AGENDA
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, November 19, 2012, at 9:00 a.m.
Capitol Building
Helena, MT

ACTION ITEMS

1112-1 **FWP: LAND ACQUISITION – MILK RIVER RANCH**
Benefits: NA (non-Trust Land)
Location: Hill County

1112-2 **DEPARTMENT OF JUSTICE (HIGHWAY PATROL): LAND ACQUISITION – HYSHAM COMMUNICATIONS SITE**
Benefits: NA (non-Trust Land)
Location: Treasure County

1112-3 **TIMBER SALES:**

A. GOUGH CREEK
Benefits: Common Schools
Location: Powell County

B. OMEGA (LIMITED ACCESS)
Benefits: Common Schools
Location: Fergus County

C. PORTER CREEK
Benefits: Montana Tech
Location: Flathead County

D. SLOCUM CREEK
Benefits: Common Schools, Public Buildings
Location: Ravalli County

E. WINDY PASS (SALVAGE)
Benefits: Common Schools
Location: Lake County

1112-4 **ADMINISTRATIVE RULE ADOPTION – NAVIGABLE RIVERS**
Benefits: Public Land Trust
Location: State of Montana

1112-5 **LAND BANKING PARCELS: FINAL APPROVAL FOR SALE**

A. DANIELS COUNTY
Benefits: Common Schools
Location: Daniels County

B. FLATHEAD COUNTY
Benefits: Common Schools
Location: Flathead County

1112-6 **LAND BANKING ACQUISITIONS: FINAL APPROVAL**

A. MILK RIVER RANCH
Benefits: Common Schools
Location: Hill County

B. NORTH SWAN (PHASE II)
Benefits: Common Schools
Location: Lake County

1112-7 **EASEMENTS:**

A. RIGHTS-OF-WAY

Benefits: Common Schools, Montana Tech, Pine Hills School, Public Land Trust, University of Montana, Eastern College/Western College

Location: Cascade, Chouteau, Deer Lodge, Madison, and Powell Counties

B. PUBLIC RECREATIONAL USE EASEMENT – CITY OF WHITEFISH

Benefits: Common Schools, Eastern College/Western College, Montana Tech, MSU 2nd, MSU Morrill, Public Buildings

Location: Flathead County

1112-8 **NORTHERN CHEYENNE TRIBE AND ARK LAND COMPANY NOVEMBER 6 OPERATING PLANS SUBMITTAL**

Benefits: NA (non-Trust Land)

Location: Powder River County

PUBLIC COMMENT

1112-1

FWP: LAND ACQUISITION – MILK RIVER RANCH

Montana Fish, Wildlife and Parks

MILK RIVER RANCH ACQUISITION

FACT SHEET

November 2012

Montana Fish, Wildlife and Parks (FWP) proposes the fee title acquisition of a 2,992-acre portion of the Milk River Ranch, located 42 miles northwest of Havre. The property includes 10 miles of riverfront habitat along the Milk River, along with associated uplands. Together with existing conservation lands, this acquisition would result in a 40-mile segment of the Milk River under public ownership, extending from the US-Canada border to the south end of Fresno Reservoir.

The property to be acquired by FWP is comprised of over 95% intact native vegetation, consisting of silver sagebrush grassland, cottonwood/shrub riparian habitat, greasewood flats, mixed-grass prairie and badlands habitats. FWP's statewide conservation strategy identifies this Montana Glaciated Plains habitat as a Terrestrial Focus Area which supports many vegetative communities and species of high priority for conservation.

FWP's portion of the Milk River Ranch would become a wildlife management area and would be managed to conserve and enhance fish and wildlife resources, to maintain a corridor for connectivity between wildlife populations in Canada and in the United States, and to provide public recreational opportunities. FWP management practices and habitat improvements will seek to enhance populations of mule deer, pronghorn antelope, white-tailed deer, elk, ring-necked pheasants, Hungarian partridge and waterfowl, along with many species of grassland and riparian songbirds, small mammals, reptiles, amphibians and fish, including many Tier I species, species of concern and potential species of concern.

Milk River Ranch also has abundant archeological, paleontological, historical and cultural values. The land is located in the heart of the Judith River Geologic Formation and has been recognized by several universities and museums for those resources. The site also has strong cultural significance to Native Americans. While FWP will not acquire rights to the archeological and paleontological resources, under the terms of the Purchase and Sale Agreement and the Warranty Deed, any research or collection of these resources must be conducted in strict compliance with the requirements of the National Historic Preservation Act.

The purchase of the Milk River Ranch is a cooperative acquisition between FWP and the Montana Department of Natural Resources (DNRC), which is proposing to purchase an additional 1,500 acres of agricultural and grazing land on the property.

OWNER:	<	Aageson Grain and Cattle, et al; Gildford, MT
PROPERTY RIGHT TO BE ACQUIRED:	<	Fee Simple
PROPERTY DATA:	<	Approximately 2,992 acres, located in Hill County, 42 miles northwest of Havre
COST	<	$4,708,500, as determined by independent appraisal
FUNDING SOURCES	<	75% Pittman-Robertson & 25% Habitat Montana or 100% Habitat Montana

- *FWP has submitted a grant application for federal Pittman-Robertson funding to the U.S. Dept. of Interior, Fish & Wildlife Service. If approved, the grant will provide 75% of the acquisition funding. If the grant is not approved for P-R funding, Habitat Montana funds will be used.*

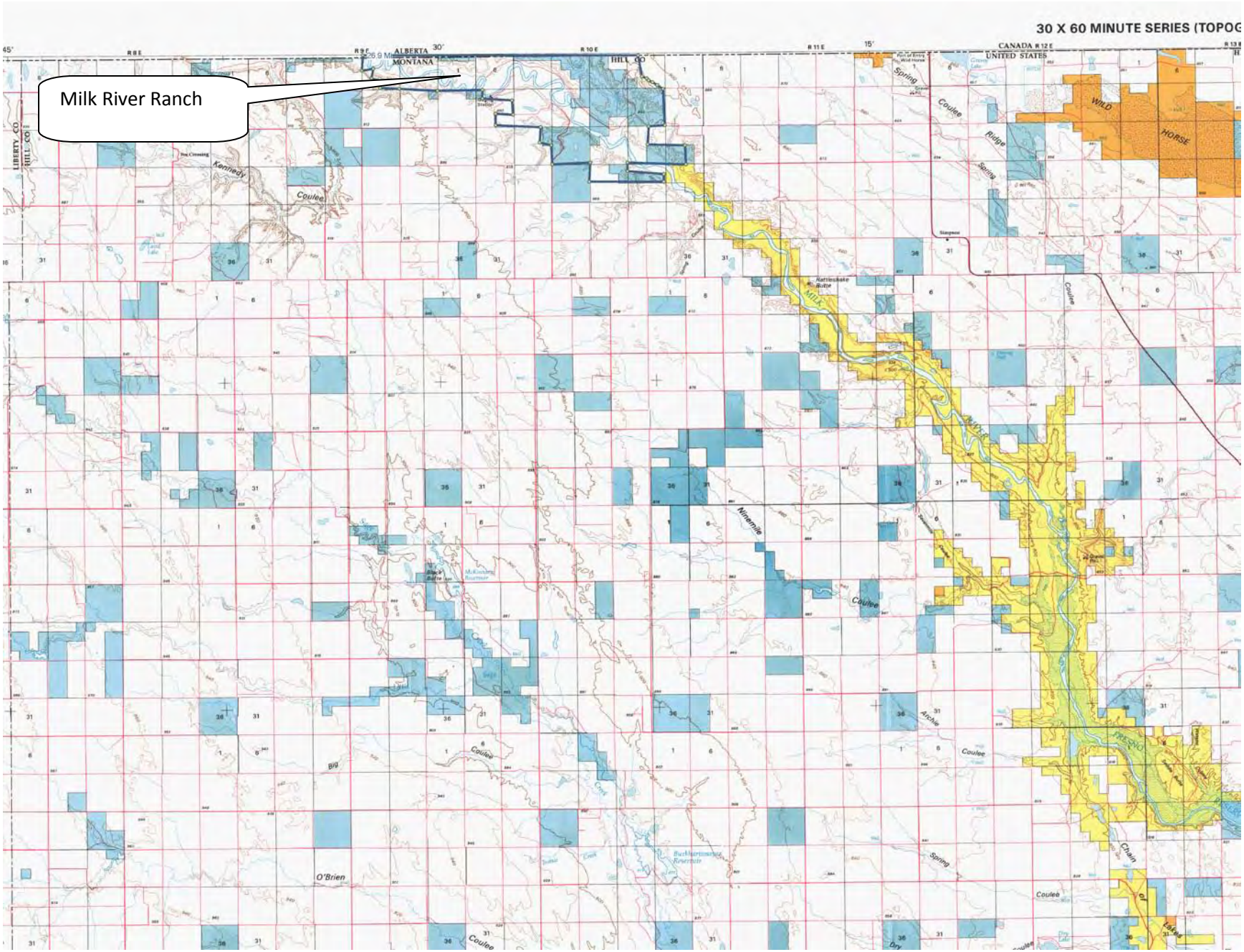
MEPA PROCESS:

Public Process

Public scoping notices for the proposed Milk River Ranch Land Acquisition were published in the *Havre Daily News and Great Falls Tribune* newspapers on October 26 and 30, 2012, and FWP issued a statewide press release on October 30. In Octoberl of 2012, FWP completed an Environmental Assessment (EA) on the proposed land acquisition, consistent with the requirements of the Montana Environmental Policy Act. The EA was available for public review on the FWP website from October18th through November 9, 2012. Additionally, FWP distributed approximately 25 copies of the EA, and email notifications of its availability to adjacent landowners, interest groups, individuals and agencies.

Comment Summary

During the public comment period on the EA, Montana Fish, Wildlife, & Parks received 4 comments in the form of letters and 35 comments from emails and/or phone calls were from individuals, organizations and local governments.


30 X 60 MINUTE SERIES (TOPOG
Milk River Ranch
ALBERTA
MONTANA
HILL CO
CANADA
UNITED STATES
LIBERTY CO
HILL CO
Kennedy
Coulee
Spring
Coulee
Ridge
Spring
WILD
HORSE
Rattlesnake Butte
MILK
RIVER
Coulee
Ninemile
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Aichle
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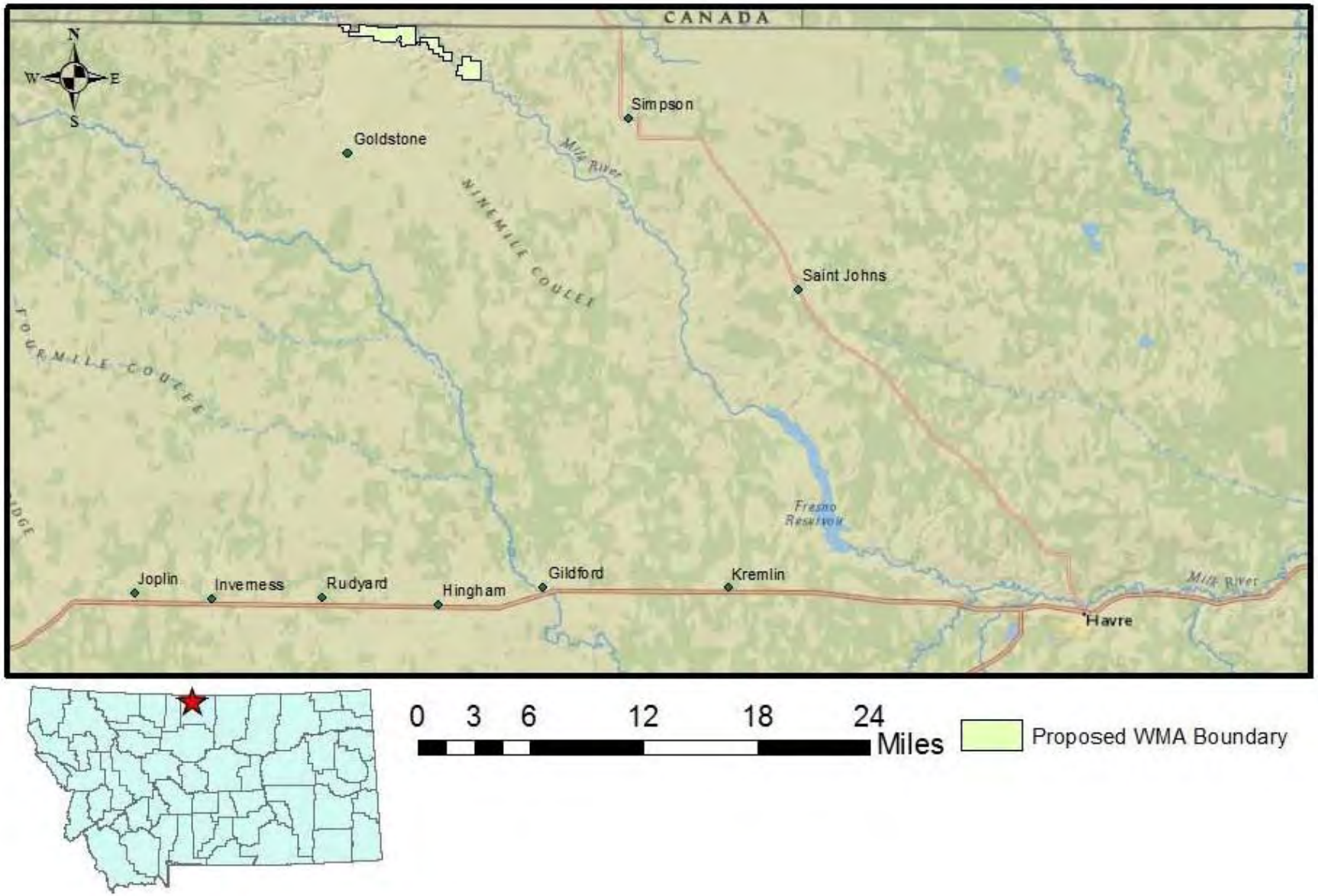
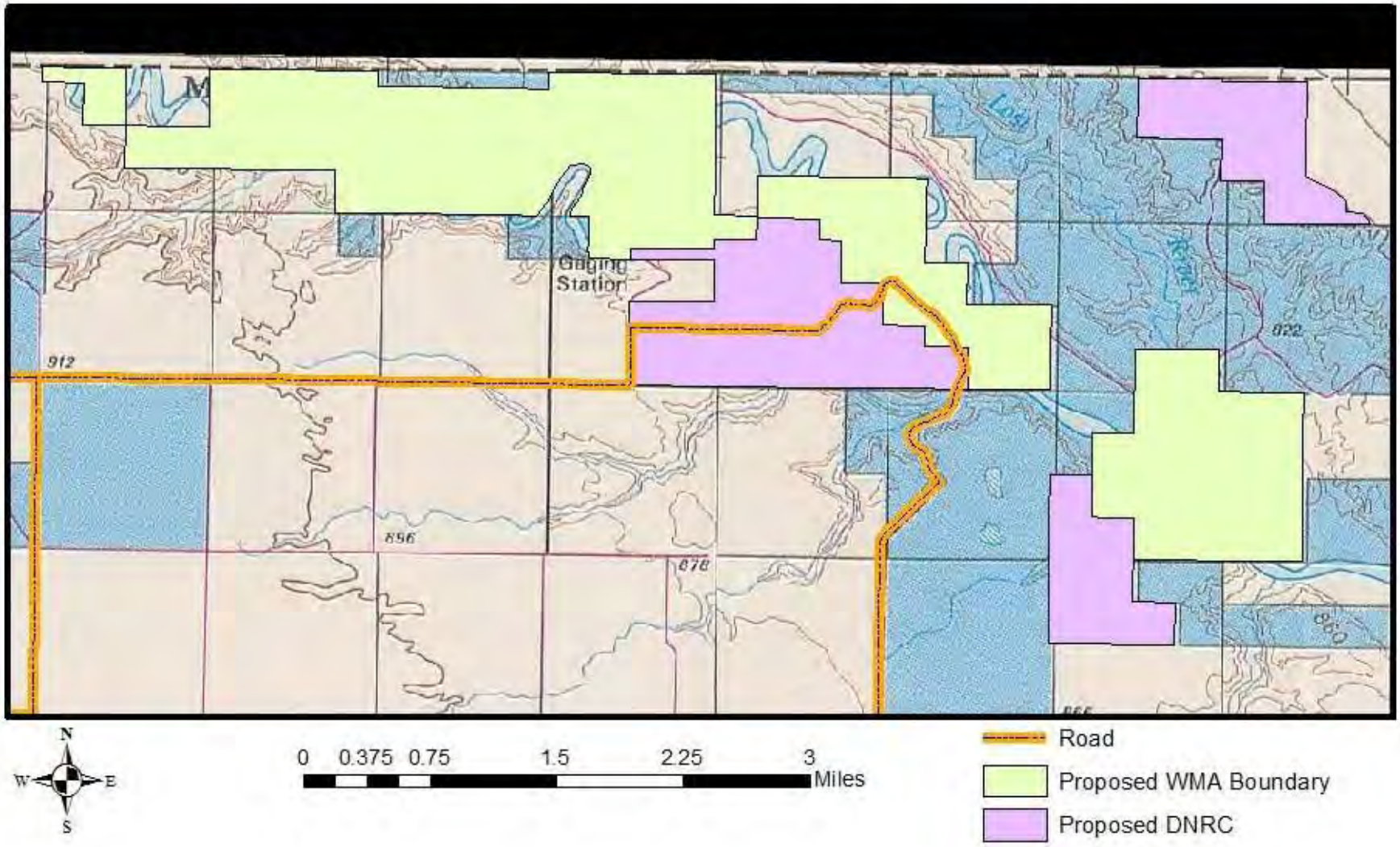
Big
Coulee
O'Brien
Coulee
Spring
Coulee
Chain
of
Lakes

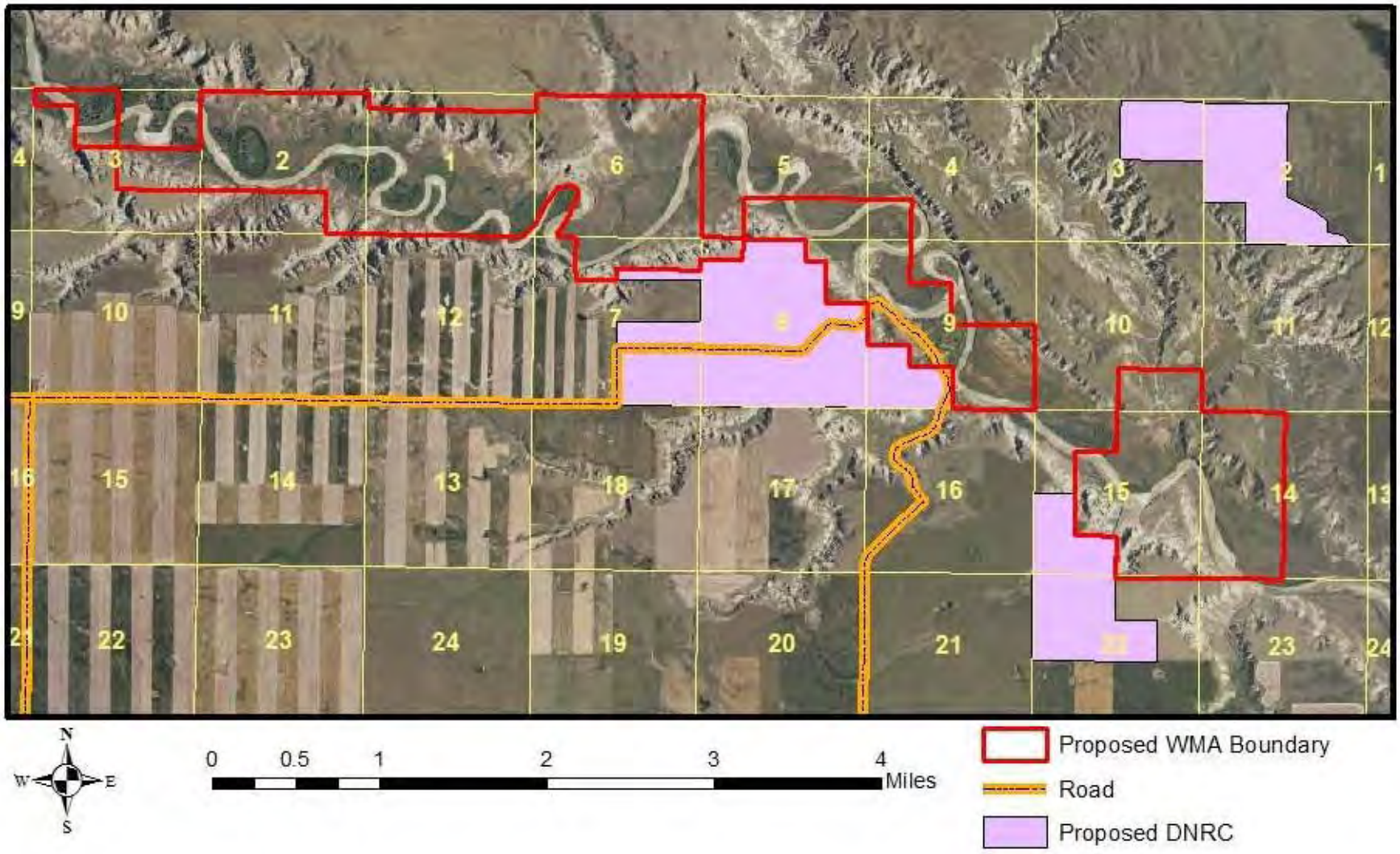
Milk River Ranch Location



Milk River Ranch Acquisition



Proposed Milk River WMA Boundary



1112-2

DEPARTMENT OF JUSTICE (HIGHWAY PATROL): LAND ACQUISITION – HYSHAM COMMUNICATIONS SITE

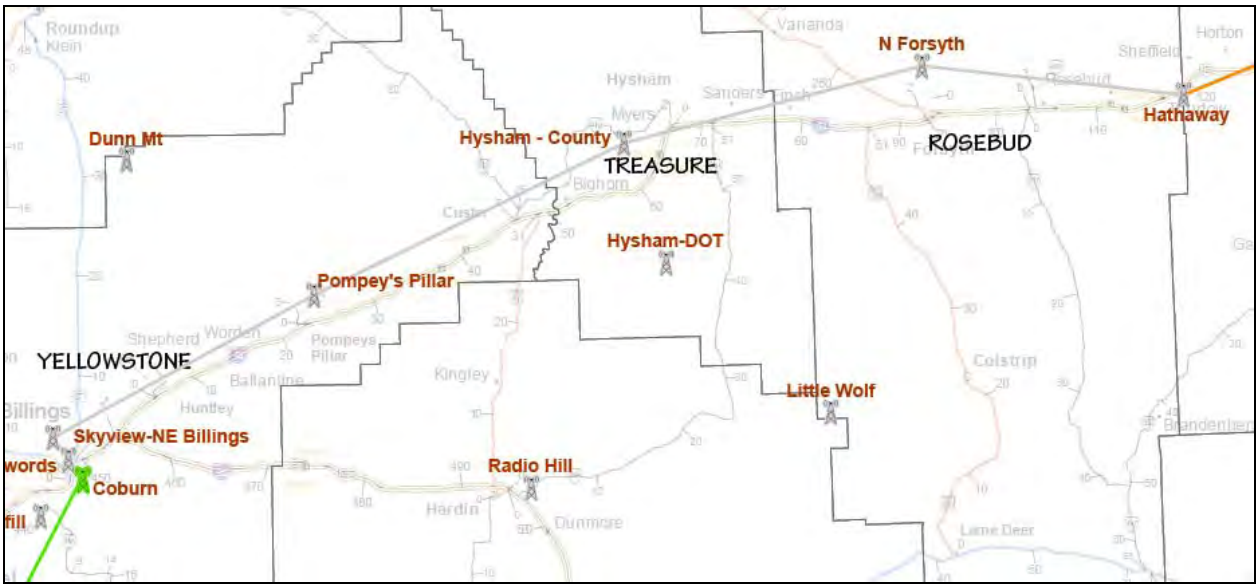
MONTANA DEPARTMENT OF JUSTICE/ MONTANA HIGHWAY PATROL
HYSHAM COMMUNITICATIONS SITE ACQUISITION

The Montana Department of Justice on behalf of the Montana Highway Patrol, seeks the State Land Board's ratification and approval of a land acquisition for its Hysham Communications Site. This site will provide essential radio coverage for law enforcement in the Hysham area.

The property acquired is a radio communications site approximately 1.0 acre in size situated in the Northeast Quarter of the Southwest Quarter (NE¼SW¼) of Section 10, Township 5 North, Range 35 East of the Montana Principal Meridian, Treasure County, Montana, together with an easement which provides access to old Highway 10. A separate road access agreement across old Highway 10 confirms that the Montana Highway Patrol has the access necessary to operate and maintain the communications site.

The cost of the acquisition of the Hysham Communications Site is $12,000. Funds for this acquisition are derived from the budget of the Montana Highway Patrol Division of the Montana Department of Justice.

The Department of Justice recommends that Board of Land Commissioners approve and ratify the acquisition of the Hysham Communications Site.



Hysham is key and essential to completing the state's Public Safety Communication System's microwave backbone and connecting the Master Zone Controller in Lewis and Clark County to the Zone Controller in Richland County. The last three remaining microwave hops between Pompey's Pillar and Hathaway have been on hold pending the procurement of the Hysham site. The federal funding that has been secured to complete the microwave backbone will soon expire and it is critical that we move as quickly as possible to ensure that we do not lose the funding.

This Document Prepared By:

Bruce D. Silva and Cheryl D. Silva
P.O. Box 538
Angels Camp, Ca 95222

After Recordation, Return To:

Bruce D. Silva and Cheryl D. Silva
P.O. Box 538
Angels Camp, Ca 95222

COUNTY OF CALAVERAS

State of Montana } ss.
County Treasure }

Fee: $28.00

Filed this 20th day of July, 2012 at 10:45 A.M.
Recorded in Deed Book No. 21 Page No. 940
Clerk & Recorder Ruth L. Baker by Christin Long Deputy

MONTANA
QUITCLAIM DEED

Site Name: Bighorn, MT **Site Number: 88924**

THIS INDENTURE is made this 20th day of June 2012, between Bruce D. Silva and Cheryl D. Silva, as Joint Tenants ("Grantor"), and Ray Waller, a single man, having a mailing address of P.O. Box 365, Mokelumne, Ca 95245, (hereinafter referred to as "Grantees")(the words "Grantor" and "Grantee" to include their respective heirs, successors, legal representatives and assigns where the context permits or requires).

WITNESSETH:

GRANTOR, for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other valuable consideration in hand paid at and before the sealing and delivery of these presents, the receipt, adequacy and sufficiency whereof are hereby acknowledged, does by these presents remise, release and forever quit-claim unto Grantee All of Grantors right, title and interest in and to:

> ALL THE TRACT(S) OR PARCELS(S) OF LAND being more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter referred to as the "Property").

TO HAVE AND TO HOLD said Property unto Grantee, so that neither Grantor nor any entity or entities claiming under Grantor shall at any time, by any means or ways, have, claim, or demand any right, title or interest in or to the Property or its appurtenances, or any rights thereof;

IN WITNESS WHEREOF, Grantor has signed and sealed this deed, this 21 day of June 2012.

GRANTOR:

Bruce D. Silva

Cheryl D. Silva

COUNTY OF CALAVERAS

This instrument was acknowledged before me on this 21 day of June 2012.

Notary Public
My commission expires: 10/13/2015

(NOTARIAL SEAL)

SHANEY M. MC POLAND
Commission # 1956297
Notary Public - California
Calaveras County
My Comm. Expires Oct 13, 2015

Created 11/2/12

My Comm. Expires Oct 13, 2015

ACKNOWLEDGMENT

State of California
County of California)

On June 21, 2012 before me, Shaney M McPoland
(insert name and title of the officer)

personally appeared Bruce D. Silva and Cheryl D. Silva,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Shaney M McPoland (Seal)

SHANEY M. MC POLAND
Commission # 1956297
Notary Public - California
Calaveras County
My Comm. Expires Oct 13, 2015

EXHIBIT "A"

SITE NAME: BIGHORN, MT
SITE NUMBER: 88924

Description of the Property

A lot, piece or parcel of land situated in the Northeast Quarter of the Southwest Quarter (NE¼SW¼) of Section 10 (10), Township Five (5) North, Range Thirty-five (35) East of the Montana Principal Meridian, Treasure County, Montana, more particularly described as follows:

Beginning at a point marked by an iron pin set for the Southeast (SE) corner of the lot, piece or parcel of land conveyed herein, which point is North 22°30' West 2,597.5 feet from the South One-Quarter (S¼) corner of said Section Ten (10); thence West 208.7 feet to an iron pin set for the Southwest (SW) corner; thence North 208.7 feet to an iron pin set for the Northwest (NW) corner; thence East 208.7 feet to an iron pin set for the Northeast (NE) corner; thence South 208.7 feet to the place of beginning, containing one (1) acre, more or less.

Together with a right of way and easement 33 feet in width for the construction, operation and maintenance of (a) a roadway suitable for vehicular traffic, and (b) such aerial and underground electric power and communication lines consisting of poles, wires, cables, conduits, guys, anchors and other fixtures and appurtenances, upon, across, over and under the lands described as being in the East Half of the Southwest Quarter (E½SW¼) and the Southwest Quarter of the Southeast Quarter (SW¼SE¼) of Section Ten (10), Township Five (5) North, Range Thirty-five (35) East of the Montana Principal Meridian, the center line of said right of way and easement being described as follows:

Beginning at a point on the south boundary of the above described one (1) acre lot, piece or parcel, West 173.7 feet from the Southeast (SE) corner thereof; thence South 54.5 feet; thence along a 20° curve left 216.6 feet; thence South 43°19' East 803.1 feet; thence along a 20° curve right 98.0 feet; thence South 23°43' East 945.3 feet; thence along a 20° curve left 193.2 feet; thence South 62°21' East 543.3 feet; thence along a 20° curve right 90.2 feet; thence South 44°19' East 240.9 feet to a point on the South boundary of Section Ten (10) North 89°53' East 746.5 feet from the South Quarter (S¼) corner thereof and which point is in U.S. Highway No. 10.

Being the same property described in that certain Quitclaim Deed, dated May 31, 2000, by AT&T Corp. to American Tower Management, Inc., recorded August 7, 2000 in Book 20,Page 296. records of Treasure County, Montana.

1112-3

TIMBER SALES

A. Gough Creek

B. Omega (Limited Access)

C. Porter Creek

D. Slocum Creek

E. Windy Pass (Salvage

GOUGH CREEK TIMBER SALE

November 19, 2012
Land Board

Location of Sale:

- Anaconda Unit (SWLO) – Approximately 10 air miles east of Drummond, Montana.
- Powell County – Section 36, T11N-R11W
- 100% CS
- The HCP resource management standards were implemented on this sale.

Sale Volume & Estimated Value:

- The estimated sale volume is 13,222 tons (1,848 MBF) with a conversion factor of 7.15 tons/MBF.

Minimum Bid Rate (per ton)	Forest Improvement Fee (per ton)	Total Minimum Value (per ton)	Estimated Volume (tons)	Total Minimum Sale Value
$3.33	$3.18	$6.51	13,222	$86,075.22

Sale & Harvest Treatments:

- The sale consists of 4 harvest units totaling 391 acres.
- Harvest treatment is designed as a regeneration harvest, leaving approximately 20-40 sq. ft. of basal area on average.
- Stand Level Inventory and Field Data Surveys did not identify any old growth present.

Harvest Systems:

- 100% tractor

Road Construction:

- Access to the Timber Sale is across previously acquired private easements.
- Approximately 5 miles of new and temporary roads would be built to access the sale area.

Public Involvement:

- Scoping letters were mailed to adjacent landowners and interested parties in March 2004. A legal advertisement was placed in the weekly Philipsburg Mail. General comments were received by MTDFWP, Confederated Salish and Kootenai Tribes, Dalton Morse (adjacent landowner) and Dwight Crawford (forester, Sun Mountain Lumber).

Public Comments, Issues and Mitigations:

- Threatened, Endangered and Sensitive Species – The anticipated risk of negative effects was generally low to moderate with all species and no significant un-acceptable effects are anticipated.

  Grizzly Bear – The project area is approximately 18 miles southwest of the NCDE recovery area but is located within occupied habitat. All roads would be closed to

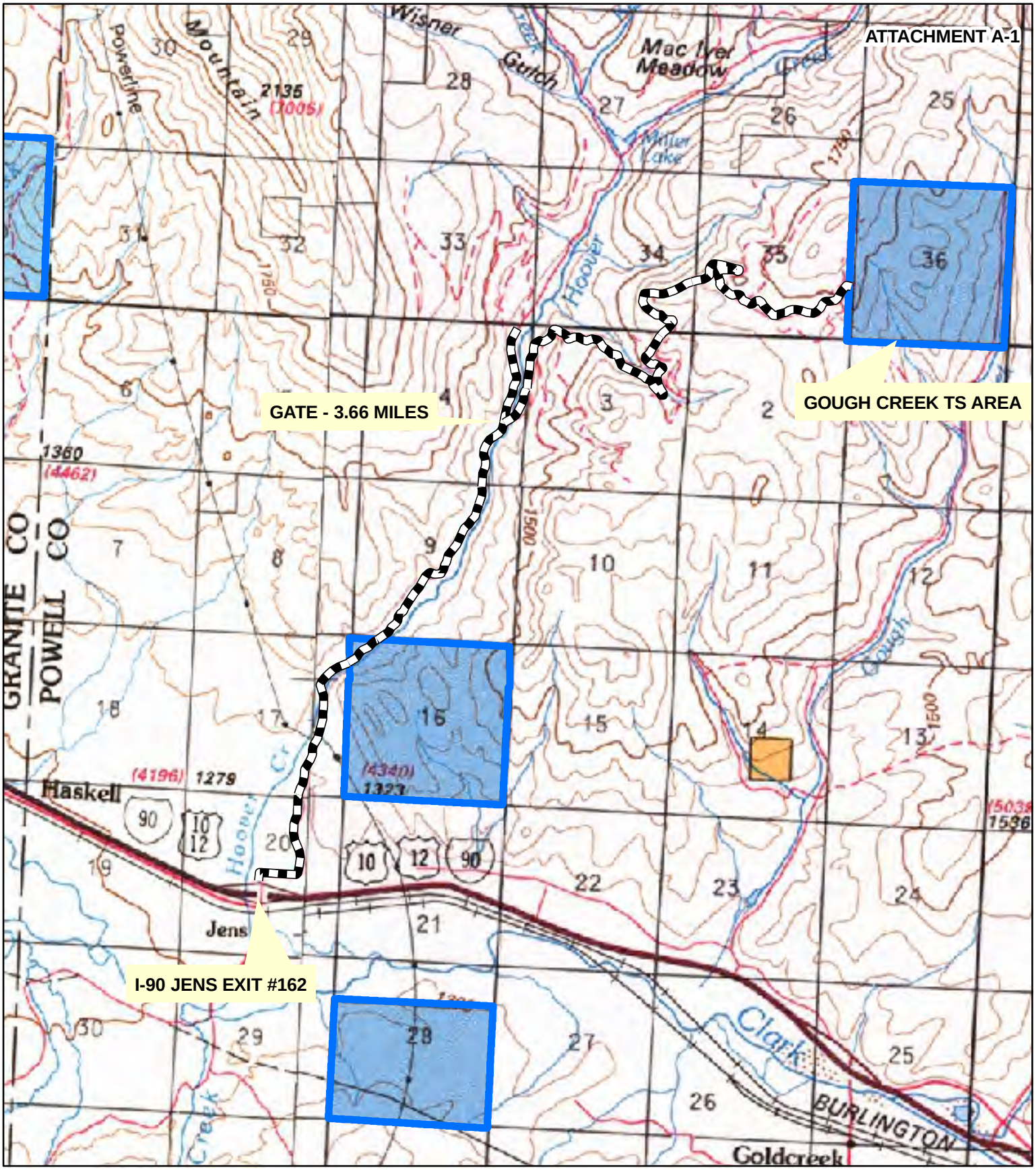
motorized vehicles, resulting in no net increase in open road densities. As a result, there would likely be low to moderate risk of direct and indirect effects, and low risk of cumulative effects to grizzly bears as a result of the proposed action (EA Section 3.2.1; page 25)

Lynx – The project area is not located within an identified Lynx Management Area but contains Lynx habitat. There may be low risk of direct, indirect and cumulative effects to lynx as a result of the proposed action (EA Chapter 3.2.1, page 28.)

Fisheries – There was no fisheries data for Gough Creek but based on conversations with locals and personal observations it was assumed that Gough Creek is a fish bearing stream channel for analysis purposes. No harvesting would be conducted within 50' of the stream channel. Direct, indirect and cumulative effects are expected to be minimal (EA Chapter 3.2.3; page 45).

The Director recommends the Land Board direct the Department to sell the Gough Creek Timber Sale.

ATTACHMENT A-1



GOUGH CREEK TIMBER SALE

T11N, R11W, Section 36

Vicinity Map

Legend

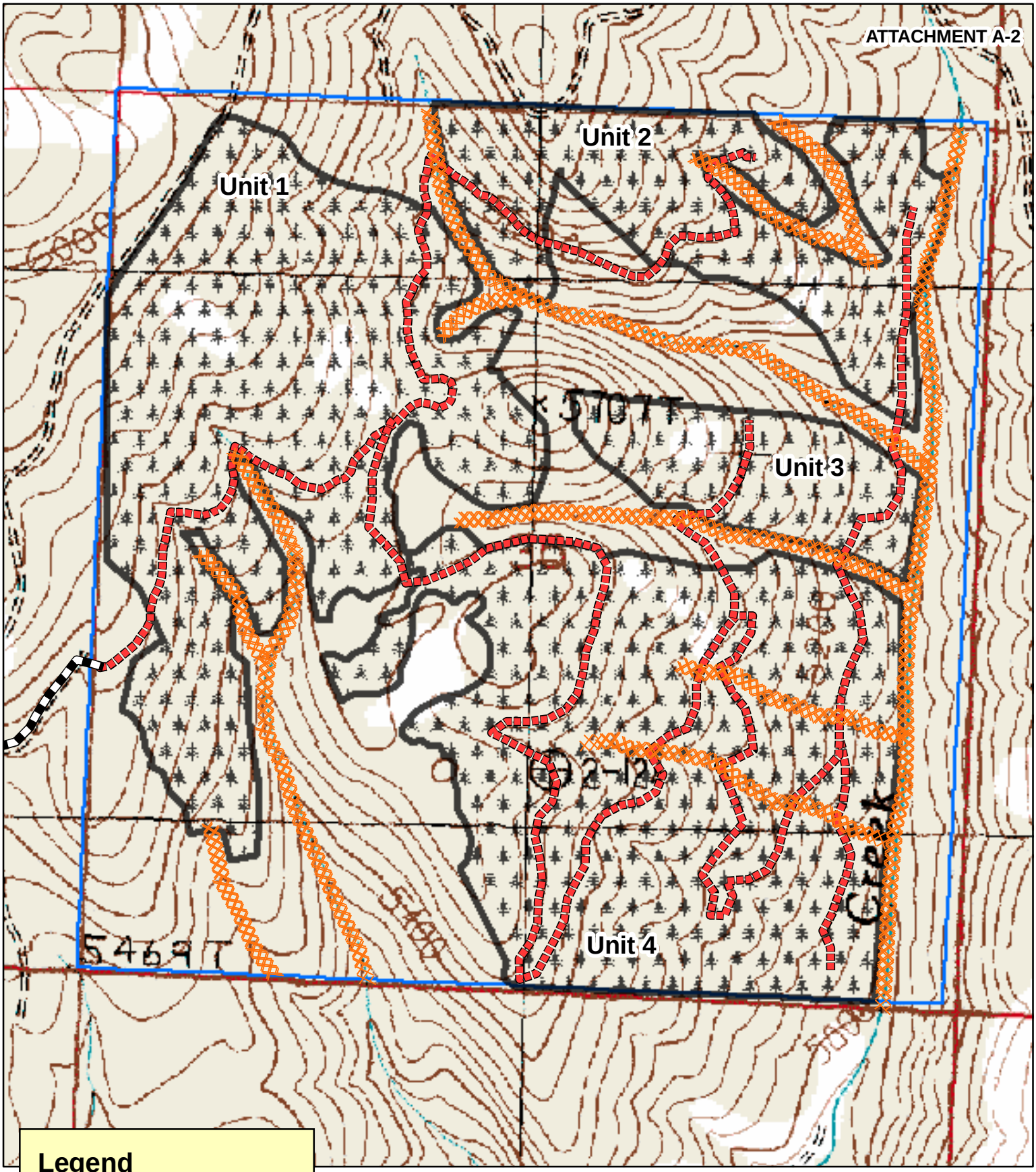
State Land

0 1,650 3,300 6,600 9,900 13,200 Feet

N

Created 11/7/12

ATTACHMENT A-2



Legend

- Gough_SMZ
- current proposed road
- State Land
- Harvest Area

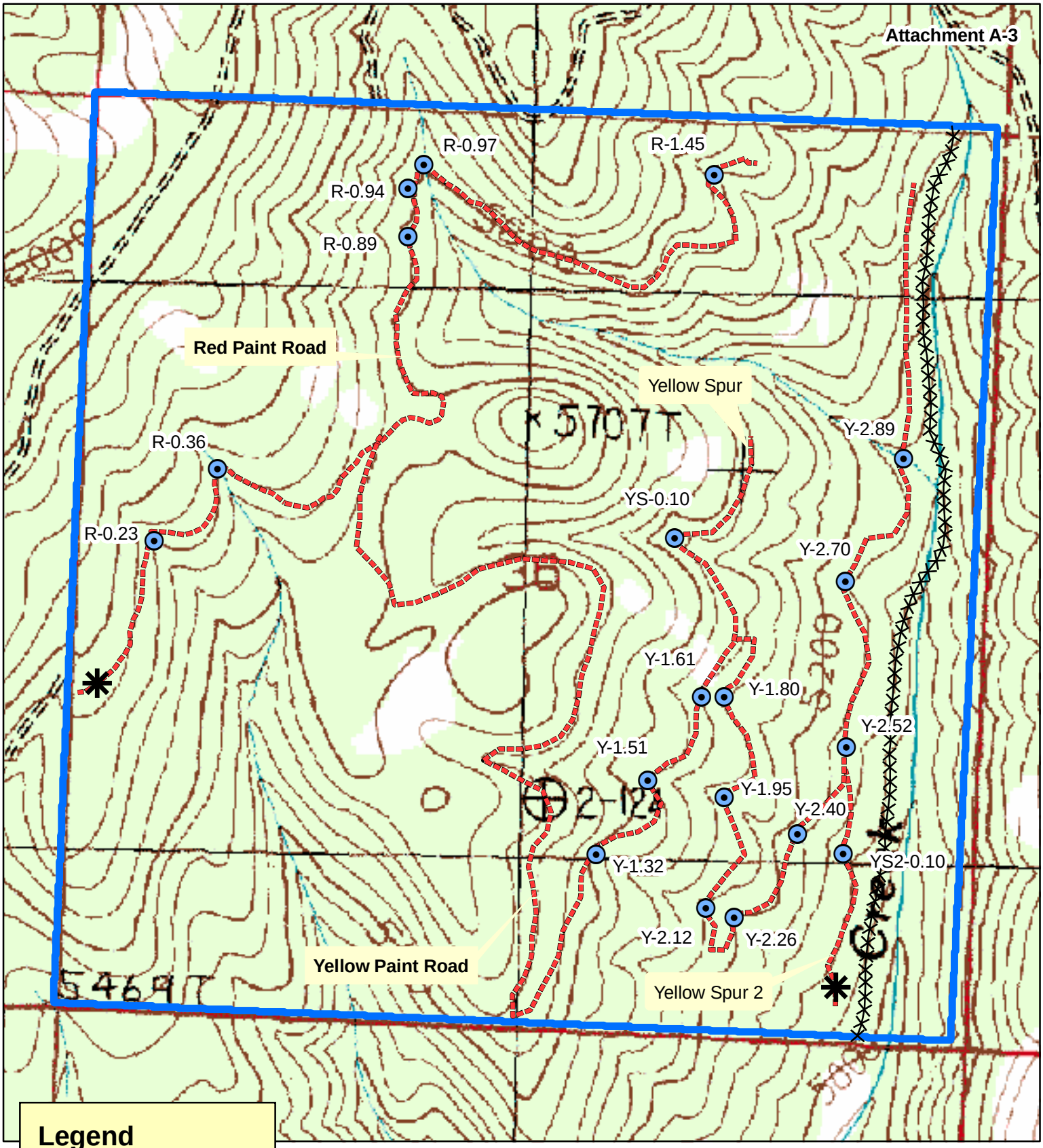
GOUGH CREEK TIMBER SALE
T11N, R11W, Section 36
Harvest Map

0 300 600 1,200 1,800 2,400 Feet

N

Created 11/7/12

Attachment A-3



Legend

- Gate installation
- CMP
- Road Obilteration
- New Road
- State Land

GOUGH CREEK TIMBER SALE
T11N, R11W, Section 36
Road Station Map

0 270 540 1,080 1,620 2,160 Feet

N

Created 11/7/12

OMEGA (Limited Access)
TIMBER SALE

November 19, 2012
Land Board

Location of Sale:
- Lewistown Unit (NELO) – Approximately 35 miles southeast of Lewistown, Montana in the Little Snowy Mountains
- Fergus County – Sections 16 & 21, T13N-R21E
- 100% CS

Sale Volume & Estimated Value:
- The estimated volume is 1,750 tons (250 MBF) of sawlogs with a conversion factor of 7.0 tons/MBF..

Minimum Bid Rate (per ton)	Forest Improvement Fee (per ton)	Total Minimum Value (per ton)	Estimated Volume (tons)	Total Minimum Sale Value
$5.00	$0.29	$5.29	1,750	$9,257.50

Sale & Harvest Treatments:
- The sale contains two harvest units totaling 75 acres.
- Silvicultural prescription would encourage the development of multi-layered stands and a complex forest structure by retaining a range of size and age classes.
- Silvicultural prescriptions proposed are for two shelterwood treatments.
- No old growth would be harvested.

Harvest Systems:
- 100% tractor

Road Construction:
- No new roads are required to access the sale units.

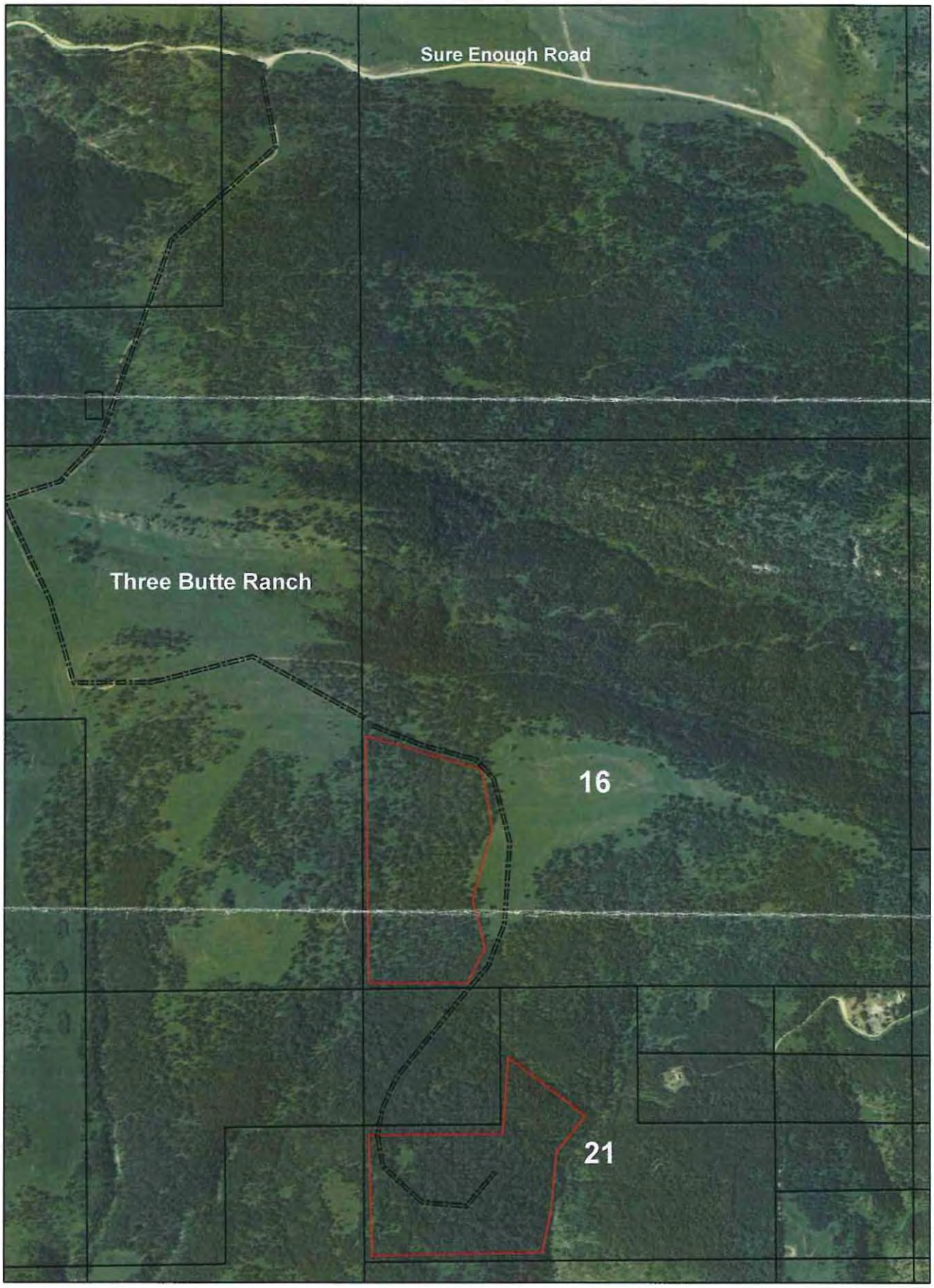
Public Involvement & Issues:
- Public involvement was solicited through legal notices published in the Lewistown News-Argus, and letters were sent to adjacent landowners, interested individuals, and special interest groups.

Public Comments, Issues and Mitigations:
- **Noxious Weeds -** All disturbed areas will be seeded with a weed free native grass mix. The project will be monitored and treated with herbicides if necessary.
- **Wildlife -** Treatments should increase forage for big game and may temporarily reduce wildlife cover. Retention of leave strips for game travel, road closures, and pockets of untreated areas will maintain limited sight distances.

The Director recommends the Land Board direct the Department to sell the Omega (Limited Access) Timber Sale.

OMEGA -TS

1112-3B



0.3 0.15 0 0.3 Miles

SEC 16 & 21, T13N, 21E

Created 11/7/12

PORTER CREEK TIMBER SALE

November 19, 2012
Land Board

Location of Sale:

- Kalispell Unit (NWLO) – Located approximately 16 miles southwest of Kalispell, Montana
- Flathead County – Section 20, T27N-R23W
- 100% SM
- This sale is within the Habitat Conservation Plan (HCP) project area and complies with the HCP.

Sale Volume & Estimated Value:

- The estimated volume is 1,040 tons (160 MBF) with a conversion factor of 6.5 tons/MBF.

Minimum Bid Rate (per ton)	Forest Improvement Fee (per ton)	Total Minimum Value (per ton)	Estimated Volume (tons)	Total Minimum Sale Value
$15.29	$3.87	$19.16	1,040	$19,926.40

Sale & Harvest Treatments:

- The sale consists of one harvest unit totaling 51 acres.
- Intermediate treatments (improvement cutting) would address disease infected trees; and suppressed and intermediate trees showing poor vigor.
- Timber harvest would focus on improving the current and future productivity of forest stands in the project area and ensuring the future forest stands meet the objectives of biodiversity and productivity for the benefit of the associated school trusts.
- No old growth would be harvested or is present in the project area.

Harvest Systems:

- 100% tractor

Roads:

- No new road construction is required.

Public Involvement:

- This sale is one of two timber sales analyzed under the Lake Rogers Environmental Assessment. In June 2012, DNRC solicited public participation and comment by placing notices in the Kalispell's Daily Interlake. The mailing list developed for this project is in the project file. The public comment period for the initial project proposal was open for 30 days generating one letter, two e-mails, and two phone calls from interested parties. The letter and one e-mail offered support for our project while the other e-mail and calls were concerned with a bald eagle nest and a loon nest on Rogers Lake.

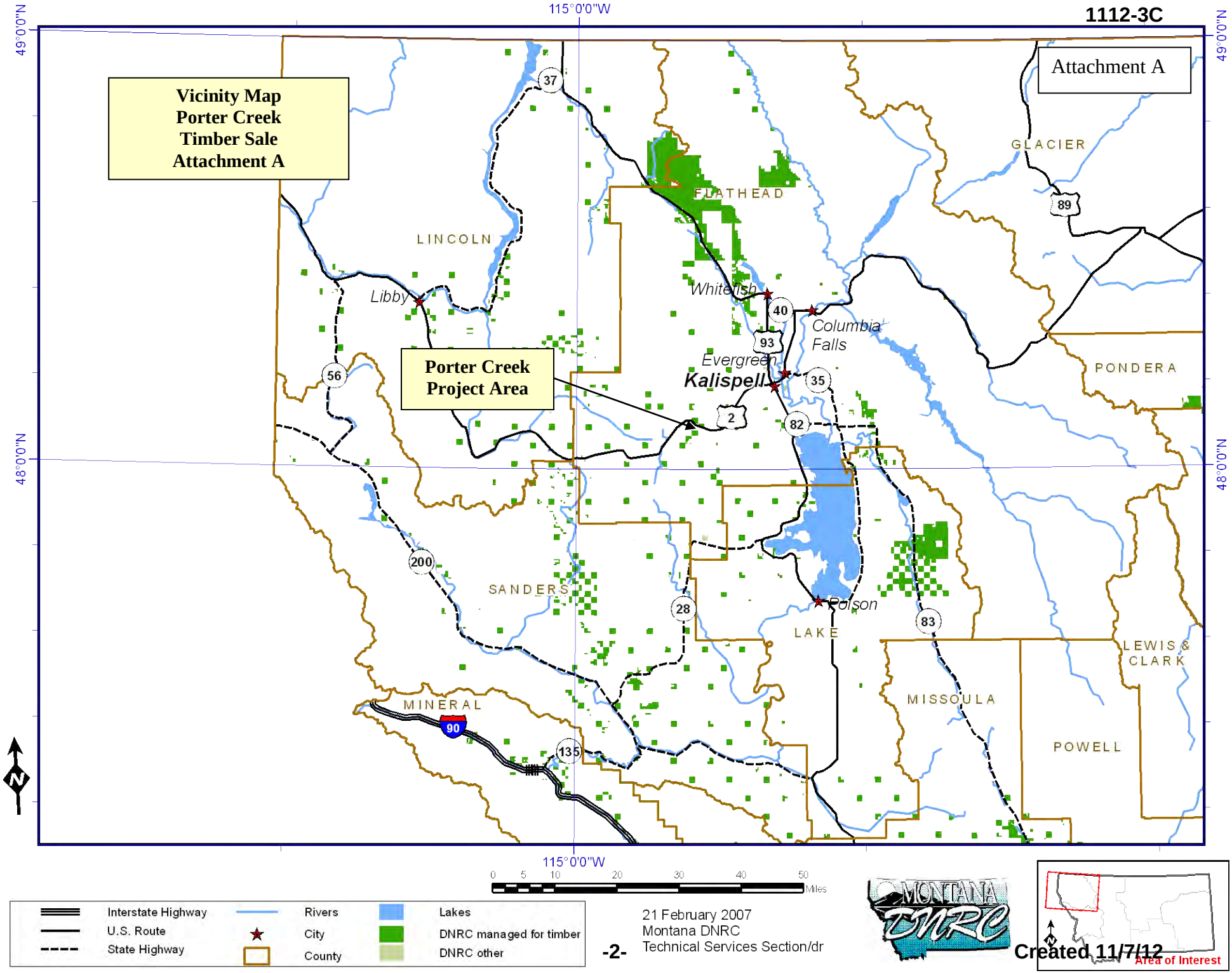
Issues & Mitigations:

- **Nesting eagles and loons**: Harvesting is prohibited within 500 feet of Lake Rogers (Section 30) from February 1st through August 15th to minimize disturbance to breeding bald eagles and common loons.

The Director recommends the Land Board direct the Department to approve the Porter Creek Timber Sale.

Attachment A

Vicinity Map Porter Creek Timber Sale Attachment A



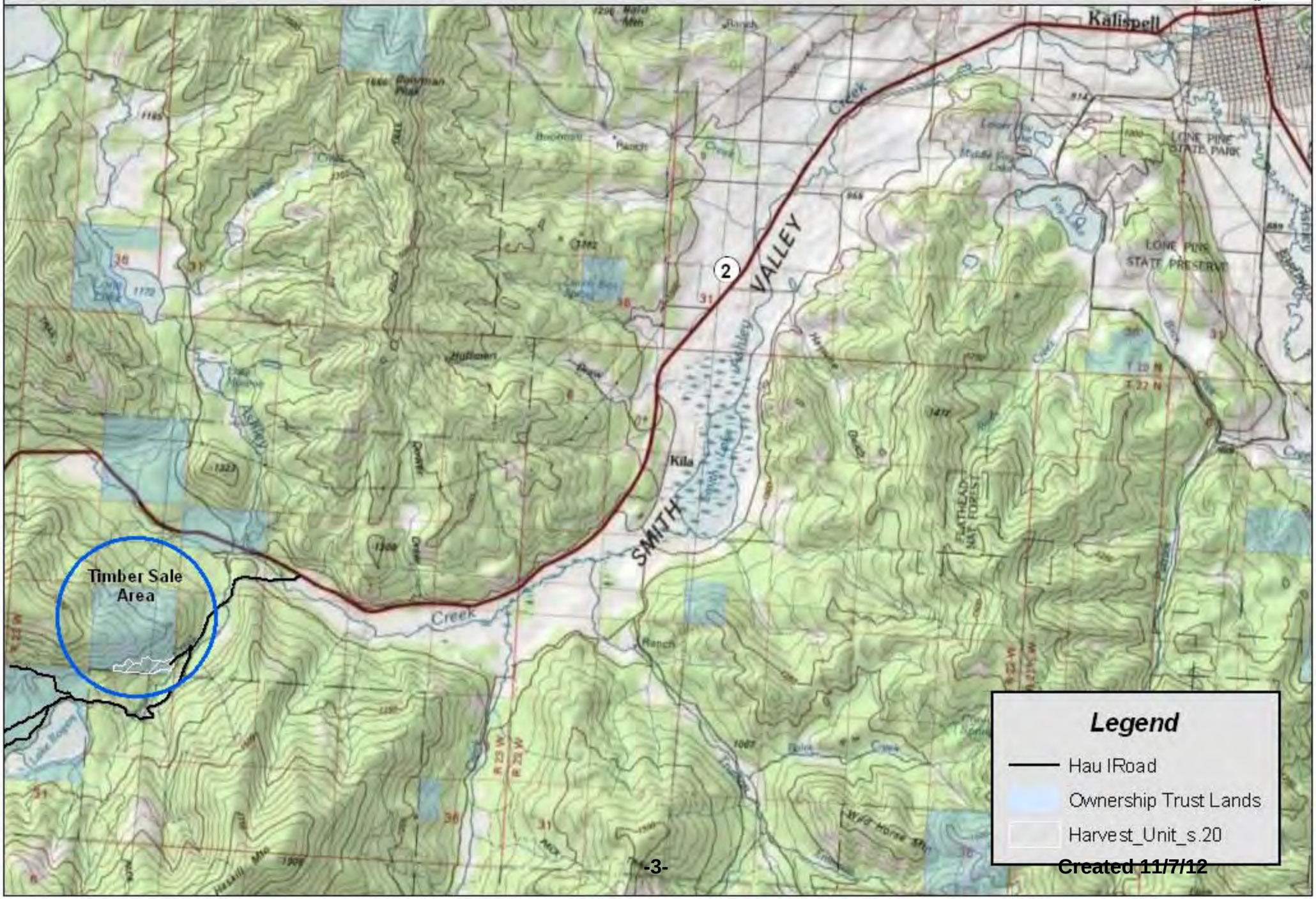
21 February 2007
Montana DNRC
Technical Services Section/dr

Created 11/7/12

Porter Creek Vicinity Area Map
S. 20, T27N, R23W

Attachment 1112-3C

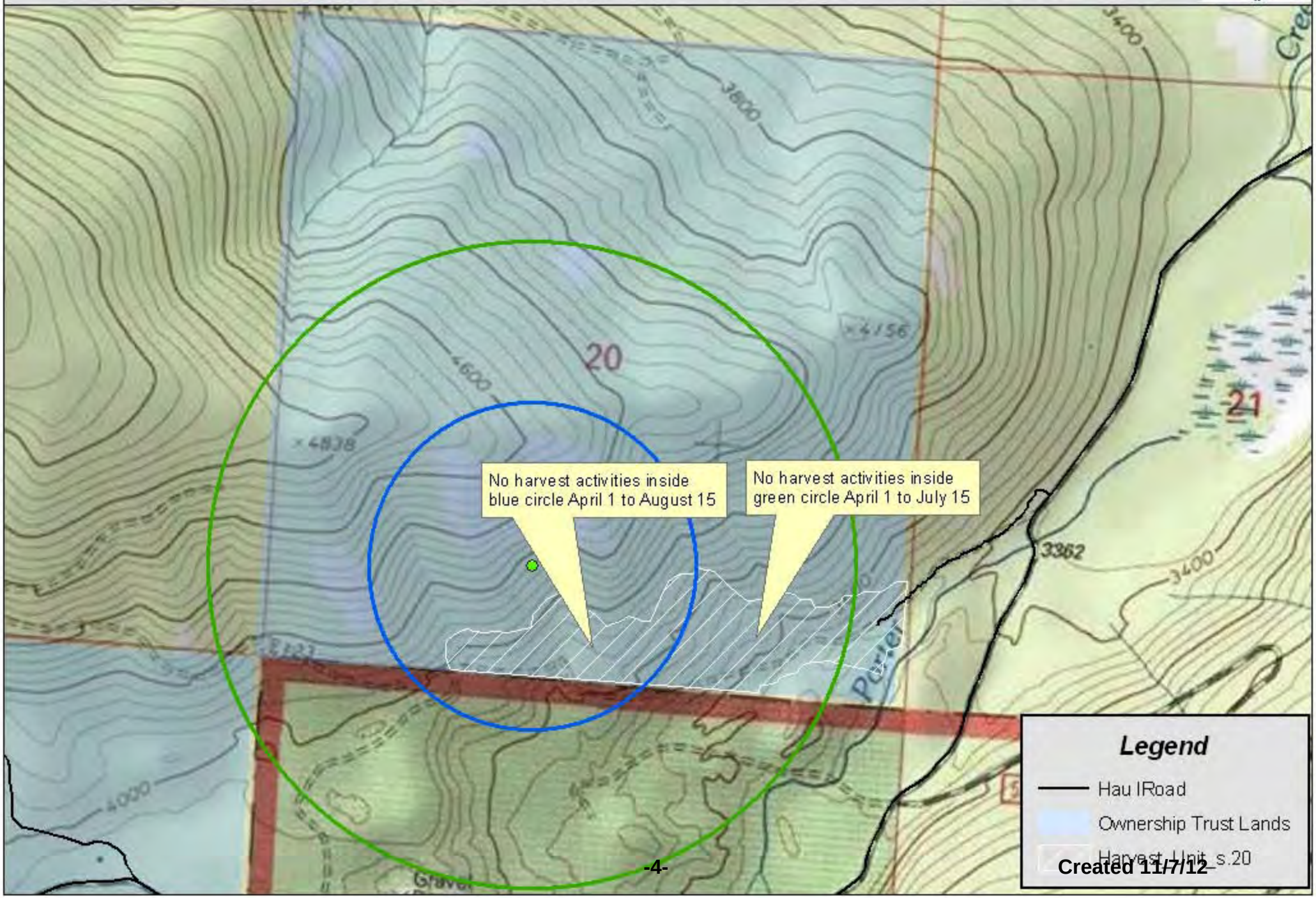
1 0.5 0 1 Miles



Created 11/7/12

Porter Creek Harvest Area Map
S. 20, T27N, R23W

Attachment 1112-3C



Created 11/7/12

SLOCUM CREEK TIMBER SALE

November 19, 2012
Land Board

Location of Sale:

- Hamilton Unit (SWLO) – Approximately 9 miles east of Stevensville, Montana.
- Ravalli County – Sections 24 & 36,T9N-R19W and Section 30, T9N-R18W
- 87% Common School, 13% Public Building
- Sections 24 and 30 are within the Habitat Conservation Plan (HCP) project area and complies with the HCP.

Sale Volume & Estimated Value:

- The estimated sale volume is 13,686 tons (2.160 MBF) with a conversion factor of 6.34.

Minimum Bid Rate (per ton)	Forest Improvement Fee (per ton)	Total Minimum Value (per ton)	Estimated Volume (tons)	Total Minimum Sale Value
$9.53	$3.58	$13.11	13,686	$179,423.46

Sale & Harvest Treatments:

- The sale includes 10 harvest units totaling 450 acres.
- This sale would harvest approximately 68% Douglas- fir infected with dwarf mistletoe; 17% lodge pole pine and ponderosa pine with a large amount infected with mountain pine beetle; 15% Western Larch, Subalpine-fir and Engelmann Spruce. Silvicultural treatments implemented will be individual tree selection, salvage and restoration.
- No old growth would be harvested or is present in the project area.

Harvest Systems:

- 69% Tractor
- 31% Skyline

Road Construction:

- Existing access to the Section is on county roads, US Forest Service and through private ownership. DNRC would require 17.34 miles of road maintenance. Approximately .49 miles of permanent road construction would take place to provide long term management within Section 30. Approximately 1.8 miles of road reconstruction and .38 miles of road abandonment along Slocum Creek would also occur. All new roads would be closed upon completion of harvest activities.

Public Involvement:

- Public scoping for this project was initiated in December 2010 with a letter to known interested parties and adjacent landowners. DNRC also placed public notices in the *Missoulian* and *Ravalli Republic*. The public comment period for the initial project proposal was open for 30 days. The comments/concerns were incorporated into the EA, and addressed as described below.

Issues & Mitigations

Silviculture:

- Harvests are commercial thinning, salvage and restoration treatments designed to maintain long term forest productivity, health and resilience.

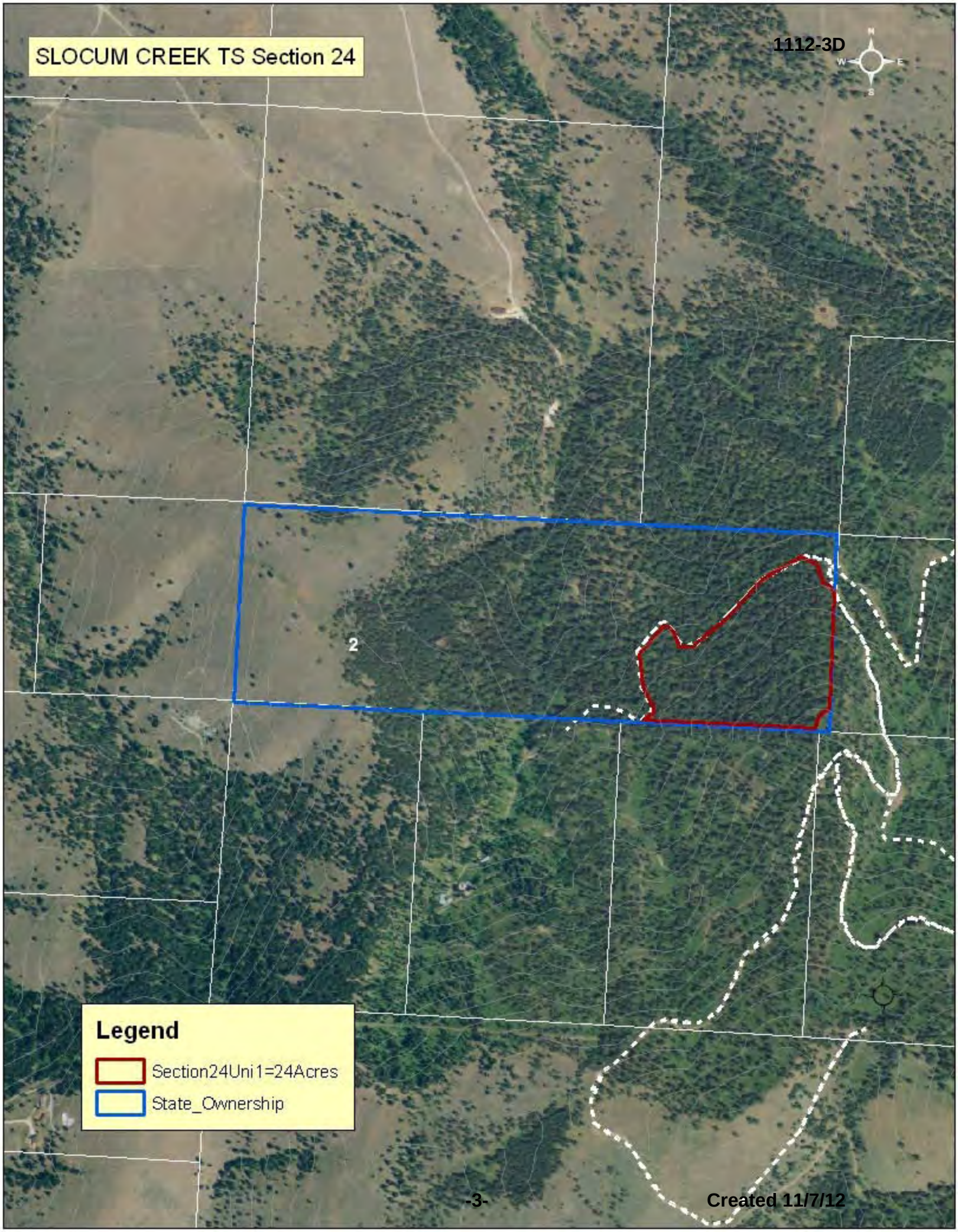
Noxious Weeds:

- Prior to entering the site, off-road logging and road construction equipment would be cleaned and inspected to avoid seed migration. New road would be promptly seeded. Post-harvest, DNRC would monitor the project area for two years. If new infestations of noxious weeds were noted, a weed management plan would be implemented.

Aesthetics:

- Visual concerns were taken into effect during marking to limit the visual impacts to recreationists who frequent the area. No visual change is expected as viewed from the Bitterroot Valley view shed.

The Director recommends the Land Board direct the Department to sell the Slocum Creek Timber Sale.



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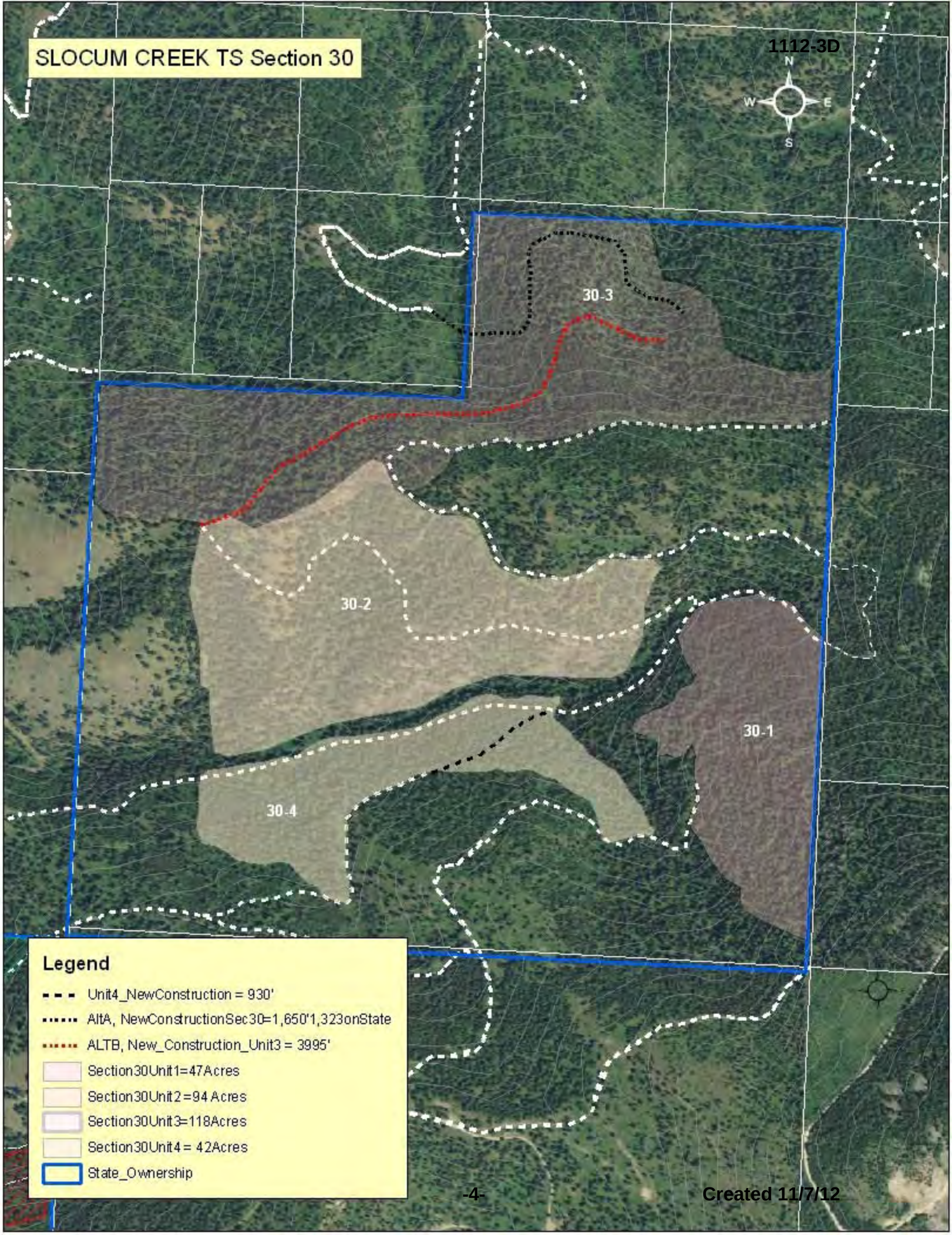

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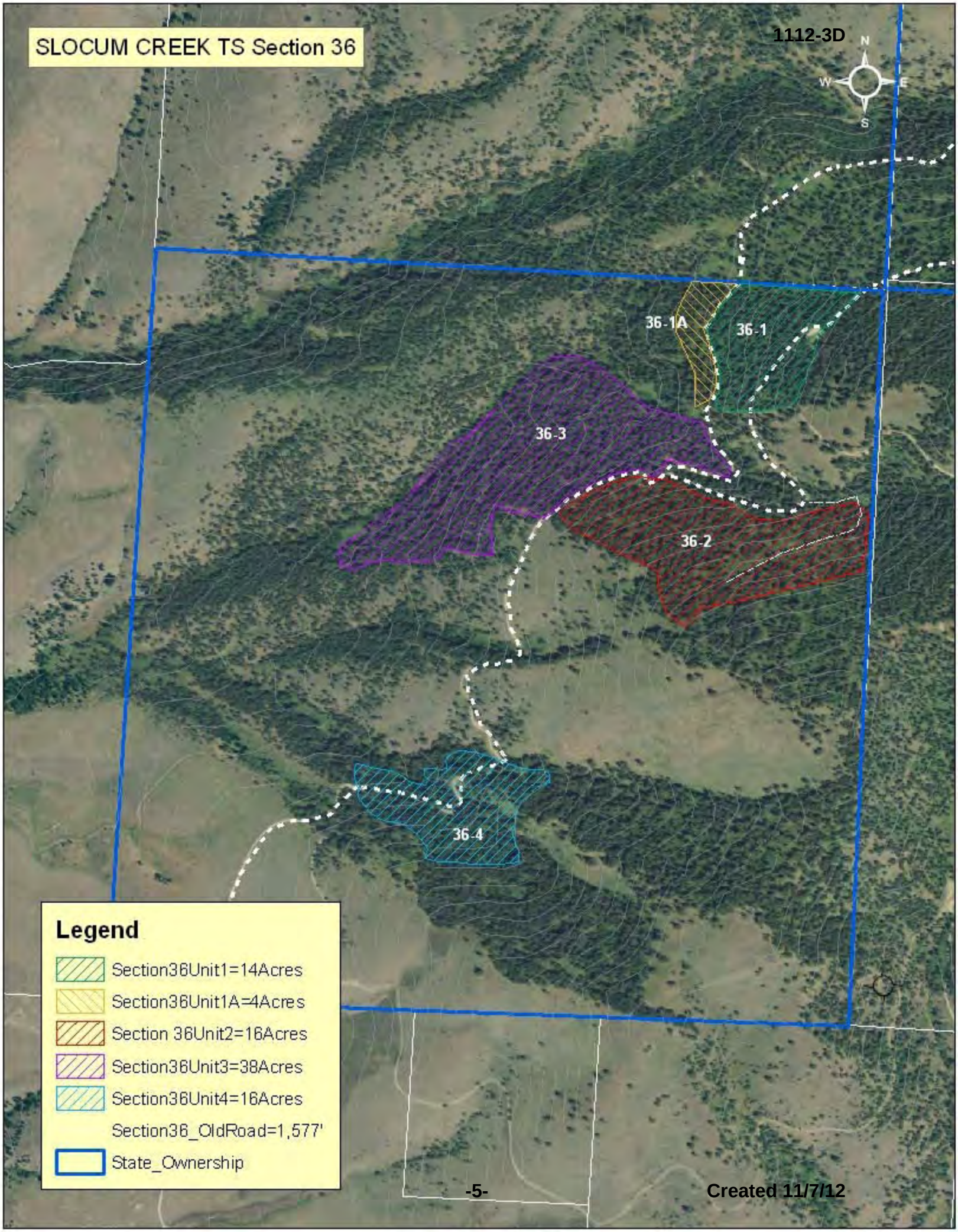

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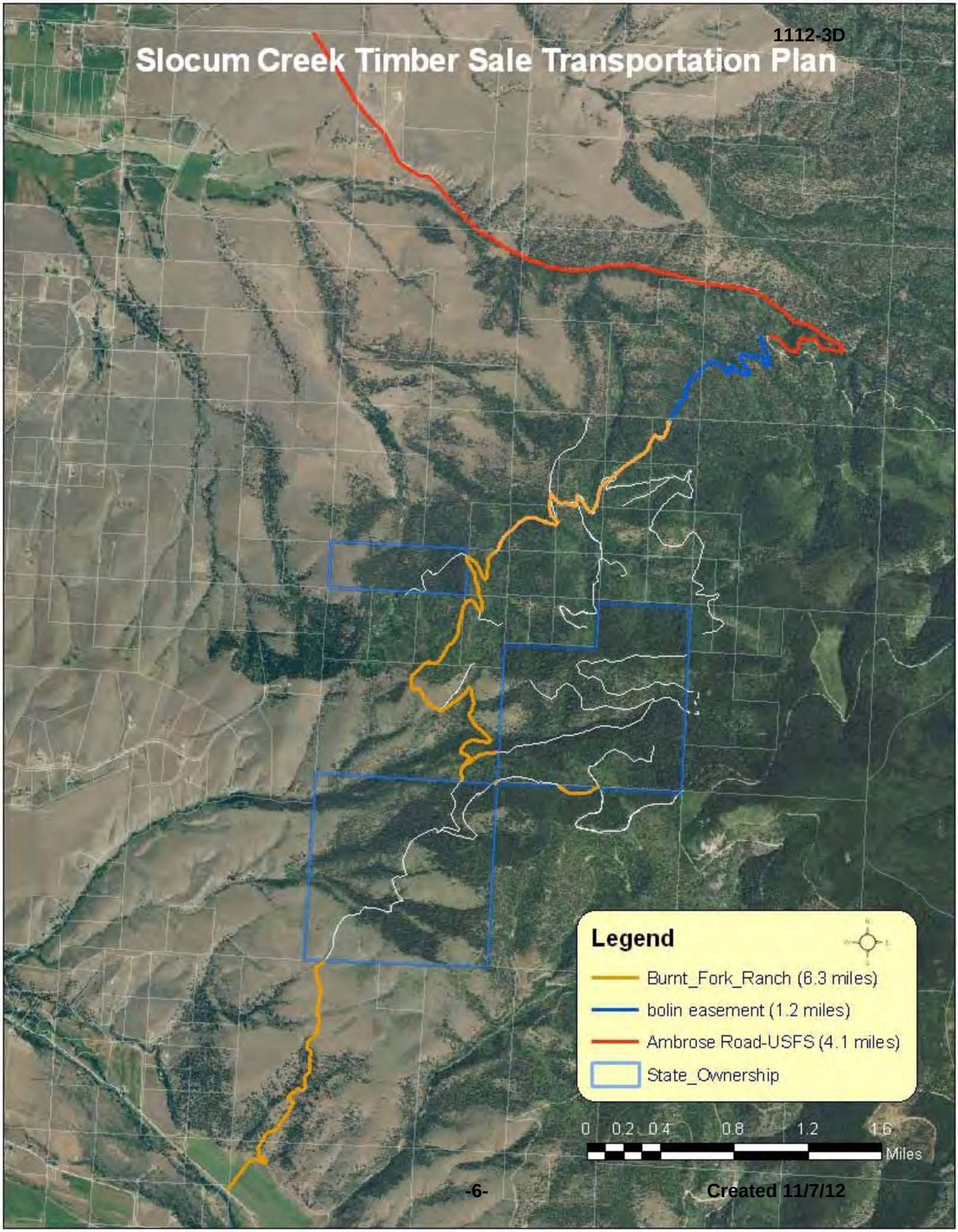
Slocum Creek Timber Sale Transportation Plan



WINDY PASS SALVAGE TIMBER SALE

November 19, 2012
Land Board

Location of Sale:

- Kalispell Unit (NWLO) - Approximately 15 air miles west of Polson, MT.
- Lake County- Section 36, T23N-R23W
- 100% CS
- This sale is within the Habitat Conservation Plan (HCP) project area and complies with the HCP.

Sale Volume and Estimated Value:

- The estimated sale volume is 4,770 tons (922 MBF) with a conversion factor of 5.17 tons/MBF.

Minimum Bid Rate (per ton)	Forest Improvement Fee (per ton)	Total Minimum Value (per ton)	Estimated Volume (tons)	Total Minimum Sale Value
$12.07	$4.86	$16.93	4,770	$80,756.10

Sale & Harvest Treatments:

- This sale consists of three (3) harvest units totaling 156 acres.
- Silvicultural treatments consist of a salvage/sanitation prescription.
- The timber harvest would salvage trees killed in the West Garceau fire and sanitize stands by removing green trees infected with dwarf mistletoe.
- No old growth would be harvested or is present in the units.

Harvest Systems:

- 100% Tractor

Roads:

- The Irvine Flats county road provides access to the project area
- Approximately 1.3 miles of existing forest road will be used. No new construction is required.

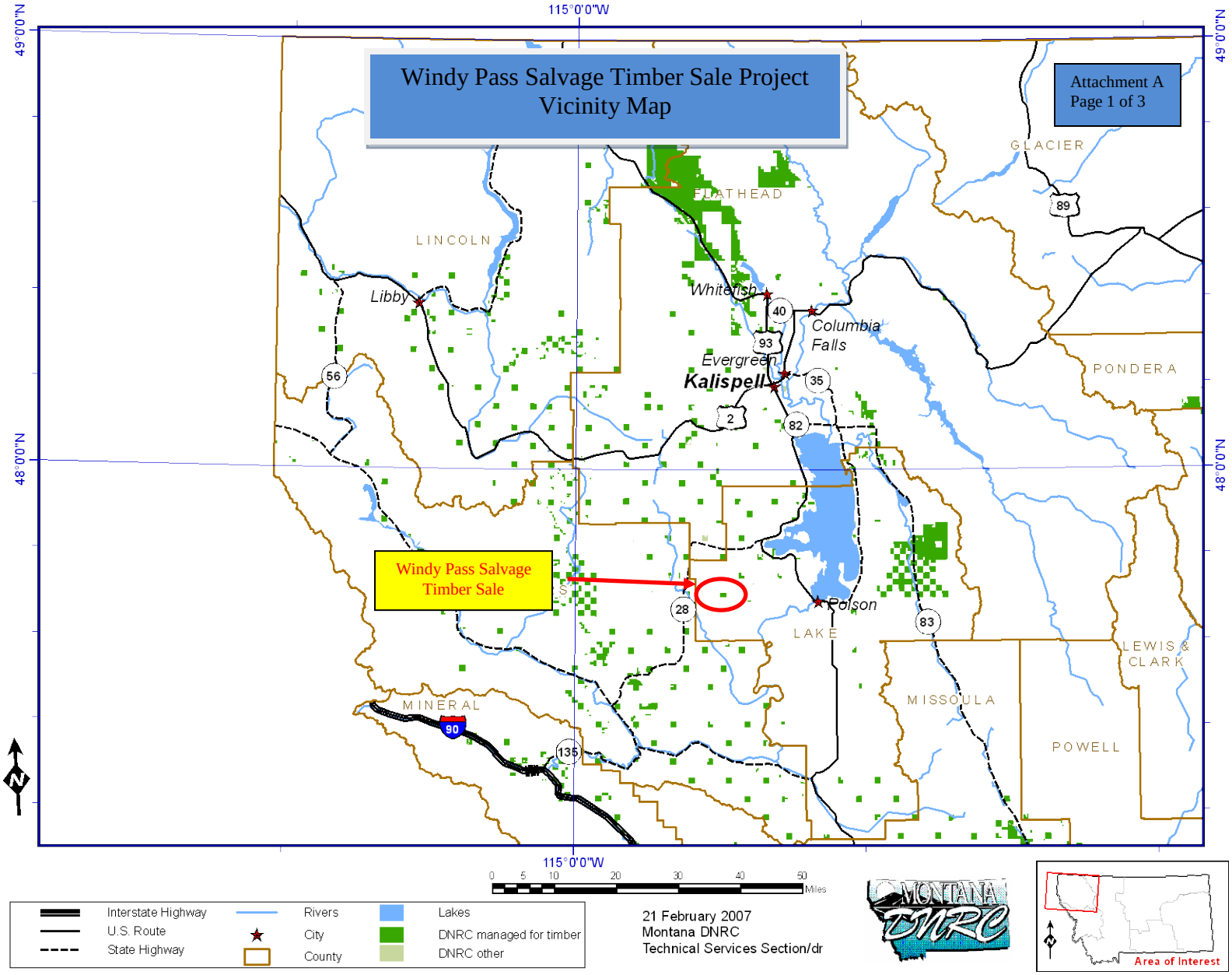
Public Involvement:

- Initial public scoping was initiated in August of 2012, with scoping notices sent out to adjacent landowners and interested parties. General comments were received from an adjacent landowner, and the Confederated Salish & Kootenai Tribe; these were addressed informally with a discussion of project objectives and proposed harvest plans.

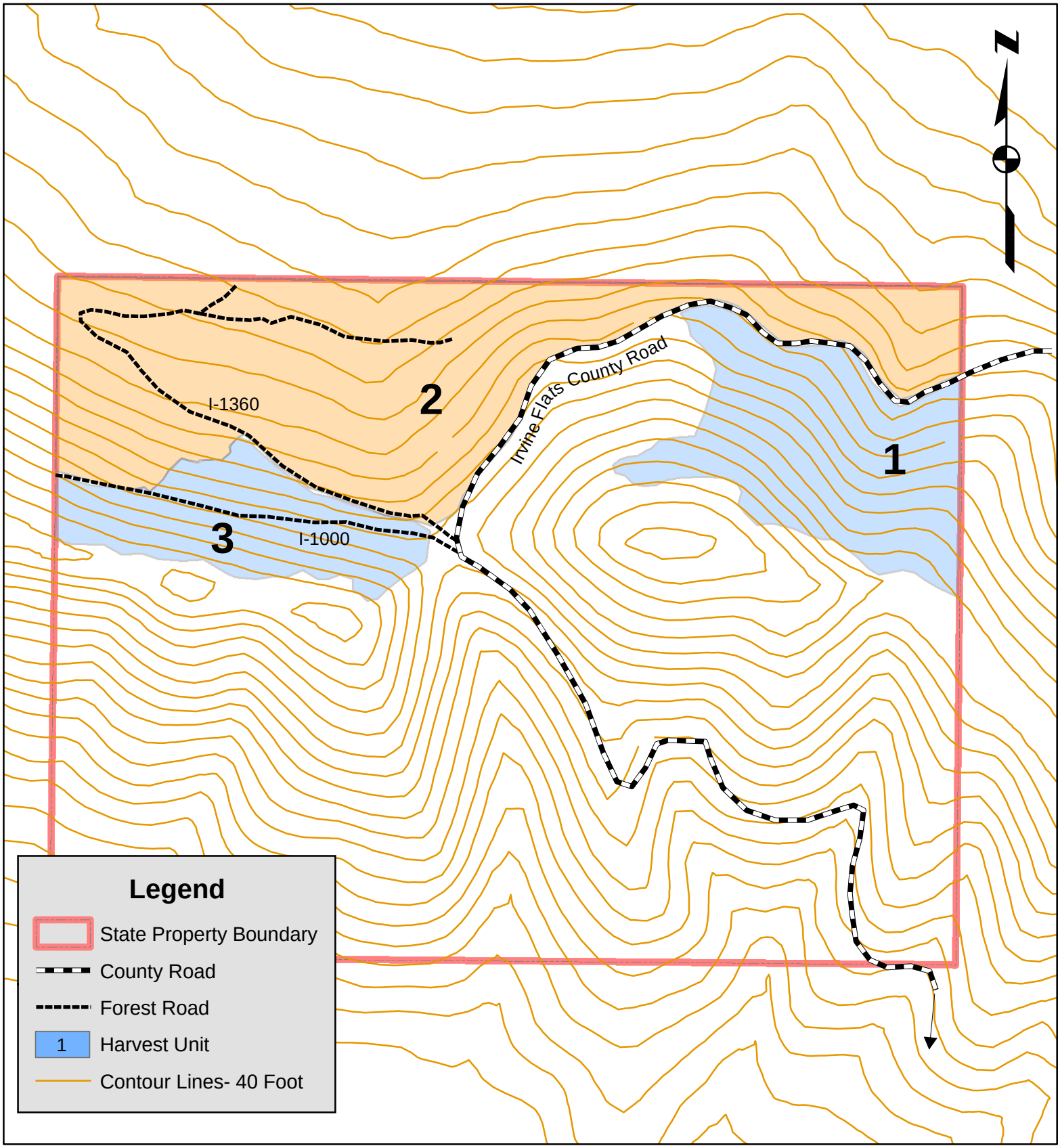
Issues, Mitigations:

- Black-backed woodpecker – No harvest activities allowed between April 15 and July 1.

The Director recommends the Land Board direct the Department to sell the Windy Pass Salvage Timber Sale.


Windy Pass Salvage Timber Sale Project
Vicinity Map
Attachment A
Page 1 of 3
115°0'0"W
49°0'0"N
48°0'0"N
GLACIER
FLATHEAD
LINCOLN
PONDERA
LAKE
MISSOULA
LEWIS & CLARK
POWELL
MINERAL
Libby
Whitefish
Columbia Falls
Evergreen
Kalispell
Polson
Windy Pass Salvage Timber Sale
89
40
93
35
2
82
56
28
83
90
135
Interstate Highway
U.S. Route
State Highway
Rivers
City
County
Lakes
DNRC managed for timber
DNRC other
0 5 10 20 30 40 50 Miles
21 February 2007
Montana DNRC
Technical Services Section/dr
MONTANA DNRC
Area of Interest

Windy Pass Salvage
Harvest Unit Map
Sec. 36, T23N, R23W



0 0.125 0.25 0.5 Miles

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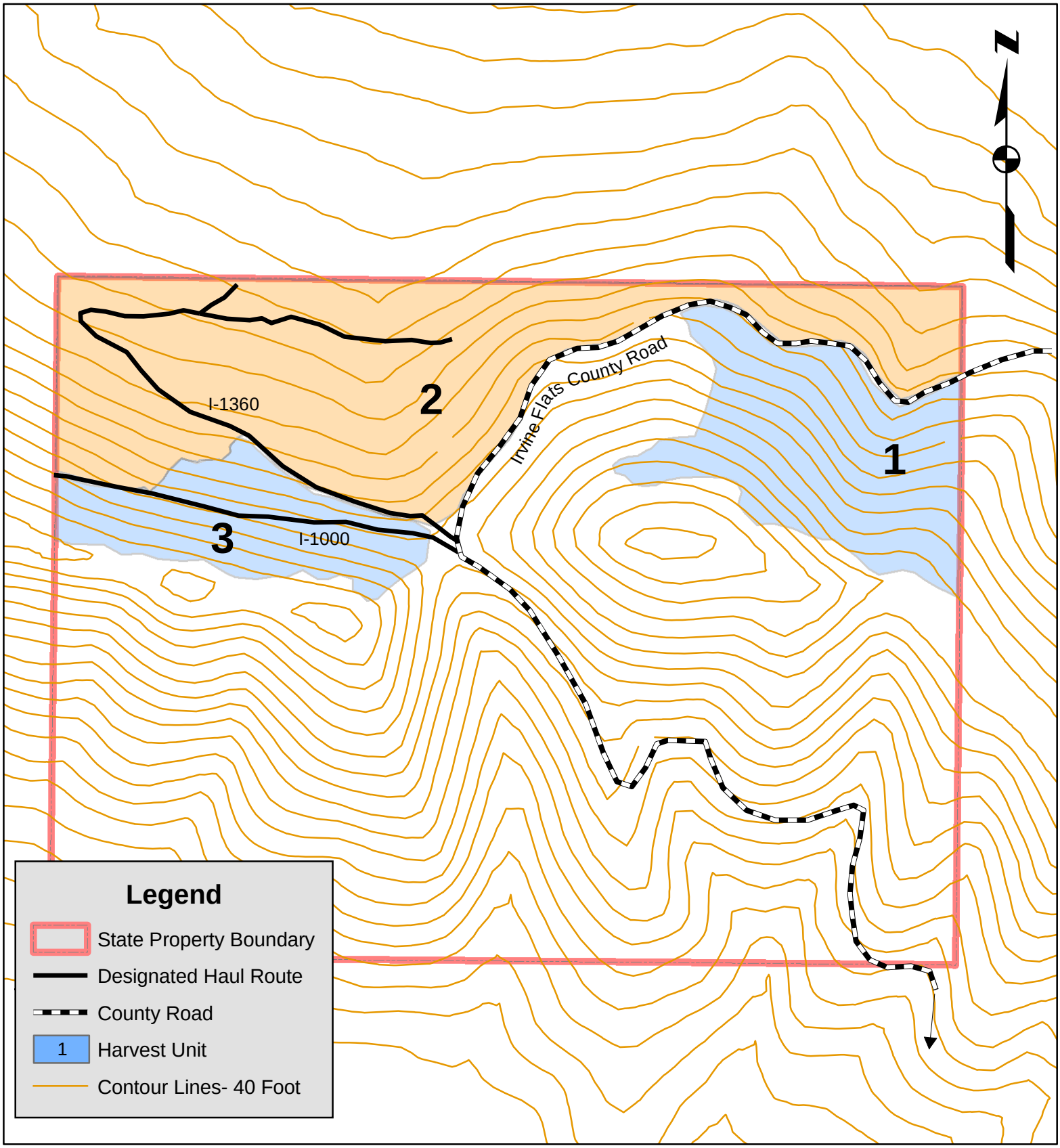
Windy Pass Salvage
Designated Haul Route Map
Sec. 36, T23N, R23W



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ADMINISTRATIVE RULE ADOPTION – NAVIGABLE RIVERS

ADMINISTRATIVE RULE ADOPTION: NAVIGABLE RIVERS
November 19, 2012
Land Board

REQUEST:
The attached draft adoption notice has been developed to implement Senate Bill 35 (2011). DNRC is requesting approval to publish the adoption notice in the Montana Administrative Register (MAR) and adopt rules governing navigable waterways.

LOCATION: Statewide
BENEFICIARY: Public Land Trust

BACKGROUND:
SB 35 was sponsored by Sen. Brad Hamlett and passed in the 2011 regular legislative session. It allows users of navigable rivers the ability to perfect their historic and new use of navigable rivers under a lease, license, or easement. The proposal notice for these rules was originally published in the MAR on June 21, 2012, and a hearing was held on July 11, 2012. DNRC also published a notice extending the comment period through August 31, 2012.

AMENDMENTS TO THE PROPOSAL NOTICE:
Based on comments received, DNRC has made the following amendments to its initial proposal:

- New Rule I was amended to revise the definition of "navigable river" so it is consistent with federal test of navigability as expressed by the U.S. Supreme Court in *PPL Montana, LLC V. Montana*, 132 S. Ct. 1215, 1219, 182 L. Ed. 2d 77 (2012). The amendments also clarify the definitions of "bed" and "thalweg"; make the definition of "footprint" consistent with statute; provide more detail as to the meaning of "hazard"; and define how to calculate "historic flow".
- New Rule IV(6) was modified to allow for terms of existing memorandums of understanding.
- New Rule V was amended to clarify where lease, license, and easement revenues will be deposited.
- New Rule VII was amended to be consistent with statute as to not require DNRC authorization for relocation or expansion footprints of water diversion structures associated with an existing water right.
- New Rule VIII was amended comply with statute and to clarify the requirement to pay for authorization under a lease, license, or easement.

NEXT STEPS:
DNRC will file the adoption notice on November 26, 2012 and the notice will be published on December 6, 2012. The rules will be effective on December 7, 2012.

RECOMMENDATION:
The director recommends approval of the draft adoption notice .

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through VIII pertaining to state-owned navigable waterways	)))	NOTICE OF ADOPTION

To: All Concerned Persons

1. On June 21, 2012, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-144 regarding a notice of public hearing on the proposed adoption of the above-stated rules at page 1225 of the 2012 Montana Administrative Register, Issue No. 12. On August 9, 2012, the department published a notice of extension of comment period on the proposed adoption at page 1597 of the 2012 Montana Administrative Register, Issue No. 15.

2. The department has adopted New Rules II (36.25.1102) and III (36.25.1103) as proposed.

3. The department has adopted New Rules I (36.25.1101), IV (36.25.1104), V (36.25.1105), VI (36.25.1106), VII (36.25.1107), VIII (36.25.1108) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined.

NEW RULE I (36.25.1101) DEFINITIONS When used in this subchapter, unless a different meaning clearly appears from the context:

(1) "Bed" means an area on or above state-owned land between the low-water marks of a navigable river channel, excepting any portion of the land greater than 50 feet vertically below the thalweg of the channel and excepting any minerals therein.

(2) through (7)(b) remain as proposed.

(c) an interruption or modification to ~~area of~~ the bed of a navigable river below the low-water mark as provided in 70-16-201, MCA~~, which may be modified for a private use~~.

(8) "Hazard" means a physical condition of an improvement, structure, or facility which creates an extraordinary risk of physical harm to persons or property which is so obvious and immediately dangerous that an ordinarily prudent person would observe and appreciate such extraordinary risk and take action to address or eliminate such risk.

(8) through (10) remain as proposed but are renumbered (9) through (11).

(1~~1~~2) "Low-water mark" means the location of the water line of a navigable river at the lowest tenth percentile of historic annual flow as measured by the nearest upstream hydrograph station.

(a) As utilized in this definition, "historic annual flow" is a graph of water flow in the stream expressed in cubic feet per second (cfs) derived from an average of all existing hydrograph records for each day of the year at a hydrograph station

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immediately above the river segment in question (with water flows in cubic feet per second expressed on the 'y' axis and calendar days expressed on the 'x' axis).

(b) The "lowest tenth percentile" is determined by constructing a cumulative frequency graph of the average annual historic water flow rates measured by a particular hydrograph station, and determining the average annual flow rate which is exceeded 90 percent of the time in that cumulative frequency graph.

(12) remains as proposed but is renumbered (13).

(1~~3~~4) "Navigable river" means a segment of a river adjudicated as navigable for title purposes by a court of competent jurisdiction.

(1~~4~~5) "Public use" means activities on navigable waters that are guaranteed by law to the general public to use navigable waters to fish, hunt, trap, navigate, camp, install docks and wharves, and recreate; provided that no physical occupation by a boat positioned, moored, or anchored in a specific location is made for any longer than fourteen days in any thirty-day period. ~~After the fourteenth day a fee shall be assessed for term use for the entire duration of the stay.~~

(15) remains as proposed but is renumbered (16).

(1~~6~~7) "Thalweg" means the deepest portion of the active channel of a stream or river in any given cross-section of the stream or river.

AUTH: 77-1-204, 77-1-1117, MCA
IMP: 77-1-1110, 77-1-1117, MCA

NEW RULE IV (36.25.1104) AUTHORIZATION FOR USE OF NAVIGABLE WATERWAYS (1) Except as otherwise provided in this rule, the following shall require prior written authorization from the department:

(a) fixed structures placed within the bed of a navigable river or suspended above the bed of a navigable river; and

(b) boats positioned, moored, or anchored longer than fourteen days within any 30-day period within a specific location upon navigable waters ~~shall require prior written authorization from the department~~.

(2) through (5) remain as proposed.

(6) With the exception of applications for authorization sought by the Montana Department of Transportation (MDT), all ~~All~~ necessary federal, state, and local permits shall be acquired by those requesting authorization to use a navigable river or other river as specified in ARM 36.25.1102(3), except where the department issues contingent authorizations under subsection (6)(b) of this rule.

(a) remains as proposed.

(b) However, the department may choose to issue a lease, license, or easement prior to the department's receipt of permit copies where the lease, license, or easement is conditioned upon the applicant's receipt of a permit and the filing of a copy of the permit with the department.

(7) remains as proposed.

(8) The department may require ~~agreement~~ holders of leases, licenses, or easements to remove hazards from the river, including structures that are no longer in use.

(9) remains as proposed.

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AUTH: 77-1-1111, 77-1-1115, 77-1-1117, MCA
IMP: 77-1-1115, 77-2-102, MCA

NEW RULE V (36.25.1105) FEES FOR USES IN NAVIGABLE WATERWAYS
(1) through (3) remain as proposed.
(4) The fee for a lease for the use of the bed of a navigable waterway shall be the greater of the product of the lease rate multiplied by the calculated market value of the footprint, any competitive bid received, or a minimum fee of $150. The process for calculating the market value lease rate will be as described in 77-1-905, MCA, and ARM 36.25.915. The department reserves the right to impose higher market value lease rates where the proposed use of the bed subjects the state, the department, or the trust beneficiaries to greater risk of damage to trust lands. However, generally, the market value lease rates will be guided by consideration of various market and risk factors, including, but not limited to:
(a) through (7) remain as proposed.
(8) Lease and license revenues will be deposited as follows:
(a) from July 1, 2011, through June 30, 2014, to the guarantee account provided for in 20-9-622, MCA; and
(b) on or after July 1, 2014, to the school facility and technology account provided for in 20-9-516, MCA. ~~into the public land trust fund, according to Article X, Section 5(1) of the Constitution.~~
(9) Easement revenues will be deposited into the permanent public land trust fund according to Article X, Section 5(2) of the Montana Constitution.

AUTH: 77-1-209, 77-1-1117, MCA
IMP: 17-3-1003, 77-1-102, 77-1-103, 77-1-1117, MCA

NEW RULE VI (36.25.1106) SELECTION OF LEASE, LICENSE, OR EASEMENT (1) and (2) remain as proposed.
(a) A lease will be issued by the department through a competitive bid process ~~per~~ pursuant to 77-1-904, MCA.
(3) remains as proposed.

AUTH: 77-1-1115, 77-1-1117, MCA
IMP: 77-1-1115, MCA

NEW RULE VII (36.25.1107) RELOCATION AND EXPANSION OF FOOTPRINT; CHANGE OF USE (1) The holder of a lease, license, or easement for a water diversion associated with an existing water right shall submit a notice to the department on a form as prescribed by the department when a footprint or associated facilities are proposed to be relocated or expanded.
(1) remains as proposed but is renumbered (2).
~~(2) The holder of a lease, license, or easement for a water diversion shall submit an application as prescribed by the department when a footprint or associated facilities are proposed to be relocated or expanded. Initiation of any work within the low-water marks of the navigable river shall begin only after the~~

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~~application has been submitted to the department and the department has authorized the work.~~

(3) through (7) remain as proposed.

(8) Relocation and expansion of a footprint under a lease, license, or easement for a water diversion structure associated with a water right which represents an historic use under ARM 36.25.1108 is exempt from the Montana Environmental Protection Act (MEPA), 75~~7~~-1-201, et seq., MCA, and the Antiquities Act, 22-3-401, et seq., MCA.

AUTH: 77-1-1116, 77-1-1117, MCA
IMP: 77-1-134, 77-1-1116, MCA

NEW RULE VIII (36.25.1108) HISTORICAL USES IN NAVIGABLE WATERWAYS

(1) Persons using the bed of a navigable river adjudicated before October 1, 2011 ~~[the effective date of these rules]~~, without written authorization from the department prior to October 1, 2011 ~~[the effective date of these rules]~~, that wish to continue the use must complete an application prescribed by the department and provide the application to the department by July 15, 2017.

(2) through (5)(b) remain as proposed.

(i) the applicant or the applicant's predecessor in interest used the bed of a river that has been determined navigable in compliance with ARM 36.25.1101(13), and that the use continues; and

(ii) the historic use of the acreage covered by the footprint which occurred prior to [the effective date of these rules], or the date the river was adjudicated as navigable, whichever is later; ~~and~~

~~(iii) the use for which authorization is sought is documented by a statement of identical historic use in a notarized affidavit;~~

(c) through (vi) remain as proposed.

~~(d) annual payment of the lease or license fee or payment for the full market value of the easement footprint.~~

(d~~6~~) t~~T~~he authorization for easements is approved by the board. Leases and licenses may be approved by the department.

(6) The lease or license shall automatically terminate should the lessee or licensee fail to make annual payment of the lease or license fee. No easement shall be issued if the easement applicant fails to pay the full market value of the easement footprint;

(7) through (10) remain as proposed.

AUTH: 77-1-1112, 77-1-1117, 77-2-102, MCA
IMP: 77-1-1112, 77-2-102, MCA

3. A summary of the written and oral comments received appear below with the department's responses. "SB 35" refers to Senate Bill 35 (2011 Montana Session Laws, Chapter 359) which was codified in Title 77, chapter 1, MCA.

COMMENT 1:

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Clarify the exemptions to the rules to encompass footprints that existed prior to statehood, as well as rights-of-way and patents that were granted, but not yet built prior to statehood. Commenter suggested adding the following language to New Rule VIII(2)(e): "Real property rights in lands beneath a navigable river that vested or accrued prior to November 8, 1889".

RESPONSE 1:
New Rule VIII(2)(b) already adequately addresses this comment, since it clarifies that the proposed rules do not apply to "footprints that existed prior to November 8, 1889", which is the date of Montana's statehood.

COMMENT 2:
Commenter asked to extend the comment period to allow more participation from public entities before proceeding with rulemaking.

RESPONSE 2:
The public comment period was extended from July 19, 2012, to August 31, 2012, to allow for more participation and comment.

COMMENT 3:
There needs to be a penalty clause in the rules, including remedies for the user or applicant if the application is denied. The penalty should include action taken to address the structure itself, as well as the person in violation.

RESPONSE 3:
There is no need to include a civil penalty procedure in the proposed rules. 77-1-125, MCA, authorizes DNRC to impose civil penalties upon persons who install or construct facilities or structures upon state trust lands without prior permission.

COMMENT 4:
The rules need to specify processes for structures with multiple involved parties and clarify who the applicant is: specifically, multiple user structures, and structures that may have separate owners, users, contractors, etc. The rules should clarify who is responsible for applications, fees, and penalties.

RESPONSE 4:
Restrictions on the identity of applicants for use are beyond the scope of this rulemaking. Users should assure themselves that the identity of the applicant for use is consistent with the ownership of the structure.

COMMENT 5:
The rules should reference the Habitat Conservation Plan (HCP) and the Comprehensive Fish and Wildlife Conservation Strategy (CFWCS) regarding application approval, remedial action for structural violations, and potential exemptions for fees to expand footprints to comply with the HCP and CFWCS.

RESPONSE 5:

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The recent DNRC HCP applies only to certain classified state forest lands. Applicants for authorization for use of the beds of navigable waters should generally comply with New Rule IV(6) which requires them to obtain all necessary "federal, state, and local permits", prior to making application to DNRC for use of a navigable river bed. However, DNRC retains the discretion under (6)(b) to issue authorizations for use conditioned upon the applicant's receipt of other necessary permits.

COMMENT 6:
There needs to be an environmental analysis completed for these rules.

RESPONSE 6
The scoping period ended on August 31, 2012, and an environmental assessment which was signed October 30, 2012 and posted to the DNRC website on November 7, 2012.

COMMENT 7:
The rules should specify which state trust the fees will go to.

RESPONSE 7:
The rules specify revenue deposit information under New Rule V(7) through (9).

COMMENT 8:
Conservation districts have already developed a multi-user application and use it uniformly for 404 and 324 turbidity permits. DNRC should consider using this existing process for simplicity in processing and clarity for the user.

RESPONSE 8:
DNRC will utilize its existing procedures for the processing of applications for use of the beds of navigable waterways.

COMMENT 9:
The rules should include a waiver or implementation incentive for increasing footprints in structures to make them more environmentally sound in ways that comply with the HCP and/or CFWCS.

RESPONSE 9:
See Response 5.

COMMENT 10:
The definition of "footprint" in rule is inconsistent with that in statute.

RESPONSE 10:
The definition in New Rule I(7) has been revised to reflect the statutory definition.

COMMENT 11:
The rules regarding expansion of a footprint are inconsistent with statute. The rules call for prior authorization for the expansion of a footprint, while the statue allows for

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the expansion for the same use without prior authorization from the DNRC or the Board of Land Commissioners (Land Board or board).

RESPONSE 11:
Under 77-1-1116(2)(b)(i), MCA, the holder of a lease, license, or easement must provide written notice to DNRC for any relocation or increase in size of the footprint. 77-1-1116(2)(b)(ii), MCA, provides that no DNRC approval is required for "lease, license, or easement for water diversion structures associated with a water right". The section specifies that the holder shall then pay full market value for any increase in size. New Rule VII(1) has been revised to be consistent with the provisions of 77-1-1116(2), MCA.

COMMENT 12:
The rules propose that all other permits must be obtained before a license, lease, or easement will be issued. But, floodplain law already requires that floodplain permits be the final permit issued.

RESPONSE 12:
DNRC retains the authority to issue authorizations for use of the beds of navigable waters, which are contingent upon the applicant's receipt of other permits under New Rule IV(6)(b).

COMMENT 13:
The rules should clarify to which rivers they apply.

RESPONSE 13:
See New Rule I(14).

COMMENT 14:
Commenter asked when DNRC will provide notice to landowners as required by 77-1-1114, MCA.

RESPONSE 14:
DNRC will provide notice to landowners following the adoption of these rules.

COMMENT 15:
The rules appear to conflict with, or exceed the authority of the enabling statutes by requiring authorization for fixed structures suspended above the bed of a navigable river.

RESPONSE 15:
The scope of the proposed rules is consistent with the definition of footprint under SB 35, which states: "…means a structure or other constructed interruption or modification to the bed of a navigable river below the low-water mark as provided in 70-16-201 [MCA]". Because navigable waters are public ways under 85-1-111, MCA, interruptions or modifications to the bed are those which may interfere with the public's use of navigable waters for navigation or other uses. Suspended structures

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above navigable waters which impose physical height restrictions upon the use of those waters, thus, clearly fall within the definition of "footprint" under SB 35.

COMMENT 16:
The rules appear to conflict with, or exceed the authority of the enabling statutes by allowing DNRC to require the removal of hazards.

RESPONSE 16:
77-1-1109(2) and (3), MCA, clarify that the purpose of SB 35 was to: "…clarify the process for the use of the beds of navigable rivers and how the state should be compensated for that use"; and that nothing in SB 35 "…diminishes the state's ownership of the beds of navigable rivers, streams, or lakes under any other law". The Land Board retains the legal authority under 77-1-202, MCA, to manage and control state lands, and to condition the use of those lands where necessary to wisely and safely manage those lands for public uses.

COMMENT 17:
The rules are unclear about choice of lease, license, and/or easement.

RESPONSE 17:
Applicants may apply for either a lease, license, or easement. See New Rule VI.

COMMENT 18:
The rules appear to conflict with or exceed the authority of the enabling statutes with regard to the MEPA application.

RESPONSE 18:
The rules are consistent with MEPA. The Legislature has devised specific MEPA procedures to be followed by the board and the DNRC by enacting 77-1-121, MCA.

COMMENT 19:
There should be a provision to the rules that would allow the state to rescind a lease, license, or easement if it is determined that the use is in violation of federal, state, or local permits, regulations, standards, or laws.

RESPONSE 19:
This provision will be addressed in the lease, license, and easement agreement terms and conditions.

COMMENT 20:
The rules should require that all lease, license, and easement applications be reviewed by the Department of Environmental Quality (DEQ) prior to issuance to ascertain that water quality will not be degraded by the proposed use, whether or not a permit is required.

RESPONSE 20:

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New Rule IV(6), requires that all other necessary permits must be obtained before authorization. DEQ will review applicable required permits as part of the lease/license/easement authorization process.

COMMENT 21:
The rules should require that all permits be approved and provided prior to granting the lease, license, or easement.

RESPONSE 21:
See Response 12 and New Rule IV(6).

COMMENT 22:
The rules should not exempt relocation or increase in size of a footprint for use of a navigable riverbed from MEPA.

RESPONSE 22:
Section 4 of SB 35 (77-1-1112, MCA) exempts historical use, and leases, or licenses that expressly state that the lease or license is subject to further permitting under any of the provisions of Title 75 or 82. Section 8 of SB 35 (77-1-1116, MCA) provides there is no prior approval required for relocation or increased footprint of a structure for a lease or license, or for an easement for water diversion structures associated with a water right. New Rule VII(8) has been revised to provide: "Relocation and expansion of a footprint under a lease, or license, or for an easement for a water diversion structure associated with a water right is exempt from (MEPA)…All other easement relocations or expansions will be subject to provisions of 75-1-201,et seq., MCA…".

COMMENT 23:
The term "hazard" in Rule IV(8) is ambiguous and conflicts with statute that addresses landowner rights to place structures in the waterway for the purpose of managing land or water. Provide a definition for "hazard" or remove the section.

RESPONSE 23:
The following definition for "hazard" has been added as New Rule I(8): "…means a physical condition of an improvement, structure, or facility which creates an extraordinary risk of physical harm to persons or property which is so obvious and immediately dangerous that an ordinarily prudent person would observe and appreciate such extraordinary risk and take action to address or eliminate such risk".

COMMENT 24:
Drop the issue. Let current controls stay in force or reduce government intervention through a new bill.

RESPONSE 24:
The DNRC is required to adopt administrative rules to implement SB 35.

COMMENT 25:

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The rules should incorporate terms of existing Memorandums of Understanding with MDT.

RESPONSE 25:
See Response 26.

COMMENT 26:
Consideration should be given to the requirements for such matters as issuance of permits to address the processes and time schedules that MDT must adhere to in its right of way construction activities.

RESPONSE 26:
Rule IV(6) has been revised to provide that: With the exception of applications for authorization sought by the Montana Department of Transportation (MDT), all ~~All~~ necessary federal, state, and local permits shall be acquired by those requesting authorization to use a navigable river or other river as specified in ARM 36.25.1102(3)". This revision is necessary to maintain in effect the January 25, 1997, procedural agreement between DNRC and MDT concerning the timing of easement applications made by MDT to DNRC for transportation projects

COMMENT 27:
The definition of "navigable river" seems to use whole-river analysis rejected by the US Supreme Court in *PPL Montana v. State of Montana,* 565 U.S. ___, 132.Ct. 1215 (2012). It should read "navigable segment of a river".

RESPONSE 27:
DNRC agrees. The definition of "navigable river" in the rules has been revised to be consistent with the segment-by-segment analysis adopted by the U.S. Supreme Court in PPL Montana v. State of Montana, 565 U.S. ___, 132.Ct. 1215 (2012).

COMMENT 28:
The definition of "low-water mark" should be revised to: (1) specify that it applies to navigable *segments* - "water line of the navigable segment of a river"; (2) include the word "ordinary" in reference to the water mark to be consistent with use in Montana case law to mean that it occurs with regularity – "ordinary low water mark"; (3) the term "historic annual flow" is ambiguous and unclear to which point in time it refers; (4) it is unclear how the rule term "lowest tenth percentile" is determined. Commenter suggested an averaging of water marks over time, including flows from all months of the year, which would result in an overestimate in the area of the low water streambed due to single peaks occurring between May and June. Also, the specification that low-water mark will be "measured by the nearest upstream hydrograph station" may result in inaccurate conclusions downstream, and it excludes other relevant data such as downstream station data, studies by the US Army Corps of Engineers, HECRAS model and other riverine modeling programs, aerial photographs, surveys, and historic evidence of the ordinary low-water mark.

RESPONSE 28:

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The definition of "navigable river" has been amended to: "…a segment of a river adjudicated as navigable for title purposes by a court of competent jurisdiction".

"Low-water mark" is defined in these rules as: "…the location of the water line of a navigable river at the lowest tenth percentile of historic annual flow as measured by the nearest upstream hydrograph station". The definition has been revised to clarify that: "…'Historic annual flow' is a graph of water flow in the stream expressed in cubic feet per second (cfs) derived from an average of all existing hydrograph records for each day of the year at a hydrograph station immediately above the river segment in question (with water flows in cubic feet per second expressed on the 'y' axis and calendar days expressed on the 'x' axis)". The definition of "low-water mark" further clarifies that: "…'lowest tenth percentile' is determined by constructing a cumulative frequency graph of the average annual historic water flow rates measured by a particular hydrograph station, and determining the average annual flow rate which is exceeded 90 percent of the time in that cumulative frequency graph".

The U.S. Army Corps of Engineers' Hydrologic Engineering Center's River Analysis System (HEC-RAS) is a computer model which enables engineers to predict expected changes in river locations over time due to changes in stream profiles, such as channel modifications and construction of levees. The definition of low-water mark utilized in the rules is the same definition of low-water mark tacitly accepted by the Montana Supreme Court in DSL v. Jerry D. Armstrong, et al., 251, Mont. 235, 824 P.2d 255 (1992), and it involves the location of the water boundary actually existing at time of the low-water mark. This definition of "low-water mark" does not utilize a computer-model predicted boundary.

COMMENT 29:
"Thalweg" is ambiguous or improperly defined. Surveyors use the term to mean the line of usual navigation on the river. The term "thread" is generally used by surveyors to mean the line of deepest water in a river.

RESPONSE 29:
The definition of "thalweg" has been amended to: "…the deepest portion of an active stream or river in any given cross-section of the stream or river".

COMMENT 30:
New Rule IV(1) states DNRC authorization is required for fixed structures suspended above the bed of a navigable river. This exceeds DNRC's authority as provided in statute to be limited to the footprint of the structure in the bed of the river, and the coinciding definition of "footprint" in statute.

RESPONSE 30:
The scope of the proposed rules is consistent with the definition of footprint under SB 35: "…means a structure or other constructed interruption or modification to the bed of a navigable river below the low-water mark as provided in 70-16-201 [MCA]". Because navigable waters are public ways under 85-1-111, MCA, interruptions or

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modifications to the bed are those which may interfere with the public's use of navigable waters for navigation or other uses. Suspended structures above navigable waters which impose physical height restrictions upon the use of those waters, thus, clearly fall within the statutory definition of a "footprint" under SB 35.

COMMENT 31:
The definition of "bed" excepts out portions "of the land 50 feet below the thalweg of the channel…". This definition is ambiguous because it is not clear if this means vertical feet or something else.

RESPONSE 31:
The definition of "bed" has been revised to clarify that "bed" excludes that portion of land greater than 50 feet vertically below the thalweg of the channel of a navigable stream.

COMMENT 32:
The definition of "navigable river" in rule is different than navigability tests utilized in the law in the past.

RESPONSE 32:
The definition of "navigable river" in the rules has been revised to comply with the federal test of navigability as expressed by the U.S. Supreme Court in PPL Montana, LLC v. Montana, 132 S. Ct. 1215, 1219, 182 L. Ed. 2d 77 (2012) wherein the Court held that: "To be navigable for purposes of title under the equal-footing doctrine, rivers must be "navigable in fact," meaning "they are used, or are susceptible of being used, ... as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water." [citing, The Daniel Ball, 10 Wall. 557, 563, 19 L.Ed. 999 (1870)]; and that this determination of navigability is established segment-by-segment.

COMMENT 33:
Restrictions provided within the definition of "public use" should be specified in parts of the rule dealing with the conduct of operations on the river, and not within the definition.

RESPONSE 33:
The definition has been revised to delete substantive restrictions. The substantive restrictions have been added to New Rule IV(1).

COMMENT 34:
New Rule II(2) conflicts with Fish, Wildlife and Parks (FWP) ongoing management of rivers by stating DNRC shall manage and administer the state's navigable rivers.

RESPONSE 34:
77-1-1109(2) and (3), MCA, state that the purpose of SB 35 was to: "…clarify the process for the use of the beds of navigable rivers and how the state should be compensated for that use"; and that nothing in SB 35 "…diminishes the state's

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ownership of the beds of navigable rivers, streams, or lakes under any other law". The Land Board retains the legal authority under 77-1-202, MCA, to manage and control state lands, and to condition the use of those lands where necessary to wisely and safely manage those lands for public uses. Pursuant to 77-1-301, MCA, DNRC, under the direction of the board, is responsible for the management of state lands. The board and DNRC manage state trust lands from a sovereign and proprietary standpoint. By contrast, FWP has regulatory oversight of boating and recreational use of streams pursuant to 23-2-501, et seq., and 23-2-301, et seq., MCA. New Rule II(2) does not conflict with FWP's regulatory authority.

COMMENT 35:
New Rule II(2)(a) is inaccurate because the whole purpose of the rules is to regulate and prevent public use, and obtain revenue.

RESPONSE 35:
See Response 34.

COMMENT 36:
The provisions in New Rule II(3)(b) are extremely vague and without any basis for understanding of what the rule actually means.

RESPONSE 36:
New Rule II(3)(b) provides that: "[t]he department may issue such contingent-right easements, leases, and licenses only where the department has historical documentation that the river was susceptible of use in commerce at statehood". 77-1-1111, MCA, directs that: "The board or the department may require a lease, license, or easement under this part only for a footprint on the bed of a navigable river". A "navigable river" for this purpose is defined by 77-1-1110(3), MCA, as: "…a river adjudicated as navigable for title purposes by a court of competent jurisdiction". Consequently, under SB 35, Section 3 (77-1-1111, MCA) the board and DNRC cannot require a user of an un-adjudicated riverbed to obtain authorization for use of that river or stream bed. The board and DNRC may only require that a user obtain authorization for use only where that segment of the waterway has been adjudicated as navigable for title purposes. However, some users of rivers and streambeds, will wish to voluntarily obtain authorizations for use of river and streambeds from the board and DNRC prior to any adjudication taking place. New Rule II(3)(b) clarifies that the board and DNRC may grant authorizations for use of river and streambeds contingent upon their subsequent adjudication as being navigable for title purposes.

COMMENT 37:
New Rule II(3)(c)(ii) refers to notice to adjacent land owners, but does not provide or refer to any means of giving notice or what type of notice is to be given. Nor does the rule define adjacent land owners.

RESPONSE 37:
New Rule II is consistent with the process for giving notice of navigability under 77-1-1114, MCA.

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COMMENT 38:
New Rule (IV)(6)(a) refers to permits without explaining what they are for or who provides them.

RESPONSE 38:
The rule refers to local, state, or federal permits necessary for the authorized use.

COMMENT 39:
New Rule IV(8) introduces the word "agreement" without previous clarification of what an "agreement" means. Commenter is unclear if this encompasses leases, licenses, and easements, or is a new class of land user.

RESPONSE 39:
New Rule IV(8) has been amended to delete "agreement" and insert the terms "leases, licenses, and easements".

COMMENT 40:
New Rule IV(9) provides that the leases and easements are assignable. That is not the same as saying that the easements are appurtenant to a dominant tenement. Easements, licenses, and leases may be transferred with the real property. Those two sentences could include legal situations of land ownership that are incompatible.

RESPONSE 40:
There is no conflict between the two sentences in New Rule IV(9). Although appurtenant easements on private lands typically transfer automatically with the title to the dominant tenement (see, Blazer v. Wall, 2008 MT 145, 343 Mont. 173, 183, 183 P.3d 84, 93), upon state lands the easement holder must file an assignment of the easement on DNRC's prescribed easement assignment forms under ARM 36.26.135(3).

COMMENT 41:
New Rule V(4) provides DNRC the right to impose higher market value lease rates for various reasons, which is inconsistent with the set fees provided in (2) and (3).

RESPONSE 41:
Regarding New Rule V: (2) only addresses the application fee for a lease, license, or easement; (3) only addresses the fee for a land use license; and (4) only addresses the fee for leases.

COMMENT 42:
New Rule V(4) specifies that DNRC reserves the right to impose higher lease rates if there is a greater risk of damage to trust lands. Inclusion of risk factor is an entirely different approach than one based on market value. Those provisions should be removed.

RESPONSE 42:

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DNRC disagrees.

COMMENT 43:
New Rule V(4)(a) suggests that the cost of demolition and reclamation may be considered when determining the lease fee, but IV(8) specifies that DNRC may require the "agreement holder" to remove hazards. The rules seem to charge the "agreement holder" more than once for undefined reclamation costs.

RESPONSE 43:
The rules provide for the ability to charge for either removal up front, or to require the agreement holder be responsible for removal.

COMMENT 44:
The provisions of New Rule V(4)(c) that refer to the current fee schedule developed by DNRC, creates a circular statement without any reference to what provisions of the schedule might be considered. The provisions should be removed from the rule.

RESPONSE 44:
The fee schedule utilized by DNRC may change periodically based upon current market values and policy directions from the board. Accordingly, under New Rule V(4)(c) the fee schedule may be an element of value to be properly considered when determining the full market value for the conveyance of an interest in state trust land.

COMMENT 45:
The provision in New Rule V(5) that the fee for a lease will be prorated for the first year is directly contradictory to the provisions of (3), which states the license fee for the first year shall be $150 without regard to the date when the license term begins.

RESPONSE 45:
Lease and license agreements grant different rights; thus, the fee structure for each is different, as provided in New Rule V. 77-1-1110(2), MCA, only specifies that the annual fee for a license is $150.

COMMENT 46:
The statement in New Rule V(6)(d) providing the fee for the easement shall be the greater of several factors or the current fee schedule developed by DNRC is ambiguously limitless.

RESPONSE 46:
See Response 44.

COMMENT 47:
New Rule V(7) specifies that application fees for historic use will be deposited into the state special revenue fund. Commenter asked if this should refer to all types of uses, or only historic easements.

RESPONSE 47:

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According to 77-1-1112(3)(a), MCA, the application fee for any historic use is $50. 77-1-1113, MCA, specifies that proceeds from the application fee must be deposited into the state special revenue fund to be used to administer the provisions of 77-1-1112, MCA.

COMMENT 48:
New Rule VI(2)(a) provides for a competitive bid process to issue leases per 77-1-904, MCA. That bid process is for commercial leasing.

RESPONSE 48:
The process under 77-1-904, MCA, allows DNRC to solicit bids via requests for proposal and competitive bidding.

COMMENT 49:
New Rule VI(2)(a) provides for a competitive bid process to issue leases per 77-1-904, MCA. This process is inconsistent with the provisions of New Rule V regarding the lease fee determination.

RESPONSE 49:
New Rule V has been amended to provide: "…fee for a lease…shall be the greater of any competitive bid received, the product of the lease rate multiplied by the calculated market value…or a minimum fee of $150".

COMMENT 50:
The rules should contain some specific provision protecting the rights of current individual irrigators to maintain their headgate structures pursuant to the provision of Montana water law, specifically 70-30-102, 85-1-204, and 85-7-1904, MCA.

RESPONSE 50:
The additional language suggested is beyond the scope of this rulemaking.

COMMENT 51:
For clarity, subsection (2) ought to precede subsection (1) in New Rule VII.

RESPONSE 51:
DNRC agrees and has made the amendment.

COMMENT 52:
The use of the word "considered" in New Rule VII(3)(c) is ambiguous. It does not specify what it means to be "considered" or who it will be "considered" by.

RESPONSE 52:
DNRC disagrees.

COMMENT 53:
Commenter asked who will determine if the water right and property benefited by the use remain the same at expansion or relocation as provided in New Rule VII(3)(c)(i).

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RESPONSE 53:
DNRC will make that determination.

COMMENT 54:
New Rule VII(7) specifies that the full market value of a footprint will be established through an appraisal conducted in compliance with ARM 36.25.917. This is not congruent with provisions of New Rule V establishing fees for uses.

RESPONSE 54:
New Rule V sets fees for the grant of an original footprint. New Rule VII addresses relocation and expansion of a footprint. 77-1-1116(2)(b)(ii), MCA, requires the payment of the full market value for the use of the expanded area. The process described in New Rule VII(7) for determining full market value for an expansion of a footprint is consistent with this grant of legislative authority.

COMMENT 55:
New Rule VII(8) refers to MEPA requirements of 77-1-201, MCA. 77-1-201, MCA, refers to the authorities of the Board of Land Commissioners and is probably an erroneous reference.

RESPONSE 55:
Commenter is correct. The reference to 77-1-201, MCA, is a typographic error and DNRC has amended the reference to 75-1-201, MCA.

COMMENT 56:
The contents of the application required in New Rule VII concerning historical use should be established.

RESPONSE 56:
DNRC disagrees. The contents of New Rule VII as amended in this notice are adequate.

COMMENT 57:
The criteria for determining if a use shall be authorized as a lease, license, or easement provided in New Rule VI is ambiguous. There should be a structure set out to enable an applicant to determine which type of agreement to apply for, and whether or not he would be granted any.

RESPONSE 57:
DNRC policy will provide guidance for application.

COMMENT 58:
The use of the word "identical" in the provisions of New Rule VIII(5)(b)(iii) is problematic and permits DNRC to deny virtually any historical use.

RESPONSE 58:

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The word "identical" has been removed, and the rule as revised requires an affidavit proving historic use occurring prior to October 1, 2011.

COMMENT 59:
New Rule VIII(5)(d) seems to require annual payment prior to the determination of which, if any, type of agreement will be granted.

RESPONSE 59:
New Rule VIII(5)(d) has been stricken, and the content has been revised and inserted as VIII(6).

COMMENT 60:
The rules attempt to exempt lease from survey requirements of 76-3-201, MCA in New Rule VIII(8). However, 76-3-302, MCA provides that the clerk and recorder is not permitted to record an instrument that transfers title or possession of a parcel or tract required to be surveyed unless a certificate of survey has been filed. All leased parcels would be required to be surveyed under the Subdivision and Platting Act.

RESPONSE 60:
Whether or not property interests issued pursuant to these rules or SB 35 must be surveyed in compliance with the Montana Subdivision and Platting Act is beyond the scope of this rulemaking. However, 76-3-205(2), MCA, provides that: "[a] division of state-owned land is not subject to the requirements of this chapter [the Montana Subdivision and Platting Act] unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974". Because no property interest will be issued pursuant to the proposed rules for residential purposes in navigable waters, it is expected that a survey of footprints under these rules will not be necessary for compliance with the provisions of the Montana Subdivision and Platting Act (76-3-101, et seq., MCA).

COMMENT 61:
Due to ambiguities and difficulties in administration, the rules should not be adopted until they have undergone substantial and thorough rewriting and revision.

RESPONSE 61:
DNRC has reviewed and revised a portion of the rules as per the comments it has received.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/
MARY SEXTON
Director
Natural Resources and Conservation

/s/
TOMMY BUTLER
Rule Reviewer

Certified to the Secretary of State on November 26, 2012.

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1112-5

LAND BANKING PARCELS: FINAL APPROVAL FOR SALE

A. Daniels County

B. Flathead County

LAND BOARD AGENDA ITEM
November 19, 2012

FINAL APPROVAL FOR SALE OF LAND BANKING PARCELS # 648, 649, 651, 652, 653, 654, 655, 656, 665, 666, 667, 668, 669, 670, 671, 672, 673 DANIELS COUNTY

Seller: State of Montana, Department of Natural Resources and Conservation

Nominators: Parcels 648-656, 665-673 – Lessee, Todd Nelson

Location: Parcels 648-656, 665-673 – are located 31 miles northwest of Scobey.

Property Characteristics: Parcels 648-656, 665-672 – mix of native rangeland with better than average productivity, and ag land used for small grains production.
Parcel 673 – This parcel is a homesite.

Access: Parcels 648, 649, 651, 652, 653, 654, 655, 656, 665, 666, 667, 668, 669, 670, 671, 672, 673, are legally accessible by the public, either through adjoining state land or via a county road.

Economic Analysis: Short term – The rate of return on the sale parcels is 2.81% for Common Schools. They would continue to receive this return if the parcel is not sold.

Long term – The sale of this parcel would result in acquisition of lands that generate a higher rate of return. To date the average annual rate of return on acquisitions has been 1.91%, on acquisitions with income generated from annual lease payments.

Cultural/Paleontological Resources:

This parcel was inventoried to Class III standards for cultural and paleontologic resources on August 17th, 2009, prior to remediation work being done. No Heritage Properties or Paleontological Resources were identified. Further, neither Judith River nor Hell Creek geological formations occur on or beneath the ground surface of the subject state tract. A cultural and paleontologic resources inventory report has been prepared and is on file with the DNRC, and the Montana State Historic Preservation Office.

Background:

In January 2012, the Board approved these parcels to continue through the Land Banking sale evaluation process. In August 2012 the Board set the minimum bid at the appraised value with access as follows:

Sale #	# of Acres	Legal	Minimum Bid	High Bid	Trust
648	320	S½, Section 3, T36N-R43E	$ 118,100	$ 118,100	Common Schools
649	320.16	Lots 1-4, S½N½, Section 3, T36N-R43E	$ 131,100	$ 131,100	Common Schools
651	60	NE¼, Section 4, T36N-R43E	$ 67,900	$ 67,900	Common Schools
652	240	SE¼, E½NE¼, Section 9, T36N-R43E	$ 98,000	$ 98,000	Common Schools
653	160	SW¼, Section 10, T36N-R43E	$ 60,200	$ 60,200	Common Schools
654	160	NE¼, Section 10, T36N-R43E	$ 67,500	$ 67,500	Common Schools
655	160	NW¼, Section 10, T36N-R43E	$ 64,800	$ 64,800	Common Schools
656	160	NE¼, Section 11, T36N-R43E	$ 69,800	$ 69,800	Common Schools
665	120	W½SW¼, SE¼SW¼, Section 29, T37N-R43E	$ 39,100	$ 39,100	Common Schools
666	160	NW¼, Section 29, T37N-R43E	$56,400	$56,400	Common Schools
667	160	SE¼, Section 30, T37N-R43E	$ 64,700	$ 64,700	Common Schools
668	360	NE¼NW¼, E½, Section 31, T37N-R43E	$ 143,600	$ 143,600	Common Schools
669	67.44	E½SW¼, less 12.56 acres in S½NE¼SW¼, Section 32, T37N-R43E	$ 16,200	$ 16,200	Common Schools
670	120	N½NW¼, SE¼NW¼, Section 32, T37N-R43E	$ 28,800	$ 28,800	Common Schools
671	120	W½SW¼, SW¼NW¼, Section 32, T37N-R43E	$ 38,300	$ 38,300	Common Schools
672	157.94	SE¼, Section 32, T37N-R43E	$ 67,300	$ 67,300	Common Schools
673	12.56	Pt S½NE¼SW¼, Section 32, T37N-R43E	$ 7,500	$ 7,500	Common Schools

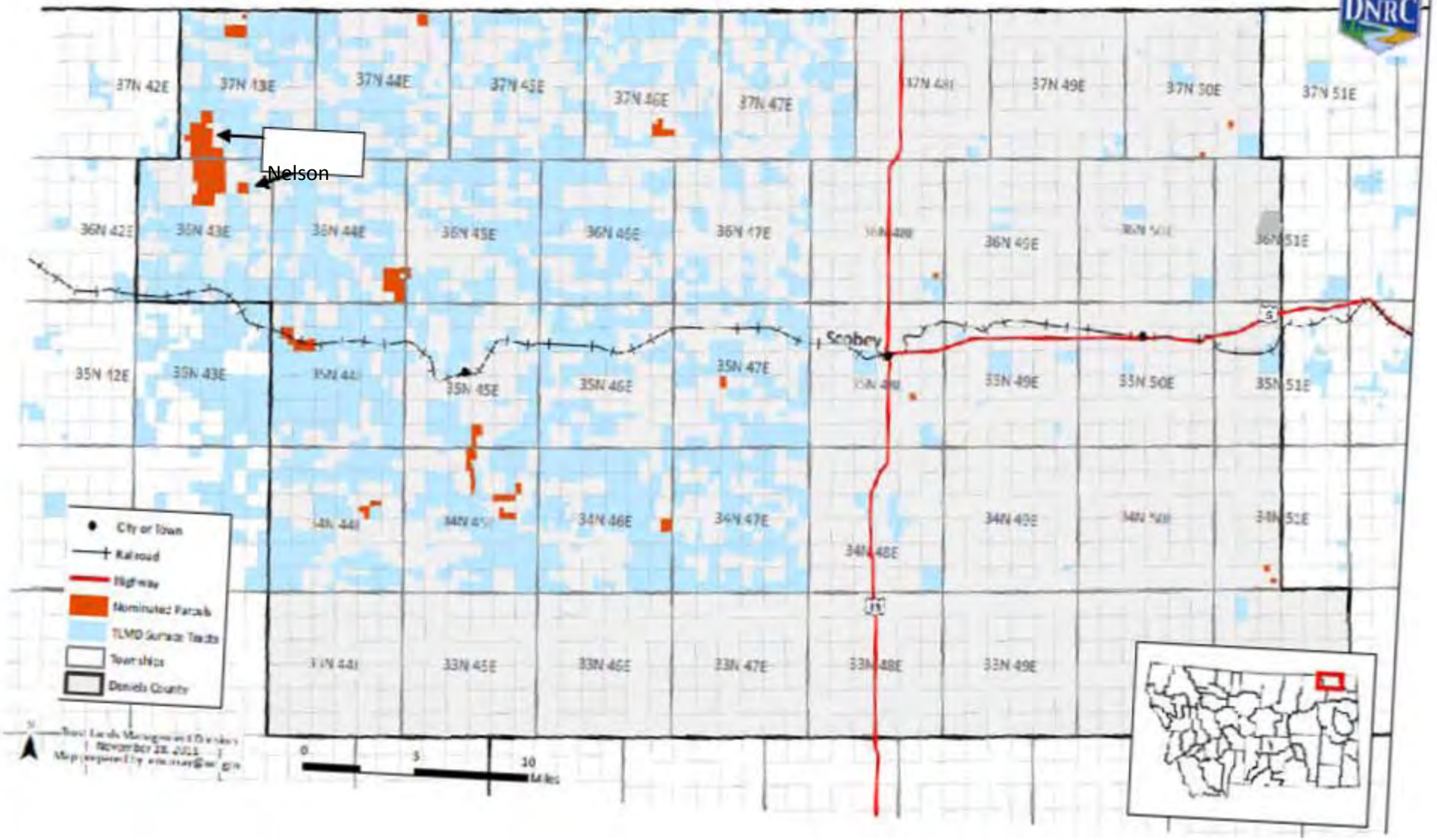
Total Acres: 2,858.10 **Total Value: $1,139,300**

Sale Price: These parcels were sold at public auction on November 8, 2012. Each parcel had only one bidder and was sold for the minimum bid amount listed above. The total for the above sale is $1,139,300.

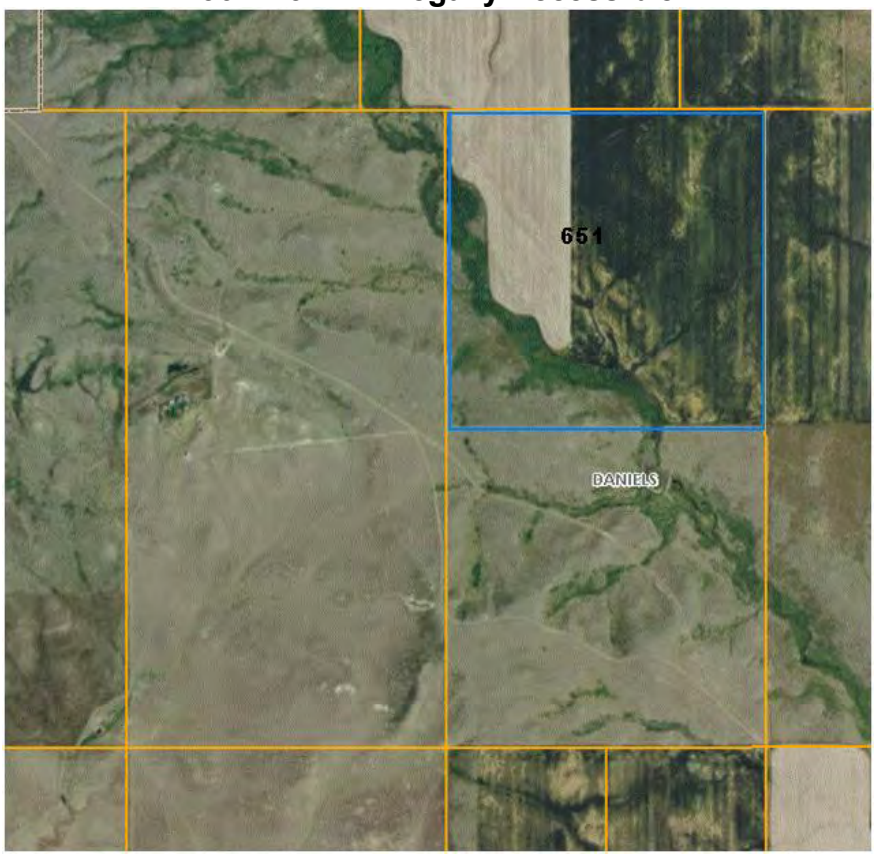
Recommendation: The Director recommends final approval of Land Banking Sale Parcels # 648, 649, 651, 652, 653, 654, 655, 656, 665, 666, 667, 668, 669, 670, 671, 672 & 673

The sales will be closed within 30 days of approval.

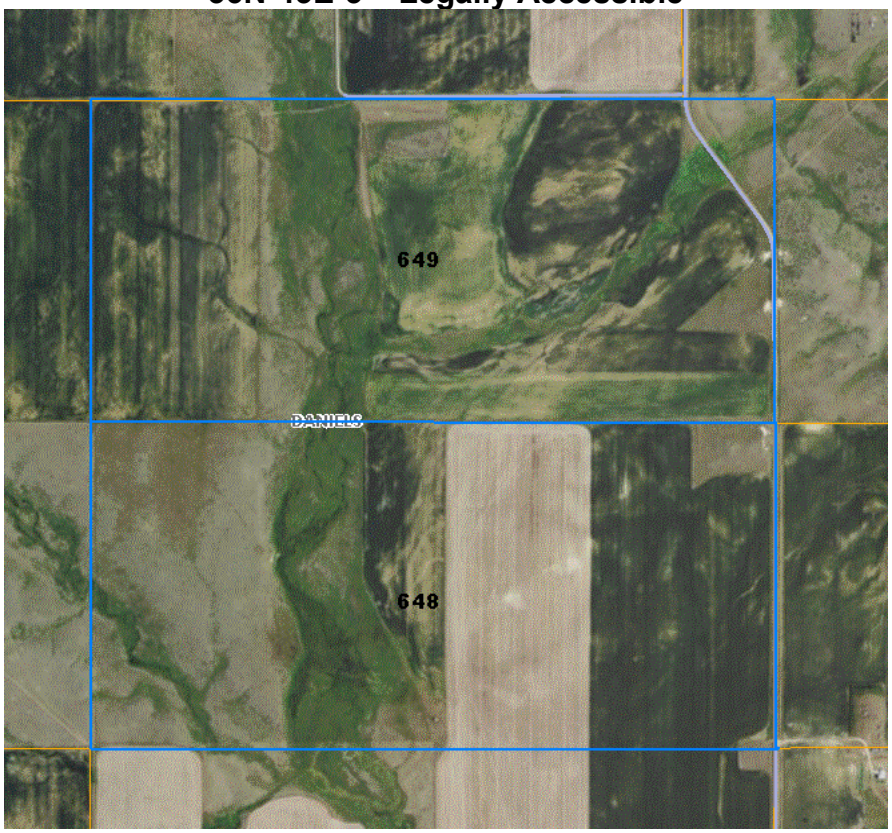
Daniels County Land Banking Sales



Sales #'s 651 – Nelson
36N-43E-4 – Legally Accessible

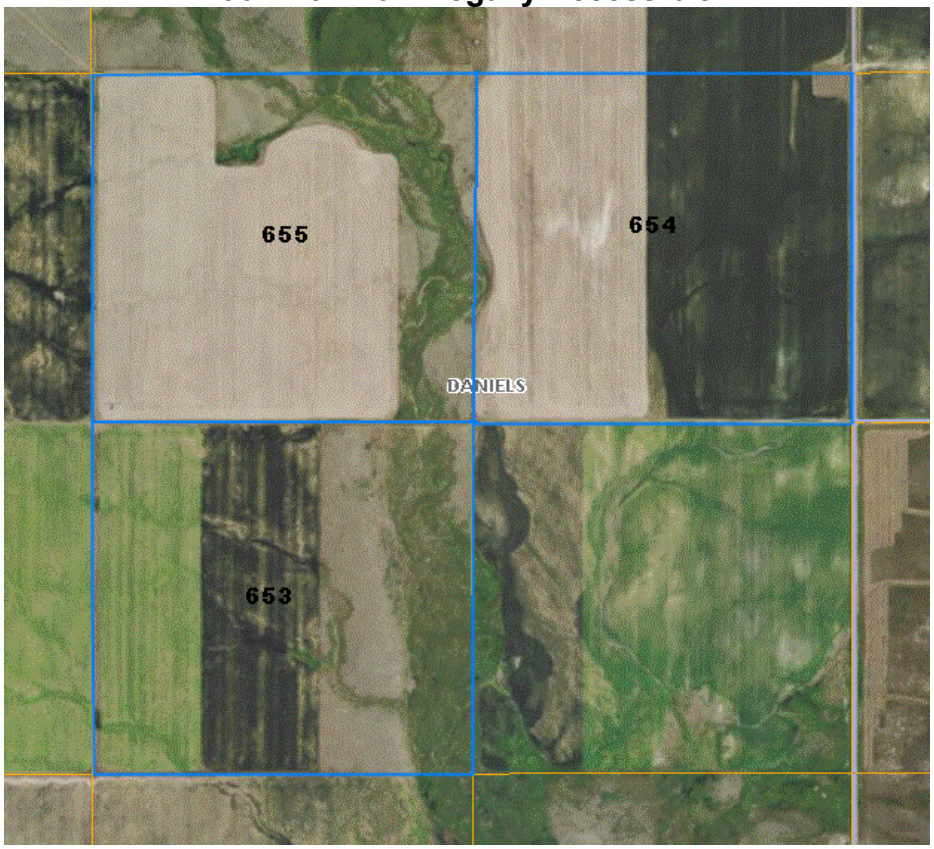


Sales #'s 648 & 649 – Nelson
36N-43E-3 – Legally Accessible

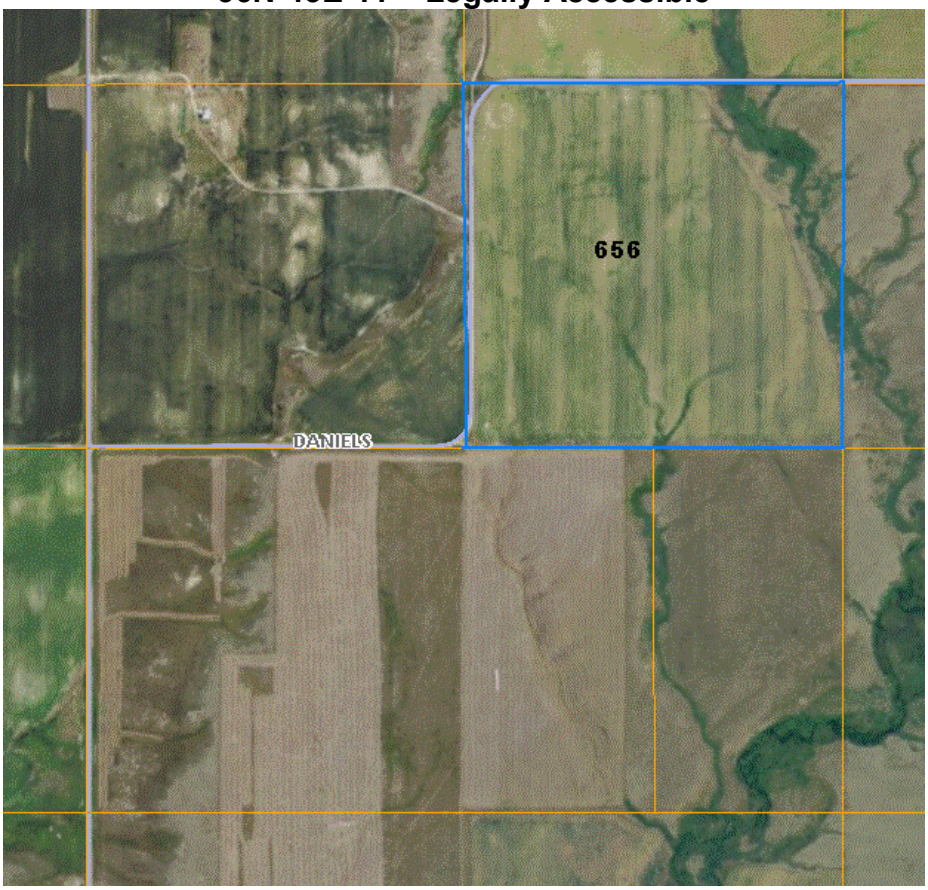


Sale # 652 – Nelson
36N-43E-9 – Legally Accessible

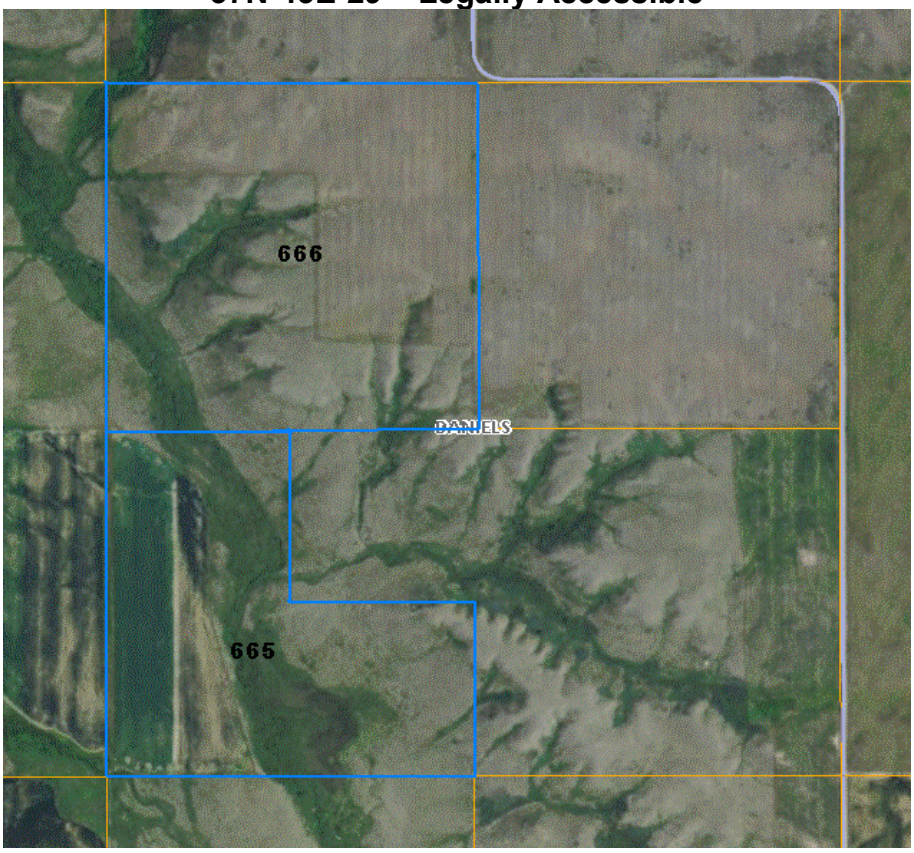
Sales #'s 653, 654 & 655 – Nelson
36N-43E-10 – Legally Accessible



Sale # 656 – Nelson
36N-43E-11 – Legally Accessible



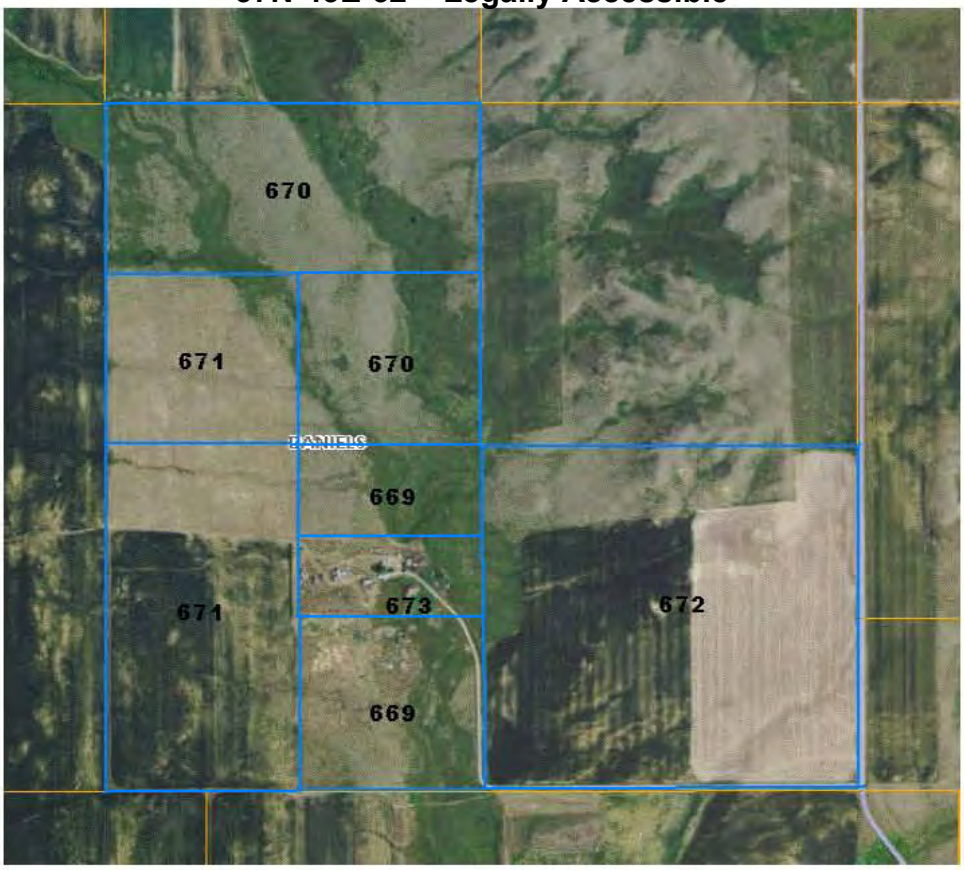
Sales #'s 665 & 666 – Nelson
37N-43E-29 – Legally Accessible



Sale # 667 – Nelson
37N-43E-30 – Legally Accessible

Sale #668 - Nelson
37N-43E-31 – Legally Accessible

Sale #'s 669, 670, 671, 672 & 673 – Nelson
37N-43E-32 – Legally Accessible



LAND BOARD AGENDA ITEM
November 19, 2012

FINAL APPROVAL FOR SALE OF LAND BANKING PARCEL # 685 FLATHEAD COUNTY

Seller: State of Montana, Department of Natural Resources and Conservation

Nominator: Parcel 685 – DNRC, Northwest Land Office

Location: Parcel 685 – is located 13 miles northwest of Whitefish.

Property Characteristics: Parcel 685 – This parcel is primarily forested with typical Western Montana forest types. Overall the parcel is average in forest productivity and revenue return. This parcel is almost entirely hillsides with 20% to 40% slopes. The sale of this parcel works towards accomplishing the goals of the Whitefish Neighborhood Plan as the entire parcel would be restricted to development to no more than 2 home site and there would be a permanent, public recreational trail easement.

Access: Parcel 685 – Is legally accessible via an adjacent block of trust lands to the west. The parcel does not have public road access.

Economic Analysis: Short term – The rate of return on the sale parcels is 0.30% for Common Schools Grant. They would continue to receive this return if the parcel is not sold.

Long term – The sale of this parcel would result in acquisition of lands that generate a higher rate of return. To date the average annual rate of return on acquisitions has been 1.91%, on acquisitions with income generated from annual lease payments.

Cultural/Paleontological Resources:

The state parcel proposed for sale (Land Banking Sale #685: T31N R22W Section 16) was inventoried to Class III standards for cultural and paleontologic resources on July 5th and July 6th, 2012. No cultural or paleontologic resources were identified. Further, neither Judith River nor Hell Creek geological formations occur on or beneath the ground surface of the subject state tract. The underlying geology is that of the Belt Series.
A cultural and paleontologic resources inventory report has been prepared and is on file with the DNRC, (Helena) and the Montana State Historic Preservation Office (Helena).

Background:

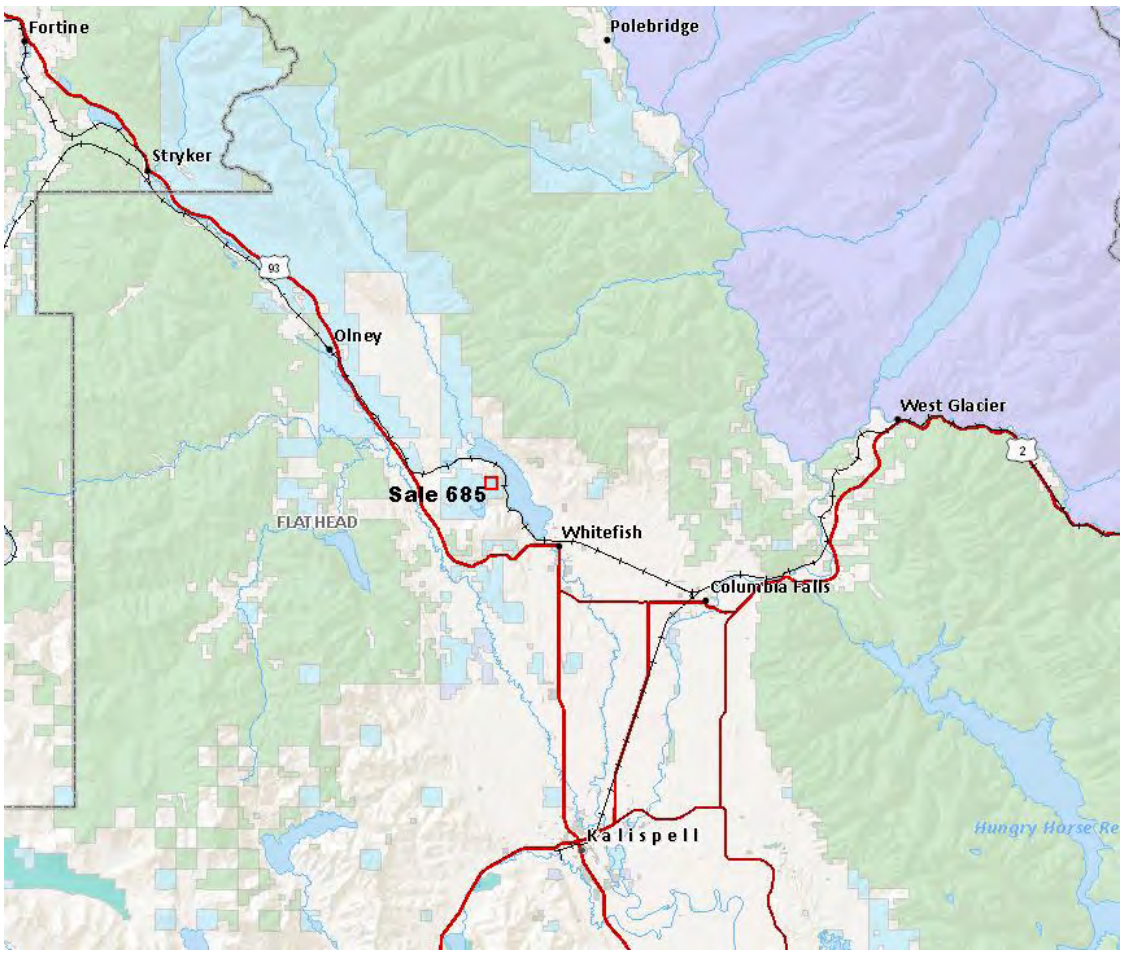
In August 2012, the Board approved this parcel to continue through the Land Banking sale evaluation process. In September 2012 the Board set the minimum bid at the appraised value with access as follows:

Sale #	# of Acres	Legal	Minimum Bid	High Bid	Trust
685	580±	E½, NW¼, E½SW¼, N½NW¼SW¼, Section 16, T31N-R22W	$2,900,000	$ 2,900,00	Common Schools
		Total Sale Price		**$ 2,900,000**	

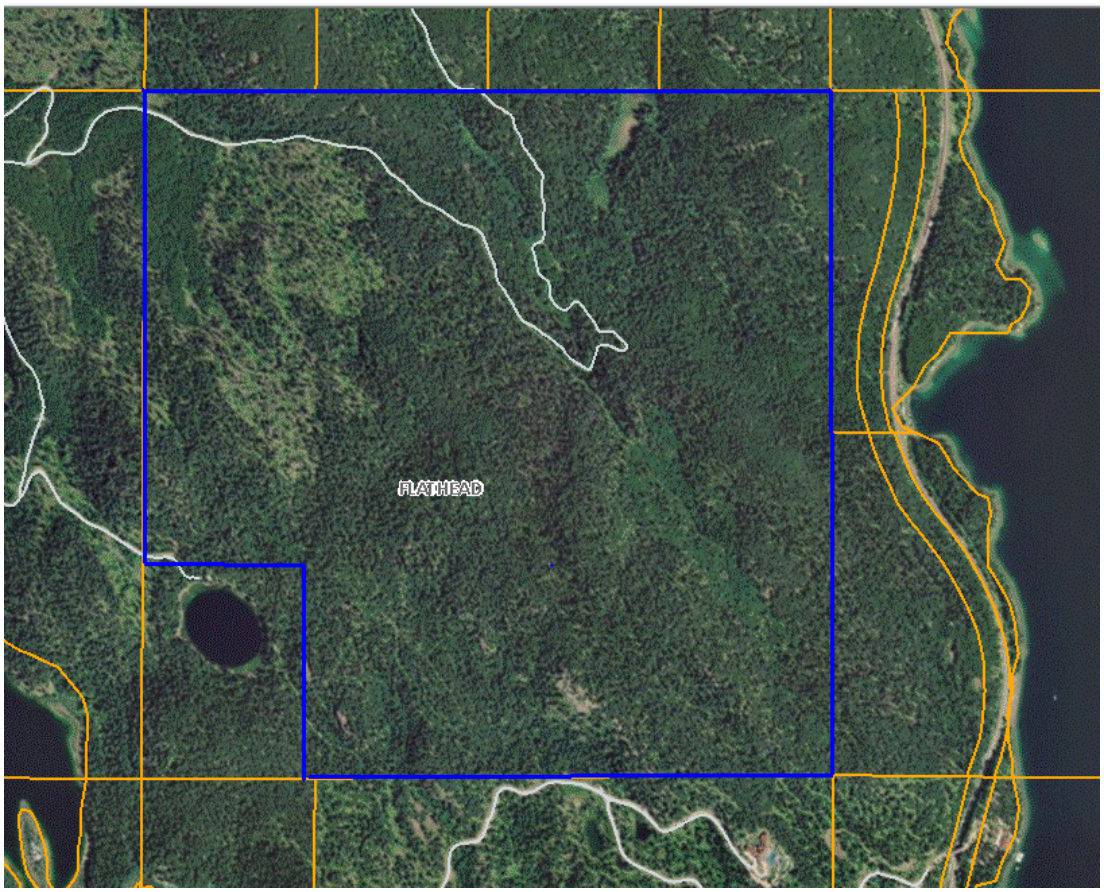
Sale Price: This parcel was sold at public auction on November 1, 2012. The parcel had only one bidder and was sold for the minimum bid amount listed above. The total for the above sale is $ 2,900,000.

Recommendation: The Director recommends final approval of Land Banking Sale #'s 685 for the purchase price listed above. The sale will be closed within 30 days of approval.

Flathead County Sale Location Map



Sale #685



1112-6

LAND BANKING ACQUISITIONS: FINAL APPROVAL

A. Milk River Ranch

B. North Swan (Phase II)

LAND BOARD AGENDA ITEM
November 19, 2012

FINAL APPROVAL FOR LAND BANKING ACQUISITION: Milk River Ranch

Seller:	Aageson Grain and Cattle
Prospective Buyer:	State of Montana, Department of Natural Resources and Conservation
Location:	Approximately 27 miles north of Hingham
Property Characteristics:	Farm and ranch property consisting of 1,513.5± acres. This property is directly adjacent to State trust lands with access to the Milk River. This property is being purchased in conjunction with DFWP's acquisition of the remaining 2,992± acres of the Milk River Ranch.
Recreational Opportunities:	Good upland bird, deer, elk, and antelope hunting opportunities
Access:	Legal access via county roads, adjacent school trust land, and Bureau of Reclamation lands.
Expected Annual Income to Trust Beneficiaries:	$30,969 without irrigated land, $32,633 with irrigated lands
Appraised Value/Purchase Price:	$1,069,226 without irrigated lands $1,159,083 with irrigated lands.
Proposed Closing Date:	By December 15, 2012

FINAL APPROVAL FOR LAND BANKING ACQUISITION
Milk River Ranch

Background
The proposed purchase of the Milk River Ranch in conjunction with the DFWP north of Havre in northern Hill County received preliminary approval from the Board of Land Commissioners (Board) in July, 2012. The DNRC has engaged in evaluation of the property as per Land Banking ARM 36.25.815 of the predominately agricultural component of the property lying south of the Milk River encompassing 1,513.5± acres.

Selection Considerations and Process
The primary purpose for this land transaction is improve income to the Common School trust beneficararies through acquisition of productive agricultural land. Acquisition of the property in conjunction with the DFWP will also provide public recreational access to the unique landscape of the Milk River Ranch.

Agency Recommendation:
The DNRC recommends the Board give final approval for acquisition of the Milk River Ranch, contingent on DFWP receiving final approval and funding for their portion of the purchase, 2,992± acres.

Due Diligence Property Evaluation Summary

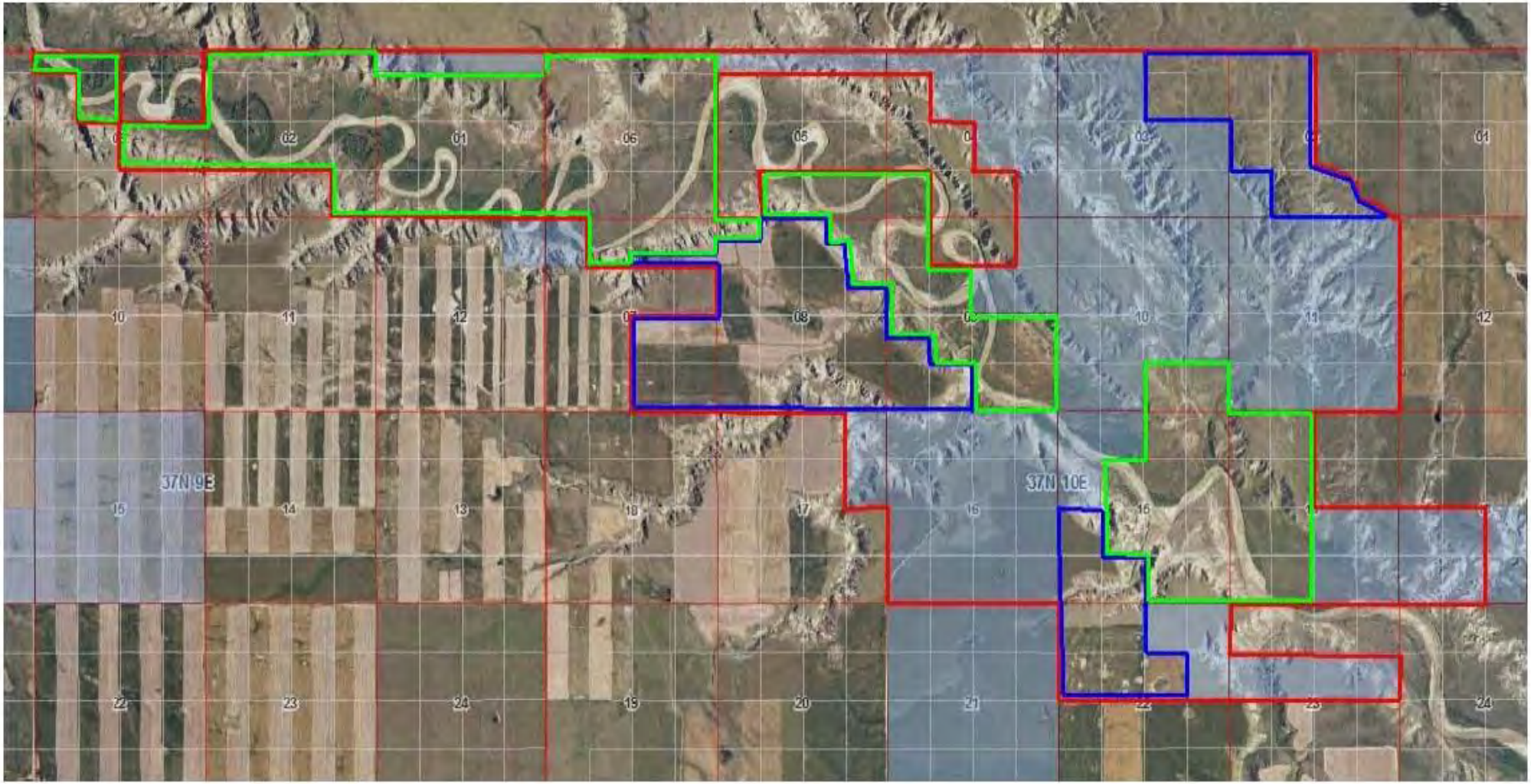
ACQUISITION REPORT	EXPLANATION
Seller's Disclosure	No known material defects in the property
Annual Rate of Return over 20 years	**TRUST** Common Schools; **NPV** $483,800.00; **ROR** 2.88%
Average Annual Rate of Return of Property Sold	**TRUST** Common Schools; **NPV** $132,135.00; **ROR** 0.79%
Annual Income	Dryland Agriculture – 921 acres @$31 per acre = 28,554 Grazing land – 535 acres @ $16 per AUM = $2,568 CRP land – 57.4 acres @ $15 per acre = 861 Total gross income - $31,983 without irrigation Irrigated agriculture – 87.60 acres @ $50 per acre = 4,380 Reduce dryland acreage by 87.60 acres. Total gross income with irrigation - $33,647

Classification of Property	Agriculture and Grazing
Soils/Range	Upland soils in this unit are silty, clayey loams and used as agland. They are nicely suited for farming and are class III with some class IV soils. Slopes are predominately 0 – 8 %. Telstad, Hillon, Nishon Cabbart, and Joplin loams make up approximately 45% of the unit. The bottomland soils make up a small portion of the unit and mostly clayey. These areas are coulee bottoms with grazing being the only practical use due to limitations. These soils have capability classes from class IV to class VII. There are some shallow Badlands that provide marginal grazing. These slopes are more than 60%.
Vegetation	The upland areas support a potential plant community consisting of western wheatgrass, needle and thread, and blue gramma. CRP property to be acquired is primarily Crested Wheatgrass and Alfalfa. The shallow site area (badlands and bottomland) supports a potential plant community consisting of western wheatgrass, green needlegrass and needleandthread grass.
Range Condition	Good. The Milk River Ranch holds a number of state leases and is a good grass manager.
Weeds	None were identified in a preliminary inspection.
Timber Cruises	No commercial timber exists on the property.
Water	There is limited water on the tracts to be acquired by DNRC. Some pits have been constructed for stock water. The acquisition lands are directly adjacent to existing trust lands with access to the Milk River.
Water Rights	Two stock water rights; 40F-158181-00, and 40F-158183-00, will transfer with lands received by DNRC. Water right 40F 16134600 provides water to an existing irrigation pivot in Section 8. There are questions regarding this water right which require remedy prior to the DNRC accepting an irrigated land value for the 87.61 acres.
Wildlife (T&E)	Good upland game bird and deer hunting opportunity. No T&E species are know to occur on site.
Fisheries	None

Wetlands/Flood Plain	None
Riparian Characteristics	This is a very arid location. There are some very small riparian areas near intermittent springs.
Cultural Values	Cultural and Paleontological exist on the property but are retained by the current owners through deed reservations.
Mineral Characteristics	The parcel is in an area of old (1970's) oil and gas exploration but no current development exists on the property or adjoining state land.
Aesthetic Values	The property has the typical characteristics of a prairie stream bottom with remnant cottonwood stands providing for a scenic area. There are many great views into the "Lost River", the Sweet Grass Hills and the grasslands of Canada.
Recreational Use	Good upland game bird hunting, deer, elk, and antelope hunting.
Zoning	None
Planning	None
Surrounding Land Use	The surrounding land uses are almost exclusively Dryland Farming, and Livestock Grazing.
Potential for Multiple Use	The primary use of the property is farming for the production of small grains and livestock grazing. The property receives recreational use during hunting season. The acquisition will greatly consolidate state trust land holdings, providing excellent recreational opportunities. There is some potential for mineral development.
Access to Parcel	County roads provide access to all areas of the parcel. Adjoining State Land and Bureau of Reclamation provide walk in access from all sides.
Infrastructure	Electrical power and communications lines run either through or nearby the parcels.
Adjacent Public Lands	A little more than 3,000 acres of state school trust land are directly adjacent to the project area. Bureau of Reclamation lands are also adjacent. These provide uninterrupted access on both sides of the Milk River for almost thirty miles. The ranch is adjacent to the Canadian border with hundreds of thousands of

	undeveloped land in Canada.
Adjacent Conservation Easements	No adjacent lands with Conservation Easements
Appraised Value	$1,069,226 without irrigated lands $1,159,083 with irrigated lands
Purchase Price	$1,069,226 without irrigated lands $1,159,083 with irrigated lands
Summary of Title report	The State has reviewed a preliminary title commitment. The Seller warrants the title shall be good, marketable and insurable subject to the exceptions approved by the State.
Summary Phase 1 Site Analysis	No environmental concerns were identified
Notification to Commissioners and Adjacent Land Owners	Completed, no comments received to date.
Comments Received During Public Involvement Process	None, it is anticipated that most public comment will be focused on the DFWP portion of the property acquisition.

MILK RIVER RANCH ACQUISITION



RED LINE = Exterior Boundaries of Ranch BLUE LINE = Parcels to be purchased by DNRC GREEN LINE = Parcels to be purchased by FWP Light Blue Shading = Existing Trust Lands

LAND BOARD AGENDA ITEM
November 19, 2012

FINAL APPROVAL FOR LAND BANKING ACQUISITION: NORTH SWAN (Phase II)

Seller:	The Nature Conservancy (TNC)
Prospective Buyer:	State of Montana, Department of Natural Resources and Conservation (DNRC)
Location:	The property is located in Lake County, within the Swan River State Forest, approximately 12 miles south of Swan Lake. The parcels are checker boarded with existing trust lands, on both sides of MT Highway 83.
Property Characteristics:	These acres are primarily forested with scattered openings throughout. The forest productivity of these lands is rated as high to very high for Western Montana. Historically these lands have been in commercial timber production. This property will be encumbered with conservation easements held by the Montana Department of Fish, Wildlife & Parks (FWP), and have an accompanying Multi Resource Management Plan, that allows for the continuation of timber management, which has been negotiated between FWP and DNRC.
Recreational Opportunities:	The property has a long history of public recreational use for hunting, fishing, horseback riding, hiking and snowmobiling. The recreational use permitted by former owners will continue under State ownership, and allowed under the existing conservation easements.
Access:	The tracts are accessible by State and private roads. Historically the property has been open to motorized and non-motorized public access. Purchase of this property would secure perpetual public access.
Appraised Value/Purchase Price:	**$400/acre x 14,624± acres = $5,849,600.00**
Proposed Closing Date:	By December 27, 2012

FINAL APPROVAL FOR LAND BANKING ACQUISITION
NORTH SWAN (Phase II)

Background:

The proposed purchase is the second phase of acquiring approximately 16,544 acres of North Swan property, located south of Swan Lake on the east and west sides of MT Highway 83 in Lake County. This acquisition received preliminary approval by the Board of Land Commissioners (Board) in October 2010. The DNRC completed the purchase of 1,920± acres in the Phase I acquisition in December 2010. We are now seeking Board approval to purchase the remaining 14,624± acres by December 27, 2012.

Public Involvement:

The North Swan property was nominated for state acquisition by The Nature Conservancy under the Land Banking process. Adjacent land owners, local, state and federal agencies and other interested parties were notified of the proposed Land Banking purchase. There was strong, positive response and support for this proposal.

Selection Considerations and Process:

DNRC secured a purchase agreement contingent upon findings of the due diligence as per Land Banking rule ARM 36.25.815. Many of the public comments received during the scoping process for the FWP's West Swan Valley Conservation Project Environmental Assessment favored DNRC's acquisition of this property.

The DNRC has conducted an in-depth evaluation of this tract for acquisition. A copy of the evaluation summary is attached. Following final approval by the Board, the DNRC will proceed to closing, and acquire the North Swan Phase II property for the appraised value of $5,849,600.

Conservation Easement:

The conservation easements are held by MT FWP. The easements allow for the continuation of forest management activities and restrict development of the land for all other uses.

Agency Recommendation:

The Director recommends the Board's final approval for acquisition of the North Swan Phase II property.

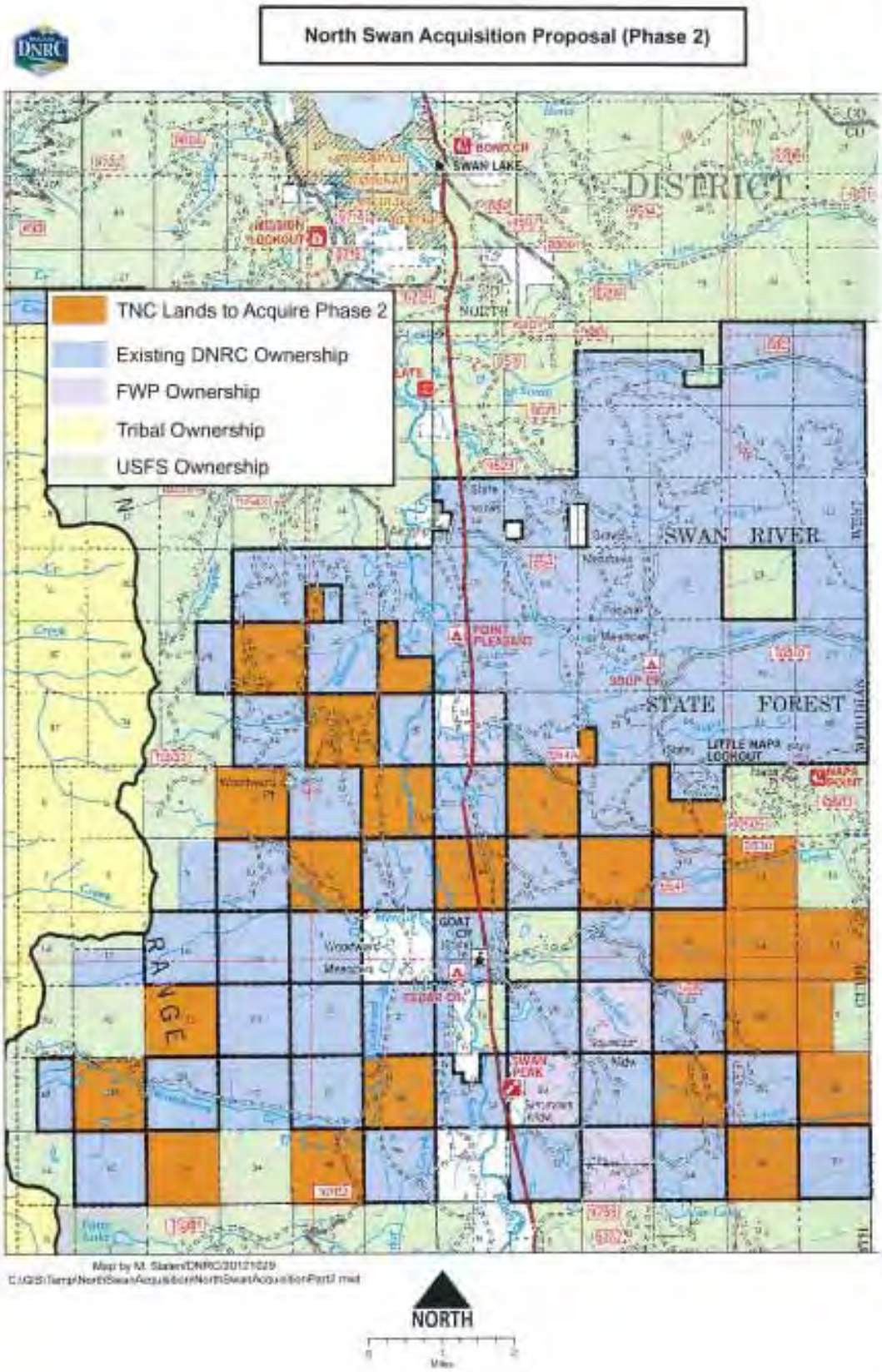
Due Diligence Property Evaluation Summary

ACQUISITION REPORT	EXPLANATION
Seller's Disclosure	No known material defects in the property
Annual Rate of Return over 60 years	**TRUST** Common Schools; **NPV** $1,522,450.00; **ROR** 1.80%
Average Annual Rate of Return of property sold	**TRUST** Common Schools; **NPV** $1,258,941; **ROR** 0.68%
Annual Income	Projected average annual income - $105,293/year, over a 60 year accounting period
Classification of property	Forest land
Soils/Range	The North Swan parcel is a forested tract of land with good forest soils providing good to excellent forest productivity.
Vegetation	The North Swan parcels are well stocked with regeneration, second growth and some merchantable timber with a species mix of ponderosa pine, Western larch, Douglas fir, and lodgepole pine. The riparian areas have aspen, cottonwood and scattered Engelmann Spruce. Native shrubs and grasses occur throughout the parcels.
Range Condition	N/A
Weeds	Weeds occurrence is similar to forested tracts throughout Western Montana. Plum Creek (previous owner) and The Nature Conservancy has been actively managing weeds along open road and areas of heavier concentration. Both chemical and biological control has been used with positive results.
Timber Cruises	Approximately 90% of the property is forested with the remainder in grassland, wetlands and riparian areas. Much of the property was logged in the 1970's, 80's and 90's, and was either planted or regenerated naturally. Some second growth stands are approaching merchantable size and will soon be available for commercial thinning. The existing composition is ponderosa pine, Western larch, Douglas fir, lodgepole pine and minor amounts of other conifers. Aspen and cottonwood stands are found around the wetland areas. It is estimated that the current merchantable volume is in excess of 7.80 MMBF. Productivity estimates indicate that the forested lands should grow at a rate of 185-290 BF per acre per year. The slope of the terrain varies with the majority suitable for tractor harvesting. The property is ideally suited for timber management.

Water	The parcels have several stream drainages that provide fish habitat and fishing opportunities.
Water Rights	N/A
Wildlife (T&E)	The parcels provides wildlife habitat for many of Montana's major big game species, upland game birds, waterfowl and non-game species. It is occupied grizzly habitat and gray wolves are known to inhabit the area.
Fisheries	Native and introduced game fish occur in the streams on the property. Woodward Creek and South Woodward Creek are major spawning streams for Bull Trout and Cutthroat Trout.
Wetlands/Flood plain	These acres are primarily forested with a few scattered small wetlands throughout.
Riparian characteristics	Scattered riparian areas are found throughout the parcels. These features are in good condition and provide valuable wildlife habitat.
Cultural values	The property has no recorded cultural features.
Mineral characteristics	The acquisition of the N Swan Phase II parcels does not include any mineral rights. All hard rock and gas and oil minerals are owned by third parties. In the lands surrounding the property, there has been no mineral exploration or mining activity.
Aesthetic Values	The property is located on both the east and west facing slopes in the Swan River Valley, along with tracts on the valley floor. They are a valuable part of the scenic Swan – Seeley corridor.
Recreational Use	The tracts provide wildlife habitat for a wide variety of large and small game animals plus water and riparian areas for waterfowl. The property has a long history of public use permitted by previous forest industry Landowners and TNC. Local communities and sportsmen strongly support this acquisition.
Zoning	None
Planning	This property comes with MT FWP conservation easements precluding future development on the 14,624 acres. The adjoining Swan River State Forest lands have no restrictions on future use.
Surrounding land use	Adjacent lands (Swan River State Forest and USFS) are used for forest management and recreational purposes.
Potential for multiple use	The primary use of the property would be timber production. The property is likely to get heavy recreational use during hunting season.
Access to parcel	All parcels being analyzed for acquisition will have road access for management of the individual parcels. The general public will have drive-in access on open roads and non-motorized access to all of the property. The property

	will be open to snowmobile use. The acquisition of this property will consolidate state ownership of several surrounding state parcels and will reduce the checkerboard land ownership pattern within the Swan River State Forest area.
Infrastructure	All of the N Swan Phase II acquisition lands are rural forestlands. All of the parcels have existing roads for the management of the forests and no other infrastructure exists within this property.
Adjacent public lands	The N Swan Phase II parcels are adjacent to Flathead National Forest lands, MT FWP lands, and existing State Trust lands.
Adjacent conservation easements	Of the N Swan Phase II parcels, all 14,624 acres have conservation easements on them held by the MT Department of Fish, Wildlife, & Parks. The conservation easements allow for the traditional uses of the land, forest management and recreation, but restrict future subdivision or the building of any structures; and places restrictions on grazing. Adjacent State Lands have no conservation easement on them.
Appraised Value	$5,849,600
Purchase Price	**TRUST** Common Schools — **Purchase Price** $5,849,600 — **Acres** 14,624±
Summary of Title report	No encumbrances that would negatively impact the value of the acquisition.
Summary Phase 1 site analysis	No cultural impacts other than logging were observed in the area.
Notification to Commissioners and adjacent land owners	The Lake County Commissioners and adjacent land owners (USFS & MT FWP) are aware of this proposed acquisition and no opposition has been noted.
Comments received during public involvement process	Public comments have been positive because of the importance of this area for public use and wildlife habitat. The public has supported the continued traditional uses of this property.

North Swan Phase II Acquisition Map



1112-7

EASEMENTS

A. Rights-of-Way
B. Public Recreational Use Easement – City of Whitefish

SUMMARY SHEET – RIGHTS OF WAY APPLICATIONS

HISTORIC COUNTY ROAD – *Madison County* (Page 3)
- *Cascade County* (Pages 6-18)

HISTORIC PRIVATE ACCESS ROAD – *Larry J & Bonnie Jo Cook* (Page 4)
- *Larry J, Bonnie Jo Cook & Kyle M Kegel* (Page 5)

PRIVATE ACCESS ROAD – *Mark A Pytosh* (Page 1)

PIPELINE (NAVIGABLE RIVER) – *Yellowstone Pipeline Co.* (Page 2)

AFFECTED GRANTS AND PROPOSED INCOME:

Common Schools	$ 63,421
Montana Tech	$ -0-
Pine Hills School	$ 221
Public Land Trust	$ 334
University of Montana	$ 2.184
Western/Eastern	$ -0-

AFFECTED COUNTIES: Cascade, Chouteau, Deer Lodge, Madison, Powell

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Mark A Pytosh 110 West 25th Street, 9th Floor New York, NY 10001
Application No.:	16102
R/W Purpose:	a private access road to a single family residence and associated outbuildings and for conducting normal farming and ranching operations
Lessee Agreement:	ok
Acreage:	4.14
Compensation:	$7,297.00
Legal Description:	60-foot strip through SE4, Sec. 34, Twp. 6N, Rge. 9W, Deer Lodge County
Trust Beneficiary:	Common Schools
Classification:	III

☞ Applicant does not meet the guidelines for a historic easement and is requesting an access easement through the Access Road Policy. The use of this road for the purposes described above has been reviewed and analyzed by the DNRC Anaconda office. The width of 60-feet was recommended by the DNRC due to cut and fill and drainage infrastructure. There will be minimal impact to the trust as a result of the grant of this easement. The Department recommends approval.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Yellowstone Pipeline Company 2626 Lillian Avenue Billings MT 59101
Application No.:	16103
R/W Purpose:	a buried 10” refined petroleum products pipeline
Lessee Agreement:	N/A (Navigable River)
Acreage:	0.13
Compensation:	$334.00
Legal Description:	50-foot strip across the Clark Fork River in the NW4SW4, Sec. 5, Twp. 9N, Rge. 10W, Powell County
Trust Beneficiary:	Public Land Trust
Classification:	III

☞ This application is to replace an existing pipeline cross the Clark Fork River that is nearly exposed. The existing pipeline is currently under an easement from the Board, issued in 1955. However, the new pipeline will be horizontally directional drilled in a location outside of the existing easement. All permits for the new pipeline corridor have been issued by the various permitting agencies. Additionally, there is a recommendation from other agencies as well as the Department to remove the existing pipeline as soon as practicable. This request is also recommended to be administered the same as the previous approved pipeline projects as follows:

- Recommended compensation is $50/rod
- Additional payments due at years 10 and 20 pursuant to a compounded annual interest rate of 2.5%
- Term easement of 30 years with opportunity to apply for renewal

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Madison County P O Box 278 Virginia City MT 59755
Application No.:	16104
R/W Purpose:	A public county road known as Wet Georgia Road
Lessee Agreement:	N/A (Historic)
Acreage:	1.86
Compensation:	$1,860.00
Legal Description:	60-foot strip through SE4SW4, SW4SE4, Sec. 6, Twp. 4S, Rge. 5W, Madison County
Trust Beneficiary:	Western/Eastern
Classification:	III

☞ Application is made pursuant to §77-1-130, Historic Rights of Way.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Larry J and Bonnie Jo Cook P O Box 762 Fort Benton MT 59442
Application No.:	16105
R/W Purpose:	a private access road for the purpose of conducting normal farming and ranching operations
Lessee Agreement:	N/A (Historic)
Acreage:	3.89
Compensation:	No Compensation Recommended
Legal Description:	20-foot strip through S2NE4, W2SE4 and SE4SW4, Sec. 34, Twp. 24N, Rge. 8E and 20-foot strip through Gov. Lots 3 & 4, Sec. 3, Twp. 23N, Rge. 8E, Chouteau County
Trust Beneficiary:	Pine Hills School, Montana Texh and Western/Eastern
Classification:	III

☞ In the late 1970's applicant's predecessor in interest acquired several easements across State trust land to his private lands. Access to the private lands occurs through a main road system and then via two forks that provide access to the residence of the property owner to the North and agricultural lands to the West and South. Due to a surveying error, segments of road on state land were labeled as being on private land. This error was not caught during review of the application, thus incomplete access was granted to both the residential and agricultural portions of the private lands. In the mid-1990's Bonnie Jo Cook and her husband purchased the property. When the error of incomplete access was later discovered, they applied for easements to correct the lack of access. While the purchase of one of the later easements did correct a segment needed, review of the road situation unfortunately did not pick up that the same application also included a segment that was already under one easement from the 1970's. Additionally, a segment of road on an adjoining state section that provides access to the residential property was, once again missed. Thus, there are currently four separate easements for the various road segments and access still is not secured.

Upon doing a field review and meeting with the Cooks the Department is recommending that rather than have the Cooks apply for a 5th easement, the Board grant two new easements to the applicants that will amend and supersede all previous easements so as to clear up the access situation. In this particular application request, the easement will be for the main stem of the road and one fork to get to the agricultural and grazing lands only. Since this road area has already been secured under three separate easements, the Department is not recommending compensation be paid again.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Larry J and Bonnie Jo Cook and Kyle Morrow Kegel P O Box 762 Fort Benton MT 59442
Application No.:	16106
R/W Purpose:	a private access road to a single family residence and associated outbuildings and for conducting normal farming and ranching operations
Lessee Agreement:	N/A (Historic)
Acreage:	4.71
Compensation:	$221.00
Legal Description:	20-foot strip through S2NE4, W2SE4, SE4SW4 and Gov. Lot 5, Twp. 24N, Rge. 8E; 20-foot strip through Gov. Lots 3 & 4, Sec. 3, Twp. 23N, Rge. 8E and 20-foot strip through SE4SE4, Sec. 33, Twp. 24N, Rge. 8E, Chouteau County
Trust Beneficiary:	Pine Hills School, Montana Tech and Western/Eastern
Classification:	III

☞ Pursuant to the history described on the preceeding page, this particular request is for the main stem of the access road and the fork providing access to applicant's residential property. Additional compensation is recommended with this easement for a 1,000-foot segment of road that had previously been overlooked in the grant of all other easements to the private property.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Cascade County 325 2nd Avenue North Great Falls MT 59401
Application No.:	16107
R/W Purpose:	a public county road known as Fox Farm Road
Lessee Agreement:	N/A (Historic)
Acreage:	1.82
Compensation:	$1,456.00
Legal Description:	30-foot strip through Gov. Lots 6 & 7, Sec. 23, Twp. 20N, Rge. 3E, Cascade County
Trust Beneficiary:	University of Montana
Classification:	III

☞ Application is made pursuant to §77-1-130, Historic Rights of Way.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Cascade County 325 2nd Avenue North Great Falls MT 59401
Application No.:	16108
R/W Purpose:	a public county road known as 45th Avenue SW
Lessee Agreement:	N/A (Historic)
Acreage:	0.91
Compensation:	$728.00
Legal Description:	30-foot strip through Gov. Lot 7, Sec. 23, Twp. 20N, Rge. 3E, Cascade County
Trust Beneficiary:	University of Montana
Classification:	III

☞ Application is made pursuant to §77-1-130, Historic Rights of Way.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Cascade County 325 2nd Avenue North Great Falls MT 59401
Application No.:	16109
R/W Purpose:	a public county road known as Simms-Cascade Road
Lessee Agreement:	N/A (Historic)
Acreage:	16.54
Compensation:	$13,232.00
Legal Description:	60-foot strip through NE4NW4, N2NE4, SE4NE4 Sec. 16, Twp. 18N, Rge. 1W; 60-foot strip through S2SE4 Sec. 26; 60-foot strip through N2, N2SE4, SE4SE4 Sec. 36, both in Twp. 19N, Rge. 2W and 60-foot strip through NE4NE4, Sec. 36, Twp. 20N, Rge. 3W, Cascade County
Trust Beneficiary:	Common Schools
Classification:	III

☞ Application is made pursuant to §77-1-130, Historic Rights of Way.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Cascade County 325 2nd Avenue North Great Falls MT 59401
Application No.:	16110
R/W Purpose:	a public county road known as Birdtail Creek Road
Lessee Agreement:	N/A (Historic)
Acreage:	8.58
Compensation:	$6,864.00
Legal Description:	60-foot strip through NW4SW4 Sec. 16, Twp. 18N, Rge. 3W; 60-foot strip through N2SE4, SW4SE4, SE4SW4 Sec. 24, Twp. 19N, Rge. 3W and 60-foot strip through Gov Lot 8, Sec. 16, Twp. 20N, Rge. 1W, Cascade County
Trust Beneficiary:	Common Schools
Classification:	III

☞ Application is made pursuant to §77-1-130, Historic Rights of Way.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Cascade County 325 2nd Avenue North Great Falls MT 59401
Application No.:	16111
R/W Purpose:	a public county road known as Shaw-Cutoff Road
Lessee Agreement:	N/A (Historic)
Acreage:	2.73
Compensation:	$2,184.00
Legal Description:	30-foot strip through E2SE4, NE4SE4, Sec. 26, Twp. 19N, Rge. 2W, Cascade County
Trust Beneficiary:	Common Schools
Classification:	III

☞ Application is made pursuant to §77-1-130, Historic Rights of Way.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Cascade County 325 2nd Avenue North Great Falls MT 59401
Application No.:	16112
R/W Purpose:	a public county road known as Old Ulm-Cascade Road
Lessee Agreement:	N/A (Historic)
Acreage:	6.68
Compensation:	$5,344.00
Legal Description:	60-foot strip through NW4SW4 Sec. 4; 60-foot strip through Gov. Lot 1 Sec. 5, both in Twp. 18N, Rge. 1E; and 60-foot strip through E2SE4 , Sec. 32, Twp 19N, Rge. 1E, Cascade County
Trust Beneficiary:	Common Schools
Classification:	III

☞ Application is made pursuant to §77-1-130, Historic Rights of Way.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Cascade County 325 2nd Avenue North Great Falls MT 59401
Application No.:	16113
R/W Purpose:	a public county road known as Willow Creek Road
Lessee Agreement:	N/A (Historic)
Acreage:	7.2
Compensation:	$5,760.00
Legal Description:	30-foot strip through N2NW4 and 60-foot strip through NE4NW4, N2NE4, Sec. 16, Twp. 19N, Rge. 8E, Cascade County
Trust Beneficiary:	Common Schools
Classification:	III

☞ Application is made pursuant to §77-1-130, Historic Rights of Way.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Cascade County 325 2nd Avenue North Great Falls MT 59401
Application No.:	16114
R/W Purpose:	a public county road known as Castner Falls Road
Lessee Agreement:	N/A (Historic)
Acreage:	6.37
Compensation:	$5,096.00
Legal Description:	30-foot strip through SE4SW4, SW4SE4 Sec. 26; 30-foot strip through NW4NE4; 30-foot strip through N2N2, Sec. 36, Twp. 18N, Rge. 1E, Cascade County
Trust Beneficiary:	Common Schools
Classification:	III

☞ Application is made pursuant to §77-1-130, Historic Rights of Way.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Cascade County 325 2nd Avenue North Great Falls MT 59401
Application No.:	16115
R/W Purpose:	a public county road known as Ten Mile Road
Lessee Agreement:	N/A (Historic)
Acreage:	3.64
Compensation:	$2,912.00
Legal Description:	30-foot strip through E2E2, Sec. 4, Twp. 18N, Rge. 2E, Cascade County
Trust Beneficiary:	Common Schools
Classification:	III

☞ Application is made pursuant to §77-1-130, Historic Rights of Way.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Cascade County 325 2nd Avenue North Great Falls MT 59401
Application No.:	16116
R/W Purpose:	a public county road known as Chestnut Valley Road
Lessee Agreement:	N/A (Historic)
Acreage:	1.82
Compensation:	$1,456.00
Legal Description:	30-foot strip through S2SE4, Sec. 16, Twp. 17N, Rge. 1W, Cascade County
Trust Beneficiary:	Common Schools
Classification:	III

☞ Application is made pursuant to §77-1-130, Historic Rights of Way.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Cascade County 325 2nd Avenue North Great Falls MT 59401
Application No.:	16117
R/W Purpose:	a public county road known as Upper Milligan Road
Lessee Agreement:	N/A (Historic)
Acreage:	6.75
Compensation:	$5,400.00
Legal Description:	30-foot strip through E2NE4 and 60-foot strip through SE4NE4, E2SE4, Sec. 36, Twp. 17N, Rge. 2E, Cascade County
Trust Beneficiary:	Common Schools
Classification:	III

☞ Application is made pursuant to §77-1-130, Historic Rights of Way.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Cascade County 325 2nd Avenue North Great Falls MT 59401
Application No.:	16118
R/W Purpose:	a public county road known as Calvert Road
Lessee Agreement:	N/A (Historic)
Acreage:	6.9
Compensation:	$5,420.00
Legal Description:	60-foot strip through E2E2, NW4NE4, Sec. 36, Twp. 17N, Rge. 4E, Cascade County
Trust Beneficiary:	Common Schools
Classification:	III

☞ Application is made pursuant to §77-1-130, Historic Rights of Way.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Cascade County 325 2nd Avenue North Great Falls MT 59401
Application No.:	16119
R/W Purpose:	a public county road known as Adel Road
Lessee Agreement:	N/A (Historic)
Acreage:	3.07
Compensation:	$2,456.00
Legal Description:	60-foot strip through SW4SW4, NE4SW4, NW4SE4, SE4NE4, Sec. 26, Twp. 15N, Rge. 1E, Cascade County
Trust Beneficiary:	Common Schools
Classification:	III

☞ Application is made pursuant to §77-1-130, Historic Rights of Way.

CERTIFICATE OF PURCHASE TO CONVEY A PERMANENT PUBLIC RECREATION USE EASEMENT
BETWEEN DNRC AND THE CITY OF WHITEFISH
November 19, 2012
Land Board

The City of Whitefish seeks to enter into a Certificate of Purchase with the State to purchase a public recreation use easement on State trust lands to achieve, in part, the long term objectives for State trust lands adjacent to Whitefish as outlined in the "Whitefish Area Trust Lands Neighborhood Plan".

Lands within the proposed easement area are located in the Beaver Lake and Skyles Lake areas near Whitefish and are within the area addressed in the "Whitefish Area Trust Lands Neighborhood Plan" approved by the Land Board in 2004, and subsequently adopted by Flathead County and the city of Whitefish in 2005. The Department continues to work with the City and other Whitefish citizens on implementation of the plan. Over the past six years, several transactions in the Whitefish area including land exchanges, leases, and land use licenses have addressed the goals of the plan.

The lands in the easement area encompass approximately 1,580 acres held in trust for the benefit of six beneficiaries: Common Schools; Montana Tech; Eastern College/Western College; Montana State University 2nd grant; Montana State University Morrill; and Public Buildings. Under terms of the easement, DNRC will continue commercial timber management within the easement area and the City of Whitefish will purchase the development rights and the right to plan, develop, and maintain a recreation system consisting of trail heads, a trail corridor, and day use sites within the easement area. Public access and traditional recreational use will continue within the easement area.

The proposed easement will meet local community goals for recreation access, restrictions on development to maintain open space, and the maintenance of a working forest landscape in perpetuity. The land associated with the proposed easement has a long history of forest management that has been compatible with public access, recreational use, and conservation.

Through a Certificate of Purchase between the City of Whitefish and DNRC, the city will purchase the 1,580+/- acre Public Recreation Use Easement for the appraised value of $7,297,500 with an initial payment of $2,600,00 and the remainder to be paid over a 3-year period with interest accruing upon the principal amount at the rate of 5.5 % per annum.

The Department recommends approval of the Certificate of Purchase whereby the City of Whitefish will be entitled to receive a permanent public recreation easement upon the completion of the payments due under the agreement.

CERTIFICATE OF PURCHASE
FOR ACQUISITION OF
PUBLIC RECREATION EASEMENT

This Certificate of Purchase is made and entered into effective this 19th Day of November, 2012, pursuant to § 77-2-327, MCA, by and between the State of Montana, State Board of Land Commissioners, by and through the Montana Department of Natural Resources and Conservation, whose address is P.O. Box 201601, Helena, MT 59620-1601, as the Seller (hereinafter referred to as the "State"), and Whitefish Legacy Partners, Inc., 525 Railway St. Suite 206, P.O. Box 1895, Whitefish, MT 59937, as the Purchaser (hereinafter referred to the as the "Purchaser") on behalf of the City of Whitefish, Montana, a Municipal Corporation, whose address is 418 E. Second St., P.O. Box 158, Whitefish, MT 59937, (hereinafter referred to as the "City").

The purpose of this Certificate of Purchase is to create an "installment sale contract" for the purchase and sale of a Deed of Public Recreation Use Easement under which the Purchaser will acquire an immediate right of use in real property, which right shall be held by the City, and which is subject to termination and forfeiture as provided herein. Nothing herein should be construed as creating an "earnest money contract", "trust indenture" or a "mortgage" or any right of redemption for a party in default of its obligations.

Accordingly, the parties hereby agree as follows:

That the State, in consideration of the total sum of seven million two hundred ninety-seven thousand five hundred dollars ($7,297,500), to be paid by Purchaser on behalf of the City on the terms and conditions set forth herein, and in consideration of the mutual promises contained herein, and other good and valuable consideration, agrees to sell to the Purchaser, on behalf of City, a Deed of Public Recreation Use Easement further described in Exhibit "1" attached hereto and incorporated herein by reference.

On or before the effective date of this Certificate of Purchase, the State of Montana has received at its address listed above a down payment of two million six hundred thousand dollars ($2,600,000), upon the purchase price, the receipt of which is hereby acknowledged. Contemporaneously with the execution of this Certificate of Purchase, the State and the Purchaser shall execute the Notice of Easement Purchaser's Interest, which is attached hereto and incorporated herein as Exhibit "2".

Thereafter, the unpaid balance resulting after the above-described down-payment, which is four million six hundred ninety-seven thousand five hundred dollars ($4,697,500), shall accrue interest at the rate of 5.5% per annum, and the Purchaser further agrees that subsequent payments in three equal installments that will be made on the corresponding dates opposite each payment amount as described below, until the full purchase price and accrued interest thereon has been paid:

November 19, 2013 $1,741,147.52

November 19, 2014 $1,741,147.52

November 19, 2015 $1,741,147.52

Any prepayment occurring prior to November 20, 2014, shall not reduce the total cumulative amount agreed to be paid, which is five million one hundred thirty-two thousand six hundred seventy-one dollars and eighty-two cents ($5,132,671.82). Any prepayment made after November 20, 2014 but before November 19, 2015, shall include a pro rata interest payment representing the interest accrued to date on the final annual payment.

Upon the successful payment of the final installment and the fulfillment by the Purchaser on behalf of the City of each and all of Purchaser's obligations under this Certificate of Purchase, the State shall deliver to the City the Deed of Public Recreation Use Easement in the form as shown in Exhibit "1" attached hereto, and by reference incorporated herein.

During the term of this Certificate of Purchase, the City, as third party beneficiary of this Certificate of Purchase shall be entitled to public recreational use of those State trust lands described in the Deed of Public Recreation Use Easement attached hereto as Exhibit "1", and by reference incorporated herein. Such right of use shall be subject to the terms, conditions, and limitations as provided in Exhibit "1".

Time is of the essence in the parties' performance under this Certificate of Purchase. In the case of an uncured breach by the Purchaser in the performance of an obligation under this Certificate of Purchase, including failure to make any of the payments as described hereinabove, but not including a breach of the terms or conditions of Exhibit "1" relating to the City's public recreational use of the State Trust Lands described therein, all of the Purchaser's and City's rights under this Certificate of Purchase shall terminate after: The State gives written notice of the breach to Purchaser Whitefish Legacy Partners, Inc., with a copy to the City at the addresses listed above; the written notice informs the Purchaser that it is granted 90 days to cure its default by submitting payment of the entire unpaid installment balance, including accrued interest, to the State; and such default is not cured within 90 days of the Purchaser's receipt of the written notice of breach or default.

After the termination of this Certificate of Purchase due to breach or default, the parties agree that the State may retain as liquidated damages whatever payments may have been made under this Certificate of Purchase, as well as any and all improvements that may have been made to the premises, as the full and final settlement for any damages due to the State for the breach.

Any risk of loss to improvements placed upon the above-described State trust lands by the City shall be borne by the City.

DATED this ____ Day of November, 2012.

WHITEFISH LEGACY PARTNERS, INC.

By:_____
Lindsay Akey, Board Chair

STATE OF MONTANA)
: ss
County of _____)

Signed and acknowledged before me on _____, 2012 by _____
_____, on behalf of whom this instrument was executed.

_____
(Signature of notary)

_____
(Printed name of notary public)
Notary public for the State of _____
Residing at: _____
(Affix Notarial Seal/Stamp Above) My commission expires:
_____

City of Whitefish, Montana

By:_____
John Muhlfeld, City of Whitefish Mayor

STATE OF MONTANA)
: ss
County of _____)

Signed and acknowledged before me on _____, 2012 by _____
_____, on behalf of whom this instrument was executed.

_____
(Signature of notary)

_____
(Printed name of notary public)
Notary public for the State of _____
Residing at: _____
(Affix Notarial Seal/Stamp Above) My commission expires:
_____

In Testimony Whereof the State of Montana has caused this Certificate of Purchase to be executed by the Governor and to be attested by the Secretary of State and countersigned by the Director of the Montana Department of Natural Resources and Conservation, and the Great Seal of

the State and the Seal of the State Board of Land Commissioners to be hereunto affixed this day of _____ A.D. 2012.

.....

Governor of the State of Montana.

ATTEST:

.....

Secretary of State.

Countersigned by:

.....

Director, Department of Natural Resources and Conservation

After recording, return to:
Montana Department of Natural Resources
and Conservation
Trust Land Management Division
Real Estate Management Bureau
P.O. Box 201601
Helena, Montana 59620

Beaver Lakes Area
DEED OF PUBLIC RECREATION USE EASEMENT

THIS DEED OF PUBLIC RECREATION USE EASEMENT (hereinafter "Easement") is made this ___ day of ___, 20_, by **THE STATE OF MONTANA, BOARD OF LAND COMMISSIONERS**, whose principal address is 1625 Eleventh Ave, Helena, Montana, 59620, (the "Grantor"), to the **CITY OF WHITEFISH, MONTANA**, whose address is 418 E. Second St., P.O. Box 158, Whitefish, Montana (the "Grantee").

Exhibits to this Easement include the following, all of which are incorporated herein by reference:

Exhibit A – Legal Description of the Property
Exhibit B – Map of the Property
Exhibit C – Baseline Map with Roads and Trails
Exhibit D – Recreation Plan, as amended

I. RECITALS

WHEREAS, the Grantor is the owner of certain real property in Flathead County (hereinafter the "Easement Area"), legally described in Exhibit A and depicted in Exhibit B; and,

WHEREAS, the Easement Area is designated as "public lands of the state" that comprise the "Public School Fund" articulated under Article X, Sections 2 and 11 of the Montana Constitution, and is held in trust for the benefit of six beneficiaries: the Common Schools (K-12 Education) Trust; the School of Mines Trust; the State Normal School; the Montana State University – Second Grant Trust; The Montana State University – Morrill Trust; and the Public Buildings Trust (hereinafter collectively referred to as the "Trusts"). These lands ("State Trust Lands") may be disposed of for the generation of revenue for the purposes for which they have been granted, consistent with general laws providing for such disposition and when the full-market value for the disposition has been paid or safely secured to the State of Montana; and,

WHEREAS, the Montana legislature, mindful of its constitutional obligations under Article X, Sections 2 and 11 of the Montana Constitution, directed that the State Trust Lands be held in trust for the benefit of the Trusts by the Montana Board of Land Commissioners (hereinafter the "Land Board") for management under Mont. Code Ann. Section 77-1-202 (2011), as amended, to secure the largest measure of legitimate and reasonable advantage to the

State, for the long-term financial support of education and for the attainment of other worthy objects helpful to the well-being of the people; and,

WHEREAS, to the extent consistent with the powers and duties of the Land Board described in Mont. Code Ann. Section 77-1-202 (2011), the people are entitled to the general recreational access and use of state lands as provided by Mont. Code Ann. Section 77-1-101(5) (2011), to the extent that the Trusts are compensated for the value of the recreational use, as required by Mont. Code Ann. Section 77-1-202(2) (2011); and,

WHEREAS, the unencumbered State Trust Lands and each of its associated rights—including the right to develop, the right of public access, and the right for public recreational use—represent collectively a valuable trust asset, no part of which may be disposed of except in pursuance of general laws providing for such disposition, and until the full market value of the estates or interests disposed of have been paid or safely secured to the state as required by Article X, Section 11 of the Montana Constitution; and,

WHEREAS, State Trust Lands are managed under a "multiple-use management" concept defined in Mont. Code Ann. Section 77-1-203 (2011), as the "harmonious and coordinated management" of all the various resources of the state lands; and,

WHEREAS, the coordinated management of the Easement Area is within the area administered by the "Whitefish Area Trust Lands Neighborhood Plan" (hereinafter "the Neighborhood Plan") approved by the Land Board in 2004, and subsequently adopted by Flathead County, Montana, and the City of Whitefish in 2005 and managed in accordance with state law. The goals of the Neighborhood Plan emphasize transactions that conserve Montana's plant, fish and wildlife habitat, protect clean water, minimize wildlife risk, enhance rural character, provide quality public recreational access, and generate long-term and full market economic return for Montana's trust beneficiaries; and,

WHEREAS, in order to carry out the goals of the Neighborhood Plan, the City of Whitefish and Whitefish Legacy Partners have developed partnerships with private landowners and state and federal agencies; have developed plans to guide the development and execution of the conservation, recreation and revenue-generation concepts in the Neighborhood Plan such as the 2006 "A Trail Runs Through It" Master Plan (TRTI); have facilitated conservation/recreation based land transactions, and have constructed a public recreation system called the "Whitefish Trail" based on the TRTI; and,

WHEREAS, the Easement Area contains popular recreation areas, important to the people of the State of Montana and residents of the City of Whitefish and Flathead County; and ensuring continued public access and traditional recreational use by the general public, consistent with the goals of the Easement, is in the public interest; and,

WHEREAS, the predominantly forested land in the Beaver-Skyles area constitutes an important wildlife corridor and contains an outstanding mixture of low elevation forests, important water features, sensitive natural communities, diverse wildlife and plant habitat, and high scenic and recreation value; and,

WHEREAS, the Easement Area has a long history of forest management use compatible with public access, conservation, and recreation values which Grantor and Grantee agree is a use compatible with the terms of this Easement that is in the public interest and should continue in a manner consistent with the Grantor's fiduciary responsibilities on behalf of the Trusts; and,

WHEREAS, continued management of the Easement Area as a "working forest" in accordance with the Statewide Forest Management Standards as defined and incorporated by reference herein (hereinafter "Statewide Forest Management Standards"), provides a renewable, long-term source of forest products; provides for long-term management of the forest in accordance with best management practices to prevent erosion, sedimentation and other degradation of soil and water resources; maintains a natural resource base for a forest products economy; and supports further investment in local businesses and community services that depend directly upon, or provide ancillary services to the forest products industry, all of which are worthy objects helpful to the well-being of the Trusts and the people; and,

WHEREAS, this grant is made pursuant to the Land Board's general authority under Mont. Code Ann. Section 77-1-202 (2011), and more specifically under its easement authority in Mont. Code Ann. Section 77-2-101 (2011); and,

WHEREAS, the Grantee seeks to carry out the purposes, terms, and exhibits of the Easement in their entirety, in order that the Easement Area remains subject to Grantor's management of the Trusts for their primary purpose as classified timber land, open and available to the public for general recreation use; and,

WHEREAS, the Grantee is authorized to acquire land and interests in land under City of Whitefish Resolution Number 12-38, adopted by the Whitefish City Council on November 5, 2012, consistent with the 2004 Whitefish Area Trust Lands Neighborhood Plan, and the 2006 "A Trail Runs Through It" Master Plan; and,

WHEREAS, this Easement has been purchased by the Grantee for full market value with funds from Whitefish Legacy Partners, Inc., a tax exempt Montana non-profit corporation; and,

WHEREAS, Grantor and Grantee agree that they are unable to foresee all potential future land uses, technologies, occurrences or opportunities affecting the Purposes of the Easement, and Grantor and Grantee will undertake all necessary acts to carry out the Purposes of the Easement.

II. AGREEMENT

In consideration of the sums paid by the Grantee for this Easement, and in further consideration of the mutual covenants and terms contained in this Easement, and pursuant to the laws of the State of Montana, Grantor grants and conveys to the Grantee, and the Grantee accepts, a public park and recreation easement (the "Easement") in perpetuity consisting of the following rights and restrictions over and across the Easement Area described in Exhibit A and depicted in Exhibit B. This Easement shall run with the land, and shall bind future purchasers, successors, assigns and transferees of all or part of the Easement Area.

A. PURPOSES

1. Grantor and Grantee agree that the purpose of this Easement is to allow for the Grantor's continued management of the Easement Area for commercial timber or in any other way subsequently determined to be consistent with its legal obligations to the beneficiaries of the Trusts and the terms of the Easement, while simultaneously protecting the public access, public recreation, forestland, and trust values (hereinafter "Values") of the State Trust Lands described in this Easement.

2. The City of Whitefish has purchased this Easement to perpetually protect the Values of the State Trust Lands described in this Easement with the Grantor retaining fee title to and overall management of the Land, subject to the terms and conditions of this Easement.

3. To assure the access to and availability of the Easement Area for general recreational use by the public, including noncommercial, hunting, fishing, and other recreation activities determined by the Land Board to be compatible with the use of the State Trust Lands; and to protect in a manner consistent with the Grantor's fiduciary responsibility to the Trusts and consistent with the terms of this Easement, the Easement Area's Values for the benefit of the Trusts and the public.

4. To ensure the long-term, professional management of the forest resources through forestry activities permitted hereunder; and to provide for commercial production of forest products in a manner compatible with the Values of the Easement Area and in accordance with the Statewide Forest Management Standards.

5. To provide for any other form of management for the benefit of the Trusts allowed under the Grantor's retained rights and consistent with the terms of this Easement.

B. GRANTOR'S RIGHTS AND DUTIES

Grantor reserves to itself, its heirs, successors, and assigns, in addition to the specific reservations made elsewhere in this Easement, all rights not granted or restricted in this Easement and all rights accruing from ownership of the Easement Area, including the right to engage in or permit others to engage in all uses of the Easement Area that are not expressly prohibited or restricted by this Easement and are agreed to be consistent with the purposes of this Easement, as set forth in Section II.A. The following enumerated rights are expressly reserved and, though not an exhaustive recital of consistent uses and practices, are deemed consistent with this Easement. As specified in the paragraphs below, Grantor's exercise of certain of these rights is conditioned upon prior notice to the Grantee under the procedures provided for in Paragraph II.F of this Easement (hereinafter referred to as "Prior Notice"). Furthermore, Grantor's exercise of many of these rights is conditioned upon Grantor's adherence to the Statewide Forest Management Standards.

1. Forest Management. Grantor reserves the right to conduct forest management and improvement activities, including commercial timber harvest, on all portions of the Easement Area, subject to the following provisions. All timber sales within the Easement Area will include as an objective the maintenance of existing recreational uses and provision for any proposed future recreational use that has been identified in an adopted Recreation Plan, (hereinafter "Exhibit D").

    a. Grantor reserves the right to conduct forest management in the Easement Area but outside of the designated Recreation System identified in Exhibit C, such activities to be conducted pursuant to the requirements of the Statewide Forest Management Standards, and in accordance with the terms of the Easement. Grantor will provide Grantee with Prior Notice of forest management activities in advance of and in addition to the statutorily-required notice provisions of the Montana Environmental Policy Act (hereinafter "MEPA").

    b. Grantor may enter into a contract with, or issue a license to, a third party for that party to conduct commercial timber harvest or other timber management activities on the Easement Area. Any such third-party management activities must not materially interfere with the rights granted to Grantee or retained by Grantor in this Easement and must be consistent with all provisions of this Easement, and Grantor must retain and accept full responsibility for compliance with these provisions. Timber harvest rights conveyed to a third party pursuant to this paragraph must be for a specified term of harvest activity.

    c. Transfer of Ownership. In the event that all or part of the underlying fee ownership interest is transferred by Grantor as provided in Paragraph II.B.11, or in the event that Grantor transfers its timber rights, Grantor shall require the transferee to prepare or adopt a forest management plan consistent with this Easement, which incorporates the Statewide Forest Management Standards, which provide for a healthy and biologically diverse forest, prevention of soil erosion and preservation of soil productivity, preservation of water quality, wetlands and riparian zones, preservation of scenic character, and enhancement of wildlife habitat and recreational resources.

2. General public access.

    a. Grantor holds, for the benefit of the public, the right of and duty to the public to access the Easement Area for general recreation use pursuant to Mont. Code Ann. Sections 77-1-203 (2011); and 77-1-801 through 77-1-815 (2011); and Admin. R. Mont. 36.25.143 through 36.25.162, as amended, and subject to the terms of this Easement. Grantor agrees to take no action, other than that authorized by this Easement, statute, or rule, to limit, prohibit or discourage access to the Easement Area.

    b. In the event that all or part of the Easement Area is transferred as provided in Paragraph II.B.11, Grantor shall ensure that proper notice is provided to Grantee for

Grantee to exercise the Grantee's Executory Right of Public Access, as provided in Paragraph II.C.3.

3. Roads. The right to construct, reconstruct, use, maintain, improve, and repair roads as needed to facilitate Grantor's management of the State Trust Lands and consistent with the terms of this Easement subject to the following:

   a. The right to reconstruct, use, maintain, improve, and repair roads in existence as of the date of the Easement is reserved by Grantor, as depicted on Exhibit C, for the management purposes allowed by this Easement. This right includes the right to decommission, and/or reclaim roads that will no longer be used for resource management purposes.

   b. The right to construct additional roads, not in existence as of the date of this Easement, is reserved by the Grantor; provided that the Grantor gives Prior Notice to Grantee which Notice includes road location and construction plans, in advance of, and in addition to statutorily required notice provisions of MEPA; and further provided that roads are available for public non-motorized use, subject to applicable law and subject to necessary closures and management constraints identified in Paragraphs II.B.7 and II.C.4, and otherwise in compliance with this Easement. If a new road extinguishes a designated trail or a component of the then existing Recreation System, as defined herein, Grantor agrees to relocate or restore the trail to provide substantially the same type and level of access. A new road may cross a designated Trail Corridor or component of the Recreation System without triggering the requirement to relocate or restore the Trail Corridor or component of the Recreation System, so long as the number of road crossings does not exceed three (3) crossings per mile of the Recreation System.

   c. The right to change the road classification, gate location, or type of road surface, from that existing at the time the Easement, subject to Prior Notice to Grantee, and in compliance with the Easement.

   d. In addition, Grantor may not block or otherwise discourage access to the Easement Area, except as specifically provided by this Easement, by vehicles from and over abutting Public Roads for access to the trailheads and other established recreational access points, such as the fishing access sites.

4. Structures.

   a. The right to maintain, renovate, repair, remove, improve, or replace existing residential and nonresidential structures, including but not limited to bridges, ditches**,** gates, fences, cattle guards, and culverts necessary for the land management activities allowed by this Easement**.**

   b. The right to place and construct new nonresidential structures necessary for the land management purposes allowed by this Easement, provided that:

(i) The Grantor may not construct or place a permanent timber processing mill on the Easement Area; and

(ii) The temporary placement of equipment and machinery for log chipping, tree limbing or scaling, or otherwise preparing logs for loading or shipment from the Easement Area is not deemed to be a "timber processing mill" and thus is permitted.

c. Grantor may construct or place on the Easement Area for temporary use a residential building or structure for resource-management purposes only, including but not limited to forest management; sand, gravel, mineral extraction; and road work.

d. Any building or structure must be removed from the property upon conclusion of the use for which the building or structure was erected or placed on the Easement Area. Upon removal, the impacted site will be restored and reclaimed.

5. Utility Lines, Communication Towers, Power Transmission Lines and Pipelines. Grantor reserves the right to construct or permit utility lines, communication towers, power transmission lines and pipelines (collectively referred to as a "utility facility") to be constructed on or across the Easement Area, in a manner that is consistent with the provisions of the Easement.

6. Chemical and Biological Agents. Grantor reserves the right to utilize agrichemicals, fertilizers, and biological agents for silvicultural purposes and for control of noxious weeds, for control of other nonnative plants not listed as noxious weeds, and for control of animals in a manner that is consistent with the provisions of the Easement.

7. Management of Public Use. Grantor reserves the right to regulate public use of the Easement Area to address reasonable concerns over the safety of Grantor, contractors, and the public for the use of the Easement Area, and as necessary to effect management of the Trust resource. Regulation shall be consistent with the provisions of this Easement. Grantor and Grantee will avoid closures of the Recreation System that unreasonably interfere with the public's right to access and use developed recreation improvements. Grantor will provide Grantee with Prior Notice of proposed regulations, closures or other management activities that would impact public use of the Easement Area.

8. Grants of Access.

a. Grantor shall control and be responsible for road access, management, and use regulation subject to the terms of this Easement; however, nothing in this Easement may interfere with a third party exercising any right of legal access across the Easement Area that was in effect at the time of the grant of this Easement, including access rights granted by operation of law under Mont. Code Ann. Section 77-1-209 (2011) and Admin. R. Mont. 36.25.1002. Grantor shall provide documentation of

roads and the rights of usage existing at the time of the grant of this Easement in the Easement Baseline Report provided for in Section E.

b. Grantor reserves the right to cross the Easement Area to access for all lawful purposes any adjoining or nearby lands owned by Grantor, whether such land is owned by Grantor at the time of the grant of this Easement or acquired by Grantor at a later time.

c. Grantor reserves the right to extend access rights to permittees, lessees, licensees, contractors, etc. for use of lands owned by Grantor at the time of the grant of this Easement or acquired by the Grantor at a later time, subject to the following provisions:

(i) On roads existing at the time of the grant of this Easement, as depicted on Exhibit C, the Grantor may, in its sole discretion, grant to third parties permanent or temporary access rights to cross the Easement Area, subject to Prior Notice to Grantee. Such right of use shall be consistent with this Easement, except such access rights guaranteed to Grantor's cabinsite lessees by Admin. R. Mont. 36.25.1002 shall be recognized notwithstanding the terms of this Easement. Grantor shall promptly provide the Grantee with a copy of any access easement, authorization, or agreement granted to a third party in the Easement Area.

(ii) Grantor may grant to third parties permanent or temporary access rights on new roads, not in existence at the time this Easement is granted, subject to Prior Notice to Grantee, and provided that the grant of access and the location and construction plans for any new road do not interfere with or alter the rights granted to Grantee herein.

(iii) On trails and other improvements within the Recreation System, and subject to Prior Approval of Grantee, which approval shall not be unreasonably conditioned, withheld or delayed, the Grantor may grant a temporary right of use on the Recreation System, provided that such use is consistent with the terms and conditions of this Easement and Grantor compensates Grantee for the increased maintenance, repair, or wear and tear caused to the Recreation System as a result of Grantor's issuance of a temporary right of use.

d. Grantor shall provide Prior Notice for any legal modification in the scope, type, level or duration of use for an existing access right on a road at the date of this Easement. Unless otherwise prohibited, any legal modification shall be consistent with the terms of the Easement. For any access right not in existence at the time of this Easement on an existing road, the scope, type, level and purpose of use shall be consistent with the terms of the Easement and subject to Prior Notice.

e. Future grants of access shall not prohibit public access to the Easement Area or inhibit recreational use by the general public.

9. Oil, Gas and Mineral Exploration, Extraction and Development. Grantor reserves the right to all oil, gas and mineral exploration, extraction and development on the land, but must give Prior Notice pursuant to Paragraph II.F to Grantee in the event that Grantor wishes to pursue, or enters into any lease or other agreement for oil, gas and mineral exploration, extraction and/or development on the Easement Area. Grantor shall relocate and restore Recreation System improvements impacted by the exploration or development activities, and require reclamation of site impacts. Grantor reserves the right to occupy so much of the surface of the Easement Area as is reasonably necessary for removal of the oil, gas, or minerals.

10. Gravel, Decorative Rock Extraction and Use. Grantor may extract gravel, rock, decorative rock, and road fill material found within the Easement Area for the construction and maintenance of roads or for sale. A total of two (2) separate gravel pits may be open at any one time, and the exposed surface area of both gravel pits together at any time may not exceed an aggregate of five (5) acres. Grantor shall relocate and restore Recreation System improvements impacted by the extraction activities, and gravel and borrow pits shall be re-graded and stabilized within a reasonable time after cessation of use.

11. Subdivision and Real Property Conveyance. For the purposes of regulating subdivision and real property conveyance, the Easement Area is considered a whole and undivided parcel of land at the time of the grant of this Easement except as otherwise provided in this Section and notwithstanding any section designations, aliquot parts, government lots or other legal or technical divisions or subdivisions that may exist at the time of the grant of this Easement. The following provisions apply to any division and conveyance of the Easement Area, or any portion thereof:

    a. Grantor may sell, convey, exchange, quit-claim, devise, gift or otherwise transfer title to the Easement Area in its entirety or in any or all of ten (10) separate lots, divided along the boundaries of the trust designations described in the Recitals and depicted in Exhibit B of this Easement.

    b. Notwithstanding any other provision of this Paragraph, transfer of the Easement Area to a federal or state agency for ownership and management as public land is permitted, subject to the terms and conditions of this Easement and does not constitute a division or transfer under the limits provided in this Paragraph.

    c. Grantor shall provide Prior Notice to Grantee of any real property transfer, and such transfer must be effected with an express provision in the instrument of conveyance stating that the Easement Area, or any part thereof, is subject to the terms and conditions of this Easement.

    d. Grantor shall provide a copy of this Easement and any related documents to the purchaser or other successors in interest to the Grantor. The terms of this easement shall be considered a deed restriction on the transfer of the underlying fee-simple title.

e. All rights to develop or use the Easement Area that are prohibited by or inconsistent with this Easement are extinguished and cannot be used to transfer development rights to other land, or to permit increased development on other land, or to achieve other regulatory mitigation credits or other similar accommodation on land not subject to this Easement. For purposes of this Easement, development rights include, without limitation, any and all rights, however designated, now or hereafter associated with the State Trust Lands or any other property that may be used to compute development density, lot yield, or any other development variable of or pertaining to the State Trust Lands or any other property.

12. Water Use. Maintenance, repair, and reconstruction of existing water facilities and the development of new water resources and facilities, including the diversion, withdrawal and use of water, consistent with valid water rights, for forestry operations and other uses consistent with the exercise of Grantor's rights provided herein; provided that any maintenance, repair, reconstruction, construction or development activities comply with state law and regulation and do not cause impairment of riparian areas, water quality or fish habitat.

13. Recreation Plan. Grantor reserves the right to review and provide input to Grantee in the development of any Recreation Plan (a "Plan"), including any amendments, as prepared and submitted by the Grantee as provided in Paragraph II.C. The Plan will be approved automatically unless: Grantor notifies Grantee within forty-five (45) days of receipt of a Plan that the Plan fails to comply with this Easement or other applicable law; or the Plan or some portion thereof requires MEPA or other public review and comment process. If the Plan fails to comply with this Easement, Grantor will provide Grantee an opportunity to remedy the non-compliance. Grantor's notification of non-compliance shall list and describe in reasonable detail all alleged non-compliance issues with respect to the Plan. Grantee shall be allotted a reasonable time in which to cure any non-compliance.

14. Inspect and Monitor. Grantor reserves the right to inspect all Grantee activities and facilities to ensure compliance with the Easement.

15. Damage Prevention. Grantor reserves the right to prevent any activity on or use of the Easement Area that is inconsistent with this Easement; and to require the restoration of any areas or features of the Easement Area that may be damaged by inconsistent activity or use by the Grantee in this Easement.

C. THE GRANTEE'S RIGHTS AND DUTIES

Grantor conveys the following rights to the Grantee, its successors and assigns:

1. Inspect and Monitor. Grantee reserves the right to inspect all Grantor activities and facilities to ensure compliance with the Easement.

2. Right to Restrict Development. Grantee has the right to enforce residential and commercial development restrictions within or on the Easement Area, which rights have been terminated under Paragraph II.B.11. Grantee does not have the right to develop or authorize development within or on the Easement Area for residential or commercial use.

3. Executory right of public access. Grantor grants and conveys to Grantee an Executory Right of Public Access. In the event all or any part of Grantor's underlying fee ownership interest in the Easement Area is disposed of as provided in Paragraph II.B.11, Grantor shall ensure that proper notice of such disposition is provided to Grantee prior to the final disposition. Upon the final disposition of the underlying fee ownership interest in a part or the entirety of the Easement Area as described above, Grantee shall record a Notice of Executory Interest (hereinafter "Notice") with the Office of Clerk and Recorder of Flathead County. Upon recordation of the Notice, the Grantee, its successors, or assigns, hold the rights, title and interest to the public's right to access within the Easement Area. Grantee may assign its Executory Right to a public entity subject to Prior Approval of the Grantor, which approval shall not be unreasonably conditioned, withheld, or delayed.

4. Right of Public Access to Recreation System. Grantee shall maintain the right of public access in the Recreation System. Grantee may regulate public use of the Recreation System to address reasonable concerns over the safety of Grantee, contractors, and the public for the use of the Easement Area, and as necessary to effect management of the Recreation System. Regulation shall be consistent with the provisions of the Easement. Grantor and Grantee will develop standards to avoid closures of the Recreation System that unreasonably interfere with the public's right to access and use developed recreation improvements.

5. Recreation System Planning, Development and Management.

   a. Grantee shall develop a Recreation Plan (attached hereto as Exhibit D), which provides the purpose, objectives, development, and management strategies for the Recreation System and Easement Area. The Plan shall address decision making responsibilities, funding, recreation system development, vegetation management, education, visitor management, and maintenance.

   b. The right to plan, construct, reconstruct, design, establish, maintain, and authorize permissible uses of the Recreation System in the Easement Area. This right includes the development of trails, trailheads and trailhead improvements; the installation of trail improvements such as steps, railing, bridges, culverts, benches, and small unlighted trail signs, day use areas, water access sites, picnic shelters and primitive camp sites for the use and benefit of the general public, subject to the terms of this Easement.

   c. Grantee is responsible for the management and use of the trail and lands by the public within the Recreation System. Recreation System construction, reconstruction, and

maintenance not described in the Recreation Plan requires Prior Approval by the Grantor, which approval shall not be unreasonably conditioned, withheld or delayed.

6. Recreation Use Authorization and Management Rights. Grantor grants to Grantee the following public use management rights, which may be assigned, delegated, or contracted to another entity upon Prior Notice to Grantor.

   a. Grantee may authorize noncommercial uses within the Recreation System in a manner consistent with this Easement and in accordance with the Recreation Plan, as amended and incorporated by reference in Exhibit D, including the authorization for the Beaver Lake Fishing Access Site which provides a public fishing access facility, including a boat launch and a parking area.

   b. Grantee may authorize noncommercial uses outside of the Recreation System, with Prior Notice to Grantor, and Prior Approval of Grantor if the authorized use is expected to involve 150 or more individuals.

   c. Right to signage. Small unlighted signs may be placed on the Easement Area by Grantee for the purposes of identifying and educating the public about the recreational improvements, directing public use and conduct to and through the Recreation System, educating the public about the Values of the Easement Area, including those associated with Easement Area and State Trust Lands generally, and otherwise achieving the goals of this Easement.

   d. Right to manage vegetation solely in conjunction with Recreation System planning, development, construction and maintenance activities.

   e. Right to host noncommercial public events such as equipment demonstrations, outreach activities, fundraising activities, educational activities, hikes, and bike events.

7. Right to future recreational improvements. Grantee may apply to Grantor for the placement of additional improvements such as a limited number of trailheads and trail corridors, parking areas, campsites and picnic areas for public use; subject to the Grantor's Prior Approval as to size, specific location, and design; and subject to the Grantee's payment of additional compensation for the placement of such improvements, approval for which shall not be unreasonably withheld.

8. Road Maintenance. Grantor and Grantee shall enter into a binding Memorandum of Understanding (hereinafter "MOU") regarding maintenance of roads used to provide vehicular access to the Easement Area and Recreation System trailheads. The MOU will outline the maintenance activities, roads to be maintained, and cost sharing for Road Maintenance between Grantor and Grantee, among other mutually agreeable road maintenance issues.

9. Forest Management.

a. Subject to the rights reserved to the Grantor in Paragraph II.B.1, Grantee may request a modification to a timber sale plan involving lands within the Easement Area but outside of the Recreation System. Grantor will be compensated by Grantee for the loss of revenue, if any, attributable to the Grantee's request only if Grantor's timber sale activities are otherwise in compliance with this Easement and Grantee requests additional modification. Grantee shall owe no compensation for requests to modify any timber sale if such sale is not in compliance with this Easement or if requests are received and followed as a result of comments received during MEPA review or any Equivalent Process.

b. Grantee has purchased the timber rights within the designated Recreation System as defined in and identified by Exhibit C, and all future components of the Recreation System identified and agreed to by the parties in Exhibit D. Grantee is solely responsible for the management of the timber within the corridor. Grantee may request that Grantor or other third party harvest timber within the Recreation System, provided that the forest management activities will take place in accordance with the provisions of the Statewide Forest Management Standards, and in accordance with state law. Grantee may enter into a contract with a third party for that party to conduct commercial timber harvest or other timber management activities within the Recreation System. Grantee must obtain a Land Use License to cross State land for timber management activities within the Recreation System. Any such third-party management activities must not materially interfere with the rights granted to Grantee or retained by Grantor in this Easement. Grantee will provide Grantor with Prior Notice of forest management activities within the Recreation System.

10. Damage Prevention. The right to prevent any activity on or use of the Easement Area that is inconsistent with this Easement; and to require the restoration of any areas or features of the Easement Area that may be damaged by inconsistent activity or use by the Grantor of this Easement.

D. RESTRICTIONS ON GRANTOR'S ACTIVITIES

Without limiting this general prohibition, the following activities and uses are expressly prohibited or restricted.

1. Forest Management. Grantor does not retain the right to conduct forest management activities within the Recreation System unless specifically requested by Grantee as provided for in Paragraph II.C.9.

2. Subdivision. The partition, division, subdivision or de facto subdivision of the land for any use is prohibited, except as specifically provided for in Paragraph II.B.11.

3. Land Use. Except as specifically provided in Paragraph II.B.11, no residential, industrial, or commercial development or building development activities are permitted on the Easement Area.

4. Roads. The right to construct, reconstruct, use, maintain, improve, and repair roads may not discourage access to and use of the Easement Area, including the Recreation System constructed by Grantee, by the general public for traditional non-motorized recreational uses except to the extent necessary to facilitate Grantor's management of the Easement Area for the benefit of the Trusts. Grantor's exercise of its right is further conditioned in that:

   a. Grantor will provide Prior Notice to Grantee before decommissioning any roadway.

   b. Grantor shall not decommission any roadway that provides motorized access to a designated trailhead within the Recreation System without Grantee's Prior Approval.

5. Buildings and Structures. The construction or placement on the Easement Area of any building or structure is prohibited, except as specifically provided for in Paragraph II.B.4 of this Easement.

6. Shooting Preserve and Related Activities. The use of the Easement Area as a game farm, game bird farm, shooting preserve, fur farm, zoo, or menagerie, or in connection with the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any domestic or wild animal is prohibited.

7. Waste Disposal. The processing, dumping, storage or other disposal of waste, refuse, and debris on the Easement Area is prohibited, except for nonhazardous and nontoxic materials generated by activities permitted on the Easement Area. Wood waste products generated through forest management activities on the Easement Area may be disposed of on the Easement Area in a manner consistent with the Statewide Forest Management Standards.

8. Hazardous Materials. Any petroleum products, explosives, hazardous substances, toxic substances, and any other substance which may pose a present or potential hazard to human health or the environment shall not be released or dumped on the Easement Area at any time, and shall not be stored or used, except as lawfully stored and used in necessary quantities for silvicultural purposes or for the oil, gas, and mineral exploration and development rights retained by the Grantor in this Easement. The installation of any underground storage tank is prohibited.

9. Restriction of Public Access Rights. Grantor will refrain from taking action to prohibit or unreasonably limit public outdoor recreational use of the Easement Area except to the extent necessary to conduct Grantor's activities for the benefit of the Trusts and as explicitly provided in II.B.7 of this Easement. Users of the Recreation System shall not be required to purchase a recreational use permit so long as their use is restricted to the

Recreation System. Recreational use of the Easement Area outside of the Recreation System requires all permits required by state law.

E. EASEMENT BASELINE REPORT

Grantor and Grantee agree to develop an Easement Baseline Report (hereinafter "Report") within ninety (90) days of the Effective Date of this Easement. The Report will include an accurate representation of the condition of the Easement Area as of the date of the conveyance of this Easement, and a description of all current roads, planned roads, skid trails, recreation trails and planned recreation trails and related improvements.

F. PRIOR NOTICE AND PRIOR APPROVAL

Whenever Grantor or Grantee is required to provide notice under the terms of this Easement, the notifying party ("Notifying Party") must notify the other party ("Notified Party") before undertaking certain activities that are not subject to approval by the Notified Party. This requirement, termed "Prior Notice," informs the Notified Party of the location and type of potential impacts on the Easement Area from a planned or proposed action of the Notifying Party. Whenever Prior Notice only is required under this Easement, the Notifying Party shall notify the Notified Party in writing not less than thirty (30) days prior to the longer of: (i) the date the party intends to undertake the activity giving rise to the notice requirement; or (ii) initial public notice if the activity is subject to MEPA or Equivalent Process analysis

Whenever required under the terms of this Easement, a party hereto ("Requesting Party") must obtain approval from the other party ("Approving Party") before undertaking certain specified activities. This requirement is termed "Prior Approval." Whenever Prior Approval is required, the Requesting Party shall request approval for the proposed activity, not less than sixty (60) days before the proposed date that the activity is to be initiated. The request must describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Approving Party to make an informed judgment as to the consistency of the proposed activity with this Easement. The Approving Party has sixty (60) days from its receipt of the request to notify the Requesting Party of its approval or denial of the activity unless MEPA or Equivalent Process analysis is required before the Approving Party may render a decision, in which case the time for approval shall be extended only to the minimum extent necessary to complete the MEPA review or Equivalent Process. In any such instance, the Approving Party's approval shall not be unreasonably denied.

If the Approving Party does not send its response to the Requesting Party's request within sixty (60) days of receipt or does not inform the Requesting Party that the Prior Approval process must be extended, then the proposed activity shall be deemed approved, and the Approving Party shall have no further right to object to or modify the activity identified by such request, unless or except when the requested activity violates the terms of this Easement, or unless the requested activity or the deemed approval violates Montana Law.

The Notifying Party shall be under no liability or obligation for any failure to give Prior Notice for any activity undertaken by the Notifying Party necessitated by virtue of fire, flood, or

other unforeseeable event, or any other emergency; however, after such an event, if there is damage to the Easement Area, the Notifying Party shall notify the Notified Party of the damage as soon as is practicable.

Any notice, response, demand, request, consent, approval, denial, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by registered or certified mail, return receipt requested, or delivered by overnight courier or personal delivery service with documentation of receipt and the date of delivery. A notice is considered given on the date of its receipt; a response is considered given on the date of its posting by the respondent. Communications should be addressed as follows:

To Grantor:	The Department of Natural Resources and Conservation Northwestern Land Office 655 Timberwolf Parkway, Suite 1 Kalispell, MT 59901
With a Copy To:	The Department of Natural Resources and Conservation The Department Director P.O. Box 201601 Helena, MT 59620
To Grantee:	City of Whitefish Attention: City Manager P.O. Box 158 Whitefish, MT 59937
With a Copy To:	Whitefish Legacy Partners, Inc. P.O. Box 1895 Whitefish, MT 59937

Or to such address as either party from time to time shall designate by written notice to the other.

G. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES

If the Grantee determines that the Grantor has violated the terms of this Easement or that a violation is threatened, the Grantee shall give written notice to the Grantor of the violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the terms of this Easement, to restore the portion of the Easement Area so damaged.

If the Grantor determines that the Grantee has violated the terms of this Easement or that a violation is threatened, the Grantor shall give written notice to the Grantee of the violation and demand corrective action sufficient to cure the violation and, where the violation involves injury

to the Easement Area resulting from any use or activity inconsistent with the terms of this Easement, to restore the portion of the Easement Area so damaged.

If a violating party fails to cure the violation within thirty (30) days after receipt of notice from the other party of a violation—or under circumstances where the violation cannot be cured within this 30-day period such longer period as the parties agree is necessary or reasonable if the parties cannot agree to a cure period—the non-violating party may pursue any remedy at law or in equity. Alternatively, the non-violating party may, in its sole and absolute discretion, seek specific performance, injunctive relief, and/or cure such violation if the violating party refuses or fails to cure within the applicable time period, or emergency circumstances or prevention of a threatened breach requires more immediate enforcement action. The violating party shall pay all reasonable costs and expenses of any kind incurred by the non-violating party in curing the violation. Nothing prevents either party from seeking injunctive relief, as allowed under Montana law.

Nothing contained in this Easement may be construed to entitle either party to bring any action against the other party for any injury to or change in the Easement Area resulting from causes beyond the party's control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes.

H. EXTINGUISHMENT, CONDEMNATION AND REIMBURSEMENT

This Easement constitutes a real property interest immediately vested in the Grantee. It is the unequivocal intention of the parties that the recreation purposes of this Easement be carried out in perpetuity, and this intention is reflected in the Grantee's payment to secure public recreational access in perpetuity. If circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement may be terminated, whether in whole or in part, by executing a recordable document evidencing the termination of this Easement or by instituting judicial proceedings in a court of competent jurisdiction. The parties agree that changed economic conditions of either party may not be considered as circumstances justifying the modification or termination of this Easement.

If this Easement is terminated by judicial proceedings, or should any of Grantee's interest in this Easement be extinguished by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation with the Prior Notice, the Grantee is entitled to the value of the rights acquired as determined by judicial proceedings. Grantee is further entitled to the value of any improvements to the land constructed as part of the Recreation System to the extent that such improvements are made by or at the expense of Grantee.

I. ASSIGNMENT

This Easement is transferable and may be assigned by the Grantee to a public entity authorized to acquire and hold such Easement under the laws of the state of Montana, subject to

the written approval of the DNRC Director. As a condition of such transfer, the Grantee shall require that the public recreation values and conservation purposes that this Easement is intended to advance shall continue to be carried out in perpetuity.

J. AMENDMENT

If circumstances arise under which an amendment to or modification or restatement of this Easement is appropriate, the Grantor and the Grantee are free to jointly amend and/or restate this Easement; provided that no amendment or restatement may be allowed that will render this Easement or any portion thereof void, and any amendment must be consistent with the purposes of this Easement and agreed to by both parties.

K. RECORDATION

Grantee shall record this instrument or an abstract of it in a timely fashion in the official records of the Flathead County, Montana Clerk and Recorder's Office, and may re-record it at any time as required to preserve its rights in this Easement.

L. DEFINITIONS

The following terms shall have the definitions ascribed to them below:

1. "Commercial Use" means any activity in which an individual, corporation, group, or other entity charges a fee or obtains other consideration. Such uses include but are not limited to outfitting, guiding, and equipment sales. Such uses also include any industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial use, multifamily residential development, or other similar business. Commercial uses do not include fundraisers, equipment demonstrations, and organized events that do not generate profit for an individual, corporation, or other for-profit entity.

2. "Decommission" means to remove a road from service to prevent motorized use. Decommissioning of a road may be accomplished by gating or otherwise blocking access to the road.

3. "Easement Area" means the land encumbered by this Easement, as identified in Exhibits A and B, including the Trail Corridor and Recreation System.

4. "Ecological Values" means the importance Montanans place on natural and scenic open space, water, native plants, fish, wildlife, cultural resources, and public lands of the State held in trust for the people. These values are ensured by Montanans' fundamental Article II, Section 3, Constitutional right to a clean and healthful environment and the interrelated mandate provided in Article IX, Section 1, of the Montana Constitution, that the State and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations; and are further recognized by the

codification in statute of rights of access, use, and enjoyment of "Montana's quiet beauty."

5. "Effective Date" means the date on which the Easement has been signed by both parties and approved by the Land Board.

6. "Equivalent Process" shall mean the federal process required for action on the Easement Area if the Easement Area is owned by any federal agency or the United States of America, or a process equivalent in all respects to MEPA, including but not limited to public comment periods, if the Easement Area is owned by any person or entity other than the State of Montana or the United States of America.

7. "Noncommercial Uses" mean uses which do not generate fees or other consideration for an individual, corporation, group, or other entity. Noncommercial uses include fundraisers, equipment demonstrations, and organized events such as classes, races, and group activities.

8. "Parcel" means any piece of land not larger than one section.

9. "Public Entity" means any governmental agency or entity, whether federal, state or a subdivision of the state.

10. "Purposes" means the Purposes outlined in Section II.A herein.

11. "Reclamation" means the return of lands disturbed by a road bed, timber management activities, or mineral management activities to a state comparable to that of the pre-disturbance landscape or to a state that allows for recreational use without danger to the public.

12. "Recreation System" shall mean all trails, including the Trail Corridor, trailheads and trailhead improvements, trail improvements such as kiosks, steps, railing, bridges, culverts, benches, and small unlighted trail signs, vault toilets, day use areas, water and fishing access sites, boat ramps, and future improvement, subject to the terms of the Easement, within the Easement Area for the use and benefit of the general public.

13. "State Trust Lands" means lands owned by the State and managed by the Board of Land Commissioners to generate revenue for designated beneficiaries pursuant to Article X, Section 11 of the Montana Constitution and Mont. Code Ann. Section 77-1-202 (2011).

14. "Statewide Forest Management Standards" means the Administrative Rules of Montana (ARM) for State Forest Land Management (ARM 36.11.401 through ARM 36.11.471), the Montana Code Annotated (MCA) and ARMs for Streamside Management Zones (Sections 77-5-301 through 77-5-307, MCA, and ARM 36.11.301 through 36.11.313, respectively), and the Best Management Practices for Forestry in Montana, Montana Department of Natural Resources and Conservation, Forestry Assistance Bureau, January 2006, as amended.

15. "Trail Corridor" is the space or corridor through which the trail will pass. The trail corridor includes the trail tread and a buffer area totaling sixteen (16) feet.

16. "Transfer" means any disposition of the underlying fee title to the Easement Area, any portion of the Easement Area, or any disposition of the Easement itself.

M. GENERAL PROVISIONS

1. Controlling Law and Venue. Any legal action arising under this Easement or relating to the subject matter of this Easement between Grantor and Grantee shall lie in Lewis and Clark County, Montana, regardless of the party initiating the action.

2. Construction. Any general rule of construction to the contrary notwithstanding, this Easement must be liberally construed in favor of the grant to effect the purposes of this Easement and policy and purposes of Mont. Code Ann. Sections 77-1-202, 77-1-203, and 77-1-801 (2011), *et seq*. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid must be favored over any interpretation that would render it invalid.

3. Conflicting Provisions. In case of conflict between the Recreation Plan, the Statewide Forest Management Standards, and the terms of this Easement, the Easement terms shall govern insofar as they do not conflict with state or federal law or regulation.

4. Rights and Immunities. In consideration of the terms and conditions of this Easement, Grantor and Grantee rely upon all of the rights and immunities against liability to the fullest extent of state law, as amended, and any successor provisions, and any other applicable provisions of law, including, but not limited to, Mont. Code Ann. Title 27, Chapter 1, Part 7; Mont. Code Ann. Title 70, Chapter 16, Part 3 (Restriction on Liability of Landowner for Recreation), and Mont. Code Ann. Title 2, Chapter 9 (Montana Tort Claims Act).

5. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged into this Easement.

6. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.

7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement will remain in force.

8. Headings. The section headings provided in this Easement are for information purposes only.

9. Non Waiver. No term or provision of this Easement shall be waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. The waiver of any right shall neither represent nor be construed to be a waiver of any other right or a pattern of waiver of any rights, related or otherwise.

10. Necessary Acts. The parties shall cooperate in good faith to perform such acts and execute such documents as may be necessary to carry out the intent of this Easement.

11. Successors. This Easement is binding on and inures to the benefit of the parties, successors and assigns, and continues as a servitude running in perpetuity with the land.

12. Multiple Counterparts. This easement may be executed in one or more counterparts all of which shall be one and the same original document for all purposes.

To Have and to Hold the said land with all appurtenances thereto unto the said Grantee and its heirs, successors and assigns forever. 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 Director, Department of Natural Resources and Conservation, and the Great Seal of the State and the Seal of the State Board of Land Commissioners to be hereunto affixed this____ day of ____, 20__.

_____
Governor of the State of Montana

Attest:

_____
Secretary of State

Countersigned by:

_____
Director, Department of Natural Resources and Conservation

By:

Its: _____

ACCEPTED BY: GRANTEE
City of Whitefish, a municipality under the laws of the State of Montana

_____
City Manager, City of Whitefish

By:

Its:_____

Exhibit A
Deed of Public Recreation Use Easement

Easement Legal Description

Section 8
That portion of Section 8, Township 31 North Range 22 West, Principal Meridian, Montana, Flathead County, Montana more particularly described as follows:

Beginning at the ¼ Corner common to Sections 8 and 17;
Thence along the south line of the Southeast ¼ S86°22'00"E, 350.91 feet;
Thence N03°38'00"E, 867.73 feet;
Thence N86°22'00"W, 1004.10 feet;
Thence S03°38'00"W, 867.73 feet to the south line of the Southwest ¼ of Section 8;
Thence along said south line S86°22'00"E 653.19 feet to the point of beginning
Containing 20.00 acres of land as shown hereon.

Section 16
That portion of Section 16, Township 31 North Range 22 West, Principal Meridian, Montana, Flathead County, Montana more particularly described as follows:

S1/2 NW1/4 SW1/4 and SW1/4 SW1/4
Containing 60.389 acres of land per COS No. _____.

Section 17
That portion of Section 17, Township 31 North Range 22 West, Principal Meridian, Montana, Flathead County, Montana more particularly described as follows:

That portion of the South ½ of the Southeast ¼ of Section 17, Township 31 North, Range 22 West, P.M., M., Flathead County, Montana, described as follows:

Beginning at the Southeast Corner of Section 17;
Thence along the East line of the Southeast ¼, North 03°34'13" East 1320.42 feet to the Southeast corner of the North ½ of the Southeast ¼;
Thence along the South line of the North ½ of the Southeast ¼, North 86°24'21" West 2634.85 feet to the Southwest corner of the North ½ of the Southeast ¼;
Thence along the West line of the Southeast ¼, South 03°37'59" West 659.06 feet;
Thence South 86°22'32" East 658.58 feet;
Thence South 03°37'35" West 659.41 feet to the South line of the Southeast ¼;
Thence along the South line of the Southeast ¼, South 86°20'42" East 1545.87 feet and South 86°24'34" East 431.76 feet to the Point of Beginning.

TOGETHER WITH

SW1/4 SW1/4, S1/2 SE1/4 NW1/4SW1/4, S1/2 SW1/4 NE1/4 SW1/4, NW1/4 SE1/4 SW1/4, SW1/4 SE1/4 SW1/4, E1/2 W1/2 NE1/4 NW1/4, E1/2 NE1/4 NW1/4, E1/2 SE1/4 NW1/4, NE1/4, NE1/4 NE1/4 SW1/4, SE1/4 NE1/4 SW1/4, NE1/4 SE1/4 SW1/4, NW1/4 SE1/4 and Gov't Lot 1

Containing 459.54 acres of land as show hereon.

Section 18
That portion of Section 18, Township 31 North Range 22 West, Principal Meridian, Montana, Flathead County, Montana more particularly described as follows:

SE1/4 Gov't Lot 4, S1/2 Gov't Lot 5, S1/2 SW1/4 SE1/4, SW1/4 SE1/4 SE1/4, SE1/4 SE1/4 SE1/4 and NE1/4 SE1/4 SE1/4
Containing +/- 75.39 acres of land as shown hereon.

Section 19
That portion of Section 19, Township 31 North Range 22 West, Principal Meridian, Montana, Flathead County, Montana more particularly described as follows:

NE1/4 Gov't Lot 2, NE1/4 NE1/4, SE1/4 NE1/4, NE1/4 SE1/4, SE1/4 SE1/4 and S1/2 SW1/4 SE1/4
Containing +/- 188.92 acres of land as shown hereon.

Section 20
That portion of Section 20, Township 31 North Range 22 West, Principal Meridian, Montana, Flathead County, Montana more particularly described as follows:

That portion of the Northeast ¼ of Section 20, Township 31 North, Range 22 West, P.M., M., Flathead County, Montana, described as follows:

Beginning at the Northeast corner of Section 20;
Thence along the North line of the Northeast ¼, North 86°24'34" West 431.76 feet and North 86°20'42" West 1545.87 feet;
Thence South 04°17'29" West 1315.20 feet;
Thence South 86°27'24" East 1315.05 feet;
Thence South 04°07'57" West 655.28 feet;
Thence South 86°32'34" East 581 feet, more or less, to the low water mark of Beaver Lake;
Thence Northerly along the low water mark of Beaver Lake 1311 feet, more or less, to the East line of the Northeast ¼;
Thence along the East line of the Northeast ¼, North 03°59'16" East 120 feet, more or less, to the Meander Corner on the North side of Beaver Lake;
Thence continuing along the East line of the Northeast ¼, North 05°10'19" East 654.46 feet to the Point of Beginning.

TOGETHER WITH

W1/2 NW1/4 NW1/4, NW1/4 SW1/4 NW1/4, SW1/4 SW1/4 NW1/4, SE1/4 SW1/4 NW1/4, NW1/4 SW1/4, SW1/4 SW1/4, Gov't Lot 7, SE1/4 SW1/4, Gov't Lot 6 and Gov't Lot 8 excepting Beaver Lake Lease Lots 41 & 42 as shown on COS No. 18353.

Containing +/- 347.60 acres of land as shown hereon.

Section 21
That portion of Section 21, Township 31 North Range 22 West, Principal Meridian, Montana, Flathead County, Montana more particularly described as follows:

Gov't Lot 1
Containing +/- 33.03 acres of land.

Sections 28 and 29
That portion of Sections 28 and 29, Township 31 North Range 22 West, Principal Meridian, Montana, Flathead County, Montana more particularly described as follows:

Tract 2 of Certificate of Survey No. 18576
Containing 6.59 acres of land.

LEGAL DESCRIPTION

Section 33
That portion of Section 33, Township 31 North Range 22 West, Principal Meridian, Montana, Flathead County, Montana more particularly described as follows:

NW1/4 SW1/4, NW1/4 excepting DNRC Cabin Lease "Skyles Lake Residence Lot#1, NW1/4 NE1/4 and NE1/4 NE1/4;
Containing 277.60 acres of land;

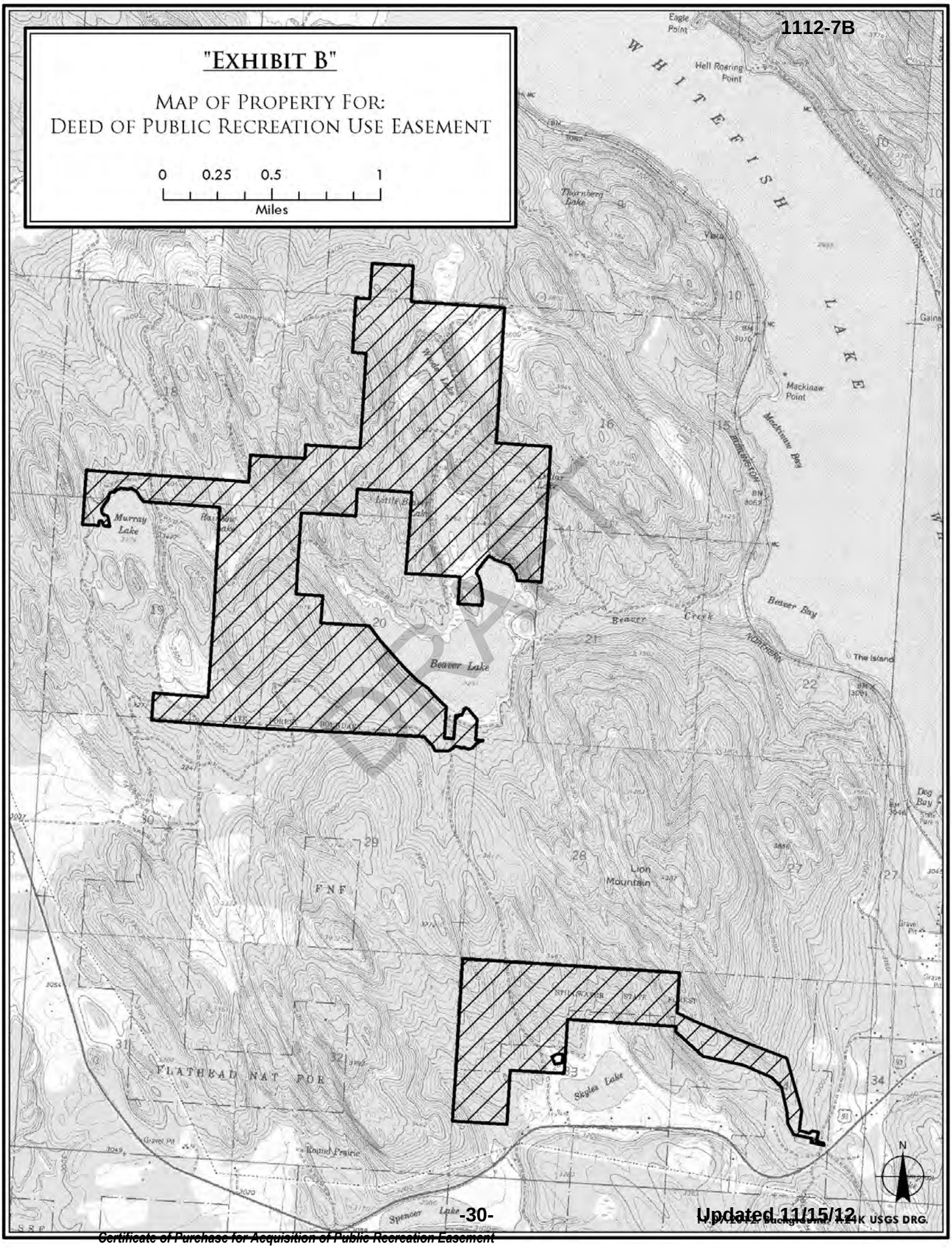
Section 34
That portion of Section 34, Township 31 North Range 22 West, Principal Meridian, Montana, Flathead County, Montana more particularly described as follows:

Commencing at the West ¼ corner of Section 34;
Thence along the West line of the Northwest ¼, North 03°27'38" East 1184.26 feet to the Point of Beginning;
Thence continuing along the West line of the Northwest ¼, North 03°27'38" East 452.84 feet;
Thence South 64°27'04" East 498.37 feet;
Thence South 67°45'26" East 1404.94 feet;
Thence South 68°57'45" East 978.09 feet;
Thence South 15°59'30" East 1331.12 feet;
Thence South 07°35'41" West 472.29 feet;
Thence South 74°17'36" East 248.65 feet;
Thence North 55°59'23" East 92.27 feet;
Thence South 76°38'47" East 153.92 feet;
Thence South 13°21'13" West 219.76 feet;
Thence South 76°38'47" East 177.18 feet;
Thence South 08°57'10" East 64.85 feet;
Thence North 76°38'47" West 326.30 feet;
Thence North 12°52'59" East 103.12 feet;
Thence North 78°57'53" West 443.71 feet;
Thence North 29°25'54" West 311.09 feet;
Thence North 02°32'41" West 254.22 feet;
Thence North 11°49'27" West 642.50 feet to the Center ¼ corner of Section 34;
Thence North 45°23'42" West 346.20 feet;
Thence North 66°27'34" West 750.28 feet;
Thence North 78°11'33" West 1002.82 feet;
Thence North 47°14'47" West 885.48 feet to the Point of Beginning,
Containing 51.22 acres of land

"EXHIBIT B"

MAP OF PROPERTY FOR: DEED OF PUBLIC RECREATION USE EASEMENT

0 0.25 0.5 1
Miles

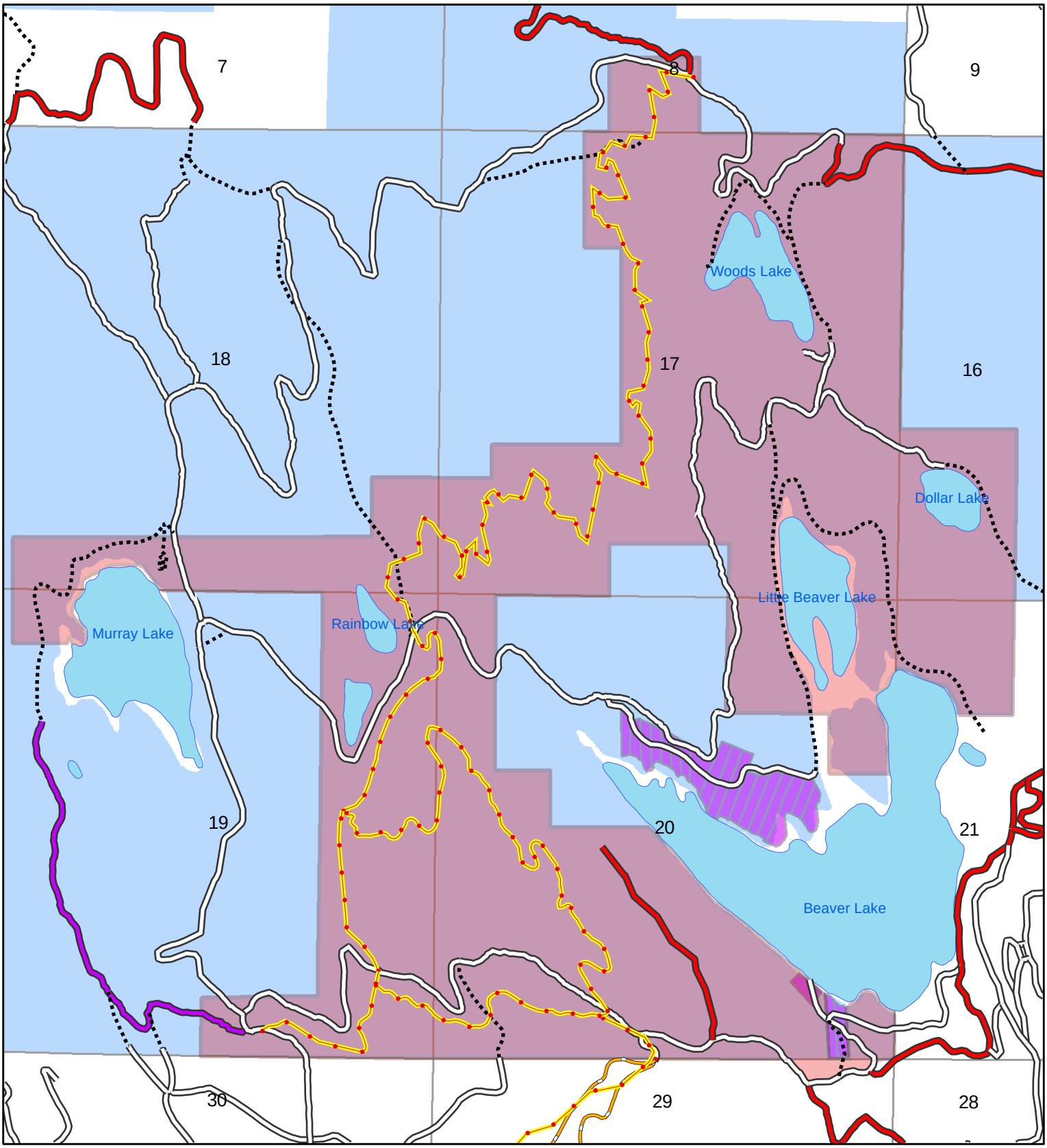


DRAFT

Updated 11/15/12

Exhibit C.1 Beaver Lakes Area Baseline Roads 2012

T. 31 N., R. 22 W.



Road Type

- OPEN
- RESIDENTIAL ACCESS
- RESTRICTED
- SEASONAL
- ABANDONED; RECLAIMED
- Whitefish Trail
- Recreation Easement (1,191 ac)
- Lease Lots
- DNRC Trust Lands

NORTH

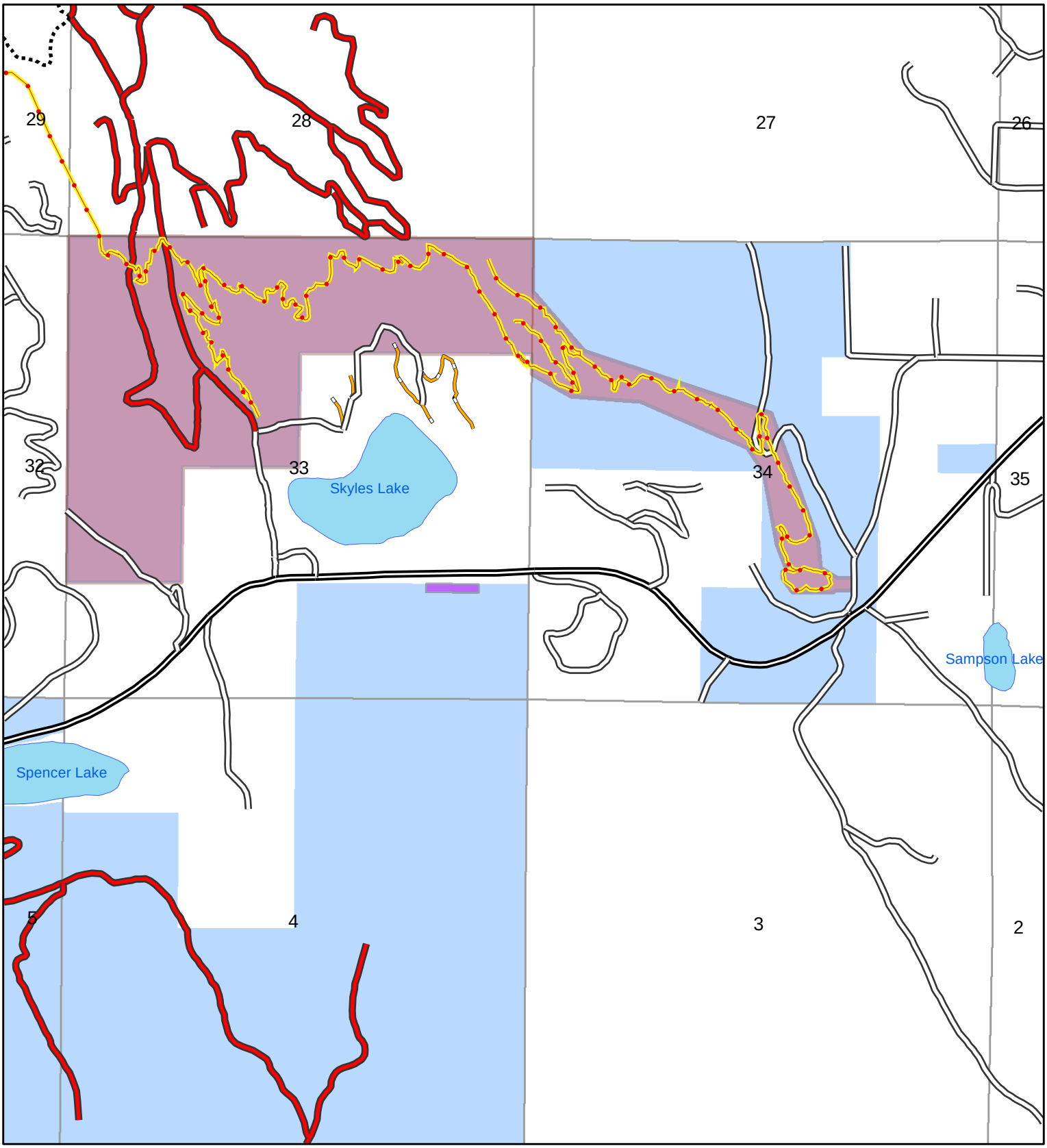
0 500 1,000 2,000 Feet

Updated 11/15/12

Certificate of Purchase for Acquisition of Public Recreation Easement
Exhibit 1, Deed of Public Recreation Use Easement (Exhibit C)

Exhibit C.2 Skyles/Lion Mtn. Area Baseline Roads 2012

T. 31 N., R. 22 W.



Map by Slaten (DNRC) C:\GIS\Temp\WhitefishPlan\SkylesRecUse20121107.mxd

Road Type

- OPEN
- RESIDENTIAL ACCESS
- RESTRICTED
- SEASONAL
- ABANDONED; RECLAIMED
- Whitefish Trail
- Recreation Easement (329 ac)
- Lease Lots
- DNRC Trust Lands

NORTH

0 500 1,000 2,000 Feet

Updated 11/15/12

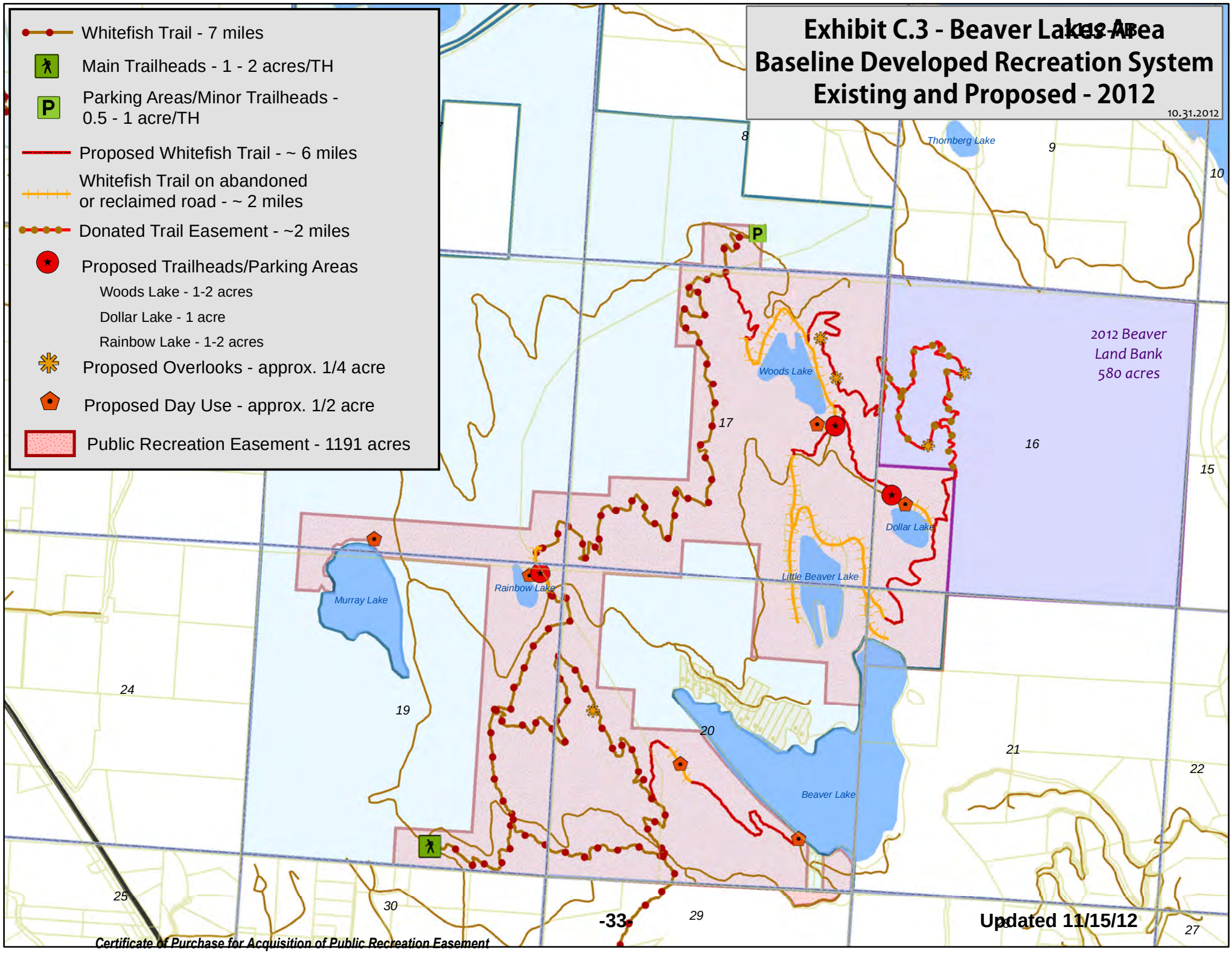


Exhibit C.3 - Beaver Lakes Area
Baseline Developed Recreation System
Existing and Proposed - 2012
10.31.2012
Whitefish Trail - 7 miles
Main Trailheads - 1 - 2 acres/TH
Parking Areas/Minor Trailheads - 0.5 - 1 acre/TH
Proposed Whitefish Trail - ~ 6 miles
Whitefish Trail on abandoned or reclaimed road - ~ 2 miles
Donated Trail Easement - ~2 miles
Proposed Trailheads/Parking Areas
Woods Lake - 1-2 acres
Dollar Lake - 1 acre
Rainbow Lake - 1-2 acres
Proposed Overlooks - approx. 1/4 acre
Proposed Day Use - approx. 1/2 acre
Public Recreation Easement - 1191 acres
Thornberg Lake
Woods Lake
Dollar Lake
Little Beaver Lake
Rainbow Lake
Murray Lake
Beaver Lake
2012 Beaver Land Bank 580 acres
8
9
10
15
16
17
19
20
21
22
24
25
27
29
30
Updated 11/15/12

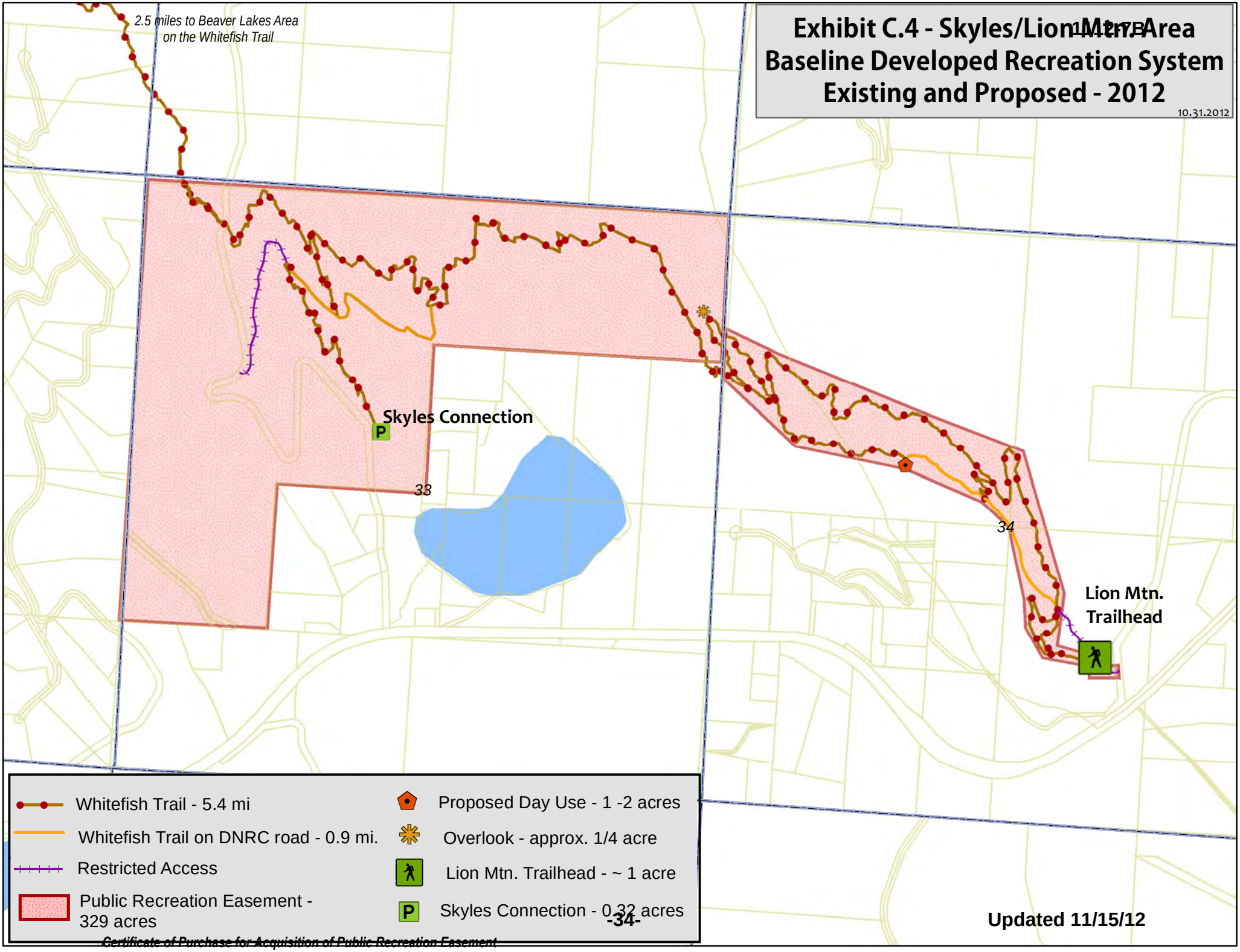


Exhibit C.4 - Skyles/Lion Mtn. Area
Baseline Developed Recreation System
Existing and Proposed - 2012
10.31.2012
2.5 miles to Beaver Lakes Area
on the Whitefish Trail
Skyles Connection
P
33
34
Lion Mtn.
Trailhead
Whitefish Trail - 5.4 mi
Whitefish Trail on DNRC road - 0.9 mi.
Restricted Access
Public Recreation Easement -
329 acres
Proposed Day Use - 1 -2 acres
Overlook - approx. 1/4 acre
Lion Mtn. Trailhead - ~ 1 acre
Skyles Connection - 0.32 acres
Updated 11/15/12

Whitefish Recreation System
RECREATION PLAN

2012-2013

Includes the Whitefish Trail, Lion Mountain, Skyles, Beaver Lakes, Lupfer, Swift- Lazy and Spencer Mountain Sub-Areas

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XI. Annual Review and Public Input

XII. Funding – Expenditures

XIII. Exhibit 1: Whitefish Recreation System Map

I. Overview

This document provides management and operating procedures for the Recreation System near Whitefish, Montana. This Recreation System is composed primarily of the Whitefish Trail, which comprises a network of single-track, natural surface trails designed as a non-motorized recreation system for hikers, runners, mountain bikers, and equestrians, including winter non-motorized use. The developed Recreation System includes trails, trail corridors, trail improvements (such as benches, signs and maps), trailheads, trailhead improvements (such as kiosks, toilets, wheelchair access, guard rails and railings), shelters, day use areas, water access sites, fishing access and boat ramps for the use and benefit of the general public.

The development of the Recreation System has involved many partners, including the City of Whitefish (City), Montana Department of Natural Resources and Conservation (DNRC), Montana Fish, Wildlife and Parks (FWP), Flathead National Forest, Flathead County (County), private landowners, and community groups. The operations and management procedures described within this document constitute the proposed Management and Operations Plan for the Recreation System. This Recreation Plan (Plan) has been developed to provide guidance and identify management and operations responsibilities for the Recreation System.

It is possible that management and operational issues may occasionally arise which have not been addressed in this Plan, referenced easement documents, or associated Whitefish Trail Land Use Licenses. These issues will be resolved and addressed as they arise and updates made as necessary, as provided for by this document.

II. Project Description

The Recreation System and lands that are the subject of this Plan consist of lands located in:

A. Beaver Lakes/Skyles Subarea

   1. Beaver Easement Area – Sections 8, 16, 17, 18, 19, 20, 21, 28, 29 Township 31 north (T31N), Range 22 west (R22W) – 1192 acres

   2. Skyles Easement Area – Section 33 Township 31 north (T31N), Range 22 west (R22W) – 278 acres

   3. Lion Mountain Easement Area – Section 34 Township 31 north (T31N), Range 22 west (R22W) – 51 acres

B. Spencer Mountain Subarea SRUL Trails – Sections 9, 15, 16 Township 30 north (T30N), and Range 22 west – 12 miles Trails, 7 miles 'free-ride' trails (19 miles total) and 1 Trailhead at Twin Bridges Road (0.25 acres) totaling – 36 acres

C. Stillwater Subarea

1. Lupfer Area Whitefish Trail SRUL – Sections 1, 2, 11, 12 Township 31 north (T31N), Range 23 west (R23W) – 4.0 miles + 1 Trailhead (.01 acres) totaling 7 acres

D. Swift Creek Subarea Whitefish Trail SRUL – Sections 31, 32 Township 32 north (T32N), Range 22 west (R22W) – 3.0 miles + 1 Trailhead (0.5 acres) totaling 5 acres

The total subject area encompasses 1,569 acres in four (4) subareas of the Whitefish School Trust Lands Neighborhood Plan area. Exhibit 1 indicates the location of existing and proposed trails and improvements that comprise the developed Recreation System.

The lands involved in the project are held in trust for the Common Schools; Public Buildings, Montana State University – Second Grant; School of Mines – Montana Tech; Montana State University Morrill grant; and State Normal School, Montana State University – Billings, The University of Montana – Western at Dillon.

III. Background

The Whitefish School Trust Lands Neighborhood Plan (Whitefish Neighborhood Plan) is a land-use plan that was approved in 2004 for the 13,000-plus acres of State Trust Lands (trust lands) surrounding the community of Whitefish in Flathead County, Montana. The Whitefish Neighborhood Plan defines future land uses for trust lands, which comprise a large portion of the area covered by the Whitefish City/County Master Plan that was adopted in 1996. The Whitefish Neighborhood Plan is the first large-scale, collaborative land-use plan prepared for any trust lands in the State of Montana.

This Plan supports implementation of the 2004 Whitefish Neighborhood Plan. The Whitefish Neighborhood Plan stipulated community goals for the management and long-term vision which entail protecting access, water quality, wildlife corridors, and recreational opportunities all the while providing revenue for Montana's schools and universities.

B. State Trust Land Goals: The lands in the subject area are held in trust by the State of Montana, and it is the responsibility of the Land Board to administer the trust to "secure the largest measure of legitimate and reasonable advantage to the state" (Montana Code Annotated (MCA) 77-1-202);

   MCA Section 77-1-202 states, "…that the people are entitled to general recreational use of state lands to the extent that the trusts are compensated for the value of the recreation." MCA Section 77-1-203 provides for multiple uses of the land, including public recreation.

C. State Forest Land Management Plan: The historic use of the subject area has been to manage the land for timber production in accordance with the State Forest Land Management Plan (adopted May 30, 1996). The plan is based on the premise that, "the best way to produce long-term income for the trust is to manage intensively for healthy and biologically diverse forests." (State Forest Land Management Plan, 1996). It provides for the development of "recreational opportunities as guided by the changing markets for new and traditional uses."

D. Whitefish School Trust Lands Neighborhood Plan: The Land Board, the City, and County have adopted the "Whitefish School Trust Lands Neighborhood Plan" (Whitefish Neighborhood Plan) to guide future land use of the trust lands within the Whitefish Neighborhood Plan;

The Whitefish Neighborhood Plan has the following goals:

1. "Enhance recreational use of trust lands for multiple users in a manner that provides compensation, supports the local economy, and provides responsible stewardship of natural resources";
2. "Generate long-term and full-market economic return from the use of trust lands for public schools and other beneficiaries";
3. "Preserve and maintain critical wildlife habitat for sensitive, threatened, and/or locally significant species."

The Whitefish Neighborhood Plan includes Implementation Strategy 10.1 to establish an operating plan or other agreement to explain how the DNRC, local jurisdictions, and the community transaction partners should work together to implement the plan.

E. "A Trail Runs Through It" Master Plan: The DNRC and the City adopted the "A Trail Runs Through It" Master Plan (TRTI Plan), which includes a plan and design standards for a trail system with the objective that proper management of the recreational trails will provide an enhanced recreation experience that will be an asset to the community, will promote conservation values, and will reduce hazards, nuisances and liabilities associated with unmanaged recreational uses.

F. 2012 Deed of Public Recreation Use Easement: The purpose of the 2012 Deed of Public Recreation Use Easement (Easement) is to maintain permanent public access for quality recreational enjoyment on specified trust lands within the area encompassed by the Whitefish Neighborhood Plan. This Recreation Plan is Exhibit D of the Public Recreation Use Easement. The Easement, held by the City, will maintain long-term asset value and generate a predictable revenue stream for the trust beneficiaries based on fair market value. The Easement will accomplish the following:

1. Promote multiple resource values such as forest health, water quality, wildlife habitat, and scenic quality;
2. Acquisition of development rights to secure permanent public access for recreation;
3. Continued forest management for timber production and reduction of catastrophic wildland fire;
4. Inclusion of recreation as a component of stewardship; and

5. Enhance the returns to the trust beneficiaries by capturing the unrealized value in the recreation asset while maintaining timber value.

IV. Definition of Terms

A. Anchor tree – means a distinct tree or grouping of trees that provides a visible cue that trail users can reference to discern the location of the trail tread. The more an anchor tree attracts and holds a user's attention, the stronger it is as an anchor. The more that the trail or site reacts to the anchor tree or wraps around it, the stronger it is as an anchor.

B. Best Management Practices – Best Management Practices (BMPs) means a practice or set of practices adopted and prescribed by the State of Montana. Reference documents include, "Water Quality BMPs for Montana Forest" (2001) and "Best Management Practices for Forestry in Montana" (2006).

C. City – In this plan, references to "the City" are a reference to the City of Whitefish (City).

D. Commercial Use - means any activity in which an individual, corporation, group, or other entity charges a fee or obtains other consideration. Such uses include, but are not limited to, outfitting, guiding, equipment sales, any industrial enterprise, retail sales outlet, business or professional office building, warehouse, motel, hotel, hospitality enterprise, commercial use, multifamily residential development, and other similar businesses. Commercial uses do not include fundraisers, equipment demonstrations, and organized events that do not generate profit for an individual, corporation, or other for-profit entity.

E. Concentrated Recreation – means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Such activities include but are not limited to outfitting, events, demonstrations, fishing derbies, photo shoots, and other similar activities.

F. Connector Trail – Connector trail corridors are limited portions of the Whitefish Trail that lie outside the Public Recreation Use Easement Areas and Spencer Community Recreation Area.

G. Department – In this plan, references to "the Department" are a reference to the Department of Natural Resources and Conservation (DNRC).

H. Easement Area –The Easement Area refers to the land encumbered by the Easement including the Trail Corridor and Recreation System.

I. Ecological Value – means the importance Montanans place on natural and scenic open space, water, native plants, fish, wildlife, cultural resources, and public lands of the State held in trust for the people. These values are ensured by Montanans' fundamental Article II, Section 3, Constitutional right to a clean and healthful environment and the interrelated mandate provided in Article IX, Section 1, of the Montana Constitution, that the State and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations; and are further recognized by the codification in statute of rights of access, use, and enjoyment of "Montana's quiet beauty."

J. Grantee – The City of Whitefish, or any subsequent grantee, assignee, or transferee that holds the Easement or License.

K. Grantor – The State of Montana.

L. Holder – Any successor in interest to the State of Montana as holder of the fee simple title to the land underlying the Recreation System.

M. Mosaics – is the collective configuration of patches and corridors in a matrix on a landscape. A patch is a homogenous area that differs from its surroundings, similar to a "stand," and has a definite shape and spatial configuration. A matrix is the landscape background while a corridor is a connection between patches and gaps. A landscape mosaic refers to the pattern of patches with connectivity and spatial heterogeneity that is desirable for functioning ecosystems.

N. Non-Commercial Use – means uses which do not generate fees or other consideration for an individual, corporation, group, or other entity. Non-Commercial Uses include fundraisers, equipment demonstrations, and organized events such as classes, races, and group activities.

O. Non-concentrated Recreation – means non-concentrated hunting, fishing, hiking, or other activities that are not specifically organized or coordinated by a group or entity.

P. Prior Notice –Notification that must be provided before certain activities may be initiated. The party desiring to undertake the activity in question shall notify the affected party(ies) of the planned or proposed action in writing not less than thirty (30) days prior to the longer of: (i) the date the party intends to undertake the activity giving rise to the notice requirement; or (ii) initial public notice if the activity is subject to environmental review under state or federal law. Activities subject to the prior notice requirement are specified herein.

Q. Recreation System – The Recreation System includes trails, including 10' (on private lands) and 16' trail corridors, trailheads, and trailhead improvements such as trailhead monument unlighted signs, kiosks, vault toilets, steps, railings, and parking guard rails; trail improvements such as bridges, culverts, benches and small unlighted trail signs, shelters, day use areas, water access sites, fishing access, and boat ramps for the use and benefit of the general public.

R. Statewide Forest Management Standards – means the Administrative Rules of Montana (ARM) for State Forest Land Management (ARM 36.11.401 through ARM 36.11.471), the Montana Code Annotated (MCA) and ARMs for Streamside Management Zones (Sections 77-5-301 through 77-5-307, MCA, and ARM 36.11.301 through 36.11.313, respectively), and the Best Management Practices for Forestry in Montana, Montana Department of Natural Resources and Conservation, Forestry Assistance Bureau, January 2006, as amended.

S. Trail Corridor – The trail corridor is the space or corridor through which the trail will pass. The trail corridor includes the trail tread and a buffer area totaling sixteen (16) feet or ten (10) feet for private lands.

T. Trusts – means the individual trusts benefitted by the state lands subject to this Recreation Plan. These Trusts include: the Common Schools; Public Buildings; Montana State University – Second Grant; School of Mines – Montana Tech; Montana State University Morrill grant; State Normal School, Montana State University – Billings; The University of Montana – Western at Dillon; School for the Deaf and Blind

U. Whitefish School Trust Lands Neighborhood Plan - The Whitefish School Trust Lands Neighborhood Plan (Whitefish Neighborhood Plan) is a land-use plan that was approved by the State Board of Land Commissioners in 2004 for the 13,000-plus acres of State School Trust Lands surrounding the community of Whitefish in Flathead County, Montana. The Whitefish Neighborhood Plan defines future land uses for trust lands, which comprise a large portion of the area covered by the Whitefish City/County Master Plan that was adopted in 1996. The Whitefish Neighborhood Plan is the first large-scale, collaborative land-use plan prepared for any trust lands in the State of Montana

V. Viewshed – means an area of land, water, or other environmental element that is visible to the human eye from a fixed vantage point. In planning, viewsheds tend to be areas of particular scenic or historic value that are deemed worthy of preservation from development or other anthropogenic modification. Viewsheds are spaces that are readily visible from public areas such as public roadways or parks. The preservation of viewsheds is frequently a goal in the designation of these open space areas.

V. Roles and Responsibilities

A. The City, through the Parks and Recreation Department, is primarily responsible for managing the developed Recreation System as identified in Exhibit 1. Duties include trail oversight, budgeting, staffing the Legacy Lands Advisory Committee (LLAC), reporting to the Whitefish City Council, acting as Liaison to the DNRC, administering contracts for construction, maintenance, conducting annual meetings, other services related to the trail, and communications with the general public.

B. The State of Montana, through the DNRC, is responsible for the management of the land and public use on trust lands outside of the developed Recreation System. The DNRC will serve as an ex-officio member of the LLAC.

C. Montana Fish, Wildlife and Parks (FWP) will continue its role in providing technical assistance in the planning, development, and management of the Recreation System. When applicable, the City, Whitefish Legacy Partners (WLP), and Montana State Parks will enter into a Memorandum of Understanding (MOU) outlining the roles and responsibilities for management of the Recreation System.

D. Legacy Lands Advisory Committee (LLAC) is a joint committee formed under an MOU between the City and WLP. Members include representatives appointed by the City Council, WLP, and ex-officio members. The purpose of the LLAC is to advise and assist the City and WLP in achieving the recreation, conservation, and revenue goals of the Whitefish Neighborhood Plan. The LLAC will develop and implement the annual work plan, oversee and provide input on the planning, design, construction, and management of the Recreation System, and review proposed projects

and proposals. The Whitefish Trail Operations Committee (Operations Committee) is a sub-committee of the LLAC and provides input on trail operations. LLAC will develop a structure to include DNRC and FWP as ex-officio members of the committee and include other key partners as technical advisors.

E. Whitefish Legacy Partners (WLP) is the community transaction partner and is responsible for supporting the City in its efforts to implement the Whitefish Neighborhood Plan. WLP is responsible for facilitating transaction-related and recreation-related methodologies, fundraising, and supporting all activities associated with the advancement of the Recreation System (events, education, volunteers, grant writing, etc.). WLP is devoted to creating a lasting legacy for the Whitefish community and is dedicated to acting as a catalyst to create innovative and unprecedented solutions to permanently protect Whitefish's important places.

F. Flathead Fat Tires (FFT) is the Northwest Montana Mountain Bike Club located in the Flathead Valley. The club is a non-profit organization of volunteers who organize events, oversee trail repair, maintenance and improvement, build parks, and ride bikes.

G. Project Specialists are contracted by the City to provide planning, design, construction, maintenance, and ongoing management services to the Recreation System. The Project Specialists report directly to the City for project guidance and policy decisions. The Project Specialists are responsible for organizing volunteers, Montana Conservation Corps (MCC) crews, and professional contractors as necessary for trail construction and maintenance.

H. Volunteers are actively engaged to assist in maintaining the Recreation System. Currently, volunteers serve in six categories: Trail/Trailhead Ambassadors (WT Ambassadors), Bike Patrollers, Trail Construction/Maintenance, Noxious Weeds, Fundraising/Events, and Interpretive Sign development. All categories involve volunteers as technical advisors. The Operations Committee works directly with a volunteer Bike Patrol, WT Ambassadors, and other volunteers to support the Recreation System. Monthly Operations Committee meetings are open to the public, and volunteers are encouraged to attend.

VI. Guiding Principles

A. Purpose – The purpose of these standards is to guide the City and the DNRC in administering the Recreation System to achieve the overall purposes of the TRTI Plan and the Easement. For generations, community members and visitors have enjoyed recreating on trust lands adjacent to the Whitefish area. For hikers, bicyclists, cross-country skiers, and other outdoor enthusiasts, this forested land offers stunning views, premier wildlife habitat, and challenging terrain. Opportunities to enjoy nature just minutes from town are becoming increasingly rare, making the preservation of areas such as those occupied by the Recreation System of vital importance.

To ensure these opportunities will be available for future generations, the DNRC and the Whitefish community formed an unprecedented partnership to plan for these lands. The outcome was the Whitefish Neighborhood Plan. The Whitefish Neighborhood Plan established a framework for decision-making regarding the active management and conservation of the trust lands. In 2005, the City and WLP initiated the Whitefish Neighborhood Plan recommendation to establish a

recreational trail system to connect various State Trust Land parcels and thereby create a Trail Corridor encircling the greater Whitefish area. In 2010, the City and WLP initiated the Whitefish Neighborhood Plan recommendation to pursue conservation opportunities. Advancing the vision of the Whitefish Neighborhood Plan will require on-going involvement and continued reliance on partnerships with public, private, and non-profit entities.

B. Goals - To ensure that Recreation System management and operations activities are consistent with the guiding principles, the TRTI Plan, and the Easement, the following goals have been outlined:

1. Public Recreation Goals: To assure the access to and availability of the Recreation System for general recreational use by the public, including noncommercial and non-concentrated hunting, fishing, and other recreation activities determined by the Land Board to be compatible with the use of the trust lands; to protect in a manner consistent with the DNRC's fiduciary responsibility to the Trusts and consistent with the goals of the Whitefish Neighborhood Plan to conserve and enhance rural character, provide quality public recreational access and protect the lands' recreational, natural, and scenic open spaces; and to protect the native plants, wildlife, fish communities, and Ecological Values for the benefit of the Trusts and for the public benefit.

2. Forestland Goals: To ensure the long term, professional management of the forest resources through forestry activities in a manner compatible with the conservation values of water quality, fish and wildlife habitat, recreation, forest health, and Ecological Values.

3. Trustland Goals: To provide for any other form of management for the benefit of the Trusts compatible with the terms of the Whitefish Neighborhood Plan.

C. Objectives – Forest management is an integral part of the economic, recreational, and aesthetic values of these lands. It is expected that timber harvesting plays a dual role of generating revenue while also serving as a primary tool for producing the desired range of stand structures and distributions to achieve biologically diverse forests. It is understood that timber harvests are fundamental to the State's management philosophy and that managed forests should reflect historic distributions and patterns of forest types and successional stages.

The lands within the Recreation System are managed in accordance with the Montana Constitution, MCA Title 77, the Administrative Rules of Montana (ARM), the Whitefish Neighborhood Plan, the State Forest Land Management Plan, the TRTI Plan, local planning and zoning documents, and the terms of the Easement to:

1. Protect, manage, maintain and enhance public access, aesthetic quality, high quality recreation opportunities, soil, water, and fish and wildlife resources.

2. Manage for forest health and biodiversity.

3. Reduce the risk of catastrophic fire.

D. Vegetation Management Standards – Timber harvests serve as a primary tool to achieve biologically diverse forests, and it is expected the DNRC will continue management of the lands as a "working forest" to provide a renewable, long term source of forest products for commercial production. Vegetation management will occur in accordance with BMPs to prevent erosion, sedimentation, and other degradation of soil and water resources and to maintain a natural resource base for a forest products economy. All timber sales conducted on the lands will include as an objective the maintenance of existing recreational uses and provisions for proposed future recreational uses.

DNRC will provide the City with Prior Notice of forest management activities in advance of and in addition to the statutorily-required notice provisions for the Montana Environmental Policy Act (MEPA). Timber harvest contracts addressing timber harvest activities will include BMPs, other site-specific mitigation measures, and the following standards:

1. Timber harvest activities will be actively administered to ensure that contract specifications, BMPs, and other resource protection requirements are met.

2. Timber harvest activities conducted near the Recreation System should leave additional trees near unit boundaries to feather edges and support natural looking stands whenever possible.

3. Timber harvest activities conducted near the Recreation System should design and implement mitigation measures to preserve and protect current and proposed trails whenever possible.

4. Within the Recreation System, the following management practices should be applied:

   a. Winter logging where practical and feasible.

   b. Intermediate treatment and commercial thinning, where practical and feasible.

   c. In absence of disease, insect infestation, blow-down, or fire, the Trail Corridor should be managed to minimize stand replacement and/or regeneration harvest.

   d. Regeneration harvests within the Trail Corridor should be no longer than ¼ mile in length, unless there are extenuating conditions, as enumerated above, whenever possible.

   e. The largest and healthiest trees of the following species: Western Larch, Douglas-fir, and Ponderosa Pine, should be retained with the goal of 75 leave trees per acre.

   f. Structural diversity should be supported by creating 'mosaics,' whenever possible.

   g. Skid trails should cross perpendicularly to existing trails, be limited to 15 feet in width, and limited to 60 foot spacing, whenever possible.

   h. Skid trails should be restored within 25 feet on either side of the trail in order to discourage cut-off trails, whenever possible.

i. Trees should be maintained at trail junctions to create natural gateways and anchor the Trail Corridor, whenever possible.

j. The size and number of landings should be located away from trail junctions and restricted to areas of limited visibility where practical.

E. General

1. Users shall be able to conveniently access the trail system from the town of Whitefish.
2. The trail shall be accessible by bicycle.
3. The trail shall connect with the City of Whitefish recreational trail system.
4. There shall be multiple access points that are a short drive from the City.
5. The trail shall provide opportunities for recreation, relaxation, education, fitness, and for experiencing nature.
6. The trail shall promote the conservation of open space and enhance access to existing recreational opportunities.
7. The trail shall be an asset for the community that will attract visitors and be an amenity for citizens and nearby property owners.
8. The trail shall connect public lands around the City.
9. The location of the trail and trail design shall give priority to protecting natural resources.

F. Trail Siting/Location/Access

1. The trail's primary purpose shall be a trail system that includes a main corridor encircling the greater Whitefish area and secondary trails on the trust lands that connect to other public lands, trail networks, recreation areas, and open space.
2. The trail shall primarily traverse the trust lands. Private property owners should participate in identifying the optimum trail alignment across their lands to connect to the trust lands.
3. There shall be multiple access points to the trail system.

   a. Each sub area shall have at least one access point with a parking area that provides adequate parking to avoid congestion.

   b. There shall be multiple access points for heavily used areas such as Beaver Lake and Spencer Lake.

c. Parking areas shall be located away from heavy traffic and designed for safety. They should use existing access points as much as possible. Attempts will be made to locate access points/parking areas on public lands wherever possible.

4. To reduce user impacts, there shall be a dedicated, primarily single-track trail system that will use existing trails where possible and avoid roads except where other options are not feasible.

5. The trail system shall contain a combination of small and large loop trails throughout the network.

G. Types and Amount of Trail Use

1. The trail shall accommodate most traditional uses that have been allowed in each sub-area and reflect BMPs.

   a. Except as provided below, motorized uses are not permitted in non-winter seasons, following current management guidelines for trust lands,

   b. The trail system shall be designated as non-motorized, and snowmobiles will not be allowed on the trail system.

   c. Motorized uses on parts of the trail that cross private forest land or United States Forest Service land shall follow current management guidelines. Motorized use on private lands will respect the desires of the property owner.

   d. The trail shall not interfere with forestry management practices.

2. The trail shall be designed for non-motorized multiple uses such as walking, hiking, mountain biking, horseback riding, and walking dogs.

3. There shall be a variety of trail segments to accommodate all ages and abilities of recreational use, encouraging as wide a range of users as reasonably possible.

   a. Parts of the trail near trailheads shall be wheelchair accessible.

   b. The level of difficulty on the trail shall vary from easy to strenuous with the easy to moderate levels being located more conveniently to the more heavily used trailheads.

4. The trail shall periodically provide access to lakes or streams to provide water for horses and dogs.

5. The trail may facilitate the goal of providing overnight camping opportunities and/or commercial recreational ventures consistent with the Whitefish Neighborhood plan.

H. Trail Conflicts

1. User education shall be emphasized with a focus on trail etiquette and principles of "Tread Lightly", such as:

    a. Educate how to share and who has the right of way;

    b. What to do if you meet a horse, etc.;

    c. Respect for wildlife and plants;

    d. Respect for private property;

    e. Responsibilities of bicyclists, equestrians, and dog owners;

    f. Don't litter or vandalize; and

    g. Pack out all waste.

2. Trail users shall be expected to use the trail responsibly and to respect the rights of other trail users and of adjacent property owners.

3. The trail shall be designed to minimize negative impacts on adjacent property owners. Trailheads and other improvements should be located away from private lands.

4. In order to reduce conflict, dogs will be subject to the following management guidelines:

    a. Dogs should be on leashes near roads and in heavily congested areas near trailheads.

    b. Dogs may have seasonal restrictions in sensitive wildlife areas.

    c. Owners should have control over all dogs they bring on the trail. Dogs should be on a leash when wildlife is in the area.

    d. Owners should clean up after dogs in more heavily traffic areas and keep dog waste off the trail in more primitive settings.

5. Policies shall be established for working with FWP to educate hunters and trail users and to develop trail use guidelines for hunting seasons. Information shall be posted at trailheads regarding the opening and duration of hunting seasons and recommendations for trail use during these times.

6. Potential sites for defined play areas for special interests such as motorized, equestrian, or dirt jump users that are separate from the main trail system shall be investigated. These groups shall be encouraged to work with DNRC to create these areas and integrate them into the recreation trail system.

7. To reduce conflict, equestrians may be subject to the following management guidelines:

a. Design parking areas to accommodate horses and horse trailers in spaces separate from other trail users. This area should include hitching rails for horses.

b. For at least the first quarter (1/4) of a mile from the trail head, horses should be on a separate trail before merging with the main trail.

c. Post signs in parking areas to spread manure.

d. Horses may be restricted in ecologically sensitive areas.

e. The number of horses in a group may be restricted.

f. Riders should be kept to a walking pace, especially in heavily used areas.

g. Equestrian groups should be involved in trail maintenance in areas of the trail that are heavily used by horses.

h. Commercial horseback riding operations should develop a trail maintenance, clean-up, and weed control plan for the trails they frequently use.

i. There should be separate watering holes for stock and people.

8. In heavily used areas, trails should either be wide enough to accommodate multiple uses, or there should be separate trails for bicyclists, pedestrians, and equestrians.

I. Maximizing Visitor Experience

1. The trail shall have safe crossings at roads, highways, and railroad crossings.

2. The trail shall follow good design practices to create a safe, interesting, low-maintenance, and functional trail system.

3. The trail shall provide logical destination points for the visitor, such as scenic lookouts.

4. The trailheads shall provide adequate parking to accommodate trail users. Parking areas shall be clean and well maintained.

5. Trail users shall be educated in order to promote a positive partnership between land owners and users and to create a positive experience for all trail users.

6. Clear maps and trail rules shall be posted at all trailheads.

7. As much of the natural habitat as possible shall be retained, and natural experience and the conservation of open space shall be promoted.

J. Trail Design

1. The trail should be wider with developed amenities near heavily used trailheads that are closer to town and should be more primitive and narrow in remote areas.

2. There should be a varied terrain with undulations, grade reversals, and meanders to make the trail interesting.

3. Trail segments should have varying degrees of difficulty.

4. The trail should have a natural surface that includes different surface types such as dirt, rocks, roots, and gravel depending on the surrounding terrain, resources, and demand.

5. The trail should have clear signs at the trailheads with maps and trail rules.

6. Litter should be monitored, and a garbage management plan should be developed. Pack-in and pack-out policies should be initiated. Trailheads should be kept clean and free of debris from illegal dumping.

7. Sanitation needs at trailheads should be monitored and a sanitation management plan should be developed that may provide for toilet facilities, as necessary.

8. Switchbacks should have gentle curves and an adequate radius for bicycles.

K. Ecological Considerations

1. Sensitive areas should be avoided when possible. Wetlands and fragile areas, especially in the Swift Creek area, need to be protected.

2. Erosion should be prevented, especially on steep grades and near stream crossings. Water quality should be maintained. Seasonal closure of some trails in the spring to prevent erosion should be considered.

3. Wildlife habitat and sensitive areas should be identified and mitigated. The trail should be aligned so as not to not disturb wildlife. Some areas may have seasonal closures to protect wildlife habitat.

4. Natural vegetation should be protected through weed control and replanting with native species.

5. Good trail design will minimize environmental impact and should include areas of ecological interest.

6. Illegal trail construction should be controlled.

L. Management and Maintenance Techniques

1. Form volunteer groups to assist with maintenance. Start programs such as “Adopt-A-Trail” and trail cleaning and trail crew work days.

2. Work with landowners to develop a management plan for parts of the trail that cross private property.

3. Create a trail manager staff position with the City to oversee development and maintenance of the trail.

4. Have a trail ranger(s) to educate the public, coordinate volunteers, monitor, and maintain the trail.

5. Be prepared to close off areas if they are abused or overused.

6. All trail easements should be negotiated in perpetuity.

7. As part of its management agreement, the City shall coordinate with appropriate government bodies, including the County, to evaluate travel patterns and mitigate significant impacts as the trail system is developed.

VII. Recreation System Development

The Recreation System includes trails, including the 16 feet (or 10 feet on private property) Trail Corridor, trailheads and trailhead improvements such as trailhead monuments, unlighted signs, kiosks, vault toilets, steps, railings, and parking guard rails; trail improvements such as bridges, culverts, benches, small unlighted trail signs, shelters, day use areas, water access sites, fishing access, and boat ramps for the use and benefit of the general public.

The Trail Corridor is 16 feet in width (or 10 feet on private property), major trailheads are approximately 0.5 – 1 acre, minor trailheads are approximately 0.25-0.5 acres, overlooks are approximately 0.25 – 0.5 acres, and day use, water access sites, fishing access, and boat ramps are approximately 0.5 – 1.0 acre.

A. Design Standards - To the greatest extent possible, the Recreation System should be open to multiple types of non-motorized use. The most frequent users are expected to be hikers, mountain bikers, runners, and equestrians. The Recreation System should be professionally designed to accommodate multiple user groups and should be designed in accordance with the guidelines in the TRTI Plan.

   1. Trails - New trail design and construction standards for contract specifications shall be in accordance with International Mountain Bicycling Association (IMBA) standards and shall be in accordance with Montana State Law and the City's procurement policies.

      The trail and related amenities will be engineered and designed to minimize potential use conflicts, preclude illegal motorized trail use, and provide for safe recreational use in accordance with the TRTI Plan.

2. Trailhead - Parking lot design and construction will be in accordance with American Association of State Highway and Transportation Officials (AASHTO) principles for safety.

B. Trail Construction Standards – New trails will be constructed in accordance with TRTI Plan guidelines and IMBA standards. Trail construction mitigations include, but are not limited to:

1. All new trails will be constructed to IMBA Standards.

2. Backslopes (cutslopes) should be at a stable angle.

3. Wasted material should be spread to a depth not to exceed ¾ inch (consolidated).

4. Depositing waste material within a draw is prohibited. Additionally, wasted material should not be placed in a location that could facilitate erosion to a draw.

5. Bare soil should be seeded within 7 days to stabilize soils and reduce the risk of weed infestations.

6. Drainage should be maintained at all times on the trails.

7. Trail use should be limited during wet periods, as necessary.

8. Grass seed mix prescribed for the Skyles Lake Timber Sale should be used for trail cutslopes and wasted material. Wasted material should be seeded to reduce the potential for weeds.

9. Motorized access for the purpose of constructing, maintaining and repairing the trail, and hosting and supporting events, including the transport of equipment and supplies necessary, should be allowed upon approval of the DNRC Unit Manager.

10. Additional professional assistance shall be provided by the City, DNRC, FWP, County, and Project Specialists.

Volunteers can assist with trail construction, maintenance, and sustainable trail construction techniques. The City shall administer the volunteer program in cooperation with WLP.

In addition to trained volunteers, the developed Recreation System receives support from the Montana Conservation Corps (MCC). MCC young adult and youth crews can assist with trail construction, trail maintenance, noxious weed pulling, sign installation, and other areas.

C. Trailheads and Parking Areas - In accordance with this Plan, trailheads within the developed Recreation System shall provide varying levels of service. Trailheads closer to town provide more amenities such as restrooms, landscaping, and larger kiosks while “backcountry” trailheads provide limited parking and informational kiosk signs only. Some trailheads will provide parking for horse trailers.

All trailheads shall have consistent and clear signs that provide information on trail locations, multi-use trail etiquette, forest management rules, and current fire hazards.

Based on use, parking lots may be plowed of snow through the winter season.

Trailheads and Parking Areas within the Recreation System:

1. Lion Mountain – There is a major trailhead located off Lion Mountain Loop Road, 2.2 miles west of Whitefish, accessible via Highway 93N. The Lion Mountain Trailhead is the closest trailhead to town and was opened in 2010. This trailhead is the "gateway" to the Recreation System, providing connectivity to the Beaver Lakes complex and beyond. This trailhead provides a high level of service and amenities including restroom facilities, handicapped parking, a family loop, a covered kiosk, and interpretive signs. The parking lot use will be monitored for planning purposes.

2. Skyles Connection - There is a minor trailhead located on Skyles Lake Lane, 3.5 miles west of Whitefish, accessible via Highway 93N. The Skyles Connection was opened in 2010. By special local agreement under the Skyles to Beaver Road Use Agreement, this parking area is limited to six vehicles. Amenities include an information kiosk. Parking lot use will be monitored for planning purposes.

3. Beaver Lakes Area – There is a major trailhead located on Beaver Lakes Road, 7.2 miles west of Whitefish, accessible via Highway 93N, 1.5 miles off Highway 93N. A second minor trailhead is located on Beaver Lakes Road, 7.2 miles west of Whitefish, 4.5 miles off Highway 93N. The Beaver Lakes trailheads were opened in 2011. The trust lands in the Beaver Lakes sub-area supports a variety of recreational uses, including a great deal of historical use, dispersed recreational use, access to Murray, Beaver, Little Beaver, Rainbow, Woods and Dollar Lakes, and fishing access at Beaver Lake supported by FWP. The Recreation System for the Beaver Lakes area, as depicted in Exhibit C of the Public Recreation Use Easement, consists of one primary trailhead with a high level of service, one secondary trailhead with a minimal level of service, and numerous proposed trailheads/parking areas.

    a. Beaver Trailhead (south) - This trailhead consists of parking spaces, a vault toilet restroom, and a covered informational kiosk. Parking lot use will be monitored for planning purposes and future parking needs to accommodate equestrian use, as needed.

    b. North Beaver Connection (north) - This minor trailhead consists of five parking spaces and a covered informational kiosk. Parking lot use will be monitored for planning purposes.

    c. Beaver Lake Fishing Access – This fishing access site is currently leased and managed by FWP and includes a boat launch, parking area, and lake access. Boat launch, parking area, and lake access use will be monitored for planning purposes and future needs.

d. Murray Lake Day Use – This lake access site is currently unmanaged and heavily used. Use will be monitored at this site for future needs and planning purposes.

e. Proposed Trailhead/Parking Areas – There are proposed trailhead/parking areas at Woods Lake, Dollar Lake, and Rainbow Lakes. These areas also provide lake and fishing access. Recreation access, parking, and lake access use will be developed and monitored for planning purposes and future needs.

D. Day Use Areas – Day use areas will be developed to include shelters, pavilions, and other similar pack in/pack out facilities as depicted in Exhibit 1 and in accordance with this Plan.

E. Fishing Access Site - Fishing access sites will be managed in accordance with State laws, regulations, the Easement terms, and this Plan.

F. Trail Amenities - Trail amenities include items such as benches, trail passings, overlooks, signs, and other improvements to enhance the user experience and to support the Recreation System. Such amenities will be consistent with the guidelines developed in the TRTI Plan and with this Plan.

G. Future Developments of the Recreation System - The City in cooperation with the Operations Committee, the LLAC, DNRC, FWP, WLP, and the County may propose additions to the Recreation System to include additional trail corridors, trailheads, parking areas, campsites, and picnic areas for public use. Current proposed additions are depicted in Exhibit 1 and have been analyzed under the Public Recreation Use Easement Environmental Assessment MEPA analysis completed in October 2012. Future proposed additions will require additional Environmental Assessments as required by MEPA.

H. Signs – Unlighted directional signs and unlighted informational signs will be designed and installed in accordance with the guidelines in the TRTI Plan to enhance the user experience and to support the Recreation System. Signs shall be placed appropriately, at standardized heights, where they can be easily seen and read by visitors. Signs shall be clean and free of dirt, mud, debris, graffiti, holes, sizable cracks, etc. Traffic and other road signs shall be placed in accordance with Montana Department of Transportation and Flathead County standards.

Kiosk informational signs shall include, at a minimum, the following information:

1. Identify managing entity as the City of Whitefish and include City logo and contact information.

2. Identify the land as trust lands managed by DNRC and include DNRC logo and contact information.

3. Applicable recreational use regulations.

4. Importance of safety.

5. Trail etiquette to minimize conflicts between different users.

6. Signs should be provided for education of users about ways to reduce effects on wildlife; including information about not feeding wildlife, packing out litter, and keeping a safe distance from wildlife. Signs will also encourage dog restraint.

Interpretative Signs - Interpretive signs are different than informational and safety-related signs required at trailheads. Ideas for interpretive signs include information that explain the importance of trust lands as managed forests that provide important revenue for Montana schools, as well as signs on forest ecosystems, logging and forest succession, native flora and fauna, medicinal plants, invasive species, geology, birds, and wildfire prevention information. The Operations Committee and LLAC will oversee the gathering of interested individuals or associations to develop and fund the design and installation of interpretive signs along the trail.

All directional, informational, and interpretive signs within the Recreation System will be designed and installed in a consistent fashion, and all sign designs and plans will be reviewed and approved by the LLAC prior to installation.

I. Special Stipulations –

1. Legal right of access to private, federal, or other lands must be secured by and is the sole responsibility of the City.

2. The City will at all times comply with the Skyles to Beaver Reciprocal Access Agreement dated August 13, 2001, including the Nielsen easement dated October 8, 2001, regarding limitations on general public usage of the Nielsen property.

3. DNRC reserves the right to require mitigation on, or to close, trails that are poorly located or otherwise contribute to potential resource damage.

4. DNRC shall regularly advise the City, in writing, of any problems or issues that arise concerning trails, parking lots, trailheads, and other related amenities.

5. The City will patrol for and remove all litter from the Recreation System.

6. The City is responsible for obtaining any parking permits required by Flathead County.

7. The City's use of motorized vehicles off-roads and on closed roads is prohibited unless DNRC specifically authorizes such use in writing. Motorized vehicles include snow machines, all-terrain vehicles (ATV's), motorcycles, and passenger vehicles.

8. The City must limit mechanized trail construction and maintenance within the Whitefish Lake Bald Eagle territory (the last 0.75 miles on the north end of the Beaver Lakes subarea) to time periods when disturbance would have the least effect on the nesting territory.

9. The City must limit trail construction in the vicinity of Boyle Lake such that access to the lake and tunnel area is discouraged, in order to maintain existing breeding loon habitat and potential Townsend's big-eared bat habitat.

10. The City must encourage dog owners to restrain their dogs to the Trail Corridor to limit disturbance to wildlife species and minimize the fragmentation of forested habitats and the spread of noxious weeds.

11. The City will provide bear proof containers for litter at all parking sites. City will reduce unnatural food sources by ensuring that litter is removed.

12. When forest management activities are scheduled that may impact the Recreation System, DNRC will take reasonable precautions within the scope of the logging process to avoid unnecessary damage to the Trail Corridor and trail tread.

13. If the City desires to revise previously proposed and approved trail, road, recreation amenity and/or parking lot construction procedures, such proposed revisions will be submitted to DNRC six weeks in advance of any related construction. The City will not proceed without DNRC's approval.

VIII. Maintenance

The City and DNRC have a binding memorandum of understanding (MOU) dated _____ regarding maintenance of roads used to provide vehicular access to the developed Recreation System. This MOU outlines the maintenance activities, roads to be maintained, and cost sharing for road maintenance between City and DNRC, among other mutually agreeable maintenance issues.

A. Roads

1. DNRC Roads on trust lands within the Public Recreation Easement Area:
   DNRC and the City will share the maintenance of DNRC Roads that access the Recreation System.

   The City will post a Recreation System monument sign at the entrance to each trailhead/parking area upon review of the LLAC.

   DNRC and the City will work proactively to identify entrance and site roads that may require upgrades such as grading and gravel, maintenance such as removal of debris and obstructions, and/or repair of potholes, ruts, erosion channels, washouts, and washboards.

Based on recommendations, DNRC and the City will develop a plan jointly for such improvements and repairs.

The City will assure vegetation is mowed and trimmed to allow ample vehicle clearance on all roads and to maintain adequate sight lines at intersections and pedestrian crossings. Roadsides are mowed to a four-foot width to discourage roadside parking while maintaining sight lines.

The City will work with DNRC to identify the need for posting additional signs to direct motorists throughout the Recreation System.

2. DNRC Roads On trust lands outside the Public Recreation Easement Area:

   DNRC and the City will work proactively on the maintenance of DNRC Roads that access the Recreation System.

   DNRC and the City will work proactively to identify the need for posting additional signs to direct motorists throughout the Recreation System.

   DNRC and the City will work proactively to identify entrance and site roads that may require upgrades such as grading and gravel, maintenance such as removal of debris and obstructions, and/or repair of potholes, ruts, erosion channels, washouts, and washboards. Based on recommendations, DNRC and the City will jointly develop a plan for such improvements and repairs.

B. Sanitation - Trailheads will include trash receptacles for garbage. WT Ambassadors will assist with picking up garbage, checking restrooms for cleanliness and supplies, providing information to visitors, and reporting vandalism.

   Trailheads will include mitt dispensers for pet waste. There will be postings at trailheads regarding rules on pet waste.

   Trailheads will be checked on a regular basis for maintenance needs for restroom facilities.

   Trash will be regularly and routinely removed to prevent accumulation and overflow.

   Dumpsters and garbage cans will be constructed of metal and free of holes, major dents, and graffiti. Garbage cans will be attached to the ground and must be designed to be bear-proof.

C. Trails - Trails shall be maintained in accordance with the TRTI Plan guidelines.

   Trails will be checked on a regular basis for maintenance needs. Trails shall be free of downed trees, litter (including accumulations of micro-litter (cigarette butts, bottle caps, pull tabs, broken glass, twist-ties, etc.), and debris (including tree, shrub and grass clippings, windblown weeds, hay bales, lumber piles, and construction remnants).

Year-round inspections will be conducted to identify new, user-created trails. If present, user-created trails will be obliterated or their use discouraged. Obliteration will take place to avoid permanent resource damage. User-created trails typically ignore such issues as slope, drainage, and overall effect on the landscape and can result in severe erosion. Natural materials such as wood debris and rock will be used to make the trail impassible, and signs will be installed to explain the closure and direct visitors to other trails.

Trail closures may also be necessary during maintenance projects or to prevent further damage on severely eroded trails. Seasonal trail closures are necessary due to excessive moisture associated with spring thaw and heavy rains. Regular inspections of trail conditions will be conducted. Signs will be posted to clearly indicate closures and briefly explain the cause and duration of closures.

Maintenance needs regarding road, parking, trail surfacing, erosion, weeds, signs, vandalism, and litter will be checked on a regular basis. Bike Patrol and WT Ambassadors will report all issues needing special attention to the City.

Trails will be well-graded and drained with water bars or drainage dips to control runoff and erosion. Erosion controls will be cleaned of fill before it renders them unusable.

D. Signs - Signs will be mounted only on posts and bulletin boards leaving trees free of signs. Fences will be free of signs except for site boundary signs. Buildings will be free of signs except for:

1. ADA access signs
2. Restroom symbols
3. Interior restroom rules
4. Necessary building identification signs
5. Signs needed for safety ("Employees Only," electrical and chemical hazard signs, fire exits, temporary closure signs, etc.)

Signs will be structurally sound, mounted securely, not faded, free of vandalism, and straight. Posts will be structurally sound, straight, secure in the ground, and treated to prevent rot and insect damage. The same type of posts will be used for all signs. Paint and sign materials will be kept in good condition and will not be faded or worn.

Temporary notices, administrative signs, and other "secondary" or visitor-posted signs shall be posted on bulletin boards and kiosks, not on the support posts. Duplicate signs and abandoned posts shall be removed. When a central bulletin board is available for seasonal notices and posters, it will be kept free of unofficial notices, private advertisements, old or weathered temporary signs, graffiti, and excess fasteners.

Vegetation around signs shall be mowed or trimmed to provide good site distances.

E. Day Use - All day use facilities shall be structurally sound, clean, painted, and free of litter, debris and evidence of vandalism, inside and out.

Tables shall be structurally sound, chained to the ground, stained or painted, free of graffiti and vandalism, and with no significant damage, rot, cracking, warping, or hazards. Bench and table surfaces will be inspected and cleaned on a regular basis.

Day Use sites are pack-in and pack-out sites.

F. Vault Toilets - Latrines shall be inspected and cleaned on a regular basis. Standards for maintenance include:

1. Exterior Inspection
   a. Roof is free of debris, and roof does not leak.
   b. Building is intact and structurally sound. Load bearing structures and finished surfaces are free of damage.
   c. Paint is free of cracks, fading, graffiti, and other vandalism.
   d. All paint matches and is the appropriate color.
   e. Building is free of cobwebs, bird nests, leaning and windblown debris, dirt, dust, and mud.
   f. Sidewalks and entry pads are level and meet ADA standards for accessibility where designed and constructed for that purpose.
   g. Backfill is graded, vegetated, and mown to standard.
   h. Doors are free of mechanical defects, dents, and holes. Locksets and latches are ADA compliant, secure, and working. Weather stripping is intact and secure.
   i. Walls are free of tape, unauthorized signs, glue, gum, bumper stickers, etc.
   j. Skylights and windows are in good repair, not leaking, free of insects, dirt, debris, and holes.
2. Interior Inspection
   a. Toilet paper is available.
   b. Vault is pumped when within two to three feet of the risers.
   c. Litter and waste are not present.
   d. Painted floors, walls, and ceilings are clean and will be repainted every three years, sooner if peeling, flaking, or stains require it.

e. Floors, walls, and ceilings are clean (no fly specks, tape, graffiti, feces, cobwebs, etc.).

f. Toilet paper racks/dispensers are appropriate size for use, work well, and are properly maintained.

g. Disabled assistance rails are placed appropriately, adequately secured, clean, and with a non-abrasive surface.

h. Solids in the vault are covered with liquid.

i. Septic and sewage systems are maintained in accordance with state health regulations.

j. Seats and lids are clean and functioning; level-stops are in place—not chipped or stained.

k. Outside and inside risers are clean with no feces, graffiti, or urine stains.

l. Floors are swept, interiors sanitized, and odors actively managed.

m. Flies, spiders, and other insects are controlled.

n. The frequency of cleaning to meet these standards depends in part on use levels. At low use levels, rest rooms are cleaned a minimum of once a week. At moderate use levels, rest rooms are cleaned a minimum of once every three days. At high use levels, rest rooms are cleaned a minimum of once each day. During extremely low use seasons (typically winter), rest rooms may need cleaning less often to meet the above standards.

G. Vegetation - Broken or fallen trees and branches should be removed when they present a hazard or obstruction in visitor use areas.

1. Hazard Tree Inspection – A hazardous tree is a tree that shows sign of a recognizable mechanical flaw and poses a threat to people or property. Once a year, any trees which stand within falling distance of public use areas and which might pose a hazard to the public or significant property should be systematically inspected for flaws. In addition, particular events such as wind storms or fires may call for additional special inspections and remediation.

2. Hazard Tree Care - Any tree denoted as hazardous should be promptly cared for to eliminate the hazardous status of the tree.

3. Hazard Tree Remediation - Depending on the location of the tree and its integrity, consideration should be given to leaving the main trunk of the tree for wildlife habitat. This means that a dead tree need not necessarily remain a hazardous tree, and that it is possible to convert a hazardous tree into a positive environmental element.

H. Noxious Weeds – the City will work with DNRC to develop a plan to address noxious weeds within the Recreation System.

Noxious weed control measures will minimize the use of herbicides. The City shall comply with the Montana County Noxious Weed Management Act, MCA 7-22-2101. When necessary, herbicides shall be used in accordance with all applicable laws and safety standards and are to be applied using professional tools and techniques to protect employee and public safety, surface and ground water, and other resources. The Operations Committee will promote using trained volunteers to identify and safely hand pull noxious weeds to the greatest extent feasible.

Temporary signs shall be posted to notify the public of spraying activity and the presence of herbicides.

IX. Visitor Management

A. Permit and Fees - A State of Montana general recreation use license is not required for areas and amenities within the Recreation System. A general recreational use license is required for use outside of the developed Recreation System in accordance with MCA Sections 77-1-203 and 77-1-804. The permit is available at State designated locations.

The City, WLP, and their partners will encourage locals and visitors to purchase general recreational use licenses. Signs shall be posted at the trailheads informing users of recreational licensing requirements.

Requirements for fishing and hunting licenses apply throughout the Recreation System.

B. Education - The Bike Patrol and WT Ambassadors will provide a regular presence and visitor assistance on the Recreation System and will assist, educate, and inform recreational users. Monthly use reports will be provided to the City.

Education programs and program development will promote working forests, recreation based economy, healthy lifestyles, and connecting communities to the natural environment.

C. Events – Events will be held periodically to support the Recreation System. The City will notify DNRC of all scheduled special events.

The City and State of Montana administrative policies and processes for special events will apply in the developed Recreation System.

If an event is expected to involve 150 or more individuals, the City will request approval from the DNRC prior to the event.

D. Monitoring - Monitoring of use will be conducted periodically within the Recreation System. Monitoring may include vehicle counts at parking areas and access roads, trail impacts by mode of travel assessments, user satisfaction surveys, and conflicts within the Recreation System.

E. Emergency Response - The "Emergency Response Plan" developed by the City provides procedures to address emergency situations and will apply within the Recreation System.

In case of emergency, trail users should dial 911. The 911 call center will dispatch the appropriate emergency response, which could include ambulance, police, and/or fire personnel.

The Bike Patrol should assist in mechanical and medical emergencies. Bike Patrollers shall be trained in basic bike maintenance, basic first aid, and cardiopulmonary resuscitation (CPR). WT Ambassadors will NOT be expected to provide medical assistance but shall be trained to report emergency situations in accordance with City procedures.

F. Enforcement - The entire Recreation System is located outside of the City limits. As such, the Flathead County Sheriff is primarily responsible for law enforcement at trailheads.

Educational materials including brochures, maps, and signs will help establish clear public awareness and expectations. Enforcement efforts will include coordination with the Sheriff's Office, the FWP State Lands Warden, and volunteer trail monitors.

DNRC is responsible for enforcing State rules and regulations regarding dispersed recreation on trust lands. Additional law enforcement along the trail shall be provided by the FWP Trust Lands Game Warden. The State Trust Lands Game Warden is responsible for law enforcement on all trust lands in the Whitefish area, and as such has many responsibilities in addition to the Recreation System.

The Bike Patrol will provide visitor assistance. The Bike Patrol will also monitor and report illegal trail activity such as motorized use or unauthorized trail building, and will report trail hazards that require maintenance or mitigation. The Bike Patrol will work with the Operations Committee to encourage proper trail etiquette and to provide a positive experience for all trail users. The Bike Patrol will promote responsible trail use and will report issues to the City. Bike patrollers will report non-compliant behavior in compliance with City established protocol.

G. User Conflicts - The TRTI Plan contains guidelines for managing user conflicts that shall be incorporated into the design, maintenance, and operation of the Recreation System.

X. Operations Issue Resolution

The LLAC, in conjunction with the DNRC, has identified a process for resolving operational and policy complaints that will invariably arise from time to time. Operational complaints may include, but are not limited to, issues such as garbage, vandalism, erosion etc. Policy complaints may include disagreements between user groups, non-motorized rules, etc.

All complaints will first be directed to the City of Whitefish Director of Parks and Recreation. For operational complaints, the Parks and Recreation Director will contact the Project Specialist who is

responsible for that specific area of operations. The Project Specialist will either implement the response or call a scheduled volunteer for assistance. After taking action to resolve the complaint, the Project Specialist will report back to the Parks and Recreation Director.

For policy complaints, the Parks and Recreation Director will contact the Operations Committee. The Operations Committee will consider policy changes as necessary at regularly scheduled Operations Committee meetings. Input shall be invited from DNRC, other partners, and community stakeholders.

The Operations Committee through the LLAC may also choose to forward citizen or agency complaints to the City Council. If the City Council is to be notified of a complaint, DNRC will also be contacted. The Council may discuss and address those issues within the scope of the current Plan. Any proposed amendment to the Plan shall be forwarded to DNRC for review and approval.

XI. Annual Review and Public Input

This Plan is intended to be a "living" document that will grow and change to meet the needs of trail users, LLAC, the Operations Committee, the City, the DNRC, the State, neighboring landowners, private landowners, and community groups. The contents of this Plan shall be updated as new issues arise or more clarification is needed as to management, operations, and responsibilities.

The LLAC will conduct one annual review meeting each fall that shall be open to the public. The goal of these public meetings is to maintain good public relations, minimize conflicts, and provide the best possible user experience. Adjacent landowners (including adjacent access road landowners) shall be notified in advance of the annual review public meeting, and legal notice shall be published in advance of the meeting.

The Operations Committee meets monthly, and meetings are open to the public. Proposed additions or changes to the Recreation System should be addressed through the Operations Committee in cooperation with the LLAC, the City, DNRC, WLP, FWP, Flathead National Forest, the County, private landowners, and community groups. Public outreach including focus groups, community meetings, media coverage, and public hearings shall be addressed by the Operations Committee.

All changes to the Plan shall be adopted in accordance with procedures outlined in the Whitefish Neighborhood Plan.

XII. Funding – Expenditures

A. Capital Expenditures – Funding for capital expenditures will come from private sources, philanthropy, donations, fundraising, grants, and other similar sources. The City will administer the budget for capital expenditures.

B. Operational and Maintenance Expenditures - Funding for operational and maintenance expenditures will come from private sources, philanthropy, donations, fundraising, the Whitefish

Trail Endowment Fund, the Whitefish Trail Grants Fund, and other similar sources. The City will administer the budget for operational and maintenance expenditures.

XIII. EXHIBIT 1
WHITEFISH RECREATION SYSTEM RECREATION PLAN

IMPLEMENTING THE WHITEFISH NEIGHBORHOOD PLAN

Developed Recreation System:

Easement Area

- 2012 Permanent Public Recreation Use Easement with existing and proposed Whitefish Trail (Beaver Lakes, Skyles, Lion Mtn. - 1521 acres)
- 2012 Proposed Whitefish Trail Easement
- Existing Whitefish Trail and Trailheads [Trail on DNRC road]
- Proposed Trails and Trailheads [Trail on DNRC road]
- Proposed Overlooks and Proposed Day Use

Recreational Land Use License (LUL)

- 2012 Proposed Recreation Use License Area Spencer Mtn. - 400 acres
- Whitefish Trail & Proposed LUL Trails [Trail on DNRC road]
- Proposed Trails and Trailheads

Conservation:

- Areas with Conservation Restrictions - 1585 acres

Swift Creek
Lower Whitefish Rd
Bear Creek
Lazy Creek
King Creek
SWIFT CREEK State Trust Lands 2930 acres
STILLWATER State Trust Lands 1020 acres
Smith Creek
Smith Lake
Swift Creek Whitefish Trail Land Use License - ~3 miles
Conservation Easement 570 acres [Flathead Land Trust]
Luper Whitefish Trail Land Use License - ~4 miles
Del Rey Rd.
Swift Creek
Whitefish Mountain Resort
Lazy Creek
Hell Roaring Creek
Haskill Basin Neighborhood Plan Subarea [high quality wildlife & watershed values]
Boyle Lake
LUPFER State Trust Lands 660 acres
Thornburg Lake
BEAVER LAKES State Trust Lands 4210 acres
~ 2 mile Trail Easement
E Lakeshore Dr
Haskill Creek
Stillwater River
Woods Lake
2012 Beaver Land Bank 580 acres
Rainbow Lake
North Beaver Lake
Dollar Lake
Murray Lake
Beaver Easement - 1192 acres
Beaver Lake
Whitefish Lake
Bootjack Lake
2009 Donated Trail Easement [City-held]
2008 Goguen Land Exchange 435 acres
BEAVER/SKYLES State Trust Lands 600 acres
Skyles Easement - 278 acres
Lion Mtn. Easement - 51 acres
Skyles Lake
Whitefish
Spencer Lake
Lost Coon Lake
Proposed Spencer Mtn. Rec. Area Land Use License - 400 acres
Whitefish River
Proposed Spencer Mtn. Trails and Connector Trail Land Use License - ~15 miles
Blanchard Lake
SPENCER MTN. State Trust Lands 2450 acres
KM Ranch and Happy Valley Neighborhood Plan Subareas
Stillwater River

- Montana School Trust Lands
- United States Forest Service
- City of Whitefish
- City of Whitefish Parks

N W E S

Miles: 0 0.5 1 2

November 2012, Whitefish Legacy Partners/hve

EXHIBIT "2"

Notice of Easement Purchaser's Interest

Notice is hereby given that the State of Montana, State Board of Land Commissioners, by and through the Montana Department of Natural Resources and Conservation, whose address is P.O. Box 201601, Helena, MT 59620-1601, as the Seller (hereinafter referred to as the "State"), and Whitefish Legacy Partners, Inc., whose address is 525 Railway St. Suite 206, P.O. Box 1895, Whitefish, MT 59937, as the Buyer (hereinafter referred to as the "Legacy Partners"), have entered into a Certificate of Purchase, dated November 19, 2012, pursuant to § 77-2-327, MCA, by which the City of Whitefish has agreed to acquire a Permanent Public Recreation Use Easement in the following described real property:

A copy of this Certificate of Purchase may be obtained from the Montana Department of Natural Resources and Conservation at P.O. Box 201601, Helena, MT 59620-1601.

DATED this ____ Day of November, 2012.

DATED this ____ Day of November, 2012.

WHITEFISH LEGACY PARTNERS, INC.

By:_____
Lindsay Akey, Board Chair

STATE OF MONTANA)
: ss
County of _____)

Signed and acknowledged before me on _____, 2012 by _____ _____, on behalf of whom this instrument was executed.

_____
(Signature of notary)

_____
(Printed name of notary public)
Notary public for the state of _____
Residing at: _____
(Affix Notarial Seal/Stamp Above) My commission expires:
_____

STATE:

STATE OF MONTANA

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

BY: _____ Date: _____, 2012

Mary Sexton

Director, Department of Natural Resources and Conservation

STATE ACKNOWLEDGMENT

STATE OF MONTANA)

) ss

COUNTY OF LEWIS & CLARK)

On this _____ day of _____, 2012, personally appeared before me MARY SEXTON, to me known to be the Director and administrator of the Department of Natural Resources and Conservation of State of Montana, that she executed the within and foregoing instrument on behalf of the State of Montana, and acknowledged said instrument to be the free and voluntary act and deed of the State of Montana for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument and that the seal affixed is the official seal of the Department of Natural Resources and Conservation for the State of Montana.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

_____

(Signature of notarial officer)

_____

(Name – typed, stamped, or printed)

Notary Public in and for State of Montana
Residing at _____.

My appointment expires _____.

1112-8

NORTHERN CHEYENNE TRIBE AND ARK LAND COMPANY NOVEMBER 6 OPERATING PLANS SUBMITTAL

Land Board Agenda Item
November 19, 2012

Northern Cheyenne Tribe and Ark Land Company
November 6 Operating Program Plans Submittal

The Northern Cheyenne Tribe and the Ark Land Company have developed and submitted to the Board of Land Commissioners five written operating program plans regarding the Otter Creek Area Coal Tracts. The five plans develop Tribal-specific programs for Employment, Contracting, On-Reservation Conduct, Environmental Monitoring, and Cultural Resources. These November 6th program plans comply with the February 19, 2002 Settlement Agreement entered into between the Board of Land Commissioners and the Northern Cheyenne Tribe which requires the submission of the five operating program plans prior to conducting any mining, construction or other operations on any portion of the Otter Creek Area Coal Tracts.

The Department recommends that on November 19, 2012, the Board approve the November 6, 2012 operating program plans as meeting the terms of the Settlement Agreement subject to all necessary environmental permits. The Department also recommends the Board forward the operating plans for inclusion in the Mine Operating and Reclamation Plans as a special condition. Nothing in the Board's approval grants the right to mining or surface disturbance.

Board Resolution Approving the Operating Program Plan:

The Board hereby approves the November 6, 2012, operating program plans as meeting the terms of the settlement agreement subject to all necessary environmental permits. The Board further directs that the operating program plans be forwarded for inclusion in the Mine Operating Plan as a special condition. Nothing in this approval grants the right to mining or surface disturbance.

Dated this 19th day of November, 2012

Montana State Board of Land Commissioners

_____

Chairman
Governor Brian Schweitzer

_____

Secretary of State Linda McCulloch

OTTER CREEK MINE

Operating Plans

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OTTER CREEK MINE

Operating Plans

Ark Land Company, in close consultation with the Northern Cheyenne Tribe, hereby submits to the Montana State Board of Land Commissioners for approval, the following Operating Plans for the Otter Creek Mine. Attached hereto are resolutions of the governing boards of Ark Land Company and Otter Creek Coal Company, LLC, respectively, which approve these Operating Plans and agree that Ark Land Company and Otter Creek Coal Company, LLC, respectively, will comply with all terms and conditions of these Operating Plans applicable to them, including those applicable because of their status as "Ark Parties" under these Operating Plans. Also attached hereto is a resolution of the Northern Cheyenne Tribal Council which, on behalf of the Tribe: approves these Operating Plans, agrees that the Tribe will comply with all terms and conditions of these Operating Plans applicable to the Tribe, and grants the limited waiver of the sovereign immunity of the Tribe set forth in Section 2.3.

Recitals

A. Ark Land Company ("Ark"), a Delaware corporation and a wholly owned subsidiary of Arch Coal, Inc. ("Arch"), is lessee and the Montana State Board of Land Commissioners ("State Land Board") is lessor, under a set of 14 coal leases[1] each dated April 20, 2010 ("State Coal Leases"). Collectively, the State Coal Leases lease to Ark for coal mining purposes all State-owned coal within certain coal tracts in Powder

[1] State of Montana Coal Lease Nos. 1103-10, 1104-10, 1105-10, 1106-10, 1107-10, 1108-10, 1109-10, 1110-10, 1111-10, 1112-10, 1113-10, 1114-10, 1115-10 and 1116-10.

River County, Montana ("State Coal Tracts") currently projected to contain in excess of 500 million tons of recoverable coal.

B. Ark is also lessee and Great Northern Properties Limited Partnership ("GNP") is lessor under coal leases covering certain coal tracts in Powder River County ("GNP Coal Tracts") checkerboarded with the State Coal Tracts, currently projected to contain in excess of 700 million tons of recoverable coal. The GNP Coal Tracts are not covered by these Operating Plans.

C. At their closest point, the State Coal Tracts are approximately 3 – 4 miles from the Tongue River, which serves as the eastern boundary of the Northern Cheyenne Indian Reservation ("Reservation").

D. Otter Creek Coal, LLC, a Delaware limited liability company ("OCC"), is a wholly-owned subsidiary of Arch and an affiliate of Ark, and has been formed to develop and operate the Project. Ark, Arch and OCC, and their respective successors and assigns, are sometimes referred to herein collectively as the "Ark Parties" and individually as an "Ark Party". Ark, Arch and OCC will be treated hereunder as separate corporate entities, except to the extent, if any, such legal status may change as a matter of law, and without prejudice to any agency relationship that may exist between the Ark Parties (and consequent legal responsibilities).

E. Among its terms and conditions, each State Coal Lease includes Special Condition 28(B) which requires that, after the conclusion of any exploration operations and before conducting any mining, construction, or other operations on any portion of the State Coal Tracts (singly and collectively "Operations"), Ark or its agent(s), in close consultation with the Northern Cheyenne Tribe ("Tribe"), must develop and submit for

approval to the State Land Board, obtain State Land Board approval of, and thereafter implement, five written Operating Plans addressing the matters outlined in Exhibit B of each State Coal Lease.

F. Special Condition 28(B) was included in each State Coal Lease in furtherance of Section 1 and Exhibit B of that certain written Settlement Agreement dated February 19, 2002 between the State Land Board and the Tribe ("Settlement Agreement"). This document sets forth the five Operating Plans that have been developed by Ark in close consultation with the Tribe for submission for approval to the State Land Board, as required by Special Condition 28(B). Specifically, the Operating Plans consist of an Employment Program, a Contracting Program, an On-Reservation Conduct Program, an Environmental Monitoring Program, and a Cultural Resources Program.

G. These Operating Plans flesh out and implement Section 1 and Exhibit B of the Settlement Agreement and Special Condition 28(B) of each State Coal Lease

H. The Ark Parties and the Tribe reserve and retain all rights and remedies at law or in equity they each may respectively have concerning, relating to or arising under the Settlement Agreement, the State Coal Leases, or these Operating Plans, as the case may be. The Ark Parties acknowledge that nothing in these Operating Plans diminishes the Tribe's rights under the Settlement Agreement.

I. **<u>Definitions.</u>** When used in these Operating Plans, the following terms will have the meanings set forth below. Definitions of other terms used herein are set forth throughout these Operating Plans.

1.1 "Applicable Law" means all applicable Federal, State and, to the extent lawfully applicable, Tribal, statutes, laws, administrative rules, regulations, decisions and orders, and judicial decisions and orders.

1.2 "Ark" means Ark Land Company.

1.3 "Ark Parties" means collectively, and **"Ark Party"** means singly, Ark Land Company, Otter Creek Coal, LLC, Arch Coal, Inc., and their respective successors and assigns.

1.4 "Board of Administrators" and "Board" means the body constituted and functioning under Part III hereof.

1.5 "Certified Tribal Contractor" means a business certified by resolution of the Northern Cheyenne Tribal Council as majority owned and controlled by the Tribe and/or an enrolled member(s) of the Tribe, as provided in Section 6.3.

1.6 "Contract" and "Contracts" have the meanings set forth in Section 6.1.

1.7 "Contractor" means any person or entity retained by "Contract" as an independent contractor by any of the Ark Parties to provide services and/or goods to the Operations.

1.8 "Effective Date" means the date of approval of these Operating Plans by the State Land Board.

1.9 "Employment-Related Opportunities" means entry-level training, employment, training for transfer or advancement, promotion, and protection from temporary or permanent reductions in work force, for or in the Operations.

1.10 "Facilitator" means the person retained and functioning as provided in Part IV hereof.

1.11 "Local Indian" means an enrolled member of the Tribe or any other federally-recognized Indian tribe, who resided on or near the Reservation during the one-year period preceding his or her application for employment in the Operations, and resides no more than 50 road miles from the Operations.

1.12 "Local Non-Indian" means a person who is not an enrolled member of the Tribe or any other federally-recognized Indian tribe, who resided on the Reservation, in the off-Reservation communities of Ashland or Birney, or in Powder River County, during the one-year period preceding his or her application for employment in the Operations, and resides no more than 50 road miles from the Operations.

1.13 "Mining Permit" means a mining permit issued under Title 82, Chapter 4, Montana Code Annotated, to any of the Ark Parties, which includes within its coverage any portions of the State Coal Leases.

1.14 "OCC" means Otter Creek Coal, LLC.

1.15 "Operations" means, singly and collectively, any construction, mining or other operations on the State Coal Tracts.

1.16 "Project" means:

a. prior to the issuance of a Mining Permit, all activities on the State Coal Tracts associated with development of the coal mine(s) and related facilities to be established based in whole or in part on the State Coal Leases; or

b. upon the issuance of a Mining Permit, all Operations.

1.17 "Qualified and Available" has the meaning set forth in Section 5.6.c as to employees, and has the meaning set forth in Section 6.1 as to Contractors and Subcontractors.

1.18 "Reservation" means the Northern Cheyenne Indian Reservation.

1.19 "Section" means a section of these Operating Plans.

1.20 "Settlement Agreement" means the written Settlement Agreement dated February 19, 2002, between the State Land Board and the Tribe.

1.21 "State" means the State of Montana.

1.22 "State Coal Tracts" has the meaning set forth in Recital A.

1.23 "Subcontracts" has the meaning set forth in Section 6.2.

1.24 "Subcontractor" means any person or entity retained by Subcontract as an independent contractor to provide services and/or goods to the Operations.

1.25 "Tribal Council" means the Northern Cheyenne Tribal Council.

II. Provisions Applicable to All Operating Plans.

The provisions of this Part II will be applicable to and be considered part of each Operating Plan.

2.1 Effective Date. These Operating Plans will become effective upon the approval of them by the State Land Board ("Effective Date"). As required by the Settlement Agreement and Special Condition 28(B) of each State Coal Lease, no Operations will take place on the State Coal Tracts prior to the Effective Date.

2.2 Compliance.

a. The Ark Parties will take all reasonable steps necessary to assure that all of their respective subsidiaries, affiliates, Contractors and Subcontractors

engaged in Operations comply with all portions of the Operating Plans applicable to such Operations.

b. The Ark Parties' obligations under Section 2.2 concerning Contractors and Subcontractors will be satisfied as follows:

i. as to Contractors, by including and enforcing, in each Contract, provisions that impose on the Contractor terms and conditions reasonably adaptable to the Contractor's own Project employment and Contracting activities, meeting the requirements of:

- Section 5.2 regarding Employment-Related Opportunities; and
- Section 6.2 regarding Subcontracting; and

ii. further, as to Contractors, by including and enforcing, in each Contract, provisions that impose on the Contractor terms and conditions substantially similar to those set forth in Part VII hereof; and

iii. as to Subcontractors, by including and enforcing, in each Contract, provisions that require that each Subcontract include provisions substantially similar to those described in Sections 2.2.b.i and ii.

2.3 Enforcement; Tribal Sovereign Immunity.

a. On their own initiative or on request of the Tribe or the Ark Parties, the State Land Board and/or the State Department of Natural Resources and Conservation ("DNRC") will direct the enforcement of any Operating Plan to the extent necessary to achieve compliance therewith ("Enforcement

Action"). Under any applicable State statute, regulation or decisional law, the Ark Parties or the Tribe may seek and obtain administrative and/or judicial review of any decision, order, rule or directive issued by the State Land Board or DNRC in any Enforcement Action.

b. The Ark Parties and the Tribe hereby agree that disputes by and between the Ark Parties and the Tribe concerning interpretation and enforcement of these Operating Plans, including, without limitation, any Enforcement Action, shall be governed by Section 2.3.a. The provisions of Section 2.3.a are not intended to preclude pursuit, subject to any available defenses, of any other remedy which may be available to the Ark Parties or the Tribe under Applicable Law, for violation of any right, duty or provision not set forth in or arising under these Operating Plans. Nothing in these Operating Plans is intended to expand or, except as provided in Section 8.8, diminish the lawful jurisdiction of any Tribal court with respect to any matter not specifically addressed in Sections 2.3.a and 2.3.b.

c. Solely as to the proceedings described in Sections 2.3.a and 2.3.b ("Remedial Proceedings"), the Tribe via the Tribal Council resolution attached hereto, expressly waives the sovereign immunity of the Tribe with respect to the following relief only, to the extent sought and granted against the Tribe in Remedial Proceedings: any decision, order, ruling, directive or judgment ordering the Tribe to comply with any provision of these Operating Plans ("Specific Performance"). Further, pursuant to Tribal Council resolution attached hereto, the Tribe's courts shall abstain

from asserting jurisdiction over all Remedial Proceedings. In all other respects, the Tribe does not waive and expressly preserves its sovereign immunity as to any form of relief sought against the Tribe in Remedial Proceedings, including (without limitation) monetary relief or any equitable relief other than Specific Performance.

2.4 Applicable Law. Each Operating Plan will be subject to, carried out in compliance with, and interpreted in accordance with Applicable Law.

2.5 Modification. As provided in Section 6 of the Settlement Agreement, an Operating Plan may be modified by Ark in close consultation with the Tribe and with the approval of the State Land Board.

III. Board of Administrators.

Within 30 days after the Effective Date, the Ark Parties and the Tribe will establish a Board of Administrators ("Board") and thereafter will maintain the Board throughout the conduct of Operations, in the manner and for the purposes set forth in the Employment Program and the Contracting Program. Notwithstanding anything to the contrary set forth in these Operating Plans, all findings, decisions, recommendations, and other actions of the Board will be advisory only, and will not be binding upon the Ark Parties or the Tribe.

3.1 Composition of Board. The Board will be composed of six members ("Administrators"), three of whom will be appointed in writing by the Ark Parties ("Ark's Administrators") and three of whom will be appointed by written resolution of the Tribal Council ("Tribe's Administrators"), each of whom must be qualified, in the judgment of the entity making the appointment, to competently perform the responsibilities of an

Administrator under these Operating Plans. Each Administrator will serve at the pleasure of the entity who appointed the Administrator. The Ark Parties and the Tribe promptly will give written notice to each other of the names, telephone numbers, fax numbers and email addresses of their Administrators and of their successors. Each Administrator must avoid all actual or apparent conflicts of interest and must not participate in any process involving a Certified Tribal Contractor in which the Administrator may derive a pecuniary interest. The Ark Parties will be solely responsible for the payment of any compensation to Ark's Administrators associated with their service on the Board, and the Tribe will be solely responsible for the payment of any compensation to the Tribe's Administrators associated with their service on the Board.

3.2 Board Responsibilities. The Board will:

a. serve as a point of contact between the Ark Parties and the Tribe with respect to matters arising under the Employment Program or the Contracting Program;

b. monitor the performance of the Ark Parties and the Tribe in meeting their respective obligations under the Employment Program and the Contracting Program;

c. on its own initiative or when requested to do so by the Ark Parties, the Tribe or the Facilitator, serve as a forum to discuss and assist with resolution of any issues or disputes regarding the interpretation or implementation of the Employment Program or the Contracting Program;

d. in its discretion, adopt rules, resolutions, or decisions regarding Board procedures, provided such actions are not inconsistent with any provision of the Employment Program or the Contracting Program;

e. perform any other tasks that may be assigned to it under the Employment Program or Contracting Program; and

f. carry out all Board functions in a manner which avoids public disclosure of information entitled to confidentiality.

3.3 Board Voting. The Board will decide all matters by vote of those Administrators present in person or by conference call at a Regular Meeting or Special Meeting. A matter will be considered decided only upon concurring vote of Ark's Administrators and the Tribe's Administrators. Each Party's Administrators will collectively have one vote, which must be cast by vote of two of such Administrators. If requested by any Administrator, the votes of each individual Administrator will be recorded in the minutes.

3.4 Board Meetings. The Board will make recommendations to the Ark Parties and the Tribe on all matters in accordance with procedures described in Sections 3.3, 3.4, and 3.5. The Facilitator and any officials, staff or other persons designated by the Ark Parties or the Tribe may attend any Board meeting in person or by conference call, provided that such attendance will be subject to any restrictions necessary to protect information entitled to confidentiality.

a. Regular Meetings. The Board will meet quarterly ("Regular Meetings") within 30 days after the end of each calendar quarter, or at such shorter regular interval as the Board may from time to time decide.

b. **Special Meetings.** Special meetings of the Board ("Special Meetings") will be held on the written request of any two Administrators, the Ark Parties or the Tribe.

c. **Meeting Place.** The place of each Board meeting, whether a Regular Meeting or a Special Meeting, will alternate meeting-by-meeting between the Ark Parties' headquarters at the Project and the Tribe's headquarters in Lame Deer, or at such other place as the Board may from time to time designate.

d. **Notice of Meetings; Agenda.** At least five business days prior to any Regular Meeting and three business days prior to any Special Meeting, written notice will be transmitted by mail, email, fax or hand-delivery ("Transmitted" or "Transmit") by a person designated by the Board, to all Administrators, the Facilitator, the Ark Parties and the Tribe, of the time, place and agenda of the meeting. The agenda will include all matters previously requested for inclusion by any Administrator, the Facilitator, the Ark Parties or the Tribe. A meeting called without timely or proper notice may, with a quorum present, nevertheless be conducted by concurring vote of Ark's Administrators and the Tribe's Administrators.

e. **Quorum.** The presence in person, or in the case of a conference call meeting under Section 3.4.g, telephonic participation, of two of Ark's Administrators and two of the Tribe's Administrators, will constitute a quorum for the transaction of any item of business at a Regular Meeting or Special Meeting.

f. **Minutes of Meetings.** Minutes of each Regular Meeting and Special Meeting will be kept by a person designated by the Board and will fairly reflect the business conducted at the meeting. Within 10 days after the meeting, the person who kept the minutes will Transmit a copy of draft minutes to all Administrators, the Ark Parties and the Tribe. The draft minutes will be considered for approval at the next meeting of the Board.

g. **Meetings by Conference Call.** In instances where circumstances prevent or render impracticable the holding of a Regular Meeting or a Special Meeting in person, or by agreement of the Board, the meeting may be held by conference call. Minutes will be kept, Transmitted and approved in the manner provided in Section 3.4.f.

3.5 Board Actions Without a Meeting. In instances where circumstances prevent or render impracticable the holding of a Regular Meeting or a Special Meeting in person or by conference call, the Board may decide matters without a meeting if at least two of Ark's Administrators and two of the Tribe's Administrators consent in writing to the taking of such action. Copies of such written consents will promptly be Transmitted to all other Administrators, the Ark Parties and the Tribe.

IV. Facilitator.

4.1 Retention. The Ark Parties will retain a person to serve as the "Facilitator" throughout the conduct of Operations. The Facilitator and any successor Facilitator must be an enrolled member of the Tribe, approved by resolution of the Tribal Council, and acceptable to the Ark Parties. The Ark Parties will not reassign, discharge or otherwise terminate a Facilitator without consulting with and giving due consideration

to the views of the Tribal Council. In the event of the reassignment, resignation, death, disability, discharge or other termination of a Facilitator, a replacement will be retained by the Ark Parties.

4.2 Duties. The Facilitator will:

a. have as his or her principal and primary duties to: (i) serve as a liaison between the Ark Parties, the Tribe and the Board with respect to the Employment Program and Contracting Program; (ii) monitor performance under, and assist in facilitating successful implementation of, the Employment Program and Contracting Program; and (iii) assist in resolving any problems which may arise in implementing the Employment Program and Contracting Program;

b. be present and available, from the Effective Date of the Operating Plans until expiration of the five-year period following the issuance of a Mining Permit and thereafter for the two-year period following any announcement of any decision to substantially expand Operations, in an on-Reservation office to be provided by the Tribe, for the equivalent of at least one full day per week or more frequently if reasonably necessary to facilitate the successful conduct of the Employment Program or Contracting Program, and otherwise be available on the Reservation or at the Project site during the life of the Project, as reasonably necessary to perform the duties of the Facilitator;

c. have any other duties now or hereafter assigned to the Facilitator by any Operating Plan, the Board or the Ark Parties, provided such duties do not

conflict or interfere with the performance of any other duty of the Facilitator under this Section 4.2;

d. be equally responsive to the Ark Parties and the Tribe;

e. disclose and endeavor to avoid all actual or apparent conflicts of interest, including (without limitation) with respect to any Certified Tribal Contractor applying for or performing a Contract; and

f. expressly agree in writing that his or her service as the Facilitator will be subject to these Operating Plans and that he or she will be removed from the position of Facilitator if, after consultation between the Ark Parties, the Tribal Council and the Board, either the Ark Parties or the Tribal Council advises, in their respective discretion, that they have lost confidence in the Facilitator's ability or commitment to properly perform the duties of the Facilitator.

V. Employment Program.

5.1 Scope. The Ark Parties will accord to Qualified and Available Local Indians and Local Non-Indians, without any preferences or quotas, meaningful and substantial opportunities to participate in all categories of Employment-Related Opportunities in the Operations. To implement the foregoing, the provisions of this Part V will apply.

5.2 Contractors and Subcontractors. The Ark Parties will require that Contractors and Subcontractors, to the extent reasonably expected to provide services in Operations for more than 90 days in any calendar year, accord to Qualified and Available Local Indians and Local Non-Indians, without any preferences or quotas,

meaningful and substantial opportunities to participate in all categories of Employment-Related Opportunities in the Operations. To implement the foregoing, the provisions of this Part V will also apply to such Contractors and Subcontractors and be included or incorporated by reference, and enforced, in Contractor and Subcontractor contract documents as provided in Section 2.2.b.

5.3 Recruitment. For all Employment-Related Opportunities, the Ark Parties will make good faith efforts to recruit, without preferences or quotas, Qualified and Available Local Indians and Local Non-Indians. Such efforts will include the following, unless the Board recommends and the Ark Parties decide otherwise as to particular jobs or categories of Employment-Related Opportunities:

a. all locally (*i.e.*, within the Reservation, Rosebud County or Powder River County) published or posted advertisements and notices for Employment-Related Opportunities will include a statement of the duty to provide meaningful and substantial opportunities, without any preferences or quotas, to Qualified and Available Local Indians and Local Non-Indians to participate therein;

b. timely written notice to the Board, the Facilitator, and the Northern Cheyenne Tribal Employment Rights Office ("TERO") of all job openings;

c. recruitment through TERO, for which the Ark Parties will pay an annual fee in the amount described in this paragraph for such services (the "TERO Fee"). The TERO Fee will begin one year prior to the initiation of any surface disturbing Operations. The TERO Fee will be $50,000 for the first two annual payments, $40,000 for the third payment, $30,000 for the

fourth payment, $20,000 for the fifth payment, and $10,000 for the sixth payment. Starting with the seventh annual payment, the TERO Fee shall include a base fee of $10,000 plus an inflationary increase equal to the percentage increase of the Consumer Price Index for All Urban Consumers published by the United States Department of Labor (the "CPI-U" with 1982-84 = 100) from the previous TERO Fee payment; provided that the inflationary adjustment shall not be below two percent (2.00%) or exceed eight percent (8.00%). The TERO Fee shall be the sole fee, expense, cost or sum assessed by TERO against the Ark Parties for all recruitment and employment services provided by TERO to the Ark Parties and the TERO Fee will from time to time be subject to adjustment by mutual agreement of the Tribe and OCC, to fairly reflect the nature and quantum of the services provided by TERO;

d. recruitment through other governmental employment offices (if any) within Rosebud and Powder River Counties;

e. on-campus recruitment at Chief Dull Knife College and at high schools on the Reservation, at Ashland, at Colstrip and in Powder River County;

f. from time to time, on-campus presentations at the above educational facilities to inform students generally of necessary skills and qualifications for Employment-Related Opportunities;

g. placement of ads in trade publications and publications of general circulation on the Reservation and in Rosebud County and Powder River County;

h. involvement, to the extent reasonably possible, of Local Indians and Local Non-Indians in the employ of the Ark Parties in recruiting, screening and interviewing candidates;

i. training for at least six (6) total hours per year, made available to all management and recruitment personnel to increase their understanding of the nature and objectives of the Ark Parties' duty to accord meaningful and substantial Employment-Related Opportunities to Qualified and Available Local Indians and Local Non-Indians, without any preferences or quotas; and

j. continuing until three years after the first shipment of coal, the identification and recruitment, without any preferences or quotas, of Local Indians and Local Non-Indians engaged in construction of mine facilities, who are Qualified and Available, or can timely be made Qualified and Available through training, for Employment-Related Opportunities in subsequent Operations.

5.4 Dissemination of Information. Each Ark Party will disseminate information regarding its obligations under this Employment Program within its own organization by:

a. including a description of such obligations in any relevant Operations manuals and handbooks;

b. conducting meetings regarding such obligations with Operations managerial and supervisory personnel and labor relations bargaining representatives (if any);

c. prominently posting descriptive announcements of such obligations at all Operations employment offices; and

d. utilizing such other reasonable means as the Board may suggest to make such obligations generally known to Operations employees.

5.5 Unions.

a. the Ark Parties will notify all labor unions (if any) representing the Ark Parties' work force in connection with the Operations of the existence of this Employment Program and of the Ark Parties' duty and intent to abide by its terms; and

b. the Ark Parties will take all reasonable actions necessary to ensure the Ark Parties' collective bargaining agreements (if any) applicable to the Operations will accommodate implementation of this Employment Program.

5.6 Work Rules. The Ark Parties and their Contractors and Subcontractors will retain the right to do the following, consistent with this Employment Program and Applicable Law:

a. develop, implement, and enforce a generally applicable employee handbook ("the Employee Handbook");

b. subject to Section 5.5, agree to, develop, implement, and enforce generally applicable collective bargaining agreements that govern the work of all employees covered by the bargaining agreement;

c. determine the background, training, experience, education, skills and other generally applicable qualifications necessary or appropriate for an

Employment-Related Opportunity and to establish tests or other generally applicable written criteria necessary to ascertain whether a candidate is qualified, capable and available ("Qualified and Available") for an Employment-Related Opportunity;

d. institute and enforce generally applicable application procedures for an Employment-Related Opportunity, including, without limitation, requirements that all applicants submit timely applications and information relevant to whether they are Qualified and Available therefor;

e. institute and enforce generally applicable work rules, standards and provisions, including but not limited to provisions covering such matters as absenteeism, on-the-job conduct, drug and alcohol testing and use, and employee disciplinary action, for the purpose of managing the Operations, including without limitation maintaining the productivity, safety and efficiency of Operations;

f. refuse to hire any employee due to the fees or costs (referral fees or otherwise) associated with the potential hire, except for TERO fees as provided in Section 5.3.c;

g. terminate any Operations employee and thereafter determine in the Ark Parties' sole discretion whether to consider any such terminated employee for rehire; and

h. direct reductions in Operations work force.

5.7 Reports. On a quarterly basis, the Ark Parties will submit to the Board of Administrators, the Tribe and the Facilitator, for review at the next Regular Meeting of

the Board, a written report without identifying any particular individual, that contains the following Operations information:

a. the numbers of applicants, hirings, promotions, layoffs and terminations of Local Indians, Local Non-Indians, and other persons, respectively, during the quarter;

b. the total numbers of Local Indian employees, Local Non-Indian employees, and other employees, respectively, by job classification, as of the end of the quarter;

c. the total wages and salaries paid to Local Indian employees and Local Non-Indian employees, respectively, during the quarter;

d. a forecast of the number of job openings expected for each job classification for the next quarter; and

e. such other information relevant to its responsibilities as the Board of Administrators may reasonably request through Board action; provided, however, that the Ark Parties may decline any request that conflicts with Applicable Law.

5.8 Job Advancement Evaluation. The Ark Parties will annually evaluate the potential for advancement of Local Indians and Local Non-Indians employed in the Operations, in an effort to identify those Local Indian and Local Non-Indian employees with the greatest potential for advancement without any preferences or quotas. On an annual basis, the Ark Parties will submit to the Board of Administrators, the Tribe and the Facilitator for review at the next Regular Meeting of the Board, a written report, without identifying any particular individual, which affirms that such evaluations have

been performed, describes generally how and when done, and summarizes the results of the evaluations.

5.9 Training Opportunities. The Ark Parties will accord to Qualified and Available Local Indians and Local Non-Indians meaningful and substantial opportunities to participate in the following training:

a. entry-level training;

b. on-the-job training for entry-level positions, lateral transfer, promotion, and supervisory positions; and

c. sponsorship of at least six summer employment or intern positions for college students for training purposes at the Thunder Basin Coal Company project ("TBCC"), to commence after the Effective Date and to continue thereafter until the Ark Parties elect to transfer such positions to the Operations.

5.10 Educational Opportunities. The Ark Parties will accord to Local Indians and Local Non-Indians meaningful and substantial opportunities to participate in the following educational programs:

a. an Electrical Co-Op Program similar to that offered at TBCC;

b. a Diesel Technology Co-Op Program similar to that offered at TBCC;

c. a Welding Co-Op Program similar to that offered at TBCC;

d. sponsorship of at least two college age mechanical / technical positions at TBCC (*e.g.*, vocational technical skills, including diesel mechanics or electrical skills), to commence after the Effective Date and to continue

thereafter until the Ark Parties elect to transfer such positions to the Operations; and

e. commencing promptly as possible after the Effective Date (or earlier, if feasible), sponsorship of at least 2 engineering or vocational technical students per year for full-ride (tuition, room and board, books, etc.) scholarships and related Operations work opportunities, provided such student initially meets and continues to meet minimum criteria modeled on a similar program at TBCC. The amount of the scholarship will be equivalent to the officially published "in-State" tuition and costs of a Montana State resident attending Montana Tech or the University of Montana, plus reasonable transportation costs of two round-trips to the Reservation per academic year.

5.11 Cultural Workshops. The Ark Parties, in consultation with the Board and the Facilitator, and through use of Indian cultural experts approved by the Tribal Council, will conduct annual workshops (not to exceed six (6) hours per year) for Operations employees, to develop and maintain awareness of Indian culture and concerns and an understanding of the need for and requirements of the Employment Program.

5.12 Employment Manuals. To the extent generally applicable to all Operations employees and not in conflict with this Employment Program, all Local Indian and Local Non-Indian employees must comply with the terms and conditions of applicable employee manuals or handbooks.

5.13 Equal Opportunity Employer. The Ark Parties are equal opportunity employers, except to the extent Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e 2(i), allows the Ark Parties, as operators of an enterprise located near the Reservation to adopt and implement the provisions of this Employment Program to provide meaningful and substantial Employment Related Opportunities to Qualified and Available enrolled members of the Tribe.

VI. Contracting Program.

6.1 By Ark Parties. The Ark Parties will accord to Certified Tribal Contractors, without any preferences or quotas, meaningful and substantial opportunities to secure, at competitive prices, contracts to provide, as an independent contractor, services and/or goods for Operations ("Contracts" or singly a "Contract") for which they are Qualified and Available. Choosing Contractors, including Certified Tribal Contractors, for Contracts must be based on an appropriate level of competency, skill and experience in order to ensure the safety of the workforce and the Operations as a whole, and such Contractor must be readily available to perform its obligations under the Contracts in a timely manner ("Qualified and Available"). To implement the foregoing, the provisions of this Part VI will apply.

6.2 By Contractors. In addition, Contractors, to the extent reasonably expected to provide services in Operations for more than 90 days in any calendar year, will accord to Qualified and Available Certified Tribal Contractors, without any preferences or quotas, meaningful and substantial opportunities to secure, at competitive prices, subcontracts to provide, as an independent contractor, services and/or goods for Operations ("Subcontracts"). To implement the foregoing, to the fullest

extent reasonably possible, the provisions of this Part VI will also apply to such Contractors in connection with Subcontracts issued by them.

6.3 Certification. To trigger the obligations of the Ark Parties and Contractors under this Part VI, the Tribal Council must by resolution approve and thereafter maintain and update a list of Certified Tribal Contractors, and provide a true copy thereof to the Ark Parties.

6.4 Loss of Certification. If, during the term of any Contract awarded to a Certified Tribal Contractor, the Tribe notifies the Ark Parties of the Contractor's loss of Certified Tribal Contractor status, the Ark Parties will, to the extent feasible, direct an adjustment in the terms of the Contract in light of the timing, nature and circumstances of the loss of Certified Tribal Contractor status, which may include, without limitation, termination of the Contract.

6.5 Additional Conditions.

a. The Ark Parties may (i) maintain, regularly review and update; and (ii) provide to the Facilitator and the Board of Administrators, written lists of Certified Tribal Contractors reasonably classified by capabilities to provide types of services and/or goods. Whether or not so listed, a Certified Tribal Contractor applying for a Contract must demonstrate that it is Qualified and Available to provide the particular types of services or goods to be provided under the Contract.

b. A Certified Tribal Contractor awarded a Contract must sign a general services agreement, or other similar type document, that is equally applicable to all Contractors, in form and substance acceptable to the Ark

Parties, which contains any contractual provisions expressly required by these Operating Plans.

c. To enable determination of whether a Certified Tribal Contractor is Qualified and Available for particular types of Contracts, the following information may be requested from the Certified Tribal Contractor, to the extent sought by the Ark Parties from other applicants under consideration for the Contract:

i. the type and quality of services the applicant can provide;

ii. the type, quality, manufacturer and sources of goods the applicant can provide;

iii. the size and capabilities of the applicant's work force or staff;

iv. any relevant experience of the applicant and its work force or staff;

v. the applicant's financial capabilities;

vi. the applicant's ability to acquire any requisite bonding or other financial security and the likely sources thereof;

vii. the applicant's ability to acquire insurance meeting any minimum coverage requirements;

viii. the applicant's ability to comply with all applicable Ark Party and State insurance and worker's compensation requirements; and

ix. such other relevant matters as the Ark Parties may require.

d. Subject to the provisions of this Part VI, the Ark Parties reserve all rights and decisions, in their sole and absolute discretion, regarding all aspects of Contracts, including, but not limited to, all negotiations and the awarding

of Contracts. Nothing in this Contracting Program may be interpreted as abridging the exclusive rights of the Ark Parties to do the following consistent with this Contracting Program and Applicable Law:

i. determine in writing the background, training, experience, skills and other qualifications necessary or appropriate to properly provide services or goods by Contract;

ii. establish standard tests or other generally applicable criteria necessary to ascertain a Contract applicant's ability to perform;

iii. decide on the basis of such bona fide standards if a Contract applicant is Qualified and Available;

iv. institute and enforce generally applicable rules, procedures and standards regarding proper Contract performance;

v. prescribe materials and other specifications for any Contract;

vi. require any Contractor to execute and comply with the terms of its Contract, including without limitation performance standards, schedules and deadlines, and pricing, billing and payment procedures;

vii. terminate any Contract in accordance with its terms; and

viii. determine in its sole discretion whether to consider a terminated Contractor for any future Contract.

6.6 Procurement. The Ark Parties will make good faith efforts to recruit, without any preferences or quotas, Certified Tribal Contractors for Contracts for which

they are Qualified and Available. Those efforts will include measures such as the following:

a. semi-annual on-Reservation training sessions (not to exceed six (6) hours per year) by the Ark Parties for Certified Tribal Contractors with respect to such matters as Contract procurement procedures, mine safety, regulatory compliance and other relevant matters;

b. published or posted advertisements or solicitations for Contracts will include a statement of the duty to provide meaningful and substantial opportunities, at competitive prices, to Qualified and Available Certified Tribal Contractors, without any preferences or quotas;

c. receiving assistance from the Facilitator and the Board in identifying Certified Tribal Contractors who may be Qualified and Available for Contracts;

d. requiring maintenance by the Facilitator of non-exclusive lists, to be available to the Ark Parties and any Administrator, of general Certified Tribal Contractors and specialized Certified Tribal Contractors who may be Qualified and Available for Contracts;

e. timely written notice to the Board and the Facilitator of Contract opportunities, the nature thereof, and when and how procurement will be conducted;

f. timely written notice of Contract opportunities by the Facilitator to TERO, Chief Dull Knife College and those Certified Tribal Contractors who the Facilitator believes may be qualified and available for such Contracts;

g. requiring Facilitator assistance to Certified Tribal Contractors through the Contract procurement process; and

h. reasonable availability of the Ark Parties' purchasing agent to answer Facilitator questions related to future Contracts.

6.7 Dissemination of Information. The Ark Parties will disseminate information regarding its obligations under this Contracting Program within its own organization by:

a. including a description of such obligations in any relevant Project manuals and handbooks; and

b. conducting annual meetings (not to exceed six (6) hours per year) with Project managerial and supervisory personnel and labor relations bargaining representatives (if any).

6.8 Reports. Within 60 days after the end of each calendar year, the Ark Parties will submit to the Board of Administrators and the Facilitator, for review at the next Regular Meeting of the Board, a written report, without including names or identifying information, that contains the following information:

a. a list of all Contracts and Subcontracts held by Certified Tribal Contractors during the quarter, and any terminations thereof (including the reasons therefor to the extent not entitled to confidentiality);

b. the total value of all Contracts and Subcontracts held by Certified Tribal Contractors during the quarter;

c. a forecast of Contracts projected to be awarded during the next quarter; and

d. such other information relevant to its responsibilities as the Board of Administrators may reasonably request through Board action; provided, however, that the Ark Parties may decline any request that conflicts with Applicable Law.

6.9 Reports on Rejected and Terminated Contractors. Within 60 days after the end of each calendar year, the Ark Parties will submit to the Board of Administrators and the Facilitator, a written report, without including names or identifying information, of the numbers and types of Certified Tribal Contractors who unsuccessfully applied for a Contract, or whose Contract was suspended or terminated.

6.10 Excluded Contracts. The provisions of this Part VI will not apply to the following types of Contracts:

a. Contracts with Ark Parties Affiliates to design, develop, construct, manage or operate the Operations, where "Affiliates" means (1) entities that control, are controlled by, or are under common control with the Ark Parties (where "control" means the power to direct the management of such entity through exercise of ownership, voting or contract rights); or (2) entities in which at least a majority of the economic interests therein are owned by the Ark Parties;

b. Contracts to provide installation, training, repair and other auxiliary services with respect to items supplied by the Contractor;

c. Contracts to provide professional services, such as engineering, architectural, environmental, legal or accounting services;

d. Contracts to respond to health and safety emergencies or environmentally hazardous situations; and

e. such other types of Contracts as the Board of Administrators may reasonably suggest.

VII. **On-Reservation Conduct Program.** The Ark Parties will work in close consultation with the Tribe to establish written guidelines designed to encourage appropriate conduct by the Ark Parties, Contractors and Subcontractors, and their respective employees and agents (each of the foregoing a "Covered Party"), as they travel through or are otherwise on the Reservation ("Guidelines").

a. The Guidelines will apply to a Covered Party on all days (including working hours and non-working hours) within any period of time (including weekends and holidays during such period) within which the Covered Party is involved or otherwise engaged in the Project.

b. The Guidelines must be consistent with and not conflict with any Applicable Law.

c. The Ark Parties will not be liable to the Tribe or any other party for the failure of a Covered Party to abide by the Guidelines, without prejudice to any other liability of a Covered Party that may arise irrespective of the Guidelines.

d. The Guidelines must call for the inclusion of provisions, substantially in the form set forth immediately below, in the Employee Handbook, in training materials for employees and agents involved in Operations, and in all

Contracts and Subcontracts that may involve employee or agent travel through or other conduct on the Reservation:

During and as conditions of my involvement in Operations as an employee or agent, or a Contractor or a Subcontractor (as the case may be), I acknowledge and understand as follows:

i. When I am on the Northern Cheyenne Reservation, the Ark Parties fully expect that I and, if I am a Contractor or Subcontractor, my employees and agents, will comply with the substance of all relevant standards of conduct generally applicable to Indians on the Reservation set forth in:

- the Law & Order Code of the Northern Cheyenne Tribe;
- the laws of the United States; and
- to the extent applicable, the laws of the State of Montana.

ii. If the Ark Parties are reliably advised and determine that I or, if I am a Contractor or Subcontractor, any of my employees or agents, while on the Reservation, has violated a standard of conduct referred to in ¶ i above, the

Ark Parties may require, as condition of my employment, Contract or Subcontract (as the case may be), and not as a matter of Ark Party jurisdiction over conduct on the Reservation, the imposition of sanctions, including suspension or termination of my employment, Contract or Subcontract (as the case may be).

iii. The conditions set forth in ¶¶ i and ii above neither constitute consent to the jurisdiction of the Tribe nor expand or diminish the lawful jurisdiction of the Tribe.

VIII. Environmental Monitoring Program.

8.1 Scope. The Ark Parties, in close consultation with the Tribe, will conduct environmental monitoring on the Reservation as specified in a detailed written Reservation environmental impacts monitoring plan ("Environmental Monitoring Plan"), to be established in accordance with the following general framework and designed to identify environmental impacts to the Reservation resulting from Operations. All references herein to the "Appropriate Tribal Department" mean the Tribal Environmental Protection Department (or any successor thereto) as to air quality, visibility and water quality matters, and the Tribal Natural Resources Department (or any successor thereto) as to biological resource matters.

8.2 Applicable Law. In addition to compliance with this Environmental Monitoring Program and the Environmental Monitoring Plan, the Ark Parties will comply

with all Applicable Law regarding monitoring and analysis of on-Reservation environmental impacts of Operations ("Applicable Environmental Requirements"), provided that in the event of any conflict between Applicable Environmental Requirements and this Environmental Monitoring Program or the Environmental Monitoring Plan, the provision(s) setting forth the requirement(s) most protective of the Reservation environment will be controlling as such relate to monitoring and analysis of on-Reservation environmental impacts of Operations only.

8.3 Retention of Environmental Consultants; Environmental Monitoring Plan. OCC, with the approval of the Appropriate Tribal Department (which approval will not unreasonably be delayed or withheld), will retain independent expert environmental consultants ("Environmental Consultants"). The Environmental Consultants will design, implement and oversee, in close consultation with OCC and the Appropriate Tribal Department, an Environmental Monitoring Plan providing for state-of-the-art environmental impact monitoring and analysis designed to assist in determining whether and to what extent Operations may adversely impact the Reservation environment. The Environmental Monitoring Plan, and any changes to the Environmental Monitoring Plan, must be approved in writing by OCC and the Appropriate Tribal Department, which approval will not unreasonably be delayed or withheld. The Environmental Consultants will be equally accountable and responsive to OCC and the Appropriate Tribal Department with respect to design, implementation and oversight of the Environmental Monitoring Plan. If, after consultation between OCC and the Appropriate Tribal Department, OCC or the Appropriate Tribal Department advises, in its discretion, that it has lost confidence in any Environmental Consultant's ability or commitment to properly

or objectively perform his or her duties, such Environmental Consultant will be discharged, and a replacement will be selected by OCC as promptly as reasonably possible, with the approval of the Appropriate Tribal Department which approval shall not unreasonably be withheld.

8.4 Monitored Parameters. In addition to any and all parameters that must be monitored on the Reservation to comply with Applicable Environmental Requirements, the Environmental Monitoring Plan at minimum will provide for monitoring of the specific parameters listed in ¶¶ a, b and c below ("Monitored Parameters"), provided that the Environmental Consultants, in close consultation with OCC and the Appropriate Tribal Department, may delete or add Monitored Parameters from or to the Environmental Monitoring Plan only if appropriate to reflect best available science or to comply with new Applicable Environmental Requirements. Any such modifications to the Environmental Monitoring Plan must be approved in writing by OCC and the Appropriate Tribal Department, which approvals will not unreasonably be delayed or withheld.

a. **Air Quality and Visibility.** As to air quality and visibility, the Environmental Monitoring Plan will provide for monitoring of particulate matter at the 10 millimeter level (commonly referred to as PM10), volatile organic compounds, heavy metals (mercury), and, if and to the extent recommended by the Environmental Consultant, opacity and concentrations of SO_2, NO_2, CO, Pb, ozone, and other pollutants, within the Reservation boundaries.

b. **Water Quality and Quantity.** As to water quality and quantity, the Environmental Monitoring Plan will provide for monitoring to determine the levels of salinity, manganese, sulfur, dissolved oxygen, total oxygen demand, pH, temperature, and water quantities in those Reservation ground and surface waters that, in the science-based opinion of the Environmental Consultants in close consultation with OCC and the Tribal Environmental Protection Department, may be adversely affected by Operations.

c. **Biological Resources.** As to biological resources, the Environmental Monitoring Plan will provide for monitoring to determine the population characteristics and habitats of those Reservation biological resources, including any sensitive plant species on the Reservation, and fish and wildlife species which occupy the Reservation that, in the opinion of the Environmental Consultants in close consultation with OCC and the Tribal Natural Resources Department, may be adversely affected by Operations.

8.5 Monitoring. In addition to any and all on-Reservation baseline and ongoing monitoring and reporting required by Applicable Environmental Requirements, at minimum the Environmental Monitoring Plan will provide for the following:

a. **Baseline Monitoring.** Baseline monitoring of the Monitored Parameters for no less than one year prior to the initiation of any surface disturbing Operations and for whatever longer period is deemed scientifically appropriate by the Environmental Consultants in close consultation with OCC and the Appropriate Tribal Department. The baseline monitoring will

be designed, implemented and used to establish scientifically-sound reference points to assist in determining whether and to what extent Operations may adversely affect the Reservation environment.

b. **On-going Impacts Monitoring.** On-going monitoring of Monitored Parameters to assist in determining any adverse impacts to the Reservation environment that may have resulted from Operations, until completion of all required reclamation on the State Coal Tracts and the release of all related reclamation bonds by the involved federal or State agencies. Such monitoring will be conducted at scientifically appropriate frequencies designated by the Environmental Consultants in close consultation with OCC and the Appropriate Tribal Department.

c. **Baseline Monitoring Report.** Prior to the projected date of commencement of Operations, the Environmental Consultants will prepare and submit to OCC and both Appropriate Tribal Departments a written report setting forth in reasonable detail the results of the baseline monitoring program with respect to each Monitored Parameter.

d. **On-going Monitoring Reports.** Thereafter, as promptly as reasonably possible after the close of each year in which Operations are conducted, the Environmental Consultants will prepare and submit to OCC and both Appropriate Tribal Departments a written report setting forth in reasonable detail the annual results and cumulative results (from inception of the on-going monitoring) for each Monitored Parameter, and any opinions or

recommendations the Environmental Consultants may respectively have (and the bases therefore) regarding whether and to what extent Operations may have adversely affected the Reservation environment.

e. **Evaluation of Parameters.** Annually, or more frequently if necessary, the Environmental Consultants shall provide a written analysis of the appropriate parameters to be monitored the following year, based on the best available science or to comply with new Applicable Environmental Requirements, to the OCC and the Appropriate Tribal Department.

8.6 Training and Employment of Local Indians. To the fullest extent feasible, OCC will contract with the Appropriate Tribal Departments to perform functions under the Environmental Monitoring Plan for which they are Qualified and Available, and train Qualified and Available Local Indians to assume responsibilities in the operation of the Environmental Monitoring Plan.

8.7 Costs. All costs of preparing, implementing and adjusting the Environmental Monitoring Plan, including (without limitation) a combined payment to the Tribal Environmental Protection Department and the Tribal Natural Resources Department of $75,000.00 per year beginning one (1) year prior to the initiation of any surface disturbing Operations (the "Environmental Payment"), will be borne or reimbursed by the Ark Parties. The Environmental Payment will be adjusted for inflation in the fifth year after the initial Environmental Payment and each subsequent year in an amount equal to the percentage increase in the Consumer Price Index for All Urban Consumers published by the United States Department of Labor (the "CPI-U" with 1982-

84 = 100) from the previous Environmental Payment; provided that the adjustment for inflation shall not be below two percent (2.00%) or exceed eight percent (8.00%).

8.8 Jurisdiction. The Tribe's courts will abstain from asserting jurisdiction over any non-member of the Tribe who is an employee or agent of an Ark Party or of an Environmental Consultant, solely with respect to civil or criminal claims against such person arising from his or her acts or omissions within the scope of his or her employment or contract and occurring in the course of implementing this Environmental Monitoring Program or any Environmental Monitoring Plan, except to the extent (if any) that such Tribal jurisdiction has lawfully been provided or confirmed by federal, State or county legislation, regulation or other action as the exclusive jurisdiction for such matter.

IX. Cultural Resources Program.

9.1 Cultural Resource Inventory. The Ark Parties, a qualified cultural resource specialist selected and employed by the Ark Parties (the "Specialist"), and the Northern Cheyenne Cultural Commission or its designee (the "NCCC") will jointly prepare and implement the following non-exclusive cultural inventory processes (the "Cultural Resource Inventory") in connection with the State Coal Tracts for the purpose of identifying and cataloging Tribally significant places and items, consistent with the National Park Service Bulletin 38 and the Native American Graves Protection and Repatriation Act (which may hereinafter be referred to as "Tribally Significant"), as follows:

a. Class I cultural resource inventory and report, involving a systematic study and evaluation of Tribally Significant documentary data and oral history concerning the State Coal Tracts and a report

of the findings thereof, including a detailed list of all reference sources;

b. Class III cultural resource inventory and report, involving a systematic, detailed field inspection of the State Coal Tracts for the purposes of identifying, listing, locating, describing, and evaluating Tribally Significant historic, cultural, religious, and burial sites located thereon, as follows:

i. Tribally Significant archaeological, historical, ethnological and cultural resources and values located thereon;

ii. Tribally Significant sites listed on, eligible for, or potentially eligible for the National Register of Historic Places located thereon;

iii. Tribally Significant historic and archeological resources located thereon that may be eligible for listing on the National Register of Historic Places through collection of additional information, conducting additional field investigations, or through other appropriate analyses;

iv. Tribally Significant or unique scenic and geological formations or sites located thereon;

v. Whether the State Coal Tracts possesses special, exceptional, critical, or unique characteristics of scenic, historic, archaeological, topographic, geologic, ethnologic,

scientific, or cultural attributes that are Tribally Significant; and

vi. Tribally Significant religious, burial, and ceremonial sites (including homesteads), traditional cultural properties, plant gathering, hunting and fishing areas, and culturally-important springs.

c. Maps specifically identifying, locating, and depicting all results of the Cultural Resource Inventory will be developed in order to accurately record such results (each a "Cultural Site" and collectively the "Cultural Sites"). All maps will be prepared on a standard 1"=400' basis. Where necessary for cultural purposes, the NCCC or its designee may identify broad areas of concern, rather than specific Cultural Sites, provided that every effort will be made to provide enough information to allow for maps that will be meaningful and usable to the Ark Parties as they determine the exact location of activities relating to Operations. The NCCC and the Tribe understand and agree that the failure to adequately disclose to the Ark Parties sufficient information about the location of sensitive cultural areas (see Bulletin 38) may adversely affect, limit, or otherwise prohibit the parties from reaching an agreed upon Treatment Plan and/or the implementation and monitoring thereof.

9.2 Cultural Resource Inventory Timing. The Cultural Resource Inventory will be conducted on the State Coal Tracts in a phased approach, as follows:

a. Phase 1 of Cultural Resource Inventory review will begin on Tract 2 of the State Coal Tracts on April 1, 2013;

b. Phase 2 of the Cultural Resource Inventory review will begin on Tract 1 of the State Coal Tracts on April 1, 2015; and

c. Phase 3 of the Cultural Resources Inventory review will begin on Tract 3 of the State Coal Tracts on April 1, 2017.

9.3 Sharing of Current Data. The Ark Parties have submitted the results of all plant and animal surveys (the "Existing Surveys") to the Montana State Department of Environmental Quality ("DEQ") as part of the Mining Permit process. The DEQ is reviewing the Mining Permit to determine if it is administratively complete, which occurs prior to agency action on the Mining Permit. The Existing Surveys will be provided to the Tribe once the DEQ has certified the Mining Permit filing is administratively complete or the date on which Phase 1 of the Cultural Resources Inventory provided for under this plan is scheduled to commence, whichever is sooner. To the extent the NCCC believes that the Existing Surveys are incomplete, the NCCC and the Ark Parties will make a good faith effort to address the same through the Cultural Resource Inventory or any alternative procedure agreed to by the Ark Parties and the NCCC. If the Existing Surveys would not otherwise be available to the public, the NCCC and the Tribe agree and certify that they will not disclose the Existing Surveys or the contents thereof to any third-party. The Ark Parties will revegetate the State Coal Tracts pursuant to the terms of the Mining Permit. If Tribally Significant plants that are located in the State Coal Tracts are identified pursuant to this section, the Ark Parties will work with the NCCC to ensure that such plants are reintroduced to the State Coal Tracts

when revegetation takes place, so long as such revegetation is not prohibited by the Mining Permit.

9.4 Costs of Cultural Resource Inventory, Ownership of Results. All reasonable costs incurred by the Specialist in connection with the Cultural Resource Inventory under Section 9.1 will be paid by the Ark Parties. All reports, maps, surveys, materials, notes, and results of the Cultural Resource Inventory (the "Inventory Results", which shall not include Artifacts, as that term is defined in Section 9.12) shall be the property of the Tribe. The Ark Parties shall be provided with complete and unrestricted access to the Inventory Results as needed to obtain any necessary legal approvals and to implement this Operating Plan, provided that the Ark Parties will not disclose the Inventory Results to third parties except as needed to satisfy the above requirements. The Ark Parties will inform the NCCC whenever the Inventory Results are provided to a third party.

9.5 Protection of Identified Cultural Sites.

a. Planning for Ground-Disturbing Activities. It is understood that the Operations will involve a large number of ground-disturbing activities. In planning the exact location of mines, access roads and other ground-disturbing activities, the Ark Parties will attempt to reasonably avoid impacts on the Cultural Sites identified under the Cultural Resource Inventory to the extent reasonably feasible, including visual and auditory impacts, taking into account the reasonable business, economic, and logistical requirements of the planned development and the Operations. Provided that the procedures specified in Sections 9.1, 9.3, 9.5(b), 9.5(c),

9.6, and 9.7 have been materially complied with, nothing herein shall prohibit the Ark Parties from taking actions or conducting the Operations in a manner that may adversely impact the Cultural Sites. The Ark Parties have filed a map with the DEQ as part of the permitting process that includes preliminary plans for the location of roads and facilities in connection with the operations of the Ark Parties. That map shall be provided to the Tribe as of the date when DEQ has certified the filing is complete or the date on which Phase 1 of the Cultural Resources Inventory provided for under this plan is scheduled to commence, whichever is sooner. The purpose of providing the map would be to give the Tribe the opportunity to identify whether the proposed locations would adversely impact any Tribally Significant sites and, if so, to work with the Ark Parties during the Cultural Resources Inventory process to determine if it is feasible to relocate any of the roads or facilities to eliminate or minimize those impacts consistent with procedures, goals, and qualifications of Section 9.5(b). If any of the above information would not otherwise be available to the public, the NCCC and the Tribe agree and certify that they will not reveal said information to third parties.

b. Treatment Plan for Cultural Sites Identified in Cultural Review Inventory.

1. In general, avoidance of impacts to Cultural Sites significant to the Tribe and graves is preferred and a good faith effort will be made by the Ark Parties to minimize such impacts, but it is recognized that avoidance may not always be compatible with the planned development and

Operations, and avoidance will not always be possible. In particular, all graves are accorded respect by the Tribe. Whenever reasonably feasible, no grave should be disturbed. Based upon Tribal standards, avoidance of grave sites must be given the highest priority. If requested by the Tribe, the Ark Parties will reasonably work with the NCCC and the surface owner to facilitate the reburial of unearthed human remains and funerary objects discovered within the State Coal Tracts.

2. **i.** Where it is anticipated that impacts to Cultural Sites cannot reasonably be avoided, the Ark Parties, in consultation with the NCCC, will develop a comprehensive treatment plan (a "Treatment Plan") as soon as practical after the Cultural Resource Inventory has been finalized (or after each Phase thereof), utilizing the following procedures:

A. Identification of the Cultural Sites.

B. Assessment of the cultural relevance of the Cultural Sites.

C. Assessment of the Project stage (current and future stages).

D. Assessment of the effect of the Project on the Cultural Sites, including any impacts that would disturb a grave site or that may diminish, directly or indirectly, the integrity of a Cultural Site's location, design, setting, materials, workmanship, feeling, or association.

E. Assessment of alternatives or modifications to the activity that could avoid or minimize adverse effects to the Cultural Sites.

F. Identification of parties whose input may be relevant to development of the Treatment Plan, including, in connection with gravesites associated with any

traditional Tribal homestead, any descendants thereof that have been identified through the Cultural Resources Inventory or that are identified by the Tribe. It shall be the NCCC's responsibility to determine which individuals and entities need to be included in this process on behalf of the Tribe, and the Ark Parties' responsibility to determine which individuals and entities need to be involved on their behalf, provided that both parties will ensure that any individual or entity necessary for consent to the Treatment Plan is appropriately involved.

G. Identification of resources (i.e. Ark Parties, NCCC, local, state and federal) beneficial to the implementation of the Treatment Plan.

H. Identification of materials needed to implement Treatment Plan and the manner in which the Treatment Plan will be implemented.

I. Define the time frame for implementing the Treatment Plan.

The Treatment Plan may include fencing prior to construction to form a barrier between the facilities and identified Cultural Site or grave, re-burial (in the case of a grave), data recovery and recordation, measures to prevent the introduction of noxious weeds or other non-indigenous species, removal or degradation of the Cultural Site, or any other measures which will address impacts to Cultural Sites. The Treatment Plan will include the manner in which implementation will be carried out and a schedule for their implementation. If any Artifacts are removed pursuant to the Treatment Plan, they will be donated as provided for in Section 9.12.

ii. For purposes of this Section, consultation shall mean the process of seeking, discussing, and considering the views of the Tribe and

attempting to seek agreement with the Tribe on how Tribally Significant properties should be considered and managed under the Treatment Plan. Consultation is built upon the exchange of ideas, not simply providing information.

3. If the NCCC determines that a Cultural Site or grave site belongs to another tribe(s), the NCCC will notify the Ark Parties as soon as possible. In such case, the appropriate tribe(s) shall be included in the consultation process as provided for in this Section.

4. Where access to surface land owned by a private landowner is required to implement the Treatment Plan or for the purpose of reburial of human remains and funerary objects that have been disturbed, the Ark Parties agree that they will make a good faith effort to obtain consent of the landowner for these purposes.

c. Monitoring.

1. The NCCC or its designee will select and train qualified Tribal members, in consultation with the Ark Parties, to serve as monitors until completion of all required reclamation on the State Coal Tracts (the "Monitors"). The Monitors shall be employed by the Tribe and under the supervision of the NCCC or its designee. The protocols by which monitoring shall take place will be developed through consultation between the NCCC or its designee and the Ark Parties, and shall be subject to applicable state and federal laws. The Monitors shall abide by all uniformly applicable workplace rules and regulations, safety

requirements, time restrictions, and other Operations-related requirements of the Ark Parties (collectively the "Workplace Rules"). The Workplace Rules will be applied to the Monitors in a manner equivalent to that applied by the Ark Parties to their employees performing duties on the Operations, and access to the Operations by the Monitors will be no more restrictive than such access provided to employees of the Ark Parties who perform duties on the Operations. The monitoring shall be on an "as-needed basis" based on activities identified in the Treatment Plan and may include, but not necessarily be limited to, physical, visual and auditory impacts to the Cultural Sites and Tribally Significant animals. Archeologists and cultural resource specialists hired by the Ark Parties will engage in good faith consultation with the NCCC or its designee and make reasonable efforts to keep informed and to reasonably include the Monitor in their work. Fees, wages, and costs (including without limitation transportation costs) incurred by the Monitor shall be borne by the Tribe with temporary assistance by the Ark Parties as provided herein. The Monitor shall provide the Ark Parties with copies of all reports, memorandums, writings, findings, and other information generated by or on behalf of the Monitor in connection with the monitoring, provided that the Tribe may redact culturally sensitive information. All consultations contemplated herein and all information shared under this Section shall remain confidential and shall not be disclosed to any third-party without the prior written consent of the non-disclosing party.

2. Quarterly meetings between the Ark Parties and the NCCC will take place to discuss whether Treatment Plans have been effective and are being implemented, and to discuss proposed changes to the Treatment Plans. Special meetings may be held at the request of either the Ark Parties or the NCCC. The parties may agree to reduce the frequency of said meetings during periods when construction activities are limited.

d. **Reports.** The Ark Parties shall provide the NCCC with reports on the progress of implementation of the Treatment Plan in regard to identified impacts on Cultural Sites, actions taken to avoid or minimize impacts on Cultural Sites, and the condition of identified Cultural Sites, including synthesizing the data for different locations within the State Coal Tracts.

e. **Training.** All employees of the Ark Parties that have direct responsibility for that part of the Operations that may directly impact Cultural Sites will receive training in the implementation of the Cultural Resources Program, as well as training about Northern Cheyenne history and culture ("Cultural Resource Training"). Trainers shall include both the upper management of OCC and appropriate cultural trainers identified by the NCCC. Cultural Resource Training will be provided periodically to ensure that all new employees with the requisite responsibilities are trained.

9.6 Discovery of New Cultural Sites or Graves.

a. **Consultation and Treatment Plan.** Where Artifacts (as defined in Section 9.12), human remains and graves or funerary items that have not been previously identified in the Cultural Resource Inventory are

discovered during the course of Operations on the Cultural Resource Property (the "Discovered Artifacts"), the Ark Parties will immediately notify the Tribal Historic Preservation Officer (THPO), or if the THPO is unavailable, the NCCC, by phone. Within three (3) business days, written confirmation of the discovery shall be sent by facsimile, e-mail, U.S. Mail, or by delivery service as follows (the "Discovery Notification"):

Conrad Fisher, THPO
PO Box 128
Lame Deer, MT 59043
Tel: 406.477.4838 or .4839
Fax: 406.477.6210
Email: conrad.fisher@cheyennenation.com

The NCCC shall promptly provide the Ark Parties with notice of change of contact information of the THPO. The Discovery Notification shall provide information about the Discovered Artifacts, the planned activity, its location and the basis for believing that an impact or excavation may occur. If a gravesite is discovered on the State Coal Tracts and is related to a Tribal homestead connected with a particular family, the NCCC shall provide written notification to any descendents that have been identified through the Cultural Resource Inventory or that are identified by the Tribe and they shall be permitted to take part in the consultation. Consultation will commence as soon as practical but no later than 10 days after the initial contact with the THPO or NCCC, as the case may be, and activities that may have adverse impacts to the Discovered Artifacts will cease until there is agreement that the activities will not have an adverse impact on the Discovered Artifacts or a Treatment Plan has

been adopted pursuant to the procedures identified in Section 9.5(b), and the Discovered Artifacts shall be treated as "Cultural Sites" under Section 9.5(b). When a grave is involved, the Ark Parties shall take steps to secure and protect the items during the three day notice period.

b. **Failure to Finalize Consultation**. If consultation cannot be concluded under Section 9.5(b)(2): (i) within 21 (twenty-one) calendar days from the date of Discovery Notification for Operations not consisting of the extraction of coal, or (ii) 2 (two) calendar days from the date of Discovery Notification for Operations consisting of the extraction of coal, and unless otherwise provided by applicable State or Federal law, then the Ark Parties may, without further consultation, adopt a Treatment Plan to address the goals and requirements stated in Section 9.5(b).

9.7 **Otherwise Applicable Federal and State Laws**.

a. Nothing herein shall alleviate or abrogate the responsibility of the Ark Parties to comply with all otherwise applicable Federal and State laws, including but not limited to:

1. The Native American Graves Protection and Repatriation Act if a gravesite is discovered on federal or tribal land, including the involvement of appropriate federal agencies;
2. The National Historic Preservation Act if there is a federal undertaking that may impact an historic property as defined by that Act, including the involvement of the appropriate federal and state agencies;
3. The Montana Antiquities Act;

4. The Montana Human Skeletal Remains and Burial Protection Act in the case of human remains discovered on state or private lands, including notification of the county coroner, cessation of activities in the vicinity of the human remains, and cooperation with representatives of the Burial Preservation Board; and
5. The Montana Strip and Underground Mine Reclamation Act.

b. Should the Operations trigger involvement of federal land management agencies and/or the State Historic Preservation Officer, the Ark Parties agree that they will notify the NCCC.

9.8 Access to State Coal Tracts. Subject to any and all limitations and qualifications under the State Coal Leases, surface use and access agreements, existing leases, Applicable Law, and the terms and conditions contained herein, the Ark Parties will provide the NCCC, and under certain circumstances identified below, enrolled members of the Tribe (upon express approval by the Ark Parties which shall not be unreasonably withheld), limited access to the State Coal Tracts for the following purposes only:

a. conducting the Cultural Resource Inventory as provided herein;

b. participating in the review of Discovered Artifacts human remains, graves or funerary items discovered during Operations;

c. monitoring the Cultural Resource Program as provided herein;

d. implementing the consultation procedures in Section 9.5, including development of Treatment Plans

e. limited ceremonial and traditional cultural purposes involving enrolled members of the Tribe may be provided with access to approved portions of the State Coal Tracts for ceremonial and traditional cultural purposes unless providing such access would be unsafe, interfere with business activities, interfere with activities of any lessee of the State Coal Tracts, or would be burdensome to the Ark Parties. If requested by the Tribe, such access for ceremonies may take place prior to any construction on the State Coal Tracts if such ceremonies can take place prior to planned construction activities.

9.9 Protocols and Limitations for Access and Use of State Coal Tracts. The following protocols and limitations will govern access and use of the State Coal Tracts:

a. in the case of access provided for the purpose specified in Section 9.8e, there will be at least 30 days advanced written notice delivered to the Ark Parties (or such person identified by the Ark Parties for receiving such notice), identifying the date, nature of use of the State Coal Tracts, and the location of said use.

b. there will be no overnight or extended use of the State Coal Tracts, except where a request is made to hold a vision quest or similar ceremonies that require an overnight stay, subject to the approval of the Ark Parties whose consent shall not be unreasonably withheld

c. the State Coal Tracts will not be used for any illegal activities.

d. no camp fires, cooking fires, or any other fires will be permitted on the State Coal Tracts, provided that this shall not apply to fires related to cultural activities such as a sweat lodge if compatible with the use of the property by the Ark Parties and upon prior written consent by the Ark Parties whose consent shall not unreasonably be withheld.

e. there will be no hunting, trapping, or fishing on the State Coal Tracts unless otherwise agreed to by the Ark Parties in their sole and absolute discretion.

f. there will be no weapons or firearms on the State Coal Tracts.

g. the State Coal Tracts will be used in such a way so as not to interfere with Operations or any other use of the State Coal Tracts by the Ark Parties and any co-owner or lessee thereof.

h. in the case of access provided for the purpose specified in Section 9.8e, all motor vehicles will stay on existing roads, and all off-road use will be limited to walking or horseback.

i. all gates will be left in the position they were found.

j. no Artifacts or any other items will be removed from the State Coal Tracts without prior consent from the Ark Parties, provided that the Ark Parties will not unreasonably withhold consent if permission to gather traditional plants or other natural materials is requested.

k. the Ark Parties and their agents will be allowed to accompany all access and use of State Coal Tracts, provided that provisions will be made for private religious and cultural ceremonies upon request and if compatible

with the use of the property by the Ark Parties and upon written consent of the Ark Parties whose consent shall not be unreasonably withheld.

l. any and all persons accessing the State Coal Tracts pursuant to Section 9.8 who are not Tribal employees or contractors employed by the Tribe will execute an appropriate waiver and release of all claims associated with such use in favor of the Ark Parties and the Tribe.

m. such use will be subject to all other reasonable limitations and restrictions as may be imposed by the Ark Parties.

9.10 Term. Access and use of the State Coal Tracts as provide by Section 9.8, as qualified by Section 9.9, shall begin on the Effective Date and continue for so long as Operations are conducted on the State Coal Tracts (including all remediation requirements under Applicable Law).

9.11 Clarification of Interest. Neither the Cultural Resource Program nor any term and condition thereof will interpreted as, or deemed to be, a lease, easement, or other property right, and nothing herein shall not be treated as a covenant running with the land or other encumbrance or burden on the State Coal Tracts.

9.12 Ownership and Donation of Artifacts. The parties understand and agree that any and all Native American artifacts (i.e. items created by the prior indigenous inhabitants of the State Coal Tracts, including but not limited to, stone tools, weapons, teepee rings, rock art, and petroglyphs), remnants, and cultural items located on, in or under the State Coal Tracts (the "Artifacts"), other than human remains and funerary items, are the property of the Ark Parties, unless otherwise provided by applicable State and Federal law. Some of the Artifacts will be removed from the State

Coal Tracts pursuant to a Treatment Plan, and to the maximum extent allowable by law, the Ark Parties commit to donate those Artifacts removed from the State Coal Tracts to the appropriate Tribal Nation (or related charitable organizations) in the form of periodic "charitable contributions", as that phrase is defined in Section 170 of the Internal Revenue Code of 1986, as amended from time to time ("IRC Section"), in a manner so as to allow the Ark Parties to qualify for the maximum federal income tax deduction then available to the Ark Parties under IRC Section 170, or its successor provision(s).

9.13 Insurance and Indemnity

a. Tribal Insurance. The Tribe will obtain and maintain during the term of these Operating Plans appropriate liability and workers compensation insurance for all of its members and employees performing any functions or duties under the Cultural Resources Program on the State Coal Tracts (the "Tribal Insurance").

b. Ark Parties Insurance. Insurance will be furnished to indemnify the Ark Parties and their respective members, directors, officers, employees, agents and attorneys (the "Indemnified Parties") from and against any loss, cost, expense and liability (including reasonable attorney fees and costs, legal assistant fees and costs, expert fees and court costs) incurred by any of the Indemnified Parties in connection with or otherwise arising out of any and all claims and proceedings (whether brought by a private party, governmental party, or otherwise) for bodily injury, property damage, or any other injury damage or claim caused by negligent, reckless or intentional activity or behavior connected with any and all use

of the State Coal Tracts by the NCCC, the Tribe, any enrolled member of the Northern Cheyenne Tribe of Indians, any invitee or guest of the foregoing, and any employee or agent of the foregoing ("Tribal Visitors"), regardless of whether such use was authorized by the Ark Parties or done without authorization. The amount of insurance coverage shall be determined by the Ark Parties and paid for by the Ark Parties.

c. **Indemnity Fund.** All claims of any kind and nature arising from or relating to the Cultural Resource Program will be satisfied to the greatest extent possible out of the Tribal Insurance. If a claim is made in excess of the Tribal Insurance or that is not covered by the Tribal Insurance, it will be satisfied to the greatest extent possible out of the Ark Parties Insurance. If a claim is made in excess of the Ark Parties Insurance limits or that is not covered by the Ark Parties Insurance that is based upon negligent, reckless or intentional activity or behavior by Tribal Visitors, then beginning during the month in which the claim was made, the Ark Parties may deposit up to 30% of the amounts due to the Tribe under the Cultural Resources Program (specifically excluding, however, all payments due under the Cultural Resource Inventory Payment) in any one month in an interest-bearing escrow account known as the "Indemnity Fund" until the full amount of the excess claim has been deposited in the fund. Once a final judgment has been entered or settlement reached and any excess claims paid, the Indemnity Fund shall be closed and any remaining balances provided to the Tribe for its use. If the Indemnity Fund is

inadequate to pay the excess claim, the Ark Parties may continue to deduct up to 30% per month from future amounts due to the Tribe under the Cultural Resources Program (specifically excluding, however, all payments due under the Cultural Resource Inventory Payment) until the full amount of the paid claim has been recouped. The Tribe shall have no liability for claims against the Ark Parties stemming from or related to the Cultural Resources Program except as provided for in this Section.

d. **Notice.** The Ark Parties shall provide written notice to the Tribe of any claim that has been made against the Indemnified Parties based upon the conduct or activities of Tribal Visitors within 10 days of receiving said claim.

e. **Resolution of Claims.** The NCCC and the Tribe will make their best good faith efforts to ensure that Tribal Visitors that are the subject of a claim will cooperate with any investigation and resolution of the claim. If there is a disagreement between the Tribe and the Ark Parties regarding whether the claim is legitimate, the amount of the damages, or whether the damages are related to negligent, reckless or intentional behavior on the part of Tribal Visitors, then the Tribe and the Ark Parties shall make every effort to reach agreement before reaching a settlement or paying the claim. If the Tribe disagrees with the disbursement of funds from the Indemnity Fund, it retains the right to pursue any appropriate remedy available to it under Section 2.3 of these Operating Plans.

f. **Sovereign Immunity.** Section 2.3 of the Operating Plans governs the circumstances under which the Tribe consents to be sued under the Operating Plans. Nothing in this Section shall be construed as expanding, authorizing, or affecting in any way the limited waiver by the Tribe of its sovereign immunity provided for in Section 2.3.

9.14 No Limitation of Rights. Nothing contained in the Cultural Resources Program shall be deemed or interpreted as a limitation on the Ark Parties right and ability to lease, sublease, assign, transfer, sale, encumber, or (except as explicitly provided for in this Cultural Resources Plan) otherwise use the State Coal Tracts, in whole or in part, including, but not limited to, all such uses associated with the Operations.

9.15 Implementation Costs of Cultural Resource Program. The Tribe will work with the State and the Federal Government to fully fund all costs of the Cultural Resource Program as provided by Exhibit C to the Settlement Agreement. The Ark Parties will assist the Tribe in its efforts to obtain federal and state funding. Until federal or state funding is received, the Ark Parties agree to fund the following implementation costs related to the Cultural Resources Program:

a. Reasonable costs of the THPO associated with the Cultural Resource Inventory, payable as follows (the "Cultural Resource Inventory Payment"):

i. $100,000.00 for Phase 1, due on April 1, 2013;

ii. $100,000.00 for Phase 2, due on April 1, 2015; and

iii. $100,000.00 for Phase 3, due on April 1, 2017.

b. Reasonable costs of the THPO and Monitors associated with implementing and monitoring under the Cultural Resources Program, as follows (the THPO Payment):

i. The Ark Parties have submitted a Mining Permit application relating to Tract 2 of the State Coal Tracts, which application is currently being reviewed for administrative completeness. The Ark Parties will pay the Tribe $120,000.00 in the year in which Operations (other than exploration operations) first begin under the Mining Permit, which shall be reduced to $100,000.00 per year for the next four (4) years, after which the payment will decrease to $50,000.00 and will continue thereafter as provided hereinbelow.

ii. Upon the final, non-appealable issuance of the initial Mining Permit for State Coal Tracts 1 and/or 3, the THPO Payment will revert to $100,000.00 per year for a period of five (5) years, beginning in the year in which Operations (other than exploration operations) first begin on State Coal Tracts 1 and/or 3 under the initial Mining Permit(s), after which the payment will decrease to $50,000.00 and will continue thereafter as provided hereinbelow.

iii. The THPO Payment shall end when coal mining operations on the State Coal Tracts cease. That is, the THPO Payment is payable only if the Ark Parties are actively mining coal on the State Coal Tracts, and does not include reclamation or reclamation related activities.

iv. In the event coal mining operations are temporarily suspended on the State Coal Tracts, the THPO Payment shall be temporarily suspended until such time as coal mining operations on the State Coal Tracts resume.

c. Reasonable costs of the Tribe in developing and negotiating the Cultural Resources Program, not to exceed a one-time payment of $15,000.00.

9.16 Applicable State and Federal Law to Control. The foregoing Cultural Resources Program is subject to all applicable State and Federal laws, and may be limited, qualified, supplemented, or abrogated in part by such laws. In the event of a conflict between applicable State or Federal law and this Cultural Resources Program, this Cultural Resources Program shall be interpreted in such a manner so as to minimize or eliminate any such conflict to the extent reasonably possible.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

WHEREFORE, the Parties have executed these Operating Plans as of the date set forth below.

Dated this November 5, 2012 ARK LAND COMPANY

By: [signature]

Its: President

Dated this November 6, 2012 OTTER CREEK COAL, LLC

By: William M. Rowlands

Its: President

Dated this _____, 2011 NORTHERN CHEYENNE TRIBE

By: _____

Its: _____

WHEREFORE, the Parties have executed these Operating Plans as of the date set forth below.

Dated this _____, 2012 ARK LAND COMPANY

By:_____

Its:_____

Dated this _____, 2012 OTTER CREEK COAL, LLC

By:_____

Its:_____

Dated this 11-5-12, 2012 NORTHERN CHEYENNE TRIBE

By: Leroy A. Spang

Its: Pres.

Resolutions of:

Ark Land Company

To be attached to Operating Plans

(See following pages)

Ark Land Company

Action by Unanimous Written Consent
Of the Board of Directors

The undersigned, being all the members of the Board of Directors of Ark Land Company, a Delaware corporation (the "Corporation"), hereby consent to the following resolutions as an action of the Board of Directors of the Corporation pursuant to Section 141(f) of the General Corporation Law of the State of Delaware:

WHEREAS, the undersigned deem it advisable and in the best interests of the Corporation and its stockholder to approve an Operating Plan for the Otter Creek Mine in Montana and enter into an agreement with the Northern Cheyenne Tribe, together with Otter Creek Coal, LLC, adopting and implementing the Operating Plan, as more particularly described in Exhibit A attached hereto (the "Operating Plan") and on the terms and conditions contained therein;

NOW, THEREFORE, BE IT

RESOLVED, that the Corporation be, and it hereby is, authorized to enter into the Operating Plan on the terms and conditions contained therein;

RESOLVED FURTHER, that the President, any Vice President, the Secretary or Assistant Secretary, the Treasurer or Assistant Treasurer or such other officer of the Corporation as the President may designate (collectively, the "Authorized Officers") be, and each of them hereby is, authorized, empowered and directed to take any and all actions necessary or desirable to effectuate the Operating Plan, and to execute, deliver and perform such certificates, instruments, agreements and documents as may be necessary or desirable in connection therewith, the taking by such Authorized Officer of any such action and the execution, certification or delivery by such Authorized Officer of any such certificates, instruments, agreements or documents shall conclusively establish his or her determination of such necessity or desirability and shall conclusively establish his or her authority therefor from the Corporation and the approval and ratification of the undersigned on the terms and conditions of the action so taken or the documents so executed;

RESOLVED FURTHER, that the Authorized Officers be, and each of them hereby is, authorized to execute all such further instruments and documents and to take all such further actions as they may deem necessary or appropriate in order to carry out the intent of the above resolutions and to effect the actions contemplated thereby; and

RESOLVED FURTHER, that all actions taken heretofore by the Authorized Officers, representatives, agents or attorneys of the Corporation, on behalf of the Corporation, in furtherance of the foregoing resolutions be, and they hereby are, approved, ratified, confirmed and adopted in all respects.

This unanimous written consent may be executed in one or more counterparts, all of which, when taken together, shall constitute one and the same instrument.

[The rest of this page is intentionally left blank]

The foregoing resolutions are hereby approved as an action taken by the Board of Directors of the Company, without formal meeting effective as of the last date written below.

_____
Robert G. Jones
Date:_____

_____
Paul A. Lang
Date:_____

_____
Jon S. Ploetz
Date:_____

Resolutions of:

Otter Creek Coal Company, LLC

To be attached to Operating Plans

(See following pages)

OTTER CREEK COAL, LLC

Action by the Sole Member

The undersigned, being the sole member of Otter Creek Coal, LLC, a Delaware limited liability company (the "Company"), hereby consent to the following resolutions as an action of the sole member of the Company pursuant to the Limited Liability Company Agreement of the Company:

WHEREAS, the undersigned deem it advisable and in the best interests of the Company and its stockholder to approve an Operating Plan for the Otter Creek Mine in Montana and enter into an agreement with the Northern Cheyenne Tribe, together with Ark Land Company, adopting and implementing the Operating Plan, as more particularly described in Exhibit A attached hereto (the "Operating Plan"), and on the terms and conditions contained therein;

NOW, THEREFORE, BE IT

RESOLVED, that the Company be, and it hereby is, authorized to enter into the Operating Plan on the terms and conditions contained therein;

RESOLVED FURTHER, that the President, any Vice President, the Secretary or Assistant Secretary, the Treasurer or Assistant Treasurer or such other officer of the Company as the President may designate (collectively, the "Authorized Officers") be, and each of them hereby is, authorized, empowered and directed to take any and all actions necessary or desirable to effectuate the Operating Plan, and to execute, deliver and perform such certificates, instruments, agreements and documents as may be necessary or desirable in connection therewith, the taking by such Authorized Officer of any such action and the execution, certification or delivery by such Authorized Officer of any such certificates, instruments, agreements or documents shall conclusively establish his or her determination of such necessity or desirability and shall conclusively establish his or her authority therefor from the Company and the approval and ratification of the undersigned on the terms and conditions of the action so taken or the documents so executed;

RESOLVED FURTHER, that the Authorized Officers be, and each of them hereby is, authorized to execute all such further instruments and documents and to take all such further actions as they may deem necessary or appropriate in order to carry out the intent of the above resolutions and to effect the actions contemplated thereby; and

RESOLVED FURTHER, that all actions taken heretofore by the Authorized Officers, representatives, agents or attorneys of the Company, on behalf of the Company, in furtherance of the foregoing resolutions be, and they hereby are, approved, ratified, confirmed and adopted in all respects.

DATED: November 5, 2012

ARCH COAL, INC

By: _____
Robert G. Jones
Senior Vice President – Law, General Counsel and Secretary

Resolution of:

Northern Cheyenne Tribal Council

To be attached to Operating Plans

(See following pages)

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MONTANA 59043

IN REPLY REFER TO:
Executive Direction
Code 101

NOV - 6 2012

Leroy A. Spang, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Spang:

This is in reference to Northern Cheyenne Tribal Resolution No. DOI-009(13) enacted by the Council on November 5, 2012 and received in this office on November 5, 2012.

Resolution No. DOI-009(13) – approving and adopting the operating plans for the Otter Creek Coal Mine.

Resolution No. DOI-009(13) is hereby noted. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV Section 1 (a), (e), (i), (k) and (l) of the Northern Cheyenne Tribe's Amended Constitution and Bylaws.

All necessary copies of this resolution have been retained for our files.

Sincerely,

Beverly A. Filler

Acting Superintendent

Enclosure

RECEIVED
NOV - 6 2012
BY:

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE INDIAN RESERVATION
LAME DEER, MONTANA

RESOLUTION NO. DOI-009 (2013)

A RESOLUTION OF THE TRIBAL COUNCIL OF THE NORTHERN CHEYENNE APPROVING AND ADOPTING THE OPERATING PLANS FOR THE OTTER CREEK COAL MINE.

WHEREAS, the Tribal Council of the Northern Cheyenne Tribe is the governing body of the Northern Cheyenne Tribe pursuant to the Amended Constitution and By-Laws of the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, as approved by the Secretary of the Interior on May 31, 1996; and

WHEREAS, the Tribal Council of the Northern Cheyenne Tribe has under Article IV, Section 1(a) of the Amended Constitution the power to negotiate with the Federal, State, and local governments, on behalf of the Northern Cheyenne Tribe; under Section 1(e) the power to engage in any business that will further the economic well-being of the members of the Northern Cheyenne Tribe and to undertake any economic activity of any nature whatever not inconsistent with law or any of the provisions of the Amended Constitution and By-Laws; under Section 1(i) the power to establish a reservation court and define its duties and powers; under Section 1(k) the power to protect and preserve the property, wildlife, and natural resources of the Northern Cheyenne Tribe; and under Section 1(l) the power to cultivate and preserve native arts, crafts, culture, and Indian ceremonials; and

WHEREAS, Section 503 of the Department of the Interior and Related Agencies Appropriations Act of 1998, Pub. L. 105-83 ("Section 503") provided that the Secretary of the Interior ("Secretary") must transfer to the State of Montana either $10 million in federal mineral rights agreed to by the Secretary and the Governor of Montana through negotiations conducted in accordance with Section 503 or all federal mineral rights in three federal coal tracts (the "Otter Creek Tracts"); and

WHEREAS, the Governor of Montana opted for the transfer of the Otter Creek Tracts to the State of Montana; and

WHEREAS, the Otter Creek Tracts consist of Otter Creek Tracts Nos. 1, 2 and 3 in Powder River County, Montana. In total, the Otter Creek Tracts encompass approximately 8,350 acres and are estimated to contain approximately 533 million tons of recoverable coal. At their closet point, the Otter Creek Tracts are approximately 3 miles from the Tongue River, which serves as the eastern boundary of the Northern Cheyenne Reservation (the "Reservation"); and

WHEREAS, The Northern Cheyenne Tribe asserted claims in the United States District Court for the District of Columbia in the case of *Northern Cheyenne Tribe v. Gale Norton,*

Secretary of the Interior, Case No. 1:02CV00146 TPJ (the "Action"), concerning the Otter Creek Tracts; and

WHEREAS, the Northern Cheyenne Tribe and the Montana State Board of Land Commissioners (the "Board") entered into a Settlement Agreement dated February 19, 2002 (the "Settlement Agreement"), wherein the parties reached an agreement resolving, among other things, the dispute concerning the Otter Creek Tracts and the Action; and

WHEREAS, under the Settlement Agreement, the Board agreed that when it authorizes the leasing of any portion of the Otter Creek Tracts for coal mining, the Board will require, separate from the terms of the lease, that the State Department of Natural Resources and Conservation require that the Operating Plans described in Exhibit B to the Settlement Agreement be established and thereafter implemented; and

WHEREAS, Exhibit B to the Settlement Agreement provides that, after the conclusion of any exploration operations and before conducting any mining, construction or other operations on any portion of the Otter Creek Tracts (singly and collectively "Operations"), the project operator in close consultation with the Northern Cheyenne Tribe, shall develop and submit for approval to the Board, obtain Board approval of, and thereafter implement the following written Operating Plans summarized below:

(1) Employment Program, designed to provide meaningful and substantial employment opportunity in Operations, without any preferences or quotas, to enrolled members of federally-recognized Indian Tribes who resided on or near the Reservation during the one-year period preceding their application for employment, among other things.

(2) Contracting Program designed to provide meaningful and substantial opportunity, without preferences or quotas, to qualified and available businesses majority-owned and controlled by the Northern Cheyenne Tribe or its members, among other things.

(3) On-Reservation Conduct, designed to encourage employees and truckers involved in Operations, while on the Reservation, to comply with all relevant standards of conduct generally applicable to Northern Cheyenne Tribal members on the Reservation.

(4) Environmental Monitoring, to the extent not independently required by applicable federal or state environmental law or regulations, a written Environmental Monitoring Program for state-of-the-art monitoring of air quality, visibility, water quality and biological resources on the Reservation.

(5) Cultural Resources, to the extent not independently required by applicable federal or State law or regulation, a written Cultural Resources Program designed to avoid disturbance or damage to Northern Cheyenne historic, cultural, religious and burial sites or items, including plants having cultural or religious significances, in the conduct of Operations; and

WHEREAS, Ark Land Company ("Ark"), a Delaware corporation, is lessee and the Board is lessor under a set of 14 coal leases[1] each dated April 20, 2010 ("State Coal Leases"). Collectively, the State Coal Leases lease to Ark for coal mining purposes all State-owned coal within the Otter Creak Tracts; and

WHEREAS, Otter Creek Coal, LLC, a Delaware limited liability company ("OCC"), a wholly-owned subsidiary of Arch Coal, Inc., is an affiliate of Ark and has been formed to develop and operate the Operations; and

WHEREAS, among its terms and conditions, each State Coal Lease includes Special Condition 28(B) which requires that, after the conclusion of any exploration operations and before conducting Operations, Ark or its agent(s), in close consultation with the Northern Cheyenne Tribe, must develop and submit for approval to the Board, obtain Board approval of, and thereafter implement, the five written Operating Plans summarized above; and

WHEREAS, Ark and OCC (collectively the "Ark Parties") have meet in close consultation with the Northern Cheyenne Tribe to develop the Operating Plans, a copy of which is attached to this Resolution. Pursuant to this Resolution, the Operating Plans will be submitted to the Board for approval, as required by Special Condition 28(B), and the Operating Plans will be binding on the Tribe and Ark Parties upon approval of the Operating Plans by the State Land Board; and

WHEREAS, Section 2.3 of the Operating Plans provides for a limited waiver of the sovereign immunity of the Northern Cheyenne Tribe and abstention of jurisdiction of the Northern Cheyenne Tribe's Courts over Remedial Proceedings (as defined in the Operating Plans), which are limited to their terms and only appropriate under the very unique circumstances described above; and

WHEREAS, Section 8.8 of the Operating Plans provides for abstention of jurisdiction of the Northern Cheyenne Tribe's Courts over any non-member of the Tribe who is an employee or agent of an Ark Party or of an Environmental Consultant (as defined in the Operating Plans), solely with respect to civil or criminal claims against such person arising from his or her acts or omissions within the scope of his or her employment or contract and occurring in the course of implementing this Environmental Monitoring Program or any Environmental Monitoring Plan (as those terms are defined in the Operating Plans), except to the extent (if any) that such Tribal jurisdiction has lawfully been provided or confirmed by federal, State or county legislation, regulation or other action as the exclusive jurisdiction for such matter, which is limited to its terms and only appropriate under the very unique circumstances described above; and

NOW, THEREFORE, BE IT RESOLVED that the Operating Plans (attached hereto and incorporated herein by this reference) are hereby approved and adopted pursuant to Article

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[1] State of Montana Coal Lease Nos. 1103-10, 1104-10, 1105-10, 1106-10, 1107-10, 1108-10, 1109-10, 1110-10, 1111-10, 1112-10, 1113-10, 1114-10, 1115-10 and 1116-10.

IV, Sections 1(a), (e), (i), (k), and (l) of the Amended Constitution and By-Laws, and the Northern Cheyenne Tribe hereby consents to and agrees to be bound by the terms and conditions of the Operating Plans applicable to the Northern Cheyenne Tribe upon approval of the Operating Plans by the State Land Board.

BE IT FURTHER RESOLVED that the limited waiver of the sovereign immunity of the Northern Cheyenne Tribe contained in Section 2.3 of the Operating Plans is hereby approved and adopted to the extent stated therein. The waiver will be effective upon approval of the Operating Plans by the State Land Board. Except as specifically waived in Section 2.3 of the Operating Plans and as provided in this Resolution, the Northern Cheyenne Tribe retains all rights, privileges, and attributes of its inherent sovereign immunity.

BE IT FURTHER RESOLVED that the abstention of jurisdiction of the Northern Cheyenne Tribe's Courts contained in Section 2.3 and Section 8.8 of the Operating Plans, is hereby approved to the extent stated in each Section. The waiver will be effective upon approval of the Operating Plans by the State Land Board. In all other respects, the Northern Cheyenne Tribal Court retains its lawful and inherent jurisdiction.

BE IT FURTHER RESOLVED that the President of the Northern Cheyenne Tribe is hereby authorized and directed to sign and execute the Operating Plans on behalf of the Northern Cheyenne Tribe, and to take such further actions as are necessary to implement and administer the Operating Plans.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 8 votes for passage and adoption, 0 votes against passage and adoption and 0 abstentions this 5th day of November, 2012.

Leroy A. Spang, President
Northern Cheyenne Tribe

ATTEST:

Eleece Lei, Acting Tribal Secretary
Northern Cheyenne Tribe

NOTED:

Acting SUPERINTENDENT

NOV - 6 2012

Attachment to Resolution No. DOI-009 (2013)

(Operating Plans)

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