

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

**ACTION ITEMS**

- 1220-1 **Department of Fish, Wildlife & Parks, Purchase of Property for New Montebello Fishing Access Site:** **APPROVED 5-0**  
*Benefits: N/A (non-trust land)*  
*Location: Lake County*
- 1220-2 **Department of Fish, Wildlife & Parks, Purchase of Property for New Somers Beach State Park:** **APPROVED 5-0**  
*Benefits: N/A (non-trust land)*  
*Location: Flathead County*
- 1220-3 **Oil and Gas Lease Sale: (December 1, 2020)** **APPROVED 5-0**  
*Benefits: Common Schools*  
*Location: Dawson and Sweet Grass Counties*
- 1220-4 **Land Banking Parcels: Set Minimum Bid for Sale** **APPROVED 5-0**  
**A. Rosebud County**  
*Benefits: Common Schools*  
*Location: Rosebud County*  
**B. Fergus County**  
*Benefits: Common Schools*  
*Location: Fergus County*
- 1220-5 **Land Banking Parcels: Final Approval for Sale** **APPROVED 5-0**  
*Benefits: Common Schools*  
*Location: Powell County*
- 1220-6 **Cabin and Home Sites: Final Approval for Sale** **APPROVED 5-0**  
**A. Powell County**  
*Benefits: Common Schools*  
*Location: Powell County*  
**B. Sanders County**  
*Benefits: Common Schools*  
*Location: Sanders County*
- 1220-7 **Easements: Standard Grant** **APPROVED 5-0**  
*Benefits: Common Schools, Public Land Trust- Nav. Rivers*  
*Location: Fergus, Petroleum, Richland, and Roosevelt Counties*
- 1220-8 **Reciprocal Access Agreement – SPP#2** **APPROVED 5-0**  
*Benefits: Common Schools, Public Buildings*  
*Location: Flathead, Lake, Lincoln, and Sanders Counties*
- 1220-9 **Commercial Lease: Proposed Wind Energy Development** **APPROVED 5-0**  
*Benefits: Common Schools*  
*Location: Wheatland County*

**1220-10 Informational Item: Real Estate Management Plan Five – Year Report**

*Benefits: N/A*

*Location: Statewide*

**PUBLIC COMMENT**

# 1220-1

DEPARTMENT OF FISH, WILDLIFE & PARKS,  
PURCHASE OF PROPERTY FOR NEW  
MONTEBELLO FISHING ACCESS SITE





<b>1220-1</b>	<b>Department of Fish, Wildlife &amp; Parks, Purchase of Property for new Montebello Fishing Access Site</b>
<b>Location:</b>	<b>Lake County</b>
<b>Trust Benefits:</b>	<b>N/A (non-trust land)</b>
<b>Trust Revenue:</b>	<b>N/A</b>

**Item Summary:** FWP proposes to purchase a fee simple interest in a 14.89-acre private property for a new Fishing Access Site (FAS) on Flathead Lake in Lake County, Montana. The proposed FAS is situated on the west shore of Flathead Lake, just a small stretch from Wild Horse Island (see attached map). The longtime owners recently sold the property to Montana's Outdoor Legacy Foundation (MOLT) in a bargain sale to ensure the property is not subdivided. MOLT wishes to sell this parcel to FWP below appraised value to create a new FAS. Site developments would include access roads, parking area, a concrete boat ramp, boat dock, vault latrine, on-site host camping site, signage and boundary fencing.

The proposed FAS is located along Montebello Lane, approximately 1 mile east of Dayton. The site includes approximately 650 feet of shoreline, as well as upland grassland. The site will contain a new boat launch ramp and picnic area, as well as an onsite host campground. Regional FWP staff would maintain the FAS as part of its existing maintenance program. The intent is for a camp host to be present throughout the summer months to help ensure a management presence at all times.

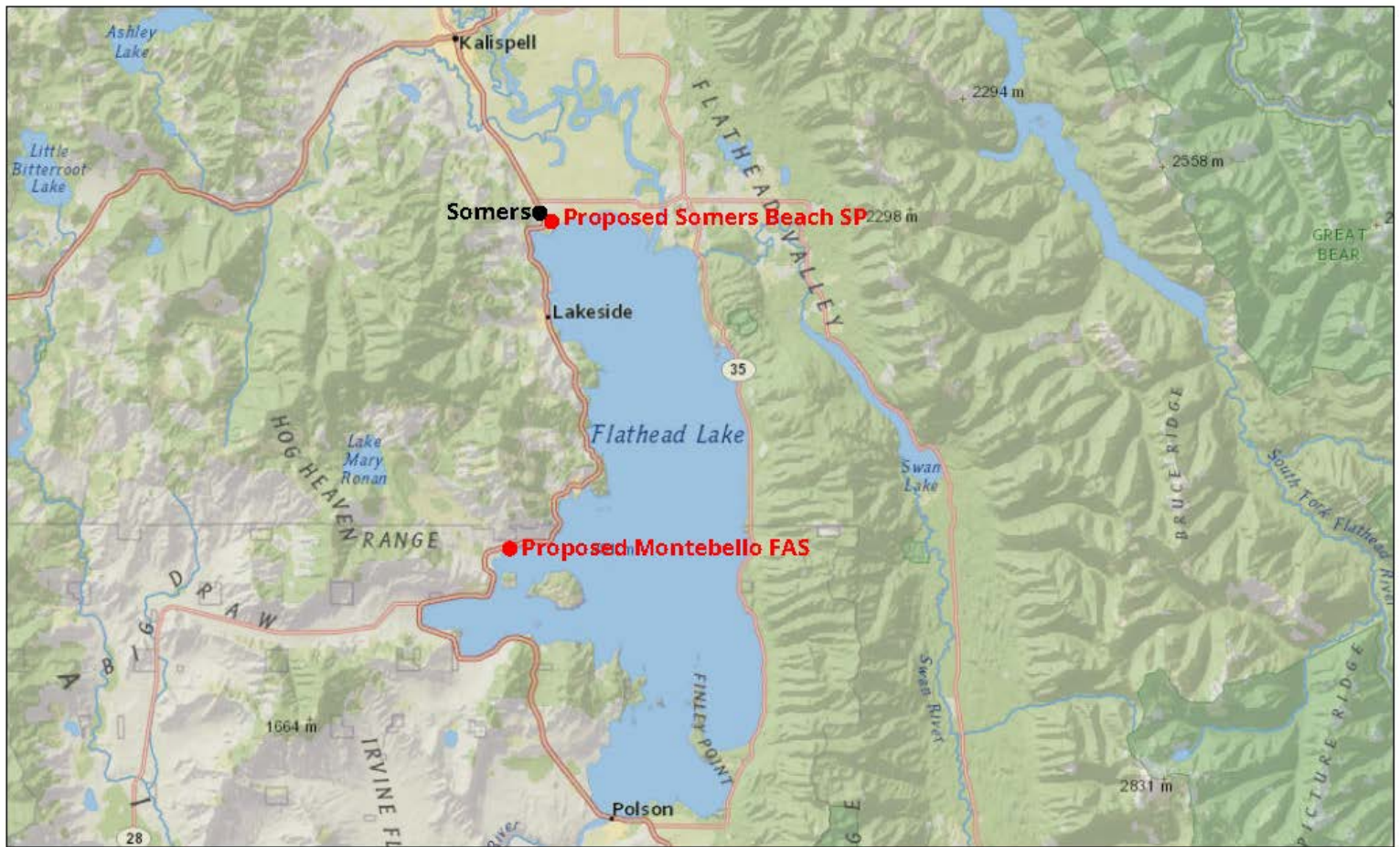
The Lake County Commissioners unanimously support the acquisition (see attached Letter of Support). FWP will pay the equivalent of property taxes to Lake County pursuant to MCA 87-1-603.

The longtime landowners (Mr. and Mrs. Mattson) generously sold this property to MOLT this November at a substantially reduced price (\$ 1.41 million -- a \$ 400,000 discount from appraised value). The Mattson's worked for many years with Flathead Land Trust to keep the property intact to prevent subdivision and multi-home development. MOLT intervened to honor the landowners' intent and is passing on this cost savings to FWP by selling it for its purchase price plus its costs, for a total purchase price estimated to be less than \$ 1.47 million.

FWP published an Environmental Assessment (EA) and invited public comment for 30 days, ending August 9, 2020. FWP issued a Decision Notice (DNR) on August 31, 2020, supporting approval of the proposed fee simple acquisition. The Fish & Wildlife Commission approved this acquisition on October 22, 2020. Petitions and comments both in support and opposed were submitted during the EA public comment period and prior to the Commission meeting. Supportive comments largely centered around the high demand for public access points on popular Flathead Lake. Comments in opposition generally focused on the potential impact on neighboring landowners and the environment. Bill Schenk, FWP's Land & Water Program Manager, will separately provide each Land Board member with the EA and DN.

**Rationale for Land Board Action:** The community would benefit from this acquisition, as local public access to Flathead Lake is limited compared to demand, and the Dayton community and Lake County residents would be able to enjoy this new FAS in perpetuity.

**FWP Recommendation:** FWP recommends the Land Board approve FWP's fee simple acquisition of this property to create the Montebello Fishing Access Site.



Printed from fwp.mt.gov  
October 23, 2020  
1:577,791  
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This map was generated from the Montana Fish, Wildlife & Parks (FWP) internal FWP Mapper online mapping system. Data layers on this map may depict sensitive species level information. This map is not intended for distribution or use beyond work associated with FWP.

Some layers may not appear in the legend due to page size limitations.





Private GT160Ac Labels

Private GT160Ac Labels

Cadastral Parcels

Cadastral Parcels

Some layers may not appear in the legend due to page size limitations.



Lake County Commissioners

406-883-7204

Fax (406) 883-7283

# LAKE COUNTY

106 4th Ave. E.

Polson, Mt. 59860

October 26, 2020

Montana Board of Land Commissioners  
and  
Montana Fish and Wildlife Commission

**RE: Support for proposed Montebello Fishing Access Site on Flathead Lake owned by Montana's Outdoor Legacy Foundation**

Dear Land Commissioners and Fish & Wildlife Commissioners:

As the Lake County Commissioners representing each of its three districts, we support the acquisition of the proposed approximately 15-acre Montebello Fishing Access Site on the west shore of Flathead Lake by the Montana Department of Fish, Wildlife & Parks (FWP), this property is currently owned by Montana's Outdoor Legacy Foundation.

FWP's proposed acquisition is entirely consistent with community interests in Lake County. Specifically, county residents will greatly benefit from a new fishing access site located near Wild Horse Island and the Dayton community. Such large public access sites are increasingly rare on Flathead Lake, and demand for access to the lake is increasing. It is also important to our constituents that FWP will be paying the equivalent of property taxes after it acquires the property and will permanently manage the site for current and future generations of Lake County residents to enjoy.

Thank you for considering this worthy project.

Sincerely,

Bill Barron  
District 1

Gale Decker  
District 3

Dave Stipe  
District 2

Return to: Dustin Ramoie, FWP Fishing Access Site Coordinator, [dustin.ramoie@mt.gov](mailto:dustin.ramoie@mt.gov)

**Montana Fish, Wildlife and Parks****Flathead Lake Recreation Access**

Anticipated spending authorization proposal, H.B. 5, 2021 Montana Legislature

As of 10/23/20

	Acquisition	Development	Total
Somers Beach State Park (Sliters Property)	\$2,800,000.00	\$2,994,651.00	\$5,794,651.00
		General License	\$4,294,651.00
		LWCF	\$1,500,000.00
		Total	<b>\$5,794,651.00</b>
	Acquisition	Development	Total
Montebello Fishing Access Site (Mattson Property)	\$1,400,000.00	\$664,349.00	\$2,064,349.00
		General License	\$664,349.00
		DJ Boat	\$1,400,000.00
		Total	<b>\$2,064,349.00</b>



# 1220-2

DEPARTMENT OF FISH, WILDLIFE & PARKS,  
PURCHASE OF PROPERTY FOR NEW  
SOMERS BEACH STATE PARK





<b>1220-2</b>	<b>Department of Fish, Wildlife &amp; Parks, Purchase of Property for new Somers Beach State Park</b>
<b>Location:</b>	<b>Flathead County</b>
<b>Trust Benefits:</b>	<b>N/A (non-trust land)</b>
<b>Trust Revenue:</b>	<b>N/A</b>

**Item Summary:** Department of Fish, Wildlife & Parks (FWP) proposes to purchase a private property for a new State Park in Flathead County, Montana. The proposed State Park is situated on approximately 106 acres along the north shore of Flathead Lake immediately east of the Town of Somers (see attached map). The private landowner, Sliters (a Montana corporation), wishes to sell this parcel to FWP at appraised value to create a State Park for beachfront recreational activity and non-motorized boat launch, picnic area and trails to the adjacent waterfowl management area, for neighboring residents, Flathead County residents and visiting recreationists to enjoy in perpetuity.

Area residents already use this site for beach recreation, which the landowner has allowed for many years. The beach is accessible when the lake is below full pool. Just over half of the acreage is above the high-water mark and includes 1,557 feet of lake frontage. The property also contains extensive wetlands and riparian habitat, and some treed and grassy areas inland. The northeastern corner is in hay production. The property borders a federal Waterfowl Production Area on the east, private homes on the west, and Somers Road. The property also borders two parcels owned by Burlington Northern (BN), one adjacent to Somers Road and one enveloping a wetland area known as the 'swamp pond' along Flathead Lake. Although it allowed the public to use the property as an access point for many years, recently, BN installed a locked gate at the entrance. The swamp pond is a former federal hazardous waste ("Superfund") site. FWP obtained "comfort letters" from Montana Department of Environmental Quality (MDEQ) and US Environmental Protection Agency for the proposed State Park, recommending ongoing monitoring of the Somers Beach property and requiring permanent access by these agencies for monitoring purposes. A "comfort letter" is an assurance from the agency that FWP's ownership of the property and proposed activities on the property would not be anticipated to form the basis of claims under state or federal environmental laws such as Superfund.

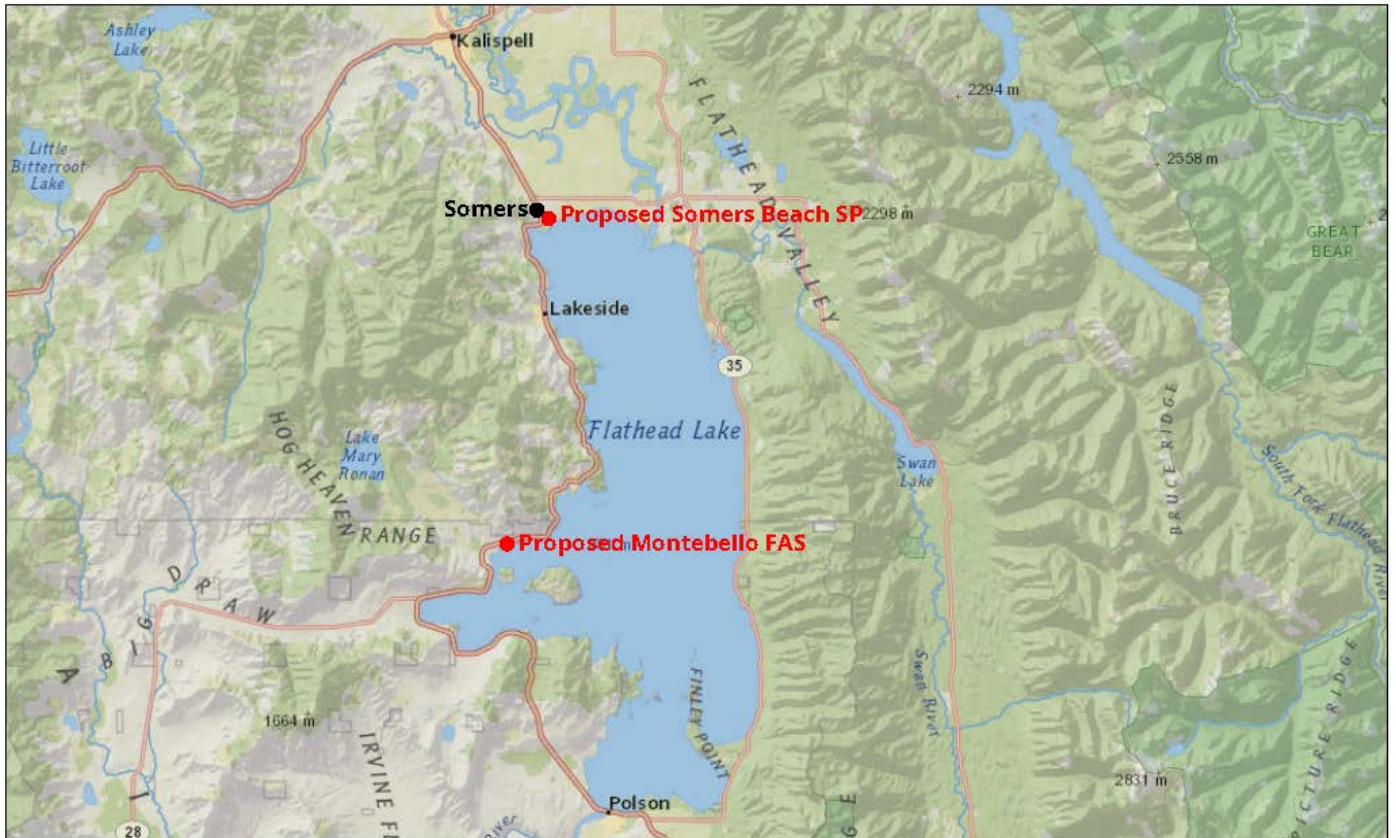
While future development of the park would be covered under a future environmental assessment and would not be fully determined until after extensive scoping and public comment, the site would be suitable for overnight camping, cabins and amenities such as day-use parking, restrooms, trails, hand-launch boat access and picnic tables. The exact nature and location of amenities will be decided following further assessment of the site, available budget, and public input.

The landowner is highly motivated to sell this site to FWP as a permanent State Park. Flathead County Commissioners unanimously support the acquisition (see attached Letter of Support). FWP will pay the equivalent of property taxes to Flathead County pursuant to MCA 87-1-603.

FWP published an Environmental Assessment (EA) and invited public comment for 30 days, ending September 12, 2020. FWP issued a Decision Notice (DN) on October 19, 2020, supporting approval of the proposed fee simple acquisition. The public comments were largely supportive. The Parks Board approved this acquisition on October 29, 2020. Bill Schenk, FWP's Land & Water Program Manager, will send the EA and DN separately to individual Land Board members.

**Rationale for Land Board Action:** The community would benefit from this acquisition, as local public access to Flathead Lake is limited compared to demand, and the local public has been using the property for years anyway.

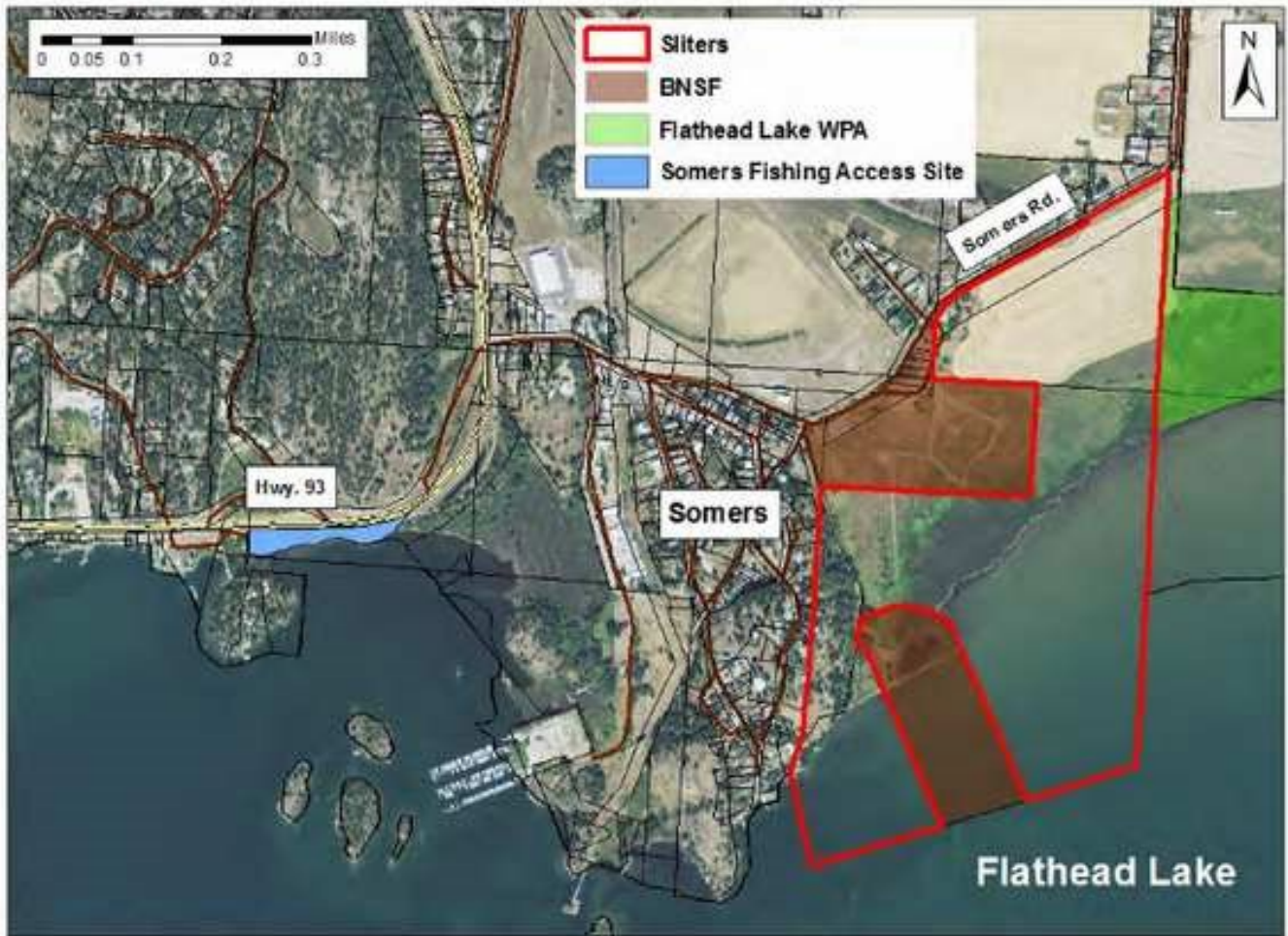
**FWP Recommendation:** FWP recommends the Land Board approve FWP's fee simple 1220-2 acquisition of this property to create the Somers Beach State Park.



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1:577,791  
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*Flathead County*  
**Board of Commissioners**  
 (406) 758-5503

Randy L. Brodehl  
 Pamela J. Holmquist  
 Philip B. Mitchell



September 28, 2020

Montana Board of Land Commissioners  
 Montana Parks & Recreation Board

**RE: Support for Proposed State Park on Flathead Lake owned by Sliter Family**

Dear Land Commissioners and Parks & Recreation Board:

The Flathead County Board of Commissioners support the acquisition of the proposed approximately 100-acre State Park on the north shore of Flathead Lake by the Montana Department of Fish, Wildlife & Parks (FWP), currently owned by the Sliter Family ("Somers Beach").

FWP's proposed acquisition is consistent with community interests in Flathead County. Specifically, county residents will greatly benefit from a new state park located adjacent to the Somers community on a site already popular with residents for waterfront recreation. It will potentially reduce pressure from the existing Somers swim access site along Highway 93 South. This site is used extensively in the summer, which creates a safety hazard for our community. FWP's staff involvement to help manage Somers Beach may free-up time from our county sheriff's department which currently has to patrol the area for illegal activity.

It is also important to our constituents that FWP will permanently manage the site for current and future access for generations of Flathead County residents to enjoy into perpetuity.

Thank you for considering this worthy project.

Sincerely,  
 BOARD OF COMMISSIONERS  
 FLATHEAD COUNTY, MONTANA

Philip B. Mitchell, District No. 1

Philip B. Mitchell, District No. 1

Pamela Holmquist, District No. 2

Pamela Holmquist, District No. 2

Randy L. Brodehl, District No. 3

**Montana Fish, Wildlife and Parks**

**Flathead Lake Recreation Access**

Anticipated spending authorization proposal, H.B. 5, 2021 Montana Legislature

As of 10/23/20

	Acquisition	Development	Total
Somers Beach State Park (Sliters Property)	\$2,800,000.00	\$2,994,651.00	\$5,794,651.00
		General License	\$4,294,651.00
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		General License	\$664,349.00
		DJ Boat	\$1,400,000.00
		Total	<b>\$2,064,349.00</b>

# 1220-3

OIL AND GAS LEASE SALE:

December 1, 2020





**Land Board Agenda Item  
December 21, 2020**

**1220-3   Oil and Gas Lease Sale (December 1, 2020)**

**Location: Dawson and Sweet Grass Counties**

**Trust Benefits: Common Schools**

**Trust Revenue: \$2,640.00**

**Item Summary**

The Department of Natural Resources and Conservation (DNRC) held an oil and gas lease sale on December 1, 2020, in the Montana Room at the Montana DNRC building. A total of three tracts were offered for lease. Three tracts were leased for a total of \$2,640.00. The three tracts that were sold covered a total of 1760.00 acres. The average bid per acre was \$1.50.

There were no competitive bids for the December 1, 2020 sale.

**DNRC Recommendation**

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

**State of Montana**  
**Oil & Gas Lease Sale - December 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, December 1, 2020.

Tract	Stipulations	Twp	Rng	Sec	Description	Acres	Bid/Acre	Total Bid	Lessee
<b>Dawson</b>									
1	1, 2, 3, 4, 5, 6	19.N	53.E	36	ALL	* 640.00	\$1.50	\$960.00	ENERGY LAND SERVICES, LLC
2	1, 2, 3, 4, 5, 6, 7	20.N	54.E	16	ALL	640.00	\$1.50	\$960.00	ENERGY LAND SERVICES, LLC
<b>Sweet Grass</b>									
3	1, 2, 3, 4, 5, 6, 7, 8, 9	2.N	14.E	16	W2, NE4	* 480.00	\$1.50	\$720.00	THEOREM RANCH LLC

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

## Summary by Lessor

	Total Acres	Total Tracts
Dept. of Natural Resources and Conservation	1,760.00	3

## Oil and Gas Lease Sale Summary

Total Tracts	3
Total Acres	1,760.00
Total Bid Revenue	\$2,640.00
Average Bid Per Acre	\$1.50

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

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- 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 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.
- 9 Unless otherwise approved by the Department in writing, wells and related surface infrastructure, including new road construction, are prohibited within 1/2 mile of the centerline of a navigable river, lake or reservoir, and within 1/4 mile of direct perennial tributary streams of navigable waterways, on or adjacent to the tract. No surface occupancy is allowed within the bed of a river, stream, lake or reservoir, islands and accretions or abandoned channels.



# 1220-4

LAND BANKING PARCELS:  
Set Minimum Bid for Sale

- A. Rosebud County
- B. Fergus County



**1220-4A Land Banking Parcel: Set Minimum Bid for Sale**

**Location: Rosebud County**

**Trust Benefits: Common Schools**

**Trust Revenue: \$416,000**

**Item Summary**

The Department of Natural Resources and Conservation (DNRC) requests to set minimum bid for one parcel totaling approximately 640 acres nominated for sale in Rosebud County. The sale was nominated by the lessee and is located southeast of Forsyth, Montana.

Sale #	# of Acres	Legal	Nominator	Trust
1079	640±	ALL T4N-R43E, Sec. 36	Darell J. & Tammy R. Luther	Common Schools

The sale parcel has been used primarily for livestock grazing purposes and has below average productivity for agricultural and grazing lands statewide.

The parcel is almost entirely surrounded by private land and is not legally accessible by the public. The southeast corner of the property is adjacent to BLM land; however, there is no legal access to the BLM parcel either. The sale of this parcel would not restrict or eliminate access to adjacent private land.

No potentially negative issues were identified through the MEPA process regarding the sale of this parcel.

**Economic Analysis:**

Short term – The average rate of return on the sale parcel is 0.36%. The parcel would continue to receive this return if it remains in state ownership.

Long-term – The funds from the sale of this parcel 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 DNRC archaeologist conducted a Class III cultural and paleontological resources inventory of Section 36, T4N R43E. During the course of inventory two isolated artifacts (two gray porcellanite flakes) were documented as IF-LR1 and IF-LR2. Both isolated finds are ineligible for listing in the National Register of Historic Places. As such, disposition of the state parcel will have No Effect to Antiquities as defined under the Montana State Antiquities Act. A formal report of findings has been prepared and is on file with the DNRC and the Montana State Historic Preservation Officer.

**Background:**

In April 2020, the Board granted preliminary approval for this parcel to continue through the Land Banking sale evaluation process.

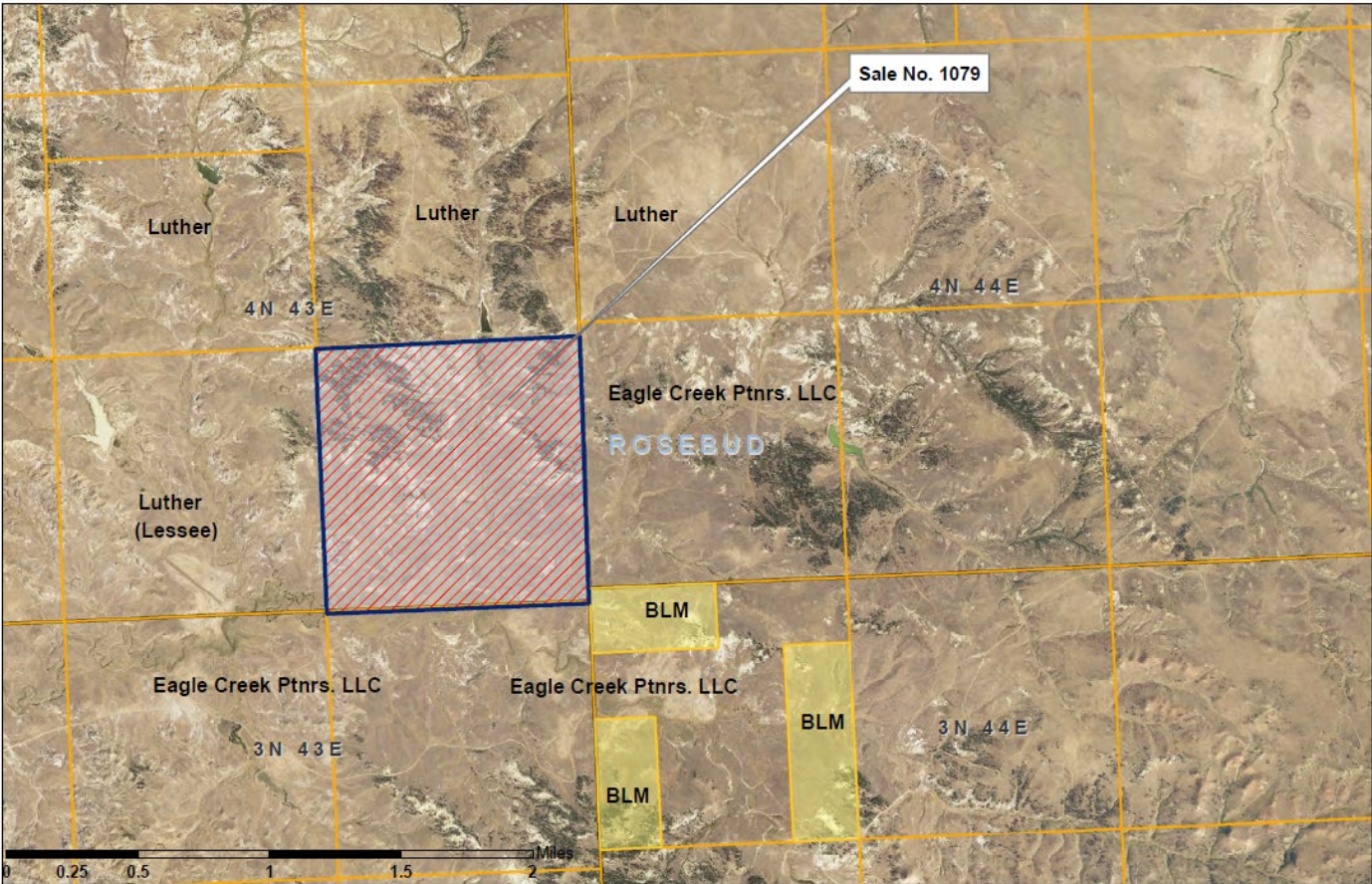
**Appraised Value:**


<b>Sale #</b>	<b>Appraised Value</b>	<b>Recommended Minimum Bid</b>
1079	\$416,000	\$416,000

**DNRC Recommendation**

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












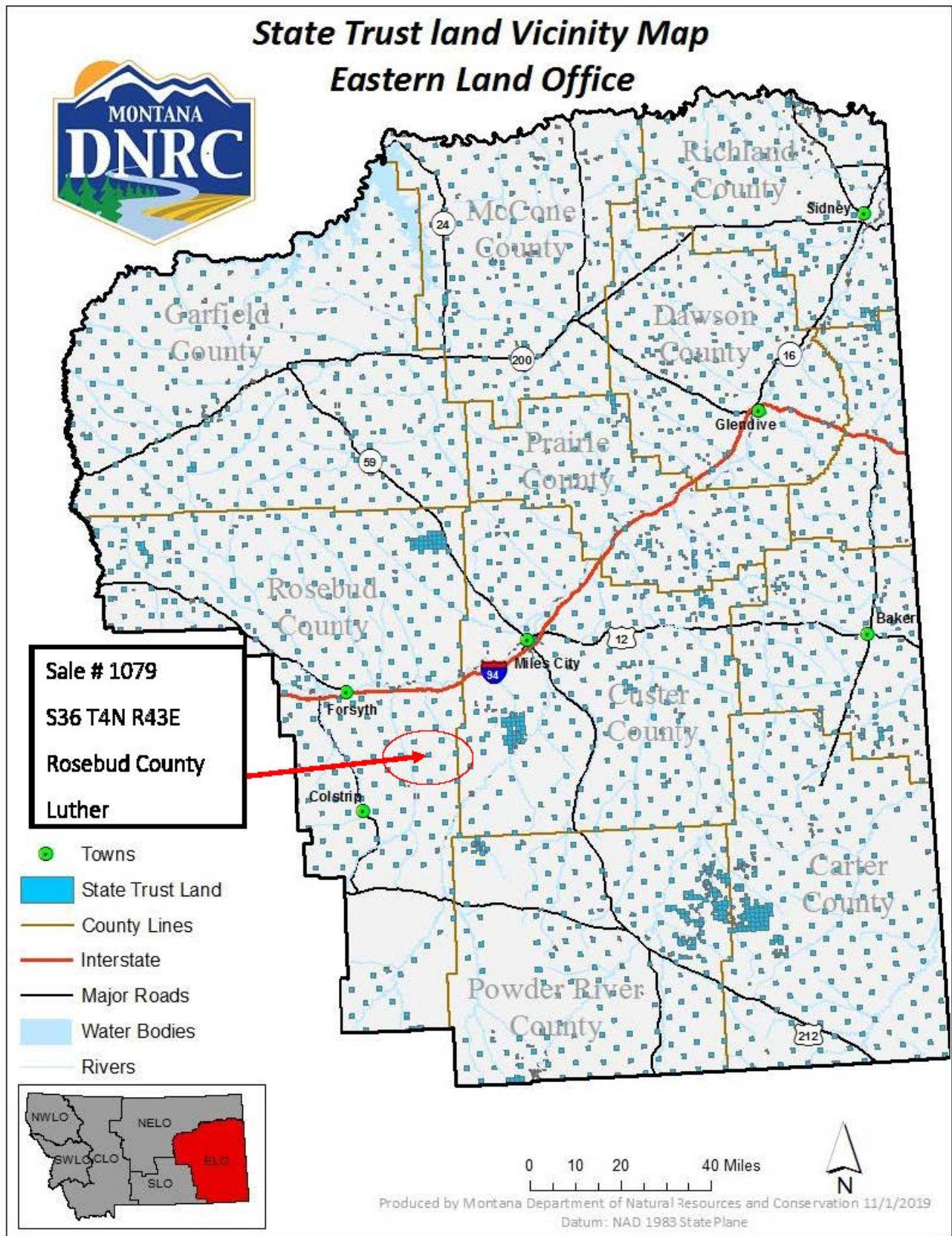
Location: Rosebud County S36 T4N R43E  
Prepared on: 10 MARCH 2020  
Prepared By: DNRC REMB Staff  
Projection: NAD 1983 MT State Plane

Rosebud County Sale: Luther  
Sale No. 1079, Common Schools

 Sale #1079	 BLM	 Owner Parcels	 Montana State Trust Land
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**Land Board Agenda Item  
December 21, 2020**

**1220-4B Land Banking Parcel: Set Minimum Bid for Sale**

**Location: Fergus County**

**Trust Benefits: Common Schools**

**Trust Revenue: \$82,000**

**Item Summary**

The Department of Natural Resources and Conservation (DNRC) requests to set minimum bid for one parcel totaling approximately 120 acres nominated for sale in Fergus County. The sale was nominated by the lessee and is located approximately 9 miles southwest of Winifred, Montana.

<b>Sale #</b>	<b># of Acres</b>	<b>Legal</b>	<b>Nominator</b>	<b>Trust</b>
1081	120±	E2NE4 & NE4SE4 T20N-R17E, Sec. 16	Terry L. & Aileen L. Noble	Common Schools

The sale parcel has been used primarily for livestock grazing purposes with a small portion (2.2 acres) of agricultural use.

Sale No. 1081 is surrounded entirely by private land and is not legally accessible by the public. The sale of this parcel would not restrict or eliminate access to adjacent private land.

No potentially negative issues were identified through the MEPA process regarding the sale of this parcel.

**Economic Analysis:**

Short term – The average rate of return on the sale parcel is 0.34 %. The parcel would continue to receive this return if it remains in state ownership.

Long-term – The funds from the sale of this parcel 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 parcel proposed for sale was inventoried to Class III standards for cultural and paleontological resources. No cultural or fossil resources were documented. Disposition of the state parcel will have *No Effect to Antiquities* as defined under the Montana State Antiquities Act. 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 April 2020, the Board granted preliminary approval for this parcel to continue through the Land Banking sale evaluation process.

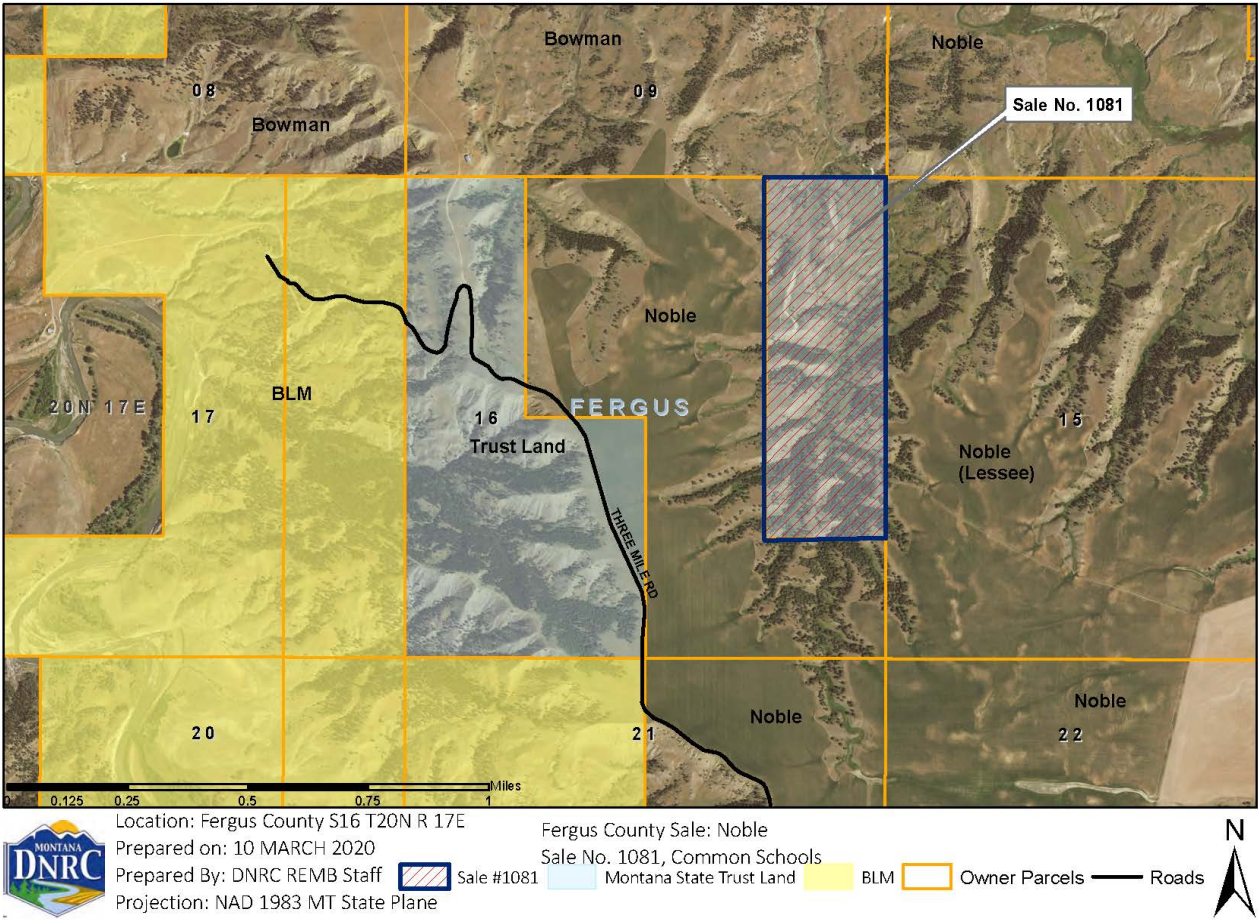
**Appraised Value:**

<b>Sale #</b>	<b>Appraised Value with Access</b>	<b>Recommended Minimum Bid</b>
1081	\$82,000	\$82,000

**DNRC Recommendation**

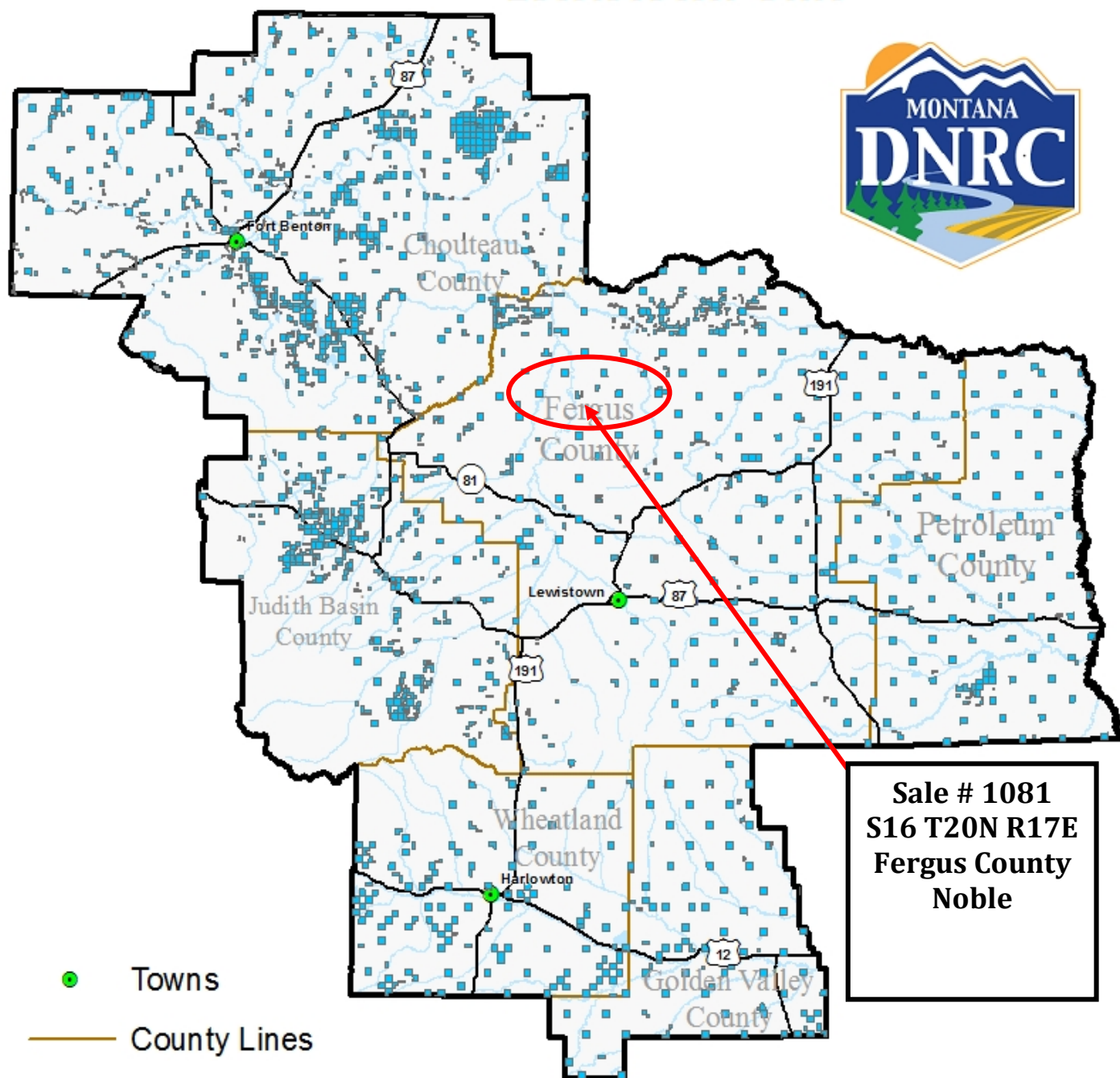
The director recommends the Land Board set the minimum bid for this parcel at the appraised land value shown above.





# State Trust Land Vicinity Map

## Lewistown Unit

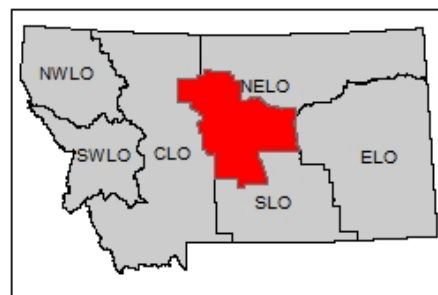


**Sale # 1081**  
**S16 T20N R17E**  
**Fergus County**  
**Noble**

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



0 10 20 40 Miles



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

# 1220-5

LAND BANKING PARCELS:  
Final Approval for Sale





**Land Board Agenda Item  
December 21, 2020**

**1220-5 Land Banking Parcels: Final Approval for Sale**

**Location: Powell County**

**Trust Benefits: Common Schools**

**Trust Revenue: \$244,000**

**Item Summary**

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

<b>Sale #</b>	<b># of Acres</b>	<b>Legal</b>	<b>Nominator</b>	<b>Trust</b>
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 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 the sale parcel is 0.18%. The parcel would continue to receive this return if it remains in state ownership.

Long-term – The funds from the sale of this parcel 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. After appraisal, in September of 2020, the Land Board set the minimum bid at the appraised value:

**Appraised Value:**

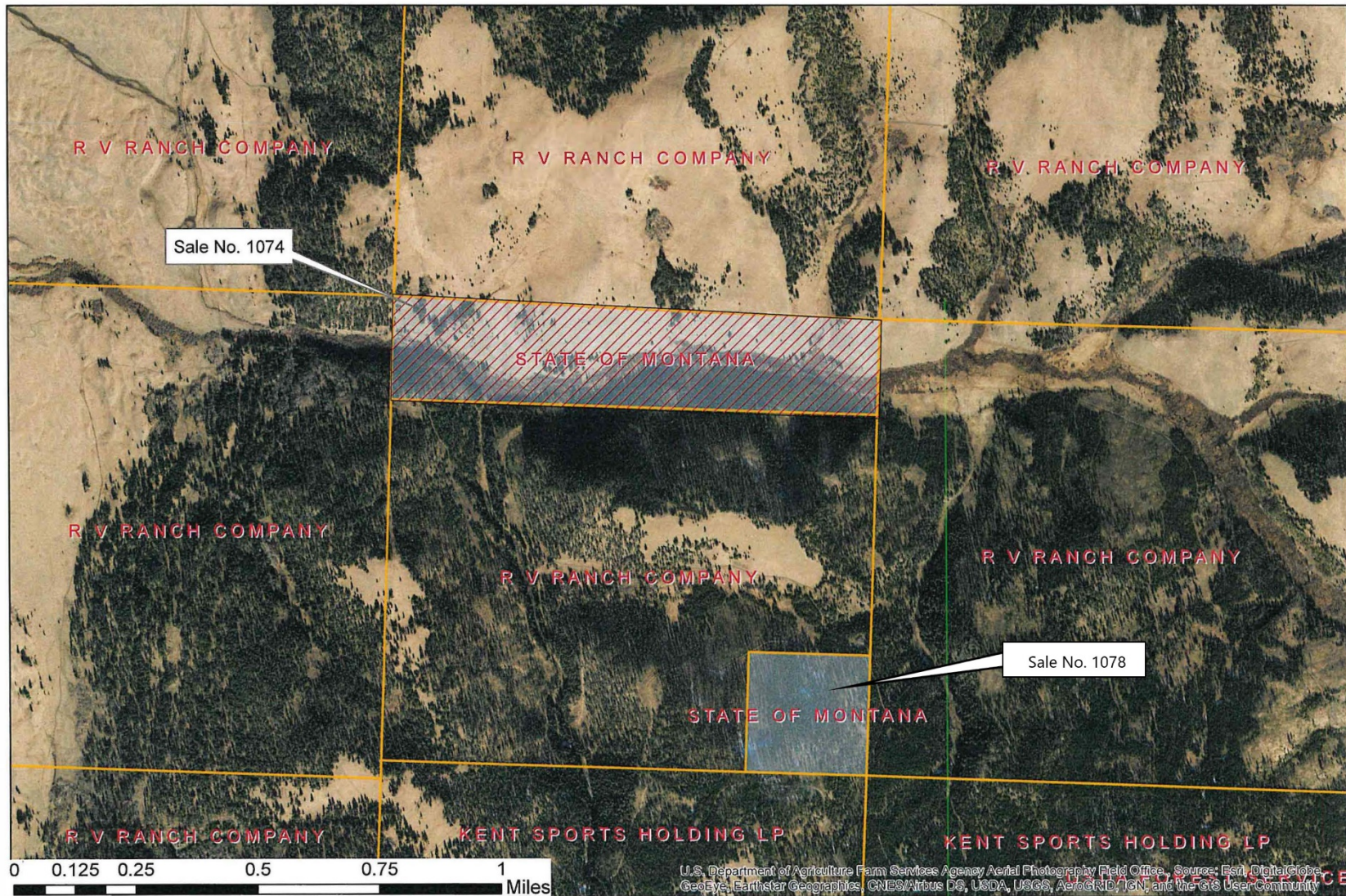
Sale #	Appraised Value	Final Sale Price
1074	\$185,000	\$185,000
1078	\$59,000	\$59,000

**Sale Price:**

The parcels sold at public auction on November 18, 2020. There was one qualified bidder for each sale, which was the current lessee of Sale #1074 and current licensee of Sale #1078. The parcels sold for the final sale price shown above.

**DNRC Recommendation**

The director recommends the Land Board grant final approval for these Land Banking sales at the value shown above.



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

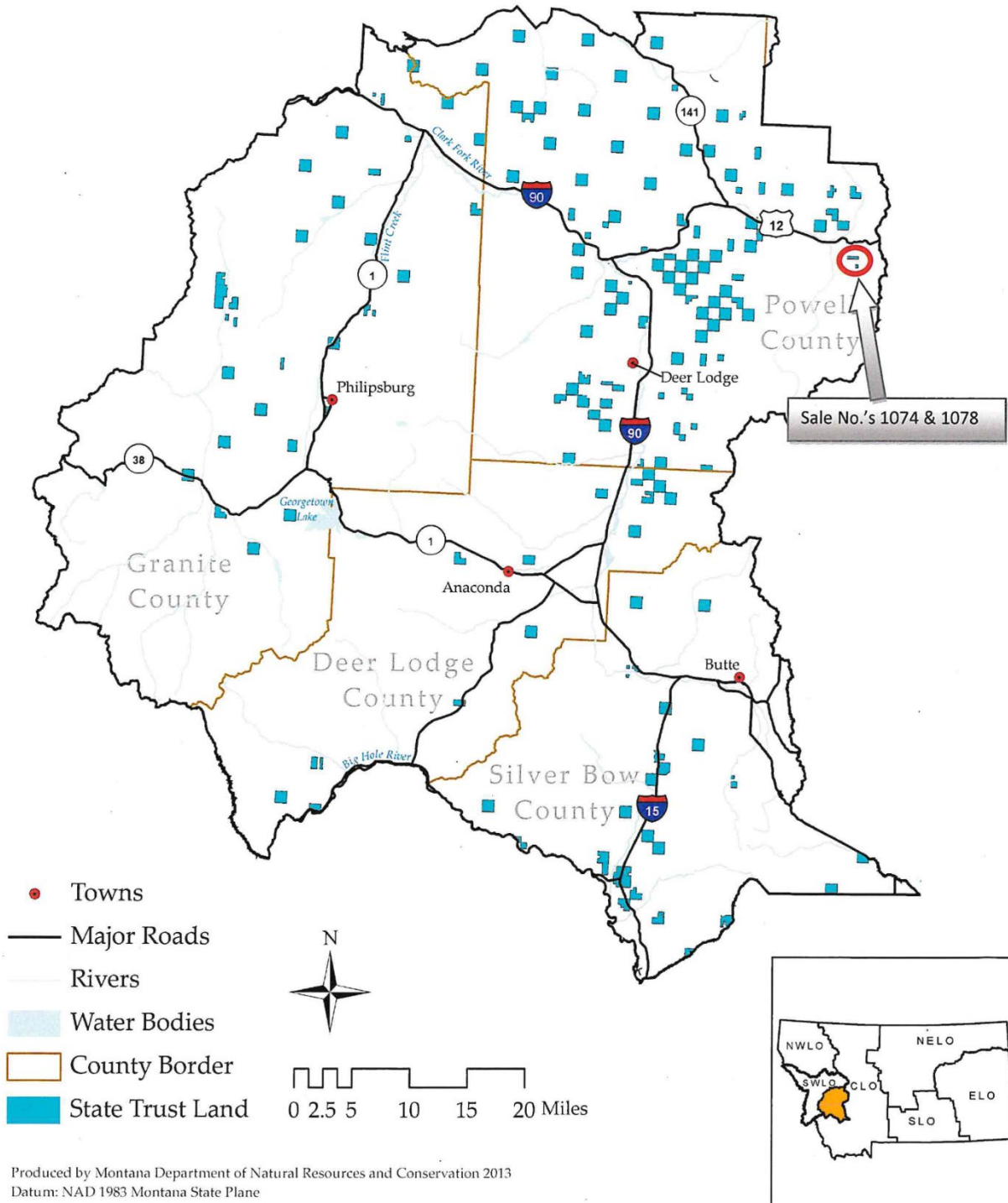
**Powell County Land Banking Sales  
 Common Schools**

Sale # 1074    Sale # 1078    Owner Parcels





**POWELL COUNTY SALE VICINITY MAP – RV RANCH  
ANACONDA UNIT**



# 1220-6

CABIN AND HOME SITES:  
Final Approval for Sale

A. Powell County  
B. Sanders County



**Land Board Agenda Item  
December 21, 2020**

**1220-6A Cabin and Home Sites: Final Approval for Sale**

**A. Powell County**

**Location:** Powell County  
**Trust Benefits:** Common Schools  
**Trust Revenue:** \$125,000

**Item Summary**

The Department of Natural Resources and Conservation (DNRC) is requesting final approval for sale of 5 cabin sites nominated for sale in Powell County. These sales were nominated by the lessee in conjunction with the Cabin and Home Site Sale Program.

<b>Sale No.</b>	<b>Acres</b>	<b>Legal Description</b>	<b>Nominator</b>	<b>Trust</b>
<b>1087</b>	1.637±	Lot 3, Morrell Creek, COS 660RT, Section 36, T17N-R15W	Diane M. McKay	Common Schools
<b>1088</b>	1.195±	Lot 5, Morrell Creek, COS 660RT, Section 36, T17N-R15W	Timothy D. Hoag	Common Schools
<b>1089</b>	1.036±	Lot 6, Morrell Creek, COS 660RT, Section 36, T17N-R15W	Macintosh Realty, LLC	Common Schools
<b>1090</b>	1.390±	Lot 7, Morrell Creek, COS 660RT, Section 36, T17N-R15W	Robin Rau, et al.	Common Schools
<b>1091</b>	1.386±	Lot 8, Morrell Creek, COS 660RT, Section 36, T17N-R15W	Thomas & Sandra Knuchel	Common Schools

The parcels are currently leased as cabin sites and produce an average income for residential leases statewide. The parcels will be sold with the access that is currently provided under their lease agreements and can be conveyed by DNRC.

**Economic Analysis:**

Short term – The average rates of return on these sale parcels are as follows. The parcels will continue to receive these returns if they remain in state ownership.

<b>Sale No.</b>	<b>Rate of Return</b>
<b>1087</b>	7.294%
<b>1088</b>	6.295%
<b>1089</b>	6.280%
<b>1090</b>	5.783%
<b>1091</b>	7.011%

Long term – The funds from the sale of these parcels would be combined with other sale funds to purchase replacement lands through DNRC'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.

### **Background**

These sales were granted preliminary approval in April 2020 to proceed through the Cabin and Home Site Sale Program. The Land Board set the minimum bid for the land and the maximum value of compensation for the improvements in October 2020.

### **Cultural/Paleontological Resources:**

A Class I level of cultural resource inventory was conducted for each of the proposed sales. Home sites typically contain numerous structures and the ground surfaces within most home sites have been variously disturbed over the course of many years of occupation and development. These sales will have no effect to state-owned heritage properties.

### **Appraised Values of Land and Improvements:**

<b>Sale Nos.</b>	<b>Appraised Land Value</b>	<b>Appraised Improvements Value</b>	<b>Final Sale Price</b>
<b>1087</b>	\$27,500	\$144,000	\$27,500
<b>1088</b>	\$25,000	\$152,000	\$25,000
<b>1089</b>	\$22,500	\$162,000	\$22,500
<b>1090</b>	\$25,000	\$167,000	\$25,000
<b>1091</b>	\$25,000	\$49,000	\$25,000

### **Sale Price**

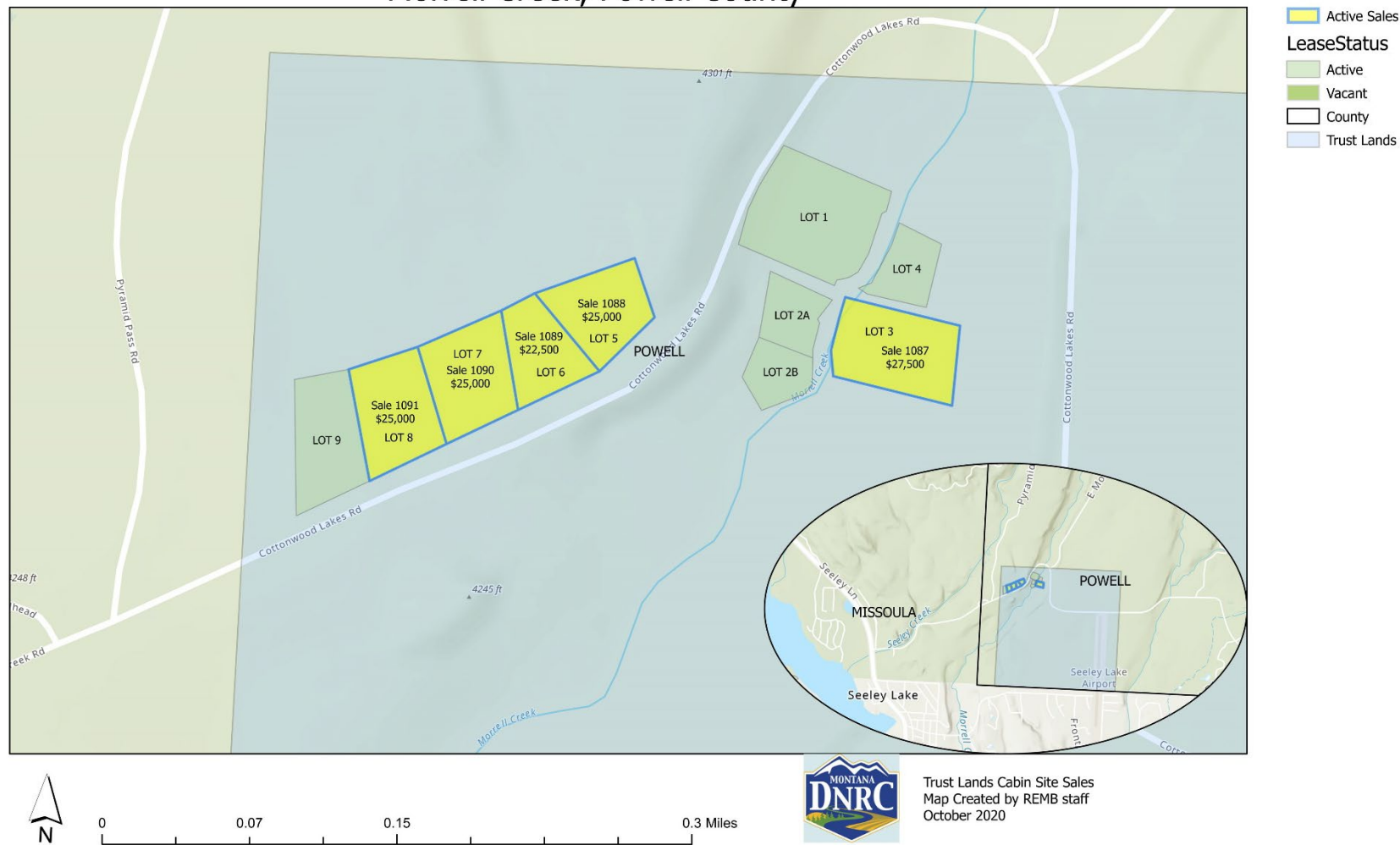
These sales sold at public auction on December 2, 2020. DNRC received a bid deposit from one qualified bidder for each sale who was the current lessee. The sites sold for the final sale prices listed above.

### **DNRC Recommendation**

The director recommends the Land Board grant final approval for the sale of these cabin sites at the values shown above.



# Morrell Creek, Powell County





**Land Board Agenda Item  
December 21, 2020**

**1220-6B Cabin and Home Sites: Final Approval for Sale  
B. Sanders County**

**Location:** Sanders County  
**Trust Benefits:** Common Schools  
**Trust Revenue:** \$235,000

**Item Summary**

The Department of Natural Resources and Conservation (DNRC) is requesting final approval for sale of 6 cabin sites nominated for sale in Sanders County. These sales were nominated by the lessee in conjunction with the Cabin and Home Site Sale Program.

<b>Sale No.</b>	<b>Acres</b>	<b>Legal Description</b>	<b>Nominator</b>	<b>Trust</b>
<b>1015</b>	1.661±	Lot 9, Fishtrap Creek, COS 3638, Section 16, T23N-R27W	Nora Jean Malinak	Common Schools
<b>1016</b>	2.647±	Lot 2, Fishtrap Creek, COS 3638, Section 16, T23N-R27W	Challis & Risa Crismore	Common Schools
<b>1017</b>	1.245±	Lot 3, Fishtrap Creek, COS 3638, Section 16, T23N-R27W	Don Eubank	Common Schools
<b>1018</b>	1.562±	Lot 4, Fishtrap Creek, COS 3638, Section 16, T23N-R27W	Wayne Crismore & Seth Reedy	Common Schools
<b>1019</b>	1.723±	Lot 6, Fishtrap Creek, COS 3638, Section 16, T23N-R27W	Clifford H. & Shari D. Crismore	Common Schools
<b>1020</b>	1.110±	Lot 10, Fishtrap Creek, COS 3638, Section 16, T23N-R27W	William, Garnet, Sean, & Carla Kinney	Common Schools

The parcels are currently leased as cabin sites and produce an average income for residential leases statewide. The parcels will be sold with the access that is currently provided under their lease agreements and can be conveyed by DNRC.

**Economic Analysis:**

Short term – The average rates of return on these sale parcels are as follows. The parcels will continue to receive these returns if they remain in state ownership.

<b>Sale No.</b>	<b>Rate of Return</b>	<b>Sale No.</b>	<b>Rate of Return</b>
<b>1015</b>	1.848%	<b>1018</b>	2.175%
<b>1016</b>	2.286%	<b>1019</b>	2.210%
<b>1017</b>	3.282%	<b>1020</b>	2.280%

Long term – The funds from the sale of these parcels would be combined with other sale funds to purchase replacement lands through DNRC'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.

### **Background**

These sales were granted preliminary approval in May 2018 to proceed through the Cabin and Home Site Sale Program. The Land Board set the minimum bid for the land and the maximum value of compensation for the improvements in October 2020.

### **Cultural/Paleontological Resources:**

A Class I level of cultural resource inventory was conducted for each of the proposed sales. Home sites typically contain numerous structures and the ground surfaces within most home sites have been variously disturbed over the course of many years of occupation and development. These sales will have no effect to state-owned heritage properties.

### **Appraised Values of Land and Improvements:**

<b>Sale Nos.</b>	<b>Appraised Land Value</b>	<b>Appraised Improvements Value</b>	<b>Final Sale Price</b>
<b>1015</b>	\$44,500	\$151,000	\$44,500
<b>1016</b>	\$40,000	\$105,000	\$40,000
<b>1017</b>	\$33,000	\$105,000	\$33,000
<b>1018</b>	\$40,000	\$128,000	\$40,000
<b>1019</b>	\$44,500	\$130,000	\$44,500
<b>1020</b>	\$33,000	\$132,000	\$33,000

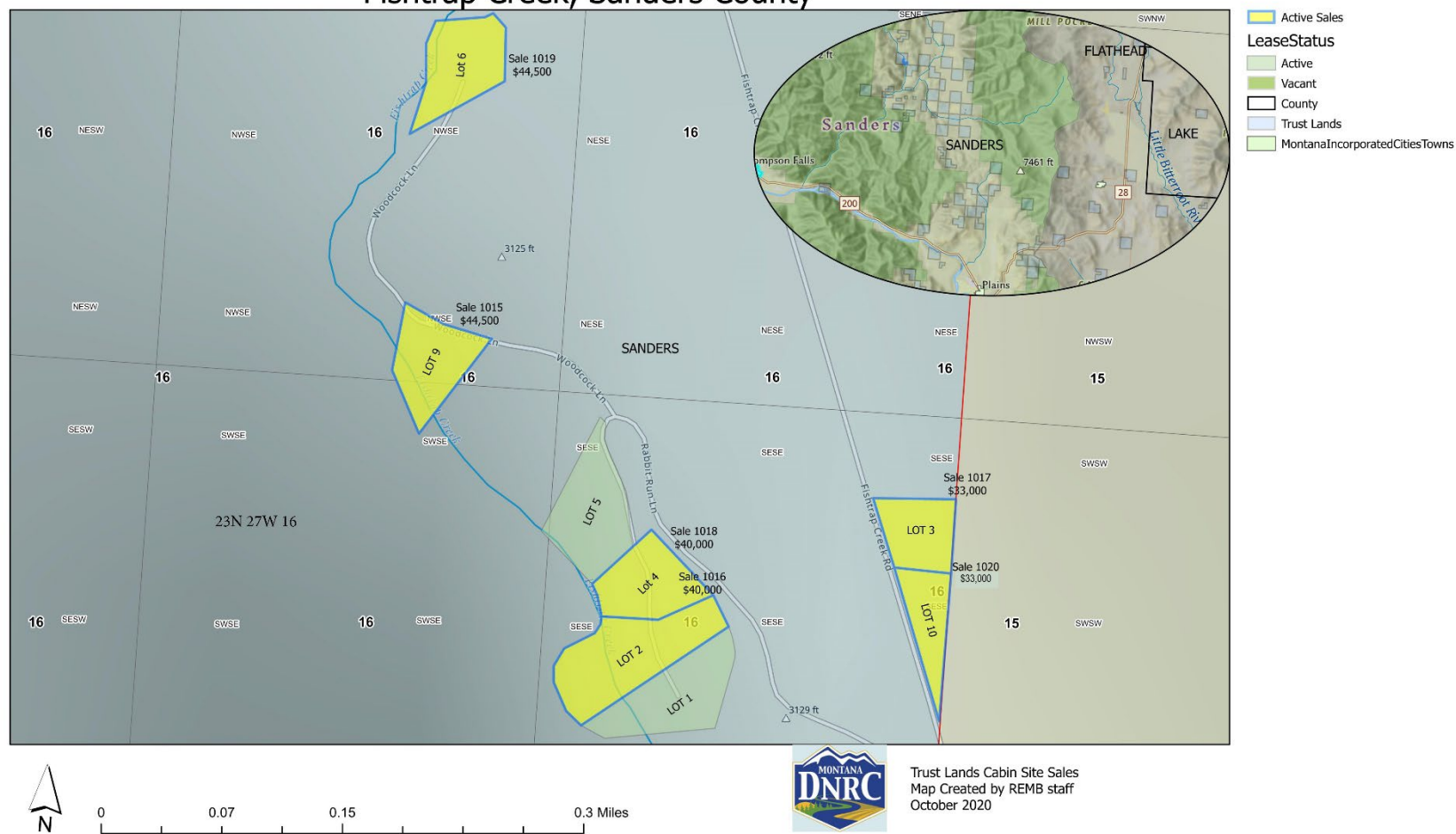
### **Sale Price**

These sales sold at public auction on December 3, 2020. DNRC received a bid deposit from one qualified bidder for each sale who was the current lessee. The sites sold for the final sale prices listed above.

### **DNRC Recommendation**

The director recommends the Land Board grant final approval for the sale of these cabin sites at the values shown above.

## Fishtrap Creek, Sanders County





# 1220-7

EASEMENTS:





**Land Board Agenda Item  
December 21, 2020**

**1220-7 Easements**

**Location:** Fergus, Petroleum, Phillips, Richland, Roosevelt

**Trust Benefits:** Common Schools, Public Land Trust – Nav. Rivers

**Trust Revenue:** Common Schools = \$ 14,354  
Public Land Trust = \$5,250

**Item Table of Contents**

<b>Applicant</b>	<b>Right-of-Way Purpose</b>	<b>Term</b>	<b>Page(s)</b>
Peter J. Vandyke	Private Access Road	Permanent	55-56
Musselshell Ranch Company	Private Access Road	Permanent	57-58
Bridger Pipeline LLC	Buried Oil Pipeline	30-year	59-60
ONEOK Rockies Midstream, LLC	Buried Natural Gas Pipeline	30-year	61-62
Big Flat Electric Cooperative, Inc.	Overhead Transmission Line	Permanent	63-64



## APPLICANTS AND RIGHTS OF WAY INFORMATION

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Applicant:	Peter J. VanDyke 10826 Goldsborough Cir. Oakdale, CA 95361
Application No.:	18989
R/W Purpose:	a private access road to conduct normal farming and ranching operations
Lessee Agreement:	N/A (Historic)
Acreage:	1.49
Compensation:	\$1,312.00
Legal Description:	30-foot strip through W2SW4, Sec. 36, Twp. 20N, Rge. 13E, Fergus County
Trust Beneficiary:	Common Schools

### Item Summary

Peter VanDyke has made application for the use of an existing road to conduct normal farming and ranching operations. Mr. VanDyke's predecessor in interest had received a limited term easement from the Land Board in 1997, however that easement expired in 2017 without being renewed. The road has been in place for many years and meets the requirements of §77-1-130, MCA, which allows for recognition of such historic access. The private property of applicant to be accessed is described as:

#### Twp. 19N, Rge. 13E Fergus County

- Lot 4, NW4SW4, Sec. 1,
- Lot 1 & 2, N2SE4, Sec. 2,
- 2/3's Interest in 30 feet wide by 165 Rods long tract, Sec. 11,

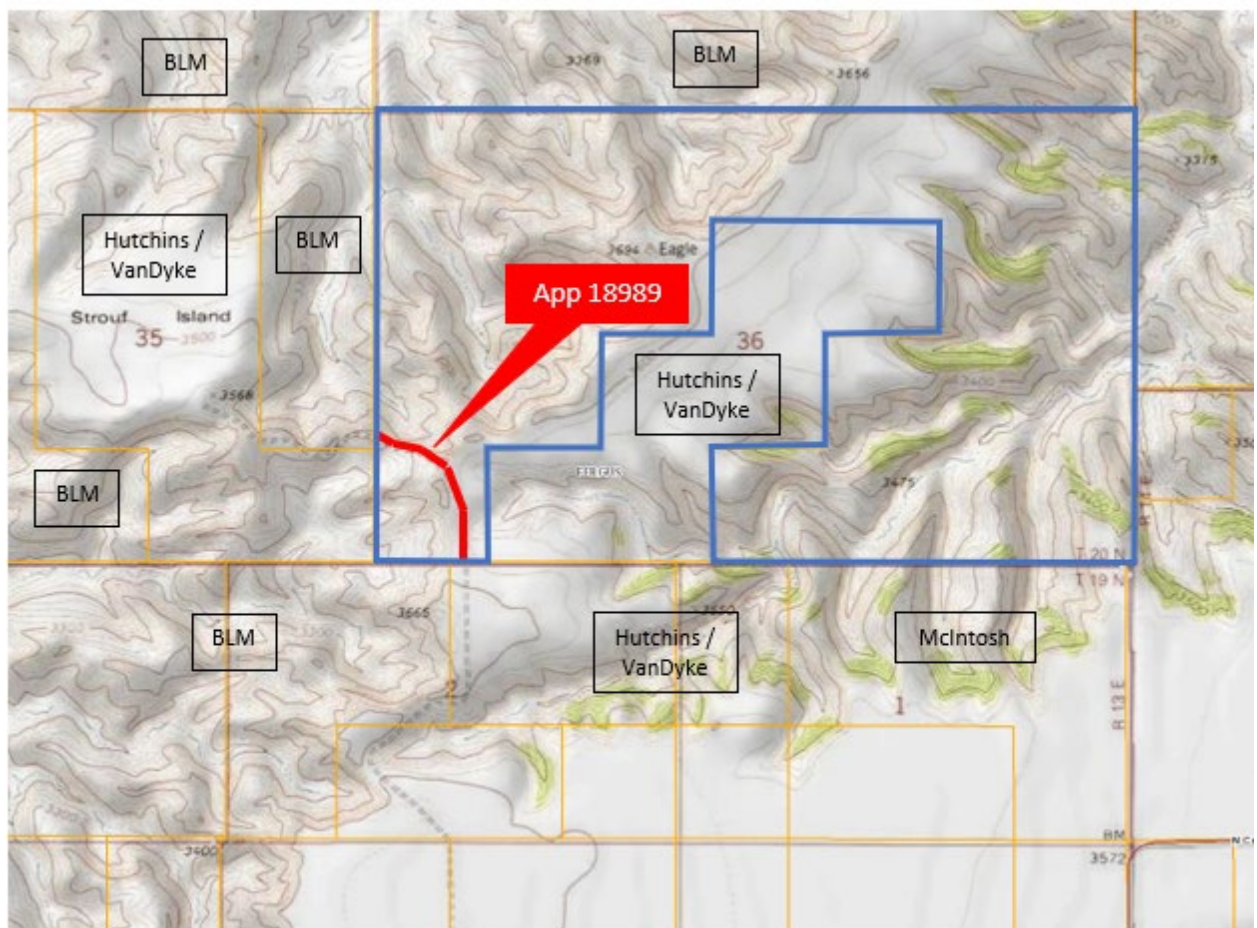
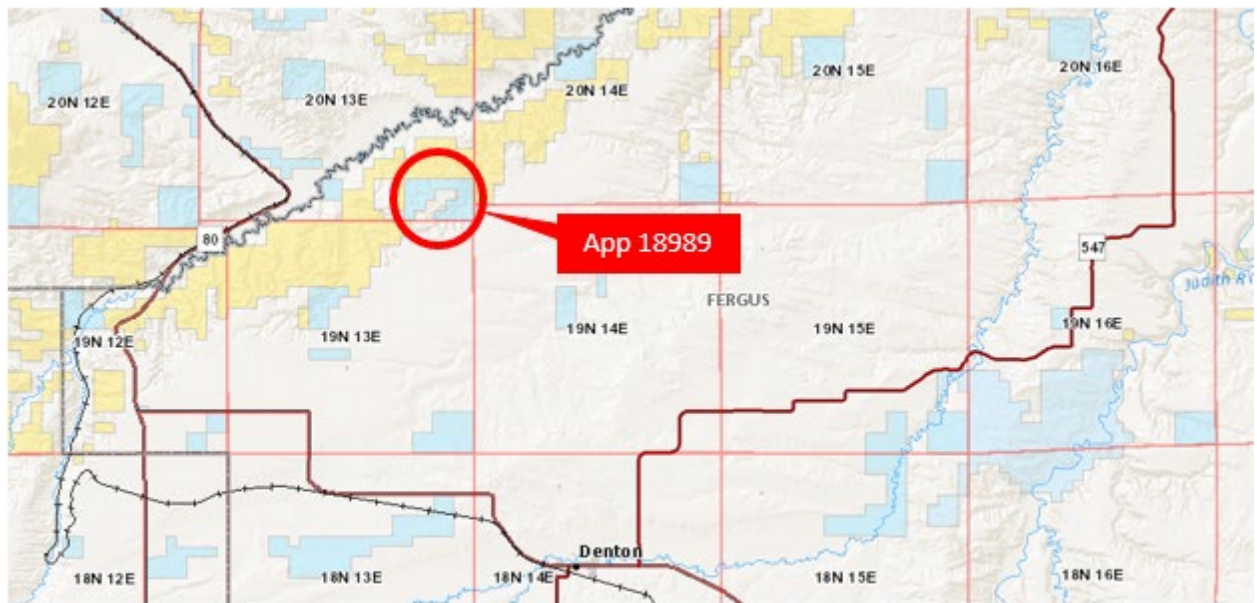
#### Twp. 20N, Rge. 13E Fergus County

- W2NE4, E2NW4, NE4SW4, W2SE4, SE4SE4, Sec. 35,
- LOTS 7, 8, 14, 15, 16, SE4SW4, Sec. 36,

### DNRC Recommendation

The director recommends approval of the application of Peter VanDyke.

## R/W Application 18989



## APPLICANTS AND RIGHTS OF WAY INFORMATION

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Applicant:	Musselshell Ranch Company PO Box 198 Musselshell, MT 59059
Application No.:	18990
R/W Purpose:	a private access road for the purpose of conducting normal farming and ranching operations
Lessee Agreement:	N/A (Historic)
Acreage:	3.03
Compensation:	\$1,818.00
Legal Description:	25-foot strip through S2S2, Sec. 36, Twp. 12N, Rge. 28E, Petroleum County
Trust Beneficiary:	Common Schools

### Item Summary

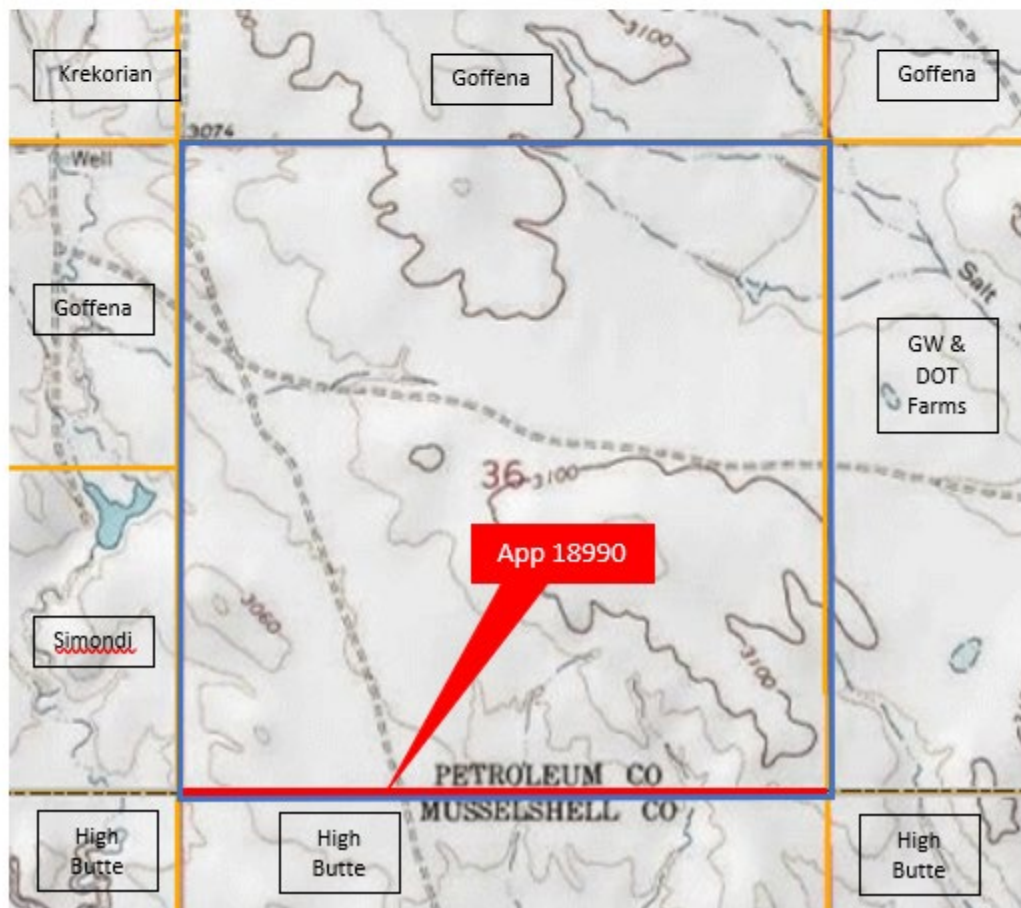
Musselshell Ranch Company has made application for the use of an existing road to conduct normal farming, ranching. The road has been in place for many years and authorization for continued use is being requested pursuant to §77-1-130, MCA, which allows for recognition of such historic access. The private property of applicant to be accessed is described as:

- All: Sec. 28, Twp. 12N, Rge. 29E, Petroleum County
- All: Sec. 29, Twp. 12N, Rge. 29E, Petroleum County
- NE4, S2: Sec. 32, Twp. 12N, Rge. 29E, Petroleum County
- All: Sec. 33, Twp. 12N, Rge. 29E, Petroleum County

### DNRC Recommendation

The director recommends approval of the application of Musselshell Ranch Company.

## R/W Application 18990





## APPLICANTS AND RIGHTS OF WAY INFORMATION

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Applicant:	Bridger Pipeline LLC PO Drawer 2360 Casper, WY 82602
Application No.:	18991
R/W Purpose:	a buried 10" crude oil pipeline (new) and a buried 10" inert crude oil pipeline
Lessee Agreement:	N/A (Nav. River)
Acreage:	0.50
Compensation:	\$5,250.00
Legal Description:	50-foot strip across the Missouri River in SW4NE4, Sec. 29, Twp. 27N, Rge. 52E, Roosevelt & Richland County
Trust Beneficiary:	Public Land Trust (Nav. River)

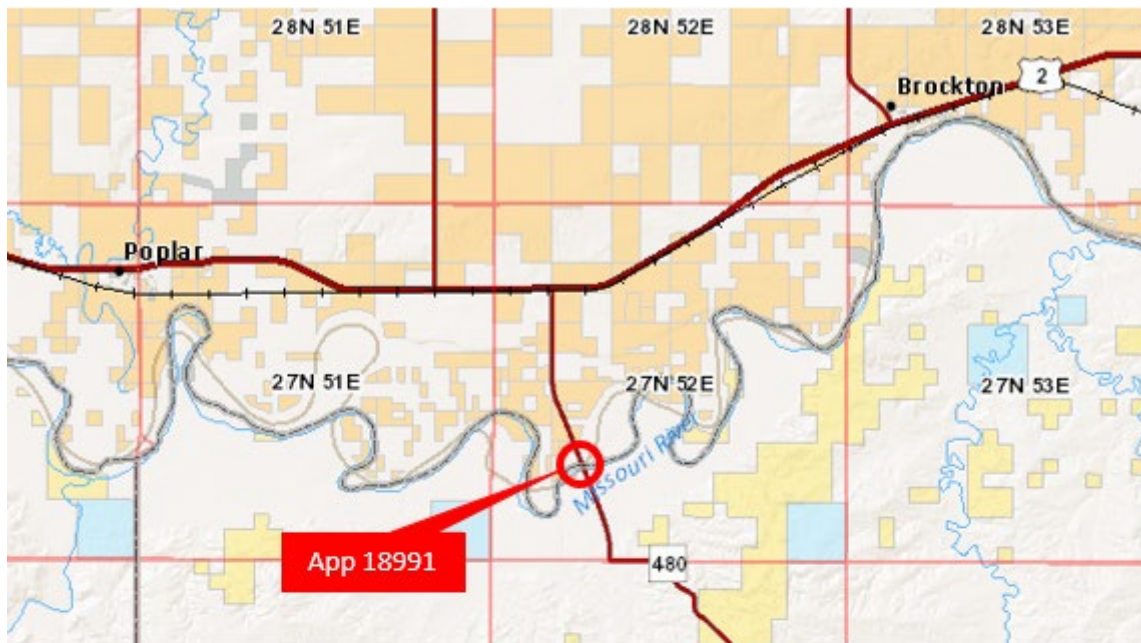
### Item Summary

Bridger Pipeline, LLC is proactively identifying and upgrading existing pipeline infrastructure and has requested an easement to rectify a trespass as well as authorize placement of a new pipeline. The existing pipeline is not exposed or threatening to fail; however, the preference is to update the crossing with new pipe and ensure it is installed well below the scour depth of the river. The new pipe will be directional bored 60-feet below the riverbed. The existing pipeline will be purged, swabbed and capped and remain in place to naturally degrade. Bridger Pipeline has made application for permits from other state agencies with permitting jurisdiction as well as through the Army Corps of Engineers. Impacts are expected to be minimal for both the boring of the new pipeline and the abandonment in place of the existing pipeline. Consistent with the grant of other pipeline easements, this easement is recommended to be issued for a thirty (30) year limited term

### DNRC Recommendation

The director recommends approval of a 30-year limited term easement for Bridger Pipeline.

## R/W Application 18991



## APPLICANTS AND RIGHTS OF WAY INFORMATION

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Applicant:	ONEOK Rockies Midstream, LLC 896 25th Street SE Sidney, MT 59270
Application No.:	18992
R/W Purpose:	a buried 6" natural gas pipeline
Lessee Agreement:	ok
Acreage:	0.96
Compensation:	\$8,892.00
Legal Description:	20-foot strip through E2NE4, Sec.20, Twp. 28N, Rge. 56E, Roosevelt County
Trust Beneficiary:	Common Schools

### Item Summary

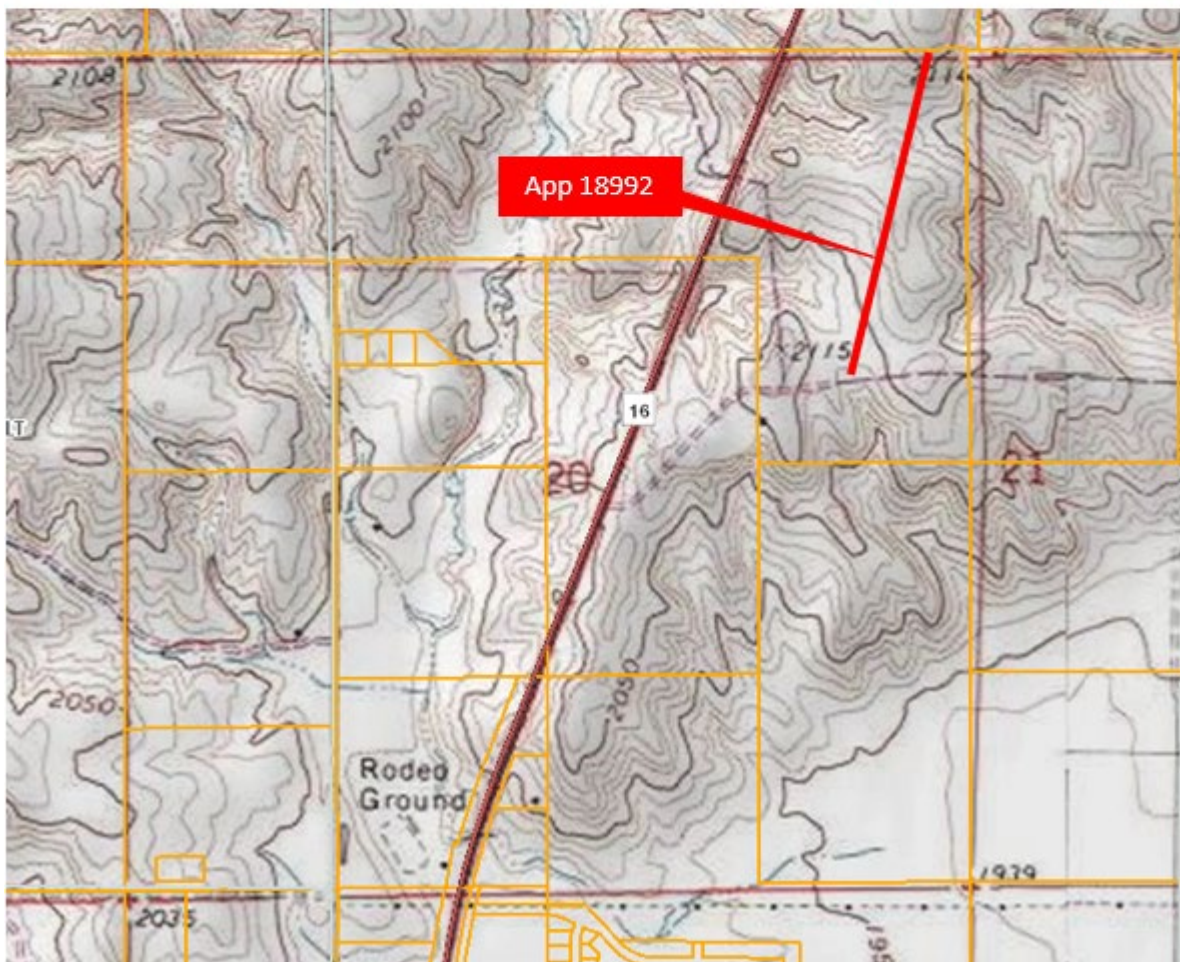
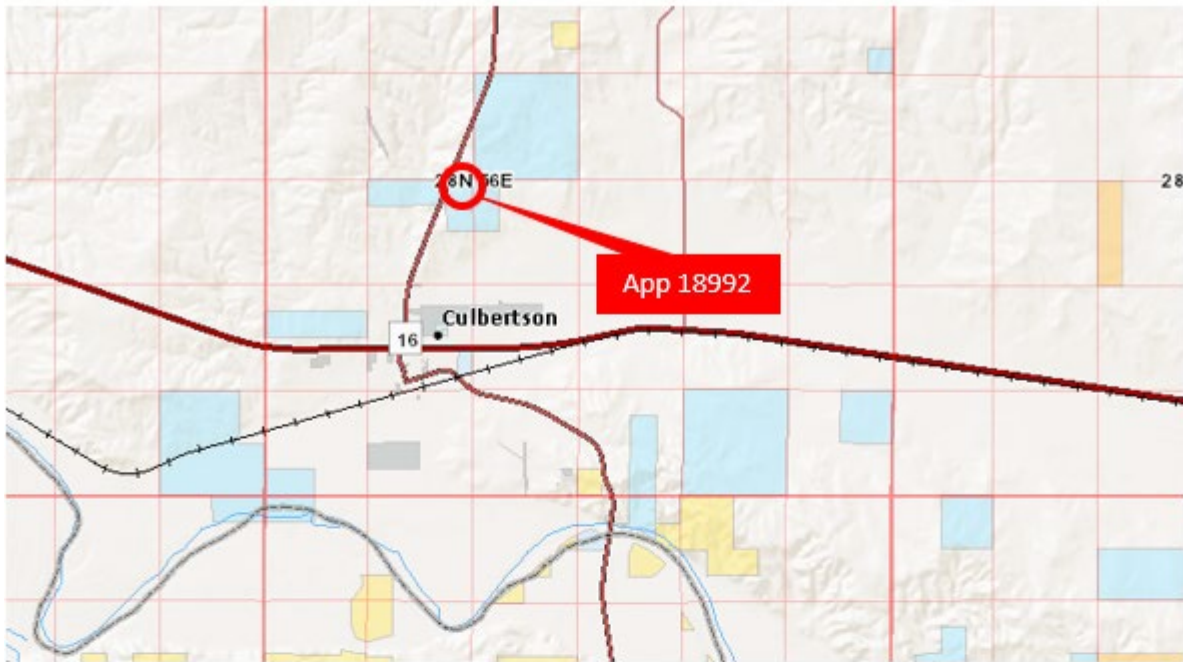
ONEOK Rockies Midstream, LLC has made application to convert an existing Land Use License issued in 2010 to a permanent easement associated with an existing 6" natural gas pipeline. Consistent with standard practice, this easement is recommended to be limited to a term of 30 years.

### DNRC Recommendation

The director recommends approval of a 30-year limited term easement for ONEOK Rockies Midstream.



## R/W Application 18992



## APPLICANTS AND RIGHTS OF WAY INFORMATION

---

Applicant:	Big Flat Electric Cooperative, Inc PO Box 229 Malta, MT 59538
Application No.:	18993
R/W Purpose:	an overhead 115kV electric transmission line
Lessee Agreement:	ok
Acreage:	6.66
Compensation:	\$2,332.00
Legal Description:	80-foot strip through W2SW4, SW4NW4, Sec. 16, Twp. 30N, Rge. 33E, Phillips County
Trust Beneficiary:	Common Schools

### Item Summary

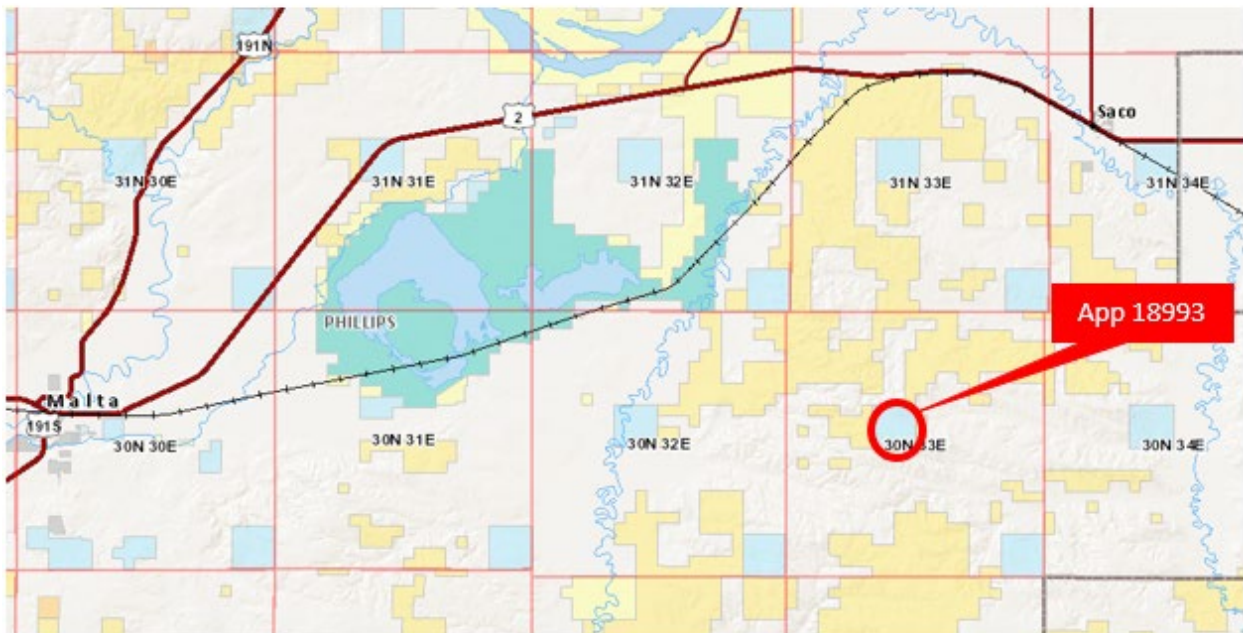
Big Flat Electric Cooperative is requesting an easement to construct an overhead electric transmission line across State Trust land to provide service to a TransCanada Keystone XL Pump station. The original route of the transmission line impacted general sage grouse habitat and known cultural resources on private land. In consultation with the Sage Grouse Oversight Team and the Bureau of Land Management the proposed corridor was re-routed approximately 7.5 miles to reduce or eliminate impacts. Big Flat Electric has agreed to mitigation for the anticipated impacts and will be subject to the Sage Grouse restrictions in the Executive Order.

### DNRC Recommendation

The director recommends approval of the application by Big Flat Electric Cooperative.



## R/W Application 18993





# 1220-8

RECIPROCAL ACCESS AGREEMENT- SPP#2



**Land Board Agenda Item  
December 21, 2020**

**1220-8 Reciprocal Access Agreement – SPP #2**

**Location: Flathead, Lake, Lincoln & Sanders**

**Trust Benefits: Common Schools, Public Buildings**

**Trust Revenue: N/A (Donation of Excess Costs Owed to Cooperator)**

**I. Cooperator:**

SPP MONTANA, LLC  
6304 Peake Road  
Macon, GA 31210-3960

**II. Purpose of Reciprocal Access Agreement:**

State land is intermingled with SPP Montana, LLC (SPP) throughout much of western Montana. Both the Montana Department of Natural Resources and Conservation (DNRC) and SPP propose to exchange easements under a Reciprocal Access Agreement. The State will grant a perpetual non-exclusive easement, 60 feet in width, to SPP for all lawful purposes, including buried utilities across State lands in Flathead, Lake, Lincoln and Sanders Counties. SPP will grant perpetual, non-exclusive easements, 60 feet in width, to the State for all lawful purposes, including buried utilities, across lands located in Sanders and Lincoln Counties.

**III. Legal Description (R/W):**

**State Grant to SPP:**

Flathead County:	Sec. 28, T26N, R26W - 3.20 road acres (C.S.)
	Sec. 36, T28N, R24W - 10.04 road acres (C.S.)
Lake County:	Sec. 16, T25N, R21W - 2.55 road acres (C.S.)
Sanders County:	Sec. 8, T22N, R26W - 1.82 road acres (P.B.)
	Sec. 28, T23N, R26W - 10.62 road acres (P.B.)
	Sec. 16, T26N, R27W - 2.69 road acres (C.S.)
Lincoln County:	Sec. 16, T26N, R28W - 11.05 road acres (C.S.)
	Sec. 36, T26N, R29W - 1.53 road acres (C.S.)
	Sec. 36, T27N, R27W - 4.95 road acres (C.S.)
	Sec. 16, T27N, R28W - 8.07 road acres (C.S.)
	Sec. 36, T27N, R28W - 13.60 road acres (C.S.)
	Sec. 36, T29N, R27W - 4.22 road acres (C.S.)

**Total State to SPP: 74.34 road acres, 10.22 miles**

**SPP Grant to State:**

Lincoln County:	Sec. 26, T29N, R28W -	20.58 road acres (C.S.)
	Sec. 31, T29N, R28W &	
	Secs. 25, 35, T29N, R29W -	0.87 road acres (P.B)
	Sec. 15, T30N, R27W -	4.36 road acres (C.S.)
	Sec. 9, T29N, R27W -	0.87 road acres (P.B.)
	Secs. 4, 5, T29N, R26W -	6.84 road acres (C.S.)
	Sec. 11, 12, T29N R27W -	6.62 road acres (P.B.)
	Sec. 9, T27N, R28W -	7.13 road acres (C.S.)
	Sec. 31, T26N, R28W -	12.07 road acres (C.S.)
Sanders County:	Sec. 1, T25N, R29W -	14.18 road acres (C.S.)
	Secs. 25, 36, T26N, R29W -	14.11 road acres (C.S.)
	Sec. 14, T26N, R27W -	7.27 road acres (C.S.)
	Sec. 15, T26N, R27W -	8.00 road acres (C.S.)
	Sec. 21, T26N, R27W -	4.73 road acres (C.S.)
	Sec. 22, T26N, R27W -	4.00 road acres (C.S.)
	Sec. 17, T24N, R27W -	0.36 road acres (C.S.)

**Total SPP to State: 111.99 road acres, 15.40 miles**

**IV. Costs to be Borne by Each Party:**

	EXCESS COSTS	
	State owes SPP	SPP owes State
Land Value	\$ 172,151	\$ 116,571
Total Value/Costs	\$ 172,151	\$ 116,571

Net Balance	\$ 55,580
-------------	-----------

The remaining Net Balance of \$55,580 that the State owes SPP will be considered a donation upon approval of this Agreement by the Land Board and receipt of the "SPP#2 easements."

## VI. Results of MEPA Analysis:

No significant impacts are expected, and no further analysis required

## VII. Benefits to State:

1. *Describe the rights regarding which DNRC lands are being accessed.*
  - Provides full permanent access for all lawful purposes (including utilities) to 3,500 acres of State Trust Lands (Common Schools and Public Buildings).
2. *Describe the public access situation and the effects of this agreement.*
  - As a result of this agreement, there will be no change to the access rights in favor of the public (no additional public access)
3. *Describe other benefits associated with completing the agreement.*
  - Provides for legal access for land management opportunities and other uses in a vastly changing ownership landscape.

- State of Montana is receiving significant more miles of road than SPP and SPP is waiving/donating the value of excess costs that the State would otherwise be responsible to pay.

**VIII. Recommendation:**

The director recommends approval of the SPP #2 Reciprocal Access Agreement and further recommends a waiver of the conveyance fee obligation described in the Reciprocal and Easement Exchange Policy as a result of the net financial benefit to the State.

**EXHIBIT 1**  
**General Vicinity map**  
Reciprocal Access Agreement

MONTANA DEPARTMENT OF NATURAL  
RESOURCES AND CONSERVATION  
and  
SPP MONTANA, LLC

Flathead County, Sanders County  
Lincoln County and Lake County  
Principal Meridian, Montana

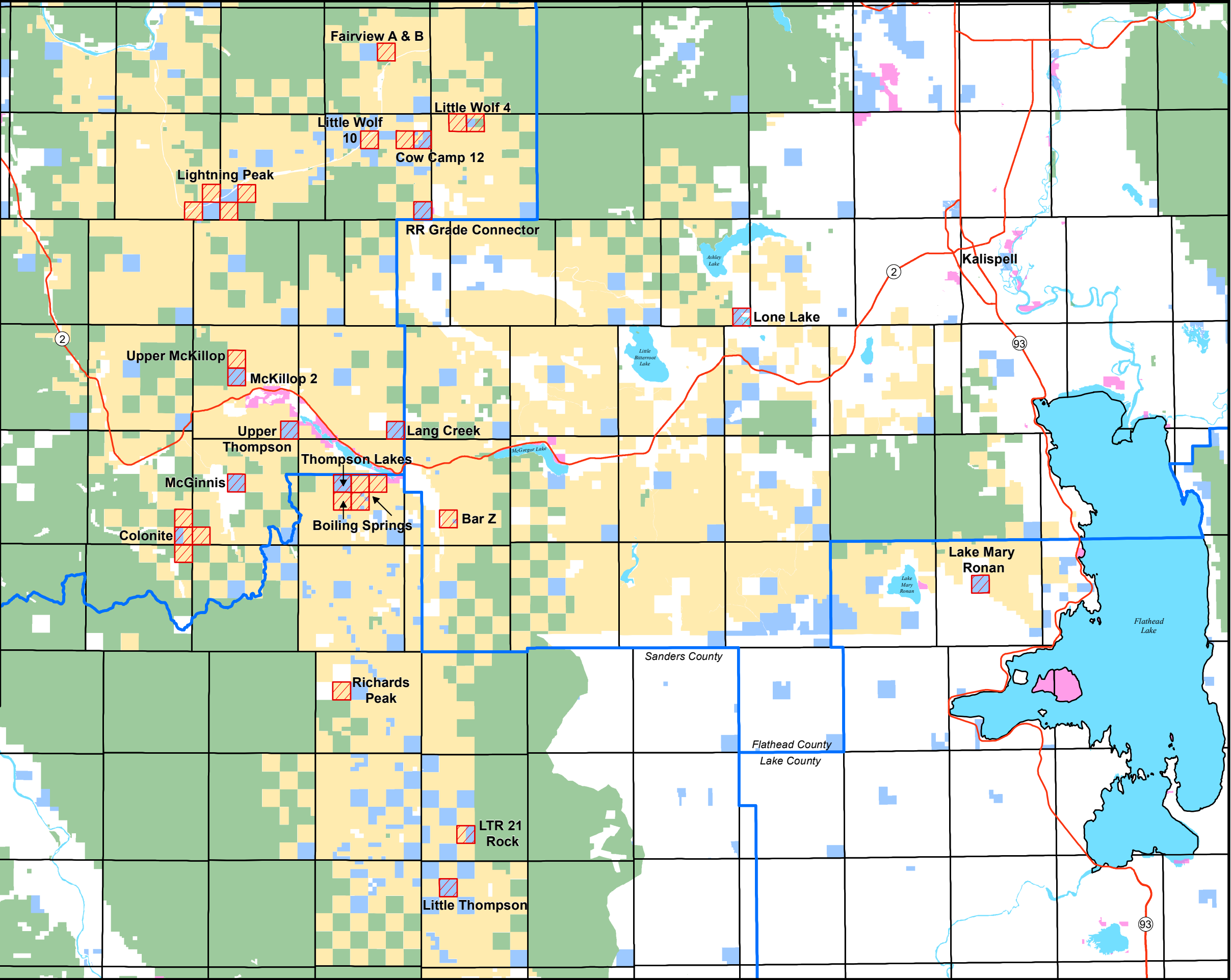
LEGEND

-  STATE Montana Department of Natural Resources and Conservation
-  NFSL National Forest System Land
-  FWP Montana Department of Fish Wildlife and Parks
-  SPP SPP Montana, LLC
-  Project Location

0 5 10 Miles



Prepared by GeoControl LLC 12-7-2020  
www.geocontrolgis.com



# 1220-9

COMMERCIAL LEASE:  
Proposed Wind Energy Development





**Land Board Agenda Item  
December 21, 2020**

**1220-9 Commercial Lease: Proposed Wind Energy Development**

**Location: Wheatland County**

**Trust Benefits: Common Schools**

**Trust Revenue: \$100,275 (5-year Option to Lease)**

**Item Summary**

The Department of Natural Resources and Conservation is requesting approval to issue an exclusive Option to Lease, and subsequently issue a Commercial Lease for the development of 1,910 Trust Land acres known as the Daisy Dean parcels. This option is in conjunction with the 3,080-acre Martinsdale Wind Farm, LLC option approved by the Land Board in August 2019 and held by EDP Renewables North America (EDPR NA.) EDPR's intent is to expand the original proposed size of the Martinsdale Wind Farm to include the Daisy Dean acreage and bring the total Trust Land acreage under Lease Option to 4,990 acres.

The Option to Lease provides site control for rights associated with wind power project development, as well as the right for the optionee to enter a long-term Commercial Lease for the construction and operation of a wind power project. Development activity is not authorized through an Option to Lease. The Option to Lease is also contingent upon an environmental review conducted in compliance with the Montana Environmental Policy Act (MEPA) and associated decision document signed by the department. The Option to Lease provides that the final decision for the MEPA document may require modifications to the Lease to ensure compliance with the MEPA decision.

The proposed Trust Land is intermingled with private land that is already leased to the proponent for the project. The proposed Option to Lease would facilitate the State's ability to participate in the wind development that is planned around the Trust Land parcels and share in the long-term revenue opportunity afforded to the adjacent private landowners within the project's boundaries. The proposed Option to Lease includes the following lands, as depicted on the attached map:

County	Description	Sec.	Twp.	Rge.	Acre s
Wheatland	S2	6	8N	13E	310
Wheatland	W2	8	8N	13E	320
Wheatland	ALL	16	8N	13E	640
Wheatland	ALL	36	9N	12E	640

The proposed Option to Lease is for up to five years. If a Lease is exercised during the Option to Lease period, the proponent could commence construction and development of wind power facilities. The Lease includes a 30-year initial term, followed by two 10-year renewal options.

The Option to Lease is based on the proposal and preliminary development plans for the project. The final site plan, including location and quantities of turbines and ultimate acreage leased will be determined based on environmental analysis and factors, wind studies, the power purchase agreement, and final determination of turbine technology.

**Trust Revenue:**

*Under the Option to Lease:* annual rent will be a rate per-acre based on the entire 1,910-acre premises. The annual rent under the Option increases in annual increments starting at \$13,370 in year one, to \$28,650 in year five.

*Under a Commercial Lease:* annual rent will consider the greater of three factors: applicable statutory minimum base rent for the leased land; revenue shares from actual energy sold; or production capacity for the number of megawatts (MW) installed on the Lease premises.

Land Value	Under Option to Lease	Under Commercial Lease Annual Rent is the Higher of these Factors		
	Option Fees	4% of Land Value	\$3,300 per MW Installed Capacity	Revenue Sharing
\$1,910,000	<p><b>Year one:</b> \$7.00 per ac. or \$13,370 within thirty (30) days of the Effective Date</p> <p><b>Year two:</b> \$8.50 per acre, or \$16,235 on the 1st anniversary of the Effective Date</p> <p><b>Year three:</b> \$10.00 per acre, or \$19,100 on the 2nd anniversary of the Effective Date</p> <p><b>Year four:</b> \$12.00 per acre, or \$22,920 on the 3rd anniversary of the Effective Date</p> <p><b>Year five:</b> \$15.00 per acre, or \$28,650 on the 4th anniversary of the Effective Date</p> <p><b>\$100,275 if Option is held for 5 years</b></p>	<p>\$76,400* +2% annually</p> <p><i>*in year 1 of full rent, if Option is exercised for full 1,910 acres</i></p>	<p>\$33,000-\$99,000* +1.5% annually</p> <p><i>*in year 1 for a range of 10MW-30MW installed on Trust Lands</i></p>	<p>3.00% yrs 1-10 3.25% yrs 11-15 3.50% yrs 16-20 3.75% yrs 21-25 4.00% yrs 26-term</p>

**Proposal:**

In February of 2020 the Department released an RFP for commercial development. EDP Renewables North America (EDPR NA) was the successful proponent. It is typical for a commercial developer to create a project company for a development project. Martinsdale Wind Farm, LLC, is EDPR NA's project company for the proposed wind development. Accordingly, Martinsdale Wind Farm, LLC is the name shown on all DNRC Lease contracts related to this development.

The proposed parcels of land are located directly adjacent to nearly 20,000 acres of land currently controlled by Applicant for the development of a large, utility-scale wind-power project. The Martinsdale Wind Farm, including the Daisy Dean parcels, is expected to begin commercial operations as soon as 2022 with an anticipated nameplate capacity of up to 300 megawatts. ("MW")

**MEPA:**

DNRC completed an Environmental Impact Statement (EIS) in April 2009 for the Martinsdale Wind Farm project area of state and private lands. This analysis did not include the four (4) Daisy Dean parcels in this item. The Department sent out a 60-day public scoping notice in September 2020

and received only 2 comments - neither being for or against the project. On October 7, 2020, Martinsdale Wind Farm, LLC contracted with a third party to complete the environmental analysis as required through MEPA for the development of the four (4) additional Daisy Dean Trust Land parcels.

**Existing Uses on the proposed project area:**

The project area currently has three active grazing leases, one active land use license and one active recreational use license. Fiscal Year 2020 revenue from these activities totaled \$9,951. These leases/licenses would remain intact until such time that a Commercial Lease is executed.

The agriculture and grazing uses are compatible with wind development, and lease operations will continue within the project area up until construction begins. If a Commercial Lease is executed, the portions of the agriculture and grazing leases within the footprint of the lease area will be withdrawn in accordance with their lease terms. The Commercial Lease will become the primary use of the land, and the agriculture and grazing uses will be reauthorized through land uses licenses.

The land use license is held by the proponent for environmental data gathering purposes and is set to expire in February 2022.

The recreational use license is for outfitting on all or part of ten sections of Trust Lands with one section being included in the Daisy Dean parcels. Upon lease execution, a determination would be made of recreational use compatibility and a wind lease on the designated section. If deemed compatible the license would not require amending.

There is one easement for underground fiber optic communications cable and four easements for overhead power within the project area. Those easements would remain intact and would not be impacted by the lease.

There are no other surface or mineral leases within the lease area.

**Recommendation**

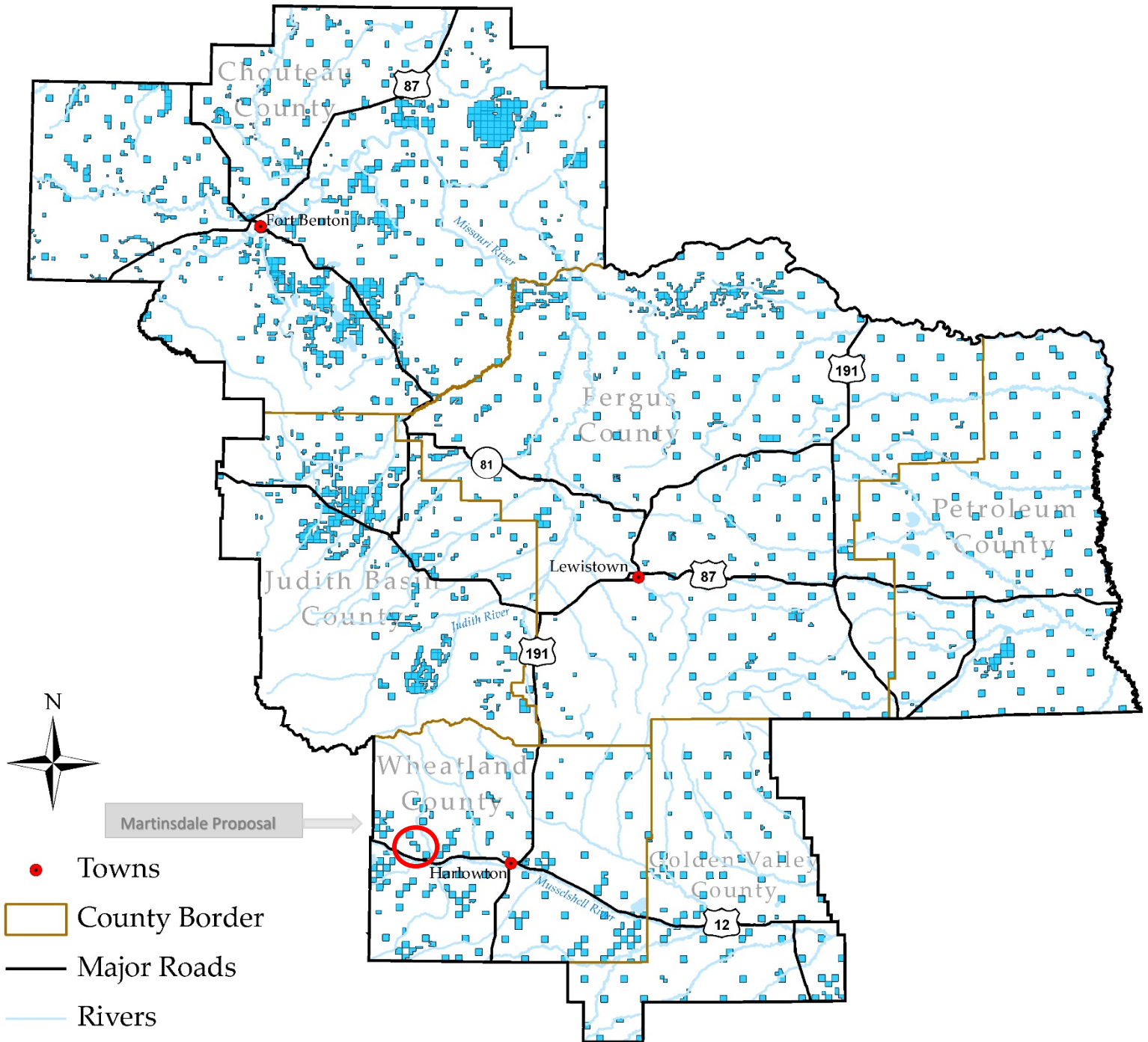
The director recommends that the Land Board approve the Option to Lease and associated commercial lease for the Martinsdale Wind Farm, LLC in Wheatland County.

# LEWISTOWN UNIT

1220-9



## DAISY DEAN PROPOSAL VICINITY MAP

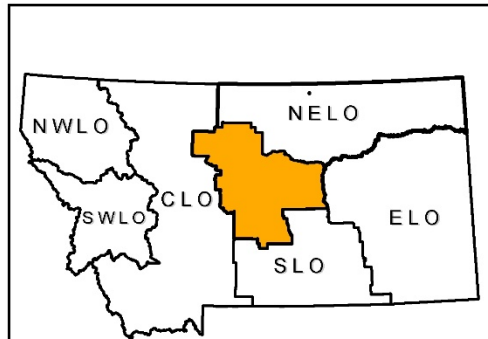


Martinsdale Proposal

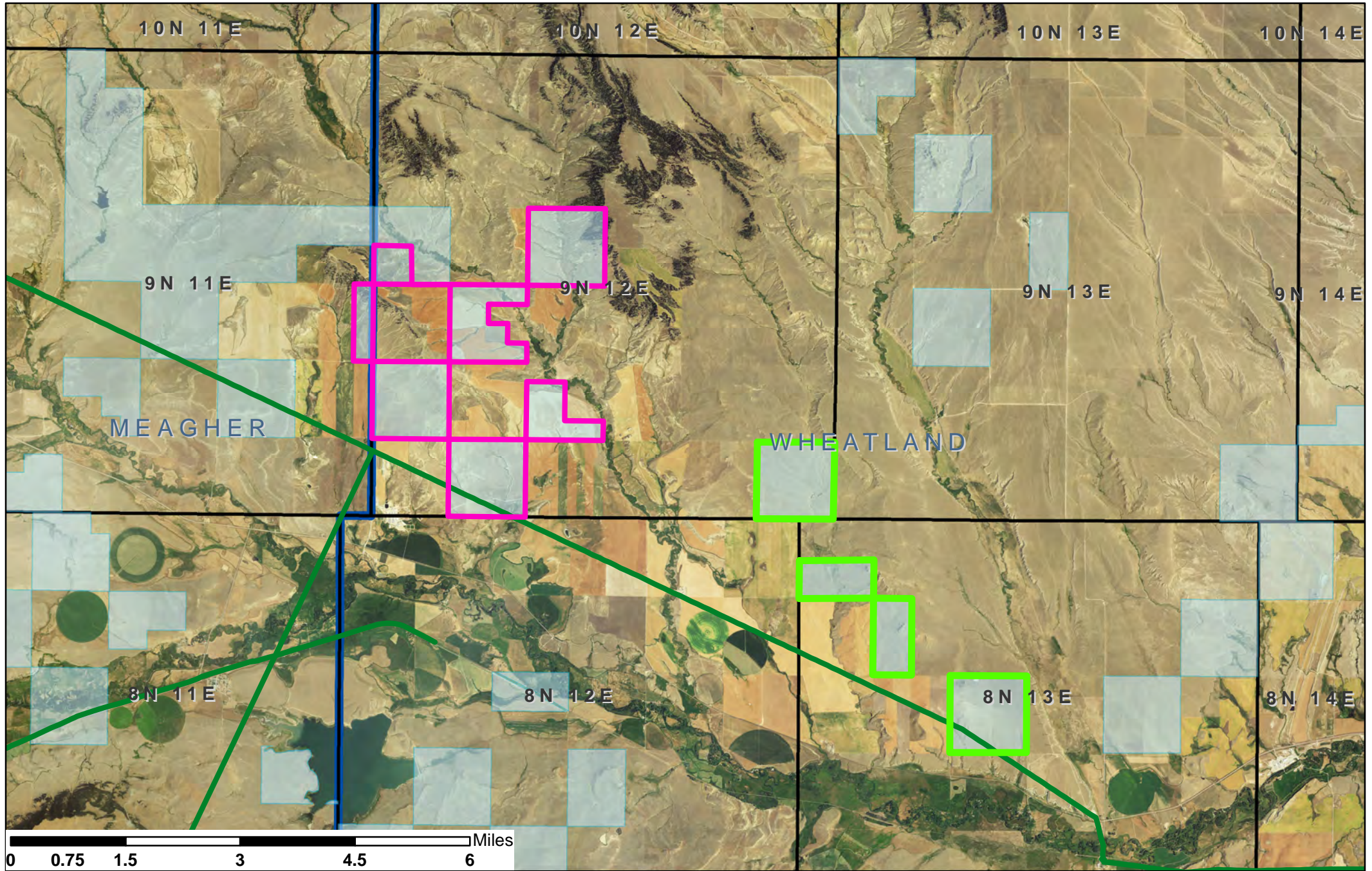
- Towns
- County Border
- Major Roads
- Rivers
- Water Bodies
- State Trust Land



0 5 10 20 30 40 Miles







Daisy Dean Parcels - Trust Beneficiary: Common Schools



Location: Wheatland County  
 Prepared on: 03 DECEMBER 2020  
 Prepared By: DNRC REMB Staff  
 Projection: NAD 1983 MT State Plane



Daisy Dean Lease Option Area

Existing Martinsdale Wind Lease Option Area

MT Transmission Lines

Trust Lands



County







MONTANA DEPARTMENT OF NATURAL  
RESOURCES & CONSERVATION

**OPTION TO LEASE AGREEMENT #3080011**

This Option to Lease Agreement, is entered into this 1st Day of January 2021 (the “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 **Martinsdale Wind Farm LLC** whose address is 808 Travis Street, Suite 700, Houston, TX 77002 (hereinafter referred to as the “Optionee”).

**GRANT OF OPTION:** In consideration of an annual payment, the Department grants to the Optionee a non-assignable exclusive option to lease 1,910 acres described as:

County	Description	Sec.	Twp.	Rge.	Acres
Wheatland	S2	6	8N	13E	310
Wheatland	W2	8	8N	13E	320
Wheatland	ALL	16	8N	13E	640
Wheatland	ALL	36	9N	12E	640

And as illustrated 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, and incorporated herein as if fully set forth. The annual fee for the option to lease shall be:

Year one:	\$7.00 per acre. or \$13,370 within thirty (30) days of the Effective Date
Year two:	\$8.50 per acre, or \$16,235 on the first anniversary of the Effective Date
Year three:	\$10.00 per acre, or \$19,100 on the second anniversary of the Effective Date
Year four:	\$12.00 per acre, or \$22,920 on the third anniversary of the Effective Date
Year five:	\$15.00 per acre, or \$28,650 on the fourth anniversary of the Effective Date

**TERM:** This Option to Lease shall remain in effect from the date of this Option to Lease Agreement for five years until 12 noon, Mountain Time on the 1st Day of January 2026, at which time it will expire and terminate automatically. Optionee may exercise this Option to Lease and execute a Lease at any time during the term. If the option is exercised prior to the expiration of the term of this Option to Lease Agreement, rent paid for the unused portion of the option term will be applied to the first year rental payment of the Lease.

The Optionee may terminate this Option to Lease at any time prior to the expiration of the foregoing 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.

**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.



**EXISTING LEASES:** Optionee acknowledges that Optionee enters into this Option to Lease subject to any leases or other rights existing on the Effective Date. A list of the leases existing on the Effective Date is attached hereto as Schedule 1.

**LEASES DURING THE OPTION TERM:** Should the Department enter into additional lease or leases after the effective date of this Option to Lease and before Optionee exercises its option ("Future Leases"), the Department shall furnish Optionee with a copy of such lease or leases upon execution of such agreement(s). Further, all Future Leases shall contain (i) a notice to the lessee under the Future Lease of the existence of this Option to Lease and Optionee's rights hereunder and under the Lease and (ii) require that all lessees under the Future Leases work in good faith with Optionee and the Department to site any buildings, roads, pipelines, drill sites, utility lines, drainage areas, retention areas, and other structures and infrastructure (permanent or temporary) in a manner that will not materially interfere with Optionee's intended use of the Premises under this Option and the Lease.

**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, for any or all of the Option to Lease premises, 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. If no date is specified, the lease term will begin immediately as of the date of the notice of exercise 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 "Lease"). The Department will deliver these duplicate originals for execution 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 to the Department within fourteen (14) days after receipt by the Optionee. The Department will send one original fully-executed lease to Optionee within fourteen (14) days after execution by the Department.

**DUE DILIGENCE AUTHORIZED:** Through the term of this Option to Lease, Optionee is permitted to access the option to lease Premises for the limited purpose of conducting due diligence activities in support of project regulatory approval, data collection, and environmental monitoring, in accordance with the following:

**PERMITTED ACTIVITIES:**

- 1) Data collection, survey, geotechnical sampling, and environmental research in support of project design, review and land use regulatory approval.
- 2) The Optionee shall obtain prior written approval, not to be unreasonably withheld, from the Department for the locations of all geotechnical borings and/or siting of any towers, or other equipment. All disturbed sites shall be reclaimed pursuant to the Reclamation section listed below.

At all times the Optionee will maintain the area within the Option to Lease Premises in a neat and orderly manner and will allow no waste or debris to accumulate thereon.

**DATA SHARING:** Should the Optionee choose to not exercise this lease option, and does not enter into a lease, the Optionee agrees to share any and all data collected on the lease premises described in Exhibit "A", including, but not limited to raw wind data and environmental data.

**ACCESS TIMING RESTRICTIONS:** Optionee must consult with the Department at least twenty-four (24) hours prior to accessing the option to lease Premises during the option period. The Department reserves the right to restrict any activity to the extent necessary to accommodate environmental or safety concerns, provided that the Department shall make a good faith effort to ensure that Optionee's due diligence activities are reasonably accommodated during the Option term.

**WEEDS AND INVASIVE PLANTS:** Optionee shall be responsible for controlling all noxious weeds and non-native grass species and other plants regulated by the Montana Weed Control Association on the Premises that were introduced by Optionee's activities thereon.

**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 the Department. Such reclamation shall include, but not be limited to, the elimination of all traces of disturbance, 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 the Department and Optionee in writing. The seed mix used in the reclamation shall be approved in advance by the Northeastern Land 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.

**LIABILITIES:** Optionee hereby assumes all responsibility for all claims, damages, and lawsuits that result from any and all damages, injury or death to persons and/or property that occur on or about said land caused by or arising out of Optionee's use of the subject area hereunder. Optionee does not assume any liability for any claims, damages, and lawsuits caused by the negligence or willful misconduct of the Department. The Optionee further agrees that it will be responsible for any damage caused when entering, crossing or leaving state-owned subject land. In no event will Optionee be liable for consequential or punitive damages.

**CONTINGENCY:** The Department's obligation to enter into the lease is contingent upon an environmental review conducted in compliance with the Montana Environmental Policy Act ("MEPA"), and associated decision document signed by the Department. The Department will have the sole right to determine whether MEPA compliance shall consist of the completion of an Environmental Assessment ("EA") or Environmental Impact Statement ("EIS"), or update to an existing EIS. The Department shall ultimately be responsible for signing a Record of Decision ("ROD") or other appropriate decision document. Optionee and the Department agree that the final decision for completion of MEPA analysis may require modifications to the attached lease document to ensure compliance with the MEPA decision.

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

STATE OF MONTANA, MONTANA DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION

By: \_\_\_\_\_

Mike Atwood, Chief  
Real Estate Management Bureau**ACKNOWLEDGMENT**STATE OF MONTANA  
County of Lewis and Clark

This instrument was acknowledged before me on \_\_\_\_\_, \_\_\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of the Montana Department of  
Natural Resources and Conservation.

\_\_\_\_\_  
(Notary Signature)

[SEAL]

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

OPTIONEE

Martinsdale Wind Farm LLC

By: \_\_\_\_\_

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

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, \_\_\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of  
Optionee, \_\_\_\_\_.

\_\_\_\_\_  
(Notary Signature)

[SEAL]

## **SCHEDULE 1 – EXISTING LEASES AND OTHER RIGHTS**

The Option to Lease is subject to existing leases and easements. The applicable leases and easements are included in the following pages of this Schedule 1 and are identified as:

Land Use License 3358 – Martinsdale Wind Farm, LLC

Easement 10673 – Central Montana Communications

Easement 2292 – Northwestern Corporation DBA Northwestern Energy

Easement 2293 - Northwestern Corporation DBA Northwestern Energy

Easement 624 - Northwestern Corporation DBA Northwestern Energy

Easement 8204 – US West Communications

Lease 3728 – Haymaker Ranch, LLC – Miller Ranch

Lease 8343 – Sheep Valley Reinhart Trust

Lease 8586 – Haymaker Ranch, LLC – Miller Ranch

Recreational License 17-005 – Living the Dream Outdoors, LLC

Receipt Number

LWS 2004574LAND USE LICENSE NO. 3358

The STATE OF MONTANA, DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, herein grants Martinsdale Wind Farm LLC, 808 Travis St, Suite 700, Houston TX 77002, herein called Licensee, a LAND USE LICENSE to occupy and use lands administered by the DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, subject to all the terms and conditions hereof.

I. DESCRIPTION

A tract or strip of land described as follows:

Acres	Section	Township	Range	Part of Section
✓ 640	16	9N	12E	ALL
✓ 160	18	9N	12E	SW4
✓ 320	20	9N	12E	W2
80	20	9N	12E	N2NE4
40	20	9N	12E	NW4SE4
80	20	9N	12E	S2SE4
✓ 640	30	9N	12E	ALL
160	28	9N	12E	S4
80	28	9N	12E	N2SW4
80	28	9N	12E	S2NW4
✓ 640	32	9N	12E	ALL
✓ 160	24	9N	11E	E4
✓ 320	08	8N	13E	W2
✓ 640	16	8N	13E	ALL

RECEIVED

SEP 03 2019

D.N.R.C

RECEIVED  
AUG 26 2019  
DNRC NELO

**Objectives****2. FILING FEE**

A fee of Twenty-five and No/100 Dollars (\$25.00) has been paid to the Licensor prior to issuance of this Land Use License.

**3. RENTAL**

The Licensee agrees to pay no later than thirty (30) days after this Land Use License is approved a fee of \$250.00.

**4. DURATION**

This License shall take effect upon signature of the Area Manager, Northeastern Land Office and remain in full force and effect up to and including **February 28, 2020**, unless terminated in accordance with Section 13 of this license.

**5. LICENSED ACTIVITY**

The purpose of this Land Use License is for:

- **Environmental data gathering necessary for windfarm development including wildlife and vegetation studies, geotechnical boring and placement of meteorological data towers.**

**6. RECLAMATION OF THE LAND**

The Licensee 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 Land Use License. Upon cancellation of this License by either party to this agreement, or upon final expiration of agreement, the Licensee shall reclaim the area to the specifications of the Licensor. Such reclamation shall include, but not be limited to the elimination of all traces of disturbances, compaction, and movement of construction equipment. Licensee shall be required to reseed all disturbed areas with native species of grasses, unless other arrangements are agreed upon between the Licensor and the Licensee in writing. 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.

**7. MONITORING SITES**

The Licensee will maintain the area within the Land Use License in a neat and orderly manner and will allow no waste or debris to accumulate thereon.

**8. WEATHER CONDITIONS**

The Licensor reserves the right to restrict or preclude any surface activity during periods of adverse weather and other conditions which may contribute to accelerated erosion, fire hazard, disruption of seasonal wildlife, or any other condition which in the opinion of the Department may have an adverse effect on Trust land. Prior to commencing permitted activities, the Licensee will contact the appropriate Area Office.

**9. NOXIOUS WEEDS**

The Licensee shall be responsible for controlling any noxious weeds introduced by Licensee's activity on state-owned land. The Licensee's methods of control must be reviewed by the Department of Natural Resources and Conservation Area Field Office that has jurisdiction for that locale. The Licensee shall comply with the Montana County Noxious Weed Management Act, Section 7-22-2101 et seq., as follows:

The Licensee shall notify the local weed board that is responsible for that geographical area in which the project is located. If the Licensee disturbs vegetation for any reason, Licensee shall be required to revegetate the disturbed area. The Licensee shall submit to the local weed board a written plan specifying the methods to be used to accomplish revegetation. The plan must describe the time and method of seeding; fertilization, recommended plant species, use of weed-free seed, and the weed management procedures to be used. This plan is subject to approval by the local weed board, and therefore must be signed by the chairman of the board.

Failure to abide by these provisions may result in the cancellation of the License.



LUL 3358  
Page 3

#### 10. LIABILITIES

The Licensee agrees to assume responsibility for fires that may result from use of the authority given here and shall defend and save the Licensor and Licensor's Surface Lessee, harmless from all claims and lawsuits that may result from any and all damages, injury or death to persons and/or property that occur upon or about said land caused by or arising out of Licensee's use of the subject area hereunder. The Licensee further agrees that they will be responsible for any damages to the surface lessee's property or leasehold interests that may be caused when entering, crossing, or leaving state-owned subject land.

#### 11. LIMITATION OF AUTHORITY

Other than for the purposes specifically described in this agreement, the Licensee agrees that it does not, and shall not claim at any time any interests or estate of any kind or extent whatsoever in the premise by virtue of this License or their occupancy or use hereunder.

#### 12. SPECIAL STIPULATIONS

- The licensee is responsible for securing all other necessary permits (local, state, federal) for any actions proposed on state land.
- The licensee shall coordinate all surface activities with DNRC surface lessees prior to entering state land.
- The licensee shall only use existing roads and trails. No off-road travel is permitted unless the licensee received prior approval from the DNRC - Lewistown Unit Office.
- Motorized Vehicle access is not authorized during wet or muddy conditions.
- The licensee will identify and have approved a plan for geotechnical boring or placement of meteorological towers prior to ground disturbing activities.
- The licensee shall take necessary precautions to limit the spread of noxious weeds in the permitted area.

#### 13. TERMINATION OF LAND USE LICENSE

The Licensor reserves the right to terminate the permission hereby granted at any time by giving the Licensee no less than ten (10) days written notice of such termination, except that the Licensor may terminate the permission forthwith at any time, if Licensee fails to comply with, or abide by, each and all of the provisions hereof, or ceases to use the permission hereby granted.

Dated this 23<sup>rd</sup> day of July, 2019.

BY: M. Wiseman, Project Manager  
Martinsdale Wind Farm LLC

\*\*\*\*\*

(Department of Natural Resources and Conservation Use Only)

#### APPROVAL OF LICENSE

BY: Clive Rooney, Lewistown Unit Manager, Northeastern Land Office

7/24/19, 2019  
Date Approved





MONTANA DEPARTMENT OF  
NATURAL RESOURCES & CONSERVATION

**LAND USE LICENSE NO. 3358**  
**AMENDMENT TO REISSUE No. 1**


The STATE OF MONTANA, DEPARTMENT OF NATURAL RESOURCES & CONSERVATION (hereinafter referred to as the "Department" or "Licensor"), whose address is PO Box 201601, 1625 Eleventh Avenue, Helena, MT 59620-1601, herein grants Martinsdale Wind Farm LLC whose address is c/o EDP Renewables North America, 808 Travis St, Ste 700, Houston, TX 77002, (hereinafter referred to as the "Licensee") a Land Use License Amendment (hereinafter referred to as "Amendment").

1. **DESCRIPTION:** A tract or strip of State land described as follows:

Legal Description	Section	Township	Range	County
W2	8	8 North	13 East	Wheatland
ALL	16	8 North	13 East	Wheatland

2. **PURPOSE:** Issued for "access to state lands referenced above to conduct environmental data gathering necessary for windfarm development, including wildlife and vegetation studies, geotechnical boring and placement of meteorological data towers."
3. **FILING FEE:** A fee of Twenty-five and No/100 Dollars (\$25.00) has been paid to the Licensor prior to issuance of this Amendment.
4. **RENTAL:** Beginning upon acceptance of this amendment, the Licensee agrees to pay, in advance, an annual fee of \$250. Payment of the rental shall be due upon signature of this amendment.
5. **DURATION:** This amendment shall take effect upon signature of the Area Manager and will effectively reissue the above stated license for a term of two years, expiring on February 28, 2022, unless terminated in accordance with the terms provided in the above described License.
6. **CERTIFICATION:** Licensee hereby agrees that there has been no change in use, activity, or location for which the original license was issued.
7. **TERMS:** Licensee hereby accepts the rights, duties, and obligations inherent in original Land Use License No. 3358 and those provided under the terms of this amendment.


This amendment is to be attached to and made part of the Land Use License. All other terms and conditions remain in full effect.

  
Toby Butterfield  
Sr. Proj. Mgr  
Licensee, Martinsdale Wind Farm LLC

2/27/20  
Date

\*\*\*\*\*

(Department of Natural Resources & Conservation Use Only)  
APPROVAL OF LICENSE

  
Clive Rooney, Area Manager, NELO

2/28/2020  
Date

Right of Way Application No. 10673  
Affecting a 20-foot strip in S½S½  
Sec. 16, Twp. 8N, Rge. 13E  
Wheatland County, Montana

EASEMENT NO. D-9694

## RIGHT OF WAY DEED

=====

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF MONTANA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Know ye that the State of Montana (hereinafter referred to as "Grantor"), in consideration of the sum of Three Hundred Nineteen and No/100 Dollars (\$319.00) now paid, grants to Central Montana Communications, Inc. (hereinafter referred to as "Grantee") a right of way for an underground fiber optic communications cable upon and across State lands, as follows:

A 20-foot strip in S½S½, Section 16, Township 8 North, Range 13 East, Principal Meridian Montana, Wheatland County, Montana, more particularly described as follows:

A tract or strip of land 20 feet wide, 10 feet on each side of a centerline described as follows:

Commencing at the Southeast corner of said Section 16; thence N0°03'W a distance of 30 feet to the Point of Beginning of the right of way centerline; thence West a distance of 5256.9 feet to the Point of Ending, from which point the Southeast corner of said Section 16 bears S0°04'E a distance of 30 feet.

The above-described right of way contains a total of 2.412 acres, more or less.

The grant of this easement is subject to the following conditions:

The Grantee shall comply with the Montana Antiquities Act, Title 22, Chapter 3, Part 4, MCA.

It is also agreed that the Grantee shall comply with such rules or regulations as may be hereafter imposed by the State Board of Land Commissioners to insure that the environment will be adequately protected and the public health and safety not be endangered.

The Grantee shall be responsible for controlling any noxious weeds introduced by Grantee's activity on state-owned land. The Grantee's methods of control must be reviewed by the Department of State Lands Area Field Office that has jurisdiction for that locale.

The Grantee shall comply with the Montana County Noxious Weed Management Act, Section 7-22-2101 MCA et. seq., as follows:

The Grantee shall notify the local weed board that is responsible for that geographical area that the project is located in. If the Grantee disturbs vegetation for any reason, Grantee shall be required to revegetate the disturbed area. The Grantee shall submit to the local weed board a written plan specifying the methods to be used to accomplish revegetation. The plan must describe the time and method of seeding; fertilization, recommended plant species, use of weed-free seed, and the weed management procedures to be used. This plan is subject to approval by the local weed board, and therefore must be signed by the chairman of the board.

The Grantee herein specifically agrees that the said fiber optic communications cable shall be buried below plow depth so as not to interfere with the use and cultivation of the land. It is also understood and agreed that the State and its lessees and purchasers shall have the right to occupy, use and fully enjoy the surface of the right of way hereby granted, to seed, cultivate and harvest crops thereon; and that the said Grantee and its successors and assigns shall pay any damages which may result to the crops, fences and other property or interests of the lessees and purchasers from the State by reason of the laying, maintaining, operating or removing of the said fiber optic communications

Right of Way Application No. 10673  
Page 2

cable, and that the amount of such damages if not mutually agreed upon, shall be ascertained and determined by three disinterested persons, one of whom shall be appointed by the lessee or purchaser of the land, his heirs or assigns, one by the Grantee herein, its successors or assigns, and the third by the two so appointed. The award of such three persons shall be final and conclusive on both parties; and that the State and its lessees and/or purchasers will not be liable for any damages to the above mentioned fiber optic communications cable resulting from the occupancy, use and enjoyment of the surface of the right of way hereby granted.

It is further agreed by the Grantee that Grantee shall backfill, grade, and revegetate all disturbed areas to the satisfaction of the State. If the first seeding of compatible grass species does not germinate to the satisfaction of the Department, the Grantee may be required to reseed in those areas open to erosion and weeds. Upon termination of this easement, Grantee shall reclaim the entire area in accordance with this paragraph.

Provided, further, that the right of way deed granted herein shall be assignable by Grantee only with the written approval of the Commissioner, Department of State Lands.

Provided, however, that the right of way granted herein is not exclusive and does not interfere with the Grantor 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 recross 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 Grantee.

Provided, that Grantor may terminate this right of way for a material breach of any of the conditions or provisions of this deed. Before termination, the Board shall give Grantee written notice of intent to terminate and a reasonable period to cure the breach.

It is further provided that whenever said lands herein granted as a right of way shall cease to be used for such purpose, the right of way shall terminate upon notice to that effect being given to the said grantee named herein.

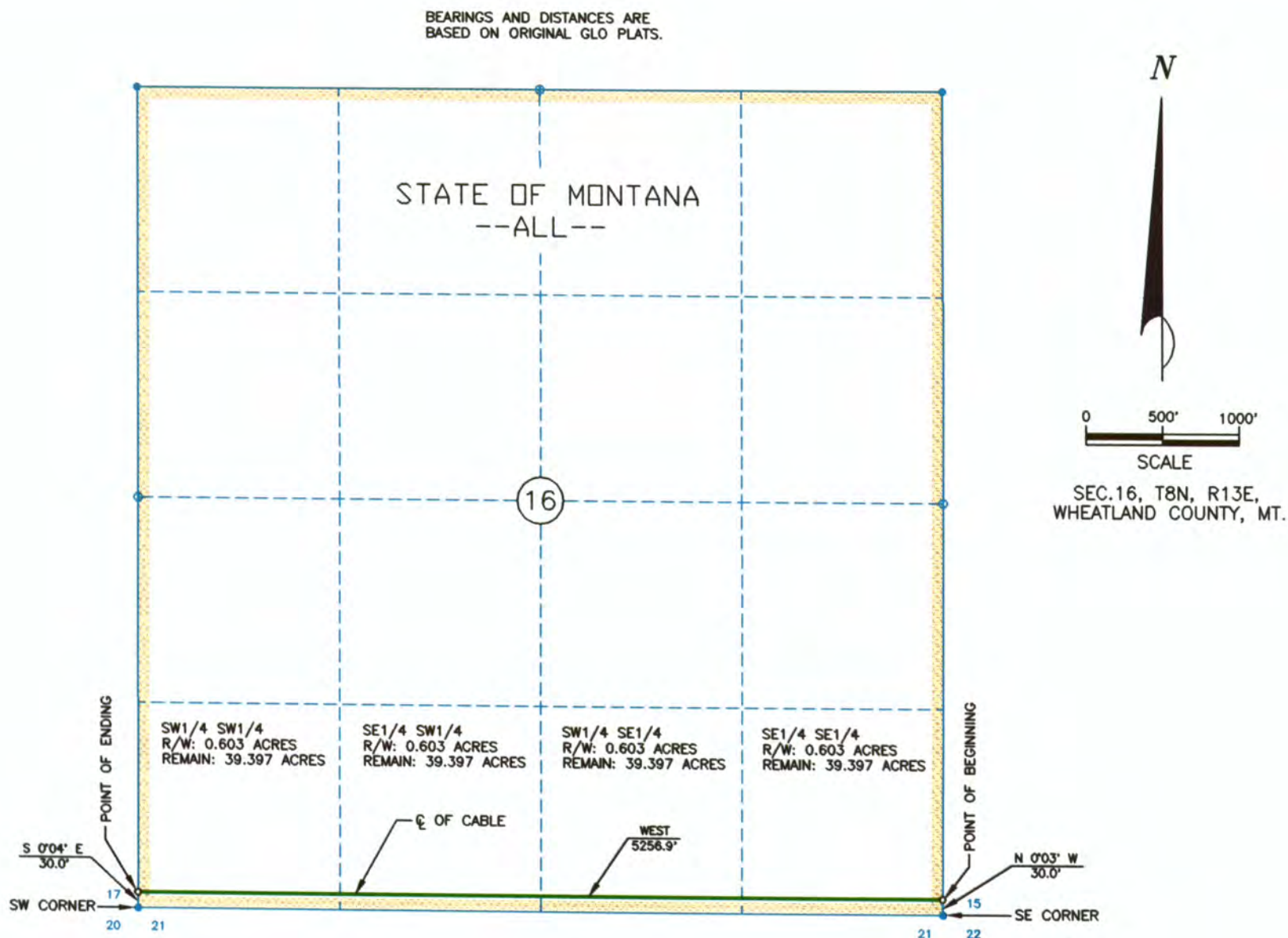
IN TESTIMONY WHEREOF, the State of Montana has caused these presents to be executed by the Governor, and to be attested by the Secretary of State, and countersigned by the Commissioner of State Lands, and the Great Seal of the State, and the Seal of the State Board of Land Commissioners to be hereunto affixed this 20th day of June, A.D. 1995.

.....*Mar. Raul*.....  
Governor of the State of Montana

ATTEST:  
.....*Michelle Perry*.....  
Secretary of State

Countersigned by:  
.....*Arthur R. Clark*.....  
Commissioner of State Lands





## DESCRIPTION

A RIGHT-OF-WAY FOR AN UNDERGROUND FIBER OPTIC COMMUNICATION CABLE EXTENDING 10.0 FEET ON EACH SIDE OF A CENTERLINE ALL WITHIN THE S1/2 SW1/4, AND THE S1/2 SE1/4, OF SECTION 16, TOWNSHIP 8 NORTH OF RANGE 13 EAST OF THE PRINCIPAL MERIDIAN, MONTANA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 16; THENCE NORTH 0°03' WEST A DISTANCE OF 30 FEET TO THE POINT OF BEGINNING OF THE RIGHT-OF-WAY CENTERLINE; THENCE WEST A DISTANCE OF 5256.9 FEET TO THE POINT OF ENDING; THENCE SOUTH 0°04' EAST A DISTANCE OF 30 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 16.

CONTAINED WITHIN THE ABOVE MENTIONED RIGHT-OF-WAY IS 2.412 ACRES, MORE OR LESS.

## AFFIDAVIT

STATE OF MONTANA

COUNTY OF HILL

JAMES C. HEBERLY, BEING DULY SWORN, SAYS, THAT HE IS THE CONSULTING ENGINEER FOR CENTRAL MONTANA COMMUNICATIONS, INC., WHOSE PRINCIPAL OFFICE IS LOCATED AT HAVRE, MONTANA; THAT THE ABOVE PLAT AND DESCRIPTION WAS PREPARED UNDER HIS SUPERVISION FROM AN ACCURATE SURVEY OF THE RIGHT-OF-WAY CENTER-LINE BY SURVEY CREWS UNDER HIS SUPERVISION. THE ABOVE PLAT CORRECTLY SHOWS THE QUANTITY OF LAND REQUIRED FOR THE RIGHT-OF-WAY IN EACH FORTY-ACRE TRACT AND ALSO THE AMOUNT OF LAND REMAINING IN EACH PORTION OF SUCH FORTY-ACRE TRACT.

SUBSCRIBED AND SWORN BEFORE ME

THIS 23 DAY OF January, 1995

Bennett W. Wagner  
NOTARY PUBLIC FOR THE STATE OF MONTANA  
RESIDING AT HAVRE, MONTANA  
MY COMMISSION EXPIRES Jan 12, 1996

James C. Heberly  
JAMES C. HEBERLY, REGISTERED PROFESSIONAL  
ENGINEER, MONTANA NO. 3823PE

PLAT of RIGHT-OF-WAY on STATE LAND  
Sec. 16, T 8 N, R 13 E, P.M.M.  
WHEATLAND COUNTY

CENTRAL MONTANA COMMUNICATIONS, INC.  
HAVRE, MONTANA

HEBERLY and ASSOCIATES INC.

HAVRE, MONTANA



No. D-1761

# RIGHT OF WAY DEED

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF MONTANA

To All To Whom These Presents Shall Come:

Know ye that the State of Montana, in consideration of the sum of \_\_\_\_\_

\_\_\_\_\_ FIFTY AND NO/100 \_\_\_\_\_ Dollars

now paid, grants to \_\_\_\_\_ THE MONTANA POWER COMPANY \_\_\_\_\_

a corporation, a right of way for an \_\_\_\_\_

\_\_\_\_\_ ELECTRIC TRANSMISSION AND TELEPHONE SYSTEM \_\_\_\_\_

upon and across state lands, as follows:

A tract or strip of land 12 feet wide, 6 feet on each side of a center line described as follows:

Starting at a point on the West line of Section 16, Township 8N., Range 13E., M. P. M., which point is 696 feet South of the West quarter corner of said Section 16, thence South 65° 24' East, 798 feet, thence South 57° 13' East, 2290 feet, to a point on the North and South center line of said Section 16, which point is 380 feet North of the South quarter corner of said Section 16, and containing an area of 0.85 acres, more or less.

This right of way is granted upon the express condition, which is accepted by the grantee, that the State and its lessees and purchasers shall have the right to use and fully enjoy the land hereby granted, except the part that is actually occupied by the poles and supports, to cultivate, seed and harvest the crops thereon; and that the grantee and its successors and assigns shall pay any and all damages which may result to crops, fences and other property from the construction, maintenance, operation or removal of the said telephone and telegraph lines; the said damages if not mutually agreed upon shall be ascertained and determined by three disinterested persons, one of whom to be appointed by the purchaser or lessee of the land, heirs or assigns, one by the grantee herein, its successors or assigns, and the third by the two so appointed as aforesaid. The award of such three persons shall be final and conclusive.

It is also understood and agreed by and between the parties hereto that if any conflict should arise, this easement shall be inferior and subject to any easement heretofore or hereafter granted in the said lands for public highways.

Whatland  
12-27-30  
sch  
7546



RIGHT OF WAY DEED

IN WITNESS AND BY THE AUTHORITY OF THE STATE OF MONTANA

STATE OF MONTANA

County of \_\_\_\_\_

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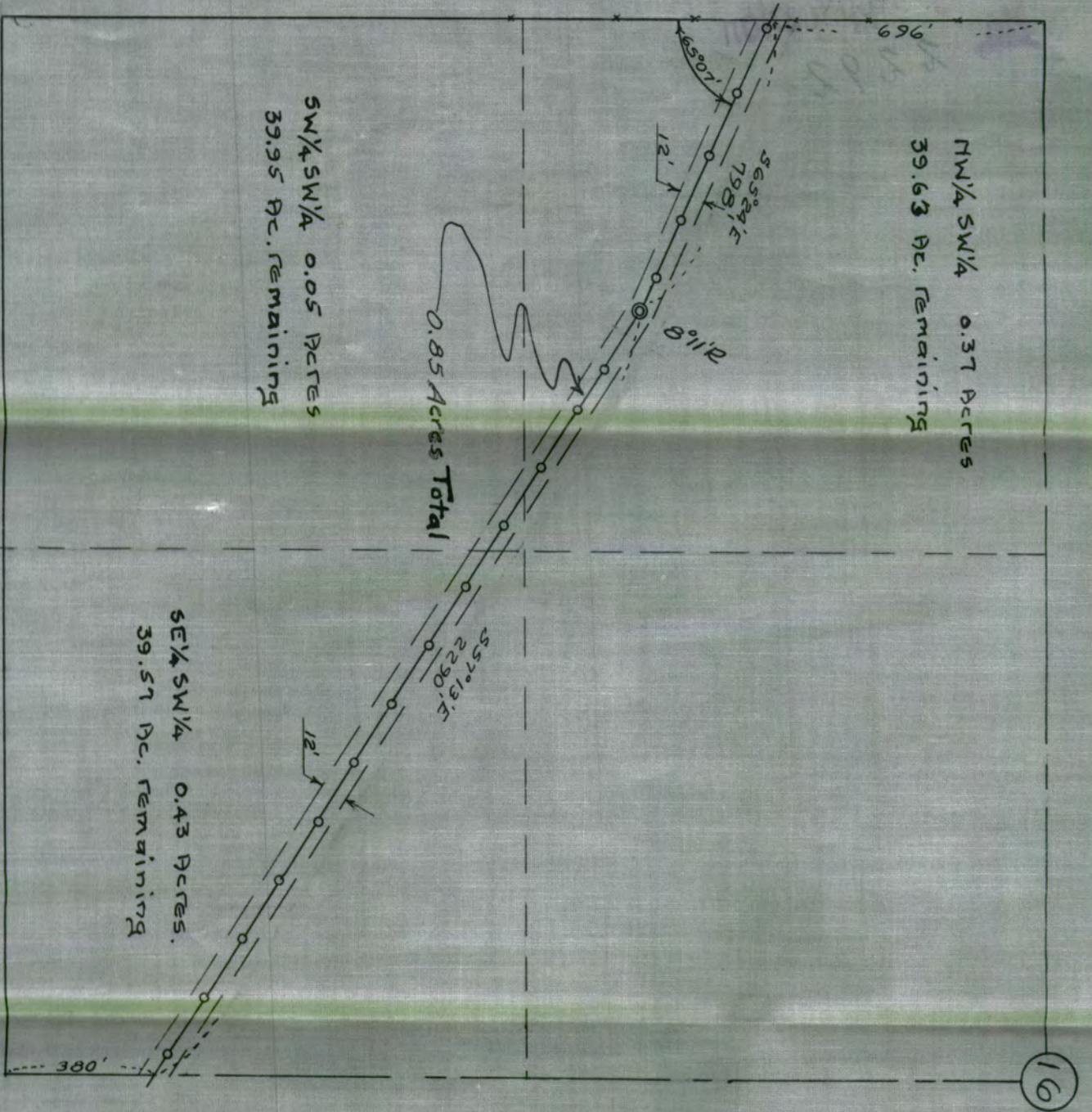
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Butter, Mont.

I hereby certify that this survey was made under my direction and that this plot is a true and correct projection of the actual survey field notes.

*W. J. ...*  
Engineer

Subscribed and sworn to before me this 22 day of August, 1930.

*W. J. ...*  
Notary Public for the

State of Montana

My commission expires Jan. 17th 1933.



THE MONTANA POWER CO.

MARTINSDALE - TWO DOT

TRANSMISSION & TELEPHONE LINE

CROSSING

NW 1/4 SW 1/4 AND THE S 1/2 OF SW 1/4 OF SEC. 16 T8N, R13E

SCALE 1" = 400' 11/21/29



Form R-48

No. D-1800

# RIGHT OF WAY DEED

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF MONTANA

Wheatland  
4-8-31

sch

7546

To All To Whom These Presents Shall Come:

Know ye that the State of Montana, in consideration of the sum of

FIFTEEN AND NO/100 Dollars

now paid, grants to THE MONTANA POWER COMPANY

a corporation, a right of way for an ELECTRIC TRANSMISSION SYSTEM AND TELEPHONE SYSTEM

upon and across state lands, as follows:

A tract or strip of land 12 feet wide, 6 feet on each side of a center line described as follows:

Beginning at a point on the North and South center line of Section 16, T. 8 N., R. 13 E., M.P.M., which point is 380 feet North of the South Quarter corner of said Section 16, thence S. 57° 13' E., 685 feet, to a point on the South line of said Section 16, which point is 574 feet East of the South quarter corner of said Section 16, and containing an area of 0.189 acres, more or less.

This right of way is granted upon the express condition, which is accepted by the grantee, that the State and its lessees and purchasers shall have the right to use and fully enjoy the land hereby granted, except the part that is actually occupied by the poles and supports, to cultivate, seed and harvest the crops thereon; and that the grantee and its successors and assigns shall pay any and all damages which may result to crops, fences and other property from the construction, maintenance, operation or removal of the said electric transmission system and telephone system; the said damages if not mutually agreed upon shall be ascertained and determined by three disinterested persons, one of whom to be appointed by the purchaser or lessee of the land, heirs or assigns, one by the grantee herein, its successors or assigns, and the third by the two so appointed as aforesaid. The award of such three persons shall be final and conclusive.

It is also understood and agreed by and between the parties hereto that if any conflict should arise, this easement shall be inferior and subject to any easement heretofore or hereafter granted in the said lands for public highways.

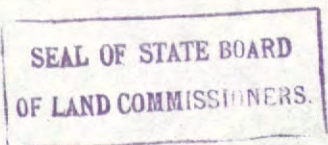


RIGHT OF WAY DEED

IN WITNESS WHEREOF, I have hereunto set my hand and the Great Seal of the State of Montana, this \_\_\_\_\_ day of \_\_\_\_\_, 1931.

It is further Provided that whenever said lands herein granted as a right of way shall cease to be used for such purpose, the same shall revert to the state upon notice to that effect being given to the said grantee named herein.

IN TESTIMONY WHEREOF, the State of Montana has caused these presents to be executed by the Governor, and to be attested by the Secretary of State, and countersigned by the <sup>COMMISSIONER</sup> ~~Register~~ of State Lands, and the Great Seal of the State, and the Seal of the State Board of Land Commissioners to be hereunto affixed this -----8th-----day of -----APRIL----- A. D. 1931



J. E. BRICKSON  
Governor of the State of Montana

ATTEST:

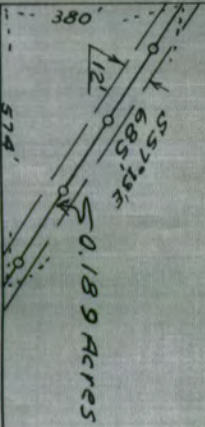
W. F. HARMON  
Secretary of State  
Countersigned by

I. M. BRANDJORD  
Commissioner of State Lands  
& Investments



16  
Sec.

Area Remaining 53.811 Acres



Butte, Mont.

I hereby certify that  
this survey was made under my direction  
and that this plot is true and correct pro-  
traction of the actual survey field notes.

Quind  
Engineer

Subscribed and sworn to before me this 22nd  
day of August, 1930.

Alley  
Notary Public for the

State of Montana

My commission expires Jan. 17th, 1933.



THE MONTANA POWER CO.

MARTINSDALE - TWO DOW

TRANSMISSION & TELEPHONE LINE

CROSSING

SW 1/4 OF THE SE 1/4 OF SEC. 16 T8N, R3E  
SCALE 1" = 400' 11/21/29



No. D-488.

# RIGHT OF WAY DEED

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF MONTANA

To All To Whom These Presents Shall Come:

Know ye that the State of Montana, in consideration of the sum of -----  
 -----Eighty-eight and 00/100 (\$88.00)-----Dollars  
 now paid, grants to the GREAT FALLS POWER COMPANY, -----  
 a corporation, a right of way for a transmission line and telephone line, for the transmission of  
 electric power for general commercial purposes,-----

upon and across state lands, as follows:

Re R/W App'n No. 624: in Section 16, T.8 N., R.13 E., <sup>Wheatland</sup> Meagher County. S<sup>2</sup> 2.25a

5-3-16  
Sch  
7968

SW $\frac{1}{4}$ :- A strip of land Twenty-five (25) feet in width, having 12.5 feet of such width on each side of the center line of survey hereinafter described, and extending over and across from the west side to the east side of the Southwest Quarter (SW $\frac{1}{4}$ ) of Section Sixteen (16), in Township Eight (8) North, of Range Thirteen (13) East of the Principal Meridian of Montana, in Meagher County, containing an area of 1.78 acres, more or less, said center line of survey being particularly described as follows, to-wit:-

Beginning at a point on the west line of said Section 16, which point is distant 627.0 feet south of the quarter section corner on the west line of said Section 16; running thence South 65 degrees and 28 minutes East 828.1 feet; thence South 57 degrees and 13 minutes East 2267.1 feet to a point on the east line of said Southwest Quarter of Section 16, from which point the quarter section corner on the south line of said Section 16 bears South distant 440.0 feet.

SE $\frac{1}{4}$ :- A strip of land Twenty-five (25) feet in width, having 12.5 feet of such width on each side of the center line of survey hereinafter described, and extending over and across from the west side to the south side of the Southeast Quarter (SE $\frac{1}{4}$ ) of said Section Sixteen (16), in township and range aforesaid, containing an area of 0.47 of an acre, more or less, said center line of survey being particularly described as follows, to-wit:-

Beginning at a point on the west line of said SE $\frac{1}{4}$  of Section 16, from which point the quarter section corner on the south line of said Section 16 bears South distant 440.0 feet; running thence South 57 degrees and 13 minutes East a distance of 810.0 feet to a point on the south line of said section 16, from which point the southeast corner of said Section 16 bears easterly distant 1955.0 feet.

THIS GRANT IS MADE SUBJECT TO THE CONDITION, that said strips of land shall not be fenced off from the remainder of the quarter sections or other legal subdivisions of land of which they respectively form a part.-----



RIGHT OF WAY DEED

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF MONTANA

TO THE PUBLIC LANDS COMMISSION

AND TO THE STATE OF MONTANA

IN WITNESS WHEREOF

THE GOVERNOR OF THE STATE OF MONTANA

AND THE SECRETARY OF STATE

AND THE REGISTER OF STATE LANDS

AND THE STATE BOARD OF LAND COMMISSIONERS

AND THE STATE BOARD OF LAND COMMISSIONERS

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It is further Provided that whenever said lands herein granted as a right of way shall cease to be used for such purpose, the same shall revert to the state upon notice to that effect being given to the said grantee named herein.

IN TESTIMONY WHEREOF, the State of Montana has caused these presents to be executed by the Governor, and to be attested by the Secretary of State, and countersigned by the Register of State Lands, and the Great seal of the State, and the Seal of the State Board of Land Commissioners to be hereunto affixed this -----3rd----- day of -----May----- A. D. 1916...

S.V. Stewart,  
Governor of the State of Montana

(Great Seal) ATTEST:

A.M. Alderson,  
Secretary of State

Countersigned by By Copeland C. Burg, Deputy,

(Seal State Board L and Commissioners.)

Sidney Miller,  
Register of State Lands





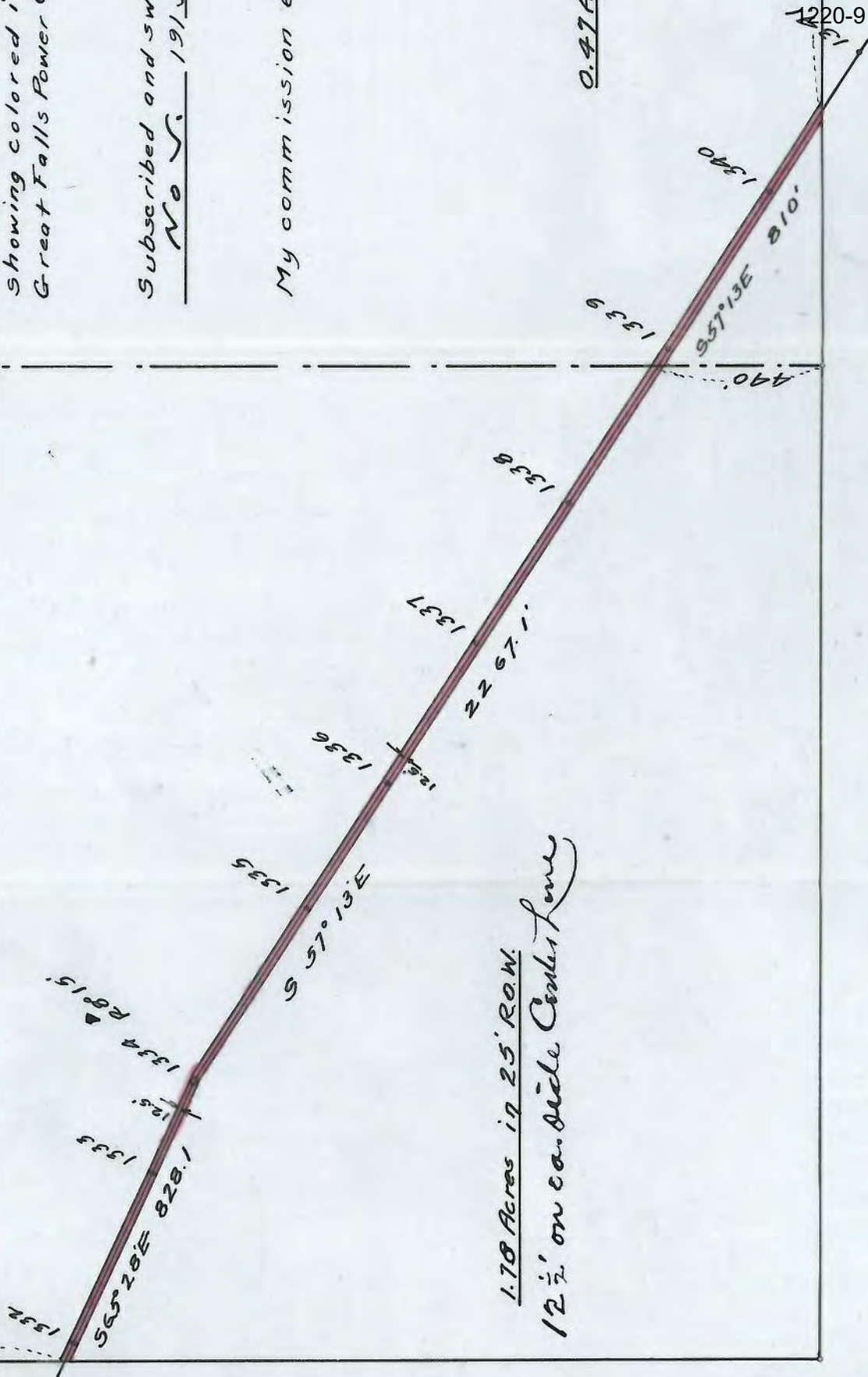
SEC. 16  
T. 8 N., R. 13 E.

George H. Potter be  
the Great Falls Power Co.  
correct copy of the  
in the field; of a  
showing colored in  
Great Falls Power Co.

Subscribed and sworn  
No. 5 1915

My commission exp

0.47 Acres





No. D-7363

# RIGHT OF WAY DEED

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF MONTANA

To All To Whom These Presents Shall Come:

Know ye that the State of Montana, in consideration of the sum of

TWENTY FIVE AND NO/100

Dollars

now paid, grants to THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY

a right of way for a COMMUNICATIONS SYSTEMS

upon and across state lands, as follows:

A tract or strip of land in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 16, Township 8 North, Range 13 East, Principal Meridian Montana, Wheatland County, Montana, more particularly described as follows:

A tract or strip of land 20 feet wide, 10 feet on each side of a centerline described as follows:

Beginning at a point lying East 10.0 feet from the Southwest Corner of Section 16, Township 8 North, Range 13 East; thence North 10.0 feet; thence West 10.0 feet to a point, said ending point lying North 10.0 feet from the Southwest Corner of Section 16, Township 8 North, Range 13 East.

Said easement contains 0.01 of an acre, more or less.

The grantee herein specifically agrees that the said communications systems shall be buried below plow depth so as not to interfere with the use and cultivation of the land. It is also understood and agreed that the State and its lessees and purchasers shall have the right to occupy, use and fully enjoy the surface of the right of way hereby granted, to seed, cultivate and harvest crops thereon; and that the said grantee and its successors and assigns shall pay any damages which may result to the crops, fences and other property or interests of the lessees and purchasers from the State by reason of the laying, maintaining, operating or removing of the said communications systems, and that the amount of such damages if not mutually agreed upon, shall be ascertained and determined by three disinterested persons, one of whom shall be appointed by the lessee or purchaser of the land, his heirs or assigns, one by the grantee herein, its successors or assigns, and the third by the two so appointed. The award of such three persons shall be final and conclusive on both parties; and that the State and its lessees and/or purchasers will not be liable for any damages to the above mentioned communications systems resulting from the occupancy, use and enjoyment of the surface of the right of way hereby granted.

It is also understood and agreed by and between the parties hereto that if any conflict should arise, this easement shall be inferior and subject to any easement heretofore or hereafter granted in the said lands for public highways.

It is further agreed by the grantee that all disturbed area shall be backfilled, graded, and revegetated to the satisfaction of the State. If the first seeding of compatible grass species does not germinate to the satisfaction of the Department, the grantee may be required to reseed in those areas open to erosion and weeds.

The grantee shall comply with the Montana Antiquities Act, Title 22, Chapter 3, Part 4 MCA (Title 81, Chapter 25, R.C.M. 1947).

It is also agreed that the grantee will comply with such rules or regulations as may be hereafter imposed by the State Board of Land Commissioners to insure that the environment will be adequately protected and the public health and safety not be endangered.

It is further Provided that whenever said lands herein granted as a right of way shall cease to be used for such purpose, the same shall revert to the state upon notice to that effect being given to the said grantee named herein.

IN TESTIMONY WHEREOF, the State of Montana has caused these presents to be executed by the Governor, and to be attested by the Secretary of State, and countersigned by the Commissioners of State Lands, and the Great Seal of the State, and the Seal of the State Board of Land Commissioners to be hereunto affixed this ELEVENTH day of DECEMBER A. D. 19<sup>79</sup>.

S/ Thomas L. Judge  
Governor of the State of Montana

ATTEST:

S/ Frank Murray  
Secretary of State

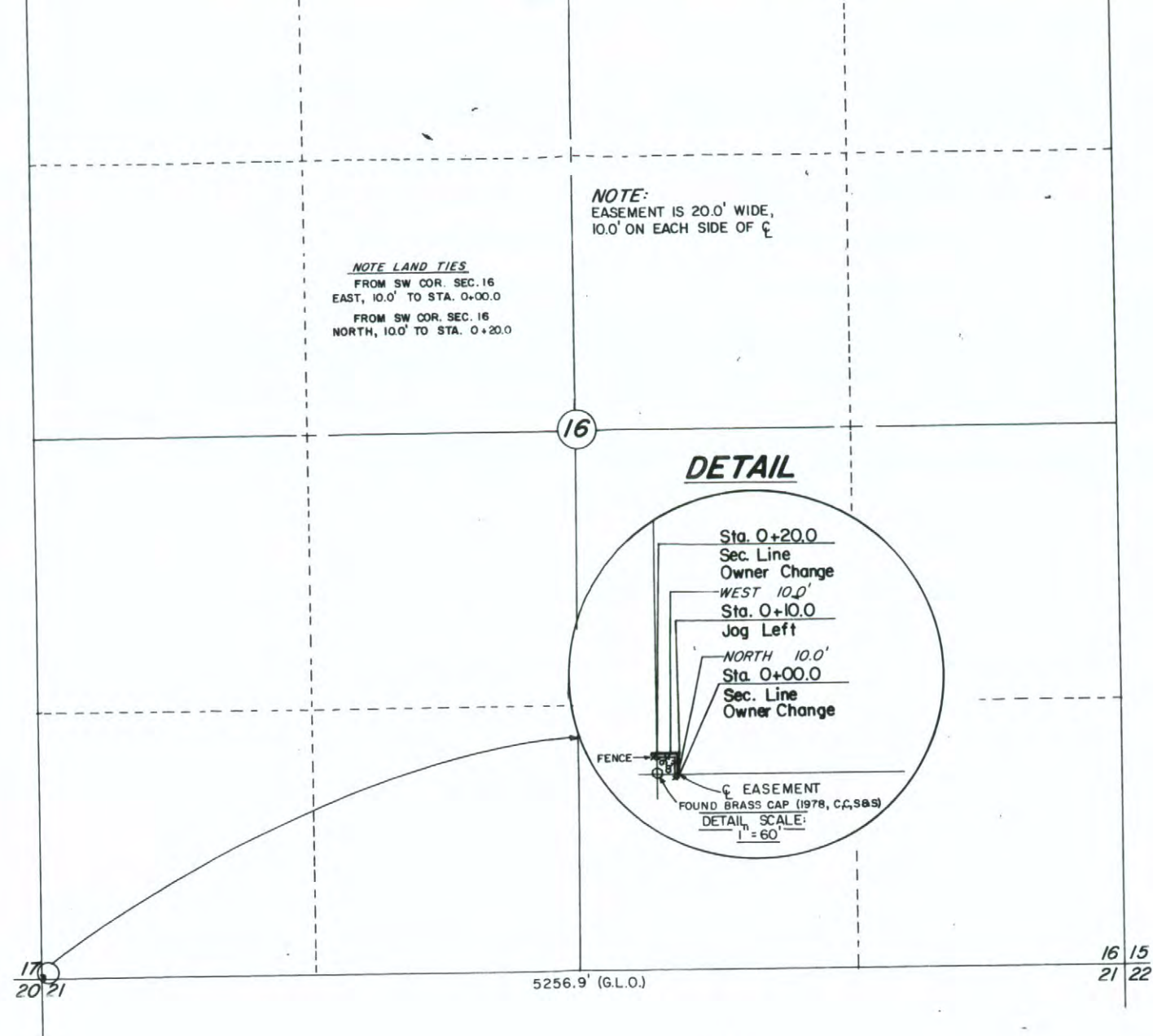
Countersigned by

S/ Leo Berry, Jr.  
Commissioner of State Lands



SCALE: 1" = 600'

<u>OUT</u>	<u>LEFT</u>
.01 A.	39.64 A.





AGRICULTURAL & GRAZING LEASE OF STATE LANDS

This lease is entered into by the State of Montana, Board of Land Commissioners and Department of Natural Resources & Conservation (Department) as lessor, and the person herein named, as the lessee.

Date this lease takes effect: March 01, 2018

Customer #: 147200

Name of Lessee: HAYMAKER RANCH LLC MILLER RANCH

Address or Box No.: C/O BENJAMEN BINGER 1978 KIDD CIR

City/State/Zip: PARK CITY UT 84098

Land Located in Wheatland County.

DESCRIPTION	Sec.	Twp.	Rge.	Acres
LOTS 6,7, E2SW4, SE4	6	8N	13E	310.20
W2	8	8N	13E	320.00
ALL	36	9N	13E	640.00

Total number of leased acres, 1270.2

more or less belonging to

Common Schools

Grant.

Grazing Acres: 1270.2

Agricultural Acres: 0

Unsuitable Acres: 0

Other Acres 0

Hayland Acres 0

CRP Acres 0

Terms of Grazing Use and Rental Rate: Minimum

Terms of Agricultural Use and Rental Rate: Minimum

Purpose for which the land is leased: GRAZING

Term of lease: 10 years

Date of expiration: February 29, 2028

THIS LEASE HAS A CARRYING CAPACITY OF 353 ANIMAL UNIT MONTHS. THE LESSEE SHALL NOT EXCEED SUCH CARRYING CAPACITY. THE ANNUAL GRAZING RENTAL IS BASED ON THIS CARRYING CAPACITY.

The State of Montana, in consideration of the payment of rentals as specified in this lease and the mutual agreements contained in this lease hereby leases the above-described lands to the lessee(s) named above.

The lessee(s) in consideration of the lease of the above-described lands and the mutual agreements contained in this lease hereby agrees to pay the rentals as specified in the lease and to perform all the conditions as specified in this lease, the applicable rules and the applicable statutes.

The parties to this lease mutually agree to the following terms and conditions:

1. ALL GRAZING RENTALS ARE DUE BY MARCH 1 EACH YEAR AND FAILURE TO PAY BY APRIL 1 AUTOMATICALLY CANCELS THE ENTIRE LEASE. A NOTICE OF RENTAL DUE OR ANY OTHER CORRESPONDENCE OR NOTICE FROM THE LESSOR WILL BE SENT TO THE ABOVE ADDRESS ONLY, UNLESS A CHANGE OF ADDRESS IS REQUESTED IN WRITING, SIGNED BY THE LESSEE AND RECORDED BY THE LESSOR.
2. ALL AGRICULTURAL RENTALS ARE DUE ON NOVEMBER 15 OF THE YEAR IN WHICH CROPS OR HAY ARE HARVESTED. IF THE RENTAL IS NOT PAID BY DECEMBER 31 OF THE SAME YEAR, THE ENTIRE LEASE IS CANCELED.
3. CONVERSION OF CLASSIFIED GRAZING LANDS TO CROPLAND WITHOUT PRIOR APPROVAL AS REQUIRED BY LAW SUBJECTS THIS ENTIRE LEASE TO CANCELLATION.
4. SUBLEASING (allowing any other person and/or their livestock to utilize the State land) WITHOUT FILING A FORM AND RECEIVING APPROVAL FROM THE DEPARTMENT MAY SUBJECT THE LEASE TO CANCELLATION. SUBLEASING ON TERMS LESS ADVANTAGEOUS TO THE SUBLESSEE THAN THE TERMS GIVEN BY THE STATE SHALL RESULT IN CANCELLATION.  
(a) SUBLEASING FOR MORE THAN TWO YEARS WILL RESULT IN LOSS OF THE PREFERENCE RIGHT.  
(b) SUBLEASING FOR MORE THAN THREE YEARS WILL RESULT IN THE LEASE BEING CANCELED. (The department's rules and applicable statutes concerning subleasing and pasturing agreements should be consulted.)
5. REPORTS--Lessee is required to submit reports as requested by the Director, including seeding and production reports. Failure to submit such reports may result in cancellation of the lease.
6. CULTIVATION--In the case of lands leased for agricultural purposes, the lessee hereby agrees to seed and cultivate such land in a husbandman-like manner and to strip farm if the land is subject to soil blowing. The lessee further agrees to keep the land clear of weeds and care for it in accordance with approved farm methods as determined by the state. The state shall have the right to impose reasonable restrictions on all state leases as are necessary to adequately protect the land, water, air or improvements in the area. Grain crops are to be delivered free of charge to the nearest elevator to the credit of the state of Montana on or before the fifteenth of November of each year. Other crops, including hay, are to be disposed of at the going market price unless otherwise directed. If a lessee decides to graze the stubble of harvested crops or hayland or grazes unharvested crops for haylands, he must contact the Department regarding payment for such grazing in classified agricultural lands. The Department shall determine the number of animal unit months of grazing available on the land and shall bill the lessee or licensee for the grazing use based on the minimum grazing rental established under Section 77-6-507, MCA or the competitive bid amount, whichever is greater. Failure or refusal to pay said rental or to notify the department of such grazing may be cause for cancellation of the lease.

7. **FEDERAL FARM PROGRAM COMPLIANCE**--If a lessee or licensee has his lease or license canceled or terminated or for any reason is no longer the lessee or licensee, then he shall no longer be entitled to any payment or benefits from any federal farm program. If such a lessee or licensee does receive any such federal payment or benefit in connection with the state lease or license he shall be liable to the state for any amounts received after he is no longer recognized as the lessee or licensee. The lessee or licensee of any state land shall comply with the provisions of the federal farm program when applicable and shall indemnify the state against any loss occasioned by noncompliance with such provisions. In addition to any rentals provided in the lease or license, the state shall receive the same share as it receives for crops of all payments pursuant to any act or acts of the congress of the United States in connection with state lands under lease or license and the crops thereof. The state shall be entitled to such amounts annually for all leases based upon a cropshare, even if the lease states that the rental is based upon a crop share/cash basis, whichever is greater. All such leases shall be considered crop share leases for the purpose of receiving the state's share of the federal farm payments.
8. **IMPROVEMENTS**--The lessee may place a reasonable amount of improvements upon the lands under this lease upon approval of an improvement permit by the Department. A report of proposed improvements, containing such information as the Director may request concerning the cost of the improvements, their suitability for the uses ordinarily made of the land, and their character whether fixed or movable, shall be submitted to the Director before installation thereof on the premises. Failure to obtain approval prior to placement of the improvement may result in such improvements not being recognized by the Department for purposes of reimbursement of such improvements. In addition, placing improvements on state lands without receiving prior approval, may result in cancellation of the lease.
9. **LIENS ON BUILDINGS AND CROPS**--The state shall have a lien upon all buildings, structures, fences and all other improvements, whether movable or not, and also upon all crops growing upon the land for any rentals due the Department.
10. **COMPENSATION FOR IMPROVEMENTS**--(a) If the land under this lease is sold or exchanged to a party other than the present lessee, or is leased to another party while the present lessee owns improvements lawfully remaining thereon, on which the state has no lien for rentals or penalties, as herein provided, and which he desires to sell and dispose of, such purchaser or new lessee shall pay the former lessee the reasonable value of such improvements. If any of the improvements consist of approved breaking (meaning the original plowing of the land) and one year's crop has been raised on the land after the breaking thereof, the compensation for such breaking shall not exceed the sum of two dollars and fifty cents (\$2.50) per acre, and that in case two or more crops have been raised on the land after the breaking thereof, the breaking shall not be considered as an improvement to the land. In case the former lessee and the new lessee or purchaser are unable to agree on the reasonable value of such improvements, such value shall be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee or purchaser and the third by the two arbitrators so appointed. The former lessee must initiate arbitration within 60 days of notification from the Department that there is a new lessee or purchaser. Failure to initiate this process within this time period results in all improvements becoming property of the state. The reasonable compensation that such arbitrators may charge for their services shall be paid in equal shares by the owner of the improvements and the purchaser or new lessee. The value of such improvements as ascertained and fixed shall be binding upon both parties; provided, however, that if either party is dissatisfied with the valuation so fixed he may within ten (10) days appeal from their decision to the Director who shall thereupon cause his agent to examine such improvements and whose decision shall be final. The Director shall charge and collect the actual cost of such reexamination to the owner and new lessee or purchaser in such proportion as in his judgment may be demanded.  
(b) Upon the termination of a lease, the Department may grant a license to the former lessee to remove the movable improvements from the land. Upon authorization, the movable improvements must be removed within 60 days or they become the property of the state unless the department for good cause grants additional time for the removal. The department shall charge the former lessee for the period of time that the improvements remain on the land after the termination of the lease.  
(c) Summer fallowing (necessary cultivation done after the last crop grown) seeding, and growing crops on the land, which have not been harvested prior to March 1 next succeeding the date of sale or at the time of change of lessee, shall be considered as improvements. Their value shall be determined in the same manner as other improvements and shall be taken over by the purchaser or new lessee and paid for by him as other improvements.
11. **ASSIGNMENT OF LEASE**--If all rentals due have been paid and the terms of this lease have not been violated, the lease may be assigned on the forms provided for that purpose by the Director, but no such assignment shall be binding on the state unless the assignment is filed with the Director, approved by him, and the appropriate assignment fees submitted for such assignment. An assignment which is signed by both parties shall be conclusive proof that all payments for improvements have been paid to the assignor by the assignee. The leasehold interest herein may only be transferred to any other party by a properly executed assignment which must be approved by the Director prior to such transfer becoming effective. Until an assignment becomes effective, the Department will consider the lessee listed above to be the lessee for all purposes. There may be no consideration given for the assignment of a lease other than the value of the improvements, if any.
12. **RENEWAL LEASE**--If all rentals due under this lease have been paid, the lessee shall upon making proper application to the Director be entitled to have this lease renewed at any time within thirty (30) days prior to its expiration for an additional period of not exceeding ten years; and if there is no other applicant then offering to lease the land, the lease shall be issued at the minimum rental as determined under statutes then in effect. If there are two or more persons desiring to lease the same tract, the former lessee shall have the preference right to the lease to the extent that he may take the lease at the highest bid made by any other applicant. However, subleasing may cause loss of this renewal right. The department's rules concerning subleasing should be consulted. The lessee desiring to renew the lease must make application to the Department prior to January 28 of the year of expiration. Failure to do so will result in the lease becoming an unleased tract upon expiration, with the loss of the preference right and subject to competitive bidding.
13. **CANCELLATION OF LEASE BY THE STATE**--The Director shall have the power and authority in his discretion to cancel a lease for any of the following causes: For fraud or misrepresentation, or for concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; for using the land for other purposes than those authorized by the lease, for overgrazing or any other misuse of the state lands involved, and for any other cause which in the judgement of the Director makes the cancellation of the lease necessary in order to do justice to all parties concerned, and to protect the interest of the state. Such cancellation shall not entitle the lessee to any refund of rentals paid or exemption from the payment of any rents, penalties or other compensation due the state. Lease cancellation for these causes is subject to appeal as provided in Section 77-6-211, MCA.
14. **LANDS MAY BE SOLD**--The Board of Land Commissioners may in their discretion exchange the lands under this lease for other lands, offer the lands under this lease for sale at any regular public sale of state lands held in the county where the land is situated upon the same terms and in the same manner as land not under lease, subject, however, to the rights of the lessee to compensation for improvements as herein provided; and subject also to the provision that the new owner will not be given possession by the state prior to March 1 next succeeding the date of exchange or sale unless the lease expires prior to that date, except through special agreement with the lessee.
15. **RESERVATION**--The state reserves all rights and interests to the land under this lease other than those specifically granted by this lease. These reservations include but are not limited to the following:  
(a) **MINERAL AND TIMBER RESERVATION**--All coal, oil, gas and other minerals and all deposits of stone, gravel, sand, gems, and other nonminerals valuable for building, mining or other commercial purposes and all timber and trees are excepted from the operation of this lease. The lessee shall not open any mine or quarry or work or dig any of the minerals or nonminerals mentioned above from any mine or any quarry, pit or diggings situated on said land whether such mine, quarry, pit or diggings was open at the date of this lease or not. The lessee shall not cut, sell, remove, use or destroy any such timber dead or alive, or standing or fallen trees without the appropriate permit, license or lease.  
(b) **ADDITIONAL RESERVATIONS**--The state reserves a right-of-way to the United States over the land above-described for ditches, canals, tunnels, telephone and telegraph, and power lines now constructed or to be constructed by the United States Government in furtherance of the reclamation of arid lands. The state also reserves the right of granting rights-of-way on the above-described land for other purposes. The state also reserves to itself and its representatives and other lessees or permittees the right to enter upon the lands embraced by this lease for the purpose of prospecting and exploring for minerals and for the purpose of mining, drilling for, developing and removing such minerals and for carrying on all operations related thereto and for any other management or administrative purposes; it also reserves to itself and its permittees the right to enter upon the said lands for the purpose of cutting and removing timber, wood and other forest products, and for removing gravel, sand, building stone, and other nonminerals. The state reserves the right to grant licenses, permits or leases for any alternative uses on state lands.
16. **NOXIOUS WEEDS AND PESTS**--The lessee agrees, at his own expense and cost, to keep the land free from noxious weeds, and if noxious weeds are present, then chemical application or other appropriate weed control measures must occur in time to prevent seed-set according to state law and to exterminate pests to the extent as required by the Department. In the event the land described in this lease shall be included in a weed control and weed seed extermination district, the lessee shall be required to comply with the provisions of Section 77-6-114, MCA, which provides as follows. "It shall be the duty of the Board in leasing any agricultural state land to provide in such lease, that the lessee of lands so leased lying within the boundaries of any noxious weed control and weed seed extermination district shall assume and pay all assessments and taxes levied by the board of County Commissioners for such district on such state lands, and such assessments and tax levy shall be imposed on such lessee as a personal property tax and shall be collected by the County Treasurer in the same manner as regular personal property taxes are collected." Failure to comply with this provision when directed to do so by the Department may result in cancellation of the entire lease.

17. FIRE PREVENTION AND SUPPRESSION--The lessee assumes all responsibility for carrying on at his own cost and expense all fire prevention and suppression work necessary or required to protect the forage, trees, buildings and structures on the land. The lessee is not responsible for the suppression of or damages resulting from a fire caused by a general recreational user. Except that he or she shall make reasonable efforts to suppress the fire or report it to the proper firefighting authority or both, as circumstances dictate.
18. UNLAWFUL USE OF LANDS OR PREMISES--If any part of the lands or premises under this lease are used or allowed or permitted to be used for any purpose contrary to the laws of this state or the United States. Such unlawful use shall in the discretion of the Board of Land Commissioners constitute sufficient reason for the cancellation of the lease. The lessee shall not utilize or allow to be utilized any state land under the lease for purposes other than the purpose for which it is granted.
19. SURRENDER OF THE PREMISES UPON TERMINATION OF THE LEASE--The lessee shall upon the expiration, cancellation, or termination of this lease peaceably yield up and surrender the possession of the land to the state of Montana or its agents or to subsequent lessees or grantees.
20. INCREASED RENTAL--If the Montana Legislature or the Board of Land Commissioners raises the rentals on state grazing or agriculture lands during the term of this lease, the lessee agrees to pay such increased rental for the years after such increase becomes effective. Also, the state reserves the right to determine the grazing capacity of said lands annually or from time to time as the Director in his discretion shall determine necessary and increase or decrease the rental thereon accordingly. In the event the Director should increase or decrease the carrying capacity of said lands, the lessee agrees to pay an increased or decreased rental based upon the Director's determination, and to adjust livestock numbers accordingly.
21. INDEMNIFICATION--The lessee agrees to save harmless and indemnify the State of Montana for any losses to the state occasioned by the levy of any penalties. Fines, charges or assessments made against the above lands or crops grown upon the lands, by the U.S. Government because of any violation of or noncompliance with, any federal farm program or other acts by the lessee.
22. LAWS AND RULES--The lessee agrees to comply with all applicable laws and rules in effect at the date of this lease, or which may, from time to time, be adopted.
23. MULTIPLE-USE MANAGEMENT--Pursuant to the obligations imposed by law, to administer state lands under a multiple-use management concept, the state reserves the right to dispose of any and all interests in the above-described land, subject, however to such interests granted to the lessee under the terms of this lease. The lessee may not close the land under lease at any time to the public for general recreational use," as defined in A.R.M. 36.25.145, without advanced written permission of the Department. Permission to close lands categorically closed under A.R.M. 36.25.150 is hereby granted and no further permission is required.
24. LEASE WITHDRAWAL--All or any portion of the land under lease may be withdrawn from this lease by the state. The lessee shall be entitled to reasonable compensation for any improvements thereon. The lands may be withdrawn to promote the duties and responsibilities of the Board of Land Commissioners.
25. SPECIAL CONDITIONS--

*Ben Berger*  
Miller Ranch by

IN WITNESS WHEREOF, The State of Montana and the lessee have caused this lease to be executed in duplicate and the Director of the Department of Natural Resources and Conservation, pursuant to the authority granted him by the State Board of Land Commissioners of the State of Montana, has

hereunto set his hand and affixed the seal of the said Board of Land Commissioners this        day of JUL 10 2018, 20      .

*Ben Berger*  
*Ben Berger*  
LESSEE SIGNATURE Haymaker Ranch LLC by

**JOHN E. TUBBS**

DIRECTOR, DEPT OF NATURAL RESOURCES & CONSERVATION

1978 Kidd Circle 7/10/18  
ADDRESS OR BOX NO.

Park City, UT 84098  
CITY STATE ZIP CODE

202-439-9179  
PHONE NUMBER

by: *Amanda Taylor*





AGRICULTURAL & GRAZING LEASE OF STATE LANDS

This lease is entered into by the State of Montana, Board of Land Commissioners and Department of Natural Resources & Conservation (Department) as lessor, and the person herein named, as the lessee.

Date this lease takes effect March 01, 2020

Customer #: **142611**

Name of Lessee: SHEEP VALLEY REINHART TRUST

Address or Box No.: BOX 89

City/State/Zip: HARLOWTON MT 59085

Land Located in Wheatland County.

DESCRIPTION	Sec.	Twp.	Rge.	Acres
ALL	16	8N	13E	640.00

Total number of leased acres, **640**

more or less belonging to **Common Schools**

Grant.

Grazing Acres: **637**

Agricultural Acres: **0**

Unsuitable Acres: **3**

Other Acres **0**

Hayland Acres **0**

CRP Acres **0**

Terms of Grazing Use and Rental Rate: **Minimum**

Terms of Agricultural Use and Rental Rate: **Minimum**

Purpose for which the land is leased: **GRAZING**

Term of lease: **10 years**

Date of expiration: **February 28, 2030**

THIS LEASE HAS A CARRYING CAPACITY OF **152** ANIMAL UNIT MONTHS. THE LESSEE SHALL NOT EXCEED SUCH CARRYING CAPACITY. THE ANNUAL GRAZING RENTAL IS BASED ON THIS CARRYING CAPACITY.

The State of Montana, in consideration of the payment of rentals as specified in this lease and the mutual agreements contained in this lease hereby leases the above-described lands to the lessee(s) named above.

The lessee(s) in consideration of the lease of the above-described lands and the mutual agreements contained in this lease hereby agrees to pay the rentals as specified in the lease and to perform all the conditions as specified in this lease, the applicable rules and the applicable statutes.

The parties to this lease mutually agree to the following terms and conditions:

1. ALL GRAZING RENTALS ARE DUE BY MARCH 1 EACH YEAR AND FAILURE TO PAY BY APRIL 1 AUTOMATICALLY CANCELS THE ENTIRE LEASE. A NOTICE OF RENTAL DUE OR ANY OTHER CORRESPONDENCE OR NOTICE FROM THE LESSOR WILL BE SENT TO THE ABOVE ADDRESS ONLY, UNLESS A CHANGE OF ADDRESS IS REQUESTED IN WRITING, SIGNED BY THE LESSEE AND RECORDED BY THE LESSOR.
2. ALL AGRICULTURAL RENTALS ARE DUE ON NOVEMBER 15 OF THE YEAR IN WHICH CROPS OR HAY ARE HARVESTED. IF THE RENTAL IS NOT PAID BY DECEMBER 31 OF THE SAME YEAR, THE ENTIRE LEASE IS CANCELED.
3. CONVERSION OF CLASSIFIED GRAZING LANDS TO CROPLAND WITHOUT PRIOR APPROVAL AS REQUIRED BY LAW SUBJECTS THIS ENTIRE LEASE TO CANCELLATION.
4. SUBLEASING (allowing any other person and/or their livestock to utilize the State land) WITHOUT FILING A FORM AND RECEIVING APPROVAL FROM THE DEPARTMENT MAY SUBJECT THE LEASE TO CANCELLATION. SUBLEASING ON TERMS LESS ADVANTAGEOUS TO THE SUBLESSEE THAN THE TERMS GIVEN BY THE STATE SHALL RESULT IN CANCELLATION.  
(a) SUBLEASING FOR MORE THAN TWO YEARS WILL RESULT IN LOSS OF THE PREFERENCE RIGHT.  
(b) SUBLEASING FOR MORE THAN THREE YEARS WILL RESULT IN THE LEASE BEING CANCELED. (The department's rules and applicable statutes concerning subleasing and pasturing agreements should be consulted.)
5. REPORTS--Lessee is required to submit reports as requested by the Director, including seeding and production reports. Failure to submit such reports may result in cancellation of the lease.
6. CULTIVATION--In the case of lands leased for agricultural purposes, the lessee hereby agrees to seed and cultivate such land in a husbandman-like manner and to strip farm if the land is subject to soil blowing. The lessee further agrees to keep the land clear of weeds and care for it in accordance with approved farm methods as determined by the state. The state shall have the right to impose reasonable restrictions on all state leases as are necessary to adequately protect the land, water, air or improvements in the area. Grain crops are to be delivered free of charge to the nearest elevator to the credit of the state of Montana on or before the fifteenth of November of each year. Other crops, including hay, are to be disposed of at the going market price unless otherwise directed. If a lessee decides to graze the stubble of harvested crops or hayland or grazes unharvested crops for haylands, he must contact the Department regarding payment for such grazing in classified agricultural lands. The Department shall determine the number of animal unit months of grazing available on the land and shall bill the lessee or licensee for the grazing use based on the minimum grazing rental established under Section 77-6-507, MCA or the competitive bid amount, whichever is greater. Failure or refusal to pay said rental or to notify the department of such grazing may be cause for cancellation of the lease.

7. **FEDERAL FARM PROGRAM COMPLIANCE**--If a lessee or licensee has his lease or license canceled or terminated or for any reason is no longer the lessee or licensee, then he shall no longer be entitled to any payment or benefits from any federal farm program. If such a lessee or licensee does receive any such federal payment or benefit in connection with the state lease or license he shall be liable to the state for any amounts received after he is no longer recognized as the lessee or licensee. The lessee or licensee of any state land shall comply with the provisions of the federal farm program when applicable and shall indemnify the state against any loss occasioned by noncompliance with such provisions. In addition to any rentals provided in the lease or license, the state shall receive the same share as it receives for crops of all payments pursuant to any act or acts of the congress of the United States in connection with state lands under lease or license and the crops thereof. The state shall be entitled to such amounts annually for all leases based upon a cropshare, even if the lease states that the rental is based upon a crop share/cash basis, whichever is greater. All such leases shall be considered crop share leases for the purpose of receiving the state's share of the federal farm payments.
8. **IMPROVEMENTS**--The lessee may place a reasonable amount of improvements upon the lands under this lease upon approval of an improvement permit by the Department. A report of proposed improvements, containing such information as the Director may request concerning the cost of the improvements, their suitability for the uses ordinarily made of the land, and their character whether fixed or movable, shall be submitted to the Director before installation thereof on the premises. Failure to obtain approval prior to placement of the improvement may result in such improvements not being recognized by the Department for purposes of reimbursement of such improvements. In addition, placing improvements on state lands without receiving prior approval, may result in cancellation of the lease.
9. **LIENS ON BUILDINGS AND CROPS**--The state shall have a lien upon all buildings, structures, fences and all other improvements, whether movable or not, and also upon all crops growing upon the land for any rentals due the Department.
10. **COMPENSATION FOR IMPROVEMENTS**--(a) If the land under this lease is sold or exchanged to a party other than the present lessee, or is leased to another party while the present lessee owns improvements lawfully remaining thereon, on which the state has no lien for rentals or penalties, as herein provided, and which he desires to sell and dispose of, such purchaser or new lessee shall pay the former lessee the reasonable value of such improvements. If any of the improvements consist of approved breaking (meaning the original plowing of the land) and one year's crop has been raised on the land after the breaking thereof, the compensation for such breaking shall not exceed the sum of two dollars and fifty cents (\$2.50) per acre, and that in case two or more crops have been raised on the land after the breaking thereof, the breaking shall not be considered as an improvement to the land. In case the former lessee and the new lessee or purchaser are unable to agree on the reasonable value of such improvements, such value shall be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee or purchaser and the third by the two arbitrators so appointed. The former lessee must initiate arbitration within 60 days of notification from the Department that there is a new lessee or purchaser. Failure to initiate this process within this time period results in all improvements becoming property of the state. The reasonable compensation that such arbitrators may charge for their services shall be paid in equal shares by the owner of the improvements and the purchaser or new lessee. The value of such improvements as ascertained and fixed shall be binding upon both parties; provided, however, that if either party is dissatisfied with the valuation so fixed he may within ten (10) days appeal from their decision to the Director who shall thereupon cause his agent to examine such improvements and whose decision shall be final. The Director shall charge and collect the actual cost of such reexamination to the owner and new lessee or purchaser in such proportion as in his judgment may be demanded.  
(b) Upon the termination of a lease, the Department may grant a license to the former lessee to remove the movable improvements from the land. Upon authorization, the movable improvements must be removed within 60 days or they become the property of the state unless the department for good cause grants additional time for the removal. The department shall charge the former lessee for the period of time that the improvements remain on the land after the termination of the lease.  
(c) Summer fallowing (necessary cultivation done after the last crop grown) seeding, and growing crops on the land, which have not been harvested prior to March 1 next succeeding the date of sale or at the time of change of lessee, shall be considered as improvements. Their value shall be determined in the same manner as other improvements and shall be taken over by the purchaser or new lessee and paid for by him as other improvements.
11. **ASSIGNMENT OF LEASE**--If all rentals due have been paid and the terms of this lease have not been violated, the lease may be assigned on the forms provided for that purpose by the Director, but no such assignment shall be binding on the state unless the assignment is filed with the Director, approved by him, and the appropriate assignment fees submitted for such assignment. An assignment which is signed by both parties shall be conclusive proof that all payments for improvements have been paid to the assignor by the assignee. The leasehold interest herein may only be transferred to any other party by a properly executed assignment which must be approved by the Director prior to such transfer becoming effective. Until an assignment becomes effective, the Department will consider the lessee listed above to be the lessee for all purposes. There may be no consideration given for the assignment of a lease other than the value of the improvements, if any.
12. **RENEWAL LEASE**--If all rentals due under this lease have been paid, the lessee shall upon making proper application to the Director be entitled to have this lease renewed at any time within thirty (30) days prior to its expiration for an additional period of not exceeding ten years; and if there is no other applicant then offering to lease the land, the lease shall be issued at the minimum rental as determined under statutes then in effect. If there are two or more persons desiring to lease the same tract, the former lessee shall have the preference right to the lease to the extent that he may take the lease at the highest bid made by any other applicant. However, subleasing may cause loss of this renewal right. The department's rules concerning subleasing should be consulted. The lessee desiring to renew the lease must make application to the Department prior to January 28 of the year of expiration. Failure to do so will result in the lease becoming an unleased tract upon expiration, with the loss of the preference right and subject to competitive bidding.
13. **CANCELLATION OF LEASE BY THE STATE**--The Director shall have the power and authority in his discretion to cancel a lease for any of the following causes: For fraud or misrepresentation, or for concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; for using the land for other purposes than those authorized by the lease, for overgrazing or any other misuse of the state lands involved, and for any other cause which in the judgement of the Director makes the cancellation of the lease necessary in order to do justice to all parties concerned, and to protect the interest of the state. Such cancellation shall not entitle the lessee to any refund of rentals paid or exemption from the payment of any rents, penalties or other compensation due the state. Lease cancellation for these causes is subject to appeal as provided in Section 77-6-211, MCA.
14. **LANDS MAY BE SOLD**--The Board of Land Commissioners may in their discretion exchange the lands under this lease for other lands, offer the lands under this lease for sale at any regular public sale of state lands held in the county where the land is situated upon the same terms and in the same manner as land not under lease, subject, however, to the rights of the lessee to compensation for improvements as herein provided; and subject also to the provision that the new owner will not be given possession by the state prior to March 1 next succeeding the date of exchange or sale unless the lease expires prior to that date, except through special agreement with the lessee.
15. **RESERVATION**--The state reserves all rights and interests to the land under this lease other than those specifically granted by this lease. These reservations include but are not limited to the following:  
(a) **MINERAL AND TIMBER RESERVATION**--All coal, oil, gas and other minerals and all deposits of stone, gravel, sand, gems, and other nonminerals valuable for building, mining or other commercial purposes and all timber and trees are excepted from the operation of this lease. The lessee shall not open any mine or quarry or work or dig any of the minerals or nonminerals mentioned above from any mine or any quarry, pit or diggings situated on said land whether such mine, quarry, pit or diggings was open at the date of this lease or not. The lessee shall not cut, sell, remove, use or destroy any such timber dead or alive, or standing or fallen trees without the appropriate permit, license or lease.  
(b) **ADDITIONAL RESERVATIONS**--The state reserves a right-of-way to the United States over the land above-described for ditches, canals, tunnels, telephone and telegraph, and power lines now constructed or to be constructed by the United States Government in furtherance of the reclamation of arid lands. The state also reserves the right of granting rights-of-way on the above-described land for other purposes. The state also reserves to itself and its representatives and other lessees or permittees the right to enter upon the lands embraced by this lease for the purpose of prospecting and exploring for minerals and for the purpose of mining, drilling for, developing and removing such minerals and for carrying on all operations related thereto and for any other management or administrative purposes; it also reserves to itself and its permittees the right to enter upon the said lands for the purpose of cutting and removing timber, wood and other forest products, and for removing gravel, sand, building stone, and other nonminerals. The state reserves the right to grant licenses, permits or leases for any alternative uses on state lands.
16. **NOXIOUS WEEDS AND PESTS**--The lessee agrees, at his own expense and cost, to keep the land free from noxious weeds, and if noxious weeds are present, then chemical application or other appropriate weed control measures must occur in time to prevent seed-set according to state law and to exterminate pests to the extent as required by the Department. In the event the land described in this lease shall be included in a weed control and weed seed extermination district, the lessee shall be required to comply with the provisions of Section 77-6-114, MCA, which provides as follows. "It shall be the duty of the Board in leasing any agricultural state land to provide in such lease, that the lessee of lands so leased lying within the boundaries of any noxious weed control and weed seed extermination district shall assume and pay all assessments and taxes levied by the board of County Commissioners for such district on such state lands, and such assessments and tax levy shall be imposed on such lessee as a personal property tax and shall be collected by the County Treasurer in the same manner as regular personal property taxes are collected." Failure to comply with this provision when directed to do so by the Department may result in cancellation of the entire lease.

17. FIRE PREVENTION AND SUPPRESSION--The lessee assumes all responsibility for carrying on at his own cost and expense all fire prevention and suppression work necessary or required to protect the forage, trees, buildings and structures on the land. The lessee is not responsible for the suppression of or damages resulting from a fire caused by a general recreational user. except that he or she shall make reasonable efforts to suppress the fire or report it to the proper firefighting authority or both, as circumstances dictate.
18. UNLAWFUL USE OF LANDS OR PREMISES--If any part of the lands or premises under this lease are used or allowed or permitted to be used for any purpose contrary to the laws of this state or the United States. such unlawful use shall in the discretion of the Board of Land Commissioners constitute sufficient reason for the cancellation of the lease. The lessee shall not utilize or allow to be utilized any state land under the lease for purposes other than the purpose for which it is granted.
19. SURRENDER OF THE PREMISES UPON TERMINATION OF THE LEASE--The lessee shall upon the expiration, cancellation, or termination of this lease peaceably yield up and surrender the possession of the land to the state of Montana or its agents or to subsequent lessees or grantees.
20. INCREASED RENTAL--If the Montana Legislature or the Board of Land Commissioners raises the rentals on state grazing or agriculture lands during the term of this lease, the lessee agrees to pay such increased rental for the years after such increase becomes effective. Also, the state reserves the right to determine the grazing capacity of said lands annually or from time to time as the Director in his discretion shall determine necessary and increase or decrease the rental thereon accordingly. In the event the Director should increase or decrease the carrying capacity of said lands, the lessee agrees to pay an increased or decreased rental based upon the Director's determination, and to adjust livestock numbers accordingly.
21. INDEMNIFICATION--The lessee agrees to save harmless and indemnify the State of Montana for any losses to the state occasioned by the levy of any penalties, fines, charges or assessments made against the above lands or crops grown upon the lands, by the U.S. Government because of any violation of or noncompliance with, any federal farm program or other acts by the lessee.
22. LAWS AND RULES--The lessee agrees to comply with all applicable laws and rules in effect at the date of this lease, or which may, from time to time, be adopted.
23. MULTIPLE-USE MANAGEMENT--Pursuant to the obligations imposed by law, to administer state lands under a multiple-use management concept, the state reserves the right to dispose of any and all interests in the above-described land, subject, however to such interests granted to the lessee under the terms of this lease. The lessee may not close the land under lease at any time to the public for general recreational use, as defined in A.R.M. 36.25.145, without advanced written permission of the Department. Permission to close lands categorically closed under A.R.M. 36.25.150 is hereby granted and no further permission is required.
24. LEASE WITHDRAWAL--All or any portion of the land under lease may be withdrawn from this lease by the state. The lessee shall be entitled to reasonable compensation for any improvements thereon. The lands may be withdrawn to promote the duties and responsibilities of the Board of Land Commissioners.
25. SPECIAL CONDITIONS--

IN WITNESS WHEREOF, The State of Montana and the lessee have caused this lease to be executed in duplicate and the Director of the Department of Natural Resources and Conservation, pursuant to the authority granted him by the State Board of Land Commissioners of the State of Montana, has hereunto set his hand and affixed the seal of the said Board of Land Commissioners this APR 28 2020, 2020.

Sheep Valley Land Trust  
Ranald W. Sundart  
 LESSEE SIGNATURE

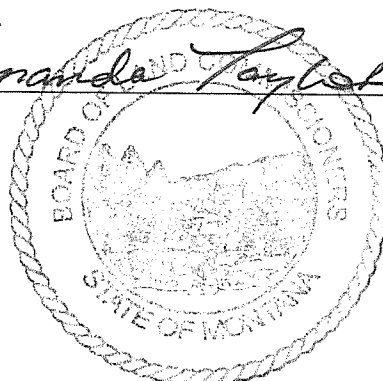
**JOHN E. TUBBS**  
 DIRECTOR, DEPT OF NATURAL RESOURCES & CONSERVATION

Box 89 4/28/2020  
 ADDRESS OR BOX NO. AT

by: Amanda Taylor

Hardtown Mont. 59085  
 CITY STATE ZIP CODE

(406) 632-5735 or 930-2037  
 PHONE NUMBER





AGRICULTURAL & GRAZING LEASE OF STATE LANDS

This lease is entered into by the State of Montana, Board of Land Commissioners and Department of Natural Resources & Conservation (Department) as lessor, and the person herein named, as the lessee.

Date this lease takes effect: March 01, 2018 Customer #: 147200

Name of Lessee: HAYMAKER RANCH LLC MILLER RANCH

Address or Box No.: C/O BENJAMEN BINGER 1978 KIDD CIR

City/State/Zip: PARK CITY UT 84098

Land Located in Wheatland County.

DESCRIPTION	Sec.	Twp.	Rge.	Acres
ALL	36	9N	12E	640.00

Total number of leased acres, 640 more or less belonging to Common Schools Grant.

Grazing Acres: 638 Agricultural Acres: 0 Unsuitable Acres: 2  
Other Acres 0 Hayland Acres 0 CRP Acres 0

Terms of Grazing Use and Rental Rate: Minimum

Terms of Agricultural Use and Rental Rate: Minimum

Purpose for which the land is leased: GRAZING

Term of lease: 10 years Date of expiration: February 29, 2028

THIS LEASE HAS A CARRYING CAPACITY OF 156 ANIMAL UNIT MONTHS. THE LESSEE SHALL NOT EXCEED SUCH CARRYING CAPACITY. THE ANNUAL GRAZING RENTAL IS BASED ON THIS CARRYING CAPACITY.

The State of Montana, in consideration of the payment of rentals as specified in this lease and the mutual agreements contained in this lease hereby leases the above-described lands to the lessee(s) named above.

The lessee(s) in consideration of the lease of the above-described lands and the mutual agreements contained in this lease hereby agrees to pay the rentals as specified in the lease and to perform all the conditions as specified in this lease, the applicable rules and the applicable statutes.

The parties to this lease mutually agree to the following terms and conditions:

- ALL GRAZING RENTALS ARE DUE BY MARCH 1 EACH YEAR AND FAILURE TO PAY BY APRIL 1 AUTOMATICALLY CANCELS THE ENTIRE LEASE. A NOTICE OF RENTAL DUE OR ANY OTHER CORRESPONDENCE OR NOTICE FROM THE LESSOR WILL BE SENT TO THE ABOVE ADDRESS ONLY, UNLESS A CHANGE OF ADDRESS IS REQUESTED IN WRITING, SIGNED BY THE LESSEE AND RECORDED BY THE LESSOR.
- ALL AGRICULTURAL RENTALS ARE DUE ON NOVEMBER 15 OF THE YEAR IN WHICH CROPS OR HAY ARE HARVESTED. IF THE RENTAL IS NOT PAID BY DECEMBER 31 OF THE SAME YEAR, THE ENTIRE LEASE IS CANCELED.
- CONVERSION OF CLASSIFIED GRAZING LANDS TO CROPLAND WITHOUT PRIOR APPROVAL AS REQUIRED BY LAW SUBJECTS THIS ENTIRE LEASE TO CANCELLATION.
- SUBLEASING (allowing any other person and/or their livestock to utilize the State land) WITHOUT FILING A FORM AND RECEIVING APPROVAL FROM THE DEPARTMENT MAY SUBJECT THE LEASE TO CANCELLATION. SUBLEASING ON TERMS LESS ADVANTAGEOUS TO THE SUBLESSEE THAN THE TERMS GIVEN BY THE STATE SHALL RESULT IN CANCELLATION.  
(a) SUBLEASING FOR MORE THAN TWO YEARS WILL RESULT IN LOSS OF THE PREFERENCE RIGHT.  
(b) SUBLEASING FOR MORE THAN THREE YEARS WILL RESULT IN THE LEASE BEING CANCELED. (The department's rules and applicable statutes concerning subleasing and pasturing agreements should be consulted.)
- REPORTS--Lessee is required to submit reports as requested by the Director, including seeding and production reports. Failure to submit such reports may result in cancellation of the lease.
- CULTIVATION--In the case of lands leased for agricultural purposes, the lessee hereby agrees to seed and cultivate such land in a husbandman-like manner and to strip farm if the land is subject to soil blowing. The lessee further agrees to keep the land clear of weeds and care for it in accordance with approved farm methods as determined by the state. The state shall have the right to impose reasonable restrictions on all state leases as are necessary to adequately protect the land, water, air or improvements in the area. Grain crops are to be delivered free of charge to the nearest elevator to the credit of the state of Montana on or before the fifteenth of November of each year. Other crops, including hay, are to be disposed of at the going market price unless otherwise directed. If a lessee decides to graze the stubble of harvested crops or hayland or grazes unharvested crops for haylands, he must contact the Department regarding payment for such grazing in classified agricultural lands. The Department shall determine the number of animal unit months of grazing available on the land and shall bill the lessee or licensee for the grazing use based on the minimum grazing rental established under Section 77-6-507, MCA or the competitive bid amount, whichever is greater. Failure or refusal to pay said rental or to notify the department of such grazing may be cause for cancellation of the lease.

7. **FEDERAL FARM PROGRAM COMPLIANCE**--If a lessee or licensee has his lease or license canceled or terminated or for any reason is no longer the lessee or licensee, then he shall no longer be entitled to any payment or benefits from any federal farm program. If such a lessee or licensee does receive any such federal payment or benefit in connection with the state lease or license he shall be liable to the state for any amounts received after he is no longer recognized as the lessee or licensee. The lessee or licensee of any state land shall comply with the provisions of the federal farm program when applicable and shall indemnify the state against any loss occasioned by noncompliance with such provisions. In addition to any rentals provided in the lease or license, the state shall receive the same share as it receives for crops of all payments pursuant to any act or acts of the congress of the United States in connection with state lands under lease or license and the crops thereof. The state shall be entitled to such amounts annually for all leases based upon a cropshare, even if the lease states that the rental is based upon a crop share/cash basis, whichever is greater. All such leases shall be considered crop share leases for the purpose of receiving the state's share of the federal farm payments.
8. **IMPROVEMENTS**--The lessee may place a reasonable amount of improvements upon the lands under this lease upon approval of an improvement permit by the Department. A report of proposed improvements, containing such information as the Director may request concerning the cost of the improvements, their suitability for the uses ordinarily made of the land, and their character whether fixed or movable, shall be submitted to the Director before installation thereof on the premises. Failure to obtain approval prior to placement of the improvement may result in such improvements not being recognized by the Department for purposes of reimbursement of such improvements. In addition, placing improvements on state lands without receiving prior approval, may result in cancellation of the lease.
9. **LIENS ON BUILDINGS AND CROPS**--The state shall have a lien upon all buildings, structures, fences and all other improvements, whether movable or not, and also upon all crops growing upon the land for any rentals due the Department.
10. **COMPENSATION FOR IMPROVEMENTS**--(a) If the land under this lease is sold or exchanged to a party other than the present lessee, or is leased to another party while the present lessee owns improvements lawfully remaining thereon, on which the state has no lien for rentals or penalties, as herein provided, and which he desires to sell and dispose of, such purchaser or new lessee shall pay the former lessee the reasonable value of such improvements. If any of the improvements consist of approved breaking (meaning the original plowing of the land) and one year's crop has been raised on the land after the breaking thereof, the compensation for such breaking shall not exceed the sum of two dollars and fifty cents (\$2.50) per acre, and that in case two or more crops have been raised on the land after the breaking thereof, the breaking shall not be considered as an improvement to the land. In case the former lessee and the new lessee or purchaser are unable to agree on the reasonable value of such improvements, such value shall be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee or purchaser and the third by the two arbitrators so appointed. The former lessee must initiate arbitration within 60 days of notification from the Department that there is a new lessee or purchaser. Failure to initiate this process within this time period results in all improvements becoming property of the state. The reasonable compensation that such arbitrators may charge for their services shall be paid in equal shares by the owner of the improvements and the purchaser or new lessee. The value of such improvements as ascertained and fixed shall be binding upon both parties; provided, however, that if either party is dissatisfied with the valuation so fixed he may within ten (10) days appeal from their decision to the Director who shall thereupon cause his agent to examine such improvements and whose decision shall be final. The Director shall charge and collect the actual cost of such reexamination to the owner and new lessee or purchaser in such proportion as in his judgment may be demanded.  
(b) Upon the termination of a lease, the Department may grant a license to the former lessee to remove the movable improvements from the land. Upon authorization, the movable improvements must be removed within 60 days or they become the property of the state unless the department for good cause grants additional time for the removal. The department shall charge the former lessee for the period of time that the improvements remain on the land after the termination of the lease.  
(c) Summer fallowing (necessary cultivation done after the last crop grown) seeding, and growing crops on the land, which have not been harvested prior to March 1 next succeeding the date of sale or at the time of change of lessee, shall be considered as improvements. Their value shall be determined in the same manner as other improvements and shall be taken over by the purchaser or new lessee and paid for by him as other improvements.
11. **ASSIGNMENT OF LEASE**--If all rentals due have been paid and the terms of this lease have not been violated, the lease may be assigned on the forms provided for that purpose by the Director, but no such assignment shall be binding on the state unless the assignment is filed with the Director, approved by him, and the appropriate assignment fees submitted for such assignment. An assignment which is signed by both parties shall be conclusive proof that all payments for improvements have been paid to the assignor by the assignee. The leasehold interest herein may only be transferred to any other party by a properly executed assignment which must be approved by the Director prior to such transfer becoming effective. Until an assignment becomes effective, the Department will consider the lessee listed above to be the lessee for all purposes. There may be no consideration given for the assignment of a lease other than the value of the improvements, if any.
12. **RENEWAL LEASE**--If all rentals due under this lease have been paid, the lessee shall upon making proper application to the Director be entitled to have this lease renewed at any time within thirty (30) days prior to its expiration for an additional period of not exceeding ten years; and if there is no other applicant then offering to lease the land, the lease shall be issued at the minimum rental as determined under statutes then in effect. If there are two or more persons desiring to lease the same tract, the former lessee shall have the preference right to the lease to the extent that he may take the lease at the highest bid made by any other applicant. However, subleasing may cause loss of this renewal right. The department's rules concerning subleasing should be consulted. The lessee desiring to renew the lease must make application to the Department prior to January 28 of the year of expiration. Failure to do so will result in the lease becoming an unleased tract upon expiration, with the loss of the preference right and subject to competitive bidding.
13. **CANCELLATION OF LEASE BY THE STATE**--The Director shall have the power and authority in his discretion to cancel a lease for any of the following causes: For fraud or misrepresentation, or for concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; for using the land for other purposes than those authorized by the lease, for overgrazing or any other misuse of the state lands involved, and for any other cause which in the judgement of the Director makes the cancellation of the lease necessary in order to do justice to all parties concerned, and to protect the interest of the state. Such cancellation shall not entitle the lessee to any refund of rentals paid or exemption from the payment of any rents, penalties or other compensation due the state. Lease cancellation for these causes is subject to appeal as provided in Section 77-6-211, MCA.
14. **LANDS MAY BE SOLD**--The Board of Land Commissioners may in their discretion exchange the lands under this lease for other lands, offer the lands under this lease for sale at any regular public sale of state lands held in the county where the land is situated upon the same terms and in the same manner as land not under lease, subject, however, to the rights of the lessee to compensation for improvements as herein provided; and subject also to the provision that the new owner will not be given possession by the state prior to March 1 next succeeding the date of exchange or sale unless the lease expires prior to that date, except through special agreement with the lessee.
15. **RESERVATION**--The state reserves all rights and interests to the land under this lease other than those specifically granted by this lease. These reservations include but are not limited to the following:  
(a) **MINERAL AND TIMBER RESERVATION**--All coal, oil, gas and other minerals and all deposits of stone, gravel, sand, gems, and other nonminerals valuable for building, mining or other commercial purposes and all timber and trees are excepted from the operation of this lease. The lessee shall not open any mine or quarry or work or dig any of the minerals or nonminerals mentioned above from any mine or any quarry, pit or diggings situated on said land whether such mine, quarry, pit or diggings was open at the date of this lease or not. The lessee shall not cut, sell, remove, use or destroy any such timber dead or alive, or standing or fallen trees without the appropriate permit, license or lease.  
(b) **ADDITIONAL RESERVATIONS**--The state reserves a right-of-way to the United States over the land above-described for ditches, canals, tunnels, telephone and telegraph, and power lines now constructed or to be constructed by the United States Government in furtherance of the reclamation of arid lands. The state also reserves the right of granting rights-of-way on the above-described land for other purposes. The state also reserves to itself and its representatives and other lessees or permittees the right to enter upon the lands embraced by this lease for the purpose of prospecting and exploring for minerals and for the purpose of mining, drilling for, developing and removing such minerals and for carrying on all operations related thereto and for any other management or administrative purposes; it also reserves to itself and its permittees the right to enter upon the said lands for the purpose of cutting and removing timber, wood and other forest products, and for removing gravel, sand, building stone, and other nonminerals. The state reserves the right to grant licenses, permits or leases for any alternative uses on state lands.
16. **NOXIOUS WEEDS AND PESTS**--The lessee agrees, at his own expense and cost, to keep the land free from noxious weeds, and if noxious weeds are present, then chemical application or other appropriate weed control measures must occur in time to prevent seed-set according to state law and to exterminate pests to the extent as required by the Department. In the event the land described in this lease shall be included in a weed control and weed seed extermination district, the lessee shall be required to comply with the provisions of Section 77-6-114, MCA, which provides as follows. "It shall be the duty of the Board in leasing any agricultural state land to provide in such lease, that the lessee of lands so leased lying within the boundaries of any noxious weed control and weed seed extermination district shall assume and pay all assessments and taxes levied by the board of County Commissioners for such district on such state lands, and such assessments and tax levy shall be imposed on such lessee as a personal property tax and shall be collected by the County Treasurer in the same manner as regular personal property taxes are collected." Failure to comply with this provision when directed to do so by the Department may result in cancellation of the entire lease.

17. FIRE PREVENTION AND SUPPRESSION--The lessee assumes all responsibility for carrying on at his own cost and expense all fire prevention and suppression work necessary or required to protect the forage, trees, buildings and structures on the land. The lessee is not responsible for the suppression of or damages resulting from a fire caused by a general recreational user. Except that he or she shall make reasonable efforts to suppress the fire or report it to the proper firefighting authority or both, as circumstances dictate.
18. UNLAWFUL USE OF LANDS OR PREMISES--If any part of the lands or premises under this lease are used or allowed or permitted to be used for any purpose contrary to the laws of this state or the United States. Such unlawful use shall in the discretion of the Board of Land Commissioners constitute sufficient reason for the cancellation of the lease. The lessee shall not utilize or allow to be utilized any state land under the lease for purposes other than the purpose for which it is granted.
19. SURRENDER OF THE PREMISES UPON TERMINATION OF THE LEASE--The lessee shall upon the expiration, cancellation, or termination of this lease peaceably yield up and surrender the possession of the land to the state of Montana or its agents or to subsequent lessees or grantees.
20. INCREASED RENTAL--If the Montana Legislature or the Board of Land Commissioners raises the rentals on state grazing or agriculture lands during the term of this lease, the lessee agrees to pay such increased rental for the years after such increase becomes effective. Also, the state reserves the right to determine the grazing capacity of said lands annually or from time to time as the Director in his discretion shall determine necessary and increase or decrease the rental thereon accordingly. In the event the Director should increase or decrease the carrying capacity of said lands, the lessee agrees to pay an increased or decreased rental based upon the Director's determination, and to adjust livestock numbers accordingly.
21. INDEMNIFICATION--The lessee agrees to save harmless and indemnify the State of Montana for any losses to the state occasioned by the levy of any penalties. Fines, charges or assessments made against the above lands or crops grown upon the lands, by the U.S. Government because of any violation of or noncompliance with, any federal farm program or other acts by the lessee.
22. LAWS AND RULES--The lessee agrees to comply with all applicable laws and rules in effect at the date of this lease, or which may, from time to time, be adopted.
23. MULTIPLE-USE MANAGEMENT--Pursuant to the obligations imposed by law, to administer state lands under a multiple-use management concept, the state reserves the right to dispose of any and all interests in the above-described land, subject, however to such interests granted to the lessee under the terms of this lease. The lessee may not close the land under lease at any time to the public for general recreational use," as defined in A.R.M. 36.25.145, without advanced written permission of the Department. Permission to close lands categorically closed under A.R.M. 36.25.150 is hereby granted and no further permission is required.
24. LEASE WITHDRAWAL--All or any portion of the land under lease may be withdrawn from this lease by the state. The lessee shall be entitled to reasonable compensation for any improvements thereon. The lands may be withdrawn to promote the duties and responsibilities of the Board of Land Commissioners.
25. SPECIAL CONDITIONS--

David M. Miller  
Miller Ranch by

IN WITNESS WHEREOF, The State of Montana and the lessee have caused this lease to be executed in duplicate and the Director of the Department of Natural Resources and Conservation, pursuant to the authority granted him by the State Board of Land Commissioners of the State of Montana, has hereunto set his hand and affixed the seal of the said Board of Land Commissioners this                      day of JUL 10 2018, 20                    .

Benjamin M. Berger  
LESSEE SIGNATURE Haymaker Ranch LLC by

**JOHN E. TUBBS**

DIRECTOR, DEPT OF NATURAL RESOURCES & CONSERVATION

1978 Kidd Circle 7/10/18  
ADDRESS OR BOX NO.

by: Amanda Taylor

Park City UT 84098  
CITY STATE ZIP CODE

202-439-9179  
PHONE NUMBER





MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION  
SPECIAL RECREATIONAL USE LICENSE FOR OUTFITTING

DS-RU2  
2/2017

Receipt Number

License No.: NELO-17-005

LWS2056717

This license is granted by the State of Montana, Department of Natural Resources and Conservation (hereinafter "Department") as licensor, and the person herein named, as the licensee.

Licensee Name: RICHARD A SCHNEIDER      Business Name: LIVING THE DREAM OUTDOORS  
Address: 130 HIGHWAY 323, PO BOX 456  
City/State/Zip: EKALAKA, MT 59234

Description of Licensed Lands:

DESCRIPTION	SEC.	TWP.	RGE.	ACRES	COUNTY
ALL	36	9N	12E	640.00	Wheatland
ALL	32	9N	12E	640.00	Wheatland
LOTS 1_2_3_4_ E2W2_E2	30	9N	12E	640.35	Wheatland
S2NW4_S2SE4_SW4	28	9N	12E	320.00	Wheatland
W2_N2NE4_NW4SE4_S2SE4	20	9N	12E	520.00	Wheatland

Total Acres Permitted: 5,800.35

License Term: From 04/01/2020 through 02/28/2021

Type of License: ☐ Exclusive ☒ Non-Exclusive

Purpose for which the land is licensed:

☒ Hunting Only ☐ Fishing Only ☐ Hunting & Fishing

Authorized Annual Period(s) of Use:

Hunting: 04/01/2020 through 12/31/2020  
Fishing: through

Overnight Use Permitted: ☐ Yes ☒ No

ANNUAL LICENSE FEE: \$ 1,160.00

Note: Except for those licenses issued through competitive bidding, the license fee may be reviewed annually by the Department throughout the term of the license and may be adjusted as necessary to ensure the rental represents fair market value for the use(s) herein authorized. Any revision to the Annual License Fee by the Department shall be applicable for the next succeeding season of use.

TERMS AND CONDITIONS

- This license is issued subject to the licensee's observance of Department's administrative rules and Montana State statutes pertaining to recreational use.
- This license is non-transferable and may only be used by the licensee for the purpose for which it is issued and is only valid for the lands described above. For the purpose of this license:
  - Only the licensee can book clients for trips that access the above-described lands.
  - No other Licensed Outfitter or Guide may be sublicensed under this agreement.
  - All fees collected from clients must be directly assignable to the licensee or their business listed above.
- Pursuant to 77-1-801 and 77-1-815, MCA, outfitters, licensed guides, and all clients must have in their possession a valid State Land Recreational License or Conservation License while engaged in general recreational use on state trust lands. In addition, outfitters and licensed guides shall have in their possession a valid Special Recreational Use License for Outfitting (SRUL) or SRUL identification card while conducting outfitting activities on state land. Copies or proof of possession of this/these license(s) shall be presented to Department of Natural Resources and Conservation employees or to authorized law enforcement personnel upon request.
- ROAD USE RESTRICTIONS: Road use upon state land is restricted to existing public roads and to roads that have been designated open or to other roads specifically authorized for use by the Department under the terms and subject to the conditions of this license. Off-road use and use of non-designated or non-approved roads is strictly prohibited. Such designation or approval applies only to that portion of the road which is located on state land and does not grant or imply use of any portion of the road which is not located on state land.
- The licensee accepts full responsibility for all fires that may result from this use and shall take all reasonable precautions to prevent and suppress fires.
- The licensee is responsible for all resource damage that occurs from this use and is responsible for any costs to repair such damage.
- Littering is prohibited.
- Pursuant to 77-1-804, MCA, the Department may assess a civil penalty of up to \$1,000 for each day of violation of the rules authorizing and governing the recreational use of state lands, including, 36.25.162(7), ARM, which provides that "[t]he holder of a special recreational use license must comply with all provisions of that license."
- In the event that the Board of Land Commissioners exchange or sell any of the lands included in this License, the Department reserves the right to terminate the permission hereby granted by giving the licensee no less than thirty (30) days written notice of such termination.
- Licensee will not cut or remove, or allow to be cut or removed, any timber from the licensed lands without permission from the Department.
- All personal property shall be removed from the licensed lands upon termination or expiration of this license. Any property remaining upon termination or expiration will become the property of the State.

**LICENSE NO.: NELO-17-005**  
**Attachment A**

[illegible]



12. The licensee shall not disturb or remove any cultural, historical or paleontological properties on these lands.
13. The licensee shall be responsible for controlling any noxious weeds introduced by licensee's activity on state-owned land. The Department Land Office that has jurisdiction for that locale must approve the licensee's method of control. The licensee shall comply with the Montana County Noxious Weed Management Act, Title 7, Chapter 22, Part 21, MCA. Only certified weed seed free hay may be used on state land.
14. The licensee will take all reasonable precautions to prevent or minimize damage to natural (i.e. vegetation, soil, water) resources within the areas of this License. Upon cancellation of this License by either party to this agreement, or upon final expiration of the agreement, the licensee shall reclaim any disturbed areas to the specifications of the Department.
15. Issuance of a Special Recreational Use License for Outfitting, including an exclusive license, does not prohibit general recreational use of state trust lands. For all licenses, including exclusive licenses, the Department reserves the right to issue other special recreational use licenses for different uses on the same land.
16. The licensee shall notify all employees and clients that the State of Montana assumes no liability regarding the use of these lands. The licensee agrees to protect, defend, indemnify and save harmless the State of Montana, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, liabilities, demands, causes of action, judgments, penalties, fines, and losses, including all costs of defense and reasonable attorney fees, arising in favor of or asserted by licensee, licensee's employees and agents, or third parties on account of property damage, personal injury, bodily injury, death, violation of or non-compliance with any laws, regulations, rules, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of, in connection with, or on account of this license, any act or omission of licensee, or any act or omission of the State of Montana, its officers, agents, employees, or subcontractors. Licensee waives all claims, demands, causes of action, and recourse against the State, including claims of contribution or indemnity, arising in favor of Licensee on account of property damage, personal injury, bodily injury, death, violation of or non-compliance with any laws, regulations, or rules, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with, or on account of this License, any act or omission of Licensee, or any act or omission of Licensee's officers, agents, employees, or subcontractors. The licensee further agrees that they will be responsible for any damages to the surface lessee, licensee or permittee's property or improvements that may be caused during the use of these lands.
17. Department personnel, FWP Game Wardens, and other enforcement personnel acting as DNRC agents, shall have at all times the right to enter into and upon the licensed lands.
18. The licensee shall be required to obtain and maintain general liability insurance with a minimum coverage requirement of \$300,000 per occurrence. The policies and certificate of insurance shall name the State of Montana and the Department of Natural Resources and Conservation as co-insured. No use pursuant to this license is allowed until a copy of the Certificate of Liability Insurance has been submitted to the Department.
19. Access to state land is not implied, guaranteed or authorized by issuance of this license. Legal right of access through, or use of, private, federal, or other lands must be secured by, and is the sole responsibility of, the licensee.
20. The posting or signing of state land by the licensee is strictly prohibited unless said posting or signing is specified as a condition of this license.
21. The licensee may not alter or impair the use of any property that would disrupt or conflict with other legitimate activities of the lessee or other licensees.
22. The application submitted to the Department for the issuance of this license is hereby made a part of this license and is enforceable as a term and condition. To the extent that the terms of the application and this license differ, this license will control.
23. **TERMINATION.** The Department reserves the right to terminate/cancel the permission granted by this license, or to withdraw any portion of the lands licensed herein, at any time, by giving licensee no less than ten (10) days written notice of such termination/cancellation, except that the Department may terminate/cancel this license at any time for any of the following causes:
  - failure to pay the annual License fee;
  - misrepresentation, fraud, or concealment of fact relating to the issuance of this license which, if known, would have had an effect on the issuance of this license;
  - a violation of any provision, limit, or term and condition of this license, including any special conditions/stipulations;
  - use of the licensed lands for purposes other than those herein authorized or any other misuse or abuse of the licensed lands;
  - enrollment of the licensed lands in a Block Management Area (BMA) if the Department determines that outfitting is not compatible with the rules, regulations or public use of the BMA;
  - for any other reason which in the judgment of the Department is necessary for the protection of the best interests of the State, as that term is defined in 36.25.102, ARM.

Termination/cancellation of this license, or withdrawal of the licensed lands for reasons stated in this section, except for enrollment in a BMA, will not entitle the licensee to any refund of or exemption in the payment of the license fee.

24. Special Conditions/Stipulations -

\* Sec 16, T6N, R20E - Access road above rimrocks crosses deeded land; there is no road use allowed.

RECEIVED

MAY 28 2020

DNRC NELO

DATED THIS 7<sup>TH</sup> DAY OF APRIL, 2020

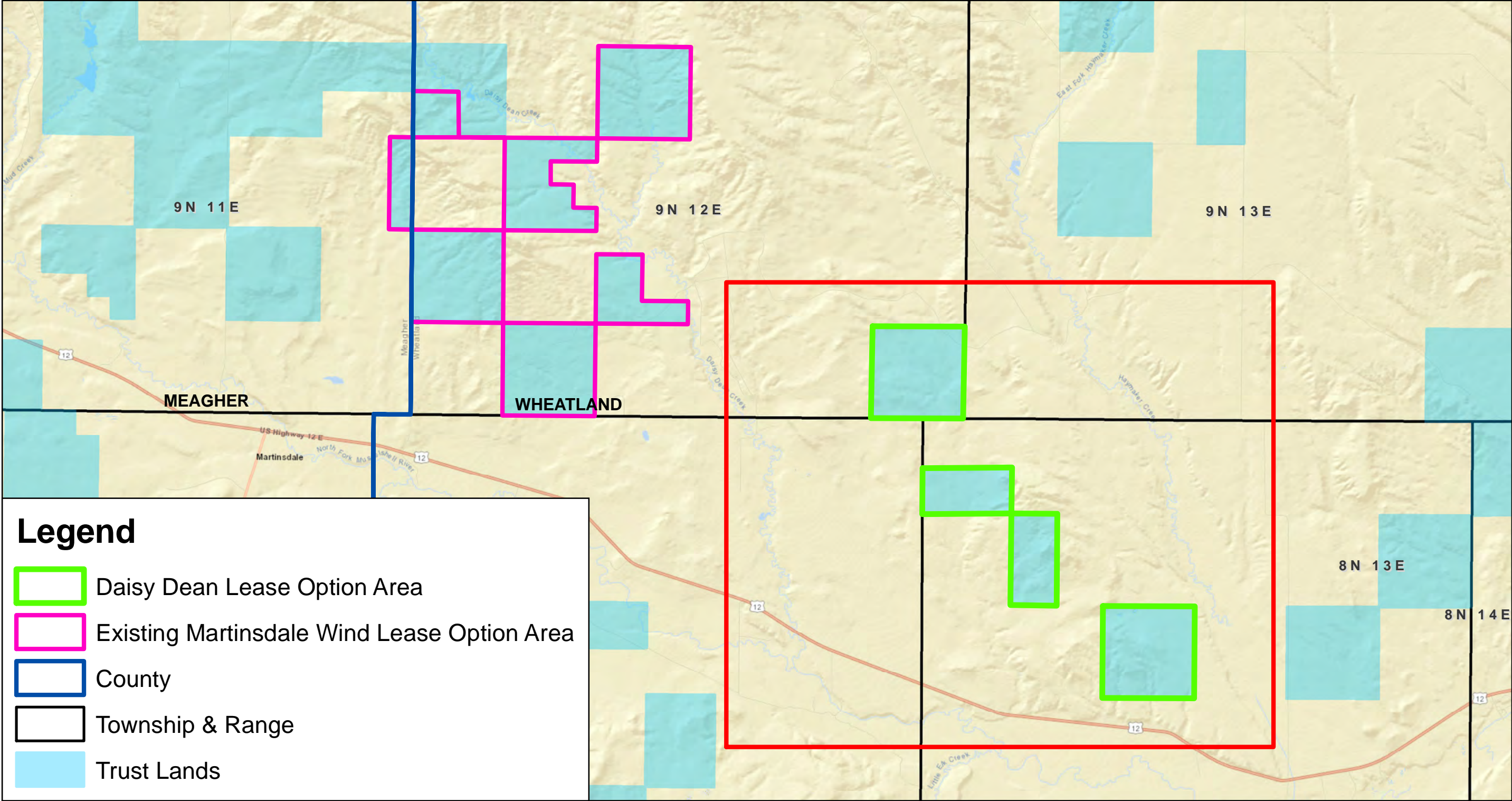
Richard A. Schneider  
Licensee RICHARD A SCHNEIDER

DATED THIS 28 DAY OF May, 2020




By: [Signature]  
Department of Natural Resources & Conservation




# OPTION EXHIBIT A - PREMISES - DAISY DEAN




### Legend

-  Daisy Dean Lease Option Area
-  Existing Power Transmission Lines
-  Trust Lands



Location: Wheatland County, MT  
Date: 11-13-2020  
Prepared By: REMB Staff Member  
Projection: NAD83 Montana State Plane

 Inset Area from top map shown in bottom map





**EXHIBIT B**

**MARTINSDALE WIND FARM LLC  
DAISY DEAN  
WHEATLAND COUNTY, MONTANA**

**LEASE NO. 3080011**

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**THIS COMMERCIAL LEASE AGREEMENT** (this “Lease”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, (the “Commencement Date”), by and between the **State of Montana by and through its Board of Land Commissioners**, whose address is P.O. BOX 201601 Helena, MT 59620-1601 (hereinafter referred to as “Lessor”), and \_\_\_\_\_, whose address is \_\_\_\_\_ (hereinafter referred to as the “Lessee”).

## 1. LEASE TERM AND PROPERTY DESCRIPTION

Lease Number	Commencement Date	Term of Lease	Expiration Date
3080011		30 Years	

Land Located in Meagher and Wheatland Counties.

County	Description	Sec.	Twp.	Rge.	Acres
Wheatland	S2	6	8N	13E	310
Wheatland	W2	8	8N	13E	320
Wheatland	ALL	16	8N	13E	640
Wheatland	ALL	36	9N	12E	640

## 2. RENT SCHEDULE

The rental fee prior to the Operations Date will be the Base Rent. The rental fee for any year after the Operations Date shall be the greater of: Base Rent; Percentage Rent; or Capacity Rent. The following schedule shows a summary of Rent payments and is not a comprehensive representation of the Rent conditions. All Rent will be paid according to Section 8 of this Lease.

Annual Rent <i>Paid in advance until operations date</i>				
Minimum Rent		Operating Fees <i>After Operations Date</i>		
Lease Year	Base Rent	Production Year	Capacity Rent Per MW Insalled	Percentage Rent Applied to Gross Revenues
1	Land Value x 4%	1	\$3,300.00	3.00%
2	Year 1 x 1.02	2	\$3,349.50	3.00%
3	Year 2 x 1.02	3	\$3,399.74	3.00%
4	Year 3 x 1.02	4	\$3450.74	3.00%
5	Year 4 x 1.02	5	\$3,502.50	3.00%
6	Year 5 x 1.02	6	\$3,555.04	3.00%
7	Year 6 x 1.02	7	\$3,608.36	3.00%
8	Year 7 x 1.02	8	\$3,662.49	3.00%
9	Year 8 x 1.02	9	\$3,717.43	3.00%
10	Year 9 x 1.02	10	\$3,773.19	3.00%
11	Year 10 x 1.02	11	\$3,829.78	3.25%
12	Year 11 x 1.02	12	\$3,887.23	3.25%
13	Year 12 x 1.02	13	\$3,945.54	3.25%



14	Year 13 x 1.02	14	\$4,004.72	3.25%
15	Year 14 x 1.02	15	\$4,064.79	3.25%
16	Year 15 x 1.02	16	\$4,125.77	3.50%
17	Year 16 x 1.02	17	\$4,187.65	3.50%
18	Year 17 x 1.02	18	\$4,250.47	3.50%
19	Year 18 x 1.02	19	\$4,314.23	3.50%
20	Year 19 x 1.02	20	\$4,378.94	3.50%
21	Year 20 x 1.02	21	\$4,444.62	3.75%
22	Year 21 x 1.02	22	\$4,511.29	3.75%
23	Year 22 x 1.02	23	\$4,578.96	3.75%
24	Year 23 x 1.02	24	\$4,647.65	3.75%
25	Year 24 x 1.02	25	\$4,717.36	3.75%
26	Year 25 x 1.02	26	\$4,788.12	4.00%
27	Year 26 x 1.02	27	\$4,859.94	4.00%
28	Year 27 x 1.02	28	\$4,932.84	4.00%
29	Year 28 x 1.02	29	\$5,006.84	4.00%
30	Year 29 x 1.02	30	\$5,081.94	4.00%

### 3. **PURPOSE.**

The purpose of this Lease is for the use of state trust land described in Section 1 of this Lease for the Operations of a wind farm and associated Wind Power Facilities.

### 4. **DEFINITIONS.**

In this Lease, the following defined terms have the meanings set forth below:

“**Base Rent**” means the amount obtained by multiplying the Land Value by the applicable Lease Rate Percentage in accordance with § 77-1-905, MCA, or subsequent Laws governing rental rates for wind power developments on State Trust Land. The Base Rent is increased annually by two percent (2%).

“**Capacity Rent**” means the amount obtained by applying the Capacity Rent Rate per megawatt Installed Capacity on the Land.

“**Capacity Rent Rate**” means \$2,500 for the first Production Year and is increased annually by one and one-half percent (1.5%) each year thereafter.

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

“**Commercial Purpose**” is, as defined by § 77-1-902(3)(a), MCA, 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. Lessor acknowledges and deems that the use of the Land by Lessee for the purposes permitted and contemplated under this Lease constitutes a Commercial Purpose hereunder and under said statute.

“**Default Rate**” means one percent 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 Laws (hereafter, “Claims”), or any permit issued under any such Environmental Laws, including without limitation: (a) any and all Claims by governmental or regulatory authorities (acting within their authority with respect to the enforcement of Environmental Laws) for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Laws; 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 applicable 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: (a) the Comprehensive Environmental Cleanup and Responsibility Act, 75-10-701, *et seq.*, MCA; (b) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*; (c) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 5101, *et seq.*; (d) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*; (e) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*; (f) the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; (g) the Clean Air Act, 42 U.S.C. § 7401, *et seq.*; (h) the Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*; and (i) the Major Facility Siting Act (MFSA), Mont. Code Ann. §§ 75-20-101 *et seq.*

“Expiration Date” means the last day of the Term of the Lease.

“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.

“Force Majeure” means fire, earthquake, flood, fire, high winds, ice, or other casualty or accident; war, civil strife, strikes, lockouts or labor disputes or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any governmental agency or utility; or any other act or condition beyond the reasonable control of a party hereto.

“Gross Revenues” for the purposes of calculating Percentage Rent, as described in Section 8 below, means the aggregate total revenue actually received by Lessee during the applicable Production Year, from the sale of electrical energy (other than Test Electricity) generated from Wind Power Facilities located on the Land or owned or operated by Lessee and metered at the point of interconnection collectively with (and including) the Turbines located on the Land, as applicable, net of all sales and use taxes and wheeling, integration, transmission and/or congestion charges (if any) imposed thereon or attributable thereto. Gross Revenues also include payments received by Lessee from: (a) the sale of renewable energy credits or pollution credits or greenhouse gas reduction credits that directly result from generation of electrical energy from such Operational Turbines; (b) any power purchaser, if such payments are made specifically in lieu of revenues from the normal operation of such Operational Turbines; and (c) amounts received by Lessee in hedging transactions which shall be reduced by amounts paid by Lessee in hedging transactions entered into by Lessee, it being understood that the Lessee and Department share proportionately in the risks and benefits of such hedging transactions, provided any hedging transaction entered into with an affiliate or subsidiary shall be entered into in good faith and on an arm’s length basis. Gross Revenues do not include: (i) production tax credits, other tax benefits and

credits, or any reimbursement thereof, or a payment elected instead of production tax credits pursuant to Section 1603 of the American Recovery and Reinvestment Act of 2009 (or any extension or renewal thereof, or any successor program); (ii) payments from the sale, lease, sublease, assignment, transfer or other disposition directly or indirectly of Wind Power Facilities (except that Lessee may not sell or otherwise transfer any part of the fee interest in the Land) or any other of Lessee's improvements, trade fixtures or chattel or the transfer or sale whether directly or indirectly of all or part of the membership interests in Lessee or any of their affiliates or subsidiaries; (iii) payments from the sale, modification or termination of any obligation under a power purchase contract; (iv) payments from the sales of electrical energy for which payment is not received; (v) revenues received not in lieu of revenues from the normal operation of the Turbine; and (vi) any rental or other payment received by Lessee in exchange for Lessee's assigning, subleasing, mortgaging or otherwise transferring all or any interests of Lessee in this Lease. If Lessee sells the production, energy, electricity or capacity from the Wind Power Facilities to a person or entity affiliated with, or in any way related to, Lessee, then "Gross Revenues" means all consideration paid for said production, energy, electricity or capacity, regardless of time or place of receipt, under the first contract which is an arms' length bona fide transaction, (provided that such dollar amount shall be increased annually after the Commencement Date on each anniversary thereof by two percent per year). Gross Revenues shall be calculated on a cash basis as opposed to an accrual basis, meaning that Gross Revenues shall not include revenues that are not actually received during the billing period.

"Hazardous Substances" means any and all substances, materials or wastes that are declared to be, or defined or regulated as, hazardous or toxic in the Comprehensive Environmental Cleanup and Responsibility Act, §75-10-701, *et seq.*, MCA, or under any Environmental Laws.

"Improvements" means any structures or Wind Power Facilities installed or constructed by Lessee upon the Land.

"Installed Capacity" means the installed nameplate capacity of the energy generating equipment as determined by the manufacturer.

"Land" means the real property described in Section 1 of this Lease.

"Land Value" means the full market value of the Land as determined by the applicable appraisal and in accordance with any Market Adjustment. The Land Value for Base Rent calculations through the first Market Adjustment is \$800.00 per acre.

"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 a percentage that is applied to the Land Value to determine Base Rent for a given year. The Lease Rate Percentage means three percent (3%) of the Land Value unless adjusted at a scheduled Market Adjustment in accordance with § 77-1-905, MCA, as applicable.

"Lease Year" means the 12-month period starting on the Commencement Date and each anniversary of this date thereafter.

"Lender" means: (i) any financing institution or other person or entity that from time to time provides secured financing for some or all of Lessee's Wind Power Facilities or Operations, collectively with any security or collateral agent, indenture trustee, loan trustee or participating or syndicating lender involved in whole or in part in such financing, their successor and assigns; or (ii) any power purchase agreement



off-taker who takes a Lender's Lien as security for the performance of the obligations under the power purchase agreement.

"Lender's Lien" means any lien, assignment of rents, assignment of leases, security agreement or other hypothecating instrument (including any sale-leaseback arrangement entered into for financing purposes) encumbering Lessee's interest under this Lease or the leasehold estate in the Wind Power Facilities hereby created (but shall not include any portion of the fee interest in the Land), or any interest hereunder, 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, buildings, Improvements or other property constituting a part of the Wind Power Facilities with the exception of any portion of the Land comprising part of the Wind Power Facilities.

"Lender's Lien Holder" means the holder(s) of any promissory note or the obligee(s) of any other obligation secured by a Lender's Lien.

"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 **Exhibit C**.

"Operations Date" means the date a power purchasing utility or other entity first receives power (other than Test Electricity) produced from any of the Turbines located on the Land or included within each Project that includes Turbines located on the Land. Lessee shall provide written notice to Lessor of the Operations Date, within 30 days of said date.

"Operations" means (a) determining the feasibility of wind energy conversion for any such Projects, including studies of wind speed, wind direction and other meteorological data; (b) converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted; (c) developing, constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and using, maintaining, repairing, operating and monitoring Wind Power Facilities; (d) vehicular and pedestrian ingress, egress and access to and from Wind Power Facilities, including by cranes and other construction equipment, over and across the Land by means of roads and lanes thereon if existing, or otherwise by such roads and ways, including but not limited to Turning Radiuses from public roads, if necessary, as Lessee or anyone else may construct from time to time; and (e) conducting surveys, tests and studies, including but not limited to biological, cultural, geotechnical and environmental testing, drilling, and sampling and studies.

"Operational Turbine" means a Turbine that (a) has been installed and is producing electric energy (other than Test Electricity) pursuant to this Lease, and (b) which has not been removed by Lessee.

"Percentage Rent" means a share of Gross Revenues as described in Section 8.1(b).

"Premises" means the Land and all Improvements.

"Production Year" means the 12 calendar month period during the Term beginning with the Operations Date and ending on December 31 of each year. The first Production Year may be less than a 12-month period.

"Project" means one or more Turbines and associated Wind Power Facilities that are constructed,

installed and/or operated on the Land and/or on other real property in the vicinity of the Land, by or on behalf of Lessee, as an integrated energy generating and delivery system.

“Qualified Lender” means any Lender who notifies Lessor in writing of its name, its address for notices, and the fact that it is a Lender.

“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, Capacity Rent, or Percentage Rent and/or all other amounts, including installation fees, required to be paid by Lessee under this Lease.

“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, subject and subordinate to Lessee’s retained interest in this Lease.

“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 the Premises that renders the Premises inoperable for its intended use for more than 180 days.

“Substantial Taking” means a Taking of at least 15 percent 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, beginning on the Commencement Date, as set forth in Section 1 of this Lease as the same may be extended or earlier terminated as herein provided.

“Test Electricity” means electricity delivered to the point of interconnection for which no payment is received.

“Turbine(s)” means wind turbine generator(s).

“Turning Radius” means a temporary construction road entrance to accommodate the turning of large or long vehicles and equipment.

“Wind Power Facilities” means (a) Turbines, wind energy conversion systems and wind power generating facilities (including associated towers, foundations and other structures and equipment and other power generation facilities) to be operated in conjunction with wind turbine installations, in each case of any type or technology; (b) transmission facilities, including overhead and underground transmission, distribution and collector lines, wires and cables, splice and junction boxes, switch panels, conduits, footings, foundations, towers, poles, crossarms, guy lines and anchors; (c) substations, interconnection

and/or switching facilities, circuit breakers and transformers; (d) operation and maintenance buildings; (e) overhead and underground control, communications and radio relay systems and telecommunications equipment, including microwave towers, dishes, and control, fiber, wires, cables, conduit and poles; (f) meteorological towers, guy wires, braces and wind measurement equipment; (g) roads and erosion control facilities; (h) temporary laydown yards; (i) signs; (j) fences and other safety and protection facilities; and (k) other improvements, facilities, appliances, machinery and equipment associated with any of the foregoing.

## **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:

**Exhibit A – Memorandum of Lease**

**Exhibit B – Vicinity Map**

**Exhibit C – Market Adjustment Schedule and Provisions**

**Exhibit D – Reclamation Plan**

**Exhibit E – Environmental Monitoring**

**Exhibit F – Existing Rights**

**Exhibit G – Site Plan**

## **6. LEASE TERM, RENEWAL, TERMINATION, AND RELEASE.**

### **6.1 Term.**

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 thirty (30) years starting on the Commencement Date.

### **6.2 Renewal Option.**

Unless at the time of renewal a default by Lessee (as defined below) shall be continuing following the expiration of any notice and cure period hereunder, Lessee may renew the Lease, extending the Term, for one period of ten (10) years and, thereafter, Lessee may renew this Lease, extending the Term, for a second period of ten (10) years. Lessee must provide Lessor written notice of Lessee's intention to renew the Lease delivered at least 6 months prior to the expiration of the original or extended term.

### **6.3 Lessee Right to Terminate; Release.**

Lessee shall have the right, in accordance with the terms of this Lease, at any time and from time to time during the Term, to surrender or terminate all or any portion of its right, title and interest in this Lease, provided that no partial surrender or termination of this Lease shall be for less than tracts of approximately forty (40) acres or a governmental lot corresponding to a quarter-quarter section, by giving Lessor not less than sixty (60) days written notice thereof and by executing and causing to be acknowledged and recorded a release describing with particularity the portion of such right, title or interest so released and the part of the Land to which it applies. Upon any such release by Lessee, the parties' respective rights and obligations hereunder (including as to the rental payments) shall cease as to the portion of the Land or the right, title or interest herein as to which such release applies including a prorated reduction in the Base Rent, but in no case shall surrender or termination be effective until Lessee shall have made complete restoration, reclamation and protection of the surface rights of the Land as may be determined by Lessor in accordance with the terms of this Lease. This Lease and the parties' respective rights and obligations hereunder shall remain in full force and effect as to any right, title, and interest of Lessee not so released.



## **7. RIGHTS; COVENANTS; CONDITION OF PREMISES; RESERVATIONS.**

### **7.1 Lessee's Rights.**

The Land leased by this Lease shall be used and occupied for the Operations of Wind Power Facilities, as those terms are defined above. In addition:

a) Lessee shall have the exclusive right to develop and use the Land for wind energy purposes and to convert all of the wind resources of the Land; provided, however, that nothing expressly or impliedly contained in this Lease or represented to Lessee shall be construed as requiring Lessee to: (i) construct and continue operation of any Wind Power Facilities from time to time located on the Land or elsewhere or (ii) generate or sell any minimum or maximum amount of electrical energy from the Land; and the decision when and to what extent to construct, install or operate Wind Power Facilities, or to generate or sell electrical energy, shall be solely in Lessee's discretion, subject to Section 8.1(c) of this Lease.

b) Lessee shall have an exclusive right to use, convert, maintain, and capture the free and unobstructed flow of wind over and across the Land.

c) Lessee shall have a non-exclusive right for audio, visual, view, reflective light, shadow flicker, noise, shadow and any other effects attributable to the Operations on the Land.

d) Lessee shall have an exclusive right to permit the rotors of Turbines located on property adjacent to the Land to overhang the Land and encroach into any applicable setback.

### **7.2 Lessor and Lessee Covenants.**

Lessor covenants that Lessee will have quiet and peaceful possession of the Land subject only to the terms, conditions, and reservations of this Lease, including prior existing rights described in Exhibit F, "Existing Rights". Lessor covenants to observe and perform all of the terms, covenants, and conditions applicable to Lessor in this Lease. Lessor covenants and agrees that neither Lessor's activities nor those activities authorized by Lessor upon the Land will interfere with, impair or materially increase the cost of (i) the construction, installation, maintenance or operation of any Improvements or any Project, (ii) vehicular or pedestrian access to, or the transmission of energy from, the Land, any Improvements or any Project, (iii) any Operations of Lessee on the Land or with respect to any Project or (iv) the undertaking of any other activities or the free enjoyment and exercise of any other rights or benefits given to or permitted Lessee hereunder, or (v) in any other way, unreasonably interfere with the free and unobstructed flow of wind over and across the Land.

Lessee covenants to pay the Rent when due, to make a good faith effort to report to Lessor any unauthorized or unpermitted use of the Premises, except that failure to report such unauthorized or unpermitted use shall not be considered a Default, and covenants to observe and perform all of the terms, covenants, and conditions applicable to Lessee in this Lease.

### **7.3 Condition of Land.**

Except as expressly set forth in this Lease, Lessee accepts possession of the Land on the Commencement Date in the then-current condition on an "AS IS, WHERE IS, AND WITH ALL FAULTS" basis. Lessor makes, and Lessee affirms that Lessor has made, no representations or warranties of any kind whatsoever with regard to the condition of the land or its fitness or suitability for any particular purpose. Lessee acknowledges that it is solely responsible for performing its own due diligence and for becoming fully familiar with the condition of the Land and any applicable rights, reservations, restrictions, uses, or other conditions that might affect its development or use for a particular purpose. Lessor represents and warrants: (i) that Lessor has no knowledge of any litigation pending and no knowledge of any actions, claims or other legal or administrative proceedings pending, threatened or anticipated with respect to or which could affect the Land; (ii) that Lessor has no knowledge of any commitments or agreements with any governmental agency or public or private utility affecting the Land or any portion thereof that have not been disclosed in writing by Lessor to Lessee; and (iii) that Lessor has not received any notice or other communication from any governmental authority alleging that the Land is in violation of any applicable Environmental Law.

#### **7.4 Lessor Reservation of Mineral Interests**

No transfer of mineral ownership, mineral rights, or pore space rights, including sand, gravel, scoria, or stone, is intended or granted to Lessee by or through this Lease. Rather, 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. Lessor reserves the right to develop the minerals on the Land owned by Lessor as long as such development (including any drilling or mining) is outside the 650 foot diameter circle around each Turbine and does not interfere with Lessee's use of the Land with the exception of the prior rights of existing leases. Lessor has had and will have a full opportunity to investigate the status of all existing leases, and the past, present and any future (or potential) mining activities under the existing leases. Lessee enters into and accepts this Lease subject to the prior rights of existing leases. Lessor shall include as a term and condition to any conveyance on or after the Commencement Date of any interest in the mineral estate in the Land, including any lease thereof, that any owner or lessee, as applicable, of any mineral interest in the Land (a) shall use the surface of the Land only in a manner that does not interfere with Lessee's surface use of the Land as described herein and with due regard for the rights of Lessee with respect to the surface use, (b) shall limit any activity to occur only on those areas of the surface of the Land that are not closer to any Turbine or proposed Turbine of Lessee than three hundred twenty-five (325) feet from the center point of any Turbine; provided, however, that temporary or permanent equipment for oil and gas exploration or production, such as drilling and workover rigs, may be installed on the Land so long as it is installed at least three hundred twenty-five (325) feet from the base of any Turbine or proposed Turbine of Lessee. No minerals of any kind, including but not limited to sand, gravel, or stone, found on the Land, shall be sold by the Lessee unless purchased from Lessor.

#### **7.5 Lessor Reservation of Other Rights.**

Lessor reserves the following rights, subject to the terms and conditions of this Lease:

- a) All rights and privileges of every kind and nature, except as are herein specifically granted;
- b) The right to lease all or any portion of the Land to other persons for the purposes of exploring for and removing timber, and all other naturally occurring resources, together with reasonable and adequate rights of entry and surface rights necessary and convenient to exercise such reserved rights. The foregoing does not apply to the extraction of subsurface resources, which are addressed in Section 7.4. Such new grants shall be compatible with the rights and privileges granted to Lessee herein and shall be subordinate to the rights of Lessee. Any new grant as described in this part (b) shall include provisions requiring that such third-party grantee indemnify Lessee for any and all damages caused to any structures or Wind Power Facilities placed upon the surface of the Land by Lessee subsequent to the Commencement Date;
- c) The right at all times during the life of this Lease to go upon the Land and every part thereof for the purpose of inspecting the same to ascertain if said Lessee and those holding thereunder by and from it are carrying out the terms, covenants, and agreements of this Lease, subject to compliance with the safety rules and procedures of Lessee;
- d) The right at any time to grant an easement or right-of-way upon, over, under, through, or across all or any part of the Land for any ditch, reservoir, communication system, electric power line, pipeline, or other lawful purpose. Such new grants shall not interfere with the rights and privileges granted to Lessee herein, and shall be subordinate to the rights of Lessee. Any new grant of easement or right-of-way upon, over, or across the Land shall include provisions requiring that such third-party grantee reimburse Lessee for any and all damages caused to any structures or Wind Power Facilities placed upon the surface of the Land by Lessee subsequent to the Commencement Date; and
- e) The right to use the Land, and grant permits or licenses to use the land, for other surface uses including agriculture, livestock grazing, ranching, and other purposes, provided, however, that within the setback area of the Turbines consisting of approximately a 650-foot diameter circle around each Turbine which shall be exclusive to Lessee, Lessor shall have no right to use the Land for any purposes except for the growing of crops, grazing of livestock, and pedestrian activities.

## **7.6 Reservation of Right to Evaluate Recreational Use.**

As of the Commencement Date, the Land will be closed to general recreational use due to categorical exclusion for recreational use of state lands under an active commercial lease pursuant to ARM 36.25.150(1). However, the Department reserves the right to evaluate any petition to exclude a specific leased tract from such categorical exclusion pursuant to ARM 36.25.150(2). Lessor will notify the Lessee of a petition to re-open the Land and may restrict the recreational use that is permitted on the Land, including appropriate limitations on the discharge of firearms or other restrictions necessary to ensure human safety and Lessee's ability to operate the Project without interference. Lessee shall post all such categorically closed Land at all customary access points with signs provided by the Department or duplicated from signs provided by the Department pursuant to ARM 36.25.150(3). In no event shall any recreational use occur within three hundred twenty-five (325) feet from the base of any Turbine or interfere with the rights granted to Lessee under this Lease.

*The ARM for recreational use and categorical exclusions is currently under review and is may be changed in the near future. This lease is subject to all laws and rules as they may be changed over time. If the referenced ARM language is modified prior to lease execution, this section may be modified accordingly.*

## **8. RENT; INSTALLATION FEES; OTHER PAYMENT TERMS; AUDIT RIGHTS.**

### **8.1 Base Rent and Operating Rent.**

All Rent due to Lessor will be paid in lawful money of the United States of America, at Lessor's Address, post-marked or recieved via electronic funds transfer on or before the due date, without notice or demand and without right of deduction, abatement, or setoff. Lessee shall provide written notice to Lessor of the Operations Date, and shall pay to Lessor basic and operating rent, as follows:

**a) Pre-Operations Date Rent.** Lease fees due prior to the Operations Date shall be paid annually, in advance, on the Commencement Date, and on each anniversary of the Commencement Date thereafter. The Lease fee for the first Lease Year must be paid through a cashier's check drawn on a Montana bank, by Automated Clearing House Transfer, or through a wire transfer. The lease fee shall be the Base Rent provided in the Rent Schedule in Section 2 of this Lease until the Operations Date. Should the Operations Date occur in the middle of a payment cycle under this subsection, a credit would be prorated and applied to the next invoice accordingly.

**b) Post-Operations Date Rent.** Following the Operations Date, the annual lease fee for each Production Year will be payable in arrears, due on or before March 1 annually. The annual amount due shall be the greater of the Base Rent, Capacity Rent, or Percentage Rent. Along with each payment of Rent under this subsection, Lessee shall deliver to Lessor a report detailing calculation data for Capacity Rent and Percentage Rent values for each year. Such report shall include, but not be limited to, specific information on installed capacity and Operational Turbines upon the Land by date, and Gross Revenue calculations, for the applicable Production Year upon the Land.

- i. **Base Rent.** Base Rent is the amount obtained by multiplying the Land Value by the applicable Lease Rate Percentage, increased annually by two percent (2%).
- ii. **Capacity Rent.** Capacity Rent is calculated annually based on Operational Turbines located on the Land during the applicable Production Year. It is calculated as the product of the Capacity Rent Rate as multiplied by the number of megawatts of Installed Capacity of all Operational Turbines located on the Land during the applicable Production Year. The Capacity Rent Rate is \$2,500 for the first Production Year and is increased by one and one-half percent (1.5%) annually each year thereafter.
- iii. **Percentage Rent.** Percentage Rent is calculated annually based on Gross Revenues received from production by the Wind Power Facilities located on the Land, or in the event power is commingled with power produced from Wind Power Facilities from property other than the Land, from the Wind Power Facilities within the Project. In the event power is commingled with power produced from Wind Power Facilities from property other than the Land, then



Lessee shall calculate the Percentage Rent as set forth below for the indicated Production Year multiplied by the Gross Revenues actually received over the course of a Production Year multiplied by a fraction, the numerator of which is the megawatts of Installed Capacity of the Operational Turbines then installed on the Land and the denominator of which is the total megawatts of Installed Capacity of all Operational Turbines then installed in the Project. The percentage applied to the Gross Revenues to calculate the Percentage Rent is 3 percent for Production Years one (1) through ten (10); 3.25 percent for Production Years eleven (11) through fifteen (15); 3.5 percent for Production Years sixteen (16) through twenty (20); 3.75% for Production Years twenty-one (21) through twenty-five (25); and 4% for Production Year twenty-six (26) through the end of the Term. It is the intent of the Lessor and the Lessee that Gross Revenues shall not include any revenues other than those set forth in the definition of Gross Revenues in this Lease.

- c) Notwithstanding anything to the contrary herein, in the event that construction of the Wind Power Facilities has not occurred on or before the tenth (10) anniversary of the Commencement Date, Lessee shall pay to Lessor rent, until the earlier of the Operations Date or the termination of the Lease, in an amount equal to the greater of: (i) the Base Rent or (ii) the Capacity Rent for the planned number of Operational Turbines as shown on the Preliminary Site Plan.

Lessor and Lessee agree to amend the Rent Schedule in this Lease as necessary to reflect the actual Operational Turbines and actual acreage leased upon the Operations Date or at any time thereafter if the number of Operational Turbines on the Land or actual acreage leased changes.

## **8.2 Installation Fees.**

Unless specified otherwise, all installation fees are due within forty-five (45) days after the Operations Date.

### **a) Turbine Capacity.**

Lessee shall pay to Lessor a one-time installation fee equal to \$1,500 per megawatt of Installed Capacity for Turbines installed on the Land. Should the Project not be fully installed by the Operations Date, payment must be made for the remaining Installed Capacity within sixty (60) days of operation as to the applicable Turbine. Additional installation fees will be due for replacement of any existing Turbines only if the installed capacity is increased, in which case Lessee shall pay for an installation fee for the difference between the originally Installed Capacity and the new Installed Capacity. This provision will apply when a Turbine is replaced due to damage or Lessee elects to repower the Project.

### **b) Roads, Transmission Lines, and Underground Cabling.**

Lessee shall pay to Lessor the following one-time installation fee payments:

- i) **New Roads:** \$.50 per lineal foot of new roads constructed by or for Lessee on the Land;
- ii) **Transmission Lines:** \$2.00 per lineal foot of overhead transmission lines installed by or for Lessee on the Land.

Overhead or underground lines, cabling and wires (which shall be deemed to include any electrical lines, communications lines, fiber optic cables and grounding wires) that are bundled or co-located with, adjacent or parallel to, or stacked along with other overhead or underground lines, cabling and wires on an integrated set of poles or in a single trench shall be considered a single line, cable or wire for purposes of determining the total distance that such line, cable or wire traverses the Land and calculating the amount due hereunder. No additional installation fee payment shall be due upon any replacement of an existing road, transmission line, or underground cable upon the Land during the term of this Lease. In instances of co-located, parallel or adjacent roads, lines, or cables, the installation will be treated as a single installation and the highest applicable per lineal foot installation fee described within this subsection shall apply.

### **c) Meteorological Tower.**

If a meteorological tower is installed by Lessee on the Land, Lessee shall pay to Lessor a one-time installation fee equal to \$500.00 per meteorological tower installed, payable within forty-five (45) days of

the date the meteorological tower is installed. No additional installation fee payment shall be due upon any replacement of an existing meteorological tower during the term of this Lease.

**d) Temporary Laydown Yard.**

If a portion of the Land is used by Lessee as temporary laydown yard for temporary storage of Lessee's equipment and materials in connection with the construction of the Improvements, then Lessee shall pay to Lessor a one-time use fee equal to \$48.00 per acre occupied by such temporary laydown yard. No additional installation fee payment shall be due upon any replacement of such temporary laydown yard during the term of this Lease, except to the extent of any increase in occupied acreage resulting therefrom. Any temporary laydown yard shall be reclaimed to its original condition in accordance with Section 9.6.

**e) Turning Radius.**

If a portion of the Land is used by Lessee as a Turning Radius area for Lessee's equipment in connection with the construction of the Improvements, then Lessee shall pay to Lessor a one-time use fee equal to \$24.00 per acre occupied by such turning radius. No additional installation fee payment shall be due upon any replacement of such turning radius during the term of this Lease, except to the extent of any increase in occupied acreage resulting therefrom.

**f) Substations and Operation and Maintenance Building.**

Any substations, interconnection and/or switching facilities, or similar high voltage transmission facility or any operation and maintenance buildings installed on the Land shall require an installation fee of \$5,000.

**8.3 Additional Payment to State Agricultural and Grazing Lessees.**

Lessee shall be liable and agrees to pay Lessor's surface lessee(s) for damage to improvements of such surface lessee(s), potentially including the breaking of land crops or other agricultural products on the Land. Lessee agrees to work closely with the Department to meet this requirement. This obligation shall not be interpreted to create third-party beneficiary rights in favor of such surface lessee. Any payment for crop damage or damage to any other agricultural product shall be based upon prevailing rates in the county in which the Land is located for such crop or agricultural products and shall be prorated for any partial acres.

**8.4 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 or received via electronic funds transfer on or before the due date, Lessee shall pay a late charge to Lessor. The late charge will be an amount equal to ten percent (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 thirty (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 due to the late payment by Lessee.

**8.5 Additional Rent.**

Lessor will not be required to pay any costs or expenses or provide any services in connection with Lessee's use of the Land. Accordingly, Lessee covenants and agrees to separately pay, in addition to the Rent, all utilities and services attributable to Lessee's use of the Land and all taxes and special assessments levied against Lessee's Improvements, whether assessed separately or not, as provided in Sections 11 and 12 below.

### **8.6 Most Favored Nations.**

When constructed by Lessee, the Lessee Improvements will be a part of a single, integrated wind power Project. Lessor and Lessee agree that if Lessee has entered into, or hereafter enters into one or more wind energy agreements or similar instruments with other landowners in the Project area under which Lessee agrees to pay such other landowner: (a) a dollar amount per megawatt of installed capacity used to calculate fees similar to Capacity Rent, (b) a percentage amount used to calculate royalties similar to the Percentage Rent, or (c) a dollar amount per acre used to calculate a minimum annual fee similar to Base Rent, which is more favorable than equivalent rates set forth in this agreement, then Lessee shall notify Lessor and prepare and deliver to Lessor for execution an amendment, which Lessor reserves the right to sign at its discretion, to this Lease modifying the payment terms hereunder to match the more-favorable corresponding terms. The more favorable terms shall be effective as to Lessor on the date such terms became effective for the other landowner or the Commencement Date, whichever is later. If necessary, Lessee shall submit payment, along with an accounting, to Lessor for the difference between the amount actually paid to date and the amount that would have been paid had the amended terms been in effect since the date they became effective for the other property(ies).

### **8.7 Lessor Audit Rights.**

Lessee shall provide all reasonable documentation necessary for Lessor to conduct a meaningful audit. Lessee agrees that Lessor, or any representative of Lessor, legislative auditors, or the legislative fiscal analyst shall have the right at all reasonable times, but not more than once every eighteen (18) months, and upon provision of reasonable notice, to inspect all reasonable documentation necessary for Lessor to conduct a meaningful audit pertaining to the calculation of amounts due under this Lease at Lessee's principal office within the United States.

If the audit determines that Rent has been underpaid, then Lessee shall pay Lessor the amount of the deficiency. Lessee shall pay Lessor any deficiency within thirty (30) days of final determination of the amount of the deficiency. If the audit determines that Rent has been overpaid, then the overpayment shall be credited against Lessee's next payment(s) due, or, if this Lease has expired, the overpayment shall be refunded to Lessee in accordance with Lessor's refund policy and procedures in place at the time the refund is due.

## **9. SITE PLAN; IMPROVEMENTS; RESTORATION.**

### **9.1 Preliminary Site Plan**

No later than one (1) year after the Commencement Date, Lessee shall deliver to Lessor a preliminary site plan showing proposed locations of the Wind Power Facilities which shall be used solely for the purposes of Section 8.1(c) to determine Capacity Rent if construction has not commenced.

### **9.2 Site Plan.**

Within thirty (30) days after the appropriate governmental agency has approved plans for any construction or grading activities on the Land, the Lessee shall provide the Lessor with a copy of the approved site plan. The site plan shall identify the applicable parcel(s) and include a drawing of the pertinent parcel(s) of the Land locating the Wind Power Facilities, utilities and grading, and a drawing of the elevation of the energy generating equipment and transmission facilities. The site plan shall also identify any and all planned improvements, including improvements necessary to calculate installation fees under this Lease.

### **9.3 Construction of Improvements and Alterations; Approval.**

Lessee may construct, operate, and maintain Improvements on the Land as approximately located on the site plan. Except for the Improvements depicted on the site plan, Lessee shall not construct, install, alter, or demolish and remove, any Improvements on the Land without approval as shown through the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed, and shall be



deemed granted unless Lessor shall deliver to Lessee written objection, with reasonable detail as to the basis for Lessor's objection and identifying the Improvements that are objectionable, within thirty (30) days after Lessee's request for approval. In the event that Lessor provides such timely written objection, Lessor and Lessee shall thereafter meet and shall use diligent and good faith efforts to resolve Lessor's reasonable objections as promptly as possible and agree upon revisions to the site plan containing any changes so agreed upon by the parties. Notwithstanding the foregoing, without additional approval, Lessee may make minor deviations and adjustments to the final siting of Improvements as reasonably necessitated by concealed conditions or other construction or engineering considerations or requirements, provided that such minor deviations do not conflict with any findings in the final environmental review document. The movement of any Turbine, access road and transmission lines up to fifty (50) feet and the movement of underground collection and distribution line up to 250 feet shall be deemed minor, provided the same do not conflict with any findings in the final environmental review document. All expenses of constructing, installing, maintaining, repairing, 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. Lessor shall have the right to post notices of non-responsibility or similar notices on the Land in order to protect the Land against any liens resulting from such work.

If Lessee commences construction of Improvements on the Land, Lessee shall diligently endeavor to cause the Operations Date to occur within eighteen (18) months, subject to conditions of Force Majeure. Within 180 days of the completion of the initial Improvements for the Land, Lessee shall deliver to Lessor an electronic ALTA/NSPS "as-built" survey of the Premises in both .shp (or other ArcGIS compatible file) and .pdf format. The Lessee shall thereafter furnish the Lessor with copies of any updated plans showing all changes and modifications thereto. The Lessee shall also furnish to the Lessor copies of certificates of occupancy or other similar documents issued to certify completion of construction in compliance with applicable requirements.

#### **9.4 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 of the Lease. Lessee shall have the right to grant liens or other security interests in the Improvements.

Upon the expiration of the Lease, title to all Improvements then held by Lessee that remain upon the Land, except moveable personal property not constituting fixtures, will automatically vest in Lessor without representation or warranty per MCA §77-1-906(2).

#### **9.5 Removal of Lessee Improvements and Restoration.**

Prior to the expiration, surrender, or termination of this Lease, including early termination (subject to Lender's rights under Section 16.3), whether as to the entire Land or only as to a part thereof, Lessee shall fulfill all obligations provided within the Reclamation Plan attached hereto as **Exhibit D**, as developed between Lessee and Lessor after completion of the appropriate environmental analysis document prior to executing this Lease. In addition to, and in accordance with, the terms of the Reclamation Plan, Lessee shall (a) remove from the Land (or such part thereof, as applicable) any Improvements owned, installed or constructed by Lessee thereon, except for any roads that Lessor allows to remain on the Land and any underground collection and distribution lines and Turbine foundations three (3) feet or more below the surface; (b) leave the surface of the Land (or such part thereof, as applicable) free from debris; and (c) otherwise restore the portion of the Land affected by Lessee to a condition as close as practicable to the condition it was in before Lessee's use. Restoration includes, if applicable, the reseeding of affected areas with grasses and/or natural vegetation in accordance with reasonable and customary land care and maintenance standards in the area relating to weed control and the restoration of disturbed pastureland, as reasonably determined by Lessee upon consultation with county agricultural authorities and in

coordination with Lessor, as to matters including seed types and seeding timing and processes, it being the intent that Lessor be able to utilize the Land in the same manner as before Lessee's use. Lessee shall be required to remove footings and foundations to the greater of (i) thirty-six (36) inches below the surface of the land or (ii) the depth (if any) required by applicable Law. Lessee shall provide Lessor with an ALTA/NSPS survey in .pdf or other electronic format that depicts the exact locations of improvements that the Lessee does not entirely remove and intends to allow to revert to Lessor. The provisions of this paragraph shall survive the termination or cancellation of this Lease.

#### **9.6 Post-Construction Restoration.**

Upon the completion of the construction of the Lessee Improvements, all Land disturbed by Lessee, its agents, contractors, and/or employees, and not required for continuing operations of the Wind Power Facilities, shall be restored to a condition and forage density reasonably similar to its original condition and forage density, consistent with the continued use of the Land pursuant to this Lease. Reclamation shall include, as reasonably required, leveling, terracing, mulching, and other reasonably necessary steps to prevent soil erosion, to ensure the establishment of suitable grasses and forbs, and to control noxious weeds and pests. After the completion of construction, no refuse, waste, or other litter of any kind shall be left on the Land by Lessee. This post-construction reclamation requirement is separate and apart from the requirements found in Section 9.5 above.

#### **9.7 Secondary Uses**

After post-construction restoration is complete in accordance with Section 9.6, Lessee's use of the Land for Wind Power Facilities shall not unreasonably disturb grazing, agriculture, or other permitted secondary uses of the Land, granted under one or more leases, licenses, or permits issued prior to the Commencement Date.

### **10. USE AND ENVIRONMENTAL COMPLIANCE.**

#### **10.1 Use and Compliance.**

The Lessee shall comply with all applicable Laws, rules, and regulations in effect upon the Commencement Date of this Lease and those Laws, rules, and regulations that may be enacted or adopted thereafter from time to time and that do not impair or impede the obligations of this Lease and that do not deprive the Lessee of an existing property right recognized by law. Lessee shall keep Lessee's Improvements in good repair, and pay all costs and expenses in connection therewith. Lessee shall not commit waste or permit impairment or deterioration of the Land (construction, installation, and removal of Improvements contemplated by this Lease, ordinary wear and tear, and damage by casualty and condemnation excepted). Excavations and Improvements shall be maintained in a safe condition to prevent injury to persons, livestock, and wildlife.

**a) Noxious Weeds.** The Lessee shall be responsible for controlling noxious weeds introduced or proliferated by Lessee's activity on the Premises or adjacent state-owned land. After the Operations Date, the Lessee shall coordinate with the Lessor's North Eastern Land Office for weed control and the development of a weed management plan for the Premises. The Lessee shall comply with the Montana County Noxious Weed Management Act.

**b) Construction Time Periods.** All construction activities will be conducted so as to minimize rutting and soil compaction after consultation with the Northeastern Land Office of Lessor.

**c) Resource Removal.** Lessee will not cut or otherwise remove any timber or standing trees, or soil or other vegetation upon the Land unless authorized to do so by Lessor. Provided however, Lessee shall be allowed to remove timber, standing trees and vegetation within: (i) a 650 foot diameter circle around each Turbine; (ii) seventy-five feet of any underground collection and distribution line and overhead transmission line; or (iii) fifty (50) feet of any access road, and otherwise as required by the National Electric Safety Code.

## **10.2 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, Montana Code Annotated (MCA), and all associated Administrative Rules of Montana (ARM).

## **10.3 Environmental Monitoring and Montana Environmental Policy Act (MEPA).**

Environmental analysis is required prior to execution of this Lease. Lessee understands additional environmental monitoring is required from the Lessee after construction and/or operations, based on the Project specifications and the environmental analysis conducted prior to lease execution. Additional monitoring requirements are made part of this Lease and attached hereto as **Exhibit E**. Lessee agrees to pay all costs associated with such environmental monitoring and any MEPA document(s) as may be required.

## **10.4 Environmental Matters.**

Lessor has made no representations to Lessee concerning the presence of toxic or Hazardous Substances within the definition of the Comprehensive Environmental Cleanup and Responsibility Act on the Land. Lessee agrees as follows: Lessee will (a) comply with all Environmental Laws applicable to the operation or use of the Land by Lessee or the construction, installation, alteration or demolition of any Improvements by Lessee; (b) use reasonable efforts to cause all persons occupying the Land under the terms of this lease 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 Land to be kept free and clear of any liens arising from Lessee's use and occupancy of the Land 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 Land, or transport or permit the transportation of any Hazardous Substances to or from the Land, in each case in any quantity or manner which violates any Environmental Laws.

If Lessor has knowledge of any pending or threatened Environmental Claim against Lessee or the Land or has good reason to believe that Lessee or the Land are in violation of any Environmental Laws, 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 Land, 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 Land. 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 ninety (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 Land.

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 Land, which are on the Land 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. Lessor shall, at its sole cost and expense take legally authorized remedial action with regard to any



Hazardous Substance contamination caused by Lessor, its lessees, licensees and permittees other than Lessee hereunder.

#### **10.5 Survival.**

The reimbursement obligations under this Section 10 will survive the expiration or earlier termination of this Lease.

### **11. UTILITIES; REPAIRS; WATER RIGHTS.**

#### **11.1 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 Land. Lessee will maintain, repair, replace and keep the Premises in reasonably good condition and repair.

#### **11.2 Utilities.**

Lessee will pay before delinquent all water, sewer, natural gas, electricity, telephone and any other utility charges related to the Premises, and arising by, through or under Lessee, including, without limitation, those which, if not paid, may be asserted as a lien or charge against the Land or Improvements.

#### **11.3 Water Rights.**

Any water right appropriated or secured on the Land by any individual or party for use on or off such Land shall be appropriated or secured in the name of the Lessor unless prior written permission to do otherwise is granted by the Lessor. Lessor shall be notified prior to such development or appropriation of water right.

### **12. TAXES.**

#### **12.1 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 and levied against Lessee's Improvements, including privilege taxes, also known as beneficial use taxes, per §15-24-1203, MCA, if applicable and any other taxes levied by the State including electrical generation taxes listed in § 15-24-3004, *et seq.*, MCA.

#### **12.2 Special Assessments.**

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

### **13. INSURANCE.**

#### **13.1 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:

**a) Commercial General Liability Insurance:** For the duration of this Lease and until the Lessor certifies that reclamation is complete, Lessee shall purchase and maintain commercial general liability insurance, when combined with umbrella liability insurance, in the amount of \$1,000,000 per occurrence / \$2,000,000 aggregate, covering claims for bodily injury, death, personal injury, and property damage, arising or allegedly arising out of, in connection with, or on account of this Lease, any act or omission of Lessee, or any act or omission of Lessee's officers, agents, employees, or subcontractors, except to the extent due to the negligence or willful misconduct of Lessor, its agents and employees. This provision is intended to require Lessee to purchase and maintain general liability insurance that includes protection for Lessee's own acts or omissions, alleged acts or omissions, negligent conduct, and alleged negligent conduct.

**b) Property Insurance.** For the duration of this Lease and until the Lessor certifies that reclamation is complete, Lessee shall purchase and maintain all-risk fire and extended coverage property insurance

(including standard extended endorsement perils, leakage from fire protective devices and other water damage) covering loss or damage to the Improvements and betterments in a sufficient amount in Lessee's reasonable discretion.

**c) Worker's Compensation and Employer's Liability Insurance.** For the duration of this Lease and until the Lessor certifies that reclamation is complete, Lessee shall either obtain and maintain an independent contractor exemption or shall purchase and maintain worker's compensation and employer's liability insurance covering Lessee and its employees and agents. Lessee shall also require each of its major sub-contractors, for the duration of this Lease and until the Lessor certifies that reclamation is complete, to either obtain and maintain an independent contractor's exemption or to purchase and maintain workers' compensation and employer's liability insurance covering each sub-contractor and its employees and agents.

**d) Environmental Impairment Liability Insurance.** To the extent such liability is not covered by the commercial general liability policy set forth in Section 13.1(a) above, for the duration of this Lease and until the Lessor certifies that reclamation is complete, Lessee shall purchase and maintain environmental impairment liability insurance in the amount of \$1,000,000 per occurrence/ \$2,000,000 aggregate protecting Lessee and the State, their elected and appointed officials, agents, and employees, against all claims for environmental contamination arising or allegedly arising out of or in connection with this Lease, except to the extent caused by the negligence or willful misconduct of Lessor. This provision is intended to require Lessee to purchase and maintain environmental impairment liability insurance that includes protection for Lessee's own acts or omissions, alleged acts or omissions, negligent conduct, and alleged negligent conduct. If Lessee can obtain environmental impairment liability insurance only on a "claims made" basis, it shall obtain the longest retroactive date and extended reporting periods available.

**e) Automobile Liability Insurance.** For the duration of this Lease and until the Lessor certifies that reclamation is complete, Lessee shall purchase and maintain business automobile liability insurance covering any automobile – including all owned, hired and non-owned automobiles – used in connection with Lessee's business. Business automobile liability insurance shall have a combined single limit of \$1,000,000 per accident. Lessee shall require each of its major sub-contractors to purchase and maintain business automobile liability insurance with the same limits.

### **13.2 Terms of Insurance.**

**a)** Each insurance policy required by this Lease shall be written for the limits of liability specified in this Lease or required by law, whichever coverage is greater.

**b)** Each insurance policy required by this Lease shall be written on an "occurrence" basis, or a "claims made" basis provided any claims under such policy shall be retroactive to the Commencement Date of this Lease and shall expire two (2) years after the expiration or termination of this Lease, unless otherwise agreed to by subsequent written agreement between Lessee and Lessor.

**c)** Each insurance policy required by this Lease shall be maintained without interruption for the time periods required by this Lease and Lessee shall provide that coverage will not be canceled for any reason without giving Lessor at least thirty (30) days prior written notice of cancelation, except that a (ten) 10 day written notice shall apply for cancellation by insurer due to non-payment of premiums.

**d)** Lessee is responsible for paying all premiums, deductibles, and retentions applicable to each insurance policy required by this Lease.

**e)** All insurance coverage of any kind purchased and maintained by Lessee or any sub-contractor as required by this Lease shall be purchased only from an insurance carrier currently authorized to do business in the State of Montana with an A. M. Best's rating of no less than A- or a Standard & Poor rating of A.

**f)** All insurance coverage of any kind purchased and maintained by Lessee or any sub-contractor as required by this Lease shall be primary coverage but only to the extent of the liabilities assumed hereunder by the parties. Any insurance or self-insurance maintained separately by Lessor, its officers, officials, employees, or volunteers shall be excess of the Lessee's or sub-contractor's insurance and shall not contribute with it but only to the extent of the liabilities assumed hereunder by the parties.

g) Lessor shall be included as an additional insured under the policies, to the extent of the liabilities arising under this Lease, on the declaration pages of the general liability, property, environmental impairment liability, business automobile liability, and excess/umbrella policies required by this Lease as named insureds (Lessee being identified as the primary or first named insured) but only to the extent of the liabilities assumed hereunder by the parties.

h) Lessee, its sub-contractors, or the insurance carrier issuing all insurance policies required by this Lease must provide a certificate of coverage of such policies to Lessor prior to execution of this Lease and as a necessary condition precedent to the formation, and enforceability of any provision, of this Lease.

i) Failure to obtain and maintain all required insurance shall be considered a material breach of this Lease. Lessee shall notify Lessor immediately if any insurance required by this Lease is canceled, expires, changes, is reduced, or restricted in coverage or if any insurer notifies Lessee of its intent to cancel, allow to expire, change, reduce, or restrict the coverage of such insurance.

j) The indemnity and insurance provisions of this Lease can be modified only by subsequent written agreement between Lessee and Lessor.

#### **14. DAMAGE OR DESTRUCTION.**

In the event of any Substantial Damage arising from or relating to Lessee's activities on and use of the Land or any Improvements from any causes whatsoever, Lessee shall promptly give written notice thereof to Lessor. Lessee shall promptly repair or restore the Land or remove any damaged Improvements and restore the affected portion of the Land 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's completion of a remediation plan developed by the Department pursuant to this Section. Lessee's duty to repair any damage or destruction of the Land, and to restore or remove any Improvements and to restore the Land, shall not be conditioned upon the availability of insurance proceeds from which the cost thereof may be paid. Unless this Lease is so terminated by mutual agreement as described in this Section 14, there shall be no abatement or reduction in Rent during such period of repair and restoration.

#### **15. CONDEMNATION.**

##### **15.1 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.

##### **15.2 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 sixty (60) days after the Taking Date. In such event, this Lease will terminate thirty (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.

##### **15.3 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.

##### **15.4 Awards for Permanent Taking.**



If there is compensation paid as a result of any Taking of the Land or Lessee's interest therein, then the award or compensation payable therefor, whether pursuant to a judgment, by agreement or otherwise, including any damages and interest (collectively, the "Award"), will be allocated as follows: (a) any portion of the Award attributable to the Taking of or injury to this Lease, or the Improvements shall be paid to Lessee, without reduction on account of any early termination effected due to the Taking; (b) any portion of the Award attributable to any cost or loss that Lessee may sustain in the removal and/or relocation of the Improvements, or Lessee's chattels and trade fixtures, shall be paid to Lessee; (c) any portion of the Award attributable to Lessee's anticipated or lost profits, to damages because of deterrent to Lessee's business or to any special damages of Lessee, shall be paid to Lessee; and (d) any portion of the Award attributable to the Taking of the fee, and all remaining amounts of the Award, shall be paid to Lessor.

#### **15.5 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.

### **16. ASSIGNMENT, SUBLETTING AND FINANCING.**

#### **16.1 Assignment.**

Lessee shall not assign its interest under this Lease, in whole or as to any part, without Lessor's prior written consent, which shall not be unreasonably withheld, conditioned or delayed if the proposed assignee is: (a) an affiliate of Lessee; (b) a present or future purchaser of electricity generated by the Improvements or engaged in the transmission or distribution of such electricity; (c) a party to a merger or reorganization transaction involving Lessee or a sale or transfer involving all or substantially all of Lessee's assets, including, but not limited to, the Improvements; or (d) any collateral assignment of the Lease in connection with a financing transaction. For other such assignments, such consent may be determined in Lessor's sole and absolute discretion. Notwithstanding the foregoing, 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. Any such Foreclosure Transferee shall be bound by the terms and conditions of this Lease. Additionally, if the Foreclosure Transferee is a Qualified Lender, such Qualified Lender 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 Lender shall be released of any further liability under the Lease. However, any assignee must be registered with the Montana Secretary of State to conduct business in the State of Montana. If Lessee assigns its rights in this Lease, as permitted or approved pursuant to this Section 16, then Lessee shall be relieved of all liabilities hereunder accruing from and after the date of such assignment, but only if (i) the assignor gives Lessor notice of the assignment, and where consent is required obtains Lessor's written consent; (ii) the assignment is expressly made subject to this Lease; (iii) the assignee expressly assumes Lessee's obligations which arise on or after the date of such assignment; and (iv) the assignee has the resources necessary to satisfy its obligations under this Lease. An assignment as described in this paragraph shall not relieve Lessee from any liability that arose prior to the assignment, in accordance with § 77-1-909, MCA. Any member of Lessee shall have the right from time to time without Lessor's consent to transfer any membership interest in Lessee to one or more persons or entities.

## **16.2 Subletting.**

Lessee may sublease the Land or portions thereof in accordance with the terms of this Section. Lessee may grant possessory or use rights under its leasehold estate under this Lease, whether by sublease, license, or another instrument. Lessee shall not enter into any sublease without Lessor's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. Lessee shall inform Lessor of all proposed subleases by delivering a copy of the sublease to Lessor. No sublease shall be effective until a valid sublease agreement with a valid attornment provision is delivered to the Lessor, as hereinafter provided. All subleases shall include an attornment provision whereby upon the early termination of this Lease or repossession of the Land by Lessor, the Sublessee shall attorn to the Lessor as its landlord under all of the terms, covenants and conditions of this Lease (prorated for the actual amount of Land used by Sublessee) for the balance of the remaining Term, with the same force and effect as if Sublessee were the Lessee under this Lease. Such attornment shall be effective and self-operative immediately upon Lessee's termination, and each Sublessee subject thereto shall agree to execute, acknowledge, and deliver to Lessor any document that Lessor reasonably requests to confirm such attornment.

## **16.3 Financing.**

**a) Lessee's Right to Encumber.** Throughout the Term, Lessee may from time to time, upon written notice to Lessor, but without having to secure Lessor's consent, execute and deliver one or more Lender's Liens recurring any indebtedness or other obligation of Lessee. Without limiting the generality of the foregoing, Lessee may execute and deliver Lender's Liens to secure promissory notes evidencing construction, interim or permanent financing for the Land or Improvements, 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. A Qualified Lender shall have the absolute right to do one, some, or all of the following things without further consent from Lessor: (a) assign its Lender's Lien; (b) enforce its Lender's Lien or other security instrument other than a mortgage or other interest in the underlying land; (c) acquire title to the Wind Power Facilities under this Lease as a Foreclosure Transferee; (d) take possession of and operate the Wind Power Facilities and the Improvements or any portion thereof in accordance with this Lease and perform any obligations to be performed by Lessee hereunder, or cause a receiver to be appointed to do so; (e) assign or transfer the leasehold estate under this Lease to a third party; or (f) exercise any rights of Lessee hereunder. Nothing in this section shall be construed to convey an interest in the underlying land.

**b) Qualified Lender's Cure Rights.** Each Qualified Lender shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder, including for purposes of curing any default or alleged default by Lessee, including any uncured Default by Lessee (as defined below). As a precondition to exercising any rights or remedies as a result of any default or alleged default by Lessee, Lessor shall deliver a duplicate copy of the applicable default notice to each Qualified Lender concurrently with delivery of such notice to Lessee. In the event of an uncured Default by Lessee after delivery of such notice and the expiration of Lessee's cure period, but prior to terminating this Lease or exercising any other right or remedy hereunder for a Default by Lessee, Lessor will give each Qualified Lender notice of such Default by Lessee, and afford it a period of: (a) Thirty (30) days after such notice is given in which to cure such Default by Lessee if such Default by Lessee is a failure to pay Rent; or (b) Sixty (60) days after such notice is given in which to cure such Default by Lessee if such Default by Lessee is not a failure to pay Rent; provided, however, that if such Default by Lessee is not a failure to pay Rent and is susceptible of cure by a Qualified Lender, but cannot reasonably be cured within such 60-day period, then so long as any Qualified Lender commences a cure within such 60-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. However, if such Default by Lessee is not a failure to pay Rent and is susceptible of cure by a Qualified Lender, but cannot reasonably be cured until the Qualified Lender obtains possession of the Land, then so long as any Qualified Lender commences to obtain

possession of the Land within such 60-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 Land, and then promptly commence and thereafter diligently pursue the cure to completion. If a Qualified Lender is prohibited by any process or injunction issued by any court or by reason of any action of any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee from commencing or prosecuting the proceedings described above, then the 60-day period specified above for commencing such proceedings shall be extended for the period of such prohibition.

**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 Lender. All rights and remedies of the Qualified Lender hereunder will be cumulative with, in addition to, and non-exclusive of one another.

**d) New Lease to Qualified Lender.** If this Lease (a) terminates because of Lessee's uncured Default by Lessee; or (b) is rejected or disaffirmed pursuant to bankruptcy law or any other law affecting creditors' rights, then, so long as a Qualified Lender has cured any such monetary Default by Lessee, and is making commercially reasonable efforts to cure any such non-monetary Default by Lessee as provided herein, Lessor shall immediately, upon written request from such Qualified Lender, received within ninety (90) days after any such event, without demanding additional consideration therefor, recognize the Qualified Lender's interest in this Lease, or enter into a new lease in favor of such Qualified Lender. The new lease shall: (i) contain the same agreements, terms, provisions and limitations as this Lease (except for any requirements that have been fulfilled by Lessee prior to such termination, foreclosure, rejection or disaffirmance hereinafter referred to as a "Terminating Event"); (ii) be for a term commencing on the date of such Terminating Event, and continuing for the remaining Term before giving effect to such Terminating Event; (iii) contain a lease of the Land or such portion thereof as to which such Qualified Lender held a Leasehold Mortgage on the date of such Terminating Event; (iv) enjoy the same priority as this Lease over any lien, encumbrance or other interest created by Lessor. At the option of the Qualified Lender, the new lease may be executed by a designee of such Qualified Lender, without the Qualified Lender assuming the burdens and obligations of Lessee thereunder. The provisions of this paragraph shall survive the termination or cancellation of this Lease.

#### **16.4 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.

### **17. LEASE EXPIRATION.**

#### **17.1 Condition at End of Lease.**

Upon the expiration or termination of this Lease, Lessee shall leave the Land in good condition and shall peaceably surrender the same to Lessor. Prior to expiration or termination, Lessee shall have removed its Improvements and personal property and shall have restored the Land according to the terms of this Lease. All Improvements and personal property remaining on the Land on the day after the expiration or termination 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 the monthly Rent that was payable during the last full "Production 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.

## **18. LIENS AND ESTOPPEL CERTIFICATES.**

### **18.1 Liens.**

Lessee will not allow any liens to be recorded, filed, claimed, or asserted against the Land. In the event a lien is recorded, filed, claimed, or asserted, Lessee will cause the same to be released or discharged within thirty (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 on occasion (but on not less than ten (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. DEFAULTS BY LESSEE AND LESSOR'S REMEDIES.**

### **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, except that the parties may agree, in writing, to extend the time for cure provided for any of the Defaults listed below, and if the time for cure is so extended the Default shall not be held to have occurred until the mutually agreed time for cure has elapsed:

**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 thirty (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 term, provision, or covenant of this Lease applicable to Lessee other than a covenant to pay Rent, and such breach or noncompliance continues for a period of thirty (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 thirty (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 or other exercise of rights under a Lender's Lien by a Qualified Lender, 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 procurement of this Lease, which if known to Lessor would have prevented its issuance of this Lease. Any material false certification or statement by Lessee in any other document or report required to be submitted under this Lease, which was known to be false by Lessee at the time it was made, shall, at the discretion of Lessor, be deemed a Default by Lessee under this Lease.

**e) Unauthorized Use of Premises.** Lessee's, Lessee's employees and agents, its subcontractors, or its subcontractor's employees' and agents' use of the Premises for any unlawful or unpermitted purpose, and such unlawful use continues for thirty (30) days after written notice from Lessor to Lessee to cease such use.

**f) Abandonment or Non-operation.** Lessee's express or implied abandonment of the Lease Premises or non-operation of Wind Power Facilities upon the Land for 12 consecutive months.

## **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 while such Default by Lessee shall be continuing, 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 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, utilizing all appropriate care, 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 ten (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.

**a) Termination of Lease.** In the event of a Default by Lessee, Lessor shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, all of which remedies shall be cumulative; provided, however, that Lessor shall not commence any action or proceeding in which termination, cancellation, rescission or reformation of this Lease is sought as a remedy except as provided below:

- i. Lessor shall not seek termination, cancellation, rescission, or reformation without first allowing Lessee an opportunity to cure any alleged failure, breach, or default through notice as provided by Section 24.2;
- ii. Lessor shall not seek termination, cancellation, rescission, or reformation for any of the defaults listed in Section 19.1(a) – (c) except as provided for nonpayment of awarded damages described in subpart (iii) below;
- iii. If Lessee fails to pay to Lessor within the time specified by any court of last resort with jurisdiction any damages awarded Lessor by such court, then Lessor may, after giving a notice and subject to Section 16.3(b), terminate this Agreement. Lessor may pay or perform

any obligations of the Lessee that have not been paid or performed as required hereunder and to obtain (a) subrogation rights therefor and (b) prompt reimbursement from Lessee for the actual, reasonable and verifiable out-of-pocket costs of such payment or performance.

**b) 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, Montana Code Annotated, and Rule 66, 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.

**c) Bankruptcy Relief.** Nothing contained in this Lease will limit or prejudice Lessor's right to obtain adequate assurances of 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.**

Either of the following events, which continue beyond the applicable notice and cure period, will constitute a "Default by Lessor" under this Lease: (a) 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 thirty (30) days after notice thereof from Lessee to Lessor; or, (b) 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 ten (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. DECOMMISSIONING AND RECLAMATION PLAN AND BOND.**

Upon the 15<sup>th</sup> anniversary of the commencement of commercial operation of the Project, the Lessee shall furnish Lessor a good and sufficient corporate surety bond or letter of credit, in the amount specified in the Reclamation Plan attached to this lease as **Exhibit D**. The bond shall secure the full performance by the Lessee of its decommissioning of the project and reclamation of the Land. The bond shall be in form and issued by a surety company acceptable to the Lessor. The bond shall be reviewed every five (5) years and may be adjusted by the Lessor to assure that reclamation will occur in accordance with the Reclamation Plan. A new or modified bond shall be delivered to the Lessor not less than thirty (30) days following Lessor's request for an additional bond. The Lessee shall have a bond or letter of credit in effect at all times until one (1) year after the expiration of the Lease Term, or one (1) year after cessation of operations, whichever is later, unless fully drawn upon earlier by Lessor or unless Lessor provides the issuer of the bond or letter of credit written notice authorizing the termination of the bond. Upon (a) the expiration of the Lease Term, and (b) Lessee's compliance with its reclamation obligations, as reasonably



determined by Lessor, Lessor shall be obligated to provide written notice to the issuer of the bond or letter of credit authorizing the termination of the bond or letter of credit, as applicable. Any such written notice shall be provided by Lessor within ten (10) days of written request by Lessee. Lessee's failure to have a bond or letter of credit in effect at all times required by this Lease in the full amount required by Lessor shall constitute a material breach of this Lease unless otherwise agreed to by Lessor. The Lessee's obligation under this paragraph shall survive the termination of this Lease.

## **22. LESSEE LIABILITY; INDEMNIFICATION.**

Lessee shall protect, defend, indemnify, and save harmless Lessor, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, liabilities, demands, causes of action, judgments, penalties, fines, and losses, including all costs of defense and reasonable attorney fees, arising in favor of or asserted by Lessee's employees and agents, its subcontractors, its subcontractor's employees and agents, or third parties on account of property damage, personal injury, bodily injury, death, violation of or non-compliance with any laws, regulations, or rules, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of, in connection with, or on account of this Lease, any act or omission of Lessee, or any act or omission of Lessee's officers, agents, employees, or subcontractors, provided, however, that in no event shall Lessee be responsible for defending, indemnifying or holding harmless Lessor to the extent of any claim, damage, injury, judgment, liabilities, penalties, fines or losses caused by, arising from or to the extent contributed to by the negligence or willful misconduct of Lessor.

In no event shall Lessor or Lessee or any of their respective officers, directors, members, partners, shareholders, employees, agents or affiliates be liable for special, indirect, exemplary, punitive or consequential damages of any nature whatsoever connected with or resulting from the performance or non-performance of this Lease or any exhibit attached hereto, including without limitation damages or claims in the nature of lost revenue, income or profits, loss of use, or cost of capital, irrespective of whether such damages are reasonably foreseeable and irrespective of whether such claims are based upon negligence, strict liability, contract, operation of law or otherwise.

Lessee waives all claims, demands, causes of action, and recourse against Lessor, including claims of contribution or indemnity, arising in favor of Lessee on account of property damage, personal injury, bodily injury, death, violation of or non-compliance with any laws, regulations, or rules, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with, any act or omission of Lessee not authorized by this Lease, or any act or omission of Lessee's officers, agents, employees, or subcontractors not authorized by this Lease.

## **23. UTILITY INSTALLATION**

The Lessee, at its sole cost and expense, shall determine the availability of, and shall cause to be installed in, on, and about the Land, all facilities necessary to supply thereto all water, sewer, gas, electricity, telephone, and other like services required in the Lessee's operations hereunder. The Lessee shall pay all connection or acreage assessments or charges levied by any public utility, agency, or municipality with respect to their services. Notwithstanding the foregoing, the Lessee shall not enter into any contract or agreement with any city, county, or other governmental agency or body or public utility with reference to sewer lines or connections, water lines or connections, or street improvements relating to the Land without the prior written consent of the Lessor, which consent shall not be unreasonably withheld.

## **24. MISCELLANEOUS**

### **24.1 Force Majeure.**

If performance of this Lease or any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of "Force Majeure", the affected party, upon giving notice to the

other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction, or interference. The affected party shall use reasonable efforts to avoid or remove such causes of nonperformance and shall immediately continue performance hereunder whenever such causes are removed.

#### **24.2 Notices.**

All notices or other communications required or permitted under this Lease shall be in writing and shall 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 (1) business day after deposit with a private courier or overnight delivery service with a written acknowledgment of receipt; or (c) five (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 address shown for Lessor and Lessee respectively in the introductory paragraph of this Lease. In the case of notices to a Qualified Lender, to the address set forth in its most recent notice to Lessor. Any party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this paragraph.

#### **24.3 Binding Effect.**

Each of the provisions of this Lease shall run with the land and will extend to bind or inure to the benefit of, as the case may be, Lessor and Lessee, and their respective heirs, successors, Sublessees, and assigns during the Term of this Lease.

#### **24.4 Entire Agreement; Modifications.**

This Lease contains the entire agreement between the parties respecting its subject matter. Any agreement, understanding, representation, statement, promise, or inducement respecting the Premises, this Lease, or any other matter referenced herein not expressly set forth in this Lease or a subsequent writing signed by both parties is null and void. All modifications to this Lease must be in writing and signed by the Lessor and the Lessee. No purported modifications or amendments, including without limitation any oral agreement (even if supported by new consideration), course of conduct, or absence of a response to a unilateral communication, shall be binding on either party. If executed properly, modifications of this Lease do not need independent consideration to be legally enforceable.

#### **24.5 Enforcement Expenses.**

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

#### **24.6 No Waiver.**

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

#### **24.7 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.

#### **24.8 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.

**24.9 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.

**24.10 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.

**24.11 Reasonableness.**

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

**24.12 Governing Law; Venue; Jurisdiction; Rule of Construction.**

This Lease will be governed by and construed according to the laws of the State of Montana. In the event of litigation concerning this Lease, venue shall be in the First Judicial District in and for the County of Lewis and Clark, Montana. The parties acknowledge and agree that they have each participated in the drafting of this Lease, and therefore, any rule of construction to the effect that ambiguities are to be resolved against the party drafting a contract shall not be employed in the interpretation of this Lease and is hereby waived.

**24.13 Time of Essence.**

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

**24.14 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.

**24.15 Cooperation.**

Lessor shall fully support and cooperate with Lessee in the conduct of its Operations and the exercise of its rights hereunder, and in carrying out and otherwise giving full force and effect to the purpose and intent of this Lease, including in Lessee's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights necessary or convenient in connection with Operations. Lessor shall have no monetary obligation in paying any permit fees or consultant charges associated with any governmental permits required.

**24.16 Recording.**

This Lease may not be recorded. Lessor and Lessee shall execute in recordable form and Lessee shall then record a memorandum of this Lease in the form attached to this Lease as **Exhibit A**. Following due and proper compliance with its rules, regulations, and procedures, Lessor shall consent to the recordation of the interest of an assignee in the Land and the recordation of any documents related to the Project.

**24.17 Wind Energy Rights Act.**

The parties acknowledge and agree that this Lease shall be construed and given effect in accordance with §70-17-401, MCA, et seq., the Montana Wind Energy Rights Act, to the extent applicable, as follows:

a) **Term Specification.** The parties acknowledge and agree that, if this Lease and/or the leasehold



estate demised hereunder shall not have sooner expired or terminated in accordance with the terms hereof, the Term shall expire and terminate on \_\_\_\_\_, said date defining the specified term and date of termination contemplated under §70-17-406(1)(d), MCA.

**b) Tax Liability.** Nothing in this Lease shall be construed as making Lessor liable, and Lessee shall be responsible, for any property tax associated with the Wind Power Facilities and the Projects or other equipment related to the development of the Wind Power Facilities and the Projects during the Term, as required under §70-17-406(1)(f), MCA.

**c) Compliance with Laws.** Lessee shall comply with federal, state, and local laws and regulations, including those applicable to the Wind Power Facilities and the Projects, as required under §70-17-406(1)(h), MCA.

**d) Remedies.** Notwithstanding anything in this Section or this Lease to the contrary, to the extent that this Lease or any terms hereof should fail to be in accordance with the requirements set forth in §70-17-401, MCA, *et seq.*, including specifically, but without limitation, §70-17-406(1), MCA, this Lease shall be construed as reformed to the minimum extent necessary so as to satisfy such requirements. The parties agree that, to the fullest extent permitted by law, reformation of this Lease shall be the sole and exclusive remedy of the parties in the event of any failure or alleged failure of this Lease to be in accordance with the foregoing requirements.

#### **24.18 Confidentiality.**

Lessee understands that, in accordance with Mont. Const. art. II, § 9, and Montana's public records laws, as such laws may be amended, that Lessor must disclose to the public upon request any records it receives from Lessee. Lessor shall not disclose any information it receives from Lessee that Lessee has previously identified as confidential and that the Lessor determines in its sole discretion is protected from mandatory public disclosure under a specific exemption to the Montana public records laws.

#### **24.19 Survival of Terms, Conditions, Restrictions Reservations, and Covenants.**

Any term, condition, restriction, reservation, or covenant that gives rise to any rights or claims of Lessor against Lessee and Lessee against Lessor shall be deemed to survive the termination, relinquishment, or abandonment of this Lease until all claims have been settled or resolved.

### **25. SIGNATURES**

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, MARTINSDALE WIND FARM LLC:**

By: \_\_\_\_\_  
AUTHORIZED SIGNATORY NAME AND TITLE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by LESSEE AUTHORIZED SIGNATORY NAME as authorized signatory of Martinsdale Wind Farm LLC, a Delaware limited liability company.

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**LESSOR, STATE OF MONTANA, DNRC:**

By: \_\_\_\_\_

MIKE ATWOOD, CHIEF  
REAL ESTATE MANAGEMENT BUREAU

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ by MIKE ATWOOD, CHIEF, REAL ESTATE MANAGEMENT BUREAU, State of Montana,  
DNRC.

STATE OF MONTANA

COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT A****Form of Memorandum – Placeholder**

The placeholder will be replaced with the actual exhibit prior to lease signature.



**EXHIBIT B****Vicinity Map**

This placeholder will be replaced with the actual exhibit prior to the Commencement Date.

**EXHIBIT C**  
**MARKET ADJUSTMENT**  
**SCHEDULE AND 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 Years 36, 46, 61, 76 and 91. The process for the Market Adjustment will commence on the date that is 90 days after the first day of Lease Years 35, 45, 60, 75, 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 in 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. The Lease Rate Percentage shall be determined as of the Market Date. See the following example of a scheduled Market Adjustment for a 50,000 square foot lease, at a 6% Lease Rate Percentage 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 the Lease Rate Percentage determined in accordance with 77-1-905, MCA, or subsequent laws governing rental rates for wind power developments on State Trust Land 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. The scope of work shall specify that the appraisal is for the Land only, and does not consider the presence of Wind Power Facilities. 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**

<b>Lease Year</b>	<b>Schedule</b>
35	"Market Adjustment"
36 through 45	Base Rent resulting from year 35 Market Adjustment applied.
45	"Market Adjustment"
46 through 60	Base Rent resulting from year 45 Market Adjustment applied.
60	"Market Adjustment"
61 through 75	Base Rent resulting from year 60 Market Adjustment.
75	"Market Adjustment"
76 through 90	Base Rent resulting from year 75 Market Adjustment applied.
90	"Market Adjustment"
91 through 99	Base Rent resulting from year 90 Market Adjustment applied.



**EXHIBIT D****Reclamation Plan**

This exhibit is dependent on the lease proposal and subsequent Environmental Analysis.

The placeholder will be replaced with the actual exhibit prior to lease signature. The final exhibit will include specific reclamation requirements, including reclamation bond amount and review schedule.

**EXHIBIT E****Environmental Monitoring**

This placeholder will be replaced with the actual exhibit prior to the Commencement Date.

**EXHIBIT F****Existing Rights**

This placeholder will be replaced with the actual exhibit prior to the Commencement Date.

**EXHIBIT G****Site Plan**

This placeholder will be replaced with the actual exhibit no later than one (1) year after the Commencement Date and will be amended in accordance with this Lease.



# 1220-10

INFORMATIONAL ITEM:

Real Estate Management Plan Five - Year Report



**Land Board Agenda Item  
December 21, 2020**

**1220-10      INFORMATIONAL ITEM – REAL ESTATE MANAGEMENT PLAN FIVE-YEAR REPORT**

**Location: Statewide**

**Trust Benefits: N/A**

**Trust Revenue: N/A**

**Item Summary**

The Real Estate Management Bureau is required to report to the Land Board every five years, starting in 2010, on the status of compliance with the Development Thresholds contained in the Department's Real Estate Management Plan (Plan) for State Trust Lands.

The Real Estate Management Plan Five-Year Report includes an analysis of exemptions, and activities that apply to the Development Thresholds including leases or easements developed for commercial, industrial or residential uses, and lands sold or exchanged that were developed for commercial, industrial or residential uses within five years of the sale closing date.

**Exclusions and Exemptions**

The Plan provides for a series of Development Threshold exemptions that exclude nearly all past and current commercial development on projects such as Section 36 in Kalispell (100-acre project), and the Lewis and Clark Commerce Center in Bozeman (28 acre project). In addition, the thresholds only apply to those activities instigated after the adoption of the Plan on July 18, 2015.

**Status of the Development Thresholds**

To date, the following acres have applied to the development thresholds since July of 2005:

**Statewide Development Threshold**

Threshold	Developed Acres	Percentage of Threshold
30,000 Acres	268.33	.89%

**Rural Development Threshold**

Threshold	Developed Acres	Percentage of Threshold
1,500 Acres	257.58	17.17%

# **REAL ESTATE MANAGEMENT PLAN FIVE-YEAR REPORT**

**ACCOUNTING AND REPORTING**

**AND**

**IMPLEMENTATION AND EFFECTIVENESS OF  
THE REAL ESTATE MANAGEMENT PROGRAMATIC PLAN**

**Montana Department of Natural  
Resources and Conservation**

**Trust Lands Management Division**

**2020**



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## I. INTRODUCTION

On July 18, 2005 the Department of Natural Resources and Conservation (Department) adopted the Real Estate Management Plan Record of Decision (ROD) which provides policy, direction, and guidance in the selection and management of real estate development on State Trust Lands. The ROD covers those activities related to the leasing, exchanging, or selling of trust lands for residential, commercial, industrial, and conservation purposes. In December 2008, the Department adopted the Real Estate Management Administrative Rules (Appendix E; ARM 36.25.901 et seq.) to implement the key components of the ROD.

The Real Estate Management Bureau of the Trust Lands Management Division is required to report the following to the State Board of Land Commissioners (Board) every five years:

- A. Implementation and Effectiveness of the Real Estate Management Plan, per ARM 36.25.914
- B. Accounting and Reporting on the compliance with Statewide and Rural Development Thresholds provided in ARM 36.25.911, as well as other specific lease, easement, sale, acquisition and development activities per ARM 36.25.913(3).

### 1. ACCOUNTING CRITERIA

As provided in ARM 36.25.913, the Department must account for the following:

- A. Commercial, industrial, and residential projects involving notification of conservation entities prior to project implementation as required by ARM 36.25.910.
- B. Commercial, industrial, and residential projects exempt from the Development Thresholds per ARM 36.25.912.
- C. Acres under commercial, industrial, or residential lease where no commercial, industrial, or residential lease existed previously;
- D. Acres under easement for commercial, industrial, or residential use;
- E. Non-isolated tracts sold and developed for a commercial, industrial, or residential use within five years of sale;
- F. Tracts acquired with existing commercial, industrial, or residential development;
- G. Tracts, or portions of tracts, encumbered or purchased with an existing conservation lease, license, easement, or other means of securing conservation uses;
- H. Non-isolated tracts sold and encumbered with a restriction on development for conservation uses within five years of sale;
- I. Acres dedicated as open space during subdivision review in excess of minimum requirement; and
- J. Acres designated as "Natural Area" per Title 77, chapter 12, part 1, MCA.

The Real Estate Management Administrative Rules (Rules) are applicable to those real estate projects, sales, and exchanges that occurred after adoption of the ROD on July 18, 2005. Per ARM 36.25.903, the Rules specify that the applicability does not include: lease lots created prior to July 18, 2005, projects that received all local government approvals necessary for the project on or before December 15, 2008, Land Use Licenses, or activities within navigable waterways.

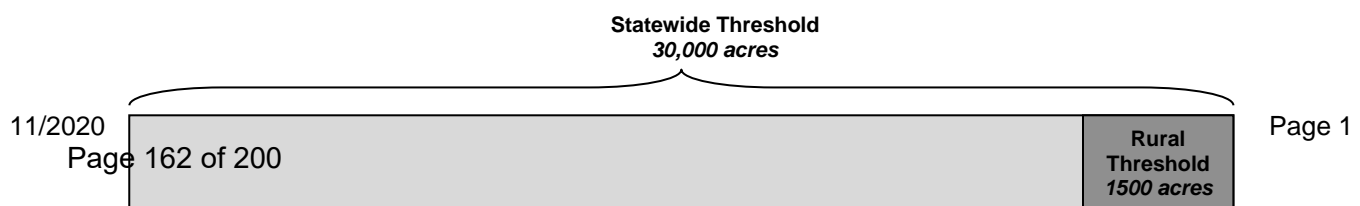
Projects and activities for which the Rules are not applicable are not included in this report.

### 2. DEVELOPMENT THRESHOLDS AND EXEMPTIONS

#### **Development Thresholds**

Qualifying development will count toward the Development Thresholds described in ARM 36.25.911. The Development Threshold means a predefined number of state trust land acres to be developed for commercial, industrial or residential uses. The rule defines a 30,000 acre statewide Development Threshold, of which, no more than 1500 acres of qualifying development may occur in rural areas.

**Figure 1: Statewide and Rural Development Thresholds**



If, prior to July 18, 2025, the aggregate acreage of qualifying development meets or exceeds either the Statewide Threshold of 30,000 acres, or the Rural Threshold of 1,500 acres, the Department must conduct a programmatic review of the Plan per ARM 36.25.914(2).

Qualifying development is limited to:

- A. State Trust Lands sold or exchanged after July 18, 2005 and developed within five years of the closing date for a commercial or industrial use.
- B. Tracts disposed of through sale or exchange after July 18, 2005 and developed within five years for residential uses if the planned density is greater than one residential unit per 25 acres.
- C. Lands that were ready for lease after July 18, 2005, and were leased for commercial or industrial uses, or at residential densities as described above.

#### **Development Threshold Exemptions**

ARM 36.25.912 provides exemptions from both the Statewide and Rural Development Thresholds.

#### **Statewide**

- A. Five Year Exemption: Sale or exchange of any tract, when it remains undeveloped during the five years following the sale closing date. Existing commercial/industrial/residential development on tracts sold/exchanged will not trigger the Development Thresholds (i.e. “grandfathered development”). Any development activity after the five year period will not count toward the Development Thresholds.
- B. Isolated Tract: Sale or exchange of an isolated tract in any county except in Beaverhead, Broadwater, Carbon, Cascade, Flathead, Gallatin, Lewis and Clark, Lake, Madison, Missoula, Park, Powell, Ravalli, Stillwater, Sweet Grass, Teton, and Yellowstone counties.
- C. Public Use: Sale, exchange, lease or easement to a public entity, for a public facility, community service, or for a private sewer or water system. Development of a tract meeting these criteria may occur within five years of sale or exchange without counting toward the Development Thresholds.
- D. Alternative Energy/Communications: Development of communications facilities, and wind, geothermal, or solar power generation facilities are exempt from the Development Thresholds.
- E. Cluster Development: Sale, exchange or lease of a tract that is developed for commercial, residential, or industrial uses on not more than 25 percent of a tract, and the remainder is deed restricted for conservation.
- F. Residential Density: Sale, exchange or lease of a tract that is developed for residential use when the density is limited to one residential unit per 25 acres through a deed restriction or other instrument that restricts density.
- G. Transfer of Development Rights: Sale, exchange or lease of a tract within a receiving area established by a local jurisdiction as part of a Transfer of Development Rights program, and developed for a commercial, industrial, or residential use utilizing development rights permanently transferred from State Trust Land in the sending area.
- H. “Conservation of Other Tracts”: Sale, exchange or lease of a tract that is developed for residential uses at a density greater than one unit per 25 acres if the potential density of one or more other tracts of State Trust Land is reduced in perpetuity by an equal or greater amount, such that the combined development density of all tracts is not greater than one unit per 25 acres.

- I. Conservation: Any portion of a tract dedicated for conservation (open space, parks, etc) upon final subdivision approval in excess of minimum state or local subdivision standards will be exempt from the Development Thresholds.

### Rural

A tract that meets one or more of the statewide exemptions provided in ARM 36.25.912(1) will be exempt from both the Statewide and Rural Development Thresholds. However, a rural tract that doesn't meet any of the Statewide Threshold Exemptions, but does meet one or more of the following criteria, it will be exempt from the Rural Development Threshold [ARM 36.25.912(2)]:

- A. County Zoning: When the tract is subject to zoning adopted by the county's governing body in compliance with Title 76, chapter 2, part 1 or part 2, MCA.
- B. Development Standards: When the tract is, or will upon development for commercial, industrial or residential uses:
- (i) provides infill opportunities;
  - (ii) contiguous to existing development;
  - (iii) located within a sewer or water utility service area;
  - (iv) adds value to existing uses;
  - (v) demonstrates economic viability; and
  - (vi) conforms to the development standards in ARM 36.25.904.

## II. ACCOUNTING AND REPORTING

### 1. NOTIFICATION OF CONSERVATION ENTITIES PRIOR TO PROJECT IMPLEMENTATION

Per ARM 36.25.909(2), the Department maintains a list of conservation entities and other persons and organizations wishing to be notified when new Real Estate Projects are being proposed. Conservation entities are notified when new Real Estate Projects (see definitions) are proposed. The Department provides conservation entities 60 days in which to propose a conservation use of those lands identified for a Real Estate Project in accordance with ARM 36.25.910.

A general notification was sent to conservation entities in December 2006 for all real estate projects in existence at that time. Two additional projects were selected in May 2009 and notification was sent at that time. Three Projects were added to the list after July 2015, and notification was sent: Penwell Bridge in Belgrade, Fox Farm Rd in Great Falls, and Butte Industrial District is the newest and still in process. However, the Department annually provides a list of ongoing real estate projects to the Board. This list is made available to the public through the Department's website as well as the Board's meeting archive.

As of 2015, Interested Parties may now sign up on the Department website to be included in an electronic mailing list to receive email notifications when a new project is proposed and for any updates to the annual ongoing projects list.

### 2. PROJECTS EXEMPT FROM THE DEVELOPMENT THRESHOLDS.

#### Land Banking Sales

A total of 313 exempt Land Banking Sales have been sold since July 18, 2005 with one or more applicable exemptions. See **Appendix A** for more information on these sales.

#### Land Exchanges

Nine land exchanges have been completed with one or more applicable exemptions.

Exchange	County	TRS	Acres Exchanged	Isolated	Rural	Closing Date	Exemption
<b>Lyman Creek</b>	Ravalli	16N 19W 16, 10N 18W 30	240	NO	YES	4/8/2009	Exchange with Public Entity [ARM 36.25.912(1)(a)]
<b>Lolo</b>	multiple	multiple	12,137.73	NO	YES	12/22/2010	Exchange with Public Entity [ARM 36.25.912(1)(a)]



Exchange	County	TRS	Acres Exchanged	Isolated	Rural	Closing Date	Exemption
<b>Goguen</b>	Flathead	31N 22W 29	434.757	NO	YES	04/8/2009	Density Limited to 1 Unit Per 25 Acres through a Deed Restriction [ARM 36.25.912(1)(e)]
<b>CS&amp;KT Phase 1</b>	Multiple	Multiple	2,411.98	NO	YES	6/16/2010	Exchange with Public Entity [ARM 36.25.912(1)(a)]
<b>CS &amp; KT Phase 2</b>	Missoula	Multiple	2,103.82	NO	Yes	12/19/2011	Exchange with Public Entity [ARM 36.25.912(1)(a)]
<b>Prairie Elk</b>	McCone	26N 46E 16	82.4	NO	YES	11/02/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
<b>Peebles</b>	Teton	Multiple	710	NO	YES	12/03/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
<b>Nistler</b>	Wibaux	15N 59E 36	160	NO	YES	08/15/2013	pre-existing residential development
<b>Montgomery</b>	Flathead	32N 23W 20	0.52	NO	YES	08/22/2014	pre-existing residential development
<b>Gallatin County</b>	Gallatin	2N 2E 36 1N 3E 6	8.82 627.31	NO YES	YES	12/27/2018	Exchange with Public Entity [ARM 36.25.912(1)(a)]

### Leases

Ten leases have been executed that meet one or more applicable exemption.

Lease	Lease Holder	Lease Type	County	Acres	Date Effective	Exemption
3063368	RFWAVE LLC.	Communication Sites	Powell	0.24	1/22/2018	Communication Facility [ARM 36.25.912(1)(b)]
3072938	SPECTRUM SITES, LLC	Communication Sites	Gallatin	1.5	3/1/2016	Communication Facility [ARM 36.25.912(1)(b)]
3073364	CLEARVIEW TOWER COMPANY II, LLC	Communication Sites	Teton	2	3/1/2018	Communication Facility [ARM 36.25.912(1)(b)]
3053463	DEPT OF FISH, WILDLIFE & PARKS	Governmental	Lake	13.35	3/1/2016	Public Facility [ARM 36.25.912(1)(a)]
3063385	CITY OF MISSOULA PUBLIC WORKS DEPARTMENT	Governmental	Missoula	0.06	6/14/2019	Public Facility [ARM 36.25.912(1)(a)]
3063368	RFWAVE LLC.	Communication Sites	Powell	0.24	1/22/2018	Communication Facility [ARM 36.25.912(1)(b)]
3072938	SPECTRUM SITES, LLC	Communication Sites	Gallatin	1.5	3/1/2016	Communication Facility [ARM 36.25.912(1)(b)]
3073364	CLEARVIEW TOWER COMPANY II, LLC	Communication Sites	Teton	2	3/1/2018	Communication Facility [ARM 36.25.912(1)(b)]
3053463	DEPT OF FISH, WILDLIFE & PARKS	Governmental	Lake	13.35	3/1/2016	Public Facility [ARM 36.25.912(1)(a)]
3063385	CITY OF MISSOULA PUBLIC WORKS DEPARTMENT	Governmental	Missoula	0.06	6/14/2019	Public Facility [ARM 36.25.912(1)(a)]

### Easements

Easements on State Trust Lands are authorized under 77-2-101, MCA. All easements for specific uses provided in statute are exempt from the development thresholds except easements for encroachments of private buildings.

The following table describes the exemptions in ARM 36.25.912 for the easement uses authorized under 77-2-101, MCA.

Statute	Applicable Threshold Exemption
<b>77-2-101, MCA. Easements for specific uses. ...the board may grant easements on state lands for the following purposes:</b>	<b>ARM 36.25.912 (1)</b> An urban tract meeting any one of the following criteria will be exempt...
(a) schoolhouse sites and grounds;	(a) leases, sales, exchanges, and easements to a public entity, for a public facility, community service, or for a private sewer or water system;
(b) public parks;	
(c) community buildings;	
(d) cemeteries;	
(e) conservation purposes	<i>The Real Estate Management Rules do not apply to easements for conservation purposes.</i>
(f) for other public uses.	(a) leases, sales, exchanges, and easements to a public entity, for a public facility, community service, or for a private sewer or water system;
<b>(2) The board may grant easements on state lands for the following purposes:</b>	
(a) right-of-way across or upon any portion of state lands for any public highway or street, any ditch, reservoir, railroad, private road, or telegraph or telephone line, or any other public use as defined in 70-30-102;	(c) acres under easement for public or private rights-of-way;
(b) any private building or private sewage system that encroaches on state lands; or	(a) leases, sales, exchanges, and easements to a public entity, for a public facility, community service, or for a private sewer or water system;

### 3. LAND USE, DEVELOPMENT, AND DISPOSITION

The following tables illustrate uses and projects that meet the accounting and reporting requirements of ARM 36.25.913(c) through (h). This section includes only those uses and projects which are not exempt from development thresholds, or excluded from the Rules per 36.25.903, and/or that have been developed within five years of sale or exchange where applicable.

Uses that are excluded from the Rules are described in Section I, subsection 1, of this report. Uses and projects that are exempt from development thresholds are listed in Section I, subsection 2, of this report.

#### Leasing: Acres under Commercial, Industrial, or Residential Lease

Lease	Lease Holder	Lease Type	County	Acres	Date Effective	Rural or Statewide	Status
3090002	Hydrodynamics, Inc	Hydroelectric Project	Sweet Grass	.75	1/1/2012	Statewide	Currently Undeveloped
3073365	ACE STORAGE, LLC	Commercial	Gallatin	10	10/1/2019	Statewide	Active
3080008	TRANSCANADA KEYSTONE PIPELINE LP	Commercial	Phillips	11.99	9/1/2019	Rural	Active
3053575	NORTHWEST MONTANA ADVENTURE LLC	Commercial	Flathead	7.28	11/1/2019	Rural	Active
3090005	NAVAJO TRANSITIONAL ENERGY CO. LLC	Commercial	Big Horn	193.2	9/15/2015	Rural	Active
3053503	JMF SERVICES INC	Commercial	Lincoln	40	2/1/2016	Rural	Active

Statewide Development Threshold Acres: **264.31**

Rural Development Threshold Acres: **253.47**

#### Easements: New Acres under Easement for Commercial, Industrial, or Residential Use

Four easements totaling 4.11 acres have been issued for building encroachments since July 18, 2005.

Easement #	Easement Holder	County	TRS	Legal	Acres	Date Effective
D-17078	Diamond B Ranch LLC	Flathead	30N 22W 7	Tract in NE4SW4	2.02	11/29/2019
D-15244	David & Carol Hansen	Granite	11N 15W 16	Tract in N2SW4	1	8/6/2015

Easement #	Easement Holder	County	TRS	Legal	Acres	Date Effective
D-14385	Stanton, Dion L & Tanya Taylor	Custer	8N 47E 28	Old Tongue River Channel	0.09	6/7/2012
D-14331	Almquist, Heather	Missoula	12N 16W 26	Tract in SE4SE4	1	4/30/2012

Statewide Development Threshold Acres: **4.11**

Rural Development Threshold Acres: **4.02**

#### **Disposition: Tracts Sold and Developed Within Five Years of Sale**

The following tables demonstrate sales and exchanges that were sold after July 18, 2005, and developed within five years.

The Department is monitoring multiple sales and exchanges for development that have closed within the past 5 years, but have not been developed. The sales list is found in Appendix B of this report. The exchanges list is found in Appendix C of this report.

#### Land Banking Sales

No Land Banking Sales have been developed to-date. The 220 sales in Appendix B are being monitored for a five-year period after closing.

Statewide Development Threshold Acres: **NO EFFECT**

Rural Development Threshold Acres: **NO EFFECT**

#### Land Exchanges

No Land Exchanges have been developed to-date. Land exchange sales found in Appendix C of this report are being monitored during the five year period.

Statewide Development Threshold Acres: **NO EFFECT**

Rural Development Threshold Acres: **NO EFFECT**

#### **Disposition: Tracts Sold and Encumbered with a Development Restriction within Five Years of Sale** None

#### **Acquisition: Tracts Acquired with Existing Commercial, Industrial, or Residential Development**

One parcel with existing commercial development was acquired as part of the Goguen land exchange and one parcel with existing commercial development was acquired as part of the 1539 11<sup>th</sup> Avenue, Helena Land Banking Acquisition. Property acquired by the state does not count toward the Development Thresholds.

Exchange / Acquisition	County	TRS	Legal	Acres	Closing Date
Goguen Land Exchange – Lupfer parcel (Property was sold on 8/30/2019)	Flathead	31N 22W 36	Lot 1 of Lupfer Townhouses	0.043	4/17/2009
1539 11 <sup>th</sup> Ave., Helena Land Banking Acquisition	Lewis & Clark	10N 3W 29	Lot D, Blk 21 Cannon CW Addition, City of Helena	1.37	2/28/2013

Statewide Development Threshold Acres: **NO EFFECT**

Rural Development Threshold Acres: **NO EFFECT**

#### **Acquisition: Tracts Purchased with Existing Encumbrance for Conservation Purposes**

Acquisition	County	TRS	Acres Acquired	Isolated ?	Rural?	Closing Date
<b>Tupper Lakes</b>	Powell	Multiple	1,716.6	No	Yes	7/28/2008
<b>Chamberlain Creek</b>	Multiple	Multiple	14,581.12	No	Yes	7/27/2010
<b>North Swan Phase 1</b>	Lake	Multiple	1,920	No	Yes	12/21/2010

<b>North Swan Phase 2</b>	Lake	Multiple	14,627.55	No	Yes	12/27/2012
<b>Stillwater Lazy Creek Phase I</b>	Flathead	Multiple	7,018.24	No	Yes	2/15/2018
<b>Stillwater Lazy Creek Phase II</b>	Flathead	Multiple	3,200	No	Yes	10/04/2018
<b>Stillwater Phase III Swift Creek</b>	Flathead	Multiple	3180.08	No	Yes	9/24/2018

#### Acres Dedicated as Open Space During Subdivision Review

Subdivision	County	TRS	Residential Acres Subdivided	Acres of Parkland Dedication	Plat Filing Date
Skyview Ridge Subdivision, 1 <sup>st</sup> Filing	Yellowstone	1N-26E-20	32.045	9.047	2/25/2014

Acres Designated as "Natural Area" Per Title 77, Chapter 12, Part 1, MCA.  
None

### III. CONCLUSION: STATUS OF DEVELOPMENT THRESHOLDS

As of July 16, 2020, the following acres have applied to the development thresholds:

#### Statewide Development Threshold

Threshold	Developed Acres	Percentage of Threshold
30,000 Acres	268.33	.89%

#### Rural Development Threshold

Threshold	Developed Acres	Percentage of Threshold
1,500 Acres	257.58	17.17%

### IV. IMPLEMENTATION AND EFFECTIVENESS

#### OF THE REAL ESTATE MANAGEMENT PROGRAMMATIC PLAN

Per ARM 36.25.914, the Department must issue a report upon the implementation and effectiveness of the Real Estate Management Programmatic Plan (Plan), including recommendation on the need for significant changes to the plan.

#### Implementation

The Department has implemented all parts of the Real Estate Management Programmatic Plan as specified in Administrative Rules of Montana 36.25.901 *et seq.*

The Department employs three area Planners that are specialists in ensuring that Development Standards are met when selecting and proceeding with any real estate project. In addition to Real Estate Management Bureau staff, Planners are key members in Project identification, Project review, site specific evaluations, and helping to secure appropriate entitlements on trust land.

The Project Identification Team and Project Review Committee meet annually in the spring to review new and existing projects, and to assign resources. A Project Management List is developed after the meeting and presented to the Board, distributed to interested parties, and posted on the Department website. The Department maintains a list of conservation interests and notifies parties on the list when any new real estate project is selected. Additionally, the Department has created an internet email mailing list that interested parties may sign up for at any time on the Department web site. To date, one interest has been expressed on securing a conservation use on the Fox Farm property near Great Falls. A local conservation group is working on partnering with Cascade County, but no formal application has been received.



The Development Thresholds, or limitation on acres to be developed for commercial, industrial, or residential uses, are established in rule 36.25.911 to be 30,000 acres statewide, and 1,500 acres rural. The Department maintains records of all commercial leases, sales, exchanges, acquisitions, and easements upon state trust land. The data has been reviewed against threshold criteria and to date we have stayed within the limitations and have only met 268.33 acres of the statewide development threshold (0.89%) and 257.58 acres of the rural development threshold (17.17%).

The Rules require a five year report to account for real estate management activities that meet ARM 36.25.910 and 36.25.912, in addition to other specific criteria that are otherwise not mentioned in the Rules. The Department completed the first report as required in July of 2010, the second report as required in August of 2015, and the third report as required in November 2020.

#### Adaptations and Considerations

- At the time the Plan was developed, the Department had a Statewide Planner position. The Plan specifically identifies the Statewide Planner's roll and specific job duties. The Department no longer has that position. The job duties have been shared between Bureau staff and area Planners.
- The Rules require that the Department account for acquisitions of tracts with existing commercial, industrial, or residential development; however acquisitions are not included at all in the applicability of development thresholds in 36.25.911. It is unclear if the intent of the Plan was to count these types of properties towards development thresholds. The Department has not included these types of properties in the development thresholds in this report.
- The Rules specifically require an accounting report for projects and activities that are exempt from development thresholds, but it does not require that that the Department report on the overall status of the development threshold and acres that are not exempt. The Department has elected to report on the status of the threshold.
- The Plan identifies Real Estate Projects as either "Projects" or "Activities" with both having very different criteria. It is confusing to have both an "Activity" and a "Project" be a type of Real Estate *Project*.
- The Plan specifies a multitude of forms for the Project Identification process. These forms can be cumbersome and excessive.

#### **Effectiveness**

The Real Estate Management Programmatic Plan has established helpful criteria in selecting Real Estate Projects statewide, and allocating resources toward selected projects appropriately. Due to the scope of this report, it does not detail projects and activities that resulted in new commercial leases on Trust land and subsequently increased revenue to the Trust. In addition, the timing of some of the newer projects coincided with a significant downturn in the real estate market in 2008 and these projects are only now being analyzed and moved forward as local conditions warrant such actions.

The Development Threshold has established limitations on statewide and rural development. To date, leases, easements, sales, and exchanges on State trust land have hardly scratched the surface of the thresholds. This demonstrates that real estate activity on trust land either has a minor impact on Development Thresholds, or is exempt from the Development Thresholds, or otherwise not applicable to the Development Thresholds. Tracking the impact of real estate activity on the thresholds is a time consuming and complicated process that includes analyzing hundreds of real estate activities against a complicated list of exemptions and exclusions; in addition, physically reviewing/monitoring privately owned tracts of land long after Department ownership has been transferred through sale or exchange, is excessive and apparently unnecessary given the observed impact on the threshold.

#### **Department Review or Action**

The Department does not wish to review or modify the Real Estate Management Programmatic Plan at this time. The final review period will conclude with the expiration of the Plan in 2025 at which time the Department will analyze the necessity for continuing the plan or making modifications to it.

## V. DEFINITIONS

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<u>Activity</u>	A real estate activity means the following: land sales and land banking; land exchanges; issuance of easements; issuance of leases; issuance of land use licenses; marketing of state trust lands proposed for lease, license, or easement, sale, or exchange; requests for proposals; planning and design; surveying and platting; development of entitlements; extension of services and infrastructure; contracting for services; environmental review; and minor repairs, operation or maintenance of existing equipment, improvements, or facilities.
<u>Cluster Development</u>	A subdivision of a tract with building lots concentrated on a portion of the tract and the remainder conserved for open space.
<u>Commercial</u>	A land use including public parking lot, restaurant, bar, hotel, motel, office space, retail store or sales outlet, storage space, gas station, convenience store, shopping center, warehouse, hospitality enterprise, or concentrated recreational use, multifamily residential use, or other similar uses.
<u>Conservation</u>	A land use including open space, preservation of habitat, natural areas, parks, or related public purposes, secured through dedication, lease, license, easement, deed restriction, or other legal instrument consistent with 77-1-203, MCA, for multiple use management.
<u>Developed</u>	A building permit, septic permit, or a permit to connect to a public sewer system, whichever comes first, has been issued for 25 percent or more of the commercial, industrial, or residential lots of a subdivided tract. Developed also means a permit has been issued for the construction of a private sewer system.
<u>Industrial</u>	A land use that includes manufacturing, wholesaling, warehousing, utilities, heavy transportation, sanitary landfills, sewage treatment facilities, wind farms, feedlots, grain storage bins, irrigation facilities, reclamation projects, electrical substations, intermodal shipping facilities, and other uses.
<u>Isolated Tract</u>	Any state land not possessing a legal right of access by the public, as provided in 77-2-361(1), MCA.
<u>Project</u>	A real estate project means a proposal initiated by the bureau to develop state trust land for a commercial, industrial, residential, or conservation use, or a public facility where no such use existed previously, when one or more of the following are required by a local government: subdivision approval; annexation; or development or amendment of a growth policy or neighborhood plan. Real estate project also means the development of entitlements on state trust lands proposed for sale or exchange.
<u>Public Entity</u>	A federal agency, state agency, a political subdivision of the state including a county, city, town, municipal corporation, a school district or other special district, a joint agreement entity, a public authority, or any other public body of this or other state.
<u>Public Facility</u>	A building or area operated by a public entity.
<u>Residential</u>	A land use including single family dwellings, duplexes, condominiums, townhouses, cabins, associated ancillary uses, or other types of residential uses.
<u>Rural</u>	A tract that does not meet the criteria for an urban tract.
<u>Transfer of Development Rights Program</u>	A program adopted by a city or county that allows the separation and transfer or sale of development rights from a tract of land in a "sending area." The development rights may be used on a tract in a "receiving area," where additional development density is allowed by the local jurisdiction. "Receiving area" means land that receives additional development rights from land within a sending area. "Sending area" means land that provides additional development rights to other land within a receiving area.

Urban

A tract:

1. within the boundaries of an incorporated city or town;
2. within 4.5 miles of the boundaries of an incorporated city or town;
3. within a public sewer or water district; or
4. within one mile of the boundaries of a public sewer or water district.
5. An entire tract of state trust land is urban if any portion of the tract meets this definition.

**APPENDIX A: EXEMPT LAND BANKING SALES**

Sale	County	TRS	Acres	Isolated?	Rural?	Sale Closing Date	Exemption
1	Blaine	28N 20E 36	640	YES	YES	12/29/2008	Isolated Tract [ARM 36.25.912(1)(g)]
7	Custer	4N 46E 16	640	YES	YES	10/7/2006	Isolated Tract [ARM 36.25.912(1)(g)]
8	Toole	34N 1E 10	160	YES	YES	6/2/2009	Isolated Tract [ARM 36.25.912(1)(g)]
9	Toole	34N 1E 11	160	YES	YES	6/2/2009	Isolated Tract [ARM 36.25.912(1)(g)]
10	Toole	34N 1E 13	160	YES	YES	6/2/2009	Isolated Tract [ARM 36.25.912(1)(g)]
11	Toole	34N 1E 14	160	YES	YES	6/2/2009	Isolated Tract [ARM 36.25.912(1)(g)]
13	Treasure	4N 37E 16	320	YES	YES	8/28/2006	Isolated Tract [ARM 36.25.912(1)(g)]
14	Treasure	3N 35E 16	640	YES	YES	8/28/2006	Isolated Tract [ARM 36.25.912(1)(g)]
17	Toole	34N 3E 36	640	YES	YES	6/2/2009	Isolated Tract [ARM 36.25.912(1)(g)]
18	Liberty	33N 4E 7	317	YES	YES	11/7/2008	Isolated Tract [ARM 36.25.912(1)(g)]
25	Pondera	29N 6W 19	80	YES	YES	5/27/2009	Isolated Tract [ARM 36.25.912(1)(g)]
26	Pondera	29N 6W 20	80	YES	YES	5/27/2009	Isolated Tract [ARM 36.25.912(1)(g)]
32	Treasure	5N 34E 36	640	YES	YES	8/28/2006	Isolated Tract [ARM 36.25.912(1)(g)]
56	Liberty	28N 4E 11	240	YES	YES	11/7/2008	Isolated Tract [ARM 36.25.912(1)(g)]
57	Liberty	28N 4E 10	40	YES	YES	11/7/2008	Isolated Tract [ARM 36.25.912(1)(g)]
62	Custer	7N 51E 16	640	YES	YES	10/7/2006	Isolated Tract [ARM 36.25.912(1)(g)]
64	Custer	6N 50E 18	316	YES	YES	10/7/2006	Isolated Tract [ARM 36.25.912(1)(g)]
76	Chouteau	25N 5E 27	40	YES	YES	8/26/2006	Isolated Tract [ARM 36.25.912(1)(g)]
78	Chouteau	25N 5E 22	40	YES	YES	8/26/2006	Isolated Tract [ARM 36.25.912(1)(g)]
78	Chouteau	25N 5E 22	40	YES	YES	8/26/2006	Isolated Tract [ARM 36.25.912(1)(g)]
81	Garfield	17N 34E 4	80	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
82	Garfield	17N 34E 5	240	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
83	Garfield	17N 34E 22	40	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
84	Garfield	17N 34E 15	280	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
87	Garfield	17N 34E 16	640	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
88	Garfield	17N 34E 22	160	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
89	Garfield	17N 34E 21	160	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
90	Garfield	17N 34E 28	240	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
91	Garfield	17N 34E 21	80	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
92	Garfield	17N 33E 16	640	YES	YES	5/26/2008	Isolated Tract [ARM 36.25.912(1)(g)]
95	Chouteau	25N 5E 16	640	YES	YES	8/26/2006	Isolated Tract [ARM 36.25.912(1)(g)]
97	Chouteau	25N 5E 15	160	YES	YES	8/26/2006	Isolated Tract [ARM 36.25.912(1)(g)]
98	Chouteau	25N 5E 23	40	YES	YES	8/26/2006	Isolated Tract [ARM 36.25.912(1)(g)]
108	Garfield	20N 40E 7	626	YES	YES	12/3/2009	Isolated Tract [ARM 36.25.912(1)(g)]
109	Garfield	20N 40E 36	640	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
110	Garfield	20N 39E 36	40	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
111	Garfield	19N 40E 16	640	YES	YES	5/26/2008	Isolated Tract [ARM 36.25.912(1)(g)]
112	Garfield	19N 39E 36	640	YES	YES	12/3/2009	Isolated Tract [ARM 36.25.912(1)(g)]
113	Garfield	19N 40E 36	40	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
123	Rosebud	10N 38E 36	640	YES	YES	11/4/2009	Isolated Tract [ARM 36.25.912(1)(g)]
124	Rosebud	9N 39E 16	640	YES	YES	11/4/2009	Isolated Tract [ARM 36.25.912(1)(g)]
125	Rosebud	9N 39E 36	640	YES	YES	11/4/2009	Isolated Tract [ARM 36.25.912(1)(g)]
128	Custer	2N 46E 36	640	YES	YES	10/7/2006	Isolated Tract [ARM 36.25.912(1)(g)]
129	Custer	1N 46E 16	640	YES	YES	10/7/2006	Isolated Tract [ARM 36.25.912(1)(g)]
130	Custer	2N 47E 16	640	YES	YES	10/7/2006	Isolated Tract [ARM 36.25.912(1)(g)]
131	Custer	3N 47E 36	640	YES	YES	10/7/2006	Isolated Tract [ARM 36.25.912(1)(g)]
132	Custer	8N 45E 16	629	YES	YES	10/7/2006	Isolated Tract [ARM 36.25.912(1)(g)]
133	Garfield	15N 42E 16	640	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
140	Garfield	20N 32E 16	640	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
164	Garfield	20N 40E 13	80	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
164	Garfield	20N 40E 13	80	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
174	Garfield	18N 38E 36	640	YES	YES	5/26/2008	Isolated Tract [ARM 36.25.912(1)(g)]
176	Garfield	18N 37E 16	280	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
177	Garfield	20N 40E 2	120	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
178	Garfield	18N 37E 16	40	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
180	Garfield	21N 38E 36	640	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
181	Garfield	19N 35E 16	280	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
182	Garfield	21N 39E 36	640	YES	YES	5/26/2008	Isolated Tract [ARM 36.25.912(1)(g)]
185	Garfield	19N 35E 16	40	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
186	Garfield	20N 38E 36	640	YES	YES	5/26/2008	Isolated Tract [ARM 36.25.912(1)(g)]



187	Garfield	20N 35E 16	80	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
188	Garfield	20N 35E 16	120	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
189	Garfield	20N 35E 16	120	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
191	Hill	31N 14E 30	160	YES	YES	11/7/2008	Isolated Tract [ARM 36.25.912(1)(g)]
192	Garfield	20N 40E 16	560	YES	YES	12/3/2006	Isolated Tract [ARM 36.25.912(1)(g)]
216	Chouteau	26N 15E 35	320	YES	YES	5/18/2008	Isolated Tract [ARM 36.25.912(1)(g)]
217	Chouteau	26N 15E 36	640	YES	YES	5/18/2008	Isolated Tract [ARM 36.25.912(1)(g)]
218	Wheatland	10N 18E 36	640	YES	YES	4/24/2009	Isolated Tract [ARM 36.25.912(1)(g)]
225	Blaine	30N 19E 23	80	YES	YES	12/29/2008	Isolated Tract [ARM 36.25.912(1)(g)]
226	Blaine	30N 19E 14	80	YES	YES	12/31/2008	Isolated Tract [ARM 36.25.912(1)(g)]
240	Garfield	19N 36E 16	640	YES	YES	12/7/2009	Isolated Tract [ARM 36.25.912(1)(g)]
243	Toole	37N 2E 8	40	YES	YES	8/6/2009	Isolated Tract [ARM 36.25.912(1)(g)]
246	Toole	37N 2E 9	40	YES	YES	8/6/2009	Isolated Tract [ARM 36.25.912(1)(g)]
247	Toole	37N 1E 22	40	YES	YES	5/27/2009	Isolated Tract [ARM 36.25.912(1)(g)]
248	Toole	37N 2E 10	80	YES	YES	8/6/2009	Isolated Tract [ARM 36.25.912(1)(g)]
249	Toole	37N 1E 35	40	YES	YES	5/27/2009	Isolated Tract [ARM 36.25.912(1)(g)]
252	Toole	37N 2E 14	40	YES	YES	8/6/2009	Isolated Tract [ARM 36.25.912(1)(g)]
254	Toole	37N 2E 15	40	YES	YES	8/6/2009	Isolated Tract [ARM 36.25.912(1)(g)]
256	Toole	37N 2E 22	40	YES	YES	8/6/2009	Isolated Tract [ARM 36.25.912(1)(g)]
276	Custer	5N 45E 26	320	YES	YES	10/7/2006	Isolated Tract [ARM 36.25.912(1)(g)]
286	Custer	3N 49E 16	640	YES	YES	10/7/2006	Isolated Tract [ARM 36.25.912(1)(g)]
287	Custer	3N 48E 16	640	YES	YES	10/7/2006	Isolated Tract [ARM 36.25.912(1)(g)]
288	Custer	3N 49E 36	640	YES	YES	10/7/2006	Isolated Tract [ARM 36.25.912(1)(g)]
289	Custer	3N 48E 23	640	YES	YES	10/7/2006	Isolated Tract [ARM 36.25.912(1)(g)]
290	Custer	3N 48E 14	640	YES	YES	10/7/2006	Isolated Tract [ARM 36.25.912(1)(g)]
291	Custer	3N 48E 13	640	YES	YES	10/7/2006	Isolated Tract [ARM 36.25.912(1)(g)]
292	Custer	3N 48E 12	320	YES	YES	10/7/2006	Isolated Tract [ARM 36.25.912(1)(g)]
294	Toole	37N 3E 30	40	YES	YES	5/27/2009	Isolated Tract [ARM 36.25.912(1)(g)]
295	Toole	36N 3E 8	40	YES	YES	5/27/2009	Isolated Tract [ARM 36.25.912(1)(g)]
297	Toole	37N 3E 34	40	YES	YES	5/27/2009	Isolated Tract [ARM 36.25.912(1)(g)]
317	Meagher	10N 7E 24	160	YES	YES	4/20/2010	Isolated Tract [ARM 36.25.912(1)(g)]
318	Meagher	10N 7E 26	40	YES	YES	4/20/2010	Isolated Tract [ARM 36.25.912(1)(g)]
341	Chouteau	26N 12E 21	40	YES	YES	12/28/2008	Isolated Tract [ARM 36.25.912(1)(g)]
350	Wheatland	9N 17E 8	640	YES	YES	2/27/2009	Isolated Tract [ARM 36.25.912(1)(g)]
351	Wheatland	9N 17E 6	161	YES	YES	5/27/2009	Isolated Tract [ARM 36.25.912(1)(g)]
376	Powell	8N 10W 10	640	NO	YES	10/21/2007	Density Limited by a Deed Restriction to no greater than 1 Unit Per 25 Acres [ARM 36.25.912(1)(e)]
389	Blaine	29N 20E 13	40	YES	YES	12/29/2008	Isolated Tract [ARM 36.25.912(1)(g)]
390	Blaine	29N 21E 8	40	YES	YES	12/28/2008	Isolated Tract [ARM 36.25.912(1)(g)]
391	Blaine	30N 20E 24	80	YES	YES	12/28/2008	Isolated Tract [ARM 36.25.912(1)(g)]
392	Blaine	30N 20E 26	40	YES	YES	12/29/2008	Isolated Tract [ARM 36.25.912(1)(g)]
393	Blaine	30N 20E 33	40	YES	YES	12/29/2008	Isolated Tract [ARM 36.25.912(1)(g)]
394	Blaine	30N 20E 35	80	YES	YES	12/29/2008	Isolated Tract [ARM 36.25.912(1)(g)]
395	Blaine	31N 21E 19	80	YES	YES	12/29/2008	Isolated Tract [ARM 36.25.912(1)(g)]
399	Chouteau	20N 13E 6	102	YES	YES	12/28/2008	Isolated Tract [ARM 36.25.912(1)(g)]
400	Chouteau	20N 13E 9	80	YES	YES	12/4/2008	Isolated Tract [ARM 36.25.912(1)(g)]
401	Chouteau	20N 13E 30	40	YES	YES	12/28/2008	Isolated Tract [ARM 36.25.912(1)(g)]
402	Chouteau	21N 7E 32	80	YES	YES	2/13/2009	Isolated Tract [ARM 36.25.912(1)(g)]
404	Chouteau	23N 8E 12	40	YES	YES	12/28/2008	Isolated Tract [ARM 36.25.912(1)(g)]
405	Chouteau	23N 8E 35	40	YES	YES	12/28/2008	Isolated Tract [ARM 36.25.912(1)(g)]
406	Chouteau	24N 6E 11	40	YES	YES	2/10/2009	Isolated Tract [ARM 36.25.912(1)(g)]
407	Chouteau	24N 6E 10	40	YES	YES	12/28/2008	Isolated Tract [ARM 36.25.912(1)(g)]
408	Chouteau	24N 11E 4	45	YES	YES	12/28/2008	Isolated Tract [ARM 36.25.912(1)(g)]
416	Chouteau	26N 7E 18	40	YES	YES	12/28/2008	Isolated Tract [ARM 36.25.912(1)(g)]
422	Chouteau	27N 7E 14	40	YES	YES	12/28/2008	Isolated Tract [ARM 36.25.912(1)(g)]
426	Chouteau	27N 16E 2	40	YES	YES	12/28/2008	Isolated Tract [ARM 36.25.912(1)(g)]
428	Chouteau	27N 16E 24	40	YES	YES	12/27/2008	Isolated Tract [ARM 36.25.912(1)(g)]
429	Chouteau	27N 17E 21	40	YES	YES	5/27/2009	Isolated Tract [ARM 36.25.912(1)(g)]
430	Chouteau	27N 17E 30	40	YES	YES	5/27/2009	Isolated Tract [ARM 36.25.912(1)(g)]
432	Chouteau	27N 17E 33	40	YES	YES	12/28/2008	Isolated Tract [ARM 36.25.912(1)(g)]
433	Chouteau	28N 8E 3	40	YES	YES	12/4/2008	Isolated Tract [ARM 36.25.912(1)(g)]
444	Fergus	22N 19E 24	80	YES	YES	3/30/2009	Isolated Tract [ARM 36.25.912(1)(g)]

446	Fergus	22N 20E 31	80	YES	YES	3/30/2009	Isolated Tract [ARM 36.25.912(1)(g)]
449	Hill	33N 14E 22	40	YES	YES	11/7/2008	Isolated Tract [ARM 36.25.912(1)(g)]
450	Hill	34N 13E 12	40	YES	YES	11/7/2008	Isolated Tract [ARM 36.25.912(1)(g)]
454	Hill	36N 8E 35	40	YES	YES	12/23/2008	Isolated Tract [ARM 36.25.912(1)(g)]
455	Hill	36N 11E 5	40	YES	YES	5/27/2009	Isolated Tract [ARM 36.25.912(1)(g)]
458	Hill	37N 9E 11	40	YES	YES	11/7/2008	Isolated Tract [ARM 36.25.912(1)(g)]
465	Blaine	33N 19E 8	5	YES	YES	11/7/2008	Isolated Tract [ARM 36.25.912(1)(g)]
494	Chouteau	28N 8E 3	39	YES	YES	12/4/2008	Isolated Tract [ARM 36.25.912(1)(g)]
512	Hill	37N 9E 5	44	YES	YES	11/7/2008	Isolated Tract [ARM 36.25.912(1)(g)]
522	Toole	37N 1E 22	40	YES	YES	5/27/2009	Isolated Tract [ARM 36.25.912(1)(g)]
523	Toole	37N 3E 34	40	YES	YES	5/27/2009	Isolated Tract [ARM 36.25.912(1)(g)]
524	Toole	37N 3E 32	40	YES	YES	5/27/2009	Isolated Tract [ARM 36.25.912(1)(g)]
525	Toole	36N 3E 5	40	YES	YES	5/27/2009	Isolated Tract [ARM 36.25.912(1)(g)]
532	Blaine	33N 19E 8	10	YES	YES	12/29/2008	Isolated Tract [ARM 36.25.912(1)(g)]
533	Blaine	33N 19E 8	10	YES	YES	12/29/2008	Isolated Tract [ARM 36.25.912(1)(g)]
534	Blaine	33N 19E 8	10	YES	YES	12/29/2008	Isolated Tract [ARM 36.25.912(1)(g)]
535	Blaine	33N 19E 8	5	YES	YES	12/29/2008	Isolated Tract [ARM 36.25.912(1)(g)]
536	Hill	37N 9E 5	40	YES	YES	11/7/2008	Isolated Tract [ARM 36.25.912(1)(g)]
539	Carter	5.5S 58E 36	65	YES	YES	3/10/2010	Isolated Tract [ARM 36.25.912(1)(g)]
550	Rosebud	10N 44E 36	640	YES	YES	12/7/2009	Isolated Tract [ARM 36.25.912(1)(g)]
553	Rosebud	8N 43E 16	640	YES	YES	12/7/2009	Isolated Tract [ARM 36.25.912(1)(g)]
561	Rosebud	12N 32E 26	320	YES	YES	11/4/2009	Isolated Tract [ARM 36.25.912(1)(g)]
317	Meagher	10N 7E 24	160	YES	YES	4/21/2010	Isolated Tract [ARM 36.25.912(1)(g)]
318	Meagher	10N 7E 26	40	YES	YES	4/28/2010	Isolated Tract [ARM 36.25.912(1)(g)]
562	Meagher	9N 7E 16	640	YES	NO	8/6/2010	Isolated Tract [ARM 36.25.912(1)(g)]
575	Golden Valley	7N 20E 20	320	YES	NO	3/9/2011	Isolated Tract [ARM 36.25.912(1)(g)]
576	Golden Valley	7N 19E 12	160	YES	YES	3/9/2011	Isolated Tract [ARM 36.25.912(1)(g)]
581	Golden Valley	7N 20E 18	6	YES	YES	3/9/2011	Isolated Tract [ARM 36.25.912(1)(g)]
16	Fallon	8N 56E 22	320	YES	YES	4/4/2011	Isolated Tract [ARM 36.25.912(1)(g)]
179	Garfield	17N 35E 7	157	YES	YES	4/4/2011	Isolated Tract [ARM 36.25.912(1)(g)]
184	Garfield	17N 34E 12	160	YES	YES	4/4/2011	Isolated Tract [ARM 36.25.912(1)(g)]
570	Garfield	14N 35E 16	640	YES	YES	4/4/2011	Isolated Tract [ARM 36.25.912(1)(g)]
571	Garfield	14N 34E 36	640	YES	YES	4/4/2011	Isolated Tract [ARM 36.25.912(1)(g)]
583	Liberty	28N 4E 12	80	YES	YES	6/3/2011	Isolated Tract [ARM 36.25.912(1)(g)]
584	Liberty	37N 5E 19	40	YES	YES	6/3/2011	Isolated Tract [ARM 36.25.912(1)(g)]
588	Liberty	28N 4E 6	59.4	YES	YES	6/3/2011	Isolated Tract [ARM 36.25.912(1)(g)]
590	Liberty	34N 6E 23	40	YES	YES	6/3/2011	Isolated Tract [ARM 36.25.912(1)(g)]
591	Liberty	28N 5E 31	48	YES	YES	6/3/2011	Isolated Tract [ARM 36.25.912(1)(g)]
592	Liberty	28N 5E 32	160	YES	YES	6/3/2011	Isolated Tract [ARM 36.25.912(1)(g)]
595	Pondera	30N 1W 34	40	YES	YES	6/3/2011	Isolated Tract [ARM 36.25.912(1)(g)]
596	Pondera	28N 9W 23	40	YES	YES	6/3/2011	Isolated Tract [ARM 36.25.912(1)(g)]
597	Pondera	26N 2W 14	40	YES	NO	6/3/2011	Isolated Tract [ARM 36.25.912(1)(g)]
589	Toole	30N 3E 34	40	YES	YES	6/3/2011	Isolated Tract [ARM 36.25.912(1)(g)]
605	Toole	31N 2W 36	78	YES	YES	6/3/2011	Isolated Tract [ARM 36.25.912(1)(g)]
606	Toole	36N 2E 10	40	YES	YES	6/3/2011	Isolated Tract [ARM 36.25.912(1)(g)]
607	Toole	36N 2E 24	40	YES	YES	6/3/2011	Isolated Tract [ARM 36.25.912(1)(g)]
608	Toole	37N 2E 2	40	YES	YES	6/3/2011	Isolated Tract [ARM 36.25.912(1)(g)]
624	Toole	36N 2E 10	40	YES	YES	6/3/2011	Isolated Tract [ARM 36.25.912(1)(g)]
626	Toole	30N 3E 34	120	YES	YES	6/3/2011	Isolated Tract [ARM 36.25.912(1)(g)]
616	Dawson	15N 56E 36	640	YES	YES	2/28/2012	Isolated Tract [ARM 36.25.912(1)(g)]
609	Rosebud	10N 36E 6	311.6	YES	YES	3/12/2012	Isolated Tract [ARM 36.25.912(1)(g)]
611	Rosebud	11N 35E 36	640	YES	YES	3/12/2012	Isolated Tract [ARM 36.25.912(1)(g)]
622	Valley	35N 43E 2	3.84	NO	NO	6/26/2012	pre-existing commercial development
620	Valley	35N 43E 2	2.2	NO	NO	7/18/2012	pre-existing commercial development
621	Valley	35N 43E 2	5.48	NO	NO	7/18/2012	pre-existing commercial development
347	Daniels	37N 50E 34	40	YES	NO	11/5/2012	Isolated Tract [ARM 36.25.912(1)(g)]
687	Jefferson	2N 1W 16	320	YES	YES	7/29/2013	Isolated Tract [ARM 36.25.912(1)(g)]
683	Rosebud	12N 43E 36	640	YES	YES	8/6/2013	Isolated Tract [ARM 36.25.912(1)(g)]
691	Custer	3N 54E 16	640	YES	YES	5/7/2014	Isolated Tract [ARM 36.25.912(1)(g)]
696	Custer	1N 48E 24	160	YES	YES	5/7/2014	Isolated Tract [ARM 36.25.912(1)(g)]
20	Garfield	18N 33E 12	320	YES	YES	5/7/2014	Isolated Tract [ARM 36.25.912(1)(g)]
702	Fallon	4N 60E 28	5	YES	YES	9/15/2014	Isolated Tract [ARM 36.25.912(1)(g)]

577	Powell	7N 8W 30	316.6	NO	YES	11/9/2010	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
574	Golden Valley	7N 20E 18	54	NO	YES	3/9/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
578	Golden Valley	7N 20E 18	63	NO	YES	3/9/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
580	Golden Valley	7N 20E 18	45	NO	YES	3/9/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
627	Yellowstone	1N 27E 36	640	YES	YES	4/4/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
628	Yellowstone	3N 28E 16	640	YES	YES	4/4/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
629	Yellowstone	4N 32E 36	640	YES	YES	4/4/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
601	Teton	24N 6W 21	40	YES	YES	6/2/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
602	Teton	24N 6W 28	40	YES	YES	6/2/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
594	Liberty	36N 7E 2	40	NO	YES	6/3/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
598	Teton	25N 5W 18	40	YES	YES	6/3/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
599	Teton	26N 6W 35	40	YES	YES	6/3/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
600	Teton	24N 6W 20	40	YES	YES	6/3/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
603	Teton	24N 6W 29	40	YES	YES	6/3/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
604	Teton	25N 2W 28	40	YES	YES	6/3/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
625	Toole	36N 2E 10	40	NO	YES	6/3/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
579	Cascade	18N 3W 36	165.31	YES	YES	8/23/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
582	Lewis and Clark	16N 2W 36	692.62	YES	YES	8/23/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
623	Daniels	35N 48E 16	9.36	NO	NO	11/18/2011	pre-existing commercial development
517	Missoula	15N 22W 22	160	YES	YES	11/22/2011	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
631	Deer Lodge	5N 10W 16	320	NO	YES	6/15/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
632	Hill	35N 11E 15	200	NO	YES	6/22/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
540	Gallatin	2S 6E 21	8.493	NO	NO	6/29/2012	pre-existing commercial development
679	Missoula	11N 19W 22	120	YES	YES	8/17/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
680	Missoula	11N 19W 16	640	YES	YES	8/17/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
638	Daniels	34N 45E 12	80	NO	YES	11/5/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
639	Daniels	34N 45E 14	160	NO	YES	11/5/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
640	Daniels	34N 45E 14	160	NO	YES	11/5/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
641	Daniels	34N 46E 24	160	NO	YES	11/5/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
646	Daniels	35N 47E 21	80	NO	YES	11/5/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
650	Daniels	36N 43E 4	160	NO	YES	11/5/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
674	Daniels	37N 44E 2	160	NO	YES	11/5/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
676	Daniels	37N 50E 26	40	NO	YES	11/5/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]

647	Daniels	35N 48E 23	40	NO	NO	11/14/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
657	Daniels	36N 44E 25	160	NO	YES	11/14/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
658	Daniels	36N 44E 25	132.5	NO	YES	11/14/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
659	Daniels	36N 44E 36	475	NO	YES	11/14/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
660	Daniels	36N 44E 36	5	NO	YES	11/14/2012	Pre-existing residential development
661	Daniels	36N 45E 30	72.18	NO	YES	11/14/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
663	Daniels	36N 48E 25	40	NO	NO	11/14/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
675	Daniels	37N 46E 27	280	NO	YES	11/19/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
643	Daniels	35N 44E 7	200	NO	YES	11/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
644	Daniels	35N 44E 8	160	NO	YES	11/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
664	Daniels	37N 43E 4	360	NO	YES	11/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
678	Daniels	35N 44E 8	160	NO	YES	11/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
685	Flathead	31N 22W 16	580	NO	NO	12/13/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
648	Daniels	36N 43E 3	320	NO	YES	12/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
649	Daniels	36N 43E 3	320.16	NO	YES	12/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
651	Daniels	36N 43E 4	160	NO	YES	12/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
652	Daniels	36N 43E 9	240	NO	YES	12/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
653	Daniels	36N 43E 10	160	NO	YES	12/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
654	Daniels	36N 43E 10	160	NO	YES	12/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
655	Daniels	36N 43E 10	160	NO	YES	12/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
656	Daniels	36N 43E 11	160	NO	YES	12/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
665	Daniels	37N 43E 29	120	NO	YES	12/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
666	Daniels	37N 43E 29	160	NO	YES	12/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
667	Daniels	37N 43E 30	160	NO	YES	12/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
668	Daniels	37N 43E 31	360	NO	YES	12/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
669	Daniels	37N 43E 32	67.44	NO	YES	12/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
670	Daniels	37N 43E 32	120	NO	YES	12/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
671	Daniels	37N 43E 32	120	NO	YES	12/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
672	Daniels	37N 43E 32	157.94	NO	YES	12/20/2012	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
673	Daniels	37N 43E 32	12.56	NO	YES	12/20/2012	Pre-existing residential development
365	Daniels	34N 45E 3	80.24	NO	YES	1/30/2013	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
366	Daniels	35N 45E 34	80	NO	YES	1/30/2013	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
633	Daniels	34N 44E 14	80	NO	YES	1/30/2013	Not developed in five years following closing date [ARM 36.25.912(1)(f)]



634	Daniels	34N 44E 14	80	NO	YES	1/30/2013	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
635	Daniels	34N 45E 3	15.83	NO	YES	1/30/2013	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
636	Daniels	34N 45E 4	160.19	NO	YES	1/30/2013	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
637	Daniels	34N 45E 10	100.47	NO	YES	1/30/2013	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
645	Daniels	35N 45E 34	160	NO	YES	1/30/2013	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
677	Daniels	34N 44E 14	40	NO	YES	1/30/2013	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
684	Mineral	17N 26W 14	12.699	NO	NO	2/1/2013	Sold to a public entity [ARM 36.25.912(1)(a)]
302	Broadwater	2N 2E 4	161.63	YES	NO	6/26/2013	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
303	Broadwater	2N 2E 8	160	YES	NO	6/26/2013	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
336	Broadwater	3N 2E 16	637.84	YES	YES	6/26/2013	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
688	Phillips	25N 25E 16	3.66	NO	YES	2/5/2014	Pre-existing residential development
689	Phillips	25N 25E 16	5.9	NO	YES	2/5/2014	Pre-existing commercial development
690	Phillips	25N 25E 16	0.5	NO	YES	2/5/2014	Pre-existing residential development
699	Pondera	26N 1E 10	9.66	NO	YES	3/11/2014	Pre-existing residential development
703	Pondera	31N 5W 15	27.85	NO	YES	3/11/2014	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
704	Pondera	31N 5W 10	25.3	NO	YES	3/11/2014	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
700	Pondera	28N 2W 16	20.005	NO	NO	3/14/2014	Pre-existing residential development
706	Stillwater	2S 22E 16	640	YES	YES	6/18/2014	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
707	Stillwater	1S 21E 36	640	YES	YES	6/18/2014	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
708	Stillwater	2S 21E 16	640	YES	YES	6/18/2014	Not developed in five years following closing date [ARM 36.25.912(1)(f)]
692	Gallatin	1S 3E 16	7.5141	NO	YES	9/15/2014	Pre-existing residential development
714	Flathead	27N 19W 5	1.331	NO	NO	12/18/2014	Pre-existing residential development
710	Gallatin	3S 7E 6	0.83	NO	YES	12/18/2014	Pre-existing residential development
712	Missoula	16N 15W 14	1.337	NO	NO	12/18/2014	Pre-existing residential development
711	Missoula	15N 14W 20	0.83	NO	YES	2/10/2015	Pre-existing residential development
1048	Flathead	31N 22WS 36	0.043	NO	NO	8/30/2019	Pre-existing commercial development

**APPENDIX B: LAND BANKING SALES UNDER MONITORING**

Sale #	County Name	TRS	Acres	Isolated	Sale Closing Date	5-Year Monitoring End Date	Status
716	Wheatland	10N 17E 16	640	YES	5/11/2015	5/10/2020	tracking
340	Jefferson	9N 3W 12	160	NO	5/20/2015	5/19/2020	tracking
717	McCone	26N 48E 16	40	YES	6/5/2015	6/4/2020	tracking
61	Carter	8S 56E 16	640	YES	6/12/2015	6/11/2020	tracking
719	Garfield	15N 41E 14	320	YES	6/12/2015	6/11/2020	tracking
718	Powder River	4S 50E 16	80	YES	6/12/2015	6/11/2020	tracking
763	Flathead	31N 22W 20	1.914	NO	12/11/2015	12/10/2020	tracking
760	Flathead	27N 19W 5	1.797	NO	12/21/2015	12/20/2020	tracking
792	Flathead	27N 23W 30	1.275	NO	2/16/2016	2/15/2021	tracking
798	Flathead	27N 19W 5	1.455	NO	2/16/2016	2/15/2021	tracking
799	Flathead	27N 19W 5	1.27	NO	2/16/2016	2/15/2021	tracking
804	Flathead	27N 19W 5	1.008	NO	2/16/2016	2/15/2021	tracking
758	Granite	11N 13W 36	160	NO	2/16/2016	2/15/2021	tracking
767	Missoula	16N 15W 14	2.668	NO	2/16/2016	2/15/2021	tracking
757	Ravalli	9N 19W 36	635.51	YES	2/16/2016	2/15/2021	tracking
720	Valley	35N 42E 29	40	NO	2/16/2016	2/15/2021	tracking
721	Valley	35N 41E 25	120	YES	2/16/2016	2/15/2021	tracking
722	Valley	35N 41E 25	40	YES	2/16/2016	2/15/2021	tracking
723	Valley	35N 42E 30	280	NO	2/16/2016	2/15/2021	tracking
768	Missoula	16N 15W 14	2.73	NO	5/16/2016	5/15/2021	tracking
766	Missoula	16N 15W 14	1.19	NO	7/5/2016	7/4/2021	tracking
753	Cascade	14N 1W 16	640	NO	7/18/2016	7/17/2021	tracking
724	Lewis and Clark	21N 8W 2	79.73	NO	7/18/2016	7/17/2021	tracking
725	Lewis and Clark	21N 8W 8	40	NO	7/18/2016	7/17/2021	tracking
726	Lewis and Clark	21N 8W 9	40	NO	7/18/2016	7/17/2021	tracking
727	Lewis and Clark	21N 8W 10	40	NO	7/18/2016	7/17/2021	tracking
728	Lewis and Clark	21N 8W 11	200	NO	7/18/2016	7/17/2021	tracking
729	Lewis and Clark	21N 8W 12	120	NO	7/18/2016	7/17/2021	tracking
730	Lewis and Clark	21N 8W 13	160	NO	7/18/2016	7/17/2021	tracking
731	Lewis and Clark	21N 8W 14	240	NO	7/18/2016	7/17/2021	tracking
732	Lewis and Clark	21N 8W 15	80	NO	7/18/2016	7/17/2021	tracking
733	Lewis and Clark	21N 8W 16	640	NO	7/18/2016	7/17/2021	tracking
734	Lewis and Clark	21N 8W 17	160	NO	7/18/2016	7/17/2021	tracking
735	Lewis and Clark	21N 8W 21	200	NO	7/18/2016	7/17/2021	tracking
736	Lewis and Clark	21N 8W 22	120	NO	7/18/2016	7/17/2021	tracking
737	Lewis and Clark	21N 8W 23	320	NO	7/18/2016	7/17/2021	tracking
738	Lewis and Clark	21N 8W 26	240	NO	7/18/2016	7/17/2021	tracking
739	Lewis and Clark	21N 8W 35	80	NO	7/18/2016	7/17/2021	tracking
740	Lewis and Clark	21N 8W 36	645.62	NO	7/18/2016	7/17/2021	tracking
741	Lewis and Clark	21N 8W 36	5	NO	7/18/2016	7/17/2021	tracking

742	Lewis and Clark	14N 2W 10	160	NO	7/18/2016	7/17/2021	tracking
743	Lewis and Clark	14N 2W 14	640	NO	7/18/2016	7/17/2021	tracking
744	Lewis and Clark	14N 2W 16	480	NO	7/18/2016	7/17/2021	tracking
745	Lewis and Clark	14N 2W 20	160	NO	7/18/2016	7/17/2021	tracking
746	Lewis and Clark	14N 2W 22	640	NO	7/18/2016	7/17/2021	tracking
747	Lewis and Clark	14N 2W 24	520	NO	7/18/2016	7/17/2021	tracking
748	Lewis and Clark	14N 2W 28	160	NO	7/18/2016	7/17/2021	tracking
749	Lewis and Clark	14N 2W 30	278.43	NO	7/18/2016	7/17/2021	tracking
750	Lewis and Clark	14N 2W 36	640	NO	7/18/2016	7/17/2021	tracking
751	Lewis and Clark	14N 3W 36	480	NO	7/18/2016	7/17/2021	tracking
752	Lewis and Clark	15N 2W 36	640	NO	7/18/2016	7/17/2021	tracking
754	Teton	26N 8W 16	519.48	NO	7/18/2016	7/17/2021	tracking
755	Teton	26N 8W 17	80	NO	7/18/2016	7/17/2021	tracking
756	Teton	26N 8W 10	40	NO	7/18/2016	7/17/2021	tracking
819	Missoula	16N 15W 4	1.311	NO	10/17/2016	10/16/2021	tracking
788	Flathead	31N 22W 20	1.193	NO	11/29/2016	11/28/2021	tracking
769	Missoula	16N 15W 14	1.28	NO	11/29/2016	11/28/2021	tracking
783	Missoula	15N 22W 12	1.31	NO	11/29/2016	11/28/2021	tracking
784	Flathead	31N 22W 20	2.04	NO	12/19/2016	12/18/2021	tracking
808	Flathead	26N 25W 16	1.416	NO	12/19/2016	12/18/2021	tracking
810	Flathead	26N 25W 16	1.494	NO	12/19/2016	12/18/2021	tracking
806	Flathead	26N 25W 16	1.333	NO	1/19/2017	1/18/2022	tracking
835	Missoula	16N 15W 4	1.363	NO	2/21/2017	2/20/2022	tracking
843	Missoula	17N 15W 16	1.304	NO	2/21/2017	2/20/2022	tracking
894	Missoula	16N 15W 4	1.131	NO	2/21/2017	2/20/2022	tracking
821	Missoula	16N 15W 4	1.325	NO	3/20/2017	3/19/2022	tracking
823	Missoula	14N 19W 16	1.305	NO	3/20/2017	3/19/2022	tracking
824	Missoula	14N 19W 16	1.052	NO	3/20/2017	3/19/2022	tracking
825	Missoula	14N 19W 16	2.401	NO	3/20/2017	3/19/2022	tracking
827	Missoula	14N 19W 16	1.534	NO	3/20/2017	3/19/2022	tracking
705	Yellowstone	1N 28E 16	640	YES	5/22/2017	5/21/2022	tracking
830	Flathead	26N 25W 16	2.708	NO	6/15/2017	6/14/2022	tracking
836	Missoula	16N 15W 4	1.407	NO	6/19/2017	6/18/2022	tracking
839	Missoula	16N 15W 4	1.173	NO	6/19/2017	6/18/2022	tracking
844	Missoula	16N 15W 4	1.571	NO	6/23/2017	6/22/2022	tracking
814	Missoula	16N 15W 4	0.808	NO	6/28/2017	6/27/2022	tracking
837	Missoula	16N 15W 4	1.682	NO	6/28/2017	6/27/2022	tracking
838	Missoula	16N 15W 4	1.084	NO	6/28/2017	6/27/2022	tracking
842	Missoula	16N 15W 4	1.463	NO	6/28/2017	6/27/2022	tracking
816	Missoula	16N 15W 4	1.001	NO	6/30/2017	6/29/2022	tracking
820	Missoula	16N 15W 4	1.237	NO	6/30/2017	6/29/2022	tracking
834	Missoula	16N 15W 4	1.25	NO	6/30/2017	6/29/2022	tracking
845	Missoula	15N 14W 36	2.851	NO	6/30/2017	6/29/2022	tracking
846	Missoula	15N 14W 36	1.807	NO	6/30/2017	6/29/2022	tracking

890	Missoula	16N 15W 4	0.646	NO	7/20/2017	7/19/2022	tracking
828	Flathead	27N 19W 5	0.879	NO	7/31/2017	7/30/2022	tracking
817	Missoula	16N 15W 4	1.465	NO	8/8/2017	8/7/2022	tracking
818	Missoula	16N 15W 4	1.133	NO	8/22/2017	8/21/2022	tracking
829	Flathead	27N 19W 5	1.54	NO	8/30/2017	8/29/2022	tracking
832	Lincoln	34N 25W 36	1.01	NO	9/6/2017	9/5/2022	tracking
831	Sanders	23N 27W 36	0.7	NO	9/26/2017	9/25/2022	tracking
853	Lewis and Clark	14N 8W 16	1.46	NO	12/8/2017	12/7/2022	tracking
858	Lewis and Clark	14N 8W 16	1	NO	12/11/2017	12/10/2022	tracking
859	Lewis and Clark	14N 8W 16	1.587	NO	12/11/2017	12/10/2022	tracking
899	Lewis and Clark	14N 8W 16	1.003	NO	12/11/2017	12/10/2022	tracking
852	Lewis and Clark	14N 8W 16	1.352	NO	12/12/2017	12/11/2022	tracking
862	Lewis and Clark	14N 8W 16	1.112	NO	12/12/2017	12/11/2022	tracking
869	Dawson	21N 55E 34	6.35	NO	12/26/2017	12/25/2022	tracking
855	Lewis and Clark	14N 8W 16	1	NO	12/26/2017	12/25/2022	tracking
857	Lewis and Clark	14N 8W 16	1.385	NO	12/27/2017	12/26/2022	tracking
898	Lewis and Clark	14N 8W 16	1.719	NO	1/2/2018	1/1/2023	tracking
856	Lewis and Clark	14N 8W 16	1	NO	1/15/2018	1/14/2023	tracking
863	Lewis and Clark	14N 8W 16	1.01	NO	1/16/2018	1/15/2023	tracking
848	Flathead	27N 19W 5	2.111	NO	1/17/2018	1/16/2023	tracking
861	Lewis and Clark	14N 8W 16	1.731	NO	1/29/2018	1/28/2023	tracking
770	Park	4S 9E 32	7.42	NO	3/8/2018	3/7/2023	tracking
895	Judith Basin	16N 12E 28	160	NO	4/3/2018	4/2/2023	tracking
896	Missoula	16N 15W 30	1.101	NO	4/3/2018	4/2/2023	tracking
772	Teton	27N 7W 35	120	YES	4/27/2018	4/26/2023	tracking
773	Teton	26N 7W 2	42.08	YES	4/27/2018	4/26/2023	tracking
245	McCone	26N 48E 35	240	YES	5/9/2018	5/8/2023	tracking
847	Flathead	27N 19W 5	1.039	NO	5/18/2018	5/17/2023	tracking
882	Missoula	15N 14W 20	1.5	NO	5/25/2018	5/24/2023	tracking
884	Missoula	16N 15W 14	0.983	NO	5/25/2018	5/24/2023	tracking
881	Missoula	15N 14W 20	1	NO	5/30/2018	5/29/2023	tracking
885	Missoula	16N 15W 14	1.443	NO	6/1/2018	5/31/2023	tracking
892	Flathead	27N 19W 5	1.999	NO	6/4/2018	6/3/2023	tracking
865	Missoula	16N 15W 28	1.205	NO	6/28/2018	6/27/2023	tracking
870	Richland	24N 54E 36	22.93	NO	7/23/2018	7/22/2023	tracking
875	Sanders	23N 27W 34	1.712	NO	8/16/2018	8/15/2023	tracking
873	Sanders	23N 26W 6	1.923	NO	8/17/2018	8/16/2023	tracking
850	Flathead	26N 25W 16	1.5	NO	8/27/2018	8/26/2023	tracking
864	Missoula	16N 15W 28	1.247	NO	9/10/2018	9/9/2023	tracking
866	Missoula	16N 15W 28	1.091	NO	9/10/2018	9/9/2023	tracking
883	Missoula	15N 14W 20	1.03	NO	9/10/2018	9/9/2023	tracking
871	Lake	24N 19W 16	0.909	NO	10/1/2018	9/30/2023	tracking
872	Lake	24N 19W 16	1.182	NO	10/1/2018	9/30/2023	tracking
888	Yellowstone	2N 27E 16	2.16	NO	11/18/2018	11/17/2023	tracking



849	Flathead	27N 19W 5	1.08	NO	11/20/2018	11/19/2023	tracking
891	Chouteau	24N 8E 33	4.68	NO	11/27/2018	11/26/2023	tracking
887	Stillwater	2N 22E 4	10.3	NO	12/17/2018	12/16/2023	tracking
944	Missoula	17N 15W 16	1.42	NO	1/8/2019	1/7/2024	tracking
923	Flathead	26N 25W 16	1.365	NO	1/14/2019	1/13/2024	tracking
945	Missoula	17N 15W 16	0.831	NO	1/16/2019	1/15/2024	tracking
943	Missoula	16N 15W 4	1.291	NO	1/25/2019	1/24/2024	tracking
938	Missoula	16N 15W 4	1.449	NO	1/28/2019	1/27/2024	tracking
941	Missoula	16N 15W 4	2.189	NO	1/30/2019	1/29/2024	tracking
933	Lewis and Clark	14N 8W 16	1.662	NO	2/22/2019	2/21/2024	tracking
942	Missoula	16N 15W 4	1.293	NO	2/25/2019	2/24/2024	tracking
939	Missoula	16N 15W 4	1.217	NO	2/26/2019	2/25/2024	tracking
1036	Missoula	16N 15W 4	1.639	NO	2/26/2019	2/25/2024	tracking
940	Missoula	16N 15W 4	3.148	NO	3/6/2019	3/5/2024	tracking
876	Sanders	23N 26W 6	1.08	NO	3/7/2019	3/6/2024	tracking
921	Flathead	26N 25W 16	1.411	NO	3/13/2019	3/12/2024	tracking
935	Lewis and Clark	14N 8W 16	1.426	NO	3/20/2019	3/19/2024	tracking
932	Lewis and Clark	14N 8W 16	1.557	NO	3/25/2019	3/24/2024	tracking
965	Missoula	16N 15W 4	3.409	NO	3/29/2019	3/28/2024	tracking
868	Broadwater	5N 2E 16	9.5	NO	4/1/2019	3/31/2024	tracking
966	Missoula	16N 15W 4	2.075	NO	4/4/2019	4/3/2024	tracking
968	Missoula	16N 15W 4	1.826	NO	4/4/2019	4/3/2024	tracking
959	Missoula	16N 15W 4	1.236	NO	4/8/2019	4/7/2024	tracking
967	Missoula	16N 15W 4	1.54	NO	4/8/2019	4/7/2024	tracking
961	Missoula	16N 15W 4	1.315	NO	4/9/2019	4/8/2024	tracking
931	Flathead	27N 19W 5	0.965	NO	4/11/2019	4/10/2024	tracking
928	Flathead	26N 25W 16	1.277	NO	4/16/2019	4/15/2024	tracking
969	Missoula	15N 22W 12	1.84	NO	4/16/2019	4/15/2024	tracking
962	Missoula	16N 15W 4	1.349	NO	4/18/2019	4/17/2024	tracking
934	Lewis and Clark	14N 8W 16	1.362	NO	4/29/2019	4/28/2024	tracking
1041	Missoula	16N 15W 4	1.303	NO	4/29/2019	4/28/2024	tracking
922	Flathead	26N 25W 16	1.789	NO	5/1/2019	4/30/2024	tracking
919	Deer Lodge	6N 10W 36	40	NO	5/3/2019	5/2/2024	tracking
889	Sanders	22N 27W 12	1.39	NO	5/9/2019	5/8/2024	tracking
925	Flathead	26N 25W 16	1.47	NO	5/10/2019	5/9/2024	tracking
930	Flathead	27N 19W 5	0.646	NO	5/17/2019	5/16/2024	tracking
1044	Teton	25N 6W 2	80	YES	6/10/2019	6/9/2024	tracking
1045	Teton	25N 6W 11	80	YES	6/10/2019	6/9/2024	tracking
1046	Teton	25N 6W 3	40	YES	6/10/2019	6/9/2024	tracking
964	Missoula	16N 15W 4	3.174	NO	6/17/2019	6/16/2024	tracking
958	Missoula	16N 15W 4	0.7	NO	7/1/2019	6/30/2024	tracking
963	Missoula	16N 15W 4	0.851	NO	7/12/2019	7/11/2024	tracking
956	Sanders	22N 27W 12	2.24	NO	11/21/2019	11/20/2024	tracking
998	Missoula	16N 15W 30	2.511	NO	11/26/2019	11/25/2024	tracking

918	Missoula	16N 15W 14	2.89	NO	12/4/2019	12/3/2024	tracking
957	Sanders	22N 27W 12	2.42	NO	12/4/2019	12/3/2024	tracking
1031	Missoula	16N 15W 14	1.722	NO	12/5/2019	12/4/2024	tracking
1030	Missoula	16N 15W 14	2.2	NO	12/17/2019	12/16/2024	tracking
977	Flathead	27N 19W 5	4.537	NO	1/13/2020	1/12/2025	tracking
996	Missoula	16N 15W 30	0.951	NO	1/13/2020	1/12/2025	tracking
1003	Missoula	16N 15W 4	1.188	NO	1/13/2020	1/12/2025	tracking
953	Flathead	27N 23W 30	1.245	NO	1/23/2020	1/22/2025	tracking
1010	Gallatin	3S 6E 1	1.07	NO	1/23/2020	1/22/2025	tracking
990	Lewis and Clark	14N 8W 16	1.432	NO	1/23/2020	1/22/2025	tracking
1038	Lewis and Clark	14N 8W 16	1	NO	1/23/2020	1/22/2025	tracking
1039	Lewis and Clark	14N 8W 16	1.1	NO	1/23/2020	1/22/2025	tracking
1002	Missoula	16N 15W 30	0.511	NO	1/23/2020	1/22/2025	tracking
1005	Missoula	16N 15W 4	1.233	NO	1/23/2020	1/22/2025	tracking
1006	Missoula	16N 15W 4	2.532	NO	1/23/2020	1/22/2025	tracking
986	Flathead	31N 22W 20	2.41	NO	2/11/2020	2/10/2025	tracking
989	Flathead	31N 22W 20	1.235	NO	2/11/2020	2/10/2025	tracking
997	Missoula	16N 15W 30	1.437	NO	2/11/2020	2/10/2025	tracking
946	Sweet Grass	1N 15E 29	4.22	NO	2/11/2020	2/10/2025	tracking
987	Flathead	31N 22W 20	2.011	NO	2/25/2020	2/24/2025	tracking
999	Missoula	16N 15W 30	0.815	NO	2/25/2020	2/24/2025	tracking
1000	Missoula	16N 15W 30	0.769	NO	3/2/2020	3/1/2025	tracking
978	Flathead	27N 19W 5	1.434	NO	3/11/2020	3/10/2025	tracking
1042	Liberty	35N 4E 9	120	YES	3/11/2020	3/10/2025	tracking
1043	Liberty	35N 4E 4	80	YES	3/11/2020	3/10/2025	tracking
1001	Missoula	16N 15W 30	0.853	NO	3/11/2020	3/10/2025	tracking
983	Flathead	31N 22W 20	2.361	NO	3/16/2020	3/15/2025	tracking
985	Flathead	31N 22W 20	1.802	NO	3/16/2020	3/15/2025	tracking
988	Flathead	31N 22W 20	1.296	NO	3/23/2020	3/22/2025	tracking
1049	Custer	4N 48E 16	640	YES	4/6/2020	4/5/2025	tracking
1050	Custer	4N 47E 36	640	YES	4/6/2020	4/5/2025	tracking
1052	Custer	2N 46E 16	640	YES	4/6/2020	4/5/2025	tracking
1053	Custer	2N 45E 36	640	YES	4/6/2020	4/5/2025	tracking
1054	Custer	1N 45E 16	640	YES	4/6/2020	4/5/2025	tracking
1061	Custer	3N 47E 16	640	YES	4/6/2020	4/5/2025	tracking
971	McCone	17N 46E 16	20.6	NO	4/6/2020	4/5/2025	tracking
126	Rosebud	8N 39E 36	640	YES	4/6/2020	4/5/2025	tracking
1051	Rosebud	2N 44E 16	640	YES	4/6/2020	4/5/2025	tracking
974	Sanders	24N 27W 26	1.421	NO	4/6/2020	4/5/2025	tracking
1060	Custer	7N 51E 34	320	YES	4/13/2020	4/12/2025	tracking
973	Sanders	23N 27W 12	1.229	NO	4/13/2020	4/12/2025	tracking
975	Sanders	23N 27W 26	0.918	NO	4/13/2020	4/12/2025	tracking
948	Fallon	6N 57E 36	14.96	NO	4/15/2020	4/14/2025	tracking
970	Prairie	16N 47E 36	8.74	NO	4/22/2020	4/21/2025	tracking

995	Missoula	16N 15W 30	2.037	NO	4/28/2020	4/27/2025	tracking
1037	Missoula	15N 14W 20	0.69	NO	4/28/2020	4/27/2025	tracking
1029	Missoula	15N 14W 20	0.55	NO	5/1/2020	4/30/2025	tracking
979	Flathead	27N 19W 5	1.471	NO	5/6/2020	5/5/2025	tracking

**APPENDIX C: LAND EXCHANGES UNDER MONITORING**

Exchange	County	TRS	Acres	Isolated	Rural	Closing Date	5-Year Monitoring End Date	Status
<b>SRI RANCH</b>	Madison	Multiple	604.568	NO	NO	3/10/2018	3/09/2023	Tracking
<b>Vermiculite Mountain</b>	Lincoln	31N 30W 16	640	YES	YES	6/12/2018	6/11/2023	Tracking

**APPENDIX D: REAL ESTATE PROJECTS LIST**

Real Estate Project	Description	Grant	Office	County	Acres	Urban/Rural
<b>Alaska Road</b>	Commercial/industrial development - Marketing and development of parcel.	Common Schools	<b>CLO</b>	Gallatin	3.3	Urban
<b>Amsterdam Road</b>	Mixed use development -Annexation and rezoning of parcel.	Common Schools	<b>CLO</b>	Gallatin	450	Urban
<b>Lewis &amp; Clark Subdivision</b>	Commercial/industrial development - market and lease of lots.	Common Schools	<b>CLO</b>	Gallatin	28	Urban
<b>North Park</b>	Commercial/industrial development - Design and engineering of subdivision.	Common Schools	<b>CLO</b>	Gallatin	178	Urban
<b>Fox Farm</b>	<b>Great Falls:</b> Anticipated mixed use development; will require annexation and rezoning of parcel. A portion of the property fronts the Missouri River.	U of M	<b>CLO</b>	Cascade	90	Urban
<b>Penwell Bridge</b>	<b>Belgrade:</b> Anticipated commercial development; will require annexation and rezoning.	Common Schools	<b>CLO</b>	Gallatin	120	Urban
<b>Bull Pasture Subdivision</b>	Commercial/industrial development - Marketing of parcel.	Pine Hills School	<b>ELO</b>	Custer	60	Urban
<b>Spring Prairie Commercial Infill (Section 36)</b>	<b>Kalispell:</b> Commercial/professional development.	Common Schools	<b>NWLO</b>	Flathead	530	Urban
<b>Cripple Horse Creek</b>	<b>Libby:</b> Anticipated commercial recreation development adjacent to an existing commercial resort on Lake Kootenai.	Public Buildings	<b>NWLO</b>	Lincoln	162.5	Rural
<b>Libby Creek/Ponderosa Plantation</b>	<b>Libby:</b> Anticipated residential development.	Common Schools	<b>NWLO</b>	Lincoln	120	Rural
<b>Libby Golf Club area lands</b>	<b>Libby:</b> Anticipated residential development adjacent to the Libby Golf Club.	Common Schools	<b>NWLO</b>	Lincoln	640	Rural
<b>Libby area lands - Cabinet Range View</b>	<b>Libby:</b> Anticipated low density residential development.	Common Schools	<b>NWLO</b>	Lincoln	800	Rural
<b>Libby area lands – Kootenai River View</b>	<b>Troy:</b> Anticipated low density residential development.	Common Schools	<b>NWLO</b>	Lincoln	45.9	Rural
<b>Skyview Ridge Subdivision</b>	Mixed use development - Sell residential and lease commercial development.	Common Schools	<b>SLO</b>	Yellowstone	285	Urban
<b>Reserve Street</b>	Commercial/professional development - Marketing and maintenance.	Common Schools	<b>SWLO</b>	Missoula	2.8	Urban
<b>Butte Industrial District</b>	<b>Butte:</b> Commercial/industrial development.	Common Schools	<b>SWLO</b>	Butte – Silverbow	350	Rural



**APPENDIX E: ADMINISTRATIVE RULES OF MONTANA 36.25.901 et seq.****36.25.901 DEFINITIONS**

As used in this subchapter, the following definitions apply, except where the context clearly indicates otherwise:

- (1) "Board" means the state Board of Land Commissioners.
- (2) "Bureau" means the Real Estate Management Bureau of the Trust Lands Management Division of the Department of Natural Resources and Conservation.
- (3) "Cluster development" means a subdivision of a tract with building lots concentrated on a portion of the tract and the remainder conserved for open space.
- (4) "Commercial" means the operation by any for-profit entity of any public parking lot, restaurant, bar, hotel, motel, office space, retail store or sales outlet, storage space, gas station, convenience store, shopping center, warehouse, hospitality enterprise, or concentrated recreational use, multifamily residential use, or other similar uses.
- (5) "Conservation" means a primary land use for open space, preservation of habitat, natural areas, parks, or related public purposes, secured through dedication, lease, license, easement, deed restriction, or other legal instrument consistent with [77-1-203](#), MCA, for multiple use management.
- (6) "Conservation entity" means a public entity or private organization qualified per Title 76, chapter 6, MCA, to acquire or designate interests and rights in real property to provide or preserve open space.
- (7) "Department" means the Department of Natural Resources and Conservation.
- (8) "Developed" means when a building permit, septic permit, or a permit to connect to a public sewer system, whichever comes first, has been issued for 25 percent or more of the commercial, industrial, or residential lots of a subdivided tract. Developed also means a permit has been issued for the construction of a private sewer system.
- (9) "Division" means the Trust Land Management Division of the department.
- (10) "Easement" means land use authorization as defined in [77-2-101](#), MCA.
- (11) "Entitlement" means an approval or permit obtained from a local government that provides a right to annex, zone, or subdivide a tract of land.
- (12) "Environmental review" means a written document as defined in [75-1-220](#)(4), MCA.
- (13) "Growth policy" means a document adopted under Title 76, chapter 1, part 6, MCA.
- (14) "Industrial" means a land use that includes manufacturing, wholesaling, warehousing, utilities, heavy transportation, sanitary landfills, sewage treatment facilities, wind farms, feedlots, grain storage bins, irrigation facilities, reclamation projects, electrical substations, intermodal shipping facilities, and other uses.
- (15) "Isolated tract or land" means any state land not possessing a legal right of access by the public, as provided in [77-2-361](#)(1), MCA.
- (16) "Joint venture" means a partnership between the department and another entity or entities to undertake a development project, each contributing equity and sharing in the revenues, expenses, and control of the project.
- (17) "Land classification" means categorizing land according to its principal value, as defined in [77-1-401](#), MCA.
- (18) "Lease" means a contract by which the board conveys a limited property interest in state lands for a term of years, for a specified rental, and for a use for which the land is classified.
- (19) "License" means a contract by which the department conveys a limited property interest in state lands for a specific term and fee, and for a use other than that for which the land is classified.
- (20) "MEPA" means The Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, MCA.
- (21) "Other (land)" means a land classification that encompasses residential, commercial, industrial, and conservation uses.
- (22) "Public entity" means a federal agency, state agency, a political subdivision of the state including a county, city, town, municipal corporation, a school district or other special district, a joint agreement entity, a public authority, or any other public body of this or other state.
- (23) "Public facility" means a building or area operated by a public entity.
- (24) "Purchase of development rights" means acquiring one or more of the fee-simple interests associated with a parcel of land, such as the commercial or residential development rights.
- (25) "Rate of return" means the ratio of income received from a project relative to the value of the asset or equity contribution, expressed as a percentage.
- (26) "Real estate activities" means the following:
  - (a) land sales and land banking;
  - (b) land exchanges;
  - (c) issuance of easements; **APPENDIX E: ADMINISTRATIVE RULES OF MONTANA 36.25.901 et seq.**

**36.25.901 DEFINITIONS**

As used in this subchapter, the following definitions apply, except where the context clearly indicates otherwise:

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Department of Natural Resources and Conservation.

(3) "Cluster development" means a subdivision of a tract with building lots concentrated on a portion of the tract and the remainder conserved for open space.

(4) "Commercial" means the operation by any for-profit entity of any public parking lot, restaurant, bar, hotel, motel, office space, retail store or sales outlet, storage space, gas station, convenience store, shopping center, warehouse, hospitality enterprise, or concentrated recreational use, multifamily residential use, or other similar uses.

(5) "Conservation" means a primary land use for open space, preservation of habitat, natural areas, parks, or related public purposes, secured through dedication, lease, license, easement, deed restriction, or other legal instrument consistent with [77-1-203](#), MCA, for multiple use management.

(6) "Conservation entity" means a public entity or private organization qualified per Title 76, chapter 6, MCA, to acquire or designate interests and rights in real property to provide or preserve open space.

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

(8) "Developed" means when a building permit, septic permit, or a permit to connect to a public sewer system, whichever comes first, has been issued for 25 percent or more of the commercial, industrial, or residential lots of a

subdivided tract. Developed also means a permit has been issued for the construction of a private sewer system.

(9) "Division" means the Trust Land Management Division of the department.

(10) "Easement" means land use authorization as defined in [77-2-101](#), MCA.

(11) "Entitlement" means an approval or permit obtained from a local government that provides a right to annex, zone, or subdivide a tract of land.

(12) "Environmental review" means a written document as defined in [75-1-220\(4\)](#), MCA.

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(15) "Isolated tract or land" means any state land not possessing a legal right of access by the public, as provided in [77-2-361\(1\)](#), MCA.

(16) "Joint venture" means a partnership between the department and another entity or entities to undertake a development project, each contributing equity and sharing in the revenues, expenses, and control of the project.

(17) "Land classification" means categorizing land according to its principal value, as defined in [77-1-401](#), MCA.

(18) "Lease" means a contract by which the board conveys a limited property interest in state lands for a term of years, for a specified rental, and for a use for which the land is classified.

(19) "License" means a contract by which the department conveys a limited property interest in state lands for a specific term and fee, and for a use other than that for which the land is classified.

(20) "MEPA" means The Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, MCA.

(21) "Other (land)" means a land classification that encompasses residential, commercial, industrial, and conservation uses.

(22) "Public entity" means a federal agency, state agency, a political subdivision of the state including a county, city, town, municipal corporation, a school district or other special district, a joint agreement entity, a public authority, or any other public body of this or other state.

(23) "Public facility" means a building or area operated by a public entity.

(24) "Purchase of development rights" means acquiring one or more of the fee-simple interests associated with a parcel of land, such as the commercial or residential development rights.

(25) "Rate of return" means the ratio of income received from a project relative to the value of the asset or equity contribution, expressed as a percentage.

(26) "Real estate activities" means the following:

- (a) land sales and land banking;
- (b) land exchanges;
- (c) issuance of easements;
- (d) issuance of leases;
- (e) issuance of land use licenses;
- (f) marketing of state trust lands proposed for lease, license, or easement, sale, or exchange;
- (g) requests for proposals;
- (h) planning and design;
- (i) surveying and platting;
- (j) development of entitlements;
- (k) extension of services and infrastructure;
- (l) contracting for services;
- (m) environmental review; and

(n) minor repairs, operation or maintenance of existing equipment, improvements, or facilities.

(27) "Real Estate Management Plan (plan)" means the PEIS for real estate for the department and the associated Record of Decision (ROD) approved July 18, 2005.

(28) "Real estate project" means a proposal initiated by the bureau to develop state trust land for a commercial, industrial, residential, or conservation use, or a public facility where no such use existed previously, when one or more of the following are required by a local government:

(a) subdivision approval;

(b) annexation; or

(c) development or amendment of a growth policy or neighborhood plan. Real estate project also means the development of entitlements on state trust lands proposed for sale or exchange.

(29) "Receiving area" means land that receives additional development rights from land within a sending area. This is a component of a program providing for the transfer of development rights.

(30) "Residential" means single family dwellings, duplexes, condominiums, townhouses, cabins, associated ancillary uses, or other types of residential uses.

(31) "Rural" means a tract that does not meet the criteria for an urban tract.

(32) "Sending area" means land that provides additional development rights to other land within a receiving area. This is a component of a program providing for the transfer of development rights.

(33) "Subdivision" means a division of land defined by Title 76, MCA.

(34) "Subdivision review" means a city, town, or county governing body evaluating a subdivision proposal for compliance with the jurisdiction's subdivision regulations.

(35) "Threshold" means a predefined number of state trust land acres to be developed for commercial, industrial, or residential uses that, if met before July 18, 2025, may require a review of the programmatic plan.

(36) "Tract" means a parcel of state trust land that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office or in the department's records.

(37) "Transfer of development rights" means separating some or all of the development rights from a parcel of land in a "sending area" and transferring those rights to a parcel in a "receiving area," where additional development density is allowed.

(38) "Urban" means a tract meeting one or more of the following criteria:

(a) within the boundaries of an incorporated city or town;

(b) within 4.5 miles of the boundaries of an incorporated city or town;

(c) within a public sewer or water district; or

(d) within one mile of the boundaries of a public sewer or water district. An entire tract of state trust land is urban if any portion of the tract falls within an area described in (38)(a) through (d).

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-904](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

### **36.25.902 ACCOUNTABLE PARTIES**

(1) The board adopts the rules in this subchapter to provide the Trust Land Management Division of the Montana Department of Natural Resources and Conservation with consistent policy, direction, and guidance when

selecting and implementing real estate projects on state trust lands.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-904](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

### **36.25.903 GENERAL APPLICABILITY**

(1) The Real Estate Management Plan (plan) rules, ARM [36.25.901](#) through [36.25.918](#), implement the Programmatic Environmental Impact Statement (PEIS) and the associated Record of Decision (ROD) adopted July

18, 2005.

(2) The rules apply to real estate projects, sales, and exchanges administered by the bureau on state trust lands, except for the following:

(a) real estate projects that, prior to July 18, 2005, have been subject to public scoping and environmental review processes under MEPA, section [75-1-201](#), et seq., MCA;

(b) real estate projects that received all local government approvals necessary for the completion of the real estate project on or before December 15, 2008;

(c) lease lots created prior to July 18, 2005;

(d) land use licenses;

(e) sales and exchanges closed on or before July 18, 2005; and

(f) real estate activities within navigable waterways of the state.

(3) These rules remain in effect until July 18, 2025, whereupon they shall expire.

History: [77-1-209](#), [77-1-301](#), [77-1-603](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

### **36.25.904 GENERAL DEVELOPMENT STANDARDS**

(1) The department will actively pursue commercial, industrial, residential, and conservation uses to increase revenue on trust lands, through one or more of the following means:

- (a) targeting those tracts most suitable for development;
- (b) improving entitlements on tracts selected for sale or development, when appropriate; or
- (c) prioritizing projects with the highest financial return per acre.

(2) The department will give priority to urban real estate projects over rural real estate projects using the following criteria:

- (a) financial rate of return per acre;
- (b) funding availability; and
- (c) the acres remaining in the development thresholds described in ARM [36.25.911](#).

(3) The department will comply with local and state land use regulations. The department will apply the following development standards in selecting, prioritizing, designing, and implementing real estate projects on state trust lands:

- (a) real estate projects should be contiguous to or part of existing or proposed development;
- (b) real estate projects in urban locations must connect to existing or planned public infrastructure and be designed to public standards, including alignment to adjoining public and private streets, that are consistent with local land use regulations;
- (c) urban real estate projects should achieve urban densities consistent with local land use regulations;
- (d) the department will promote mixed use in urban locations through planned-unit development or other means provided by local land-use regulations;
- (e) the department will utilize local land use planning and regulatory processes to involve the general public and beneficiaries in developing state trust lands for commercial, industrial, residential, and conservation uses;
- (f) the department will coordinate environmental review with local regulatory review;
- (g) the department may use or promote purchase of development rights, transfer of development rights, cluster development, joint ventures, or other measures as provided by law;
- (h) the department will coordinate with local communities, other state and federal agencies, conservation agencies, and other interest groups to provide for notice and review as necessary; and
- (i) the department will exclude from consideration, or employ necessary measures to avoid, minimize, or mitigate impacts potentially resulting from commercial, industrial, and residential real estate projects:
  - (i) on slopes greater than 25 percent;
  - (ii) in a designated 100-year floodplain or wetland. The department will avoid adverse impacts in the floodplain. Adverse impacts will be determined by the department through an environmental review in compliance with Title 75, chapter 1, MCA;
  - (iii) that potentially affect federally listed threatened and endangered species or designated critical habitat; and
  - (iv) in a designated wildland-urban interface or area of high wildfire hazard.

(4) Any commercial, industrial, or residential lease expected to generate annual revenue in excess of \$50,000 may not be issued without the board's prior approval.

(a) The board delegates its authority to the department to issue commercial or industrial leases expected to generate \$50,000 or less annually, but the board reserves the authority to subsequently review the issuance of such leases.

(5) Development in rural areas will include commercial resorts, development for public purposes such as sewer or water, natural resource based development, and conservation opportunities. Other unique development opportunities may be considered when the intended uses:

- (a) provide infill opportunities;
- (b) are contiguous to existing development;
- (c) are or can be located within a sewer or water utility service area;
- (d) add value to the existing uses;
- (e) demonstrate economic viability and conform to applicable development standards; or
- (f) limit development to not more than 25 percent of a tract while the remainder of the tract is designated for conservation through an easement, deed restriction, or dedication at final subdivision approval.

History: [77-1-209](#), [77-1-301](#), [77-1-603](#), MCA; IMP, [77-1-605](#), [77-1-904](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

### **[36.25.905](#) PROJECT EVALUATION, REVIEW, AND SELECTION PROCESS**

(1) ARM [36.25.906](#) through [36.25.910](#) describe the evaluation, review, and selection process for real estate projects on state trust lands.

(2) The department will require ARM [36.25.906](#) through [36.25.910](#) for real estate projects approved by the project identification team after December 25, 2008.

(3) The department will not require ARM [36.25.906](#) through [36.25.910](#) for an individual real estate activity that is associated with a previously approved real estate project.



History: [77-1-209](#), [77-1-301](#), [77-1-603](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.906 SITE-SPECIFIC EVALUATION**

(1) The department will conduct a site-specific evaluation to assess the suitability of a tract or portion of a tract proposed for a real estate project. The site-specific evaluation will include the following factors:

- (a) unique or sensitive biological and physical features;
- (b) topography;
- (c) influence of floodplains and/or wetlands;
- (d) hazardous geologic conditions;
- (e) known cultural or historic features through a preliminary cultural survey;
- (f) proximity to other public lands or private lands under conservation easement, as documented by information in the Montana Natural Heritage Program database or similar source;
- (g) water availability and water rights;
- (h) existing and required access;
- (i) the location and quality of infrastructure, such as roads, utilities, power, telephone, public water, or sewer availability;
- (j) any existing encumbrances;
- (k) proximity to community infrastructure and utilities;
- (l) other nearby residential, industrial, or commercial development, proposed or existing; and
- (m) wildland fire hazards and available fire protection.

(2) The department will analyze federal, state, and local land-use regulations, plans, and policies, for their relationship to the proposed real estate project. This analysis must identify existing entitlements and any entitlements that must be acquired for the proposed real estate project to achieve the highest return.

(3) The department may conduct a market analysis for a parcel proposed for commercial, industrial, residential, or conservation use. At minimum, the market analysis must identify:

- (a) the size of the current and future market;
- (b) market-growth trends, historic and future; and
- (c) expected rate of return.

History: [77-1-209](#), [77-1-301](#), [77-1-603](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.907 SITE SELECTION REPORT**

(1) Field staff will develop a site selection report for each real estate project proposal that will include these elements:

- (a) how the proposed real estate project conforms to the standards in ARM [36.25.904](#);
- (b) description of the proposed real estate project, including proposed land use, density, existing and proposed entitlements, required infrastructure improvements, local regulatory approval required, and potential rates of return from the real estate project, if implemented;
- (c) how the proposed real estate project relates to ARM [36.25.911](#) and [36.25.912](#);
- (d) results of the site-specific evaluation;
- (e) estimate of the costs and timeline for the proposed real estate project; and
- (f) how the proposed real estate project integrates with other trust land management projects or programs.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.908 PROJECT IDENTIFICATION TEAM AND PROJECT REVIEW COMMITTEE**

(1) The department will form a project identification team comprised of bureau staff and field representatives. The project identification team will meet annually, at minimum. The duties of the project identification team will include:

- (a) reviewing and selecting real estate projects proposed by field staff;
- (b) reviewing the status of previously selected real estate projects;
- (c) canceling previously selected real estate projects; and
- (d) assigning resources.

(2) The project identification team will select real estate projects based upon review of the site selection reports developed by field staff under ARM [36.25.907](#), in consideration of the following criteria:

- (a) conformance to the standards in ARM [36.25.904](#);
- (b) relationship to ARM [36.25.911](#) and [36.25.912](#);
- (c) results of the site-specific evaluation;
- (d) results of the market analysis, as described in ARM [36.25.906](#)(3);
- (e) staffing and funding needs and limitations;
- (f) project complexity;
- (g) project timeline; and

(h) how the proposed real estate project integrates with other trust land management projects or programs.

(3) The department will form a project review committee, comprised of bureau staff and planning and land use staff from each area office. The project review committee will meet annually, at minimum. The duties of the project review committee will generally include:

(a) reviewing the status of previously selected real estate projects;

(b) assessing resource needs of real estate projects; and

(c) recommending project proposals to the real estate project identification team.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.909 PROJECT MANAGEMENT LIST**

(1) The department will create a project management list of the real estate projects selected by the project identification team. The list will identify new real estate projects, existing or previously approved real estate projects, and canceled real estate projects.

(2) The department will create and maintain a list of persons, conservation entities, and other organizations interested in receiving notice of new real estate projects.

(3) Within 30 days of the project identification team's selection of new real estate projects, the department will:

(a) provide the project management list to the board;

(b) provide a list of new real estate projects to interested persons who have made a request to the department to be informed of new real estate projects; and

(c) post the project management list on the department's web site.

(4) The department will notify affected lessees and licensees and local governments having jurisdiction over the area of a selected real estate project.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.910 NOTIFICATION OF CONSERVATION INTEREST**

(1) After providing notice of new real estate projects pursuant to ARM [36.25.909](#), the department shall allow conservation entities 60 days in which to propose a conservation use of those lands by issuing a letter of intent to the department. By such a letter of intent, an entity may seek to secure for conservation uses any tract or portion of

a tract proposed by the project identification team for a residential, industrial, or commercial use.

(2) A conservation entity submitting a letter of conservation intent during the 60 days has an additional 45 days in which to apply to the department for a lease, license, easement, or other approved legal instrument to secure conservation use, as approved by the department. The 45 days begin on the day following the last day of the 60-day period. An entity applying within the 45-day period has 12 months to secure conservation use. The department

may extend the 12 month period.

(a) Issuance of a conservation lease, license, or easement shall be made pursuant to Article X, section 11 of the Montana Constitution. The department reserves the right to approve or deny a proposal for a conservation use.

(b) The department may require bonding, letter of credit, or nonrefundable deposit as part of the application for a conservation use.

(3) Any real estate project on the project management list may proceed forward if:

(a) the department receives no letter of intent within the 60-day period;

(b) a conservation entity submits a letter of intent within the 60 days but fails to apply to the department within the subsequent 45 days; or

(c) a conservation entity submits a letter of intent and application within the applicable periods but fails to secure conservation use on the subject property within 12 months, unless the department has granted an extension.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.911 NEW DEVELOPMENT THRESHOLDS**

(1) The statewide threshold is 30,000 acres. The department will conduct a review of the plan as specified in

ARM [36.25.914](#)(2) if the aggregate acreage of real estate projects, sales, and exchanges meeting the criteria described in ARM [36.25.916](#)(2) exceeds the statewide threshold, or is anticipated to exceed the statewide threshold during the term of the programmatic plan.

(a) Five percent of the statewide threshold, termed the rural threshold, is allocated for rural real estate projects, sales, and exchanges. The rural threshold is 1500 acres. The department will conduct a review of the programmatic

plan as specified in ARM [36.25.914](#)(2) if the aggregate acreage of real estate projects, sales, and exchanges in rural areas meeting the criteria described in ARM [36.25.916](#)(2) exceeds the rural threshold or is anticipated to exceed the rural threshold during the term of the programmatic plan.

(2) The following, unless otherwise exempted in ARM [36.25.912](#), will count toward the applicable thresholds in

(1) and (1)(a):

- (a) tracts leased or under easement for commercial and industrial uses;
- (b) tracts leased or under easement for residential uses at a density greater than one residential unit per 25 acres;
- (c) tracts disposed of through sale or exchange and developed within five years following sale for a commercial or industrial use; and
- (d) tracts disposed of through sale or exchange and subdivided within five years following sale for residential use where the planned density is greater than one residential unit per 25 acres.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.912 NEW DEVELOPMENT THRESHOLD EXEMPTIONS**

(1) An urban tract meeting any one of the following criteria will be exempt from the statewide threshold in ARM [36.25.911](#)(1). A rural tract meeting any one of the following criteria will be exempt from the rural threshold in ARM [36.25.911](#)(1)(a) and the statewide threshold in ARM [36.25.911](#)(1):

- (a) leases, sales, exchanges, and easements to a public entity, for a public facility, community service, public benefit, or for a private sewer or water system;
- (b) acres under lease or easement for communications facilities, or for wind, geothermal, or solar power generation;
- (c) acres under easement for public or private rights-of-way;
- (d) a tract developed for commercial, residential, or industrial uses through lease or easement or following sale or exchange, whereby such uses are clustered on not more than 25 percent of a tract and the remainder of the tract is designated for conservation in perpetuity through an easement, deed restriction, or dedication upon final subdivision approval;
- (e) a tract developed for residential lease or easement, or disposed of through sale or exchange, with restrictions limiting residential density to one residential unit per 25 acres;
- (f) a tract sold or exchanged and not developed until after five years following the sale closing date;
- (g) an isolated tract sold or exchanged except in Beaverhead, Broadwater, Carbon, Cascade, Flathead, Gallatin, Lewis and Clark, Lake, Madison, Missoula, Park, Powell, Ravalli, Stillwater, Sweet Grass, Teton, and Yellowstone counties;
- (h) acres dedicated for conservation upon final subdivision approval review in excess of minimum state or local subdivision requirements;
- (i) a tract within a receiving area established by a local jurisdiction as part of a transfer of development rights program, and developed for commercial, industrial, or residential use by means of development rights permanently transferred from land in the sending area; and
- (j) a tract developed for residential use at a density greater than one unit per 25 acres when the potential density of one or more additional tracts is reduced in perpetuity by an equal or greater amount, such that the combined development density of all tracts is not greater than one unit per 25 acres. This exemption applies to lands for lease, easement, exchange, or sale, and includes lands receiving final subdivision approval within five years following sale.

(2) A rural tract that is not otherwise exempt from the rural and statewide threshold as provided in (1) will be exempt from the rural threshold but will still count toward the statewide threshold when one of the following criteria are met:

- (a) the tract is developed consistent with zoning adopted by the county's governing body in compliance with Title 76, chapter 2, part 1 or part 2, MCA; or
- (b) the developed use meets all of the following:
  - (i) provides infill opportunities;
  - (ii) is contiguous to existing development;
  - (iii) is or can be located within a sewer or water utility service area;
  - (iv) adds value to existing uses;
  - (v) demonstrates economic viability; and
  - (vi) conforms to the development standards in ARM [36.25.904](#).

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.913 ACCOUNTING AND REPORTING**

(1) The department will account for real estate management activities that meet ARM [36.25.910](#) and [36.25.912](#). In addition, the department will account for the following:

- (a) acres under commercial, industrial, or residential lease where no commercial, industrial, or residential lease existed previously;
- (b) acres under easement for commercial, industrial, or residential use;
- (c) nonisolated tracts sold and developed for a commercial, industrial, or residential use within five years of sale;

- (d) tracts acquired with existing commercial, industrial, or residential development;
- (e) tracts, or portions of tracts, encumbered or purchased with an existing conservation lease, license, easement, or other means of securing conservation uses;
- (f) nonisolated tracts sold and encumbered with a restriction on development for conservation uses within five years of sale;
- (g) acres dedicated as open space during subdivision review in excess of minimum requirement; and
- (h) acres designated as "Natural Area" per Title 77, chapter 12, part 1, MCA.

(2) The department may account for other land use, development, and disposition in other department documentation, such as annual reports.

(3) The department will report the results of the accounting to the board by August 2010 and every five years thereafter.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.914** MANAGEMENT OF THE REAL ESTATE MANAGEMENT PLAN

(1) In July 2010 and every five years thereafter, the bureau will issue a report upon the implementation and effectiveness of the plan, including a recommendation on the need for significant changes to the plan.

(2) Upon review of such reports, the board or the department may consider a review of the programmatic plan for any of the following reasons:

- (a) the thresholds in ARM [36.25.911](#)(1) or (1)(a) have been exceeded;
- (b) new legislation is adopted that is incompatible with the selected alternative;
- (c) the board provides new direction; or
- (d) the Trust Land Management Division administrator judges that the original assumptions supporting the plan no longer apply.

(3) The department may implement and initiate real estate projects during a review of the programmatic plan pursuant to ARM [36.2.537](#).

(4) The department may make minor changes or additions to the plan without a review of the entire programmatic plan, as long as those changes are compatible with the overall plan, as determined by the department.

(a) Cumulative minor changes may result in the department's review of the programmatic plan.

History: [77-1-209](#), [77-1-301](#), [77-1-603](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.915** MINIMUM LEASE CALCULATION

(1) Pursuant to [77-1-905](#)(2), MCA, the department will set the minimum annual rent for any commercial lease to obtain the full market value of that lease. Such rental shall be at a rate not less than the product of the appraised value of the land multiplied by a rate that is two percentage points a year less than the current federally guaranteed,

annual, 20-year bond rate provided by the Montana Board of Investments commercial loan rate sheet.

For the purpose of calculating the minimum annual rent, the department may round the 20-year rate to the nearest whole number.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), [77-1-912](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.916** DELEGATION OF AUTHORITY TO DEPARTMENT FOR SURVEYING, PLATTING, AND EXACTIONS

(1) The board delegates to the department, subject to its review, its authority under [77-1-301](#), [77-2-309](#), and [77-2-310](#), MCA, to determine whether it is in the best interest of the trust beneficiaries to survey, plat, or create blocks and lots of state lands prior to sale.

(2) The board delegates to the department, consistent with the board's fiduciary duties and subject to the board's review, its authority to agree to exactions, conditions, restrictions, or fees imposed as a result of zoning, annexation, subdivision, or building permit approval processes within Title 7, 50, 67, or 76, MCA, or local land use regulations.

History: [77-1-301](#), [77-1-309](#), [77-1-310](#), MCA; IMP, [77-1-301](#), [77-1-309](#), [77-1-310](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08

#### **36.25.917** APPRAISAL OF LAND PRIOR TO LEASE OR EASEMENT

(1) The value of a parcel under consideration for lease or issuance of an easement shall be determined through an appraisal or limited valuation.

(2) An appraisal must include state-owned improvements in the valuation and use comparable sales for like properties.

The department may conduct an appraisal or appraisal update; or the department may contract with a Montana-licensed certified general appraiser. The department shall review and approve an appraisal or appraisal



update conducted by a contract appraiser.

(3) A limited valuation is an estimation of value through other means which may include:

- (a) the department's fee schedule;
- (b) a survey of real estate appraisers, local tax assessors, or local realtors; or
- (c) an evaluation of local rents or local market fees.

(4) An appraisal or limited valuation must be updated, or the parcel reappraised:

- (a) where issuing a lease, if the appraisal or limited valuation is older than two years; and
- (b) where issuing an easement, if the appraisal or limited valuation is older than one year. An appraisal or limited valuation may be updated or the parcel reappraised earlier than as required in (4)(a) and this subsection.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

### **36.25.918 CATEGORICAL EXCLUSIONS**

(1) Pursuant to [77-1-121](#), MCA, and ARM [36.2.523](#)(5), the board adopts the following additional categorical exclusions for real estate management activities conducted upon state trust lands:

- (a) lease and license administration including review, inspection, amendments, assignments, renewals, and enforcement of terms and conditions;
- (b) department review and approval of lease or license modifications, improvements, removal of improvements, and new utility service connections, consistent with applicable regulations;
- (c) adjustments to the boundaries of existing leases or licenses, consistent with applicable regulations;
- (d) project planning and design;
- (e) project evaluation under ARM [36.25.906](#);
- (f) development of a site selection report under ARM [36.25.907](#);
- (g) project selection under ARM [36.25.908](#);
- (h) development of the project management list under ARM [36.25.909](#);
- (i) marketing of state trust lands proposed for lease, license, or easement;
- (j) short-term land use licenses, involving no resource extraction or developed uses, and conforming to local permitting and land use regulations;
- (k) other real estate management activities administered by the bureau on state trust lands that are not in connection to:

(i) a department proposal for a sale, exchange, easement, placement of improvement, lease, license, or permit; or

(ii) a department review of an application for authorization of a sale, exchange, easement, placement of improvement, lease, license, or permit;

(l) department request to amend a local growth policy or zoning regulation;

(m) department request to amend or develop a neighborhood plan or extension of services plan;

(n) annexation; and

(o) land acquisition. Categorical exclusions include activities on state trust lands conducted by others under the authority of the department as well as activities conducted by the department itself.

(2) Categorical exclusions shall not apply in extraordinary circumstances where the bureau is proposing an activity:

- (a) upon sites with high erosion risk;
- (b) where critical habitat for federally listed threatened and endangered species may be affected;
- (c) where Native American religious and cultural sites may be affected;
- (d) where archaeological sites may be affected;
- (e) where historic properties and areas may be affected;
- (f) where several related categorically-excluded individual activities may cumulatively result in significant impacts to the human environment because they will either occur closely in time, or in the same geographic area. Such related actions may be subject to environmental review even if they are not individually subject to review; or
- (g) where the activity would result in a violation of any applicable local, state, or federal laws or regulations.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [75-1-201](#), [77-1-121](#), [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

(d) issuance of leases;

(e) issuance of land use licenses;

(f) marketing of state trust lands proposed for lease, license, or easement, sale, or exchange;

(g) requests for proposals;

(h) planning and design;

(i) surveying and platting;

(j) development of entitlements;

(k) extension of services and infrastructure;

(l) contracting for services;

(m) environmental review; and

(n) minor repairs, operation or maintenance of existing equipment, improvements, or facilities.

(27) "Real Estate Management Plan (plan)" means the PEIS for real estate for the department and the associated Record of Decision (ROD) approved July 18, 2005.

(28) "Real estate project" means a proposal initiated by the bureau to develop state trust land for a commercial, industrial, residential, or conservation use, or a public facility where no such use existed previously, when one or more of the following are required by a local government:

(a) subdivision approval;

(b) annexation; or

(c) development or amendment of a growth policy or neighborhood plan. Real estate project also means the development of entitlements on state trust lands proposed for sale or exchange.

(29) "Receiving area" means land that receives additional development rights from land within a sending area. This is a component of a program providing for the transfer of development rights.

(30) "Residential" means single family dwellings, duplexes, condominiums, townhouses, cabins, associated ancillary uses, or other types of residential uses.

(31) "Rural" means a tract that does not meet the criteria for an urban tract.

(32) "Sending area" means land that provides additional development rights to other land within a receiving area. This is a component of a program providing for the transfer of development rights.

(33) "Subdivision" means a division of land defined by Title 76, MCA.

(34) "Subdivision review" means a city, town, or county governing body evaluating a subdivision proposal for compliance with the jurisdiction's subdivision regulations.

(35) "Threshold" means a predefined number of state trust land acres to be developed for commercial, industrial, or residential uses that, if met before July 18, 2025, may require a review of the programmatic plan.

(36) "Tract" means a parcel of state trust land that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office or in the department's records.

(37) "Transfer of development rights" means separating some or all of the development rights from a parcel of land in a "sending area" and transferring those rights to a parcel in a "receiving area," where additional development density is allowed.

(38) "Urban" means a tract meeting one or more of the following criteria:

(a) within the boundaries of an incorporated city or town;

(b) within 4.5 miles of the boundaries of an incorporated city or town;

(c) within a public sewer or water district; or

(d) within one mile of the boundaries of a public sewer or water district. An entire tract of state trust land is urban if any portion of the tract falls within an area described in (38)(a) through (d).

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-904](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

### **36.25.902 ACCOUNTABLE PARTIES**

(1) The board adopts the rules in this subchapter to provide the Trust Land Management Division of the Montana Department of Natural Resources and Conservation with consistent policy, direction, and guidance when

selecting and implementing real estate projects on state trust lands.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-904](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

### **36.25.903 GENERAL APPLICABILITY**

(1) The Real Estate Management Plan (plan) rules, ARM [36.25.901](#) through [36.25.918](#), implement the Programmatic Environmental Impact Statement (PEIS) and the associated Record of Decision (ROD) adopted July

18, 2005.

(2) The rules apply to real estate projects, sales, and exchanges administered by the bureau on state trust lands, except for the following:

(a) real estate projects that, prior to July 18, 2005, have been subject to public scoping and environmental review processes under MEPA, section [75-1-201](#), et seq., MCA;

(b) real estate projects that received all local government approvals necessary for the completion of the real estate project on or before December 15, 2008;

(c) lease lots created prior to July 18, 2005;

(d) land use licenses;

(e) sales and exchanges closed on or before July 18, 2005; and

(f) real estate activities within navigable waterways of the state.

(3) These rules remain in effect until July 18, 2025, whereupon they shall expire.

History: [77-1-209](#), [77-1-301](#), [77-1-603](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

### **36.25.904 GENERAL DEVELOPMENT STANDARDS**

(1) The department will actively pursue commercial, industrial, residential, and conservation uses to increase revenue on trust lands, through one or more of the following means:

- (a) targeting those tracts most suitable for development;
- (b) improving entitlements on tracts selected for sale or development, when appropriate; or
- (c) prioritizing projects with the highest financial return per acre.

(2) The department will give priority to urban real estate projects over rural real estate projects using the following criteria:

- (a) financial rate of return per acre;
- (b) funding availability; and
- (c) the acres remaining in the development thresholds described in ARM [36.25.911](#).

(3) The department will comply with local and state land use regulations. The department will apply the following development standards in selecting, prioritizing, designing, and implementing real estate projects on state trust lands:

- (a) real estate projects should be contiguous to or part of existing or proposed development;
- (b) real estate projects in urban locations must connect to existing or planned public infrastructure and be designed to public standards, including alignment to adjoining public and private streets, that are consistent with local land use regulations;
- (c) urban real estate projects should achieve urban densities consistent with local land use regulations;
- (d) the department will promote mixed use in urban locations through planned-unit development or other means provided by local land-use regulations;
- (e) the department will utilize local land use planning and regulatory processes to involve the general public and beneficiaries in developing state trust lands for commercial, industrial, residential, and conservation uses;
- (f) the department will coordinate environmental review with local regulatory review;
- (g) the department may use or promote purchase of development rights, transfer of development rights, cluster development, joint ventures, or other measures as provided by law;
- (h) the department will coordinate with local communities, other state and federal agencies, conservation agencies, and other interest groups to provide for notice and review as necessary; and
- (i) the department will exclude from consideration, or employ necessary measures to avoid, minimize, or mitigate impacts potentially resulting from commercial, industrial, and residential real estate projects:
  - (i) on slopes greater than 25 percent;
  - (ii) in a designated 100-year floodplain or wetland. The department will avoid adverse impacts in the floodplain. Adverse impacts will be determined by the department through an environmental review in compliance with Title 75, chapter 1, MCA;
  - (iii) that potentially affect federally listed threatened and endangered species or designated critical habitat; and
  - (iv) in a designated wildland-urban interface or area of high wildfire hazard.

(4) Any commercial, industrial, or residential lease expected to generate annual revenue in excess of \$50,000 may not be issued without the board's prior approval.

(a) The board delegates its authority to the department to issue commercial or industrial leases expected to generate \$50,000 or less annually, but the board reserves the authority to subsequently review the issuance of such leases.

(5) Development in rural areas will include commercial resorts, development for public purposes such as sewer or water, natural resource based development, and conservation opportunities. Other unique development opportunities may be considered when the intended uses:

- (a) provide infill opportunities;
- (b) are contiguous to existing development;
- (c) are or can be located within a sewer or water utility service area;
- (d) add value to the existing uses;
- (e) demonstrate economic viability and conform to applicable development standards; or
- (f) limit development to not more than 25 percent of a tract while the remainder of the tract is designated for conservation through an easement, deed restriction, or dedication at final subdivision approval.

History: [77-1-209](#), [77-1-301](#), [77-1-603](#), MCA; IMP, [77-1-605](#), [77-1-904](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

### **36.25.905 PROJECT EVALUATION, REVIEW, AND SELECTION PROCESS**

(1) ARM [36.25.906](#) through [36.25.910](#) describe the evaluation, review, and selection process for real estate projects on state trust lands.

(2) The department will require ARM [36.25.906](#) through [36.25.910](#) for real estate projects approved by the project identification team after December 25, 2008.

(3) The department will not require ARM [36.25.906](#) through [36.25.910](#) for an individual real estate activity that is associated with a previously approved real estate project.

History: [77-1-209](#), [77-1-301](#), [77-1-603](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

### **36.25.906 SITE-SPECIFIC EVALUATION**

(1) The department will conduct a site-specific evaluation to assess the suitability of a tract or portion of a tract proposed for a real estate project. The site-specific evaluation will include the following factors:

- (a) unique or sensitive biological and physical features;
- (b) topography;
- (c) influence of floodplains and/or wetlands;
- (d) hazardous geologic conditions;
- (e) known cultural or historic features through a preliminary cultural survey;
- (f) proximity to other public lands or private lands under conservation easement, as documented by information in the Montana Natural Heritage Program database or similar source;
- (g) water availability and water rights;
- (h) existing and required access;
- (i) the location and quality of infrastructure, such as roads, utilities, power, telephone, public water, or sewer availability;
- (j) any existing encumbrances;
- (k) proximity to community infrastructure and utilities;
- (l) other nearby residential, industrial, or commercial development, proposed or existing; and
- (m) wildland fire hazards and available fire protection.

(2) The department will analyze federal, state, and local land-use regulations, plans, and policies, for their relationship to the proposed real estate project. This analysis must identify existing entitlements and any entitlements that must be acquired for the proposed real estate project to achieve the highest return.

(3) The department may conduct a market analysis for a parcel proposed for commercial, industrial, residential, or conservation use. At minimum, the market analysis must identify:

- (a) the size of the current and future market;
- (b) market-growth trends, historic and future; and
- (c) expected rate of return.

History: [77-1-209](#), [77-1-301](#), [77-1-603](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

### **36.25.907 SITE SELECTION REPORT**

(1) Field staff will develop a site selection report for each real estate project proposal that will include these elements:

- (a) how the proposed real estate project conforms to the standards in ARM [36.25.904](#);
- (b) description of the proposed real estate project, including proposed land use, density, existing and proposed entitlements, required infrastructure improvements, local regulatory approval required, and potential rates of return from the real estate project, if implemented;
- (c) how the proposed real estate project relates to ARM [36.25.911](#) and [36.25.912](#);
- (d) results of the site-specific evaluation;
- (e) estimate of the costs and timeline for the proposed real estate project; and
- (f) how the proposed real estate project integrates with other trust land management projects or programs.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

### **36.25.908 PROJECT IDENTIFICATION TEAM AND PROJECT REVIEW COMMITTEE**

(1) The department will form a project identification team comprised of bureau staff and field representatives. The project identification team will meet annually, at minimum. The duties of the project identification team will include:

- (a) reviewing and selecting real estate projects proposed by field staff;
- (b) reviewing the status of previously selected real estate projects;
- (c) canceling previously selected real estate projects; and
- (d) assigning resources.

(2) The project identification team will select real estate projects based upon review of the site selection reports developed by field staff under ARM [36.25.907](#), in consideration of the following criteria:

- (a) conformance to the standards in ARM [36.25.904](#);
- (b) relationship to ARM [36.25.911](#) and [36.25.912](#);
- (c) results of the site-specific evaluation;
- (d) results of the market analysis, as described in ARM [36.25.906](#)(3);
- (e) staffing and funding needs and limitations;
- (f) project complexity;
- (g) project timeline; and



(h) how the proposed real estate project integrates with other trust land management projects or programs.

(3) The department will form a project review committee, comprised of bureau staff and planning and land use staff from each area office. The project review committee will meet annually, at minimum. The duties of the project review committee will generally include:

(a) reviewing the status of previously selected real estate projects;

(b) assessing resource needs of real estate projects; and

(c) recommending project proposals to the real estate project identification team.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.909 PROJECT MANAGEMENT LIST**

(1) The department will create a project management list of the real estate projects selected by the project identification team. The list will identify new real estate projects, existing or previously approved real estate projects, and canceled real estate projects.

(2) The department will create and maintain a list of persons, conservation entities, and other organizations interested in receiving notice of new real estate projects.

(3) Within 30 days of the project identification team's selection of new real estate projects, the department will:

(a) provide the project management list to the board;

(b) provide a list of new real estate projects to interested persons who have made a request to the department to be informed of new real estate projects; and

(c) post the project management list on the department's web site.

(4) The department will notify affected lessees and licensees and local governments having jurisdiction over the area of a selected real estate project.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.910 NOTIFICATION OF CONSERVATION INTEREST**

(1) After providing notice of new real estate projects pursuant to ARM [36.25.909](#), the department shall allow conservation entities 60 days in which to propose a conservation use of those lands by issuing a letter of intent to the department. By such a letter of intent, an entity may seek to secure for conservation uses any tract or portion of

a tract proposed by the project identification team for a residential, industrial, or commercial use.

(2) A conservation entity submitting a letter of conservation intent during the 60 days has an additional 45 days in which to apply to the department for a lease, license, easement, or other approved legal instrument to secure conservation use, as approved by the department. The 45 days begin on the day following the last day of the 60-day period. An entity applying within the 45-day period has 12 months to secure conservation use. The department

may extend the 12 month period.

(a) Issuance of a conservation lease, license, or easement shall be made pursuant to Article X, section 11 of the Montana Constitution. The department reserves the right to approve or deny a proposal for a conservation use.

(b) The department may require bonding, letter of credit, or nonrefundable deposit as part of the application for a conservation use.

(3) Any real estate project on the project management list may proceed forward if:

(a) the department receives no letter of intent within the 60-day period;

(b) a conservation entity submits a letter of intent within the 60 days but fails to apply to the department within the subsequent 45 days; or

(c) a conservation entity submits a letter of intent and application within the applicable periods but fails to secure conservation use on the subject property within 12 months, unless the department has granted an extension.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.911 NEW DEVELOPMENT THRESHOLDS**

(1) The statewide threshold is 30,000 acres. The department will conduct a review of the plan as specified in

ARM [36.25.914](#)(2) if the aggregate acreage of real estate projects, sales, and exchanges meeting the criteria described in ARM [36.25.916](#)(2) exceeds the statewide threshold, or is anticipated to exceed the statewide threshold during the term of the programmatic plan.

(a) Five percent of the statewide threshold, termed the rural threshold, is allocated for rural real estate projects, sales, and exchanges. The rural threshold is 1500 acres. The department will conduct a review of the programmatic

plan as specified in ARM [36.25.914](#)(2) if the aggregate acreage of real estate projects, sales, and exchanges in rural areas meeting the criteria described in ARM [36.25.916](#)(2) exceeds the rural threshold or is anticipated to exceed the rural threshold during the term of the programmatic plan.

(2) The following, unless otherwise exempted in ARM [36.25.912](#), will count toward the applicable thresholds in

(1) and (1)(a):

- (a) tracts leased or under easement for commercial and industrial uses;
- (b) tracts leased or under easement for residential uses at a density greater than one residential unit per 25 acres;
- (c) tracts disposed of through sale or exchange and developed within five years following sale for a commercial or industrial use; and
- (d) tracts disposed of through sale or exchange and subdivided within five years following sale for residential use where the planned density is greater than one residential unit per 25 acres.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.912 NEW DEVELOPMENT THRESHOLD EXEMPTIONS**

(1) An urban tract meeting any one of the following criteria will be exempt from the statewide threshold in ARM [36.25.911](#)(1). A rural tract meeting any one of the following criteria will be exempt from the rural threshold in ARM [36.25.911](#)(1)(a) and the statewide threshold in ARM [36.25.911](#)(1):

- (a) leases, sales, exchanges, and easements to a public entity, for a public facility, community service, public benefit, or for a private sewer or water system;
- (b) acres under lease or easement for communications facilities, or for wind, geothermal, or solar power generation;
- (c) acres under easement for public or private rights-of-way;
- (d) a tract developed for commercial, residential, or industrial uses through lease or easement or following sale or exchange, whereby such uses are clustered on not more than 25 percent of a tract and the remainder of the tract is designated for conservation in perpetuity through an easement, deed restriction, or dedication upon final subdivision approval;
- (e) a tract developed for residential lease or easement, or disposed of through sale or exchange, with restrictions limiting residential density to one residential unit per 25 acres;
- (f) a tract sold or exchanged and not developed until after five years following the sale closing date;
- (g) an isolated tract sold or exchanged except in Beaverhead, Broadwater, Carbon, Cascade, Flathead, Gallatin, Lewis and Clark, Lake, Madison, Missoula, Park, Powell, Ravalli, Stillwater, Sweet Grass, Teton, and Yellowstone counties;
- (h) acres dedicated for conservation upon final subdivision approval review in excess of minimum state or local subdivision requirements;
- (i) a tract within a receiving area established by a local jurisdiction as part of a transfer of development rights program, and developed for commercial, industrial, or residential use by means of development rights permanently transferred from land in the sending area; and
- (j) a tract developed for residential use at a density greater than one unit per 25 acres when the potential density of one or more additional tracts is reduced in perpetuity by an equal or greater amount, such that the combined development density of all tracts is not greater than one unit per 25 acres. This exemption applies to lands for lease, easement, exchange, or sale, and includes lands receiving final subdivision approval within five years following sale.

(2) A rural tract that is not otherwise exempt from the rural and statewide threshold as provided in (1) will be exempt from the rural threshold but will still count toward the statewide threshold when one of the following criteria are met:

- (a) the tract is developed consistent with zoning adopted by the county's governing body in compliance with Title 76, chapter 2, part 1 or part 2, MCA; or
- (b) the developed use meets all of the following:
  - (i) provides infill opportunities;
  - (ii) is contiguous to existing development;
  - (iii) is or can be located within a sewer or water utility service area;
  - (iv) adds value to existing uses;
  - (v) demonstrates economic viability; and
  - (vi) conforms to the development standards in ARM [36.25.904](#).

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.913 ACCOUNTING AND REPORTING**

(1) The department will account for real estate management activities that meet ARM [36.25.910](#) and [36.25.912](#). In addition, the department will account for the following:

- (a) acres under commercial, industrial, or residential lease where no commercial, industrial, or residential lease existed previously;
- (b) acres under easement for commercial, industrial, or residential use;
- (c) nonisolated tracts sold and developed for a commercial, industrial, or residential use within five years of sale;

- (d) tracts acquired with existing commercial, industrial, or residential development;
- (e) tracts, or portions of tracts, encumbered or purchased with an existing conservation lease, license, easement, or other means of securing conservation uses;
- (f) nonisolated tracts sold and encumbered with a restriction on development for conservation uses within five years of sale;
- (g) acres dedicated as open space during subdivision review in excess of minimum requirement; and
- (h) acres designated as "Natural Area" per Title 77, chapter 12, part 1, MCA.

(2) The department may account for other land use, development, and disposition in other department documentation, such as annual reports.

(3) The department will report the results of the accounting to the board by August 2010 and every five years thereafter.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.914** MANAGEMENT OF THE REAL ESTATE MANAGEMENT PLAN

(1) In July 2010 and every five years thereafter, the bureau will issue a report upon the implementation and effectiveness of the plan, including a recommendation on the need for significant changes to the plan.

(2) Upon review of such reports, the board or the department may consider a review of the programmatic plan for any of the following reasons:

- (a) the thresholds in ARM [36.25.911](#)(1) or (1)(a) have been exceeded;
- (b) new legislation is adopted that is incompatible with the selected alternative;
- (c) the board provides new direction; or
- (d) the Trust Land Management Division administrator judges that the original assumptions supporting the plan no longer apply.

(3) The department may implement and initiate real estate projects during a review of the programmatic plan pursuant to ARM [36.2.537](#).

(4) The department may make minor changes or additions to the plan without a review of the entire programmatic plan, as long as those changes are compatible with the overall plan, as determined by the department.

(a) Cumulative minor changes may result in the department's review of the programmatic plan.

History: [77-1-209](#), [77-1-301](#), [77-1-603](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.915** MINIMUM LEASE CALCULATION

(1) Pursuant to [77-1-905](#)(2), MCA, the department will set the minimum annual rent for any commercial lease to obtain the full market value of that lease. Such rental shall be at a rate not less than the product of the appraised value of the land multiplied by a rate that is two percentage points a year less than the current federally guaranteed,

annual, 20-year bond rate provided by the Montana Board of Investments commercial loan rate sheet.

For the purpose of calculating the minimum annual rent, the department may round the 20-year rate to the nearest whole number.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), [77-1-912](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.916** DELEGATION OF AUTHORITY TO DEPARTMENT FOR SURVEYING, PLATTING, AND EXACTIONS

(1) The board delegates to the department, subject to its review, its authority under [77-1-301](#), [77-2-309](#), and [77-2-310](#), MCA, to determine whether it is in the best interest of the trust beneficiaries to survey, plat, or create blocks and lots of state lands prior to sale.

(2) The board delegates to the department, consistent with the board's fiduciary duties and subject to the board's review, its authority to agree to exactions, conditions, restrictions, or fees imposed as a result of zoning, annexation, subdivision, or building permit approval processes within Title 7, 50, 67, or 76, MCA, or local land use regulations.

History: [77-1-301](#), [77-1-309](#), [77-1-310](#), MCA; IMP, [77-1-301](#), [77-1-309](#), [77-1-310](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08

#### **36.25.917** APPRAISAL OF LAND PRIOR TO LEASE OR EASEMENT

(1) The value of a parcel under consideration for lease or issuance of an easement shall be determined through an appraisal or limited valuation.

(2) An appraisal must include state-owned improvements in the valuation and use comparable sales for like properties.

The department may conduct an appraisal or appraisal update; or the department may contract with a Montana-licensed certified general appraiser. The department shall review and approve an appraisal or appraisal

update conducted by a contract appraiser.

(3) A limited valuation is an estimation of value through other means which may include:

- (a) the department's fee schedule;
- (b) a survey of real estate appraisers, local tax assessors, or local realtors; or
- (c) an evaluation of local rents or local market fees.

(4) An appraisal or limited valuation must be updated, or the parcel reappraised:

- (a) where issuing a lease, if the appraisal or limited valuation is older than two years; and
- (b) where issuing an easement, if the appraisal or limited valuation is older than one year. An appraisal or limited valuation may be updated or the parcel reappraised earlier than as required in (4)(a) and this subsection.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

#### **36.25.918 CATEGORICAL EXCLUSIONS**

(1) Pursuant to [77-1-121](#), MCA, and ARM [36.2.523](#)(5), the board adopts the following additional categorical exclusions for real estate management activities conducted upon state trust lands:

- (a) lease and license administration including review, inspection, amendments, assignments, renewals, and enforcement of terms and conditions;
- (b) department review and approval of lease or license modifications, improvements, removal of improvements, and new utility service connections, consistent with applicable regulations;
- (c) adjustments to the boundaries of existing leases or licenses, consistent with applicable regulations;
- (d) project planning and design;
- (e) project evaluation under ARM [36.25.906](#);
- (f) development of a site selection report under ARM [36.25.907](#);
- (g) project selection under ARM [36.25.908](#);
- (h) development of the project management list under ARM [36.25.909](#);
- (i) marketing of state trust lands proposed for lease, license, or easement;
- (j) short-term land use licenses, involving no resource extraction or developed uses, and conforming to local permitting and land use regulations;
- (k) other real estate management activities administered by the bureau on state trust lands that are not in connection to:
  - (i) a department proposal for a sale, exchange, easement, placement of improvement, lease, license, or permit; or
  - (ii) a department review of an application for authorization of a sale, exchange, easement, placement of improvement, lease, license, or permit;
- (l) department request to amend a local growth policy or zoning regulation;
- (m) department request to amend or develop a neighborhood plan or extension of services plan;
- (n) annexation; and
- (o) land acquisition. Categorical exclusions include activities on state trust lands conducted by others under the authority of the department as well as activities conducted by the department itself.

(2) Categorical exclusions shall not apply in extraordinary circumstances where the bureau is proposing an activity:

- (a) upon sites with high erosion risk;
- (b) where critical habitat for federally listed threatened and endangered species may be affected;
- (c) where Native American religious and cultural sites may be affected;
- (d) where archaeological sites may be affected;
- (e) where historic properties and areas may be affected;
- (f) where several related categorically-excluded individual activities may cumulatively result in significant impacts to the human environment because they will either occur closely in time, or in the same geographic area. Such related actions may be subject to environmental review even if they are not individually subject to review; or
- (g) where the activity would result in a violation of any applicable local, state, or federal laws or regulations.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [75-1-201](#), [77-1-121](#), [77-1-605](#), [77-1-903](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.