AGENDA
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
September 21, 2020 at 9:00 a.m.
State Capitol, Room 303
Helena, MT

ACTION ITEMS

0920-1 **Timber Sale: Lazy Swift Blowdown**
Benefits: MSU 2nd Grant
Location: Flathead County

0920-2 **Oil and Gas Lease Sale: September 1, 2020**
Benefits: Common Schools
Location: Dawson, and Toole Counties

0920-3 **Land Banking Parcels: Set Minimum Bid for Sale**
Benefits: Common Schools
Location: Powell County

0920-4 **Easements:**
Benefits: Capitol Buildings, Common Schools, Public Land Trust- Nav. Rivers
Location: Beaverhead, Fallon, Lewis and Clark, Pondera, Richland, Rosebud, Toole, and Wibaux Counties

0920-5 **Proposed Commercial Lease Agreement: Mountaineer Development Parcel**
Benefits: Common Schools
Location: Flathead County

PUBLIC COMMENT

0920-1

TIMBER SALES:

Lazy Swift Blowdown

Land Board Agenda Item
September 21, 2020

0920-1 Timber Sale: Lazy Swift Blowdown

Location: Flathead County
Section 19, 30, & 31 T32N, R22W

Trust Beneficiaries: MSU Second Grant

Trust Revenue: $160,962 (estimated, minimum bid)

Item Summary

Location: The Lazy Swift Blowdown Timber Sale is located approximately 9 miles northwest of Whitefish, MT.

Size and Scope: The sale includes 9 harvest units (*588 acres*) of tractor logging.

Volume: The estimated harvest volume is 6950 tons (*1.1 MMBF*) of sawlogs.

Estimated Return: The minimum bid is $23.16 per ton, which would generate approximately $160,962 for the MSU Second Grant Trust and approximately $33,291 in Forest Improvement fees.

Prescription: This sale has a harvest prescription of salvage designed to capture the value of blowdown trees and regenerate stands through planting.

Road Construction/Maintenance: The Montana Department of Natural Resources and Conservation (DNRC) is proposing 0.3 miles of new permanent road construction, 0.8 miles of road reclamation, and 12.0 miles of road maintenance.

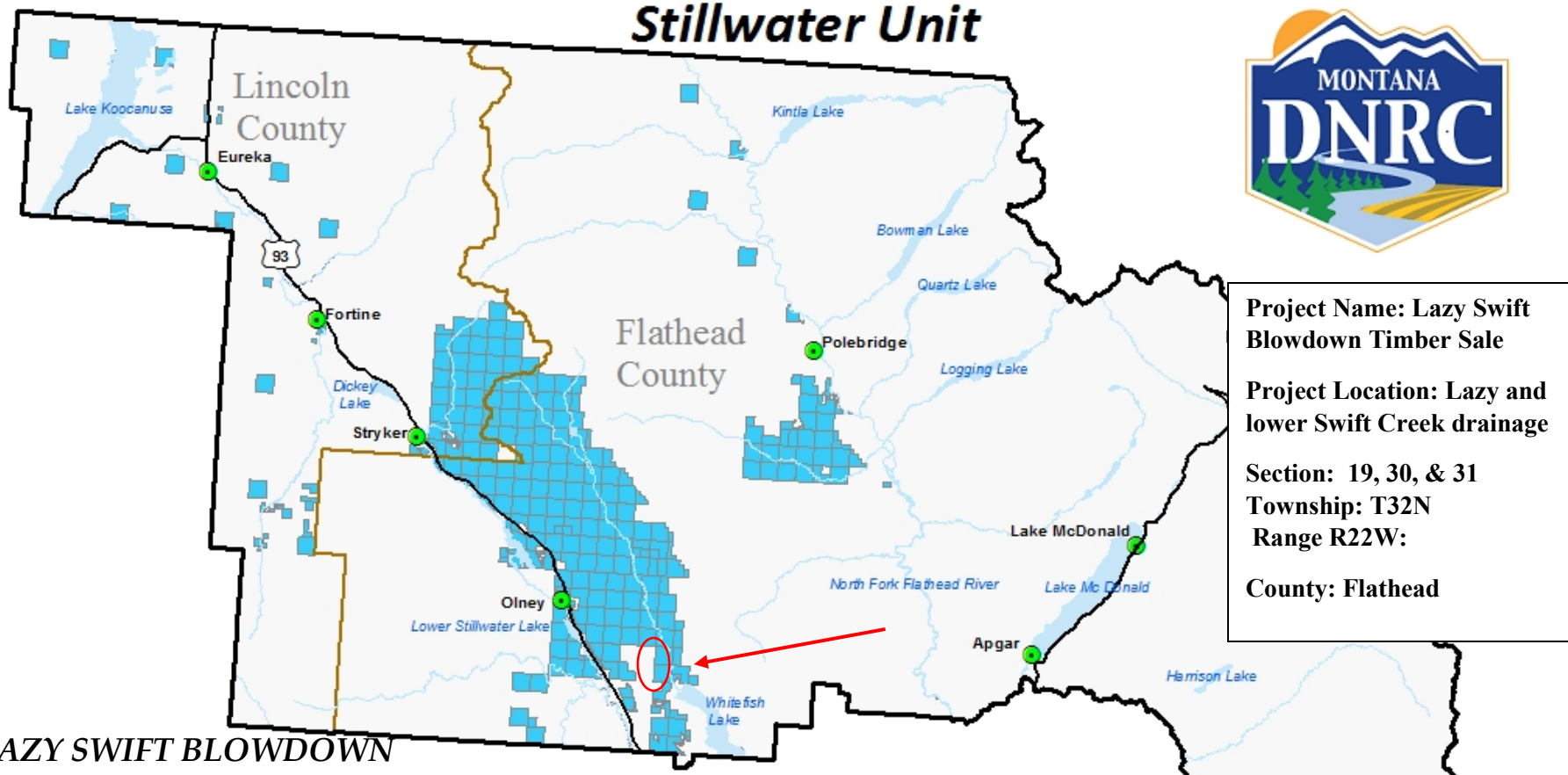
Access: Access is obtained through State and temporary access through Southern Pacific Pines ownership with a Temporary Road Use Permit (TRUP).

Public Comments: Nine comments were received. Most comments revolved around DNRC making a timely effort to salvage logs for the wood products, reduce future bark beetle infestations, and minimize disruption of recreation activities associated with Land-Use Licenses by having most logging completed before spring 2021. No Land-Use Licenses occur within this Timber Sale. All the comments were addressed in the Environmental Assessment (EA).

DNRC Recommendation

The director recommends the Land Board direct DNRC to sell the Lazy Swift Blowdown Timber Sale.

State Trust Land Vicinity Map
Stillwater Unit



Project Name: Lazy Swift Blowdown Timber Sale

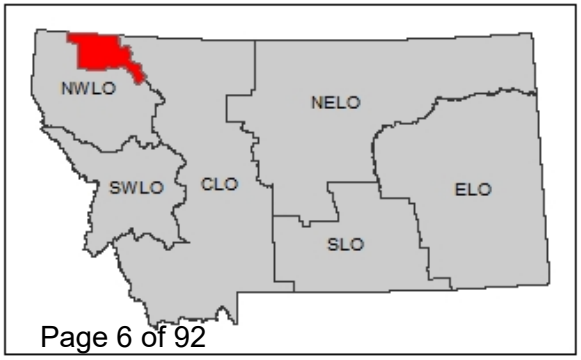
Project Location: Lazy and lower Swift Creek drainage

Section: 19, 30, & 31
Township: T32N
Range R22W:

County: Flathead

LAZY SWIFT BLOWDOWN

VICINITY MAP



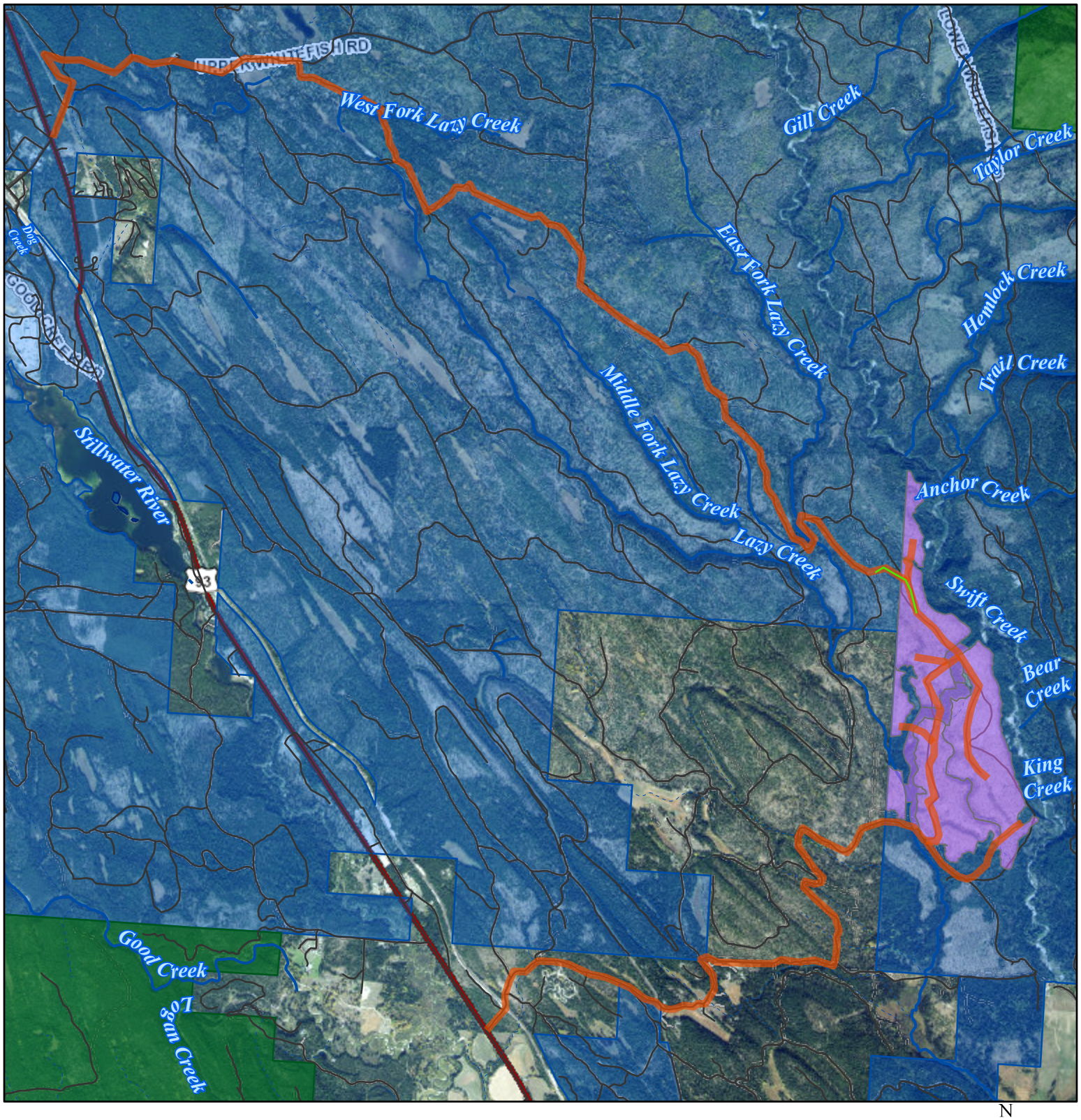
Towns
Major Roads
Rivers
County Lines
Water Bodies
State Trust Land

0 5 10 20 Miles

N

Produced by Montana Department of Natural Resources and Conservation 11/1/2019
Datum: NAD 1983 StatePlane

Lazy Swift Blowdown Haul Route

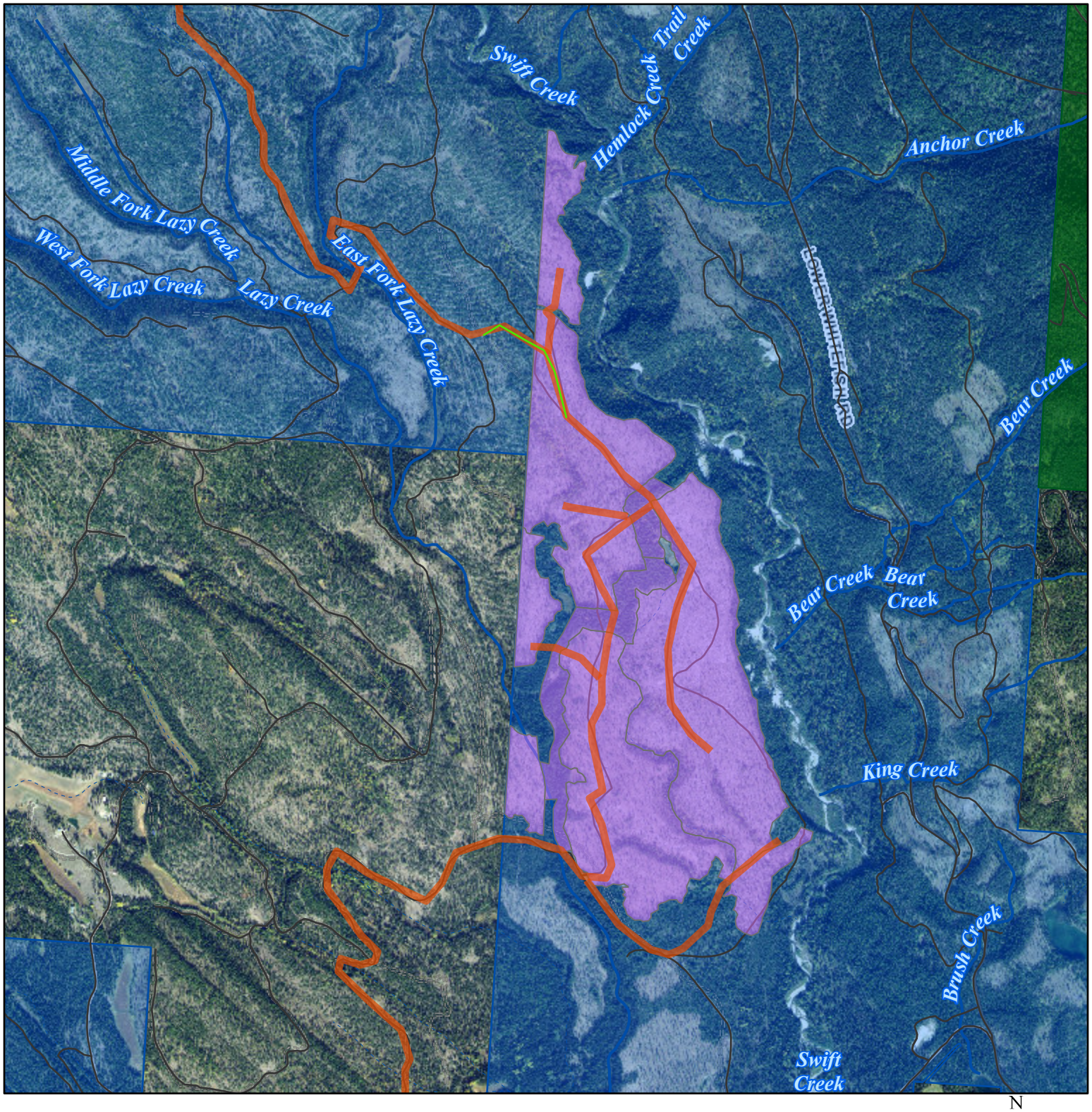


Haul Route
New Road
Lazy Swift Blowdown Harvest Units
Existing Road
Perennial Stream
Intermittent Stream
Montana State Trust Lands
Montana Fish, Wildlife, and Parks
US Forest Service
Private Ownership

N

0 0.5 1 Miles

Lazy Swift Blowdown Harvest Units



Haul Route
New Road
Lazy Swift Blowdown Harvest Units
Existing Road
Perennial Stream
Intermittent Stream
Montana State Trust Lands
US Forest Service
Private Ownership

N

0 0.25 0.5 Miles

0920-2

OIL AND GAS LEASE SALE:

September 1, 2020

Land Board Agenda Item
September 21, 2020

0920-2 Oil and Gas Lease Sale (September 1, 2020)

Location: Dawson, and Toole Counties

Trust Benefits: Common Schools

Trust Revenue: $82,569.92

Item Summary

The Department of Natural Resources and Conservation (DNRC) held an oil and gas lease sale on September 1, 2020, in the Montana Room at the Montana DNRC building. A total of sixteen tracts were offered for lease. Sixteen tracts were leased for a total of $82,269.92. The sixteen tracts that were sold covered a total of 7,071.02 acres. The average bid per acre was $11.63.

The high competitive bid for the September 1, 2020 sale was $50.00 per acre and the largest total bid was $20,000.00 for Tract 16 in Toole County.

DNRC Recommendation

The director requests Land Board approval to issue the leases from the September 1, 2020 oil and gas lease sale.

State of Montana
Oil & Gas Lease Sale - September 1, 2020
Lease Sale Results

The following described lands were offered for oil and gas leasing through oral competitive bidding in the Department of Natural Resources and Conservation Montana Room, 1539 Eleventh Avenue, Helena, Montana, beginning at 9:00 am, September 1, 2020.

Tract	Stipulations	Twp	Rng	Sec	Description		Acres	Bid/Acre	Total Bid	Lessee
Dawson										
1	1, 2, 3, 4, 5, 6, 7, 9	13.N	56.E	16	ALL		640.00	$1.50	$960.00	PRIMARY FUELS, LLC
2	1, 2, 3, 4, 5, 6	16.N	54.E	10	NE4		160.00	$1.50	$240.00	PRIMARY FUELS, LLC
3	1, 2, 3, 4, 5, 6	16.N	54.E	12	S2NE4, SE4NW4, NE4SW4		160.00	$1.50	$240.00	PRIMARY FUELS, LLC
4	1, 2, 3, 4, 5, 6, 7	16.N	54.E	16	ALL		640.00	$1.75	$1,120.00	ENERGY LAND SERVICES, LLC
5	1, 2, 3, 4, 5, 6, 7, 10, 13, 14	16.N	54.E	36	LOTS 1, 2, 3, 4, N2, N2S2		637.00	$1.50	$955.50	PRIMARY FUELS, LLC
6	1, 2, 3, 4, 5, 6, 7	16.N	55.E	16	ALL	*	640.00	$1.75	$1,120.00	ENERGY LAND SERVICES, LLC
Toole										
7	1, 2, 3, 4, 5, 6, 8, 10	34.N	1.W	7	LOTS 1, 2, E2NW4, E2SE4, BELOW THE BASE OF THE MADISON FORMATION		234.02	$21.00	$4,914.42	SWANSON, TOM E.
8	1, 2, 3, 4, 5, 6	34.N	1.W	16	E2, BELOW THE BASE OF THE MADISON GROUP FORMATION	*	320.00	$21.00	$6,720.00	SWANSON, TOM E.
9	1, 2, 3, 4, 5, 6	34.N	2.W	36	ALL, BELOW THE BASE OF THE REIRDON FORMATION		640.00	$31.00	$19,840.00	SWANSON, TOM E.
10	1, 2, 3, 4, 5, 6, 10	35.N	2.W	25	SE4NE4, SE4, BELOW THE BASE OF THE MADISON FORMATION		200.00	$6.00	$1,200.00	SWANSON, TOM E.
11	1, 2, 3, 4, 5, 6	36.N	1.W	14	ALL		640.00	$1.50	$960.00	SWANSON, TOM E.
12	1, 2, 3, 4, 5, 6, 7, 12	36.N	1.W	23	N2		320.00	$1.50	$480.00	SWANSON, TOM E.
13	1, 2, 3, 4, 5, 6	36.N	1.W	36	ALL	*	640.00	$1.50	$960.00	SWANSON, TOM E.
14	1, 2, 3, 4, 5, 6, 11	37.N	4.W	16	ALL, BELOW THE TOP OF THE ELLIS GROUP		640.00	$25.00	$16,000.00	NORTHWESTERN CORPORATION DBA NORTHWESTERN ENERGY
15	1, 2, 3, 4, 5, 6, 11	37.N	4.W	30	NE4, BELOW THE TOP OF THE ELLIS GROUP	*	160.00	$41.00	$6,560.00	NORTHWESTERN CORPORATION DBA NORTHWESTERN ENERGY
16	1, 2, 3, 4, 5, 6, 11	37.N	4.W	32	W2, W2SE4, BELOW THE TOP OF THE ELLIS GROUP	*	400.00	$50.00	$20,000.00	NORTHWESTERN CORPORATION DBA NORTHWESTERN ENERGY

* Part or all of tract is not state-owned surface

Summary by Lessor

	Total Acres	Total Tracts
Dept. of Natural Resources and Conservation	7,071.02	16

Oil and Gas Lease Sale Summary

Total Tracts	16
Total Acres	7,071.02
Total Bid Revenue	$82,269.92
Average Bid Per Acre	$11.63

State of Montana
Oil & Gas Lease Sale - September 1, 2020
Stipulations

1 Lessee shall notify and obtain approval from the Department's Trust Land Management Division (TLMD) prior to constructing well pads, roads, power lines, and related facilities that may require surface disturbance on the tract. Lessee shall comply with any mitigation measures stipulated in TLMD's approval.

2 Prior to the drilling of any well on or into the lease premises, lessee shall send one copy of the well prognosis, including Form 22 "Application for Permit" to the Department's Trust Land Management Division (TLMD). After a well is drilled and completed, lessee shall send one copy of all logs run, Form 4A "Completion Report", and geologic report to TLMD. A copy of Form 2 "Sundry Notice and Report of Wells" or other appropriate Board of Oil and Gas Conservation form shall be sent to TLMD whenever any subsequent change in well status or operator is intended or has occurred. Lessee shall also notify and obtain approval from the TLMD prior to plugging a well on the lease premises.

Issuance of this lease in no way commits the Land Board to approval of coal bed methane production on this lease. Any coal bed methane extraction wells would require subsequent review and approval by the board.

3 The TLMD will complete an initial review for cultural resources and, where applicable, paleontological resources of the area intended for disturbance and may require a resources inventory. Based on the results of the inventory, the TLMD may restrict surface activity for the purpose of protecting significant resources located on the lease premises.

4 The lessee shall be responsible for controlling any noxious weeds introduced by lessee's activity on State-owned land and shall prevent or eradicate the spread of those noxious weeds onto land adjoining the lease premises. The lessee’s methods of control shall be reviewed and approved by the Department’s Unit Office that has jurisdiction for that locale.

5 The definitions of "oil" and "gas" provided in 82-1-111, MCA, do not apply to this lease for royalty calculation purposes.

6 If the State does not own the surface, the lessee must contact the owner of the surface in writing at least 30 days prior to any surface activity. A copy of the correspondence shall be sent to TLMD.

7 Due to unstable soil conditions on this tract and/or topography that is rough and/or steep, surface use may be restricted or denied. Seismic activity may be restricted to poltershots.

8 The lessee is responsible to pay for all damages, including penalties and charges assessed by the USDA-CFSA on CRP lands, as a result of drilling and production on the tract.

9 This lease is located within designated sage grouse general habitat. Proposed activities are subject to, and shall comply with, all provisions, stipulations and mitigation requirements of the Montana Sage Grouse Habitat Conservation Strategy, as implemented by Governor's Executive Orders 10-2014, 12-2015, and amendments thereto. Contact the TLMD prior to preparing a project proposal.

10 Due to the floodplain/wetlands area(s), surface use may be restricted or denied.

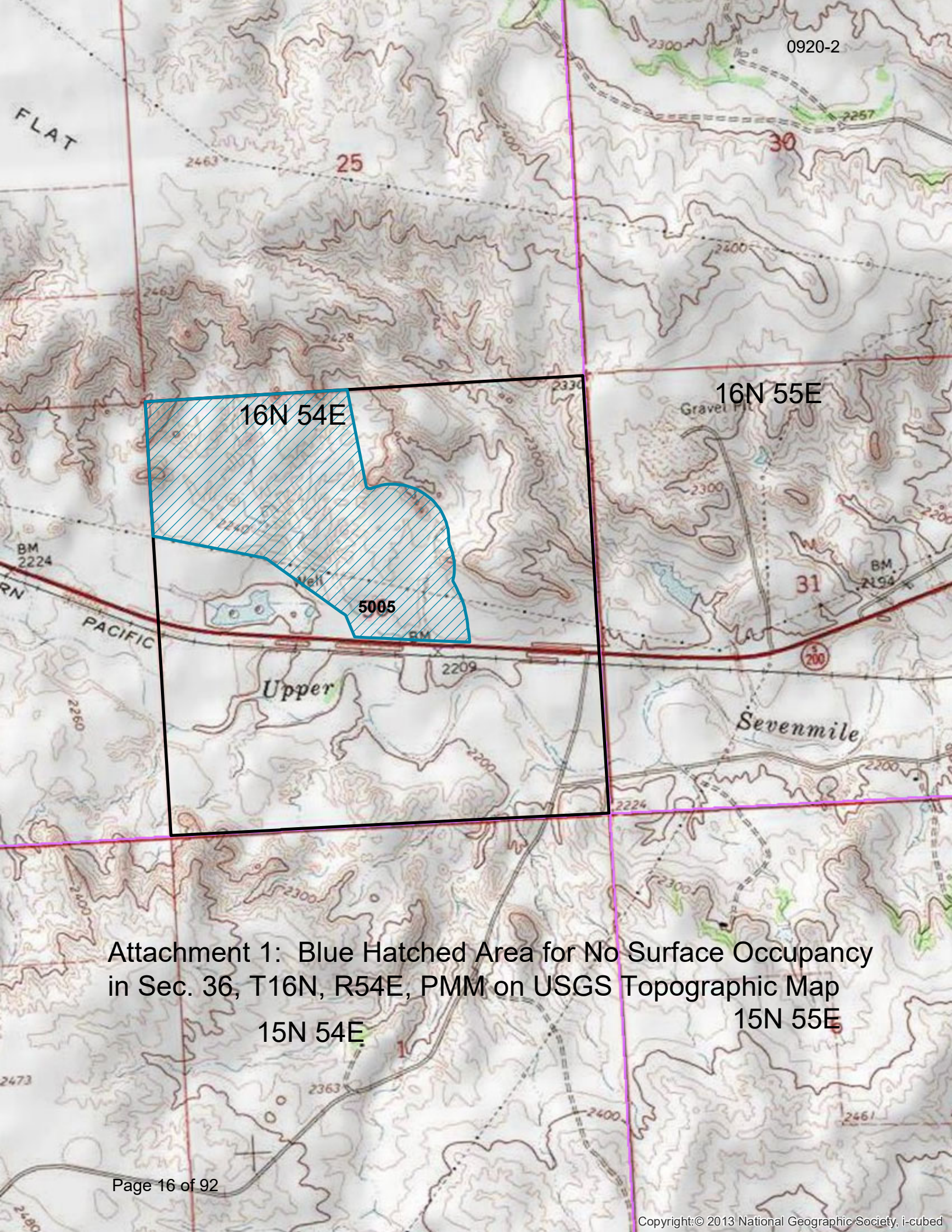
11 A gas storage unit exists on this tract. TLMD will solicit comments from the gas storage operator (if other than lessee) if drilling through the gas storage reservoir is proposed, and TLMD may include reasonable protective stipulations in approving lessee’s operating plan. As part of its regulatory review, the BOGC may also require protective measures to ensure no impact to the gas storage reservoir.

12 This tract has (an) existing well(s) and related facilities. The lessee has 45 days from the effective date of this lease to determine whether or not to assume responsibility from the former lessee for the well(s) and any existing facilities. The lessee may not enter the well(s) until a change of operator has been filed with, and approved by, the Board of Oil and Gas Conservation. The(se) well(s) must be returned to commercial production or plugged and the well site (s) reclaimed within 18 months from the effective date of this lease.

13 No surface occupancy will be permitted in the hatched portion of the DFWP easement area shown on the accompanying topographic map and 2017 aerial photo (unless otherwise approved in writing by the Director of MT Dept. of Fish, Wildlife and Parks).

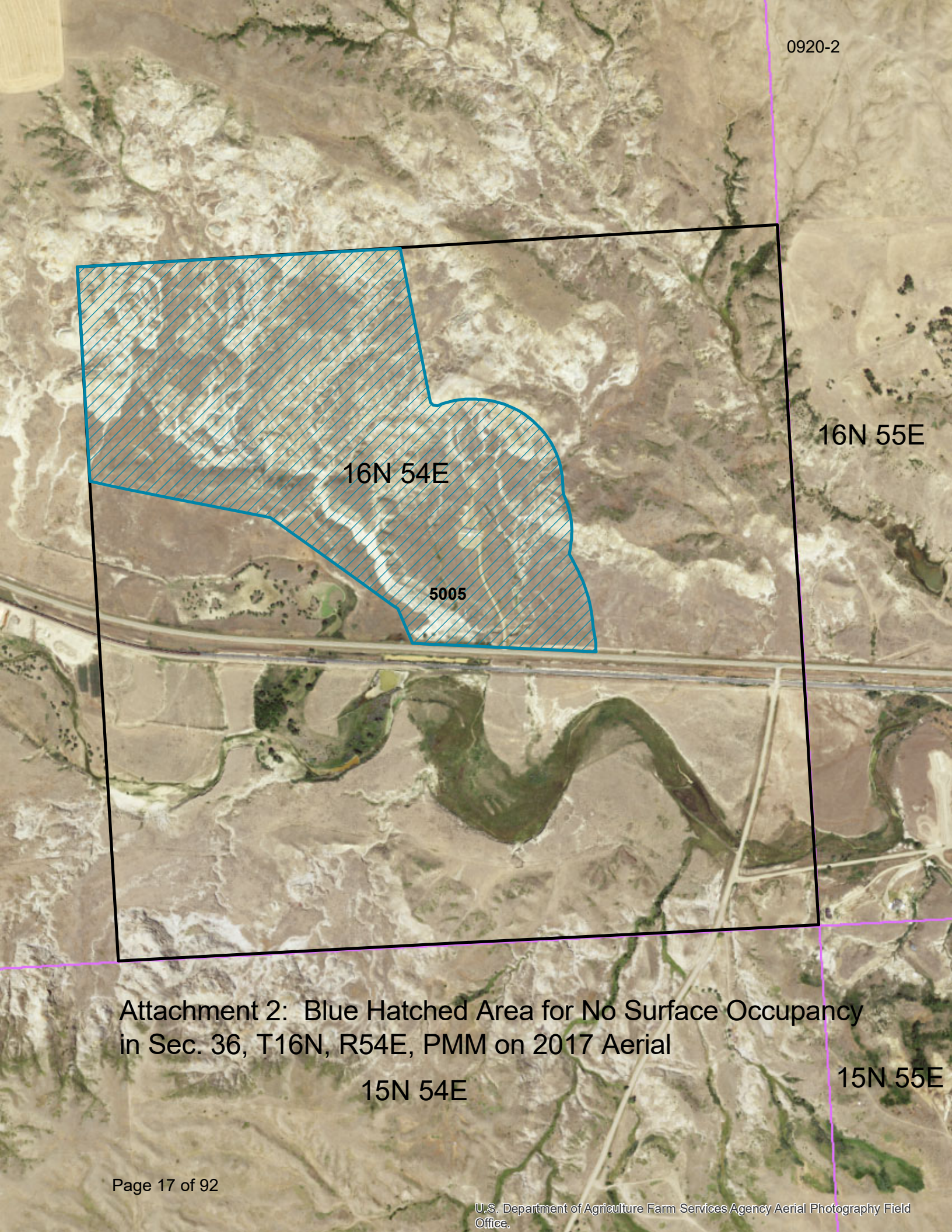
14 MT Dept. of Fish, Wildlife and Parks (MT-DFWP) holds a permanent public park and recreation easement D-12389 on 357.28 surface acres, more or less, approximately north of the right-of-way of MT State Highway No. 200S for the development, maintenance and operation of a public shooting range, including associated facilities. DNRC will consult with MT-DFWP regarding oil and gas activity proposed on their easement area.

If the lessee proposes oil and gas activity on the easement area, lessee shall coordinate with MT-DNRC and MT-DFWP to determine a suitable location of proposed oil and gas well(s), related facilities and equipment for possible development and production within the easement area, but outside the no-surface-occupancy area. The location of the well(s), equipment and facilities shall be reasonable and shall not cause undue hardship to the oil and gas lessee. MT-DFWP's easement requires written concurrence that the proposed uses do not unreasonably conflict with their rights under the easement. The lessee will also work and coordinate with MT-DNRC if proposing any activity outside the MT-DFWP easement area on this tract.



Attachment 1: Blue Hatched Area for No Surface Occupancy in Sec. 36, T16N, R54E, PMM on USGS Topographic Map

Copyright:© 2013 National Geographic Society, i-cubed



Attachment 2: Blue Hatched Area for No Surface Occupancy in Sec. 36, T16N, R54E, PMM on 2017 Aerial

U.S. Department of Agriculture Farm Services Agency Aerial Photography Field Office.

0920-3

LAND BANKING PARCELS:

Set Minimum Bid for Sale

Land Board Agenda Item
September 21, 2020

0920-3 Land Banking Parcel: Set Minimum Bid for Sale

Location: Powell County

Trust Benefits: Common Schools

Trust Revenue: $244,000

Item Summary

The Department of Natural Resources and Conservation (DNRC) requests to set minimum bid for two parcels totaling 165.39 acres nominated for sale in Powell County. The sale of one parcel was nominated by RV Ranch Co. and the other parcel was nominated by DNRC. They are located approximately 5 miles southeast of Elliston, Montana.

Sale #	# of Acres	Legal	Nominator	Trust
1074	125.39±	Government Lots 1,2,3,4 Less 6.5 acres patented Railroad T9N-R6W, Sec. 16 Powell County	RV Ranch Co.	Common Schools
1078	40±	SE4SE4 T9N-R6W, Sec. 16 Powell County	DNRC	Common Schools

The sale parcels have been used primarily for forest management and livestock grazing purposes.

This sale parcels are surrounded by private land (RV Ranch Co. and Kent Sports Holding LP) and are not legally accessible by the public. Sale #1074 is completely surrounded by Conservation Easements, while sale #1078 is partially surrounded by Conservation Easements. The proponent has indicated that they intend to include these parcels in a Conservation Easement with the Montana Land Reliance after the purchase of the property. The sale of these parcels would not restrict or eliminate access to adjacent private land.

MEPA scoping has been completed, with no potentially negative issues related to the sale of these parcels identified.

Economic Analysis:
Short term – The average rate of return on each sale parcel is 0.18%. The parcels would continue to receive this return if they remain in state ownership.
Long-term – The funds from the sale of these parcels would be combined with other sale funds to purchase replacement land through the department's Land Banking program. Lands purchased are required to have an equal or greater rate of return

than the combined lands that generated the sale funds used for the purchase. To date, the average annual rate of return on acquisitions has been 2.91% on acquisitions with income generated from annual lease payments.

Cultural/Paleontological Resources:
The state parcels proposed for sale were inventoried to Class III standards for cultural and paleontological resources. No cultural or paleontological resources were identified. A formal report of findings has been prepared and filed with the Montana State Historic Preservation Office per the requirements of the Montana State Antiquities Act.

Background:
In September 2019, the Board granted preliminary approval for these parcels to continue through the Land Banking sale evaluation process.

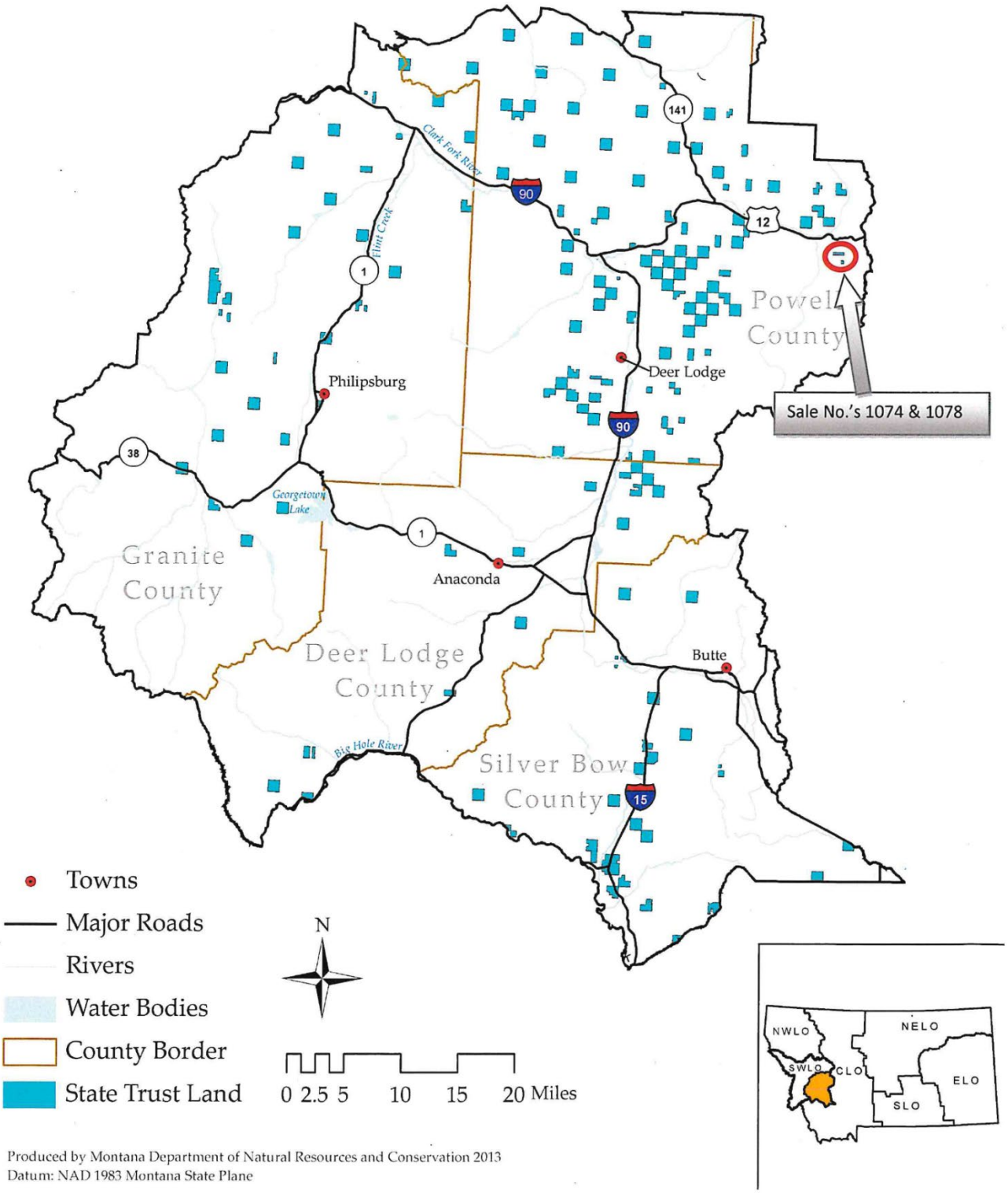
Appraised Value:

Sale #	Appraised Value with Access	Recommended Minimum Bid
1074	$185,000	$185,000
1078	$59,000	$59,000

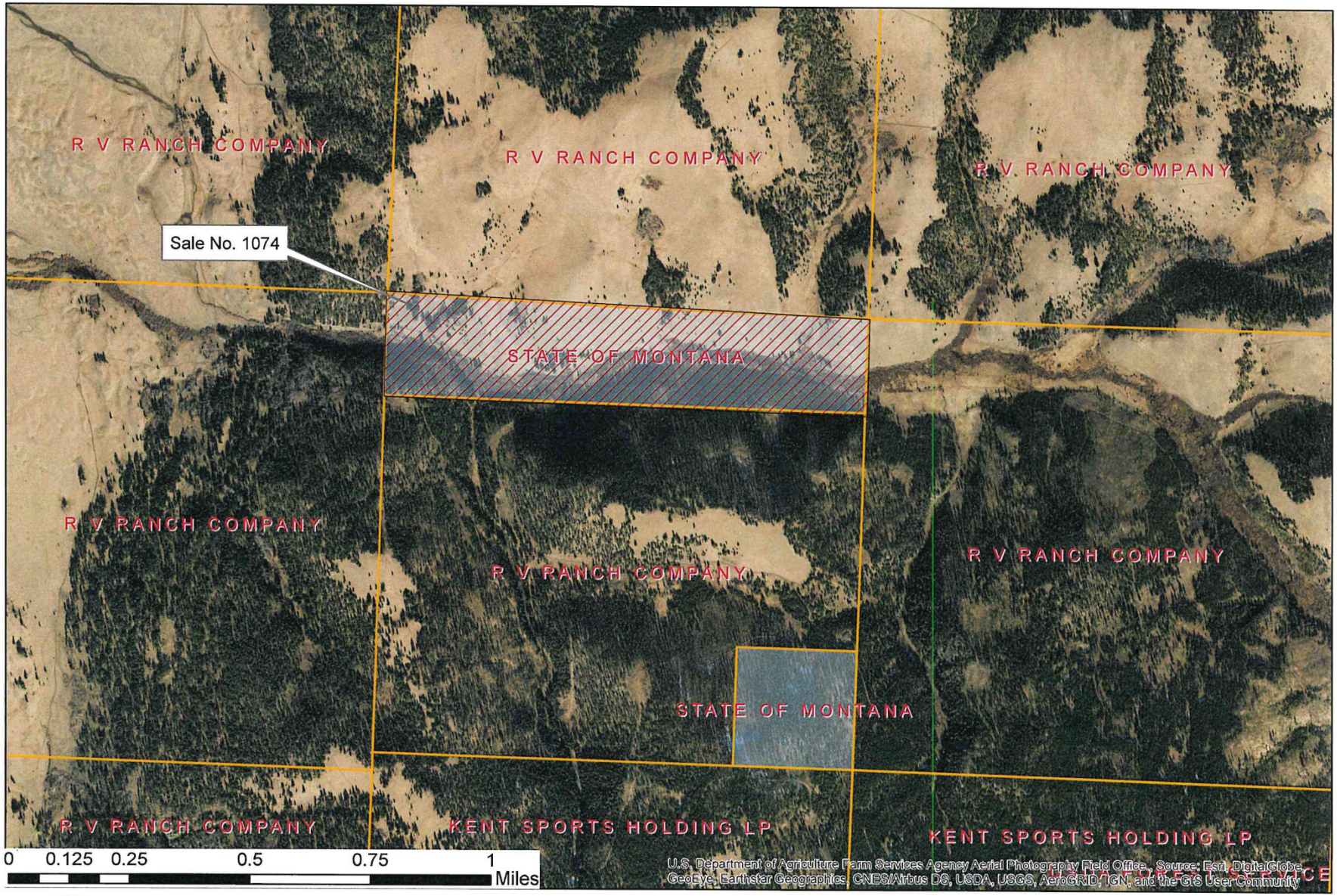
DNRC Recommendation

The director recommends the Land Board set the minimum bid for these parcels at the appraised land value shown above.

POWELL COUNTY SALE VICINITY MAP – RV RANCH
ANACONDA UNIT



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

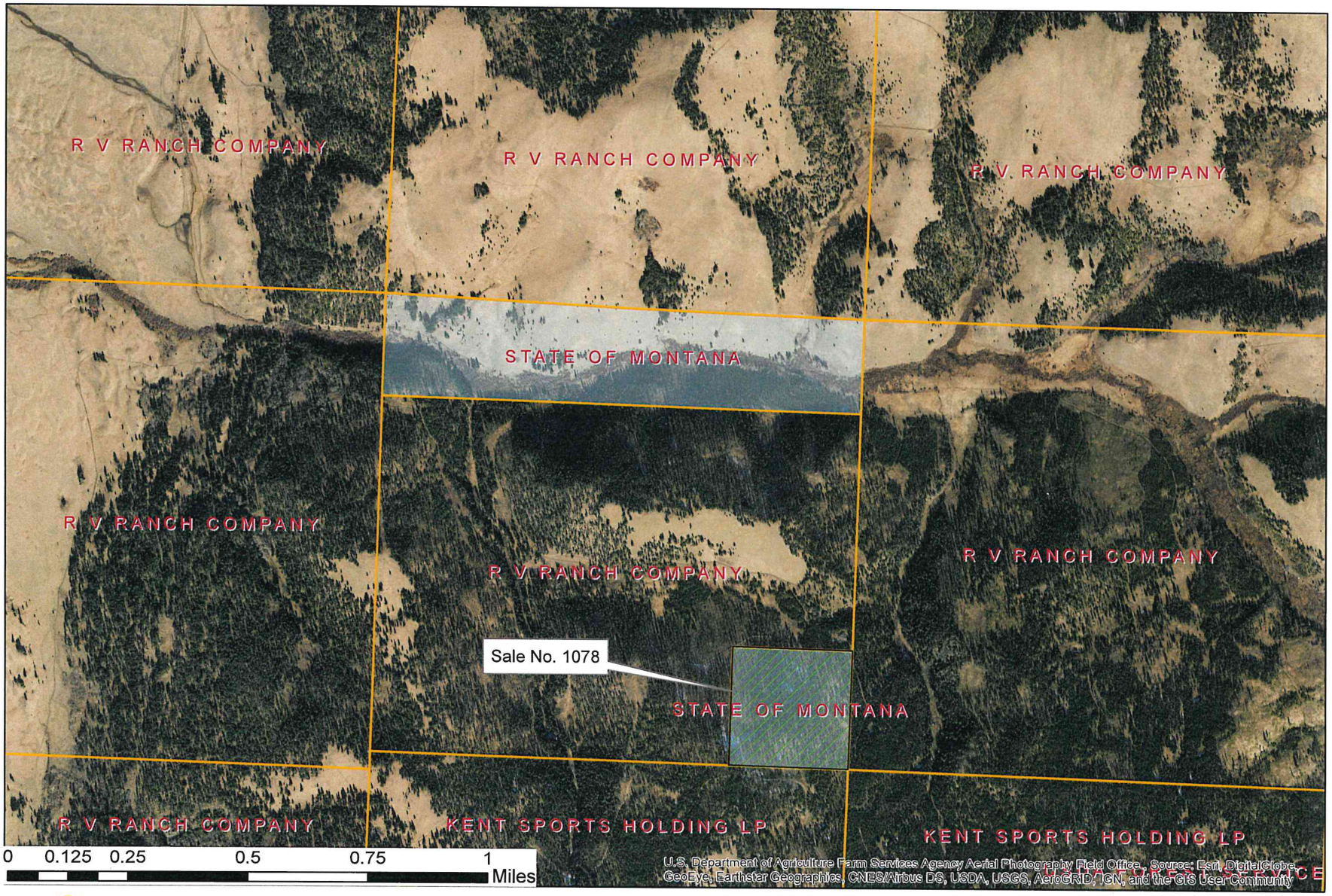


Location: Powell County
Prepared on: 27 AUGUST 2019
Prepared By: DNRC REMB Staff

Powell County Sale: RV Ranch Co.
Sale No. 1074, Common Schools

Sale # 1074 Montana State Trust Land Owner Parcels

N



Location: Powell County
Prepared on: 27 AUGUST 2019
Prepared By: DNRC REMB Staff

Powell County Sale: DNRC
Sale No. 1078, Common Schools

Sale # 1078 Montana State Trust Land Owner Parcels

N

0920-4

EASEMENTS:

Land Board Agenda Item
September 21, 2020

0920-4 Easements

Location: Beaverhead, Fallon, Lewis and Clark, Pondera, Richland, Rosebud, Toole, Wibaux

Trust Benefits: Capitol Buildings, Common Schools, Public Land Trust – Nav. River

Trust Revenue: Capitol Buildings = $244
Common Schools = $13,864
Public Land Trust = $2,940

Item Table of Contents

Applicant	Right-of-Way Purpose	Term	Page(s)
M & J Investments	Private Access Road	Permanent	30-31
Range Telephone Cooperative	Buried Fiber Optic Cable	Permanent	32-33
Goldenwest Electric Cooperative, Inc	Overhead Electrical Transmission Line	Permanent	34-35
Northern Telephone Cooperative, Inc	Buried Telecommunications Cable	Permanent	36-37
Christian J. Berg	Private Access Road	Permanent	38-39
Kathryn J. Davis	Private Access Road	Permanent	40-41
Tadd Jordan Sanders	Private Access Road	Permanent	42-43
Clearwater Energy Resources, LLC	Overhead Electrical Transmission Line	Permanent	44-45
Town of Lima	Private Access Road	Permanent	46-47
Hiland Crude, LLC	Buried Natural Gas Pipeline	30-year	48-49
Nine Mile County Water and Sewer District	Buried Water Pipeline	Permanent	50-51

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	M & J Investments PO Box 713 Lincoln, MT 59639
Application No.:	18944
R/W Purpose:	a private access road to conduct normal farming, ranching, and timber management operations
Lessee Agreement:	N/A (Historic)
Acreage:	0.31
Compensation:	$527.00
Legal Description:	20-foot strip through SE4NW4, Sec. 2, Twp. 13N, Rge. 9W, Lewis and Clark County
Trust Beneficiary:	Common Schools

Item Summary

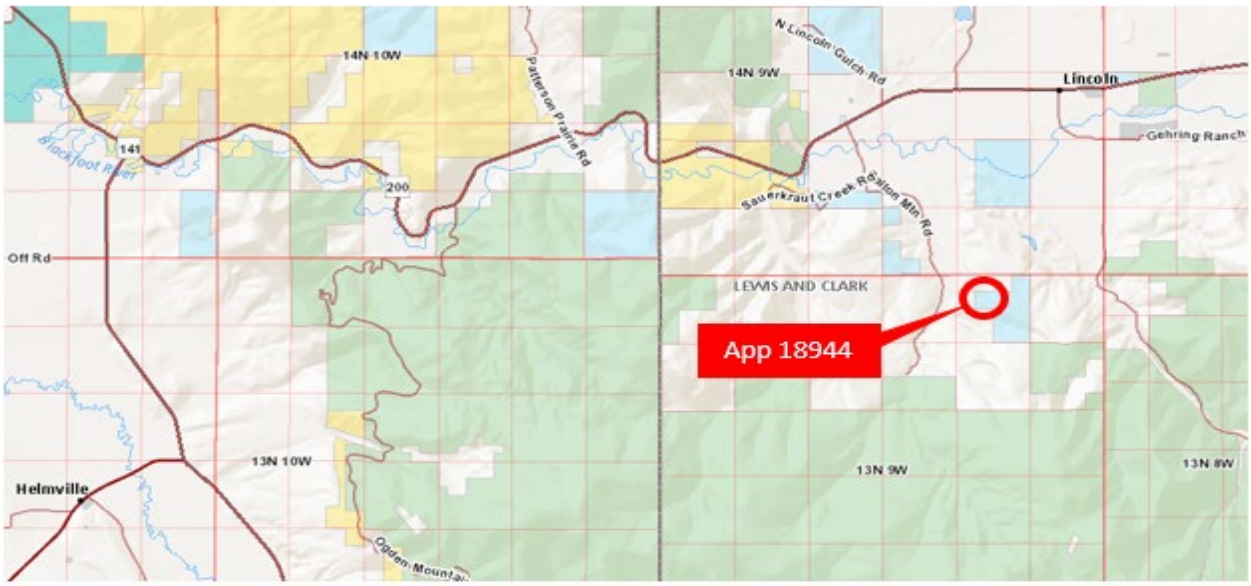
M & J Investments has made application for the use of an existing road to conduct normal farming, ranching, and timber management activities. The road has been in place for many years and authorization for continued use is being requested pursuant to §77-1-130, MCA, which allows for recognition of such historic access. The State Trust land impacted is legally accessible for resource management purposes through several reciprocal easement grants acquired in the late 1990's from adjacent landowners. The private property of applicant to be accessed is described as:

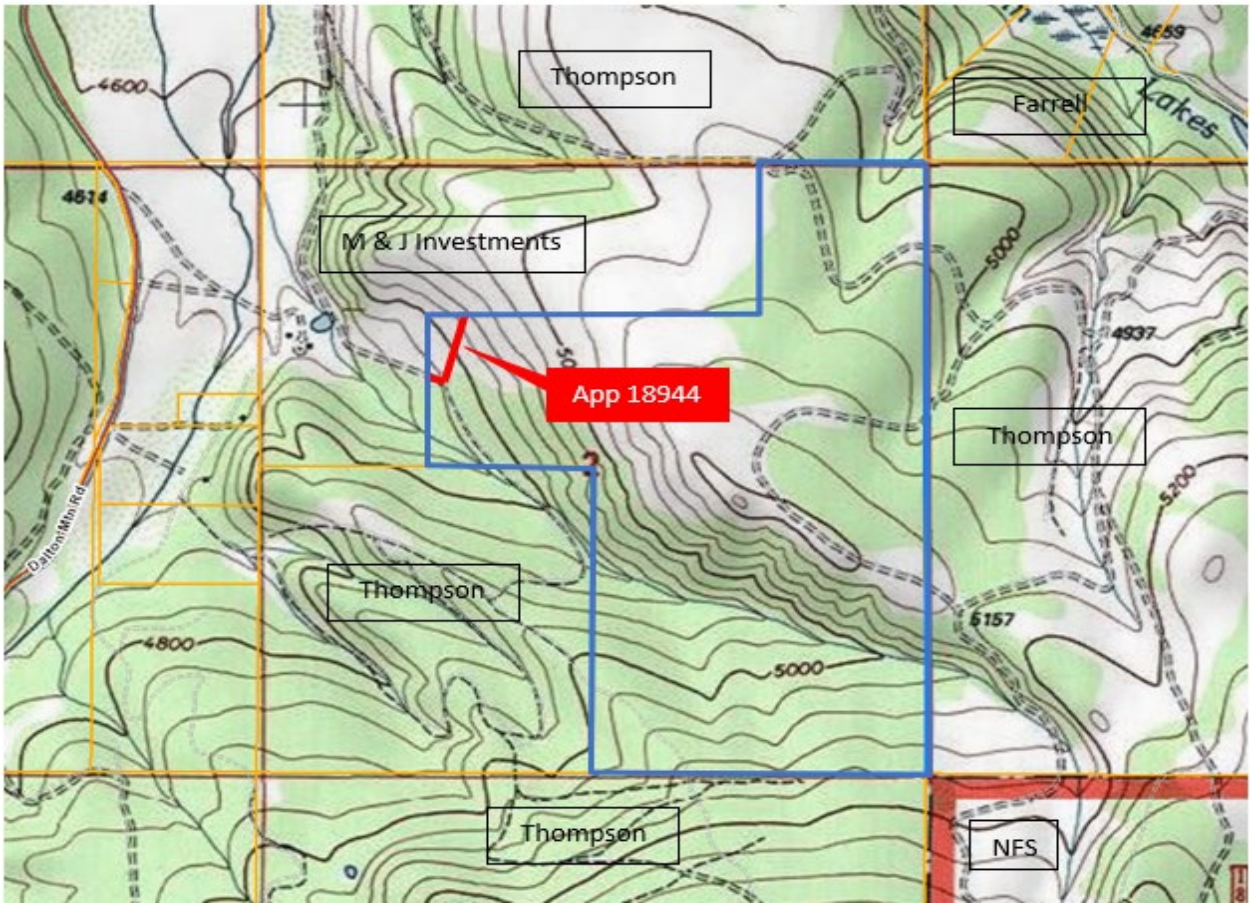
- W2NW4, NE4NW4, NW4NE4, Sec. 2, Twp. 13N, Rge. 9W, Lewis and Clark County

DNRC Recommendation

The director recommends approval of the application of M & J Investments.

R/W Application 18944





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Range Telephone Cooperative 2325 Front St. Forsyth, MT 59327
Application No.:	18957
R/W Purpose:	a buried fiber optic cable
Lessee Agreement:	ok
Acreage:	2.24
Compensation:	$1,344.00
Legal Description:	16-foot strip through NE4NE4, S2NE4, SE4NW4, E2SW4, Sec. 16, Twp. 1S, Rge. 44E, Rosebud County
Trust Beneficiary:	Common Schools

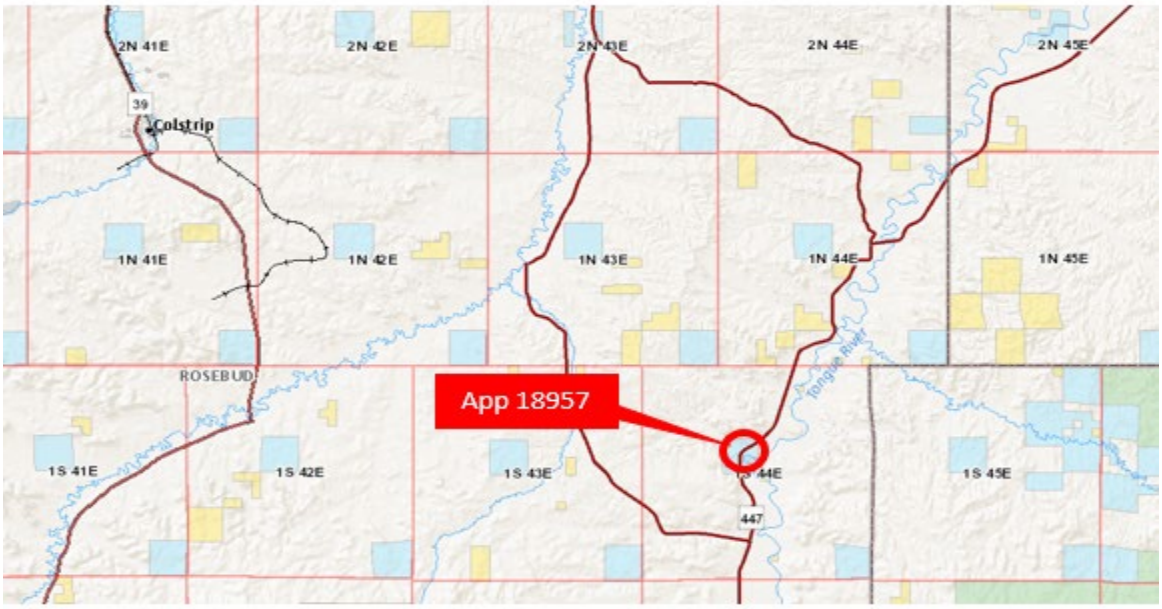
Item Summary

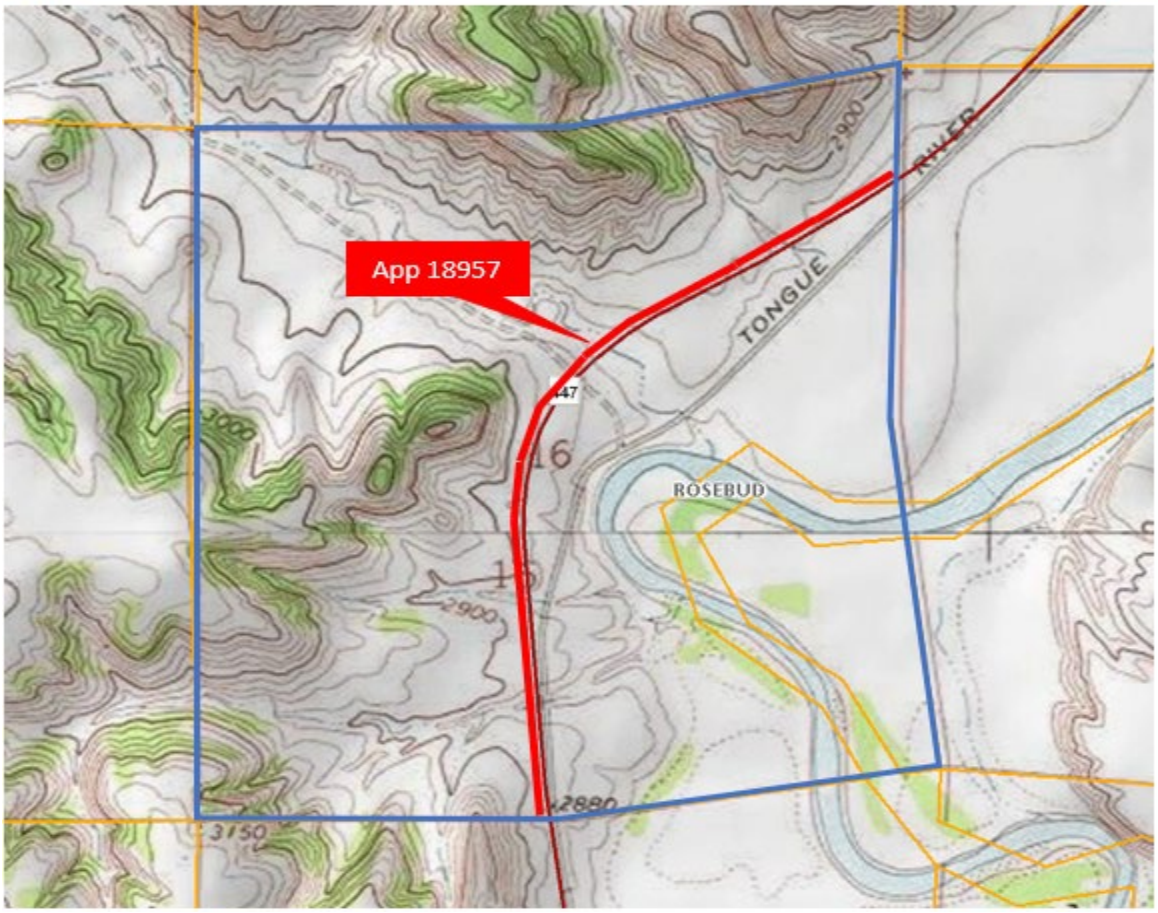
Range Telephone Cooperative is requesting easements to place fiber optic cable across State Trust land in rural Rosebud County. The installation will provide a communications link between outlying areas of Rosebud County. The selected route will follow the existing roadways and minimal impacts to the land is anticipated.

DNRC Recommendation

The director recommends approval of the application of Range Telephone Cooperative.

R/W Application 18957





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Goldenwest Electric Cooperative, Inc PO Box 177 Wibaux, MT 59353
Application No.:	18958
R/W Purpose:	an overhead 115 kV electric transmission line
Lessee Agreement:	ok
Acreage:	5.81
Compensation:	$3,486.00
Legal Description:	80-foot strip through SW4NW4, and Gov. Lots 3 & 4, Sec. 12, Twp. 16N, Rge. 59E, Wibaux County
Trust Beneficiary:	Common Schools

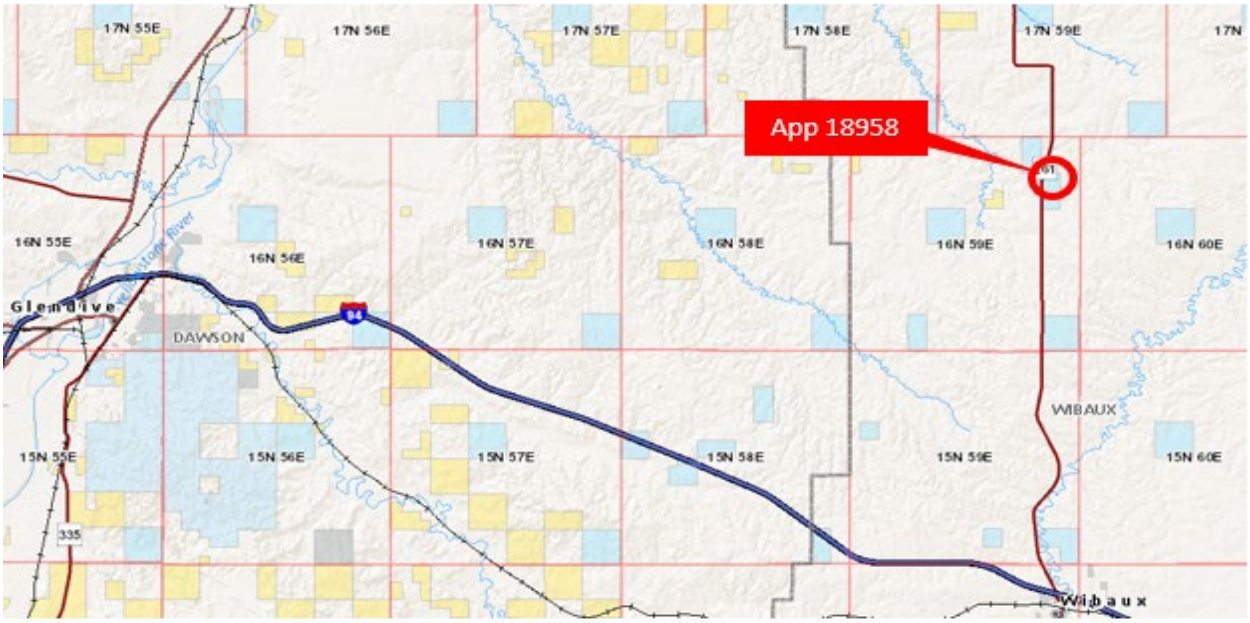
Item Summary

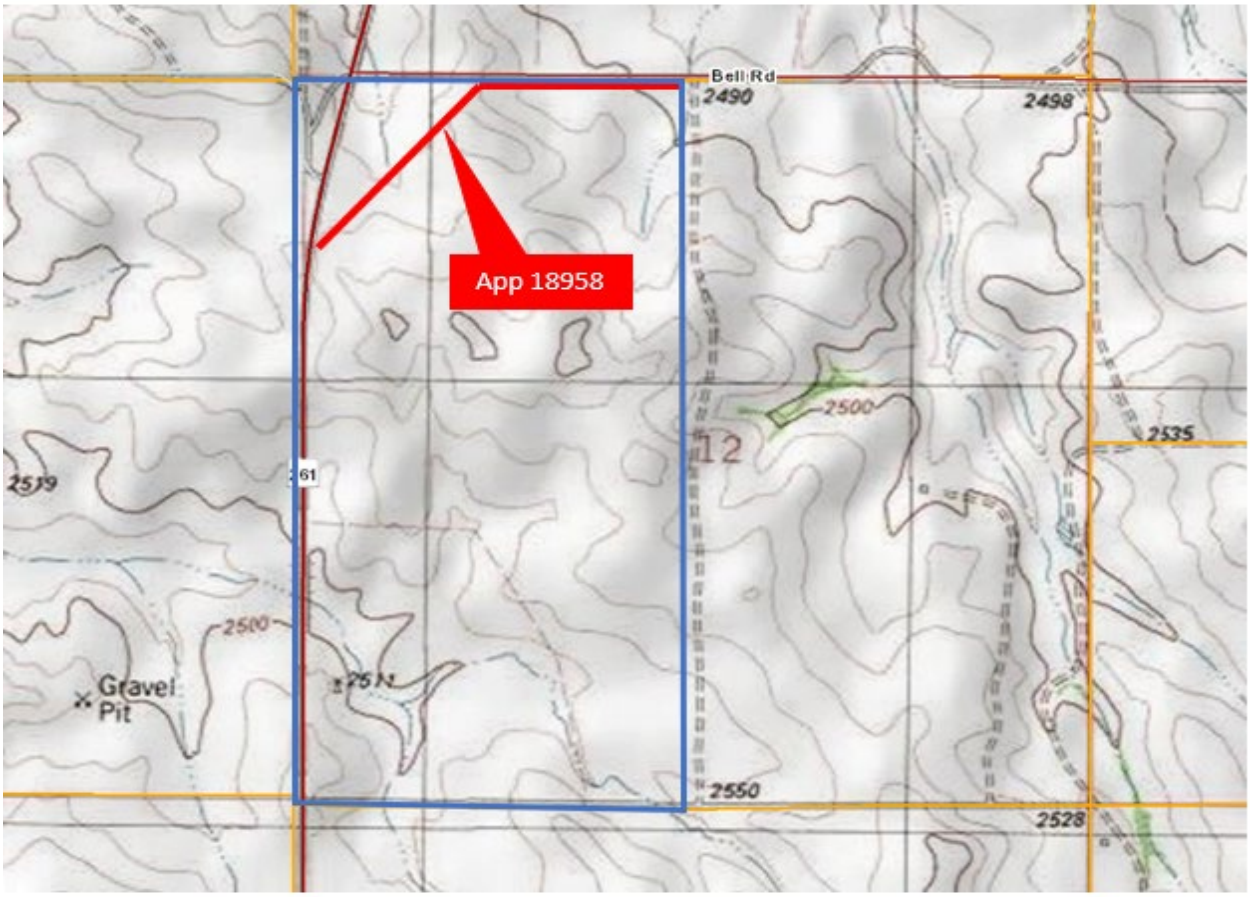
Goldenwest Electric Coop is requesting an easement to construct an overhead electric transmission line across State Trust land to provide service to a substation. The transmission line is necessary to provide a reliable power source for two larger natural gas/liquids pump stations as the current system is inadequate. The State Land impacted is not within sage grouse habitat, therefore there are no associated mitigations pursuant to the Sage Grouse Program.

DNRC Recommendation

The director recommends approval of the application by Goldenwest Electric Coop.

R/W Application 18958





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Northern Telephone Cooperative, Inc PO Box 190 Sunburst, MT 59482
Application No.:	18961
R/W Purpose:	a buried telecommunications cable
Lessee Agreement:	ok
Acreage:	0.61
Compensation:	$244.00
Legal Description:	20-foot strip through NE4NE4, Sec. 23, Twp. 35N, Rge. 3W, Toole County
Trust Beneficiary:	Capitol Buildings

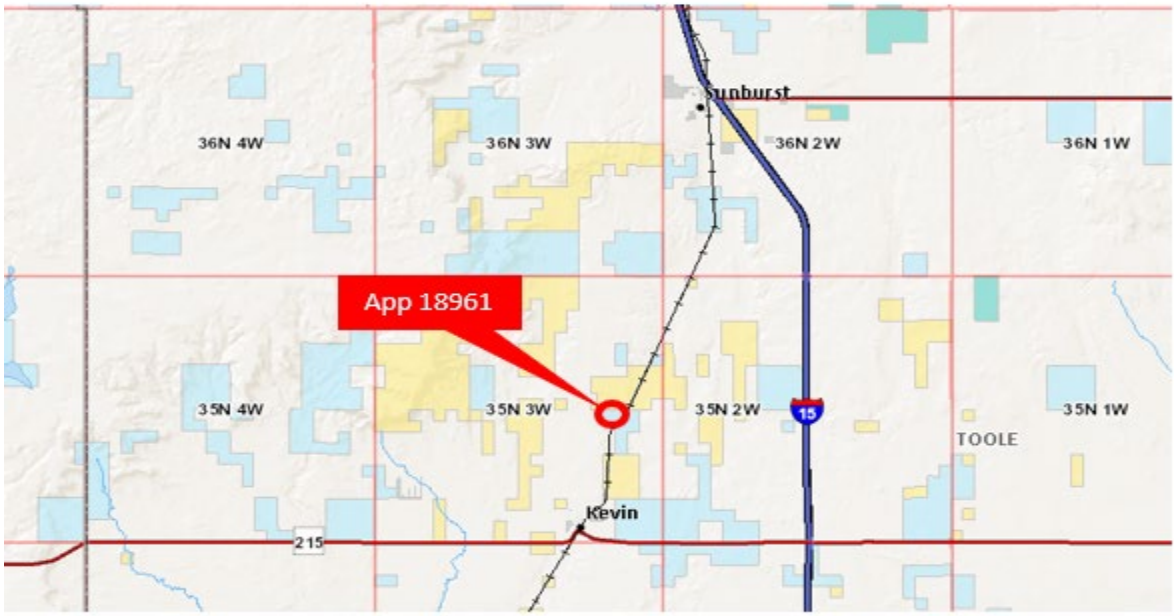
Item Summary

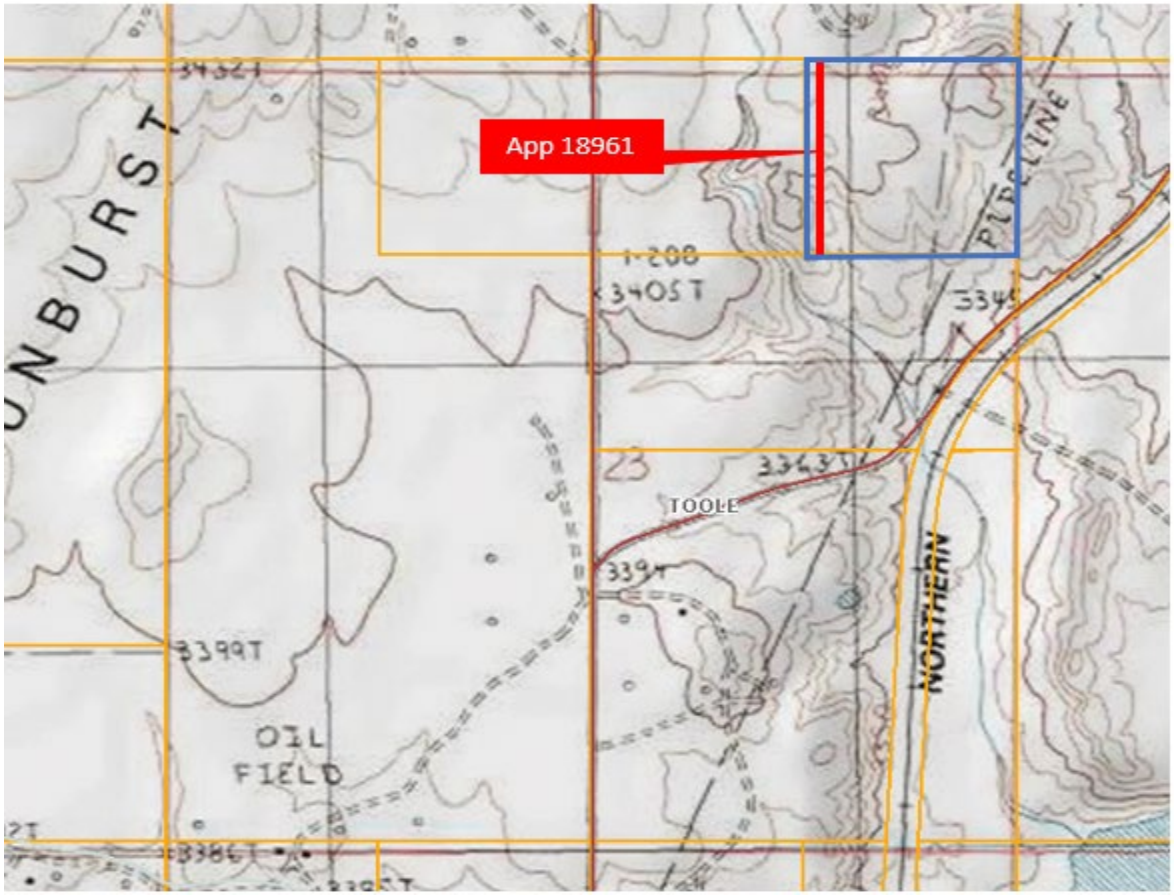
Northern Telephone Cooperative is requesting an easement to cross State Trust land for the purpose of upgrading their current facilities in the Kevin Exchange service area. The new installation will provide state of the art telecommunications facilities and allow for future growth capabilities. The route chosen follows existing roads and ground previously disturbed causing minimal impacts.

DNRC Recommendation

The director recommends approval of the application by Northern Telephone Cooperative, Inc.

R/W Application 18961





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Christian J. Berg 1350 Coyote Hill Rd. Conrad, MT 59425
Application No.:	18962
R/W Purpose:	a private access road to conduct normal farming and ranching operations
Lessee Agreement:	N/A (Historic)
Acreage:	1.21
Compensation:	$1,452.00
Legal Description:	20-foot strip through W2SE4, Sec. 31, Twp. 29N, Rge. 3W, Pondera County
Trust Beneficiary:	Common Schools

Item Summary

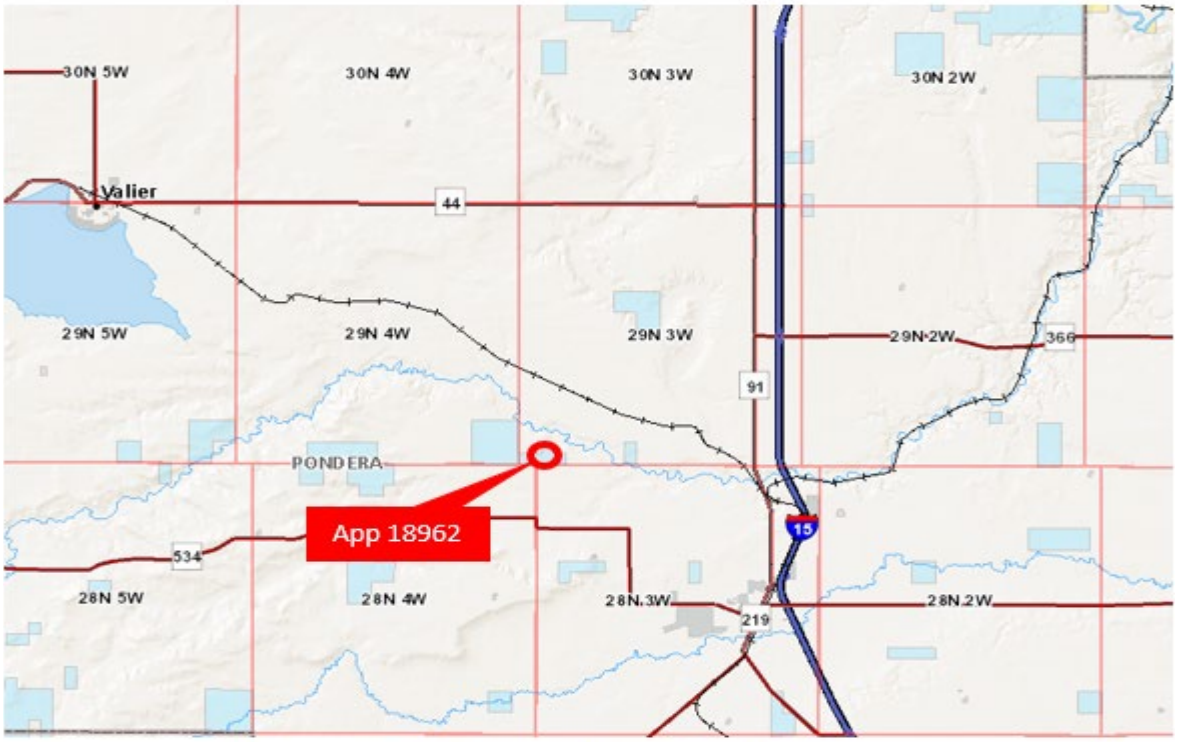
Christian Berg has made application for the use of an existing road to conduct normal farming and ranching operations activities. The road has been in place for many years and authorization for continued use is being requested pursuant to §77-1-130, MCA, which allows for recognition of such historic access. The State Trust land is legally accessible through a county road. The private property to be accessed is described as:

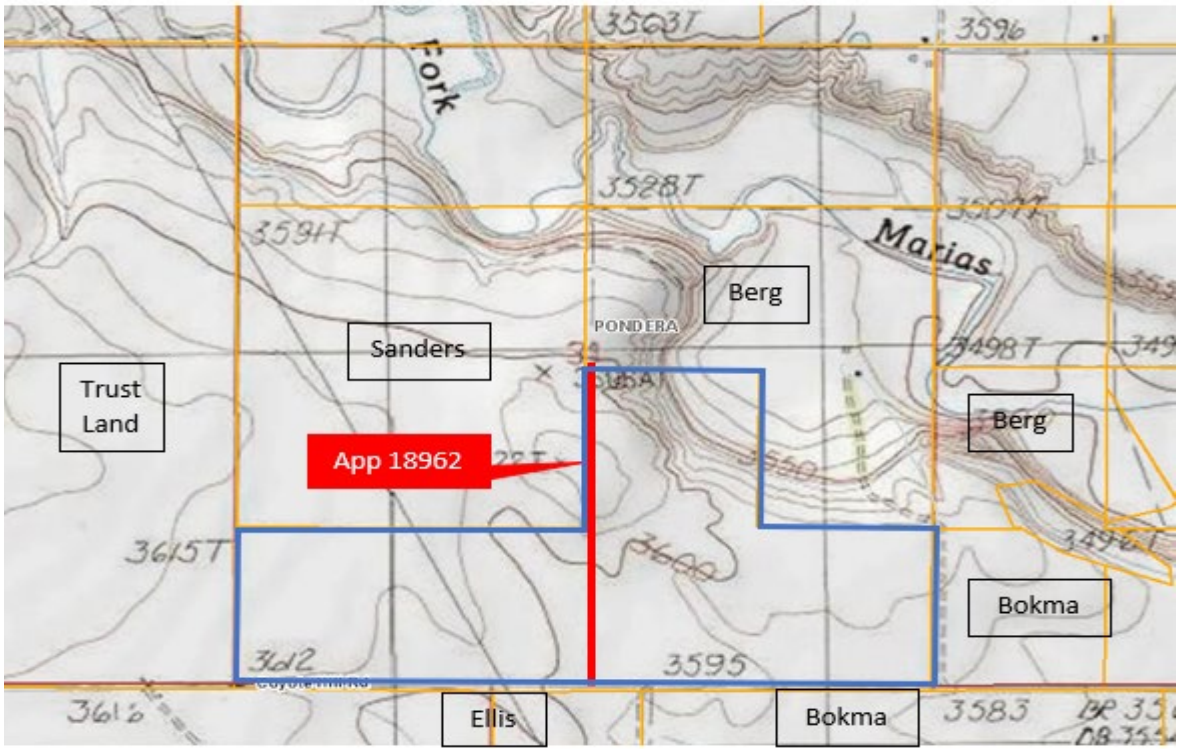
- That portion of the SW4NE4 west of the canal, Sec. 31, Twp. 29N, Rge. 3W, Pondera County

DNRC Recommendation

The director recommends approval of the application of Christian Berg.

R/W Application 18962





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Kathryn J. Davis 1816 Norwood Lane Billings, MT 59102
Application No.:	18963
R/W Purpose:	a private access road to conduct normal farming and ranching operations
Lessee Agreement:	N/A (Historic)
Acreage:	0.77
Compensation:	$578.00
Legal Description:	30-foot strip through N2NE4, Sec. 36, Twp. 32N, Rge. 2W, Toole County
Trust Beneficiary:	Common Schools

Item Summary

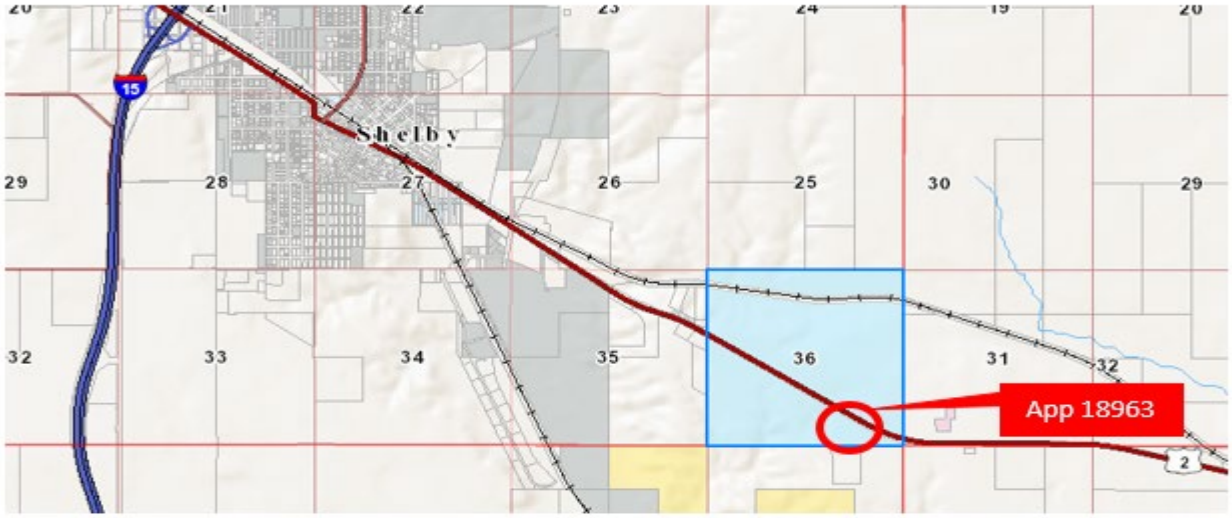
Kathryn Davis has made application for the use of an existing road to conduct normal farming and ranching operations activities. The road has been in place for many years and authorization for continued use is being requested pursuant to §77-1-130, MCA, which allows for recognition of such historic access. The State Trust land impacted is legally accessible by a state highway. Ms. Davis has a 50% life estate ownership in the private lands to be accessed. Those lands are described as follows:

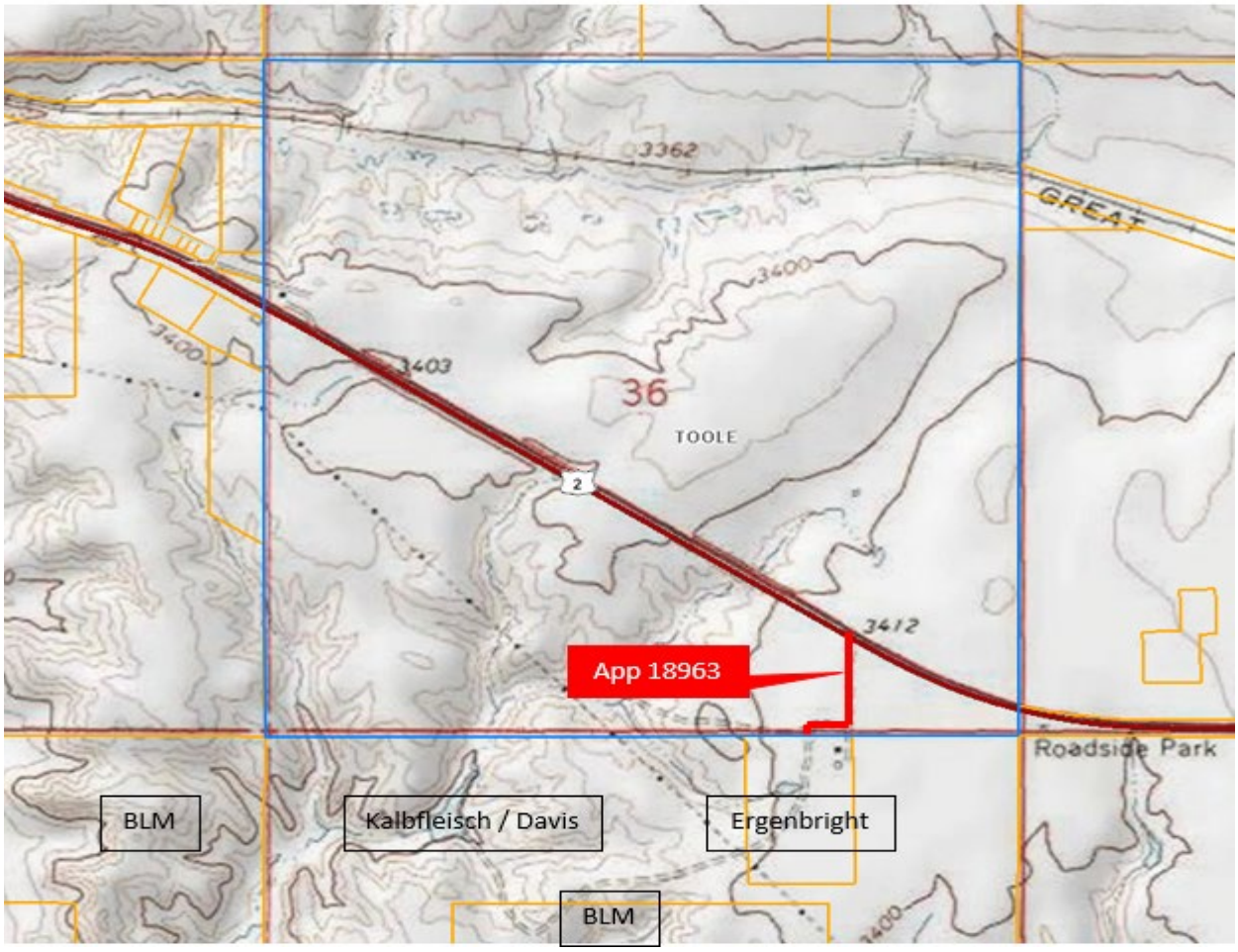
- N2NE4 (less 20 ac. Homesite), SE4NE4, N2NW4, SW4NW4, W2SW4, Sec. 1, Twp. 31N, Rge. 2W, Toole County

DNRC Recommendation

The director recommends approval of the application of Kathryn Davis.

R/W Application 18963





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Tadd Jordan Sanders PO Box 7 Joplin, MT 59531
Application No.:	18964
R/W Purpose:	a private access road to conduct normal farming and ranching operations
Lessee Agreement:	N/A (Historic)
Acreage:	0.61
Compensation:	$732.00
Legal Description:	20-foot strip through SW4SE4, Sec. 31, Twp. 29N, Rge. 3W, Pondera County
Trust Beneficiary:	Common Schools

Item Summary

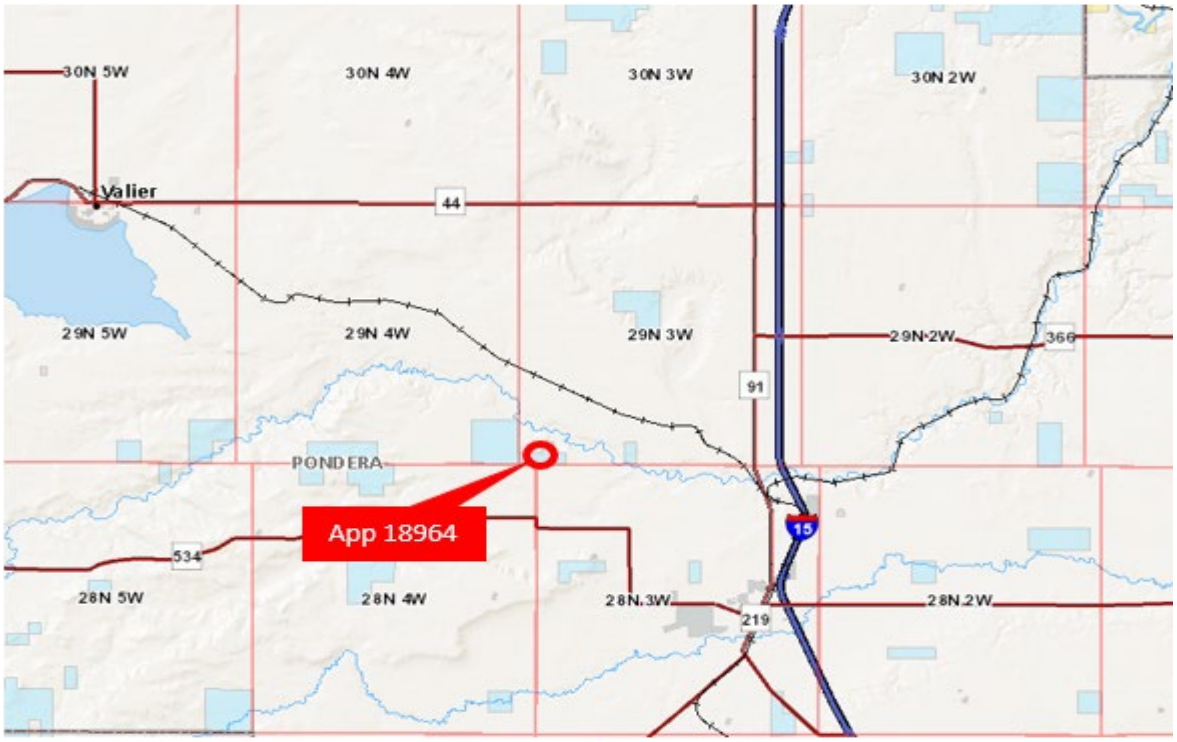
Tadd Sanders has made application for the use of an existing road to conduct normal farming and ranching operations activities. The road has been in place for many years and authorization for continued use is being requested pursuant to §77-1-130, MCA, which allows for recognition of such historic access. The State Trust land is legally accessible through a county road. The private property to be accessed is described as:

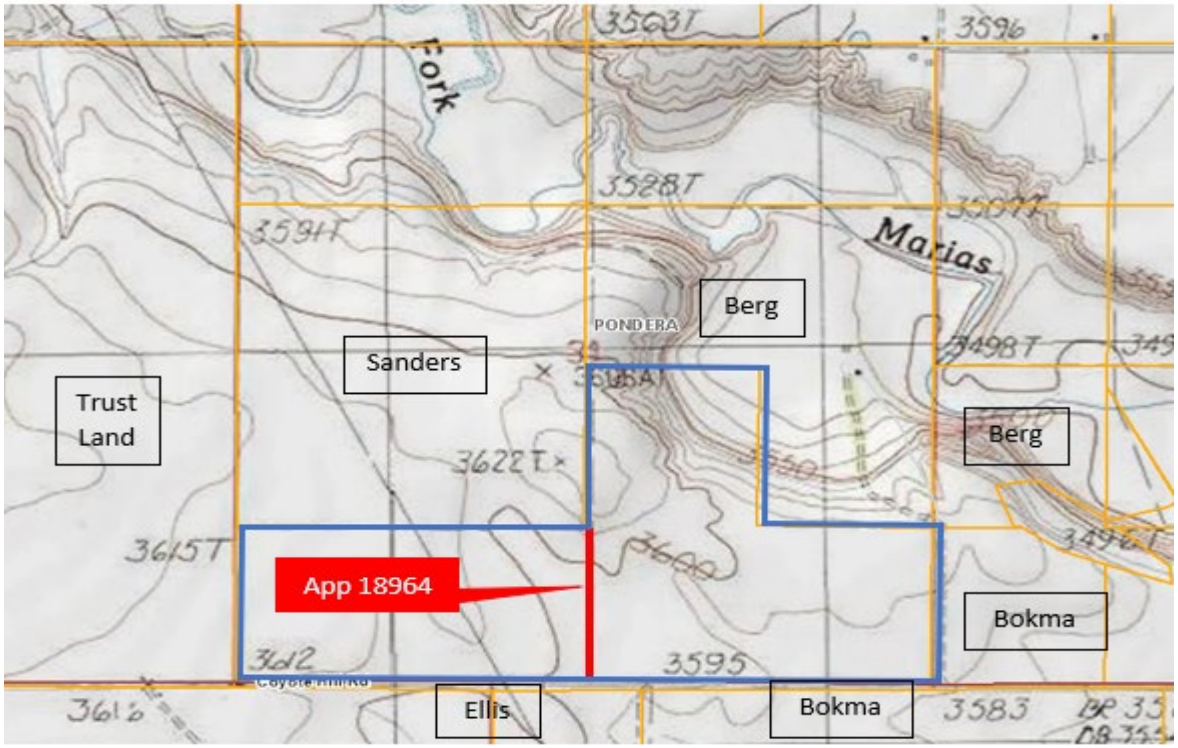
- Government Lots 2 and 3, SE4NW4, NE4SW4, Sec. 31, Twp. 29N, Rge. 3W, Pondera County

DNRC Recommendation

The director recommends approval of the application of Tadd Sanders.

R/W Application 18964





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Clearwater Energy Resources, LLC 700 Universe Boulevard Juno Beach, FL 33408
Application No.:	18965
R/W Purpose:	an overhead 500 kV electric transmission line
Lessee Agreement:	N/A (Nav. River)
Acreage:	2.10
Compensation:	$2,940.00
Legal Description:	150-foot strip across the Yellowstone River between Lots 1 & 8, Sec. 10, Twp. 6N, Rge. 41E, Rosebud County
Trust Beneficiary:	Public Land Trust - Nav. River

Item Summary

Clearwater Energy Resources is requesting an easement for an overhead electric transmission line across the Yellowstone River. The purpose of the transmission line is to provide a link between the Clearwater Wind Farm project located near Angela and the existing transmission infrastructure and substation near Colstrip. Consultation with the Corps of Engineers has occurred in addition to other state agencies with potential permitting authorities. The route chosen was the least impactive of all routes considered.

DNRC Recommendation

The director recommends approval of the application by Clearwater Energy Resources.

R/W Application 18965

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Town of Lima PO Box 184 Lima, MT 59739
Application No.:	18966
R/W Purpose:	a private access road to a municipal water supply system, including spring development, water transmission line and storage tank
Lessee Agreement:	N/A (Historic)
Acreage:	3.27
Compensation:	$3,924.00
Legal Description:	30-foot strip through Gov. Lot 1, NW4NE4, NE4NW4, Sec. 16, Twp. 14S, Rge. 8W, Beaverhead County
Trust Beneficiary:	Common Schools

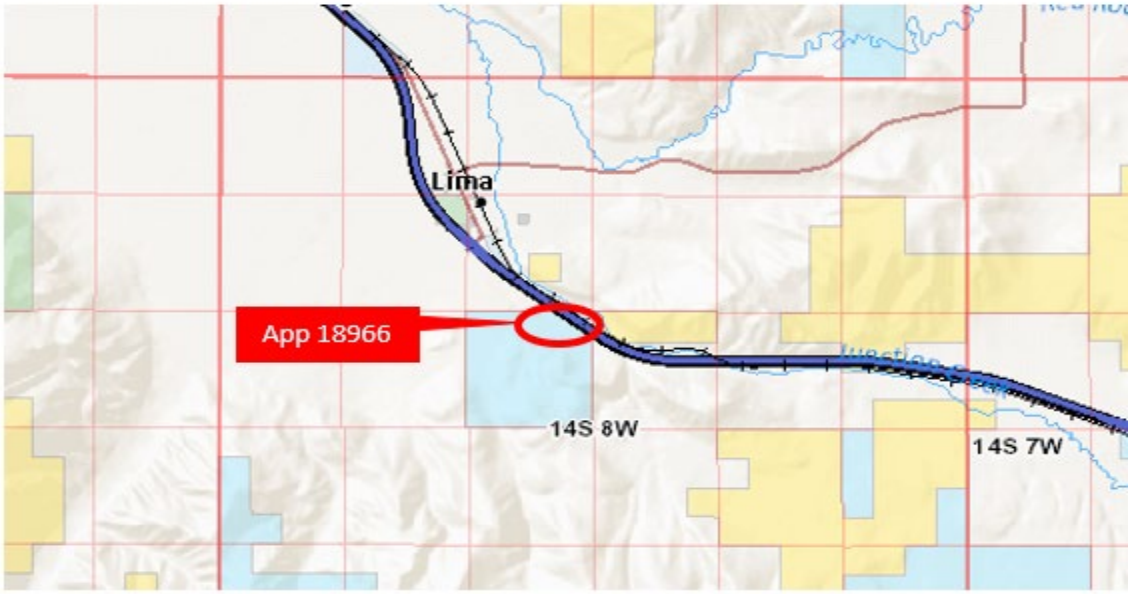
Item Summary

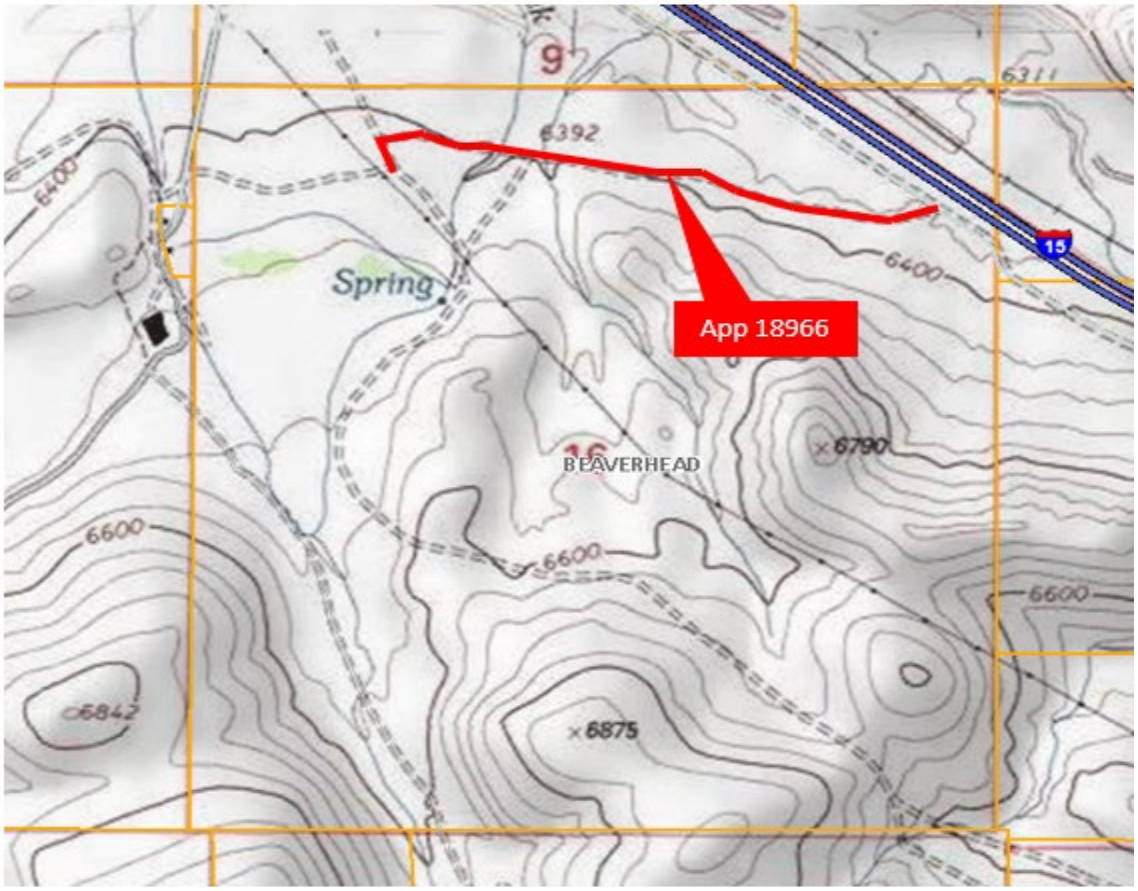
The Town of Lima has made application for the use of an existing road to access their municipal water supply infrastructure located under an existing easement on State Trust land. The principal access to the water supply infrastructure previously was through private lands which has since been lost. The Town has also utilized the existing access on State Land; however, they had not previously held a legal easement for this access. As the road has been in place for many years and utilized by the Town, they meet the qualifications for historic access. pursuant to §77-1-130, MCA, which allows for recognition of such historic access.

DNRC Recommendation

The director recommends approval of the application of Town of Lima.

R/W Application 18966





APPLICANTS AND RIGHTS OF WAY INFORMATION

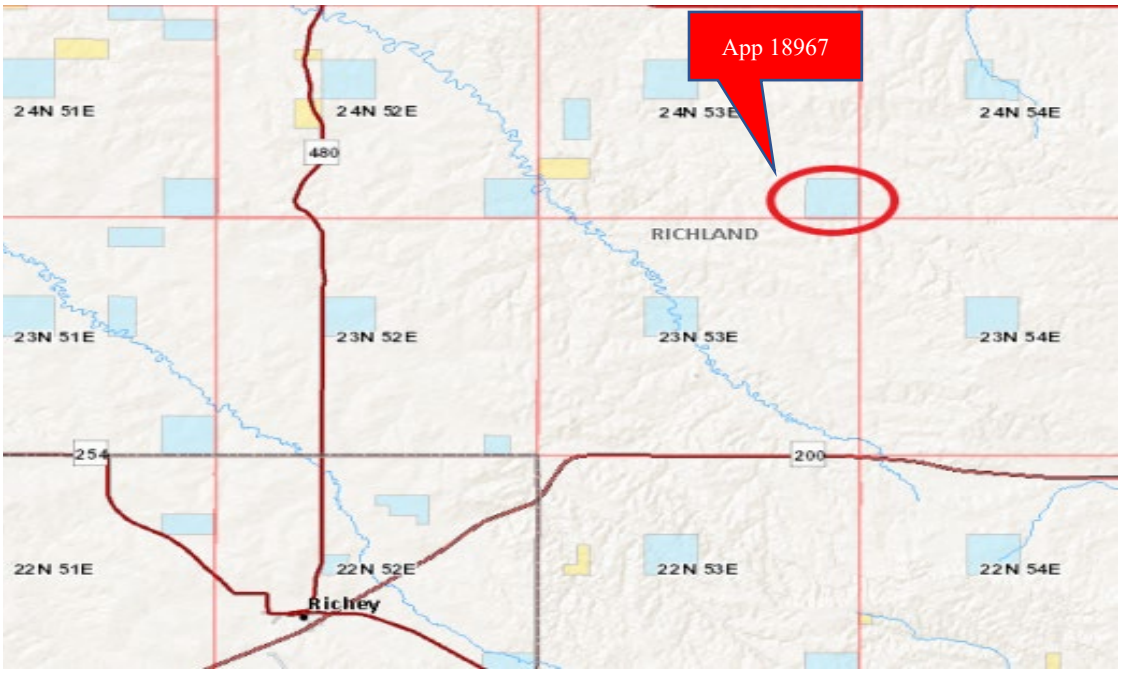
Applicant:	Hiland Crude, LLC 1001 Louisiana Street Houston, TX 77002
Application No.:	18967
R/W Purpose:	buried 4" natural gas pipeline
Lessee Agreement:	ok
Acreage:	0.13
Compensation:	$1,721.00
Legal Description:	20-foot strip through NW4NW4, Sec. 36, Twp. 24N, Rge. 53E, Richland County
Trust Beneficiary:	Common Schools

Item Summary

Hiland Crude, LLC has made application to convert an existing Land Use License issued in 2010 to a permanent easement associated with an existing 4” natural gas pipeline. Consistent with standard practice, this easement is recommended to be limited to a term of 30 years. Hiland Crude, LLC has offered compensation in the amount of $100/rod which is consistent with other installations in the area.

DNRC Recommendation

The director recommends approval of a 30-year limited term easement for Hiland Crude


App 18967
24N 51E
24N 52E
24N 53E
24N 54E
480
RICHLAND
23N 51E
23N 52E
23N 53E
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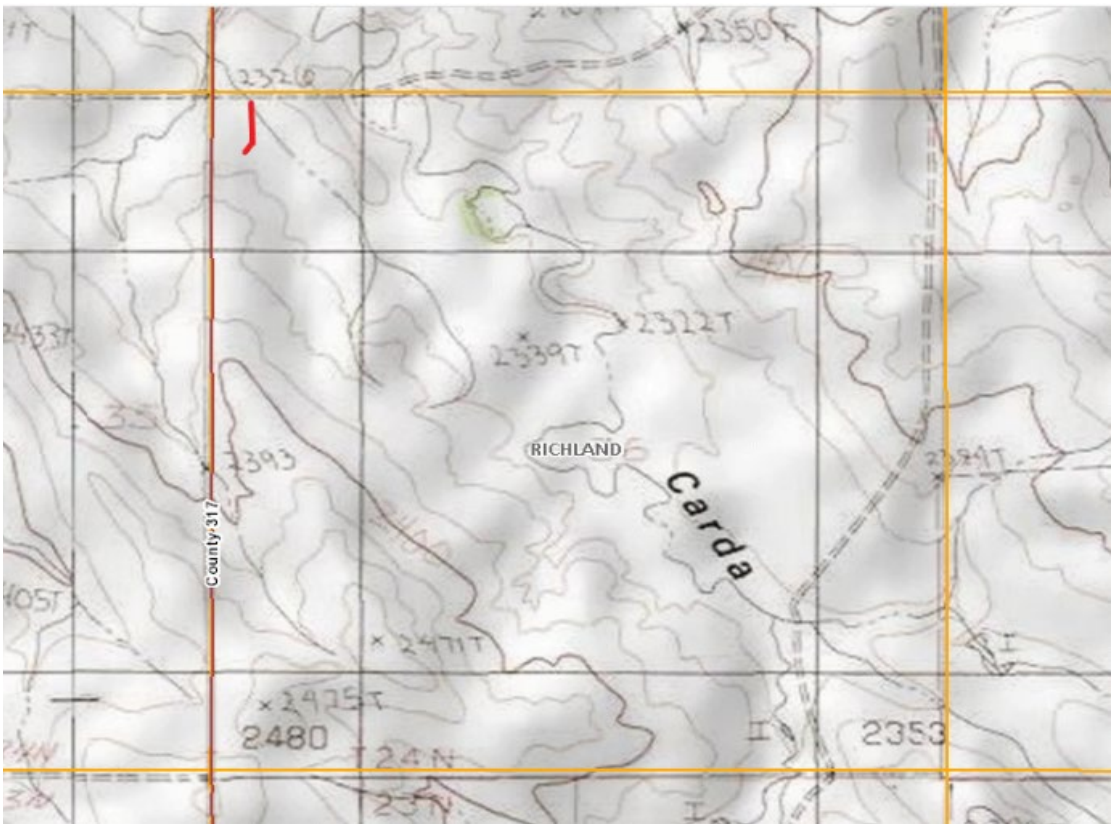
254
200
22N 51E
22N 52E
22N 53E
22N 54E
Richey


2350T
2326
2322T
2339T
RICHLAND
Carda
2393
County 317
2471T
2475T
2480
2353
24N
23N

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Nine Mile County Water and Sewer District 226 1st Street South Shelby, MT 59474-1920
Application No.:	18969
R/W Purpose:	a buried 2" water pipeline
Lessee Agreement:	N/A (Unleased)
Acreage:	0.12
Compensation:	$100.00
Legal Description:	20-foot strip through NW4NE4, Sec. 16, Twp. 36N, Rge. 2W, Toole County
Trust Beneficiary:	Common Schools

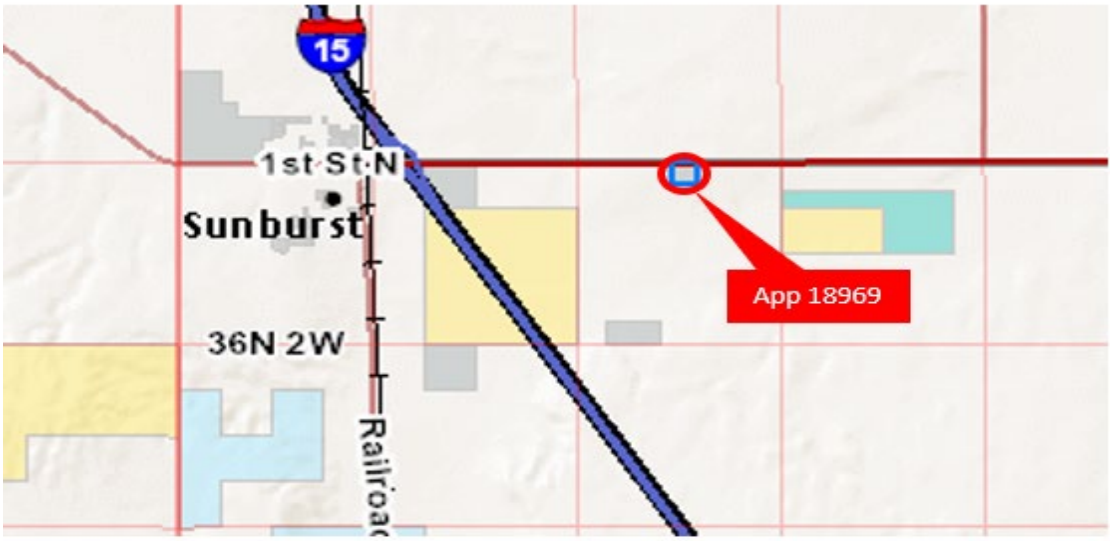
Item Summary

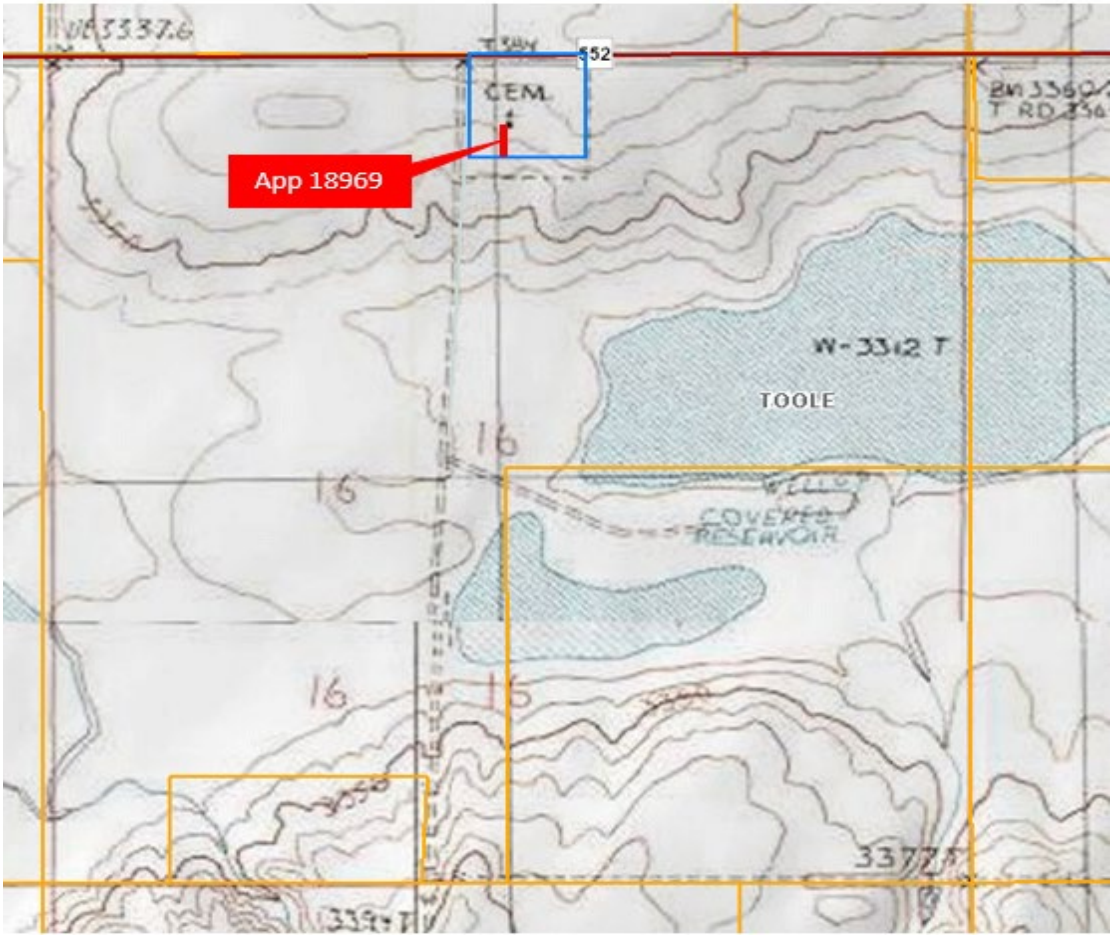
Nine Mile County Water and Sewer District has made application to install a buried 2” water pipeline across a 10-acre parcel of State Land to serve the Sunburst Cemetery, which comprises the 10-acre ownership of the State. The pipeline will connect to the existing water main that parallels the southern border of the State parcel.

DNRC Recommendation

The director recommends approval of the application for Nine Mile County Water and Sewer District.

R/W Application 18969





0920-5

PROPOSED COMMERCIAL LEASE AGREEMENT:

Mountaineer Development Parcel

Land Board Agenda Item
September 21, 2020

0920-5 Proposed Commercial Lease Agreement: Mountaineer Development Parcel

Location: Flathead County

Trust Benefits: Common Schools

Trust Revenue: $142,215 annually

Item Summary
The Department of Natural Resources and Conservation is requesting approval to issue a long-term lease for development of the Mountaineer Parcel in the Spring Prairie Planned Unit Development (PUD). The Mountaineer Development Parcel is located in the NE1/4 of Section 36, Township 29N, Range 22W, in Flathead County, frequently referred to as Section 36, in the City of Kalispell.

A request for proposals (RFP) for commercial development was released on June 20, 2019 and closed on September 18, 2019. One proposal was received and reviewed by DNRC staff. Based on scoring criteria provided within the RFP, a partnership consisting of three experienced developers, Cedar House Partners, G4 Holdings and LHC, INC. was the selected proponent. This group will execute and hold the lease as Mountaineer Development I, LLC (MTNR DEV I).

Lease Area	Land Value for Lease Area	Minimum Bid for Lease Fee	Minimum Bid for Option Fee	MTNR DEV I Proposed Lease Fee	MTNR DEV I Proposed Option Fee
22.4+/- Acres	$2,585,722	$129,286 (5%)	$38,786 (1.5%)	$142,215 (5.5%)	$38,786 (1.5%)

Proposal:
- MTNR DEV I submitted a proposal to lease the 22.4acre Mountaineer Parcel for development and sublease of mixed-commercial and retail with a major grocery chain as the likely anchor tenant.
- Proposal includes installation of the remainder of Treeline Road to Old Reserve Drive with an estimated cost in excess of 2.1 million dollars.
- The proposal contains an initial Option to Lease for up to two years to allow for the proponent to obtain all necessary City approvals and other due diligence necessary prior to initiating the development.
- Developer expectations are that the Option to Lease period will not require a full two years.
- The subsequent Commercial Lease term is 30 years, with renewal rights up to 99 years.

Revenue:
- Option to Lease Period: Annual fee Year One of **$38,786.** Annual fee Year Two of **$51,714.**
- Commercial Lease: Annual fee of **$142,215**, with 2% increase compounded annually.
- Market Adjustment: Annual lease fee is reviewed every 15 years using an updated appraisal.

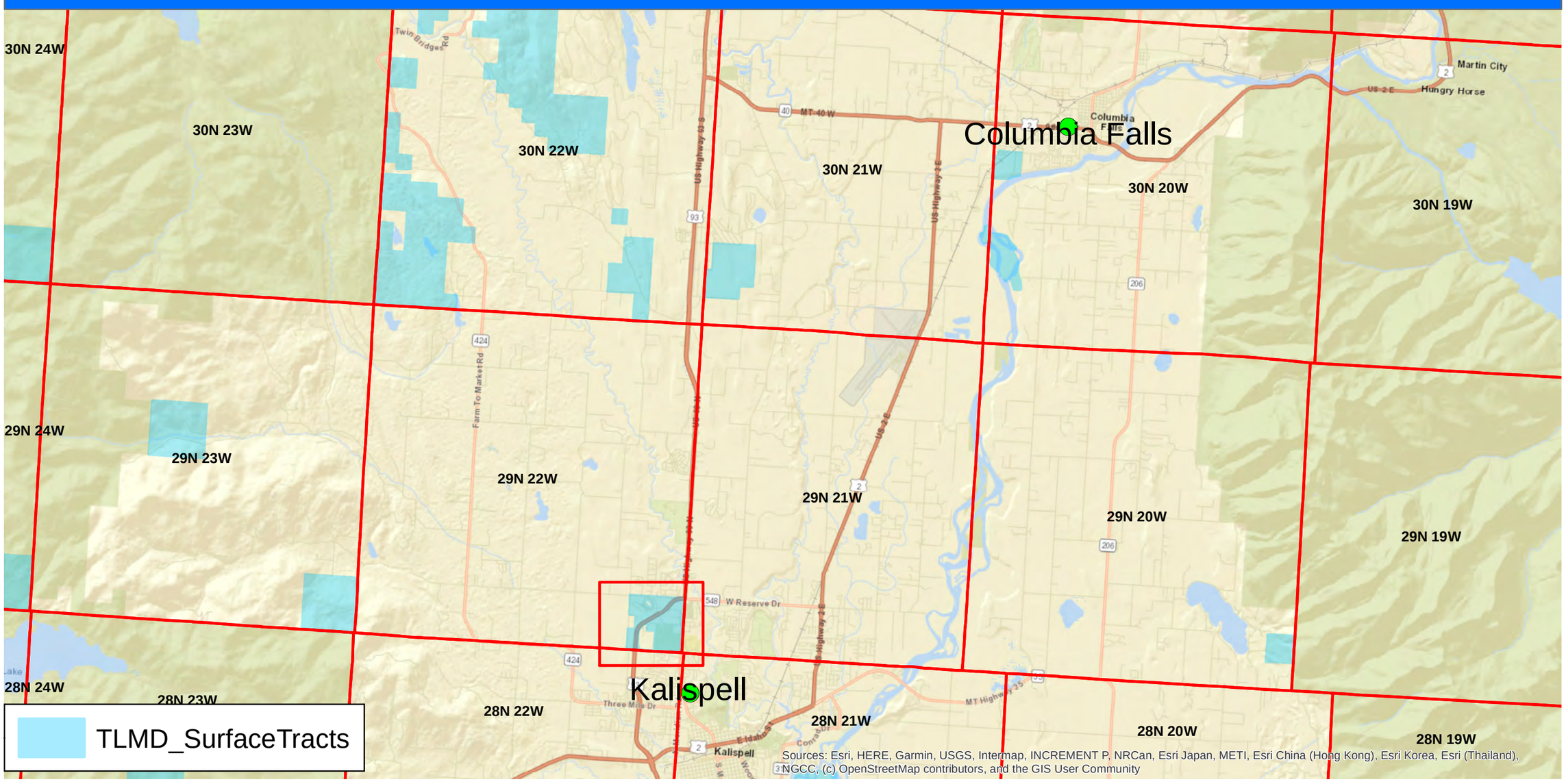
Property Details:
- Spring Prairie/Section 36 is home to Lowe's, Cabela's, Famous Dave's, Glacier High School & more.
- Parcel is adjacent to Costco, Springhill Suites & Holiday Inn Express.

- The lease area is zoned Spring Prairie PUD/R-5 – Mixed Professional.
- Use and development is guided by a neighborhood plan, integrated into the Kalispell Growth Policy.
- Mountaineer is bordered on the north by Treeline Rd, bounded on the north-west by US93A, also known as the Kalispell Bypass, by Old Reserve Drive to the south and to the east is Spring Prairie Center.
- City of Kalispell Fire Department Station #62 is located adjacent to the southeast corner of the parcel.

MEPA:
A Final Environmental Impact Statement for development of Section 36 was completed in 2001. The MTNR DEV I lease development proposed for Mountaineer is consistent with the professional development proposed and analyzed for in the FEIS. In addition, the proposed use is consistent with that which was analyzed for through prior public planning processes for the Kalispell Growth Policy and the Spring Prairie PUD.

The director recommends that the Board approve the issuance of a commercial lease agreement for the Mountaineer Development Parcel.

Mountaineer Development Parcel - Kalispell



Location: Flathead County
Date: 9-3-2020
Prepared By: REMB Staff Member
Projection: NAD83 Montana State Plane

N

Legend

Mountaineer Parcel

Spring Prairie Development Area

Inset Area from top map shown in bottom map

MOUNTAINEER DEVELOPMENT I, LLC
MOUNTAINEER
KALISPELL, MONTANA

LEASE NO. 3053581

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COMMERCIAL LEASE

THIS COMMERCIAL LEASE (this "Lease") is entered into as of the _____ day of ____ _____, (the "Commencement Date"), 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 **Mountaineer Development I, LLC**, a Montana company whose address is1610 Whitefish Stage Road, Ste 2, Kalispell, MT 59901 (hereinafter referred to as the "Lessee").

1. LEASE TERMS AND PROPERTY DESCRIPTION

Lease Number	Commencement Date	Term of Lease	Expiration Date
3053581		**30 Years**	

Land Located in Flathead County

Description	Sec.	Twp.	Rge.	Acres
PART OF NE4	**36**	**29N**	**22W**	**22.4 +/-**

2. BASE RENT SCHEDULE

Lease Year	Calendar Period	*Adjustment Period Escalator*	Adjusted Base Rent
1	1st 6 calendar months Reduced Rent – prorated at 50% of full rent	0	**$35,553.68** *($142,214 x.5 x.5)*
	2nd 6 calendar months Full Rent – prorated at full rent	0	**$71,107.36** *($142,214 x .5)*
	# months to reach Feb 28 Supplemental Billing period – prorated at full rent	0	**$ xx,xxx** *($142,214/365 x #)*
2	March 1 – February 28	*2%*	**$145,059.00**
3	March 1 – February 28	*2%*	**$147,960.18**
4	March 1 – February 28	*2%*	**$150,919.39**
5	March 1 – February 28	*2%*	**$153,937.78**
6	March 1 – February 28	*2%*	**$157,016.53**
7	March 1 – February 28	*2%*	**$160,156.86**
8	March 1 – February 28	*2%*	**$163,360.00**
9	March 1 – February 28	*2%*	**$166,627.20**
10	March 1 – February 28	*2%*	**$169,959.74**
11	March 1 – February 28	*2%*	**$173,358.94**
12	March 1 – February 28	*2%*	**$176,826.12**
13	March 1 – February 28	*2%*	**$180,362.64**
14	March 1 – February 28	*2%*	**$183,969.89**

15	March 1 – February 28	*2%*	**$187,649.29**

3. PURPOSE.
The purpose of this lease is for commercial use consistent with the B-5 Mixed Commercial Zone of the Spring Prairie Planned Unit Development in Kalispell, MT.

4. DEFINITIONS.
In this Lease, the following defined terms have the meanings set forth for them below:

"Adjustment Period" is a multi-year Lease period, as specified in the Base Rent Schedule in Section 2 of this lease, during which an Adjustment Period Escalator is applied annually to the prior year's Base Rent.

"Adjustment Period Escalator" is 2% compounded annually and applied to the prior year's Base Rent as demonstrated in the Base Rent Schedule. The Adjustment Period Escalator will not be applied to Base Rent for the First Lease Year and the first year that any Market Adjustment is applied (i.e. Year 16, 31, 46, 61…etc…).

"Base Rent" means the amount obtained by multiplying the Land Value by the Lease Rate Percentage and as periodically adjusted by the Adjustment Period Escalator.

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

"Commencement Date" means the date this Lease goes into effect, legally binding the Lessor and Lessee to the terms of the Lease.

"Commercial Purpose" per MCA 77-1-902(3)(a) 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.

"Default Rate" shall mean 1% compounded monthly.

"Department" means the Montana Department of Natural Resources and Conservation.

"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.

"First Lease Year" means the first twelve-month period starting on the Commencement Date.

"Foreclosure Transferee" means any foreclosure purchaser or other transferee of Lessee's interest under this Lease who acquires such interest at the sale conducted by virtue of, or otherwise in connection with, a foreclosure of any Leasehold Mortgage or any conveyance in lieu of such foreclosure.

"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. Expressly excludes Bonneville Power Administration power transmission line and associated structures.

"Land" means the real property described in paragraph 1.

"Land Value" means the full market value of the Land as determined by the applicable appraisal.

"Laws" means 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 Percentage" means 5.5% as bid in the proposal response. The Lease Rate Percentage is applied to the Land Value to determine the initial Base Rent for the First Lease Year and for the first year after a Market Adjustment. This percentage may not be less than the rate provided in 77-1-905, MCA, and may be modified accordingly as part of a scheduled Market Adjustment.

"Lease Year" means, after the First Lease Year, 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 use or 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.

"Local Management Office" means

Montana Department of Natural

Resources and Conservation
Attn: Kalispell Unit
655 Timberwolf Parkway, Ste. 2
Kalispell, MT 59901

"Market Adjustment" means a review of current Base Rent factors, conducted at scheduled intervals during the term of the lease, which will be used to determine the Base Rent Schedule for the next period. It includes consideration of the minimum Lease Rate Percentage at the time, as well as an appraisal process to update the lease area land value. The Market Adjustment Schedule and Provisions are found in **Lease Exhibit B**.

"Premises" means the Land and all Improvements

"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.

"Reduced Rent Term" is a period starting at the commencement of the Lease and continuing for six months.

"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.

"Rent" means Base Rent and all other amounts required to be paid by Lessee under this Lease.

"Security Bond" means a cash deposit, a letter of credit from a financial institution, or a surety bond, provided that the form and manner of the Security Bond has been approved by Lessor.

"Sublease" means a sublease, license, concession or other agreement (whether written or oral) according to which Lessee grants any party the right to use or 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 harm to Improvements that renders the Premises inoperable for its intended use for more than 180 days.

"Substantial Taking" means a Taking of at least 15% of the Land or Improvements 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 or intends in good faith to conduct in the future.

"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.

"Term" means the duration of this Lease as set forth in paragraph 1.

5. EXHIBITS.

The Exhibits listed below are attached to and incorporated into 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 Lease will control. The Exhibits to this Lease are:

Lease Exhibit A – Preliminary Site Plan, will replace with Final Plat upon City of Kalispell Approval
Lease Exhibit B – Market Adjustment Schedule and Provisions
Lease Exhibit C – Shared Traffic Signal Cost Breakdown
Lease Exhibit D – Shared Traffic Signal Contributing Area

6. LEASE TERM.

6.1 Lease.

Subject to the terms, covenants, conditions and provisions of this Lease, Lessor leases to Lessee and Lessee leases from Lessor the Land for the Term of 30 years starting on the Commencement Date.

6.2 Renewal Option.

If all Rent due under this lease has been paid when due and Lessee is not in default, after opportunity to cure, of any terms of this Lease, Lessee may renew the Lease for four additional 15 year Terms and subsequently one additional 9 year Term, for a maximum total lease term of 99 years. The Base Rent will be adjusted at renewal according to the process outlined in **Lease Exhibit B**.

6.3 Lessor and Lessee Covenants.

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

6.4 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.

7. RENT.

7.1 Base Rent.

All Rent due to Lessor will be paid in lawful money of the United States of America, at Lessor's Address, post-marked on or before the due date, without notice or demand and without right of deduction, abatement or setoff.

7.2 Terms of Payment.

Per MCA 77-1-905(1), the First Lease Year is the twelve-month period beginning on the Commencement Date. The First Lease Year Rent must be paid by cashier's check, drawn upon a Montana bank, and payment is due upon execution of the lease. Failure to pay the First Lease Year's Rent at the time of lease execution will result in the cancellation of the lease and forfeiture of all money paid.

Following the First Lease Year, a Lease Year will be March 1st – February 28th and Rent for the Lease Year will be payable semi-annually, in advance, as set forth below. If the First Lease Year does not end on February 28, there will be a supplemental billing period prorated at the First Lease Year's full Base

Rent for the difference in time between the end of the First Lease Year and February 28. See Base Rent Schedule. Beginning with the first day of the Second Lease Year, Lessee shall pay Base Rent according to the following provisions: Base Rent during each Lease Year will be payable in semi-annual installments in an amount equal to one-half (1/2) of the annual amount specified in the Base Rent Schedule for such Lease Year, in advance, on or before (a) the first day of the Lease Year on March 1st, and (b) September 1st of the Lease Year. All Rent will be calculated according to the Base Rent Schedule and Exhibit B hereto.

7.3 Late Charge.
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 Lessor does not receive the full amount of any Rent postmarked on or before the due date, Lessee shall pay a late charge to Lessor. The late charge will be an amount equal to 10% of any overdue Rent for Lessor's cost of collecting and handling such late payment due as additional Rent. If payment of the Rent and late charge are not made in full within 30 days of the due date, the outstanding balance of the unpaid Rent and the late fee shall accrue interest at the Default Rate. Interest on all delinquent amounts shall be calculated from the original due date to the date of payment. Lessor retains sole discretion to apply payments received to past due Rent, including any late charge(s) and interest, before applying a payment to current Rent. The parties hereby agree that such late charge represents a fair and reasonable estimate of the cost that Lessor will incur by reason of the late payment by Lessee.

7.4 Lien for Unpaid Rent.
Lessor shall have a lien upon all Lessee Improvements for payment of all Rent specified herein.

7.5 Additional Rent.
This Lease is what is commonly called a "triple-net" Lease. It is the intent of the parties that the Base Rent provided in this Lease will be a net payment to Lessor and that Lessor will not be required to pay any costs or expenses or provide any services in connection with the Premises. Accordingly, Lessee covenants and agrees to separately pay, in addition to the Base Rent, all utilities and services, taxes, fees, and special assessments, and for all maintenance and repairs of the Premises.

8. IMPROVEMENTS AND ALTERATIONS.

8.1 Improvements and Alterations.
Lessee shall not construct, install, alter, or demolish and remove, any utilities or Improvements without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Lessee is responsible for obtaining all necessary licenses or permits required by any governmental authority to implement the improvement and/or alteration as well as responsible for conforming to all land use regulations, design, and construction standards of the appropriate jurisdictional authority. Prior to Lessee's submission of subdivision plats to the jurisdictional authority, Lessee will submit same to Lessor for review and approval. All expenses of securing permits for, constructing, installing, altering, or demolishing any Improvements shall be the sole responsibility of Lessee. Lessee shall at all times comply with all Laws, including any applicable city and state building codes and fire codes. Lessee shall promptly provide the "Local Management Office" with copies of all project-related applications submitted and licenses/permits secured, as well as pertinent public meeting agendas and staff reports. Lessor will have the right to post notices of non-responsibility or similar notices on the Premises in order to protect the Land against any liens resulting from such work. Upon completion of the initial Improvements for the Premises Lessee shall deliver to Lessor an engineer's certificate for the Premises an electronic "as-built" survey of the Premises in both AutoCAD and .pdf format.

8.2 Title to Improvements.
During the Term, Lessee will be deemed to own, and hold title to all Improvements subject only to the Lessor's reversionary interest in the Improvements upon the expiration or termination of the Lease. Lessee shall have the right to grant liens or other security interests in the Improvements. Upon the expiration or earlier termination of the Lease, 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 MCA §77-1-906(2).

9. USE AND ENVIRONMENTAL COMPLIANCE.

9.1 Use and Compliance.
Lessee shall use the Premises in a manner that does not reduce the value of the Land. 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 impair or impede the obligations of this Lease and which do not deprive the Lessee of an existing property right recognized by law. Lessee shall keep the Premises in good repair, including but not limited necessary repairs to the interior, exterior and structure of any Buildings, snow removal, sidewalk cleaning, mowing of grass and general landscaping, and contract for the same in Lessee's own name and pay all costs and expenses in connection therewith. Lessee shall not commit waste or permit impairment or deterioration of the Premises, ordinary wear and tear and damage by casualty and condemnation excepted.

9.2 Compliance with Title 77 MCA.
Lessor and Lessee specifically acknowledge that the Land is State school trust land managed by the Montana Board of Land Commissioners and agree that this Lease is subject to the provisions of Title 77 of the Montana Code Annotated and all associated Administrative Rules of Montana.

9.3 Weed Management.
The Lessee shall be responsible for controlling any noxious weeds on the Lease Premises. The Lessee shall comply with the Montana County Noxious Weed Management Act and any applicable local regulations. The "Local Management Office" may at its discretion review/approve the Lessee's methods of weed control.

9.4 Excess Native Materials
If site development results in excess native materials (topsoil, fill dirt, boulders, etc.) Lessee must coordinate with Lessor any plans for storage onsite or permanent disposition off-site. Lessor and Lessee agree that any onsite storage and stockpiling shall be temporary in nature. If Lessee seeks to profit from the sale of excess native materials taken from the site, Lessor and Lessee shall negotiate in good faith any appropriate compensation to the trust beneficiary before any sale commences.

9.5 Environmental Matters.
Lessor has made no representations to Lessee concerning the presence of Toxic or Hazardous Substances within the definition of the Montana Comprehensive Environmental Cleanup and Responsibility Act (CECRA) on the Land. Lessee agrees as follows: 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 Sublessees 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 by Lessee in such compliance; and (d) keep or cause the Premises to be kept free and clear of any liens arising from Lessee's use and occupancy of the Premises imposed thereon pursuant to any Environmental Laws.

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.

If Lessor has knowledge of any pending or threatened Environmental Claim against Lessee or the Premises or has good reason to believe that Lessee or the Premises are in violation of any Environmental Law, at Lessor's written request (such request shall describe the basis for such request in reasonable detail), 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 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, Lessor may obtain the same, and the cost of such assessment (together with interest thereon at the Default Rate) will be payable by Lessee on demand.

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.

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 are on the Premises as a result of Lessee's activities under the Lease, 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.

9.6 Lessee Indemnity for Environmental Compliance.
Lessee agrees to defend (with attorneys reasonably satisfactory to Lessor), protect, indemnify and hold harmless Lessor from and against any and all liabilities, obligations (including removal and remedial actions), losses, 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 Lessor directly or indirectly based on, or arising or resulting, in whole or in part, 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 Lessee or anyone acting by, through or under Lessee regardless of when such indemnified matters arise.

9.7 Survival of Indemnification.
The remedial indemnification and reimbursement obligations under this Section 8 will survive the expiration or earlier termination of this Lease.

10. <u>UTILITIES AND REPAIRS.</u>

10.1 Installation and Repairs.
Lessee will install any water, sewer, storm water, electric, communication lines, natural gas lines, roads, sidewalks, and/or any other infrastructure as required for the development of the leased land, subject to

the provisions in section 8.1. Any utility installation for the leased area sufficient to service areas outside the leased land is subject to Lessor's prior review and approval and may be subject to further permitting. Lessee will maintain, repair, replace and keep the Premises in reasonably good condition and repair.

10.2 Utilities.
Lessee will pay before delinquent 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.

10.3 Sidewalks.
(a) Maintenance. Lessee agrees to assume full responsibility for maintenance of the bike and pedestrian paths within the project, whether or not any portion of those sidewalks or bike paths were constructed, reconstructed, or repaired in connection with the project. Maintenance shall include all things ordinarily associated with sidewalk and bike and pedestrian path maintenance (including but not limited to, grinding or milling down sidewalk displacements, surface patching, crack sealing, replacing small portions of damaged sidewalk, sweeping, cleaning, washing, the removal of snow, debris and other obstructions or impediments to safe pedestrian travel, and any and all other normally accepted maintenance practices). Lessee will inspect the sidewalks/paths at regular and reasonable intervals, determined solely by Lessee to be adequate, to determine what, if any, maintenance needs to be performed. Lessee shall enforce its contract provisions to recover all costs associated with its maintenance activities from sublessors who lease property adjacent to the sidewalks/paths and/or who receive the benefit of the maintenance performed. Lessee agrees to accomplish maintenance in the future and will not, in the event of later claims or litigation, allege that it was in any way the Lessor's responsibility to maintain them. Lessee will maintain or cause the maintenance of these sidewalks/paths for the life of these sidewalks/paths.

(b) Indemnification. Lessee will protect, indemnify, defend and save harmless Lessor (including its elected officials, employees, agents, and contractors) against and from all claims, liabilities, demands, causes of action, judgments (with any costs and attorney's fees that might be awarded), and losses to them arising in favor of or asserted by any person or entity (including Lessee itself) on account of personal injury, death or damage to property which in any way, in whole or in part, results from, arises out of, involves or is connected to the use of these sidewalks/paths or Lessee's performance or failure to perform future sidewalk/path maintenance (including, but not limited to, its performance or failure to perform regular and reasonable inspections of the sidewalks/paths). Lessee agrees that this indemnification will be fully binding on Lessee, whether it is insured for such claims or not, even if its insurance carrier refuses to be bound by the indemnification or otherwise fails or declines for any reason whatsoever to defend and indemnify Lessor. Lessee's duty to defend Lessor includes payment or reimbursement of all attorney's fees and costs Lessor incurs, with legal counsel employed or hired by Lessor to be reimbursed at prevailing hourly market rates.

11. <u>TAXES.</u>

11.1 Payment of Taxes.
Lessee will pay before delinquent, 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.

11.2 Special Assessments.
Lessee will pay all special assessments (i.e. SIDs, RIDs, etc.) and other like impositions levied, assessed, or attributable to the Land during the Term.

11.3 Notice and Acknowledgment of Assessments.
Pursuant to MCA 77-1-911, the lessee shall furnish to the department an officially certified description of all state trust land included within the boundaries of a city or county improvement district and a description and listing of the amount of assessments and charges of every character made against the leasehold interest of the lessee and the leasehold interest of the state, as soon as the assessments or charges are levied. Lessee hereby covenants and warrants to timely pay all charges so assessed. If any such assessment is not paid when due, the nonpayment shall constitute a breach of this lease.

11.4 Tax Contests.
Lessee will have the right to contest any Taxes or special assessments payable by Lessee, provided Lessee (a) pays all taxes and special assessments before delinquent, and (b) provides Lessor with written notice of any 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, 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 11.4.

12. <u>INSURANCE.</u>

12.1 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 12 issued by an insurance company(ies) licensed to do business in the State of Montana that are reasonably satisfactory to Lessor.

12.2 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 Lessor 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 $1,000,000.00 for any one accident or occurrence, $2,000,000.00 aggregate. Lessee may obtain some portion of this required coverage in the form of an excess liability policy. Lessor will be named as an additional insured in the policy(ies) 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.

c) Workers' Compensation Insurance. Workers' compensation and employer's liability insurance covering Lessee's employees, officers, agents and representatives employed at the Premises.

12.3 Terms of Insurance.
The policies required above, shall name Lessor as an 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 required policy. Lessee shall deliver Proof before the Lease is executed. 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 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; and

d) not have a deductible in excess of $20,000.00.

13. <u>DAMAGE OR DESTRUCTION.</u>
In the event of any Substantial Damage to the Premises from any causes whatsoever, Lessee shall promptly give written notice thereof to Lessor. Lessee shall promptly repair or restore the Premises as nearly as possible to its condition immediately prior to such damage or destruction unless Lessor and Lessee mutually agree in writing that such repair and restoration is not feasible, in which event this Lease shall thereupon terminate upon Lessee completion of a remediation plan developed by the Department. Lessee's duty to repair any damage or destruction of the Premises shall not be conditioned upon the availability of insurance proceeds from which the cost of repairs may be paid. Unless this Lease is so terminated by mutual agreement, there shall be no abatement or reduction in Rent during such period of repair and restoration. If a Default by Lessee shall have occurred and be continuing at the time such damage or destruction occurs, Lessor may elect to terminate this Lease by providing written notice of such election to Lessee and Lessee shall forfeit the Security Deposit.

14. <u>CONDEMNATION.</u>

14.1 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.

14.2 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 30 days after the date of Lessee's notice of termination and all Base Rent and other Rent will be apportioned to the date Lessee surrenders possession.

14.3 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 and Base Rent will be adjusted to reflect the reduced Land remaining after the Taking. If a Substantial Taking occurs but Lessee does not exercise its termination option 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 and Base Rent after the Taking Date will be adjusted to reflect the reduced Land remaining after the Taking.

14.4 Awards for Permanent Taking.
If there is compensation paid as a result of any permanent Taking of the Premises, the award will be allocated as follows: Lessee will be entitled to receive an amount equal to the then current appraised fair market value of the Improvements placed by the Lessee upon the Premises and Lessor will be entitled to the balance of the award.

14.5 Award for Temporary Taking.
If all or any portion of the Premises shall be taken for temporary use or occupancy, the foregoing provisions shall not apply and the Lessee shall continue to pay the full amount of Rent and the Lessee shall perform and observe all of the other terms, covenants, conditions and obligations of this Lease as though the temporary Taking had not occurred, subject to any order of the condemning authority. In the event of a temporary Taking, Lessee shall be entitled to receive the entire amount of the compensation award for such taking, unless the period of temporary use or occupancy shall extend beyond the Expiration Date in which case the compensation shall be apportioned between the Lessor and the Lessee as of the Expiration Date.

15. ASSIGNMENT, SUBLETTING AND FINANCING

15.1 Assignment.
Lessee shall not assign its interest under this Lease, in whole or in part, without Lessor's prior written consent. Such consent shall be determined in Lessor's sole and absolute discretion but shall not be unreasonably withheld. 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 Foreclosure Transferee as a substitute Lessee under this Lease and will honor all rights and interest of such substitute Lessee as if the substitute Lessee was the initial Lessee under this Lease and such Foreclosure Transferee shall be bound by the terms and conditions of this Lease. Additionally, if the Foreclosure Transferee is a Qualified Mortgagee, such Qualified Mortgagee shall have the right to assign its interest under this Lease without the consent of Lessor and, upon such assignment, Lessor shall recognize the assignee as a substitute Lessee under this Lease and the Qualified Mortgagee shall be released of any further liability under the Lease. If Lessee assigns its rights in this Lease, as permitted pursuant to this Section, and the assignee assumes, in writing, Lessee's obligations hereunder which arise on or after the date of such assignment, then Lessee shall be relieved of all liabilities hereunder accruing from and after the date of such assignment, but this Lease shall otherwise remain in full force and effect.

15.2 Subletting.
Lessee may sublease the Premises or portions thereof in accordance with the terms of this section. Lessee shall require any sublessees to maintain the Premises pursuant to the terms and conditions contained in this Lease. Lessee shall inform Lessor of all subleases by delivering a copy of the sublease to the Lessor, addressed as follows: DNRC, Real Estate Management Bureau Chief, P.O. Box 201601, Helena, MT 59620. Lessee shall own all Improvements on the Premises subject to the sublease. No sublease shall be effective until a valid subordination, non-disclosure, and attornment (SNDA) provision is delivered to the

Lessor, as hereinafter provided. Upon receipt of copy of the sublease by Lessor, Lessor shall have thirty (30) days in which to object to the sublease. Lessor hereby reserves the right to object to any sublease arrangement for any reason, in the sole discretion of the Lessor. All subleases shall include an attornment provision whereby upon the early termination of this Lease or repossession of the Premises by Lessor, the sublessee shall attorn to the Lessor as its landlord. Such attornment shall be effective and self-operative immediately upon Lessee's termination. Sublessee shall agree to execute, acknowledge and deliver to Lessor any document that Lessor reasonably requests to confirm such attornment.

15.3 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.

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.

c) Prohibition Against Mutual Rescission. No mutual termination, cancellation, rescission or modification of a material provision 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.

15.4 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.

16. <u>DISPUTE RESOLUTION.</u>

16.1 Issues Subject to Administrative Hearing.

Any controversy which may arise between Lessor and Lessee regarding the provisions hereof shall be resolved by an administrative contested case hearing before the Department under the Montana Administrative Procedures Act.

16.2 Administrative Hearing Procedure.
All administrative hearings hereunder shall be conducted in the offices of the Department in Helena, Montana. The findings of fact, conclusions of law, and proposed decision of the hearing examiner shall be rendered within sixty (60) days of the completion of the hearing and submission of any briefs. Either party may file exceptions to the hearing examiner's findings, conclusions, and proposed decision with the Department's Director. The Lessee may, as permitted by the Department's administrative rules, petition for judicial review of the final administrative decision of the Department. Fees of the respective counsel engaged by the parties, and fees of expert witnesses or other witnesses called for the parties shall be paid by the respective party engaging such counsel or calling or engaging such witness.

17. LEASE EXPIRATION.

17.1 Condition at End of Lease.
Upon vacating the Premises on the Expiration Date, Lessee shall leave the Premises in good condition and shall peaceably surrender the same to Lessor. Lessee shall remove all of its personal property on or before the Expiration Date. All personal property remaining on the Premises on the day after the Expiration Date shall be conclusively deemed abandoned by the Lessee and shall become property of Lessor without further notice to Lessee.

17.2 Holding Over.
If the Premises are not surrendered on the Expiration Date, Lessee shall immediately indemnify Lessor against loss or liability resulting from the delay by Lessee in so surrendering the Premises, including, without limitation, any claims made by any succeeding Lessee founded on such delay. 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 Lessee 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.

17.3 Memorandum Notice of Lease.
Upon 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. The memorandum notice shall include an expiration clause that will cause it to expire at the same time as the termination of this Lease, whenever that might occur.

18. LIENS AND ESTOPPEL CERTIFICATES.

18.1 Liens.
Lessee will not allow any liens to be recorded, filed, claimed or asserted against the Premises. In the event a lien is recorded, filed, claimed or asserted, the Lessee will cause the same to be released or discharged within 30 days thereafter. If the Lessee defaults under the foregoing covenant, then the Lessor may, upon written notice to Lessee, 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 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.

18.2 Lien Contests.
If Lessee has a good faith dispute as to any lien for which Lessee is responsible, 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 promptly pay any judgment rendered and cause the lien to be released.

18.3 Estoppel Certificates.
Lessor and Lessee agree that at any time and from time to time (but on not less than 10 business 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 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 will be provided by the requesting party.

19. <u>DEFAULTS BY LESSEE AND LESSOR'S REMEDIES.</u>

19.1 Defaults by Lessee.
Each of the following events, which continue beyond any applicable notice and cure period, 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, including late charges and interest accruing thereon, payable by Lessee under the terms of this Lease when due, and such failure continues for 30 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 30 days after levy; provided, however, that this provision shall not apply in the event of a foreclosure or transfer in lieu of foreclosure under a Leasehold Mortgage by a Qualified Mortgagee or to a transfer of Lessee's interest in this Lease and the Premises to a Foreclosure Transferee.

d) Fraud or Misrepresentation. Lessee's fraud or misrepresentation, or concealment of material facts relating to its issue, which if known would have prevented its issue in the form or to the party issued.

e) Unauthorized Use of Premises. Lessee's use, or knowledge or permission of someone else's use, of the Premises for any unlawful or unpermitted purpose, and such unlawful use continues for 30 days after written notice from Lessor to Lessee to cease such use.

19.2 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, 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.

19.3 Remedies.

a) Cure by Lessor. In the event of 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, together with interest at the Default Rate, from the date of payment of any such advances, costs and expenses by Lessor.

b) Termination of Lease. In the event of 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. In the event of 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, 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 termination 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, 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 any payments 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.

20. DEFAULTS BY LESSOR AND LESSEE'S REMEDIES.

20.1 Defaults by Lessor.

The following event, which continues beyond the applicable notice and cure period, 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 and Lessor does not commence to cure such breach or noncompliance within such 30-day period and does not thereafter pursue such cure in good faith to completion.

20.2 Lessee's Remedies.

If any Default by Lessor occurs, Lessee will have the right, at Lessee's election, then or at any later time, to exercise the remedy described below. Exercise of such remedy will not prevent the concurrent or subsequent exercise of any other remedy otherwise available to Lessee at law or in equity. 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.

21. SECURITY BOND

Per MCA 77-1-907 (1) prior to executing a commercial lease, the Land Board may require the posting of bonds, sureties, guarantees, or a letter of credit sufficient to ensure that the commercial purposes will be conducted as proposed with no harm to the financial interests of the beneficiaries.

To secure compliance with the terms of this Lease, on or before the Commencement Date, the Lessee shall secure a **$47,500** Security Bond, and provide written evidence of such Security Bond and the terms under which it may be called to Lessor. In the event Lessor assigns or transfers Lessor's interest in this Lease, Lessor shall transfer its interest in the Security Bond to Lessor's successor-in-interest, whereupon Lessor shall be automatically deemed released from all liability in connection with the Security Bond.

21.1 Security Bond upon the Expiration Date.

Upon the Expiration Date of this Lease, Lessor may call upon the Security Bond if necessary to compensate Lessor for all tangible loss, injury or deterioration of the Premises caused by Lessee, or Lessee's guests, plus all unpaid Rent and Lessor's costs to reclaim the Land. Within sixty (60) days following Lessee's departure from the Premises, Lessor will deliver to Lessee a written list of the total amount owed by Lessee to Lessor, which will be the portion of the Security Bond that Lessor will call

upon. Said list will be mailed to Lessee's Address unless Lessee provides Lessor of a new address in writing. If the Security Bond is insufficient to satisfy the damages, reclamation charges and unpaid Rent, Lessor may collect the deficiency from Lessee.

21.2 Security Bond Upon Early Termination by Lessee.
Upon early termination of this Lease by Lessee for any reason other than a Taking or Substantial Damage, the parties acknowledge and agree that the Lessor will suffer damages the exact amount of which will be extremely difficult to ascertain. Accordingly, Lessee shall forfeit the entire amount of the Security Bond in full at that time. If the Security Bond is insufficient to satisfy the damages, reclamation charges and unpaid Rent, Lessor may collect the deficiency from Lessee.

21.3 Security Bond Upon Default of Lessee.
Upon a Default by Lessee, Lessor may, but without obligation to do so or prejudice to or waiver of any other remedy available to Lessor, call upon the Security Bond in the amount and to the extent deemed appropriate or necessary by Lessor, in its sole discretion. If the Security Bond is insufficient to satisfy the damages, reclamation charges and unpaid Rent, Lessor may collect the deficiency from Lessee.

21.4 Security Bond upon Market Adjustment
At the time of any scheduled Market Adjustment, the bond amount will be adjusted to be 1/3 of the annual lease fee for the first year after the Market Adjustment. The Bond amount will be rounded up to the nearest whole thousand dollars.

22. MISCELLANEOUS

22.1 Notices.
All notices required under this Lease must be in writing and will 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 with a written acknowledgment of receipt; or (c) 5 business days after the date postmarked on the cover of any correspondence or notice when deposited in the United States mail, certified – return receipt requested, with postage prepaid. All such notices shall be sent to the noticee's address shown in this Lease unless the party giving notice has been notified, in writing, of a more recent address for the noticee. In the case of notices to a Qualified Mortgagee, to the address set forth in its most recent notice to Lessor.

22.2 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.

22.3 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. All modifications to this Lease must be in writing and signed by the Lessor and the Lessee. If executed properly under this section, modifications of this Lease do not need independent consideration to be legally enforceable.

22.4 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.

22.5 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.

22.6 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.

22.7 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.

22.8 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.

22.9 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.

22.10 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.

22.11 Reservation of Oil, Gas, and Minerals.
Lessor expressly excepts and reserves from this Lease all 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 no drilling, mining or other surface disturbance will be undertaken on the surface of this Lease, nor shall the Lessor interfere with the Lessee's right to subjacent support, during the Term of this Lease.

22.12 Reservation of Rights-Of-Way.
Lessor expressly excepts and reserves from this Lease and retains the right to grant rights-of-way on the Land for other purposes to third parties. Provided, however, that the right of way granted herein is not exclusive and does not interfere with the Lessor and its successor, assigns or purchasers of State products or other parties authorized to use State land, in their right, at all times to go upon, cross and re-cross the land covered by said right of way, at any point, for any and all purposes in a manner that will not unreasonably interfere with the rights granted to Lessee.

22.13 Right of Inspection.
Lessor, or its authorized representatives, may, at any reasonable hour, enter upon and inspect the Premises to ascertain compliance with this Lease. Any inspection or examination of the Buildings and Improvements shall not interfere with Lessee's use of the Premises or the business conducted therein.

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

22.15 Governing Law; **Venue and Jurisdiction.**
This Lease will be governed by and construed according to the laws of the State of Montana. Venue and jurisdiction for any dispute arising under this Lease shall be before the Lessor as a contested case proceeding under the Montana Administrative Procedures Act before the Department.

22.16 Time of Essence.
Time is expressly declared to be of the essence of this Lease.

22.17 Broker.
Lessor represents and warrants that no broker or agent negotiated or was instrumental in negotiating or consummating this Lease on behalf of Lessor. Lessee will indemnify and hold Lessor harmless from all damages paid or incurred by the Lessee from any claims asserted against Lessor by brokers or agents claiming through the Lessee.

Having read and intending to be bound by the terms and provisions of this Lease, Lessor and Lessee have signed it as of the date first stated above.

LESSEE, MOUNTAINEER DEVELOPMENT I, LLC

By: _____

Its:_____

ACKNOWLEDGMENT

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on _____, ____, by _____.

_____
(Notary Signature)

[SEAL]

LESSOR, STATE OF MONTANA, DNRC:

By _____
GREG PONCIN
AREA MANAGER
NORTHWEST LAND OFFICE

ACKNOWLEDGMENT

STATE OF _____)

COUNTY OF _____)

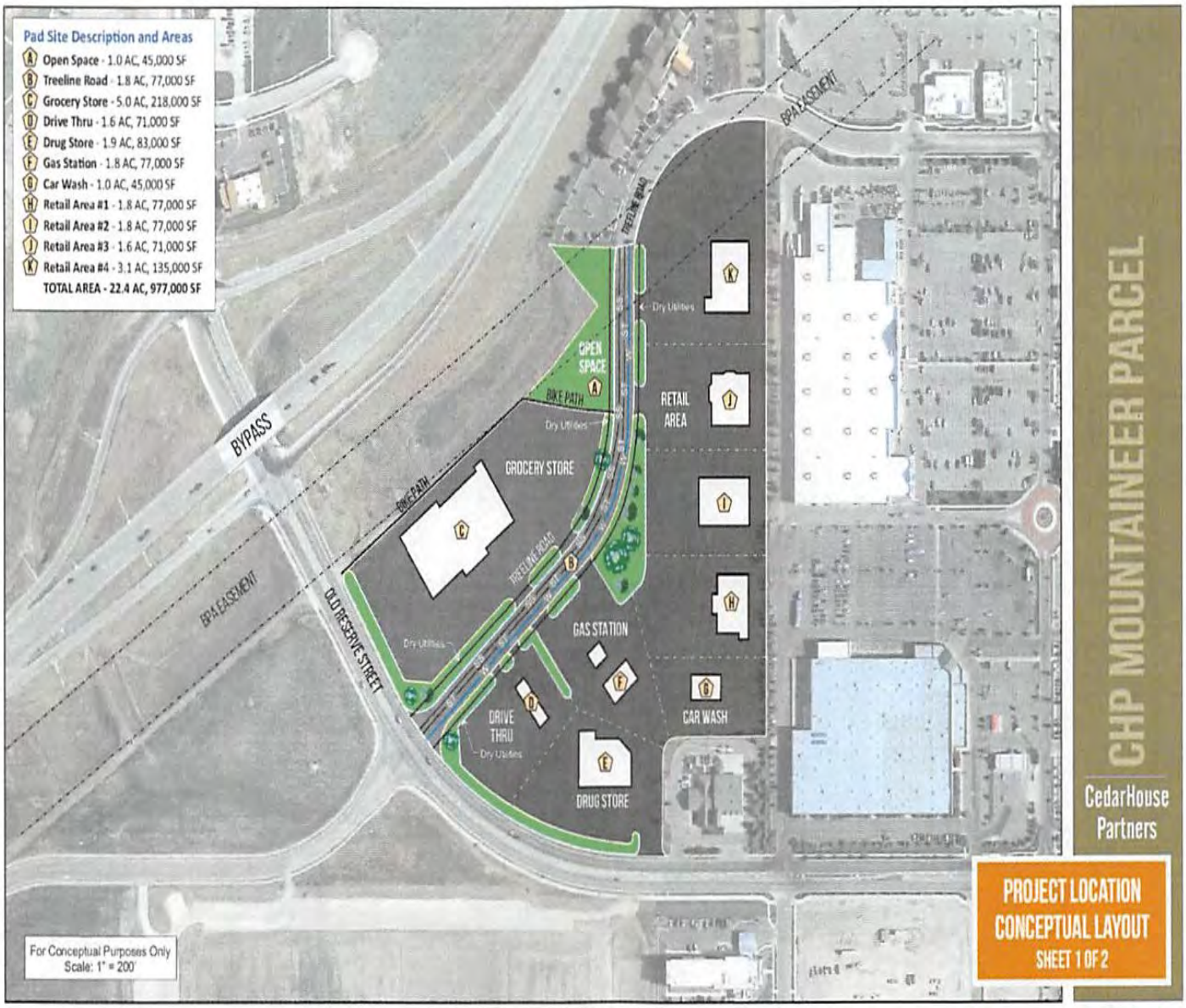
This instrument was acknowledged before me on _____, ____, by _____.

_____
(Notary Signature)

[SEAL]

LEASE EXHIBIT A

Site Plan/Plat – To be replaced with preliminary plat when complete.



LEASE EXHIBIT B
MARKET ADJUSTMENT
SCHEDULE AND PROVISIONS

MARKET ADJUSTMENT PROVISIONS

Base Rent for the Land shall be subject to Market Adjustments determined in accordance with these provisions. The Market Adjustments will apply in Lease Year 16, 31, 46, 51, 66, 81 and 96. The process for the Market Adjustment will commence on the date that is 90 days after the first day of Lease Years 15, 30, 45, 50, 65, 80 and 90 as applicable (the "Market Date").

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

SELECTION OF APPRAISERS
Lessor and Lessee shall each hire an appraiser meeting the qualifications set forth in these provisions and shall instruct such appraiser to prepare an appraisal of the market value of the Land based upon the assumptions and meeting the requirements set forth these provisions. 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. 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.

DETERMINATION OF BASE RENT
If the difference between the dollar amount of Lessor's Appraisal and the dollar amount of Lessee's Appraisal is equal to or less than 10%, then the Land Value shall be deemed to be the mathematical average of the two appraisals. See the following example of a scheduled Market Adjustment for a 50,000 square foot lease, at a 6% lease rate with two different appraisal values:

Lessor Appraisal = $6.50 per square foot
Lessee Appraisal = $6.10 per square foot
Land Value= $6.30 per square foot

New Annual Base Rent = $6.30 x 50,000 (or applicable square footage) x 6% (or applicable Lease Rate) = $18,900.

If the difference between the dollar amount of Lessor's Appraisal and the dollar amount of Lessee's Appraisal is greater than 10%, then:

a) Lessor and Lessee shall have 30 days from the Appraisal Report Date within which to agree upon the Land Value between the two appraisals; OR
b) If Lessor and Lessee are unable to agree on the Land Value within such 30 day period, then Lessor and Lessee shall jointly select a third appraiser to prepare an appraisal of the market value of the Land utilizing the same scope of work from the Lessor's Appraisal and the Lessee's Appraisal. The third appraiser shall be provided copies of both appraisals. The third appraisal shall be prepared and delivered to both Lessor and Lessee. The Land Value shall be the mathematical average of the two appraisals that are closest in dollar amount.

The Land Value determined in accordance with the foregoing provisions shall be binding and conclusive on the parties. Base Rent for the land, as adjusted by the Market Adjustment, shall be amount obtained by multiplying the Land Value by a percentage determined in accordance with 77-1-905, MCA, or the rate bid in the lease proposal, whichever is higher.

QUALIFICATIONS OF APPRAISERS; REPLACEMENT

Each of Lessor's Appraiser, Lessee's Appraiser and any 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; and (c) have appraised similar types of uses in the three years prior to such Market Date. If any appraiser designated to serve in accordance with these provisions shall fail, refuse, or otherwise become unable to act, a new appraiser shall be appointed by the contracting party.

SCOPE OF WORK

The Lessor shall draw up the scope of work that meets the statutory requirements at the time, and supply the scope of work to all appraisers. All appraisals conducted during a Market Adjustment shall be subject to the same scope of work.

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.

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.

MARKET ADJUSTMENT SCHEDULE

Lease Year	**Schedule**
16	"Market Adjustment"
17 through 30	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
31	"Market Adjustment"
32 through 45	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
46	"Market Adjustment"
47 through 50	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
51	"Market Adjustment"
52 through 65	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
66	"Market Adjustment"
67 through 80	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
81	"Market Adjustment"
82 through 95	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
96	"Market Adjustment"
97-99	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.

Lease Exhibit C
Shared Traffic Signal Cost Breakdown
Treeline Road/Old Reserve Drive Intersection

The City of Kalispell has indicated that development around the intersection of Treeline Road and Old Reserve Drive will eventually necessitate signalization of the intersection. The development that instigates the requirement of signalization is responsible for contracting this installation of the traffic signal. There are four lease parcels whose development will directly impact traffic on the intersection; they are depicted as the "Contributing Area" on **Lease Exhibit D**. If at any time prior to April 1, 2027, the intersection requires signalization, lessees on all four parcels will be responsible to share in the cost of the traffic signal installation. The following represents the shared cost break down under three different scenarios for required signalization.

Scenario 1: Table 1 is the Shared Stoplight Cost Breakdown under a scenario where signalization is not required until development of the "Mountaineer" parcel. In this scenario, lessees of all four parcels contribute to the entire signalization cost. If any of the Contributing Development Parcels are not under lease, the Cost Breakdown will be recalculated to distribute responsible shares among leased Contributing Development Parcels.

Scenario 2: Table 2 is the Shared Stoplight Cost Breakdown under a scenario where signalization is required prior to any development of the "Mountaineer" parcel. In this scenario, lessees of the three parcels on the same side of Old Reserve Drive will contribute to the entire cost of signalization as required at the time. Any future lessee of "Mountaineer" would fully bear any further signalization work required from the subsequent development of "Mountaineer."

Scenario 3: If signalization is not required prior to April 1, 2027, the developing entity that is responsible for contracting the installation will bear the costs entirely.

If traffic signal improvements at the junction of Treeline Road and Old Reserve Drive are required upon development of the "Mountaineer" parcel, the costs shall be shared as follows assuming full occupancy of the Contributing Area:

TABLE 1.				
Contributing Development Parcel	**Zoning**	**Acres**	**ADT**	**% of Total**
Treeline Center	B-5-PUD	5.6	1,846	***18.1%***
Treeline One	B-5-PUD	1.2	396	***3.9%***
Mountaineer Development	B-5-PUD	21.5	7,087	***69.5%***
Snowline Parcel	R-4-PUD	8.3	870	***8.5%***
Total		36.6	10,199	100.0%

If traffic signal improvements at the junction of Treeline Road and Old Reserve Drive are required in association with one of the following developments any development of the "Mountaineer" parcel the costs shall be shared as follows. Costs associated with upgrades or any other improvements as may

be required by the subsequent development of the Mountaineer parcel will be borne entirely by the Mountaineer project.

TABLE 2.				
Contributing Development Parcel	**Zoning**	**Acres**	**ADT**	**% of Total**
Treeline Center	B-5-PUD	5.6	1,846	***59.3%***
Treeline One	B-5-PUD	1.2	396	***12.7%***
Snowline Parcel	R-4-PUD	8.3	870	***28.0%***
Total		15.1	3,112	100.0%

NOTES:

1) Traffic count data taken from Institute of Transportation Engineer's (ITE) Trip Generation Handbook.

2) B-5 PUD ADT set at 330/acre based on typical or expected mix of retail/hotel/restaurant/office uses.

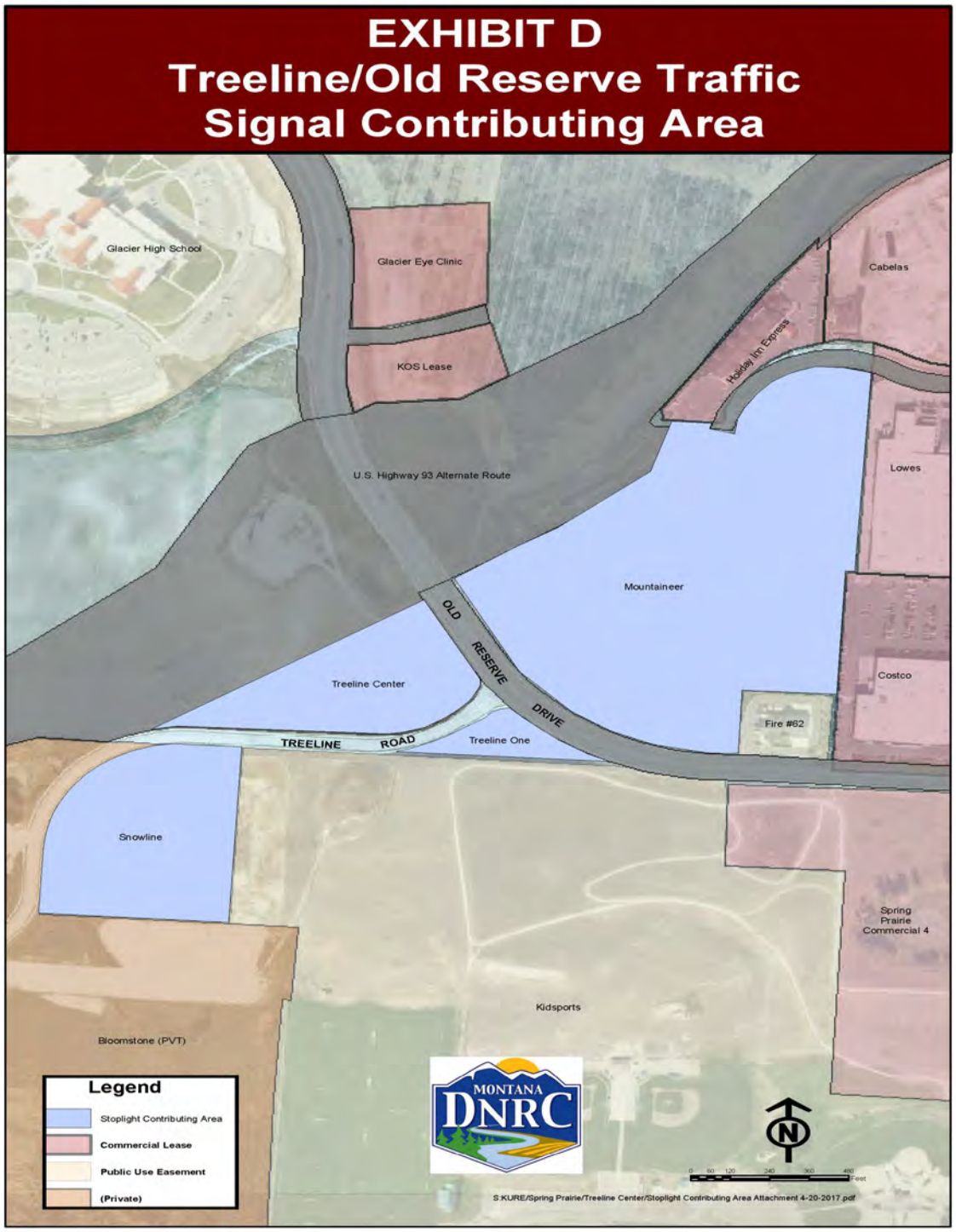
3) Based on best available estimate of net lease area acreage of parcels.

4) Mountaineer Development net lease acreage is based on an estimated 23.4-acre parcel less 1.9 acres for ROW dedication for Treeline Road from Holiday Inn Express to Old Reserve Drive.

5) Snowline Parcel ADT Based on development of 116 multi-family units per zoning administrator's determination regarding density.

Lease Exhibit D

Shared Traffic Signal Contributing Area



MONTANA DEPARTMENT OF NATURAL
RESOURCES & CONSERVATION

OPTION TO LEASE AGREEMENT #3053581

This Option to Lease Agreement ("Option"), is entered into this ____ Day of _____, 20__, (Effective Date) by and between the Montana Department of Natural Resources and Conservation, whose address is P.O. Box 201601, Helena, MT 59620 (hereinafter referred to as the "Department") and Mountaineer Development I, LLC, whose address is 1610 Whitefish Stage Road, Ste 2, Kalispell, MT 59901 ("Optionee")

GRANT OF OPTION: In consideration of an annual payment ("Option Fee"), the Department grants to the Optionee an exclusive option to lease premises described in Exhibit A, ("Premises") attached hereto upon those terms and conditions as in the form, terms, and conditions of that lease agreement attached hereto as Exhibit B, ("Lease") and incorporated herein as if fully set forth. The Option Fee shall be:

Year One: $38,785.83, due within (10) days of the Effective Date.
Year Two: $51,714.44, due on the first anniversary of the Effective Date.

TERM: This Option shall remain in effect from the Effective Date for two years until 12 noon Mountain Time on the _____ Day of _____, 20__, at which time it will expire and terminate automatically. Optionee may exercise this Option and execute a Lease at any time during the Term. If the Option is exercised prior to the expiration of the Term, rent paid for the unused portion of the Term will be applied to the first-year rental payment of the lease agreement.

The Optionee may terminate this Option at any time prior to the expiration of the Term. The Optionee will provide the Department with a written notice of early termination at least thirty (30) days prior to the intended date of early termination. Upon the Department's receipt of such notice of termination, this Option shall terminate and the Optionee shall be released from all obligations under this Option other than those obligations that expressly survive such termination. Under early termination, Optionee shall not be entitled to any refund of any prepaid payments for the Grant of Option.

ASSIGNMENT: Optionee shall not assign its interest under this Option, in whole or as to any part, without Department's prior written consent.

PAYMENT OF SPECIAL ASSESSMENTS AND TAXES: Optionee will pay all special assessments (i.e. SIDs, RIDs, etc.) and other like impositions levied, assessed, or attributable to the lease premises described in Exhibit "A" during the Term. The Optionee will pay before delinquent, directly to the taxing authority, all Taxes that may accrue during or are attributable to any part of the Option term, including privilege taxes, also known as beneficial use taxes, per MCA 15-24-1203.

DUE DILIGENCE AUTHORIZED: Throughout the Term, Optionee is permitted to access the Premises for the limited purpose of conducting due diligence activities in support of project regulatory approval, in accordance with the following:

1. All due diligence activities will be coordinated through the Department's Due Diligence Contacts, and Department consideration as described below will not be unreasonably withheld, conditioned, or delayed. Due Diligence Contacts are:

Anne Shaw Moran; Mountaineer Project Manager
655 Timberwolf Parkway, Ste. 2
Kalispell, MT 59901
phone: 406-751-2274
asmoran@mt.gov.

Dave Poukish; Kalispell Unit Manager
655 Timberwolf Parkway, Ste. 2
Kalispell, MT 59901
phone: 406-751-2263
dpoukish@mt.gov

2. Due diligence activity is limited to: data collection, survey, real estate signage, geotechnical sampling and environmental research, and preliminary subdivision platting in support of project design, review and land use regulatory approval.
3. Optionee shall provide copies of data collection, survey, geotechnical sampling and environmental use reports to the Due Diligence Contacts.
4. Optionee shall obtain prior written approval from the Due Diligence Contacts for the locations of all geotechnical borings. The boring sites shall be reclaimed pursuant to the Reclamation section listed below.
5. Optionee shall submit proposed preliminary subdivision plats, applications, and related documents and drawings to the Due Diligence Contacts for review and approval prior to submission to jurisdictional authority, allowing a reasonable time for landowner review and response. Any documents requiring landowner signatures shall be submitted to the Due Diligence Contacts for processing. All expenses of such application and permitting process shall be the sole responsibility of Optionee. If Optionee fails to exercise the Option, all plat-related documents shall be deemed available to the Department to use as needed in future platting activities for the Premises.
6. Optionee shall at all times comply with any applicable state, federal, and local regulations. Optionee shall promptly provide the Due Diligence Contacts with copies of all licenses/permits secured, and pertinent public meeting agendas and staff reports.

7. At all times the Optionee will maintain the Premises in a neat and orderly manner and will allow no waste or debris to accumulate thereon. No supply or equipment storage shall be permitted on the Premises during the Term without prior written approval from the Due Diligence Contacts.

ACCESS TIMING RESTRICTIONS: Prior to accessing the Premises for due diligence activities, Optionee must request physical access from the Due Diligence Contacts and provide evidence that the Department is listed as additionally insured on policies related to the activity. Optionee shall not access the Premises until written and/or email approval is received from the Due Diligence Contacts; provided, however, that if no response is received within three (3) business days, the Department shall be deemed to have approved the request and Optionee or its agents shall be entitled to access the Premises for the purposes stated in Optionee's request. Department reserves the right to restrict or preclude any activity to the extent necessary for environmental concerns, safety, or other land management reasons, provided that Department shall make a good faith effort to ensure that Optionee's due diligence activities are reasonably accommodated during the Option term.

RECLAMATION: Optionee shall take all reasonable precautions to prevent or minimize damage to natural (i.e., vegetation, soil, water, wildlife), and cultural resources within the areas of the Option to Lease. Optionee shall reclaim any disturbed areas in the option to lease premises to the specifications of Department. Such reclamation shall include, but not be limited to the elimination of all trace of disturbances, compaction, and movement of construction equipment. Optionee shall be required to reseed

all disturbed areas with native species of grasses, unless other arrangements are agreed upon between Department and Optionee in writing. The seed mix used in the reclamation shall be approved in advance by the Kalispell Unit Office. When any action requires disturbance, all soil materials shall be salvaged, safeguarded from loss due to wind or water erosion or machinery activity, and shall be replaced on all disturbed areas.

PROPERTY MAINTENANCE: During the period of the Option, the Optionee shall be responsible for weed management, sidewalk snow removal, and sidewalk cleaning as per applicable local regulations and as required by the Due Diligence Contacts.

MANNER OF EXERCISE OF OPTION: The Optionee may exercise the option granted in the preceding paragraph at any time before the expiration of the option period by giving written notice of exercise of the option to the Department, at the address of the Department set out above. The notice of exercise of the option must specify the date upon which the lease is to commence, and such date must be within the term of the option.

EXECUTION OF LEASE AGREEMENT: Upon receipt of the notice of exercise of lease option, the Department must prepare or cause to be prepared duplicate originals of the lease agreement which is attached as Exhibit "B". The Department will deliver these duplicate originals for execution, along with an invoice for the first year's rent to the Optionee within thirty (30) days after receipt of the Optionee's notice of exercise of the option. The Optionee must deliver the fully executed duplicate lease agreements, along with a cashier's check for the full first year's rent and security deposit as specified within the lease, to the Department within fourteen (14) days after receipt by the Optionee. The Department acknowledges receipt of a bid deposit in the amount of $14,221.47 paid by Optionee, which sum shall be applied as a credit on the invoice for the first year's rent.

Date:_____

STATE OF MONTANA, MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By:_____
Greg Poncin, Area Manager
Northwestern Land Office

ACKNOWLEDGMENT

STATE OF MONTANA
County of Flathead

This instrument was acknowledged before me on _____, ____, by _____.

_____
(Notary Signature)

[SEAL]

Date: _____ Mountaineer Development I, LLC

By:_____

Its:_____

ACKNOWLEDGMENT

STATE OF _____

County of _____

This instrument was acknowledged before me on _____, ____, by _____.

_____
(Notary Signature)

[SEAL]