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DEPARTMENT DECISION ON PETITION FOR CLOSURE OF STATE LANDS

July 1, 2025

PROCEDURAL HISTORY

On April 1, 2025, the Montana Department of Natural Resources and Conservation ("Department") received a petition ("Petition"), filed pursuant to Mont. Admin. R. 36.25.152(3), for closure of the following described state lands (together referred to hereafter as "Subject Lands," individual section references hereafter are to "Section 1," "Section 2," "Section 12," and "Section 36", respectively):

Township 1 North, Range 2 East

Section 1: All
Section 2: All
Section 12: All

Township 2 North, Range 2 East

Section 36: Part of the S½ lying south of Interstate 90, and less MS403
Gallatin County, Montana

The Petition was filed by Stephen McDonnell, John McDonnell and Kelsey Valley Ranch, LP, ("Petitioners") and requests a decision from the Department, to permanently close the Subject Lands to recreational use. The Petition requests closure of the Subject Lands based on the contention, by the Petitioners that discharge of firearms for purposes other than lawful hunting ("recreational shooting") on the Subject Lands causes a threat to public safety; an imminent threat of immediate, irreparable property damage



and bodily injury; and because closure is necessary to preserve the income-generating potential of the Subject Lands.

On May 1, 2025, the Department posted public notice of the Petition (“Petition Notice”) and invited public comment as contemplated by Mont. Admin. R. 36.25.152(4) & (5). During the comment period, the Department received 280 total written comments on the Petition. On May 19, 2025, the Department received at least two comments timely requesting a public hearing on the Petition, pursuant to Mont. Admin. R. 36.25.152(5). The Department set a public hearing for 10:00 a.m., June 18, 2025, at the Sacajawea Hotel Conference/Events Room, 5 N. Main St., Three Forks, Montana 59752. Notice of the Hearing was posted on June 5, 2025, by the Department, in the manner required by Mont. Admin. R. 36.25.152(6).

A public hearing was conducted by the Department at the aforementioned time and place for the purpose of receiving public comment on the Petition. During the Hearing, the Department received oral comment from 26 individuals with others making written comment. Now, after considering the Petition, public comment on the Petition, and its own independent investigation into the matter, the Department hereby issues its decision on the Petition.

SUMMARY OF PETITION

The Petition seeks a permanent closure of the Subject Lands to recreational shooting for the reason that an existing seasonal closure of said lands is inadequate and that a permanent closure is necessary to protect public safety, prevent irreparable property damage and bodily injury, and to protect the income generating potential of the Subject Lands. In support of their position, and in addition to the allegations contained in the Petition, the Petitioners have submitted photographs, personal statements, and an email statement from a current lessee of the Subject Lands as well as separate written and oral comment.

Petitioners each own real property adjacent to the Subject Lands upon which they conduct farming and ranching activities. Petition at 2, 3. Petitioners allege, through counsel, and by way of photographic evidence, that their personal and real property has been damaged and/or destroyed by irresponsible recreational shooters on the Subject Lands. The damage and destruction alleged by Petitioners includes destruction of gates and fences. *Id.* at 6, Ex. 3, Ex. 4. In support of these allegations, Petitioners have attached photographs purporting to depict cut barbed wire fences; knocked down, damaged and obliterated fence posts; and damaged signage. *Id.* at Exs. 5 and 6.

Petitioners also allege they have observed damage to the Subject Lands as a direct result of the complained-of recreational shooting activity. Petitioners contend shooters regularly leave behind trash, litter, or other refuse, including “targets, target holders, beer cans, and other shooting paraphernalia.” *Id.* at 7, Ex. 3. They support their contentions with photographs of old pallets left behind as apparent target stands, used clay targets, and used paper and other targets. *Id.* at Ex. 7.

Related to the foregoing, Petitioners contend that current public use diminishes the income generating potential of the Subject Lands, thereby injuring the school trust beneficiaries. Petitioners allege that they have passed up opportunities to place bids to lease the Subject Lands because of concerns for their safety; that of their employees and private property, including livestock. Petitioners have additionally included an email statement from current lessee of the Subject Lands, Goeff Martell. *See Id. at Ex. 9.* In that statement, Martel asserts that he has witnessed the destruction, through shooting, of his privately owned solar panels and stock water tanks on the Subject Lands, as well as the cutting and destruction of his fencing and gates. *Id.* In addition, Martel contends that he is only able to productively utilize his leased ground during the seasonal restriction on the Subject Lands because livestock are not safe outside of the restriction period, but that the restriction period is also regularly disregarded, with shooting occurring year-round. *Id.* Mr. Martel also provided oral comment—further described hereafter—at the public hearing held on this matter on June 18, 2025.

Finally, Petitioners contend that current recreational shooting on the Subject Lands poses an imminent threat of immediate, irreparable bodily injury. *Id.* at 5. Statements of the Petitioners reflect their observations that recreational shooters on the Subject Lands are numerous and are disorganized in their use of the Subject Lands, shooting in all directions, and without regard to people, animals, or property which may be down range. *Id.*, 5-6, Ex. 3. Specifically, Petitioner, Kameron Kelsey and current lessee Goeff Martel both state that they have personally been down range of shooters while weapons discharged in their general direction, and without regard to their presence. *Id.* Ex. 3, p 2p; Ex. 9.

Based on the foregoing, Petitioners request permanent closure of the Subject Lands based on Mont. Admin. R. 36.25.152(1)(a), (h) and (k).

SUMMARY OF PUBLIC COMMENT

DNRC received significant public comment, both in writing and orally during the hearing, from proponents, opponents, and proponents of a modified approach to future management of the Subject Lands. A high number of individuals submitted written comment in opposition to the Petition, demonstrating a significant public interest in the continued availability of the Subject Lands for recreational shooting. Among the reasons articulated for opposition to the Petition, many commentors noted that state lands should be publicly accessible and should remain open; that a closure as requested in the Petition would violate the Second Amendment to the United States Constitution as well as Article II, Section Twelve of the Montana Constitution. A high number of commentors in direct opposition to closure as well as commentors in favor of a modified approach from that requested in the Petition also stated that there is a significant lack of publicly accessible areas to engage in recreational shooting in the Gallatin Valley; that the Subject Lands fill that need; that—at least parts—of the Subject Lands are uniquely conducive to those activities, due to their topography; and that granting the Petition would displace a high number of shooters who will almost certainly move to another, potentially less conducive, parcel of state land in the future. Finally, a significant number of commentors in opposition to the Petition acknowledged issues with both litter left on the Subject Lands and the disorganized manner in which shooting occurs, but nonetheless opposed closure or support a modified approach to management of the Subject Lands for the reasons stated above.

The Department also received comment from proponents of the Petition, both orally and in writing. Oral comment at the hearing was predominantly from proponents of some form of restriction or closure. Proponents of the petition included the Petitioners themselves, at least one of the lessees of the Subject Lands, neighboring land and homeowners, and other members of the recreating public. The Petitioners and lessees, Geoff Martel and Craig DeBoer, provided both written and oral comment in support of the closure noting concerns about their personal safety and that of their employees; the continual destruction of their personal property; and the diminution in productivity of the Subject Lands. Specifically, Mr. Martel provided photographs of a dishwasher purportedly used as a target backstop and then left on the Subject Lands, as well as bullet holes in solar panels he has installed on the Subject Lands. Martel also commented on his water troughs being shot, and on witnessing bullets impact in the vicinity of himself and his employees while working on the Subject Lands.

Other individuals in support of the Petition provided comment of similar nature, alleging safety concerns for themselves and their children; alleging bullet holes in their homes and other residential structures and vehicles; and general safety concerns about being down range of shooters ostensibly unaware or unconcerned with their presence. In general, almost every commentor in support of the Petition alleged a general theme of unsafe and disorganized shooting practices on the Subject Lands. In addition to citing general safety concerns, commentors noted that the nature of current shooting practices on the Subject Lands functionally prohibits other recreational activities on those lands.

In addition, most commentors supportive of the Petition alleged a high volume of trash on the Subject Lands, primarily as incident to shooting. Alleged trash included targets, pallets and other items—including the aforementioned dishwasher—used as target stands, clays, and other refuse apparently brought onsite to shoot and then left. Indeed, one written commentor noted his organization’s involvement in a cleanup effort in which over 5,000 pounds of refuse was removed from the site. Finally, more than one commentor (including a member of the Three Forks Volunteer Fire Department) stated that there have been fires on the Subject Lands as a result of unsafe or irresponsible shooting practices.

Finally, a number of closure proponents provided comment on confrontations, and general lack of courtesy in interacting with recreational shooters on the Subject Lands. Commentors stated that users often respond in an aggressive and sometimes combative manner when confronted about their use of the Subject Lands. Other commentors noted that their private drives are frequently blocked by users of the Subject Lands. Still others noted that the seasonal restriction in place on the Subject Lands is frequently disregarded with recreational shooters.

As a final note a significant number of individuals (perhaps a majority of commentors), including at least one of the Petitioners themselves, expressed a view which, while articulated as being either for or against the petition, advocated for a land management approach which differed from an outright ban on all recreational uses—or even all recreational shooting—or preservation of the status-quo. These comments were supported by many of the same arguments articulated above, recognized the benefit of publicly accessible lands for reasons including, but not limited to, recreational shooting, and suggested that a middle ground ought to be found moving forward for management of the Subject Lands.

DEPARTMENT INVESTIGATION AND OBSERVATIONS

Pursuant to Mont. Admin. R. 36.25.152(8) the Department has engaged in its own investigative efforts to corroborate facts alleged in comments, uncover additional relevant facts, and to craft a path forward which attempts to meaningfully address the issues articulated as important to the general public, neighboring landowners, and state lessees, while effectively carrying out the Department's fiduciary obligations as the land manager, for the benefit of the Montana school trust beneficiaries.

With regard to its independent investigation into this matter the Department notes the following:

- 1) The Subject Lands have been/are the subject of both seasonal and temporary restrictions to recreational shooting. In 2012 a restriction on all target shooting was imposed upon Section 2. That restriction was lifted in mid-2015 following the passage of 2015 Mont. Senate Bill No. 326. That bill, codified at Mont. Code Ann. § 77-1-804, was introduced, at least in partial response to the foregoing restriction, and modified the process for the Department to initiate restrictions on recreational use, requiring a warning period and periodic reassessment of any imposed restrictions. *Id.* The Department has not imposed a permanent restriction on the Subject Lands since the passage of SB 326. In November 2022, the Department did impose a 2-week restriction on shooting on the Subject Lands to allow the lessee to perform cleanup and maintenance. It then initiated the current, annual seasonal shooting restriction which runs from April 15 through June 30, each year and covers Section 2. The current seasonal restriction was imposed in direct response to requests from the lessee, based on his expressed fear for his safety, that of his employees, livestock and other personal property. With regard to the foregoing, the Department can corroborate the statements of commentators that the current seasonal restriction is routinely disregarded. *See* Affidavit of Kara Huyser (attached hereto as Exhibit "A"), ¶ 12. Department staff have, themselves observed shooters on the Subject Lands during the seasonal restriction. *Id.* Additionally, FWP wardens have confirmed that, in the three years since imposition of the seasonal restriction, they regularly patrol the Subject Lands and continue to educate users on the restriction. *Id.*
- 2) Relevant to the above, the Department faces significant challenges with regard to enforcement of Department rules and state law on the Subject Lands. First, the Department recognizes the relatively long response time for Gallatin County law enforcement to the Subject Lands and the challenges that creates with regard to gathering evidence to issue citations or otherwise deter criminal or irresponsible

shooting activities. The Department, for its part, lacks both the resources and the authority to create its own enforcement arm. The Montana Department of Fish Wildlife and Parks (“FWP”) is the agency statutorily charged with law enforcement on state lands pursuant to Mont. Code Ann. § 87-1-504. However, FWP is faced with its own host of challenges in effectively enforcing recreational use laws and rules on the Subject Lands. Notably, there are a total of three wardens who cover a geographical area which runs from south of Big Sky, north to the Toston area, and from west of Pony to east of Bozeman. The Subject Lands, thus constitute a very small geographical component of a much larger enforcement area, all of which wardens indicate is experiencing a surge in recreational use. Notwithstanding that fact, FWP reports having logged a total of 568 hours to the Department in the period between January 2023 and June 2025, the majority of which have involved coverage of this area. In the experience of FWP personnel, this constitutes a considerable dedication of time to such a small area. Consequently, any effective long-term management plan must recognize the limited resources available to effectively manage recreational use of the Subject Lands.

- 3) The Department is also able to corroborate the accounts of commentors and Petitioners regarding trash and shooting paraphernalia left on the Subject Lands. Bozeman Unit office staff have spent significant hours removing trash from the Subject Lands, much of it bearing the evidence of use as targets. Ex. “A”, ¶ 13. Some notable items include heavy metal targets, wood crates, buckets of spent ammunition, lumber, and household appliances. *Id.* FWP staff, in the course and scope of executing their law enforcement responsibilities on the Subject Lands, have unilaterally engaged in their own cleanup efforts as well. In addition to regularly picking up trash left by recreationists, one warden has reported hauling an oven off the site which was used as a target and left. The Department lacks the data to conclusively support the commentor account that over 5,000 pounds of trash was removed from the Subject Lands during a recent cleanup effort, but based on the personal experience of field staff, we have no reason to doubt the veracity of such an account. The Department also considers reasonable the accounts of Petitioners, its lessee, and other commentors that recreational users regularly destroy their private property. Department staff have witnessed the cutting and shooting of fences on the Subject Lands and verified solar panels have been impacted by bullets. See Affidavit of Hoyt Richards (attached hereto as Exhibit “B”), ¶ 6. It is beyond apparent to the Department that the accumulation of trash, and destruction of personal property, directly associated with recreational

shooting poses a problem to effective land management and productive utilization of the Subject Lands.

- 4) With regard to the safety concerns expressed in the Petition and in many comments, Department personnel have generally observed that shooting on the Subject Lands frequently occurs in a haphazard manner, often in multiple directions and with little apparent regard for property or persons down-range of the shooters' targets. By way of example, field staff have observed footpaths worn in the ground from target placement in some of the more prominent shooting locations, particularly in Section 2, along Buffalo Jump Road. Ex. "A", ¶ 17. The land beyond those typical target placements is, in some instances, devoid of any backstop for bullets, earthen or otherwise. *Id.* It is therefore not unreasonable to conclude that bullets fired from these locations often carry far beyond their intended targets and impact at locations in which the shooter is either unaware of, or ambivalent to. The Department cannot independently verify various accounts which have led to commentors and Petitioners fears and apprehensions. It does, however, find those fears to be reasonable, based on its observations.
- 5) The Subject Lands are presently encumbered by 4 agricultural and grazing leases, covering approximately 2,078.85 acres, more or less, in the aggregate. Of those acres approximately 1,549 are classified as primarily useful for grazing with another 506 classified for agriculture. The Agriculture and Grazing Bureau ("AGMB") of the Trust Land Division of the Department also recognizes that the status quo on the Subject Lands, as it pertains to recreational shooting, has an adverse effect on the income generating potential of the Subject Lands. Recreational shooting on the Subject Lands, in its current form, poses a significant risk to the Department's lessees. A risk which has been articulated by its lessees both in this proceeding in written and oral comment. To that point, lessee, Geoff Martel indicated in oral comment that the current seasonal restriction does not allow for his full, productive use of the Subject Lands; deprives him of the most productive grazing period on the Subject Lands; and prioritizes recreational users over paying lessees. Similarly, lessee, Craig DeBoer indicated that he will not be able to continue to lease parts of the Subject Lands if measures are not taken to manage recreational shooting. Based on its observations and comments received from lessees, AGMB recognize that its lessees undertake a risk to their personal safety and that of their property, including livestock, and that such risk may ultimately threaten the willingness of current lessee's to renew their

leases, in which case all or parts of the Subject Lands could go unleased, thus depriving the trust of lease revenue. Further, current lessees are not currently receiving the full benefit of their lease, insofar as they are only able to safely run cattle on the property during the seasonal shooting restriction on Section 2. Based on their experience and expertise in rangeland management, AGMB staff believes current recreational shooting practices on the Subject Lands will adversely affect trust revenue generated from the Subject Lands.

- 6) The Department is also aware of accounts of user conflicts on the Subject Lands. Of particular note is an altercation which occurred in 2022, in which a man was assaulted by a recreational shooter on the Subject Lands, sustaining “significant facial injuries that compromised his ability to breath,” and subsequently was airlifted to Bozeman for emergency medical care. Sukut, Juliana, *Three Forks man charged with assault after punching man unconscious*, Bozeman Daily Chronicle, Oct. 31, 2022; See also Ex. “A”, ¶ 19. Accounts like this one suggest to the Department that there is merit to public comment indicating some recreational users on the Subject Lands are hostile and confrontational when approached by adjacent residents.
- 7) Turning next to arguments in opposition to the closure, there is an apparent and sizeable public interest in keeping the Subject Lands publicly available for target shooting in some form. Similarly, the Department recognizes that the population of recreational shooters in the Gallatin Valley is unlikely to dissipate as a result of closure of the Subject Lands. Moreover, the Department understands that, as one of, if not the primary owners/managers of lands publicly available to shooting, it is unlikely to avoid the problem of managing problem recreationalists as a result of an outright closure to recreational use. In other words, the Department recognizes that an outright closure is likely to do nothing more but shift this burden onto other lands and other individuals.
- 8) Related to the above, the Department reasonably believes the veracity of commentors who expressed that the problems addressed above lie with a select few individuals. Nevertheless, the legacy of those users is significant and has created a potential safety hazard, an unsightly refuse dump, and a problem for the Department in fulfilling its fiduciary obligations to the school trust. While it is regrettable that the Department’s decision here will adversely impact responsible shooters, that is the practical reality of managing the Subject Lands without a permanent and continual law enforcement presence.

- 9) Turning next to the future of management on the Subject Lands, DNRC is presently in possession of an application, from FWP, for an 86.40-acre easement for the purpose of development of a formal public shooting range on the Subject Lands. The Easement Application will not be acted upon by the Land Board by the date of this Decision, and its future as it relates to the Subject Lands is therefore uncertain. While the formal development of a shooting area on the Subject Lands would address some of the issues identified herein, it is, at this point, too speculative to figure significantly into the Department's decision. When/if the Easement Application is approved by the Land Board, this Decision would doubtless need to yield to the parameters of any such easement.
- 10) In addition to the Easement Application, the Department is also in the midst of lease negotiations with NorthWestern Energy ("NorthWestern") for the development of a natural gas compressor station along Buffalo Jump Road. While also speculative, this proposal is perhaps more concrete in that the Department is actively attempting to negotiate and finalize a commercial lease with NorthWestern. In the event NorthWestern and the Department execute a lease, the lands subject to that lease would be categorically closed to recreational use of any kind pursuant to Mont. Code Ann. § 77-1-804(3) and Mont. Admin. R. 36.25.150(1)(d). Under its present formulation, the NorthWestern lease currently also contemplates the construction of office space which would be occupied by personnel necessary to monitor and operate the facility. The existence of that office space would, if constructed, likewise be subject to the one-quarter mile firearm restrictions contemplated by Mont. Admin. R. 36.25.149(1)(c). That categorical closure and one-quarter-mile firearm restriction would supersede anything in this Decision. As an aside, the one-quarter mile firearm restriction provided under Mont. Admin. R. 36.25.149(1)(c) is also currently applicable, and impacts a number of locations, in all four Sections of the Subject Lands, but particularly Sections 2 and 36. To that point, shooting within a quarter-mile of said structures is categorically prohibited without the express permission of the owner of the structure.

RATIONALE FOR DECISION

Under § 10 of the Enabling Act of 1889, Montana acquired sections 16 and 36 in each township within the state, and, in instances where section 16 or 36 had already been disposed, the state acquired equivalent lands in lieu of said disposed-of sections. Act of February 22, 1889 ("Enabling Act"), ch. 180, 25 Stat. 676 (1889). The lands were granted to the State by the United States "for the support of common schools." *Id.* The

Montana Supreme Court has determined that the federal government's grant of those lands to the State of Montana constituted a grant, in trust, to the state. *Montanans for Responsible Use of School Trust v. State*, 1999 MT 263, ¶ 13. Pursuant to the State's 1889 Constitution, Montana accepted the federal land grant and provided those lands would be held in trust, consistent with the terms of the 1889 Constitution and the Enabling Act. *Dept. of State Lands v. Pettibone*, 702 P.2d 948, 951 (1985). Those terms were continued under the 1972 Montana Constitution. *Id.*

The State Board of Land Commissioners was created under the Montana constitution as the body charged with the duty of administering the foregoing trust. Mont. Const. Art. X, § 4. Acting in its capacity as trustee, it is the duty of the Board to "administer [the] trust to: (a) secure the largest measure of legitimate advantage to the state; and (b) provide for the long-term financial support of education." Mont. Code Ann. § 77-1-202(1); *see also State v. Stewart*, 137 P. 854, 855 (1913). The Department acts as agent of the Board in the administration of its trust duties. Mont. Code Ann. § 77-1-301.

Secondary to the constitutional mandate to manage trust lands for the benefit of schools is the legislative directive that state lands are to be managed under a multiple-use management concept including recreational use by the public. Mont. Code Ann. § 77-1-203. Public recreational use, however, must yield to the primary, income generating purpose of state lands. *See e.g.* Mont. Code Ann. § 77-1-804(3) (authorizing categorical closure when the classified use or status of state lands is incompatible with recreational use) & (5) (authorizing closure when, among other things, recreational use diminishes the income-generating potential of state lands or when recreational use damages surface improvements of the state's lessee). To that end, the legislature has directed that the Board should adopt administrative rules for the management of recreational use of state trust lands, including rules to "address the circumstances under which the board may close legally accessible state lands to recreational use." Mont. Code Ann. 77-1-804(2). The Board, acting through the Department, has done so in Mont. Admin. R. 36.25.143 through 36.25.162. Of particular relevance here are Mont. Admin. R. 36.25.149 and 36.25.152.

First, Petitioners request closure of the Subject Lands based upon Mont. Admin. R. 36.25.152(1)(a), (h), and (k) for the reason that recreational shooting damages the income generating potential of the state lands, poses a threat to public safety, and constitutes an imminent threat of immediate, irreparable property damage or bodily injury both on the Subject Lands and on adjacent lands. The Department has heard public comment from both proponents and opponents of the relief requested in the Petition, and is persuaded that there is a

sizeable population of individuals in Gallatin County for whom the Subject Lands provides the best—if not only—opportunity for publicly accessible lands on which to practice shooting sports; but that the current level and manner of recreational shooting occurring on the Subject Lands is unsustainable and that recreational shooting on the Subject Lands should not be permitted to continue without reasonable restrictions being imposed by the Department.

The income generating potential of the Subject Lands, under 36.25.152(1) (a), represents the Department's primary obligation in managing the Subject Lands. To that point, current lessees have stated both in person, and in writing, that they are unable to utilize the lands to the full capacity contemplated under each of the leases. The Department has implemented a seasonal restriction to recreational shooting on Section 2 to address this specific problem. While Department staff is aware that the lessee of Section 2 currently runs cows on the Subject Lands during the restriction, it is also aware, based on field inspections, observations and discussions with the lessees that the lessees are functionally precluded from utilizing the lands subject to their lease outside of the restriction period, and that use during the seasonal restriction is also challenging due to recreational shooters disregarding the restriction.

Further, between public comment, conversations with FWP, and the Department's own observations, it is apparent that the Subject Lands have become little more than a refuse dump. Bozeman unit staff have spent considerable time removing litter from the Subject Lands, as have FWP wardens. Time which is drastically out of proportion with the time spent managing other pieces of Trust Lands within the Unit. This is in addition to time that members of the public have reported spending in formal and informal cleanup efforts. Current recreational use of the Subject Lands has caused physical damage to the land, as a result of littering and increased foot traffic, which has a corresponding negative impact on the suitability of the lands for grazing purposes and therefore negatively impacts the income generating potential of the Subject Lands. Hence, not only are current patterns of use damaging to the Subject Lands, but they also require an outsized investment of time and resources when compared to other state lands and therefore adversely impact the Department's ability to manage those lands.

Moreover, while speculative, AGMB staff anticipate that, based on public comment from its lessees, at the time of lease renewal, there could be a lack of competitive bidding—thereby depressing rental rates—or the current lessees could decline to renew their respective leases, in which case the trust would earn no revenue from the Subject Lands. The Department anticipates the occurrence of the foregoing if the risk of

running livestock on the Subject Lands exceeds the need of area ranchers to secure grazing land. Based on comment, current lessees have indeed identified this risk for the Department and have requested that action be taken. As discussed above, the Department, acting as agent for the Board in carrying out its land management responsibilities, acts as a trustee for the benefit of the school trusts. *See e.g. Montanans for Responsible Use of School Trust v. State*, 1999 MT 263, ¶¶ 13-14. Acting as a trustee, the Department has a duty to manage lands “as a prudent person would” exercising “reasonable care, skill, and diligence.” Mont. Code Ann. § 72-38-804. In light of its fiduciary duty, the Department considers it reasonable to recognize that the high-volume and disorganized nature of recreational shooting currently occurring on the subject lands poses a risk to the continued, productive management of the Subject Lands, and that current lessees incur costs which are higher than their counterparts on comparable grazing lands in maintaining their improvements and safely managing their stock. The Department further considers it reasonable to take measures, as outlined hereafter to attempt to reasonably mitigate that risk in order to ensure the continued productivity of the Subject Lands, while being mindful of its statutory directive to keep state lands open to the public for recreation. Based on public comment and the Department’s own observations, current recreational shooting has an adverse impact on the income generating potential of the Subject Lands.

Next, the Department considers Petitioners’ allegations that a closure of the Subject Lands to recreational shooting is necessary to address an imminent threat, caused by potential substantial public use, of immediate, irreparable property damage or bodily injury on the state tract or adjacent land. To justify closure on the basis of Mont. Admin. R. 36.25.152(1)(k), the Department must conclude that (1) recreational shooting constitutes a “substantial public use”; and (2) that said use poses an imminent threat of immediate, irreparable property damage or bodily injury occurring on the Subject Lands or lands adjacent thereto.

The Department, first concludes that current recreational shooting practices on the Subject Lands constitutes a “substantial public use.” Indeed, the level of public comment opposed to closure suggests, on its own, a substantial use. That suggestion is supported by Department observation. Scarcely is there a day which the Department cannot observe recreational users shooting on the Subject Lands. The statements of Petitioners and commentators that there may be as many as 30 separate groups shooting on the Subject Lands is credible, based on Department field observations. Ex. “A”, ¶ 11.

Moreover, the Department agrees that the current nature of recreational use on the Subject Lands constitutes an imminent threat of immediate, irreparable property damage or bodily injury. In the

Department's observation, an indeterminate, but impactful, amount of shooting on the Subject Lands is carried out in a disorganized manner with little regard to the location of other shooters or of persons or property which may be down range of a shooter's target. While the Department believes that this behavior exists in a minority of users and that most shooters engage in safe and responsible firearm use, this behavior nonetheless constitutes a danger to adjacent landowners, lessees, other recreationists, and the public at large.

The Department has also confirmed statements from Geoff Martel that shooters have, in fact, caused damage to his fences, gates, solar panels, and water troughs. Ex. "B", ¶6. The Department likewise finds credible, comment from Petitioners that recreational users have caused damage to their fences and gates. There were also a significant number of comments both in writing and orally, from its lessees, adjacent land and homeowners, and the Petitioners that they have a subjective fear for their personal safety when in the vicinity of the Subject Lands, have had livestock shot, and have had structures, including their homes shot. The Department is unable to confirm the veracity of any of these allegations of property damage; reports of individuals caught in the line of fire; or the subjective apprehension or fear felt by any of these landowners, caused by irresponsible and unsafe shooting practices. The Department nonetheless finds their safety concerns and allegations to be reasonable given target locations and shooting directions as observed by Department staff and relayed by FWP wardens.

While the Department observes that the foregoing is, in its estimation, generally true of the Subject Lands, it is worth mention that the majority of the unsafe shooting practice (and consequently the greatest threat to the safety of persons and property) originates from shooting occurring along Buffalo Jump Road, in Section 2. The other primary shooting locus is in Section 36 off of Two Dog Road. The Department observes—as several commentators noted—that the topography around the primary shooting area on Two Dog Road is far more conducive to safe shooting practices with most shooting occurring in one of two natural coulees or drainages. Ex. "A", ¶ 20. Topography in this area forms a natural backstop for bullets and thus damage to personal property or threats to human safety from shooting are lower in this area. While not as common as in Section 2, problem shooting in Section 36 is, however, known to occur. Often when targets are placed on a ridge or horizon line with no earthen backstop.

By contrast, shooting in Section 2 along Buffalo Jump Road occurs in flatter terrain and therefore poses a greater threat to property damage and personal injury as a result of stray bullets carrying long distance. *Id.* Shooting in that section is typically in the direction of Sections 1, 6, 11, and 12 and bullets have a significant

chance of ultimately impacting in those sections. Likewise, while the Department is not aware of shooting occurring in Sections 1, 6, or 12 at the same rate which occurs in Section 2, the terrain in those sections is generally less suitable to safe shooting than the terrain in Section 36.

Relevant to the foregoing analysis, and even to the extent Department has been unable to conclusively corroborate the allegations of Petitioners and commentators, a significant amount of the shooting observed by Department staff, as well as the aftermath of that shooting, constitute clear violations of Department rule regarding recreational use. While it may be true that FWP wardens are often unable to issue citations for these offenses, the fact of their commission is no less certain. Of note, Mont. Admin. R. 36.25.149(1)(h) states that “[a] recreationist may not interfere with legitimate activities of the lessees or their agents conducted pursuant to the lease. For example, the discharge of firearms that would interfere with the authorized use of a tract for livestock operations is prohibited.” Notably, the seasonal restriction currently in place on Section 2 of the Subject Lands was imposed in part, because recreational shooting effectively precludes the State’s lessee from running cattle on the Subject Lands under the terms of his lease. Department staff have regularly observed violations of the current seasonal restriction, while cattle are present in the lands subject to restriction, and FWP wardens have indicated that they continue to educate individuals about the restriction, three years after its imposition, and the lessee is still unable to safely utilize his lease for grazing outside of the restriction period.

Of similar note, Mont Admin. R. 36.25.149(1)(j) explicitly prohibits littering on state lands. The Department has no shortage of evidence with regard to the high volumes of litter which are removed from the Subject Lands regularly. Subpart (1)(c) of the foregoing rule also requires use of firearms occur in a careful and prudent manner, and prohibits discharge of firearms within one-quarter mile of an inhabited dwelling or outbuilding. Based on Department staff observations, conversations with FWP, and public comment, it is reasonable to believe violations of this rule occur on a frequent basis.

While FWP (as the agency responsible for enforcement of state land use laws and rules pursuant to Mont. Code Ann. § 87-1-504) rarely has had opportunity to issue citations to specific individuals for either of the foregoing offenses, it is unquestionable that violations of the foregoing rules occur on a regular basis on the Subject Lands, both of which bear upon the safety of the public, lessees, and adjacent landowners and/or negatively affect the income generating capacity of the Subject Lands.

For the foregoing reasons, the Department concludes that current shooting practices on the Subject Lands in Sections 1, 2, 6, and 12 pose an imminent threat, caused by potential substantial public use, of immediate, irreparable property damage or bodily injury on both the Subject Lands and lands adjacent thereto. For the same reasons, the Department concludes current shooting practices in those sections is also a threat to public safety. The Department separately concludes that recreational shooting, in its current form, in Section 36, also satisfies the criteria of Mont. Admin. R. 36.25.152(1)(a), (h), and (k), but that measures can reasonably be taken to mitigate the threat to public safety, property damage, bodily injury, and damage to the lands' income generating potential, so as to preserve the opportunity for the public to continue using Section 36 for recreational shooting.

Having concluded that the Petition does meet the criteria of Mont. Admin. R. 36.25.152(1)(a),(h), and (k), the Department is nonetheless compelled to note, as addressed above, that the legislature has directed that public lands should remain open to recreational use, to the extent such use is compatible with the income-generating potential of the land, and that state lands are to be managed under a "multiple-use" concept. Mont. Code Ann. § 77-1-203. Specifically, the Land Board and Department are directed to manage lands so that "they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust . . . and harmonious and coordinated management of the various resources, each with the other, will result without impairment of the productivity of the land . . ." *Id.*

To that point, the Department does not take lightly the request before it to close state land to public recreation. Were it not for the significant body of public comment from neighbors, lessees, Petitioners and concerned citizens, coupled with the Department's own observations, the Petition would be far less persuasive. The Subject Lands are, in the experience of Department staff, relatively unique in the volume and severity of land management issues arising from recreational shooting. However, the Department is also persuaded by comments articulating that the Subject Lands constitute an important community resource as a publicly accessible location for recreational shooting; that the Gallatin Valley lacks other publicly accessible options; that an outright closure of the Subject Lands will displace a high number of shooters; that those shooters will likely migrate to another location; and that other state trust land would be a likely recipient of those displaced shooters. Consistent with its legislative mandate, the Department takes seriously its obligation to leave all or parts of the Subject Lands open to recreation, including recreational shooting, to the extent it can be done without impairing income generation on the Subject Lands.

Finally, a number of comments have asserted that any restriction the Department might impose with regard to firearms would violate both the Second Amendment to the United States Constitution and Article II, Section 12 of the Montana Constitution. The Department disagrees that the restrictions imposed herein implicate either the Second Amendment or Article II, Section 12 of the Montana Constitution. However, it likewise recognizes that it is without authority to decide constitutional questions. *See e.g. Flowers v. Mont. Dept. of Fish, Wildlife and Parks*, 2020 MT 150, ¶ 15 (“Constitutional questions are properly decided by a judicial body, not an administrative official, under the constitutional principle of separation of powers.” *Internal citations omitted*).

[REMAINDER OF PAGE INTENTIONALLY BLANK – DECISION BEGINS ON SUBSEQUENT PAGE]

DECISION

Pursuant to 36.25.152(8) Mont. Admin. R., the Department grants the Petition, with modification. This decision appropriately considers, and meaningfully addresses, the sizeable contingent of the Gallatin Valley community that recognizes the importance of this location for recreation, including recreational shooters, as one of the few remaining, publicly available locations to practice shooting sports in the area. It likewise strikes an appropriate balance with concerns articulated by the Petitioners and other commentators expressing a variety of concerns including safety, protection of private property, and damage to public lands. Indeed, Petitioners own recorded oral comments (i.e. that it is not their intent to close the Subject Lands to the public entirely, or even to all recreational shooting) suggest that this result adequately addresses the interests of the multiple interest groups at issue here. Unless otherwise noted herein, this Decision is effective as of July 15, 2025. The Department issues the following decision pursuant to Mont. Code Ann. § 77-1-804, Mont. Admin. R. 36.25.149(2), and 36.25.150.

1) TOWNSHIP 1 NORTH, RANGE 2 EAST, SECTION 1 ALL; SECTION 2 ALL; and SECTION 12 ALL

First, with regard to Sections 1, 2, and 12, the Department imposes a full closure to recreational shooting (meaning, as defined above, all discharge of firearms for purposes other than lawful hunting). Other forms of recreational use will not be affected by this restriction, including hunting during the applicable hunting seasons. By September 1, 2027, the Department will re-evaluate the closure based on criteria including, but not necessarily limited to the following:

- a) The status of FWP's easement application for development of a formal shooting range in Section 36 and its potential impacts on long-term recreational use on the Subject Lands as a whole.
- b) The status of NorthWestern Energy's proposed commercial lease for a gas compressor station in Section 2 and its potential impacts on long-term recreational use on the Subject Lands as a whole.
- c) Impacts to other regional trust land during the restriction period, including, but not necessarily limited to whether the closure of Sections 1, 2, and 12 have led to higher incidents of multiple-use conflicts arising from recreational shooting on other trust lands.
- d) Impacts to trust revenue attributable to the Subject Lands during the restriction period.

The Department may, in its discretion, vacate the restriction upon re-evaluation in 2027. If the restriction is vacated, future recreational shooting on Sections 1, 2, and 12 will be limited as follows:

- a) A seasonal restriction on recreational shooting beginning on May 1 of each year and running through September 15 of each year.
- b) Recreational users will be required to log their name, address, and conservation license number along with dates of use at designated sign-in boxes prior to use.
- c) Shooting on Sections 1, 2, and 12 may only occur between sunrise and sunset as determined and published annually in FWP's hunting regulations.
- d) Use of exploding targets of any kind is prohibited.
- e) Long-range shooting past 300 yards is prohibited.
- f) Shooting in the direction of the Gallatin County Landfill, of houses, and across, or in the direction of Buffalo Jump Road is prohibited.
- g) Affixing targets to, or shooting at fence posts, fence wire, gates or otherwise damaging personal property is prohibited.
- h) All recreational use will be further subject to all applicable local, state, and federal laws, rules, ordinances and regulations.

2) TOWNSHIP 2 NORTH, RANGE 2 EAST, SECTION 36 PART OF THE S½ LYING SOUTH OF INTERSTATE 90, AND LESS MS403

With regard to Section 36, recreational shooting will remain open subject to the following:

- a) Seasonal restriction on recreational shooting beginning May 1 of each year and running through September 15 of each year. All other lawful forms of recreational use, including hunting, are not subject to the seasonal restriction.
- b) Outside of seasonal restriction:
 - Recreational users will be required to log their name, address, and conservation license number along with dates of use at designated sign-in boxes prior to use
 - Shooting on Section 36 may only occur between sunrise and sunset as determined and published annually in FWP's hunting regulations
 - Use of exploding targets of any kind is prohibited

- Long-range shooting past 300 yards is prohibited
- Shooting in the direction of the Gallatin County Landfill, and across, or in the direction of, Buffalo Jump Road is prohibited
- The affixing of targets to fence posts, fence wire, gates, or other personal property within the Subject Lands is expressly prohibited.
- All recreational use will be further subject to all applicable local, state, and federal laws, rules, ordinances and regulations

A map depicting the effect of this Decision on the Subject Lands is attached hereto as Exhibit “C.”

3) RE-EVALUATION PROCESS:

Beginning July 1, 2027, a public comment period will be opened for 30 days. The purpose of this comment period will be to gauge public perception of the effectiveness of the restriction for Sections 1, 2, and 12. At the end of the comment period a public meeting may be held, after proper notice to the public, to provide an opportunity for increased public engagement. A decision regarding future use of Subject Lands will occur by September 1, 2027.

DNRC retains discretion for decision making authority to continue, modify, or repeal the restriction of Subject Lands to recreational target shooting based on the highest and best use of the Subject Lands as stated in the DNRC mission, the Montana Constitution and state law.

The Petitioners or any objector (meaning any person who provided a written or oral comment which states reasons why the Petition should not be granted along with any appropriate supporting documentation) may appeal this decision to the Director of the Department by filing a written appeal, on or before July 16, 2025, with the Department’s Central Land Office at the following address:

Department of Natural Resources and Conservation
Central Land Office
Attn: Hoyt Richards
8001 N. Montana Ave.
Helena, MT 59602

Requests for appeal from individuals not meeting the definition of either “objector” or “petitioner” as contemplated in Mont. Admin. R. 36.25.152, will not be considered.

**DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION**

By: /s/Hoyt Richards

Hoyt Richards, Central Land Office Area Manager

AFFIDAVIT OF KARA HUYSER

State of Montana)
) ss.
County of Gallatin)

Under penalties of perjury, I, Kara Huyser, the undersigned, duly sworn and deposed, state that:

1. I am the Unit Manager for the Bozeman Unit Office for the Trust Land Management Division of the Montana Department of Natural Resources and Conservation.
2. I have held this position for 2.5 years.
3. In my capacity as Unit Manager, I oversee the day-to-day management of lands within the Bozeman Unit, including the following described state trust lands (together the "Subject Lands" and individually described hereafter as "Section 1," "Section 2," "Section 12," and "Section 36," respectively):

Township 1 North, Range 2 East

Section 1: All
Section 2: All
Section 12: All

Township 2 North, Range 2 East

Section 36: Part of the S½ lying south of Interstate 90, and less MS403
 Gallatin County, Montana

4. In my capacity as Unit Manager, I frequently interact with lessees of state trust lands, recreational users of state trust lands, and the general public interested in state trust land matters, including the use and management of the Subject Lands.
5. In my capacity as Unit Manager, it is also part of my job duties to engage in field work, including making on-the-ground decisions about land management; patrolling

state trust lands for the purpose of making in-person observations; interacting with wardens for the Montana Department of Fish, Wildlife, and Parks (“FWP”) with regard to their execution of law enforcement responsibilities upon state trust lands; and engaging in clean-up and other tasks for the purpose of managing trust lands within the Bozeman Unit for the benefit of the trust beneficiaries and informing Area Office, Bureau-level and Division-level management regarding trust land management matters.

6. I have engaged in all of the foregoing employment activities on the Subject Lands for the duration of my employment as Unit Manager.
7. With regard to the foregoing, it is my opinion that challenges to effective land management exist with regard to the Subject Lands which are disproportionate to other trust lands within the Bozeman Unit; and that those challenges are driven, in large part, by a high volume of recreational firearm shooters utilizing the Subject Lands for recreational, non-hunting, purposes.
8. With regard to the foregoing, it is my understanding that there is a general lack of publicly available land for the public to engage in shooting sports in Gallatin County and that the Subject Lands offer one of the most easily accessible opportunities in the area for recreationists to engage in said activities.
9. In my experience, the highest volume of recreational shooting occurs along Two Dog Road, in Section 36, adjacent to the Gallatin County landfill; and along Buffalo Jump Road in Section 2. I have, on multiple occasions, observed 30 or more vehicles parked along Buffalo Jump Road, all—or a majority—of which appear to be engaged in recreational shooting.

10. Those challenges can be primarily summarized as follows:

- a. Exceedingly high volumes of litter left on the Subject Lands.
- b. Unsafe and disorganized shooting practices, primarily in Section 2, along Buffalo Jump Road and, to a lesser extent in Section 36 along Two Dog Road.
- c. Higher-than-average user conflict between recreational shooters, neighboring land and homeowners, and the general public; and
- d. Damage to the private personal property of state trust land lessees and adjacent property owners caused by gunfire and the destruction of fencing.
- e. Under-utilization by state trust land lessees, of the Subject Lands, due to the reasonable apprehension of damage to their personal property, injury to livestock or personal injury, as a result of recreational shooting on the Subject Lands.

11. For the reasons outlined above, it is my understanding that seasonal shooting restrictions were imposed in 2022 upon Section 2 under which recreational shooting is prohibited between April 15 and June 30 of each year.

12. Notwithstanding the foregoing, based on my personal observation, it is not uncommon to see recreational shooters on Section 2 during the seasonal closure. FWP wardens have also communicated to me that they continue to encounter shooters on Section 2 during the seasonal closure and continue to educate individuals regarding the seasonal closure, three years after its imposition.

13. I have personally hauled hundreds of pounds of litter off of the Subject Lands, most of which bears the evidence of its use as either targets or target stands for recreational shooting. Items I have personally removed include, heavy metal targets, wooden

crates, pallets, lumber, household appliances, and buckets of spent ammunition.

Trash is, in my experience, continually present on the Subject Lands and exists in quantities far higher than any other piece of trust land in the Bozeman Unit.

14. In addition to my own personal efforts in managing litter on the Subject Lands, I have been informed that FWP wardens also frequently haul litter in similar quantities off of the Subject Lands.

15. In my opinion as the Bozeman Unit Trust Land Manager, the presence of high volumes of litter on the Subject Lands has a significant adverse impact upon its suitability as productive grazing land and for other forms of recreational use.

16. It is also my observation that, while a high number of individuals using the Subject Lands for shooting purposes do so in a safe and responsible manner, a significant volume of recreational shooting on the Subject Lands, especially in Section 2, occurs in an unsafe and irresponsible manner.

17. It has been my observation that shooters often place targets on a horizon line where it is highly unlikely, if not impossible, to determine what property, animals, or people lie beyond the shooters target. Specifically, with regard to the foregoing, I have observed a number of target placements, evidenced by footpaths worn in the ground, which terminate in locations of open and/or elevated terrain.

18. It is my opinion with regard to the foregoing that the disorganized manner in which shooting often occurs on the Subject Lands poses a safety risk to lessees, adjacent landowners, members of the general public, and other recreational shooters.

19. I have also received reports of discourteous and sometimes threatening or hostile interactions between recreational shooters and other recreationists, adjacent

landowners, and state lessees. Specifically, those reports include an incident in 2022 in which I was made aware that a man was assaulted by a recreational shooter on the Subject Lands, sustained serious injuries and was airlifted to receive medical care in Bozeman.

20. With regard to recreational shooting activity, generally, on the Subject Lands, it is my observation that the lands typically used in Section 36 for shooting are far more conducive to safe shooting practice than in Section 2. There are natural coulees or drainages in Section 36 which form natural shooting lanes and form earthen backstops to prevent errant gunfire from unintended impacts into personal property, livestock, or people. By comparison, much of the lands utilized in Section 2 is open and is at an equal or higher elevation to the surrounding lands, making it significantly more difficult to be sure of what lies downrange of one's target.

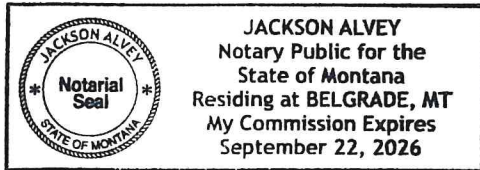
AFFIANT SAYETH NOTHING FURTHER

Dated this 30th day of June, 2025.


Kara Huyser
Bozeman Unit Manager

State of Montana
County of Gallatin

Subscribed and sworn to before me this 30th day of June, 2025.



SEAL

[Handwritten Signature]

Notary Public for the State of Montana

Printed Name: _____

Residing at: _____

My Commission Expires: _____

State of Montana)
) ss.
County of Lewis and Clark)

1. I am the Area Manager for the Central Land Office for the Trust Land Management Division of the Montana Department of Natural Resources and Conservation.
2. I have held this position for 12 years.
3. In my capacity as Area Manager, I oversee the trust land management operations of the Conrad, Helena, Dillon and Bozeman Unit offices.
4. Specifically, with regard to the Bozeman Unit office, I am aware of the management challenges associated with recreational shooting on the following described state trust lands, lying within the Bozeman Unit's management authority (together the "Subject Lands" and individually described hereafter as "Section 1," "Section 2," "Section 12," and "Section 36," respectively):

Section 1:	All
Section 2:	All
Section 12:	All

Section 36: Part of the S½ lying south of Interstate 90, and less MS403
Gallatin County, Montana

Affidavit of Hoyt Richards

recreational users of state trust lands, and the general public interested in state trust land matters, including the use and management of the Subject Lands, when such matters are of significance to management of the Central Land region as a whole.

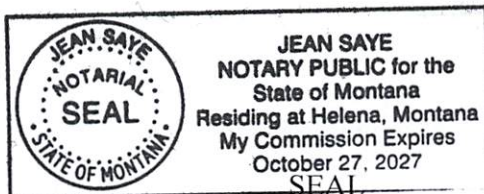
6. With regard to the Subject Lands, I have personally verified damage to the personal property of trust land lessees of the Subject Lands and adjacent property owners, caused in large part, by gunfire. Specifically, I have observed water troughs and fence posts impacted by bullets and on June 13, 2022, I personally took photographs of bullet holes in solar panels owned by a lessee of the Subject Lands and utilized in his cattle operation on the Subject Lands. I have also observed fence posts, barbed wire and gates cut, or otherwise destroyed, likely by recreationists on the Subject Lands.

AFFIANT SAYETH NOTHING FURTHER

Dated this 30th day of June, 2025.

Hoyt Richards
Hoyt Richards
Central Land Office Manager

State of MT, County of Lewis & Clark
Subscribed and sworn to before me this 30th day of June, 2025.



Jean Saye
Notary Public for the State of Montana
Printed Name: Jean Saye
Residing at: _____
My Commission Expires: _____

**Trust Land Recreational Shooting Restrictions Effective
July 15, 2025.**

