's receipt of the Assignment Documentation. If Lessor fails to submit such objection within said 30-day period, Lessee must provide Lessor with a Reminder Notice. Failure of Lessor to submit such objection within 10 business days after Lessor's receipt of the Reminder Notice will constitute an approval of the proposed assignee and subsequent assignment. Notwithstanding the foregoing, no Lessor consent will be required for an assignment to any of the following transferees: (a) an Affiliate provided that such Affiliate has net assets worth equal to or greater than \$10,000,000.00 in Constant Dollars (measured from and after the assignment of this Lease or portion thereof), as demonstrated by the Affiliate's most recent income tax return and financial statements certified by an officer or member of the Affiliate and prepared in accordance with accounting principles generally used by commercial developers in the marketplace or, in the alternative, has a principal with net assets worth equal to or greater than \$10,000,000.00 in Constant Dollars, as demonstrated by the principal's most recent income tax return and financial statements certified by the principal, who provides Lessor with a guaranty of one year's Base Rent under the Lease; or (b) a transferee which is the result of

a merger or consolidation with Lessee, or which acquires all or substantially all of Lessee's corporate stock or assets, the result of which is an entity possessing net assets equal to or greater than \$10,000,000.00 in Constant Dollars. Upon the written assumption by any assignee of all of Lessee's obligations arising under this Lease from and after the date of assignment, Lessee will be released from all obligations under this Lease. In addition, Lessor's consent will not be required for any transfer of Lessee's interest under this Lease to a Foreclosure Transferee. Lessor will recognize any assignee or Foreclosure Transferee as a substitute Lessee hereunder and will honor all rights and interests of such substitute Lessee as set forth in this Lease, including, without limitation, the right to assign its interest under this Lease and be released from liability hereunder according to this Section 11.1. Any Foreclosure Transferee will be liable for and will be deemed to have assumed those obligations of Lessee that arise under this Lease from and after its record acquisition of Lessee's interest hereunder.

11.2 Subletting. Throughout the Term, Lessee may from time to time and without Lessor's consent sublet all or any portion or portions of the Premises or grant licenses, concessions or other possessory interests in all or any portion or portions of the Premises upon any terms that Lessee deems appropriate. Subject to the second to last sentence of this Section 11.2, upon the expiration of the Term or earlier termination of this Lease or upon repossession of Premises by Lessor, Lessor will accept the attornment of any Sublessee and upon any such attornment by a Sublessee, such Sublessee's Sublease will become a direct agreement between Lessor and such Sublessee, binding on each of them according to its terms; provided, however, that in no event will Lessor be obligated to accept the attornment of any Sublessee or create a direct agreement with any Sublessee after the date that is 99 years after the Commencement Date. In addition, Lessor will execute and deliver to any Sublessee an instrument, in the form of **Exhibit C**, evidencing (a) the covenants of Lessor set forth in the preceding sentence as applied specifically to such Sublessee, and (b) the necessary terms and conditions of such Sublease required by **Exhibit C**. Any Sublessee's right to attorn to Lessor upon a termination of this Lease or upon repossession of the Premises by Lessor according to the foregoing provisions will be subject and subordinate to the right of a Qualified Mortgagee to attorn to Lessor according to Section 11.3(c), regardless of whether such Sublessee effects or attempts to effect its attornment prior to, simultaneously with or subsequent to the exercise of the attornment right under Section 11.3(c) by a Qualified Mortgagee, and the exercise of the right to attorn under Section 11.3(c) by a Qualified Mortgagee will nullify any earlier, contemporaneous or later exercise of any Sublessee's right to attorn. The foregoing will not be construed to limit the rights of each Sublessee under its Sublease and any requirements made for Sublessee's benefit with a Qualified Mortgagee. Lessee covenants and agrees for the benefit of Lessor that Lessee will use its commercially reasonable business judgment in exercising all of Lessee's rights and privileges set forth in this Section 11.2. In addition, Lessee covenants and agrees that Lessee will exercise all of Lessee's rights and privileges set forth in this Section 11.2 in the ordinary course of business consistent with practices and customs used by other developers and/or operators of similarly situated projects in the State of Montana. Notwithstanding anything contained herein to the contrary, in no event shall Lessee allow a Sublessee to pay more than three month's minimum rent in advance pursuant to such Sublessee's Sublease.

11.3 Financing.

(a) Lessee's Right to Encumber. Throughout the Term, Lessee may from time to time and without Lessor's consent execute and deliver one or more Leasehold Mortgages securing any indebtedness or other obligation of Lessee. Without limiting the generality of the foregoing, Lessee may execute and deliver Leasehold Mortgages to secure promissory notes evidencing construction, interim or permanent financing for the Premises or to secure Lessee's obligations under development, reimbursement or other agreements with governmental or quasi-governmental entities, utility companies or other third parties concerning matters such as sales or property tax abatement or rebate programs, public improvements or utilities. If any Leasehold Mortgagee or potential Leasehold Mortgagee requests that Lessor grant any express approvals with respect to its Leasehold Mortgage or execute and deliver any documents in connection therewith, Lessor will reasonably cooperate in granting such approvals and executing and delivering such documents, provided that in no event will Lessor be required to encumber or subordinate its reversionary interest in the Premises or to undertake any personal liability for the obligations of Lessee secured or to be secured by the Leasehold Mortgage. Without limiting the generality of the foregoing, if any potential Leasehold Mortgagee requires that, in order to accept a Leasehold Mortgage, this Lease be modified in any manner that would not materially impair Lessor's rights or materially increase its obligations hereunder, Lessor will reasonably cooperate in executing and delivering the requested amendment.

(b) Qualified Mortgagees' Cure Rights. Prior to terminating this Lease or exercising any other right or remedy hereunder for a Default by Lessee, Lessor will give each Qualified Mortgagee notice of such Default by Lessee and afford it a period of 30 days after such notice is given in which to cure such Default by Lessee; provided, however, that (i) if such Default by Lessee is not a failure to pay Rent and is susceptible of cure by a Qualified Mortgagee but cannot reasonably be cured within such 30-day period, then so long as any Qualified Mortgagee commences a cure within such 30-day period (and notifies Lessor that it has done so), its cure period will be extended for as long as reasonably necessary for it to diligently pursue the cure to completion; (ii) if such Default by Lessee is not a failure to pay Rent and is susceptible of cure by a Qualified Mortgagee but cannot reasonably be cured until the Qualified Mortgagee obtains possession of the Premises, then so long as any Qualified Mortgagee commences to obtain possession of the Premises within such 30-day period (and notifies Lessor that it has done so), its cure period will be extended for as long as reasonably necessary for it to obtain possession of the Premises and then promptly commence and thereafter diligently pursue the cure to completion; and (iii) if such Default by Lessee is not a failure to pay Rent and is not susceptible of cure by a Qualified Mortgagee, then so long as any Qualified Mortgagee commences to foreclose or otherwise enforce its Leasehold Mortgage within such 30-day period (and notifies Lessor that it has done so) and thereafter diligently pursues such foreclosure (or a conveyance in lieu thereof) to completion, upon such Qualified Mortgagee's acquisition of Lessee's interest under this Lease, and provided any other Defaults by Lessee have then been cured or are then being cured according to the foregoing provisions, Lessor will waive such Default by Lessee that is not susceptible of cure by a Qualified Mortgagee.

(c) Qualified Mortgagees' Right to Attorn. If, by virtue of a Default by Lessee, Lessor reenters and repossesses the Premises without terminating this Lease or terminates this Lease, Lessor will give notice thereof to each Qualified Mortgagee within 10 days after such reentry and repossession or termination, as the case may be. If any Qualified Mortgagee notifies Lessor within 30 days after Lessor gives such notice that such Qualified Mortgagee would like to attorn to Lessor and either assume Lessee's obligations under this Lease (in the case of a reentry and repossession without termination of this Lease) or enter into a new Lease with Lessor for the Premises (in the case of a termination of this Lease), and provided that such Qualified Mortgagee (i) pays Lessor all Base Rent and other Rent due and payable to Lessor under this Lease at the date of reentry and repossession or termination and which thereafter becomes due or would have become due if this Lease had not been terminated up to and including the date such Qualified Mortgagee's attornment to Lessor becomes effective, together with all of Lessor's expenses incident to the reentry and repossession or termination, but less any amounts collected during such period by Lessor from any Sublessees; and (ii) covenants to promptly thereafter cure any Default by Lessee existing at the time of such reentry and repossession or termination that is not a failure to pay Rent and is susceptible of cure by a Qualified Mortgagee, then Lessor will accept such attornment and either (i) deliver possession of the Premises to such Qualified Mortgagee (or its designee) if Lessor has reentered and repossessed the same without terminating this Lease, whereupon such Qualified Mortgagee (or designee) will assume in writing all obligations of Lessee arising under this Lease from and after the date possession is so delivered, Lessor will waive any existing Defaults by Lessee that are not susceptible of cure by a Qualified Mortgagee and this Lease will continue in full force and effect as a direct obligation between Lessor and such Qualified Mortgagee (or its designee), or (ii) Lessor will execute and deliver a new lease of the Premises to such Qualified Mortgagee (or its designee) for the balance of what would have been the Term had this Lease not been so terminated for the Rent and otherwise upon all of the same terms and conditions set forth in this Lease. The lessee under any such new lease will have the same right, title and interest in and to the Improvements as Lessee had under this Lease. If more than one Qualified Mortgagee should properly notify Lessor that it would like to attorn to Lessor according to this Section 11.3(c), Lessor will only be required to accept attornment by that Qualified Mortgagee whose Leasehold Mortgage was recorded first in the real property records of the county in which the Premises are located. The right to attorn to Lessor and assume Lessee's rights under this Lease or enter into a new lease with Lessor according to this Section 11.3(c) will be prior and superior to any Sublessee's right to attorn to Lessor according to Section 11.1, regardless of which right was exercised first, and in the event that both a Sublessee according to Section 11.1 and a Qualified Mortgagee according to this Section 11.3(c) desire to attorn to Lessor, Lessor will only be obligated and entitled to accept attornment of the Qualified Mortgagee exercising its rights under this Section 11.3(c). If a dispute as to priority between one or more Sublessees or Qualified Mortgagees who wish to attorn according to either Section 11.1 or this Section 11.3(c) should arise, Lessor may interplead all such persons and be dismissed from such action.

(d) Prohibition Against Mutual Rescission. No mutual termination, cancellation or rescission of this Lease by Lessor and Lessee will be effective unless and

until the same is approved in writing by each Qualified Mortgagee. All rights and remedies of the Qualified Mortgagee hereunder will be cumulative with, in addition to and non-exclusive of one another.

11.4 Assignment by Lessor. If Lessor sells or otherwise transfers the Land, or if Lessor assigns its interest in this Lease, such purchaser, transferee or assignee thereof shall be deemed to have assumed Lessor's obligations hereunder which arise on or after the date of sale or transfer, and Lessor shall thereupon be relieved of all liabilities hereunder accruing from and after the date of such transfer or assignment, but this Lease shall otherwise remain in full force and effect.

12. INTENTIONALLY DELETED.

13. LEASE EXPIRATION.

13.1 Condition at End of Lease. Upon vacating the Premises on the Expiration Date, Lessee shall leave the Premises in the state of repair and cleanliness required to be maintained by Lessee during the Term of this Lease and shall peaceably surrender the same to Lessor.

13.2 Lessee Shall Yield Premises. The Lessee shall upon the termination of this Lease peaceably yield up and surrender the possession of the land to the Lessor or its agents or to subsequent lessees or grantees for any cause.

13.3 Holding Over. Should the Lessee remain in possession of the Premises after the Expiration Date or termination without a written agreement providing for the same, Lessee will, at Lessor's option be deemed to be a tenant from month to month, at a monthly Base Rent, payable in advance, equal to 150% of monthly Base Rent payable during the last full "Lease Year" prior to the Expiration Date or termination of this Lease, and Lessee will be bound by all of the other terms, covenants and agreements of this Lease as the same may apply to a month-to-month tenancy.

14. LIENS AND ESTOPPEL CERTIFICATES.

14.1 Liens. Lessee will not allow to be recorded, filed, claimed or asserted against the Premises any mechanic's lien for supplies, machinery, tools, equipment, labor or material contracted for, by, through or under such party and furnished or used in connection with any construction, development, alteration, improvement, addition to, demolition of or repair to or maintenance of any Building or other Improvement, or any tax lien, judgment lien or other involuntary lien of any nature arising by, through or under such party, and if the Lessee causes or permits any such lien to be so recorded, filed, claimed or asserted, the Lessee will cause the same to be released or discharged within 90 days thereafter. If the Lessee defaults under the foregoing covenant, then the Lessor may cause any such claimed lien to be released of record by bonding or payment or any other means available. All sums paid and costs and expenses, including reasonable attorneys' fees, incurred by the Lessor in connection therewith, together with interest on all such sums at the Default Rate from the date incurred until paid, will be due and owing from the Lessee to the Lessor upon demand therefore. The provisions of this Section 14.1 are subject in all respects to those set forth in Section 14.2 below.

14.2 Lien Contests. If Lessee has a good faith dispute as to any lien for which Lessee is responsible according to Section 14.1 Lessee may contest the same by appropriate proceedings so long as Lessee bonds over the lien or deposits with Lessor security in an amount acceptable to Lessor (but in no event more than the amount required by applicable Laws) which may be used by Lessor to release such lien and pay interest and costs if Lessee's contest is abandoned or is unsuccessful. Upon final determination of any permitted contest, Lessee will immediately pay any judgment rendered and cause the lien to be released. So long as Lessee is acting in conformity with this Section 14.2, Lessor will have no right to exercise its remedies under Section 14.1.

14.3 Estoppel Certificates. Lessor and Lessee agree that at any time and from time to time (but on not less than 10 days' prior request by the other party), each party will execute, acknowledge and deliver to the other a certificate indicating any or all of the following: (a) the date on which the Term commenced and the date on which it is then scheduled to expire; (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification); (c) the date, if any, through which Base Rent had been paid; (d) that no Default by Lessor or Default by Lessee exists which has not been cured, except as to defaults stated in such certificate; (e) that the responding party has no existing defenses or set-offs to enforcement of this Lease, except as specifically stated in such certificate; and (f) such other matters as may be reasonably requested by the requesting party. Any such certificate may be relied upon by the requesting party and, if Lessor is the requesting party, by any prospective purchaser of Lessor's reversionary interest in the Premises, or if Lessee is the requesting party, by any or present or prospective Leasehold Mortgagee, Sublessee or assignee of Lessee's interest under this Lease.

15. DEFAULTS BY LESSEE AND LESSOR'S REMEDIES.

15.1 Defaults by Lessee. Each of the following events will constitute a "Default by Lessee" under this Lease:

(a) Failure to Pay Rent. Lessee fails to pay any Base Rent or any other Rent payable by Lessee under the terms of this Lease when due, and such failure continues for 10 days after written notice from Lessor to Lessee of such failure.

(b) Failure to Perform Other Obligations. Lessee breaches or fails to comply with any provision of this Lease applicable to Lessee other than a covenant to pay Rent, and such breach or noncompliance continues for a period of 30 days after written notice thereof from Lessor to Lessee; or, if such breach or noncompliance cannot be reasonably cured within such 30-day period, Lessee does not commence to cure such breach or noncompliance within such 30-day period and thereafter pursue such cure in good faith to completion.

(c) Execution and Attachment Against Lessee. Lessee's interest under this Lease or in the Premises is taken upon execution or by other process of law directed against Lessee, or is subject to any attachment by any creditor or claimant against Lessee and such attachment is not discharged or disposed of within 90 days after levy or such

longer time as may be necessary to effectuate a discharge or disposal of the attachment provided that Lessee is diligently contesting the attachment.

15.2 Lessor's Remedies. Time is of the essence. If any Default by Lessee occurs, Lessor will have the right, at Lessor's election, then or at any later time prior to Lessee's cure, to exercise any one or more of the remedies described below. Exercise of any of such remedies will not prevent the concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to Lessor at law or in equity.

(a) Cure by Lessor. Where there is a Default by Lessee, Lessor may, at Lessor's option but without obligation to do so, and without releasing Lessee from any obligations under this Lease, make any payment or take any action as Lessor deems necessary or desirable to cure any Default by Lessee in such manner and to such extent as Lessor in good faith deems necessary or desirable, provided that, prior to making any such payment or taking any such action, Lessor notifies Lessee in writing of Lessor's intention to do so and affords Lessee at least 10 days in which to make such payment or take such action. Lessee will pay Lessor, upon written demand, all advances, costs and expenses of Lessor in connection with making any such payment or taking any such action, including reasonable attorney's fees, together with interest at the Default Rate, from the date of payment of any such advances, costs and expenses by Lessor, together with all past-due rentals, accrued Late Fees, and interest at the Default Rate from the date payment was due.

(b) Termination of Lease. Where there is a Default by Lessee, Lessor may terminate this Lease, effective at such time as may be specified by written notice to Lessee, and demand (and, if such demand is refused, recover) possession of the Premises from Lessee. In such event, Lessor will be entitled to recover from Lessee such damages as are allowable by applicable Laws.

(c) Repossession and Reletting. Where there is a Default by Lessee, Lessor may reenter and take possession of all or any part of the Premises, without additional demand or notice, and repossess the same and expel Lessee and any party claiming by, through or under Lessee, and remove the effects of both using such force for such purposes as may be necessary, without being liable for prosecution for such action or being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of Rent or right to bring any proceeding for breach of covenants or conditions. No such reentry or taking possession of the Premises by Lessor will be construed as an election by Lessor to terminate this Lease unless a notice of such intention is given to Lessee. No notice from Lessor or notice given under a forcible entry and detainer statute or similar Laws will constitute an election by Lessor to terminate this Lease unless such notice specifically so states. Lessor reserves the right, following any reentry or reletting, to exercise its right to terminate this Lease by giving Lessee such notice, in which event the Lease will terminate as specified in such notice. After recovering possession of the Premises, Lessor will use reasonable efforts to relet the Premises on commercially reasonable terms and conditions. Lessor may make such repairs, alterations or improvements as Lessor considers appropriate to accomplish such reletting, and Lessee will reimburse Lessor upon demand for all reasonable costs and expenses, including

reasonable attorneys' fees, which Lessor may incur in connection with such reletting. Lessor may collect and receive the rents for such reletting but Lessor will in no way be responsible or liable for any inability to relet the Premises or to collect any rent due upon such reletting. Regardless of Lessor's recovery of possession of the Premises, so long as this Lease is not terminated Lessee will continue to pay on the dates specified in this Lease, the Base Rent and other Rent which would be payable if such repossession had not occurred, less a credit for the net amounts, if any, actually received by Lessor through any reletting of the Premises.

(d) Receiver. To properly effectuate the recovery of damages and other sums owing from Lessee to Lessor hereunder following a Default by Lessee, Lessor, in conjunction with any dispossession proceeding commenced pursuant to this Lease may seek an appointment of a receiver by a court of competent jurisdiction to the extent provided for in and compliance with the requirements of Title 25, Chapter 14, Part 2 of the Montana Code Annotated and Rule 66 of the Montana Rules of Civil Procedure, as they may be amended. In no event will Lessor be obligated to post a bond in connection with the appointment of a receiver.

(e) Bankruptcy Relief. Nothing contained in this Lease will limit or prejudice Lessor's right to obtain adequate assurances of the Lessee's future performance under 11 USC Section 365 or other applicable laws, or any other legal rights, in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding.

16. DEFAULTS BY LESSOR AND LESSEE'S REMEDIES.

16.1 Defaults by Lessor. The following event will constitute a "Default by Lessor" under this Lease: Lessor breaches or fails to comply with any provision of this Lease applicable to Lessor, and such breach or noncompliance continues for a period of 30 days after notice thereof from Lessee to Lessor; or, if such breach or noncompliance cannot be reasonably cured within such 30-day period, Lessor does not commence to cure such breach or noncompliance within such 30-day period or does not thereafter pursue such cure in good faith to completion; provided, however, that any such cure period will terminate at such time, if ever, as the subject breach or failure to comply results in an actual or constructive eviction of Lessee.

16.2 Lessee's Remedies. Time is of the essence. If any Default by Lessor occurs, Lessee will have the right, at Lessee's election, then or at any later time, to exercise any one or more of the remedies described below. Exercise of any of such remedies will not prevent the concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to Lessee at law or in equity.

(a) Cure by Lessee. Lessee may, at Lessee's option but without obligation to do so, and without releasing Lessor from any obligations under this Lease, make any payment or take any action as Lessee deems necessary or desirable to cure any Default by Lessor in such manner and to such extent as Lessee in good faith deems necessary or desirable, provided that, prior to making any such payment or taking any such action, Lessee notifies Lessor of Lessee's intention to do so and affords Lessor at least 10 days in which to make such payment or take such action. Lessor will pay Lessee, upon demand,

all advances, costs and expenses of Lessee in connection with making any such payment or taking any such action, together with interest at the Default Rate, from the date of payment of any such advances, costs and expenses by Lessee.

(b) Damages. Regardless of whether this Lease is terminated, Lessee may commence and pursue any lawful action in any court or before any other proper tribunal to recover such damages as may be allowable as a result of or in connection with the Default by Lessor. Lessor acknowledges that Lessee is relying upon Lessor's performance and observance of its obligations hereunder in entering into Subleases and in developing, constructing and operating or causing to be developed, constructed and operated income-earning Improvements.

17. MISCELLANEOUS.

17.1 Security Deposit. Upon execution of this lease, Lessee shall deposit with Lessor the \$50,000 Security Deposit which: (a) shall be held by Lessor in an interest-bearing account as security for the performance of Lessee's obligations under this Lease; (b) shall not in any way be deemed an advance rental deposit or a measure of Lessor's damages upon a Default by Lessee beyond the expiration of any applicable cure periods; (c) Lessor may, from time to time after a Default by Lessee which is not cured prior to the expiration of any applicable cure periods but without obligation to do so or prejudice to or waiver of any other remedy available to Lessor, use or apply the principle and accrued interest in the manner and to the extent deemed appropriate or necessary by Lessor, in its sole discretion (an "Application"), following notice to Lessee of the proposed Application and the expiration of ten (10) days during which Lessee shall have failed to cure the Default by Lessee, to remedy, cure, or otherwise address the Default by Lessee, which Application shall not, except to the extent provided by this Lease, cure or waive such Default by Lessee; and (d) shall, following any Application, be restored to its original amount upon request by Lessor. Unless otherwise required by applicable Laws, Lessor: (a) shall not be required to segregate the Deposit from other funds of Lessor; (b) may use the Deposit for such purposes as Lessor may determine; (c) shall, in the event of an assignment or other transfer of Lessor's interest in this Lease, transfer the Deposit to Lessor's successor-in-interest, whereupon Lessor shall be automatically deemed released from all liability in connection with the Deposit; and (d) shall, within 120 days after the expiration or earlier termination of this Lease, return the Security Deposit, or the balance thereof remaining after any Application, to Lessee.

17.2 Notices. All notices required or permitted under this Lease must be in writing and will only be deemed properly given and received (a) when actually given and received, if delivered in person to a party who acknowledges receipt in writing; or (b) one business day after deposit with a private courier or overnight delivery service, if such courier or service obtains a written acknowledgment of receipt; or (c) 10 business days after the date postmarked on the cover of any correspondence or notice when deposited in the United States mails, certified – return receipt requested, with postage prepaid. All such notices must be transmitted by one of the methods described above to the party to receive the notice at, in the case of notices to Lessor, Lessor's Address, in the case of notices to Lessee, Lessee's Address, and in the case of notices to a Qualified Mortgagee, the address set forth as its notice address in its most recent notice to Lessor, or, in any case, at such other address(es) as Lessor, Lessee or a Qualified Mortgagee may notify the others according to this Section 17.2.

17.3 Binding Effect. Each of the provisions of this Lease will extend to bind or inure to the benefit of, as the case may be, Lessor and Lessee, and their respective heirs, successors and assigns.

17.4 Modifications. This instrument contains the entire agreement between the parties, and no statement, promises or inducements made by either party, or agents of either party, which are not contained in this Lease shall be valid or binding and this Lease may not be enlarged, modified or altered except as provided in this Lease or unless signed by the parties. If executed properly under this section, modifications of this Lease do not need independent consideration to be legally enforceable.

17.5 Enforcement Expenses. Regardless of any statutory rights, each party agrees to bear their own costs, charges and expenses, including the fees and out-of-pocket expenses of attorneys, agents and others retained, incurred in successfully enforcing the other party's obligations under this Lease.

17.6 No Waiver. No waiver of any provision of this Lease will be implied by any failure of either party to enforce any remedy upon the violation of such provision, even if such violation is continued or repeated subsequently. No express waiver will affect any provision other than the one specified in such waiver, and that only for the time and in the manner specifically stated.

17.7 Memorandum Notice of Lease. Upon the request of either party, Lessor and Lessee will, in form satisfactory to Lessor and Lessee, cause to be prepared and will execute, acknowledge and deliver a short memorandum notice of this Lease in recordable form which either party may record in the real property records of the county in which the Premises are located to give constructive notice of the existence of this Lease. The terms and conditions of this Lease are controlling over any memorandum notice later prepared by the Lessor and Lessee.

17.8 Captions. The captions of sections are for convenience of reference only and will not be deemed to limit, construe, affect or alter the meaning of such sections.

17.9 Severability. If any provision of this Lease is declared void or unenforceable by a final judicial or administrative order, this Lease will continue in full force and effect, except that the void or unenforceable provision will be deemed deleted and replaced with a provision as similar in terms to such void or unenforceable provision as may be possible and be valid and enforceable.

17.10 Waiver of Jury Trial. Lessor and Lessee waive trial by jury in any action, proceeding or counterclaim brought by Lessor or Lessee against the other with respect to any matter arising out of or in connection with this Lease, Lessee's use and occupancy of the Premises, or the relationship of Lessor and Lessee.

17.11 Authority to Bind. The individuals signing this Lease on behalf of Lessor and Lessee represent and warrant that they are empowered and duly authorized to bind Lessor or Lessee, as the case may be, to this Lease according to its terms.

17.12 Only Lessor/Lessee Relationship. Lessor and Lessee agree that neither any provision of this Lease nor any act of the parties will be deemed to create any relationship between Lessor and Lessee other than the relationship of Lessor and Lessee.

17.13 Reservation of Oil, Gas, and Minerals. In consideration of \$2,000 paid at the commencement of this Lease in addition to any other payments to be made by the Lessee, Lessor expressly excepts and reserves from this Lease all rights (“Mineral Rights”) to all oil, gas and other minerals in, on or under the Land and that might be produced or mined from the Land; provided, however, that there shall be no drilling, mining or other surface disturbance will be undertaken on the surface of this lease, nor shall the Premises, or the area within 500 feet of the Premises (the “Buffer Area”) to the extent Lessor owns the Mineral Rights in the Buffer Area, for purposes of conducting any activity (“Mineral Activity”) for or related to the exploration, development or production of oil, gas or other minerals. Subsurface mining of the Premises and the Buffer Area will be allowed provided that the same (a) is in compliance with Laws, (b) does not interfere with the Lessee’s right to subjacent support of the Premises, (c) does not interfere with the use and occupancy or enjoyment of the Premises by Lessee or any of its sublessees, successors or assigns, and (d) does not create vibrations which would interfere with the construction, maintenance, use or occupancy of the Project or the Improvements. In addition, (w) Lessor represents and warrants to Lessee that Lessor has not granted, conveyed or leased to any third party any Mineral Rights in or on the Land or the Buffer Area, (x) Lessor agrees that any grant, conveyance or lease of Mineral Rights in or on the Premises or the Buffer Area shall be expressly made subject to the provisions of this Section 17.13, (y) Lessor shall not oppose or refuse to grant its approval of any development, construction or operation of the Project based upon its Mineral Rights in the Premises or the Buffer Area, and (z) Lessor shall be responsible for any and all damages that Lessee may incur as a result of any Mineral Activity in, on or under the Premises or the Buffer Area in contravention of the provisions, during the Term of this Lease

17.14 Reasonableness. At any time during this Lease, if Lessee is to use reasonable judgment, it shall be deemed to mean ordinary business judgment.

17.15 Governing Law; Venue and Jurisdiction. This Lease will be governed by and construed according to the laws of the State of Montana. The district courts of the State of Montana and located in Lewis and Clark County shall have exclusive, original jurisdiction to hear, determine and render judgment on any claim or dispute arising out of this Lease.

17.16 Time of Essence. Time is expressly declared to be of the essence of this Lease and each and every covenant of Lessee hereunder.

17.17 Broker. Lessor and Lessee represent and warrant that no broker or agent negotiated, or was instrumental in negotiating or consummating this Lease (the “Brokers”). Neither party knows of any other real estate broker or agent who is or might be entitled to a commission or compensation in connection with this Lease. Lessor and Lessee will pay all fees, commissions or other compensation payable to the Brokers pursuant to a separate agreement entered into by Lessor and Lessee. Lessee and Lessor will indemnify and hold each other harmless from all damages paid or incurred by the other resulting from any claims asserted against either party by brokers or agents claiming through the other party.

17.18 Lessor May Inspect Premises. Representatives of the Lessor shall, upon 48 hours notice to the Lessee, have the right to enter into and upon the premises and all buildings and structures thereon and all parts thereof for the purpose of inspecting and examining the same to assure compliance with the provisions of this Lease; provided that, to the extent that Lessee has such rights under, and pursuant to the terms of applicable Subleases.

[Signatures appear on following page(s)]

LESSOR:

STATE OF MONTANA, DNRC

DATE: _____

By: _____
John E. Tubbs
Director

STATE OF MONTANA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014 by _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A**LEGAL DESCRIPTION OF THE LAND**

Victory Commons Commercial Lot

That portion of the South one-half (S1/2), Section Thirty-six (36), Township Twenty-nine North, Range Twenty-two West (T.29N R. 22W.), Principal Meridian, Montana, Flathead County, Montana, more particularly described as follows:

Commencing at the Center one-quarter corner of said Section 36 thence along the East-West mid-section line of said Section 36 S89° 58' 06"E 867.68 feet to the Southerly right-of-way of Reserve Loop and to the beginning point of a curve to the Left having a radius of 935.04 feet from which the radius point bears N21° 02' 33"E, thence along said right-of-way and along said curve an arc length of 342.96 feet; thence continuing along said right-of-way S89° 58' 22"E 57.56 feet to the True Point of Beginning of the tract of land herein described; thence continuing along said right-of-way S89° 58' 06"E 1249.19 feet to the West right-of-way of U.S. Highway 93; thence along said right-of-way S00° 09' 13"W 47.74 feet; thence S14° 02' 47"E 61.86 feet; thence S00° 12' 01"W 1000.10 feet; thence S14° 16' 50"W 41.18 feet; thence S00° 11' 01"W 299.89 feet; thence leaving said right-of-way N89° 50' 21"W 80.07 feet; thence S00° 09' 27"W 99.93 feet; thence N89° 49' 53"W 225.04 feet; thence N00° 10' 48"E 232.29 feet; thence N44° 36' 56"W 257.08 feet; thence S90°W 363.66 feet; thence N00° 01' 47"W 831.87 feet; thence N89° 58' 06"W 400.00 feet; thence N00° 01' 47"W 300.00 feet to the True Point of Beginning containing 28.23 Acres of land, more or less.

EXHIBIT B**BASE RENT EXHIBIT**

Subject to the terms of the lease and during the term of the Lease, the Lessee does hereby covenant and agree to pay to the Lessor the annual Reduced Rent and Base Rent as described herein below corresponding to each particular Lease Year as described herein below, with the first annual payment due on the Lease Commencement Date, and all annual payments at base rental rates after Year 1 due and payable in equal quarterly installments on the first day of each Quarter, as more particularly set forth below.

The Base Rent = Market Value *Land * Lease Rate

The Initial Base Rent = \$2.53/ sq ft * 28.236 acres * 5.49% = \$170,838

	Annual Base Rent	Quarterly Payment
1. During the Reduced Rent Term:	\$64,064	N/A
2. During the period commencing on the Base Rent Commencement Date and continuing through Lease Year 10 (Base Rent begins):	\$170,838	\$42,710;
(During the partial Quarter in which the Base Rent Commencement Date occurs, the quarterly installment of Base Rent will be prorated.)		
3. For Lease Years 11 through 20:	\$187,922	\$46,981;
4. For Lease Years 21 through 30, a market adjustment amount determined in accordance with <u>Schedule 1</u> attached to this <u>Exhibit B</u> ;		
5. For Lease Years 31 through 40, a market adjustment amount determined in accordance with <u>Schedule 1</u> attached to this <u>Exhibit B</u> ;		
6. For Lease Years 41 through 50, a market adjustment amount determined in accordance with <u>Schedule 1</u> attached to this <u>Exhibit B</u> ;		
7. For Lease Years 51 through 60, a market adjustment amount determined in accordance with <u>Schedule 1</u> attached to this <u>Exhibit B</u> ;		
8. For Lease Years 61 through 70, a market adjustment amount determined in accordance with <u>Schedule 1</u> attached to this <u>Exhibit B</u> ;		
9. For Lease Years 71 through 80, a market adjustment amount determined in accordance with <u>Schedule 1</u> attached to this <u>Exhibit B</u> ;		
10. For Lease Years 81 through 90, a market adjustment amount determined in accordance with <u>Schedule 1</u> attached to this <u>Exhibit B</u> ; and		

11. For Lease Years 91 through 99, a market adjustment amount determined in accordance with **Schedule 1** attached to this **Exhibit B**.

SCHEDULE 1 TO EXHIBIT B

MARKET ADJUSTMENT PROVISIONS

The Base Rent for the Premises shall be subject to a market adjustment determined in accordance with the provisions of this **Schedule 1** (“Market Adjustment”) on the date(s) set forth in the preceding provisions of this **Exhibit B**. The process for the Market Adjustment will commence on the date that is 18 months prior to the first day of the 21st Lease year (the “Market Date”).

The Market Adjustment will be determined by appraisal in accordance with the following provisions:

1. Selection of Appraisers. Within five days following the Market Date, Lessor and Lessee shall each hire an appraiser meeting the qualifications set forth in Section 3 below of this **Schedule 1** and shall instruct such appraiser to prepare an appraisal of the fair market value of the Premises based upon the assumptions and meeting the requirements set forth in Section 4 of this of this **Schedule 1**. The appraiser so retained by Lessor is herein referred to as “Lessor's Appraiser,” and the appraisal prepared by Lessor's Appraiser is herein referred to as “Lessor's Appraisal.” The appraiser so retained by Lessee is herein referred to as “Lessee's Appraiser,” and the appraisal prepared by Lessee's Appraiser is herein referred to as “Lessee's Appraisal.” Each appraiser shall be subject to the approval of the other party, which approval will not be unreasonably withheld, conditioned or delayed. Lessor's Appraisal and Lessee's Appraisal are collectively herein referred to as the “Party Appraisals.” Lessor's Appraiser and Lessee's Appraiser shall each be instructed to complete their respective appraisals and deliver their results to both Lessor and Lessee simultaneously within 60 days following the Market Date.

2. Determination of Base Rent.

2.1 If the positive difference between the dollar amount of Lessor's Appraisal and the dollar amount of Lessee's Appraisal is equal to or less than 10% of the lower in dollar amount of the two Party Appraisals, then the Base Rent Factor (as hereinafter defined) shall be deemed to be the mathematical average of the two Party Appraisals.

2.2 If the positive difference between the dollar amount of Lessor's Appraisal and the dollar amount of Lessee's Appraisal is greater than 10% of the lower in dollar amount of the two Party Appraisals, then:

(a) Lessor and Lessee shall have 30 days within which to agree upon the Base Rent Factor; and

(b) If Lessor and Lessee are unable, within such 30 day period, to agree upon the Base Rent Factor, then Lessor's Appraiser and Lessee's Appraiser shall jointly select a third appraiser meeting the qualifications set forth in Section 3 of this **Schedule 1** (the “Third Appraiser”) and instruct such Third Appraiser to prepare an appraisal of the fair market value of the Premises based upon the assumptions and meeting the requirements set forth in Section 4 of this

Schedule 1 (the “Third Appraisal”). The Third Appraiser shall be provided copies of all data utilized by Lessor’s Appraiser and Lessee’s Appraiser in preparing the Party Appraisals, as well as copies of Lessor’s Appraisal and Lessee’s Appraisal. The Third Appraiser shall be given 30 days within which to prepare and deliver the Third Appraisal to both Lessor and Lessee simultaneously. Each of Lessor’s Appraisal, Lessee’s Appraisal and the Third Appraisal are sometimes herein referred to individually as an “Appraisal” and collectively (in any combination or two or more) as the “Appraisals.”

(c) In the event a Third Appraisal is required as aforesaid, the Base Rent Factor shall be deemed to be the mathematical average of the two Appraisals that are closest in dollar amount. Should the dollar amount of any one of the Appraisals happen to be exactly equal to the mathematical average of the other two Appraisals, then such dollar amount shall constitute the Base Rent Factor hereunder.

The Base Rent Factor determined in accordance with the foregoing provisions shall be binding and conclusive on the parties. “Base Rent Factor” means the per square foot fair market value of the Premises. Base Rent for the Premises, as adjusted by the Market Adjustment, shall be amount obtained by (a) multiplying the Base Rent Factor by the number of square feet of area of the Land of the Premises, and (b) multiplying the resulting product by 5%.

3. Qualifications of Appraisers; Replacement. Each of Lessor’s Appraiser, Lessee’s Appraiser and the Third Appraiser must (a) have an MAI designation by the Appraisal Institute (or similar designation available on the Market Date); (b) be a Certified General Appraiser licensed in the State of Montana (or similar designation available on the Market Date); and (c) have appraised either three neighborhood (grocery anchored), community (grocery and another anchor) or power shopping centers or any combination of these three shopping center types in the past three years. If any appraiser designated to serve in accordance with this **Schedule 1** shall fail, refuse or become unable to act, a new appraiser meeting the foregoing requirements shall be appointed in his or her place by the party who appointed the appraiser being replaced.

4. Assumptions and Requirements. The purpose of each of the Appraisals will be to estimate the fair market value of the Premises. The task calls for a complete appraisal presented in a self-contained appraisal report, according to the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation. Additional requirements of the Appraisal are as follows.

4.1 The intended users of the Appraisals are Lessor and Lessee.

4.2 The Premises are to be appraised as though the Premises are vacant and developable to their highest and best use, subject, however, to all matters of record encumbering the Premises, excluding the Lease.

4.3 No value shall be given to the existence of any below surface infrastructure including water, sewer, gas, electricity, telephone and other similar utilities.

4.4 No value shall be given to the existence of the Lease by and between Lessor and Lessee or the amount of rents payable thereunder.

5. Materials to be Provided to the Appraisers. Each appraiser appointed to serve in accordance with this **Schedule 1** shall be provided copies of an ALTA survey showing the site and all matters of record. All such materials shall be provided to each of the appraisers as soon as such appraiser has been retained in accordance with the terms hereof.

6. Briefing Session. Lessor's Appraiser and Lessee's Appraiser, should either so elect, shall be entitled to require a briefing session, to be held at Lessor's offices on a day and at a time mutually acceptable to Lessor, Lessee, Lessor's Appraiser and Lessee's Appraiser but in all events not earlier than 10 nor later than 15 days following the Market Date. At such session, both such appraisers shall be present and each shall be entitled to ask such questions of Lessor and Lessee.

7. Payment. Lessor shall pay all costs, fees and expenses of Lessor's Appraiser, and Lessee shall pay all costs, fees and expenses of Lessee's Appraiser. If a Third Appraiser is required, Lessor and Lessee shall share equally all costs, fees and expenses of such Third Appraiser.

EXHIBIT C

LIMITED POWER OF ATTORNEY

THIS LIMITED POWER OF ATTORNEY is made by _____ (“Lessor”), for the benefit of _____ (“Lessee”), with respect to the following facts:

RECITALS

A. Lessor and Lessee entered into that certain Victory Commons Commercial Ground Lease dated as of _____, 2014 (the “Lease”), pursuant to which Lessor demised and leased to Lessee and Lessee leased and accepted from Lessor the real property in Kalispell, Montana, that is legally described on **Exhibit A** attached hereto and made a part hereof (the “Premises”). The Lease is evidenced by that certain Memorandum of Victory Commons Commercial Ground Lease dated _____, recorded on _____, 2014, in the real property records of the County of _____, State of Montana (the “Official Records”), in Book _____ at Page _____, under Reception No. _____ (the “Memorandum”).

B. Pursuant to the terms and conditions of Section 4 of the Lease, Lessee has certain rights to apply for and seek entitlements for the Premises, in Lessor’s name, without the prior consent of Lessor. For purposes of administrative convenience in evidencing Lessee’s rights pursuant to the Lease, the parties now desire to enter into this Limited Power of Attorney.

AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that Lessor does hereby make, constitute and appoint Lessee as its true and lawful attorney-in-fact to act for it and in its name, place and stead, with full power and authority to accomplish and complete only the following acts or transactions:

1. Authorization for Governmental Entitlements and Permits. To apply for and secure, in Lessor’s name if necessary, such governmental approvals, permits or other authorizations (including, without limitation, rezonings, master or final site plans, subdivision or P.U.D. plats and agreements, building permits, grading permits, sign permits and certificates of occupancy) as may be necessary or appropriate in connection with the development of the Premises or the installation, construction, change or alteration of, addition to or removal or demolition of, any improvements, or the use or enjoyment of the Premises.

2. Exculpation. Lessee will not incur any liability to Lessor for acting or refraining from acting hereunder so long as Lessee is acting or refraining from acting in accordance with the terms, provisions and conditions of the Lease. In the event that Lessee acts or refrains from acting in contravention to the terms of the Lease, Lessor will have all rights and remedies available to it as “Landlord” under the Lease.

3. Durability. This Power of Attorney shall not be affected by any dissolution, disability, incompetence or incapacity which Lessor may suffer at any future time or times, whether or not the same shall be adjudicated by any court, it being the intent of Lessor that the authorizations and powers granted herein shall remain exercisable notwithstanding any such subsequent occurrence.

4. Governing Law. This Limited Power of Attorney shall be governed by the laws of the State of Montana in all respects, including its validity, construction, interpretation and termination.

5. Limited or Special Power. This Limited Power of Attorney is limited and special in nature, shall extend only to those specific matters described herein and shall not, in any way, be construed as a General Power of Attorney granted by Lessor.

6. Termination. This Limited Power of Attorney shall not be affected by Lessor's dissolution, disability, incompetence or incapacity, but shall be terminated on _____ [Insert Expiration Date from Lease]; provided, however, that if the Lease is earlier terminated in accordance with the terms and provisions of the Lease, as evidenced by a termination of the Memorandum recorded in the Official Records, then this Limited Power of Attorney will automatically terminate.

7. Incorporation of Recitals. The Recitals set forth above are hereby incorporated into and made part of this Limited Power of Attorney.

8. Recordation. At the election of Lessee, this Limited Power of Attorney will be recorded in the Official Records.

[Signatures appear on following page(s)]

IN WITNESS WHEREOF, Lessor has made this Limited Power of Attorney as of the _____ day of _____, 2014.

LESSOR:

_____, a _____

By: _____, a _____, its

By: _____

Its: _____

LESSEE:

_____, a _____

By: _____, a _____, its _____

By: _____

Its: _____

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT D**GROUND LESSOR NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS GROUND LESSOR NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made this _____ day of _____, 20_____, by and among _____, _____ ("Lessor"), _____ ("Ground Lessor"), and _____, a _____ ("Lessee").

RECITALS

A. Ground Lessor is the owner of certain real property (the "Real Property") that Ground Lessor has leased to Lessor pursuant to the terms of that certain Victory Commons Commercial Ground Lease between Ground Lessor and Lessor dated _____, 2014 (the "Ground Lease"). The Real Property is more particularly described in the Ground Lease.

B. Lessor and Lessee have entered into a Lease (the "Lease"), dated _____, 20_____, demising a portion of the Real Property to Lessee as further described in the Lease (the "Leased Premises").

C. Ground Lessor, Lessor and Lessee are executing this Agreement to provide Lessee and Ground Lessor with certain rights upon expiration and/or termination of the Ground Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessee, Lessor and Ground Lessor, intending to be legally bound hereby, covenant and agree as follows:

1. Consent. Ground Lessor hereby consents to and approves of the Lease and the leasing of the Leased Premises to Lessee. In addition, Ground Lessor consents to and approves of the construction of the improvements described in the Lease and all alterations and modifications required in connection therewith so long as the same comply with the Ground Lease.

2. Status of Ground Lease. Ground Lessor represents and warrants to Lessee that as of the date of this Agreement: (a) Ground Lessor is the "Lessor" under the Ground Lease; (b) Ground Lessor is the sole holder of fee title to the Leased Premises; and (c) Ground Lessor has the full right and authority to enter into this Agreement. Ground Lessor further represents and warrants to Lessee that, to the best of Ground Lessor's knowledge and belief: (i) the Ground Lease is unmodified and in full force and effect and represents a valid lease of the Real Property; and (ii) neither Ground Lessor nor Lessor are in default under any terms or conditions of the Ground Lease.

3. Non-Disturbance. Provided that Lessee is not in default under the Lease or this Agreement beyond any applicable notice and cure period, Ground Lessor hereby agrees that Ground Lessor: (a) shall not disturb or deprive Lessee in or of its use, quiet enjoyment and possession (or its right to use, quiet enjoyment and possession) of the Leased Premises, or of any part thereof, or any right, benefit or privilege granted to or inuring to the benefit of Lessee under the Lease (including any right of renewal or extension thereof); (b) shall not terminate or affect the Lease; (c) shall recognize Lessee's rights, benefits and privileges under the Lease; and (d) shall recognize the leasehold estate of Lessee under all of the terms, covenants and conditions of the Lease for the remaining balance of the term of the Lease with the same force and effect as if Ground Lessor were the Lessor under the Lease. Ground Lessor covenants that any sale by it of the Leased Premises shall be made subject to the Lease and the rights of Lessee thereunder.

4. Ground Lessor's Rights. By virtue of the attornment of Lessee set forth herein, Ground Lessor shall be entitled to exercise the claims, rights, powers, privileges, options and remedies of Lessor under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Lessee under the Lease as though Ground Lessor were named therein as Lessor. Ground Lessor shall not, by virtue of the operation of this Agreement, be or become:

(a) Liable for any act or omission of Lessor arising prior to the date Ground Lessee takes possession of Lessee's interest in the Lease except to the extent such act or omission is of a continuing nature, such as, for example, a repair obligation;

(b) Liable for any offsets or deficiencies which Lessee might be entitled to assert against Lessor arising prior to the date Ground Lessor takes possession of Lessor's interest in the Lease, except to the extent that Ground Lessor has received the benefit of the act of Lessee giving rise to the right of deduction, such as, for example, relief of an obligation that would otherwise have been paid by Ground Lessor as Lessor under the Lease;

(c) Bound by any payment of rent or additional rent made by Lessee to Lessor for more than one month in advance, which payment was not required under the terms of the Lease; or

5. Attornment. In the event of the termination or expiration of the term of the Ground Lease for any reason whatsoever, and if Lessee is not in default under the terms and conditions of the Lease beyond any applicable notice and cure period, then, and in any such event, Lessee shall not be made a party in the action or proceeding to terminate the Ground Lease. Further, notwithstanding any contrary provisions in the Ground Lease, provided that Lessee is not in default under the Lease or this Agreement beyond any applicable notice and cure period, Lessee shall not be evicted or moved or its possession or right to possession under the terms of the Lease be disturbed or in any way interfered with. Subject to the provisions of this Agreement, Lessee will attorn to Ground Lessor or any other party which obtains title to the Leased Premises pursuant to any remedy provided for by the Ground Lease or otherwise. Such attornment shall be effective and self-operative without the execution of any other instruments on the part of any party, provided that Ground Lessor notifies Lessee thereof, and in all events, the Lease shall continue in full force and effect, subject to the terms of this Agreement, as a

direct Lease between Ground Lessor (or such party) and Lessee under all of the exact and verbatim terms and provisions of the Lease (including any rights of Lessee to renew or extend the term thereof), without the necessity for executing any new lease. In the event of such attornment, Ground Lessor shall be deemed to have assumed and shall assume, subject to the provisions of Section 4 herein, the performance of all of the affirmative covenants of Lessor occurring under the Lease from and after the time Ground Lessor becomes Lessor and until such time as such obligations are assumed by a bona fide purchaser, if any.

6. Acknowledgement of Lessee. Lessee acknowledges and agrees that this Agreement satisfies any condition or requirement for a non-disturbance agreement from Ground Lessor pursuant to the terms of the Lease. Except as otherwise expressly set forth in this Agreement, Lessee agrees that in the event of a conflict between the terms and provisions of the Lease and the terms and provisions of the Ground Lease, the terms and provisions of the Ground Lease will control.

7. Notice of Payment. After notice is given to Lessee by Ground Lessor pursuant hereto that the Ground Lease has been terminated or has expired and that the rentals under the Lease should be paid to Ground Lessor, Lessee shall pay to Ground Lessor, or in accordance with the directions of Ground Lessor, all rentals and other monies due and to become due to the Lessor under the Lease, and Lessor hereby expressly authorizes Lessee to make such payments to Ground Lessor and hereby releases and discharges Lessee of any from any liability to Lessor on account of any such payments.

8. Modifications. On and after the date of the Lease and throughout the term of the Lease, Ground Lessor and Lessor shall not enter into any cancellation, amendment or termination of the Ground Lease, which would materially and adversely affect Lessee's leasehold interest or Lessee's business operation in the Leased Premises, without Lessee's prior written consent, which consent shall not be arbitrarily withheld or delayed.

9. Terms of Lease. Lessee has the following renewal/ extension option(s): _____; with the following percentage increases in the fixed monthly minimum rent _____.

10. Liability. Ground Lessor and Lessee agree that neither of them has any liability to the other by reason of any default by Lessor under the Ground Lease, and that their only liability to each other with respect to Lessee's use of the Leased Premises is as expressly provided herein. Furthermore, Lessee has no liability to Ground Lessor under the Lease until the expiration or earlier termination of the Ground Lease and Ground Lessor's assumption of the Lease, pursuant to Section 5 of this Agreement. Nothing contained herein or in the Lease releases Lessor from its obligations under the Ground Lease.

11. Amendments. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against which the same is brought to be asserted. This Agreement: (a) contains the entire understanding of Ground Lessor, Lessor and Lessee regarding the matters dealt with herein (any prior written or oral agreements between them as to such matters being superseded hereby); and

(b) can be modified or waived in whole or in part only by a written instrument signed on behalf of the party against whom enforcement of the modification or waiver is sought.

12. Litigation. Provided that Lessee is not in default under the Lease beyond any applicable notice and cure period, Ground Lessor shall not institute any litigation naming Lessee as a defendant or otherwise terminating Lessee’s leasehold interest in the Leased Premises unless Lessee is required to be named in such litigation by law, and only so long as Lessee’s failure to defend against any such action shall not result in a waiver of its rights to continued possession under the Lease as set forth in this Agreement. The term Ground Lessor as used herein shall include any successor-in-interest to Ground Lessor.

13. Miscellaneous. This Agreement shall inure to the benefit of and shall be binding upon Lessee, Lessor and Ground Lessor, and their respective heirs, personal representatives, successors and assigns. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein. This Agreement shall be governed by and construed according to the laws of the State of Montana.

14. Notices. Any notice, demand or request required hereunder shall be given in writing at the addresses set forth below by personal delivery, nationally-recognized overnight courier service, or certified, first class mail, return receipt requested. Notice shall be deemed delivered (a) upon personal delivery, (b) the next business day after deposit with a nationally recognized overnight courier service, or (c) three days after deposit with certified, first class mail, postage prepaid. Rejection or other refusal to accept, or inability to deliver because of a changed address of which no notice has been given, will constitute receipt of the notice or other communication. The addresses may be changed by notice to the other party given in the same manner as provided above.

If to Ground Lessor:

With a copy to:

If to Lessor:

If to Lessee:

15. Attorneys' Fees. In the event of any litigation arising out of the enforcement or interpretation of any of the provisions of this Agreement, the prevailing party shall be awarded its reasonable attorneys' fees, including costs of suit, discovery and appeal from the non-prevailing party. The "prevailing party" shall be that party who obtains substantially the relief sought in the action.

16. Other Documentation. The parties hereto covenant and agree that they shall execute such other and further documents as are or may become necessary to carry out the objectives of this Agreement.

[Signatures appear on following page(s)]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year first above written.

LESSEE:

_____, a _____

By: _____, a _____, its

By: _____

Name: _____

Title: _____

LESSOR:

_____, a _____

By: _____, a _____, its _____

By: _____

Its: _____

GROUND LESSOR:

_____, a _____

By: _____, a _____, its

By: _____

Its: _____

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

EXHIBIT E

**ACTION AUTHORIZING LESSOR'S EXECUTION, DELIVERY AND
PERFORMANCE OF LEASE**

814-5

LAND BANKING ACQUISITION:
PRELIMINARY APPROVAL FOR PURCHASE

**Land Board Agenda Item
August 18, 2014**

814-5 Land Banking Acquisition: Preliminary Approval for Purchase

Location: Pondera County

Trust Benefits: Common Schools

Trust Revenue: N/A

Item Summary

The Department of Natural Resources and Conservation (DNRC) has identified a potential land acquisition of 2,563 acres known as the Bullhead Ranch available for sale in Pondera County.

Proposed Acquisition

These acres include approximately 336 acres of irrigated crop land, 671 acres of dry crop land, 41 acres of dry land hay, 473 acres of Conservation Reserve Program (CRP) land, and 1,042 acres of grazing land. The property is for sale for \$3,250,000.

Selection Considerations

DNRC has conducted a review of this tract nominated for acquisition per ARM 36.25.813(3).

Access: The parcel is accessible by both Bullhead Road and Trunk Butte Road, both county roads. Purchase of this property would also secure perpetual public access to 400 acres of existing trust land.

Revenue: The predicted annual rate of return over a 20 year period is estimated at 2-percent to 2.63-percent. The irrigated agricultural land is rotated between wheat, barley, and alfalfa hay, with the varying rates of return being influenced by crop prices and yields.

Multiple Uses: The parcel has a variety of natural resources uses including irrigated agricultural land and dry land crop, CRP and dryland grazing. The property also offers wildlife habitat, hunting (big game and upland game birds), and other recreational opportunities. The proposed acquisition adjoins an existing parcel of trust land and the purchase of this property would ensure permanent public access to that trust land.

Location: The property is located approximately 15 miles northeast of Conrad, Montana, in Pondera County.

Cooperation: DNRC plans to contact the Pondera County Board of County Commissioners to discuss the proposed acquisition prior to the Land Board meeting. No opposition is expected. Regional staff of the Department of Fish, Wildlife and Parks (FWP) has expressed support of the proposed acquisition.

Steps in this process include securing a purchase agreement contingent upon findings of the due diligence as per land banking rule ARM 36.25.813 through 815. Due diligence includes a detailed inventory report of the property, appraisal, Phase 1 hazardous materials study, land title review, an in-depth financial analysis, and a survey, if needed, followed by final Land Board approval.

DNRC Recommendation

The director recommends preliminary approval of the Bullhead Ranch property for further consideration for acquisition.

Bullhead Ranch

Pondera County, Estimated Price \$3,250,000

Location: 15 miles northeast of Conrad, Montana in Pondera County

Acreage: 2,563 deeded acres

*336 acres irrigated crop land

*671 acres dry crop land

*473 acres CRP

*41 acres dry land hay

*1,042 acres native/tame grazing land

Carrying Capacity: 1,042 ± acres of grazing land are estimated to have an initial carrying capacity of 312 AUMs. An additional 100 AUMs would be available on crop land stubble after harvest.

Crop Land / CRP:

*Irrigated – 80-100 bushels/acre barley

*Dry – CC 28 bushels/acre barley

*Dry – SF 44 bushels/acre barley

*Dry – SF 40-60 bushels/acre wheat

*Dry Hay – 1-1.5 tons/acre

*CRP – 473 acres 1-1.5 tons/acre or 1 AUM/acre

Stockwater: One water well on the property is developed for a winter water system around the farmstead. Other water is seasonally available from Bullhead Creek and irrigation ditches.

Irrigation: The property has 390 water shares in the Pondera County Canal and Reservoir Company (PCCRC - Valier, MT). The water source for the irrigation is the PCCRC via Lake Francis. Irrigation water is delivered to the farm by a series of irrigation ditches. Irrigation is from wheel lines and one center pivot.

Timber: None

Fencing: Fences are generally in good condition. There is a four-strand barbed-wire fence around the perimeter of the property. CRP and crop land is fenced into several pastures to allow for livestock rotation.

Improvements: Farmstead contains two houses (that will be demolished), a water well, telephone services, electric service, ten grain bins with 37,000 bushel storage, two large metal shops, storage buildings, barn, various sheds and livestock pens and corals. Above-ground irrigation equipment (pivot, wheel lines, pumps) are not included.

County/Taxes: \$10,309 annually

Precipitation: 10 - 14 inch precipitation zone



Bullhead Ranch

Comments:

The 2,563± acre Bullhead Ranch presents an opportunity to purchase productive irrigated agricultural land in combination with excellent dry crop and grazing land. Additionally, the proposed purchase adjoins 400 acres of existing state trust land. All tracts on this property are accessible through the Bullhead and Trunk Butte county roads. Wildlife on this farm includes mule deer, whitetail deer, pronghorn antelope, Hungarian partridge, sharp tail grouse, pheasants, and various other none game mammals and birds. An occasional grizzly bear may also visit the property. This property is located three miles south of the Montana Department of Fish, Wildlife and Parks Marias River Wildlife Management Area. This area offers good big game hunting and excellent upland bird hunting opportunities. Other recreational opportunities such as hiking and bird watching may also exist.

Projected annual revenue to trust beneficiaries for grazing and agriculture lands, based on minimum state lease rates, is estimated between \$66,500 and \$87,900. Crop land rotations include wheat, barley, and alfalfa hay with the varying annual revenue being influenced by crop prices and yields. Annual rates of return are estimated between 2 percent and 2.63 percent.



Bullhead Ranch

Property legal descriptions:

<u>TWN</u>	<u>RNG</u>	<u>SEC</u>	<u>Description</u>	<u>Acres</u>
30N	3W	9	W2NE, NENE, E2NW, W2SW, PART E2SW	338.64
30N	3W	4	N2NE, SWNE, W2SE, SESE, SESW	281.40
30N	3W	3	LOT 4	40.51
31N	3W	33	SW, S2SE, NWSE	280.00
30N	3W	18	SE, S2NE	240.00
30N	3W	9	W2NW	80.00
30N	3W	8	N2, N2S2	480.00
30N	3W	6	SESE	40.00
30N	3W	5	NWSE, NE, SW, S2SE, NESE	481.52
30N	3W	4	N2SENE	20.00
<u>30N</u>	<u>3W</u>	<u>4</u>	<u>NW, N2SW, SWSW</u>	<u>281.40</u>
			Total Acres	2,563.47

814-6

EASEMENTS

**Land Board Agenda Item
August 18, 2014**

814-6 Easements

Location: Prairie, Fergus, Phillips Counties

Trust Benefits: Common Schools

Trust Revenue: Common Schools= \$23,941.00

Item Table of Contents

Applicant	Right-of-Way Purpose	Page(s)
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Fergus County	Historic County Road	3-4
Montana Department of Transportation	New Highway Construction	5-7

Rights of Way Applications

August 18, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Tongue River Electric Cooperative, Inc. PO Box 138 Ashland, MT 59003
Application No.:	16483
R/W Purpose:	a 14.4kV overhead distribution line
Lessee Agreement:	ok
Acreage:	2.05
Compensation:	\$667.00
Legal Description:	20-foot strip through E2NE4, N2SE4, Sec. 15, Twp. 10N, Rge. 54E, Prairie County
Trust Beneficiary:	Common Schools

Item Summary

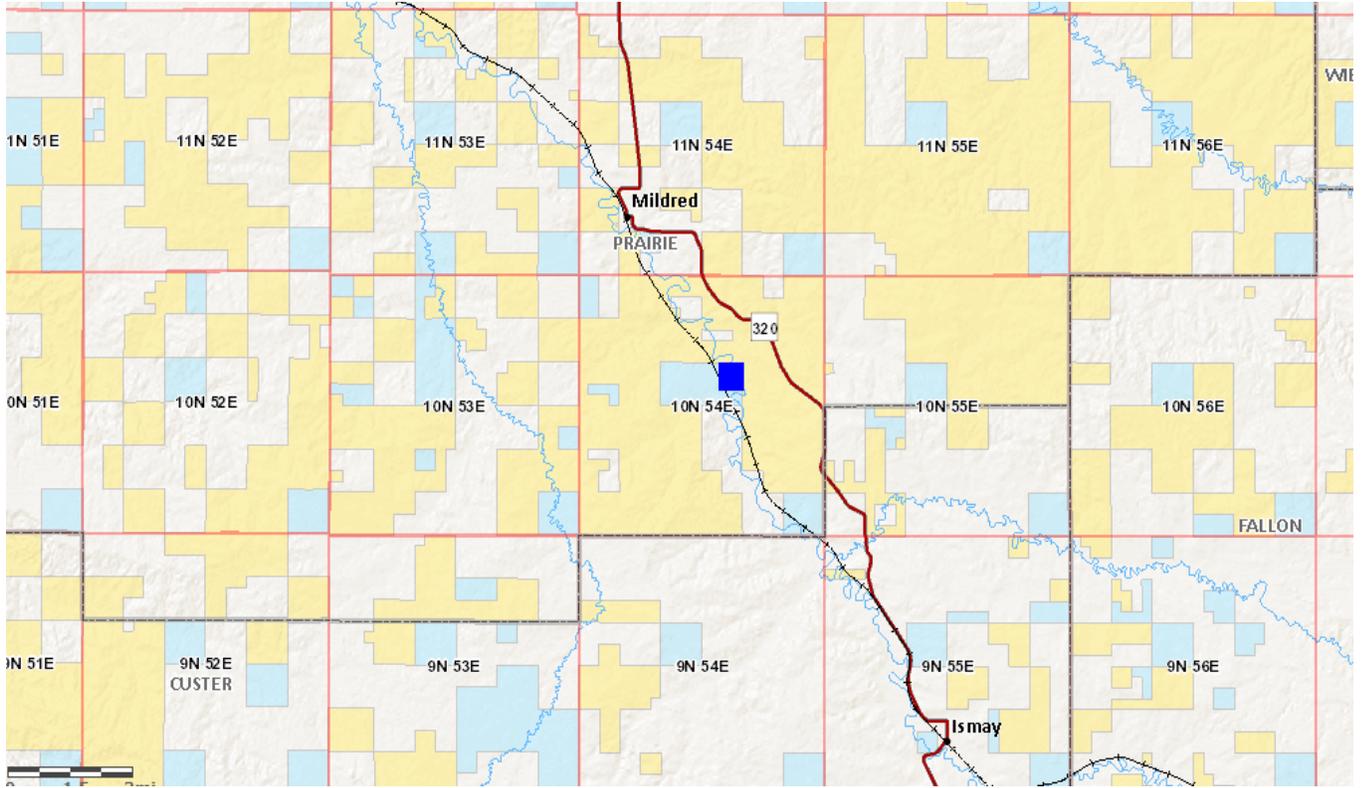
Tongue River Electric Cooperative, Inc., has made application for a 14.4kV overhead single phase distribution line. This line will come off of an existing power line in Section 11 on Bureau of Land Management (BLM) property and continue on to the existing Burlington Northern Santa Fe Railway Company (BNSF) track on Section 15, which is state land. The power line will connect to an existing BNSF installation that measures the heat of the axels as the trains travel over it; if the axels that are too hot, the system signals, therefore preventing wildfires caused by overheated train axels. This line will go through sage grouse habitat, so Tongue River Electric will follow mitigation measures found in the Avian Power Line Interaction Committee Guidelines for the installation of this overhead power line.

DNRC Recommendation

The director recommends approval of this overhead power distribution line request.

Rights of Way Applications

August 18, 2014



Rights of Way Applications

August 18, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Fergus County 712 W Main Street, Suite 210 Lewistown, MT 59457
Application No.:	16529
R/W Purpose:	a public county road known as Andrews Lane
Lessee Agreement:	N/A (Historic)
Acreage:	4.61
Compensation:	\$1037.00
Legal Description:	60-foot strip through SE4SW4, S2SE4, Sec. 16, Twp. 19N, Rge. 19E, Fergus County
Trust Beneficiary:	Common Schools

Item Summary

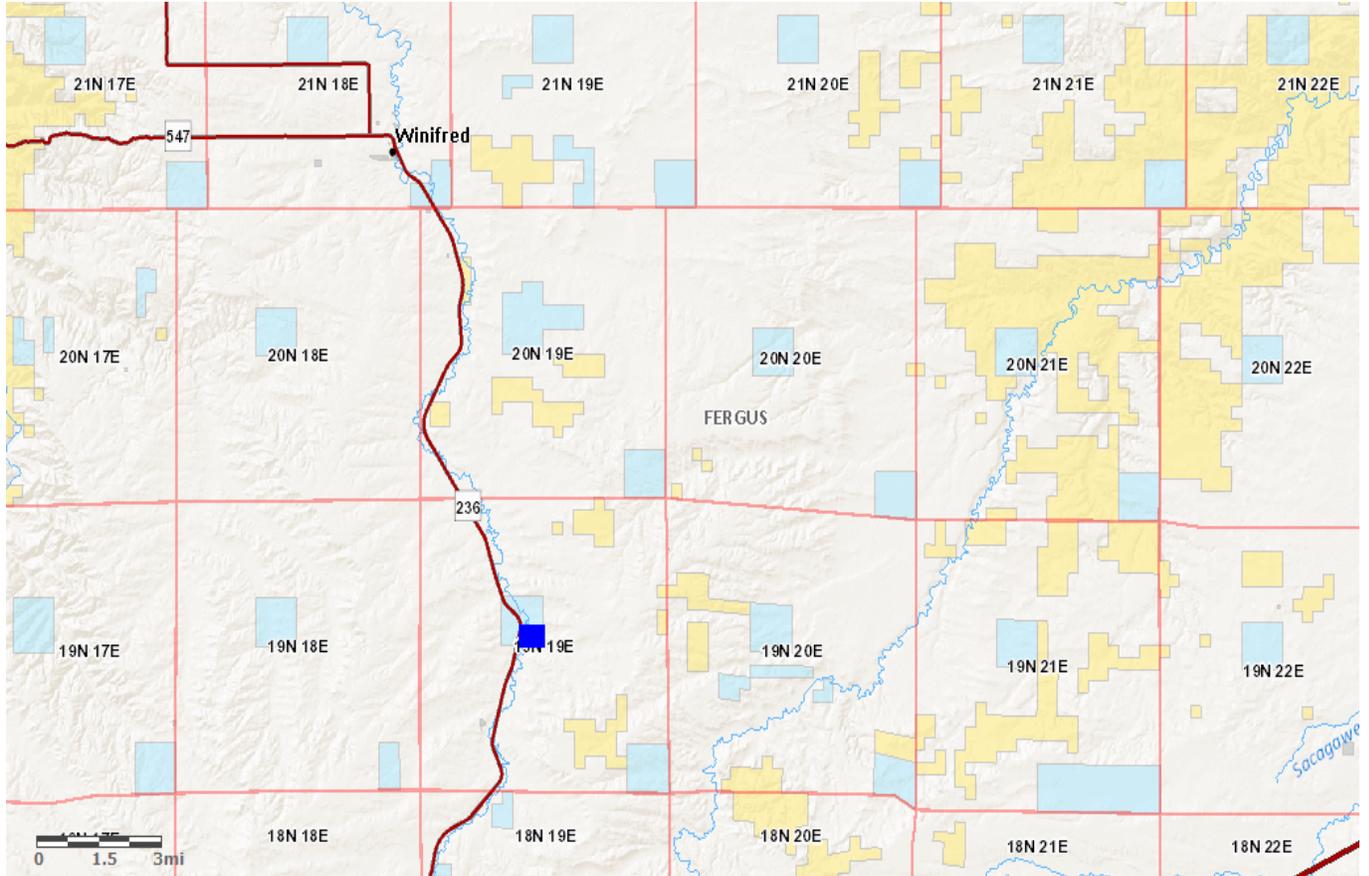
Fergus County has made application for this county road that was constructed on state lands many years ago without proper authorization from the Land Board. Pursuant to §77-1-130, MCA, the county is requesting recognition of this road as a historic right of way.

DNRC Recommendation

The director recommends approval of this historic right of way for Fergus County.

Rights of Way Applications

August 18, 2014



Rights of Way Applications

August 18, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Montana Department of Transportation PO Box 201001 Helena, MT 59620-1001
Application No.:	16630
R/W Purpose:	highway construction and maintenance including occupancy by public utilities
Lessee Agreement:	ok
Acreage:	3.21
Compensation:	\$3659.00
Legal Description:	tract of land in the SE4SW4, SW4SE4, N2SE4, E2NE4 Sec. 36, Twp. 32N, Rge. 30E, Phillips County
Trust Beneficiary:	Common Schools

Item Summary

Montana Department of Transportation has made application for highway construction and maintenance including occupancy by public utilities for a project known as Malta-North. The scope of this project is to reconstruct an 11.5 mile portion of US Highway 191 north of the town of Malta. This project will result in substantial changes to the horizontal and vertical alignments of the existing roadway. The fundamental purpose of this project is to bring US Highway 191 up to current federal design standards and to improve drivability and safety for the traveling public.

DNRC Recommendation

The director recommends approval of this highway construction project.

Rights of Way Applications

August 18, 2014

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Montana Department of Transportation PO Box 201001 Helena, MT 59620-1001
Application No.:	16631
R/W Purpose:	highway construction and maintenance including occupancy by public utilities
Lessee Agreement:	ok
Acreage:	13.27
Compensation:	\$18,578.00
Legal Description:	tract of land in the N2SW4, SE4NW4, NW4NE4, US Government Lots 1 & 6, Sec. 36, Twp. 33N, Rge. 30E, Phillips County
Trust Beneficiary:	Common Schools

Item Summary

See page 5

DNRC Recommendation

See page 5

Rights of Way Applications

August 18, 2014

