AGENDA
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
November 16, 2020, at 9:00 a.m.
State Capitol, Room 303
Helena, MT

ACTION ITEMS

1120-1 **Timber Sales: Elk Sales** **APPROVED 5-0**
Benefits: Common Schools
Location: Sanders County

1120-2 **Forest Management Bureau Filing Adoption Notice for publication in the Montana Administrative Register and completing the Montana Administrative Procedure Act for amendment and repeal of rules for forest management** **APPROVED 5-0**

1120-3 **Land Banking Parcels: Preliminary Approval for Sale** **APPROVED 5-0**
Benefits: Common Schools
Location: Powell County

1120-4 **Cabin and Home Sites: Set Minimum Bid for Sale** **APPROVED 5-0**
A. Flathead County
Benefits: Montana Tech
Location: Flathead County
B. Missoula County
Benefits: MSU 2nd
Location: Missoula County

1120-5 **Land Donation – LBO Properties Limited Partnership** **APPROVED 5-0**
Benefits: Common Schools
Location: Missoula County

1120-6 **Reciprocal Access Agreement – SPP #1** **APPROVED 5-0**
Benefits: Common Schools, Montana Tech, Public Buildings
Location: Flathead, Lake, and Sanders Counties

1120-7 **Easements:** **APPROVED 5-0**
Benefits: Common Schools, Pine Hills School
Location: Lewis and Clark, McCone, Teton, and Yellowstone Counties

1120-8 **Informational Item – 2020 Real Estate Project List**
Benefits: Common Schools, University of Montana, Pine Hills School, and Public Buildings
Location: Gallatin, Cascade, Custer, Flathead, Lincoln, Yellowstone, Missoula, and Butte - Silverbow Counties

1120-9 **Informational Item - 2020 State Trust Lands Report**
Benefits: N/A
Location: Statewide

PUBLIC COMMENT

1120-1

TIMBER SALES:

Elk Sales

Land Board Agenda Item
November 16, 2020

1120-1 Timber Sale: Elk Sales

Location: Sanders
S36 T26N R28W

Trust Beneficiaries: Common Schools

Trust Revenue: $681,451 (estimated, minimum bid)

Item Summary

Location: The Elk Sales Timber Sale is located approximately 35 miles NW of Plains, MT.

Size and Scope: The sale includes 5 harvest units (*560 acres*) of skyline (63 acres) and tractor (497 acres) logging.

Volume: The estimated harvest volume is 26,495 tons (*3.8 MMBF*) of Sawlogs.

Estimated Return: The minimum bid is $25.72 per ton, which would generate approximately $681,451 for the Common School's Trust and approximately $112,074 in Forest Improvement fees.

Prescription: This sale has a combination of commercial thin, shelterwood and seed tree prescriptions designed to reduce insect and disease issues and to promote forest health

Road Construction/Maintenance: The Department of Natural Resources and Conservation **(**DNRC) is proposing 0.8 miles of new permanent road construction, 2.4 miles of road reconstruction, and 14.1 miles of road maintenance.

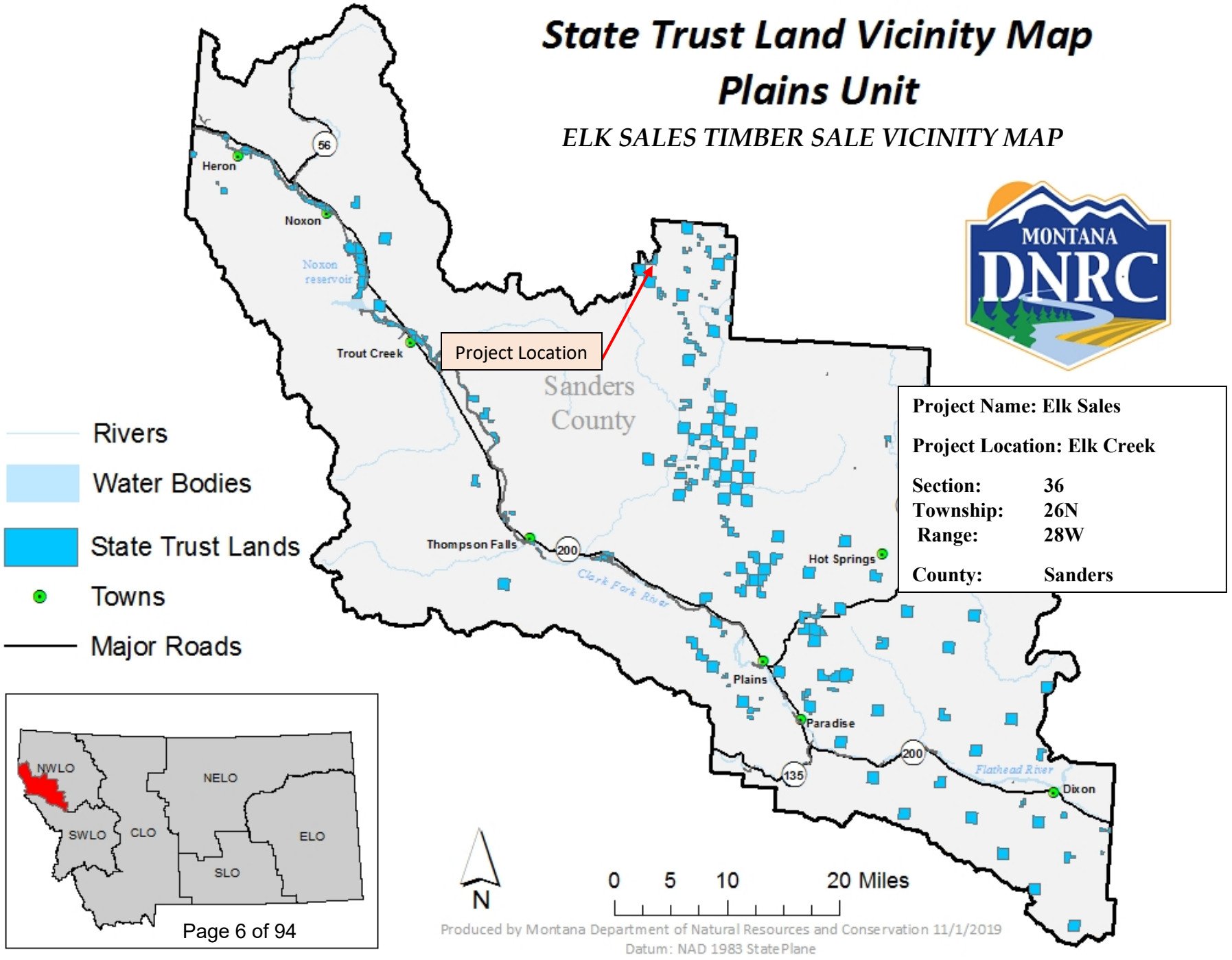
Access: Access is obtained through a temporary road use permit with the United States Forest Service (USFS).

Public Comments: Five comments were received. Weyerhaeuser, F.H. Stoltze, and Thompson River Lumber Company commented with letters of support. Montana Fish Wildlife and Parks had concerns about noxious weeds, wildlife corridors and maintaining an aspen stand. All equipment would be washed and inspected before the equipment can move onto the project area. Weeds would be monitored and managed post-harvest. The DNRC wildlife biologist was consulted to designate a wildlife corridor and it would be implemented through the silvicultural prescriptions. Where feasible, conifers would be removed from the aspen stands. The Northern Cheyenne Tribal Historic Preservation Office asked to be notified if cultural resources are found. If cultural resources are found, operations would stop and the DNRC archeologist would be notified.

DNRC Recommendation

The director recommends the Land Board direct DNRC to sell the Elk Sales Timber Sale.

State Trust Land Vicinity Map
Plains Unit
ELK SALES TIMBER SALE VICINITY MAP

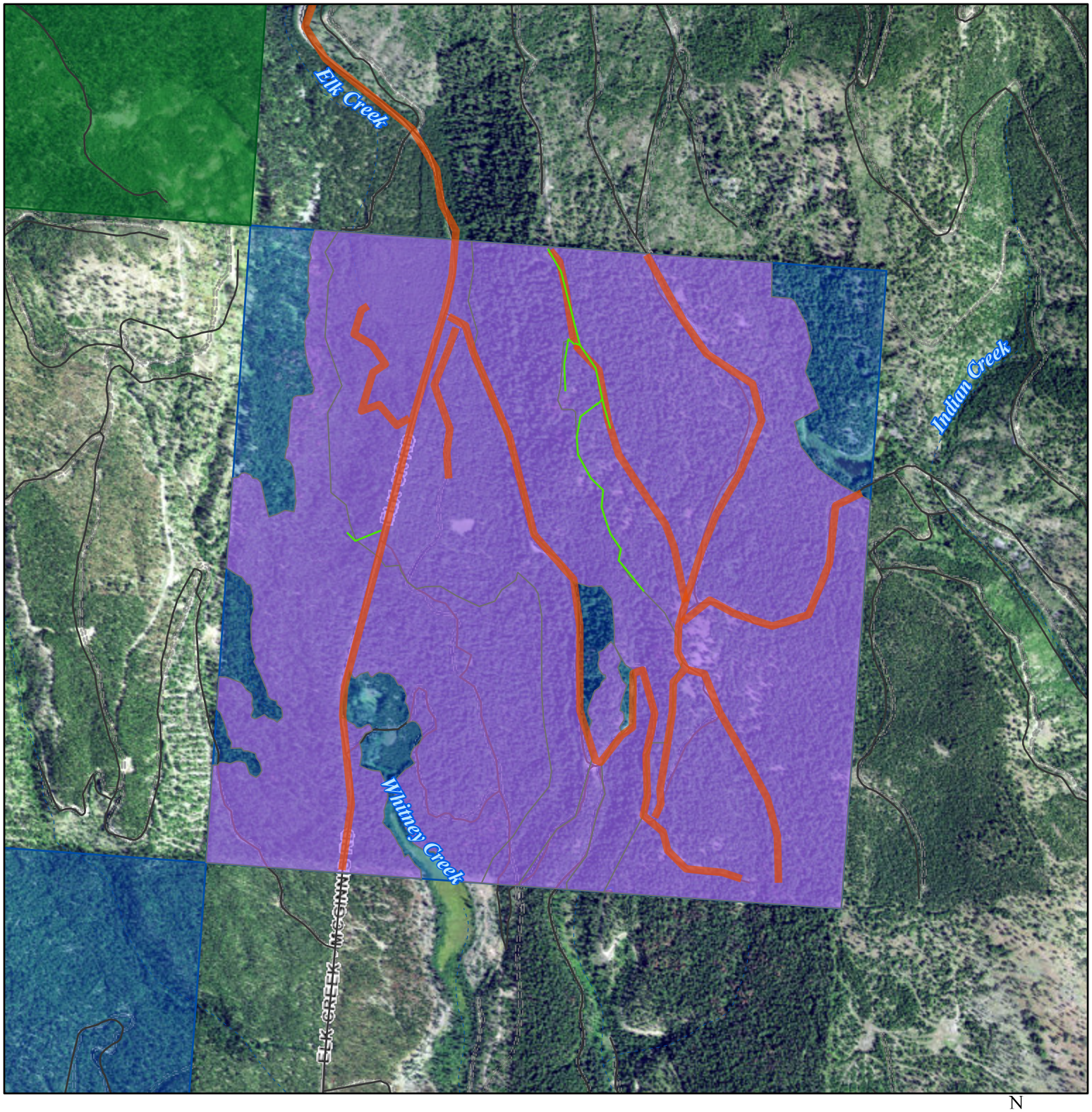


Project Name: Elk Sales

Project Location: Elk Creek

Section:	**36**
Township:	**26N**
Range:	**28W**
County:	**Sanders**

Elk Sales Harvest Unit



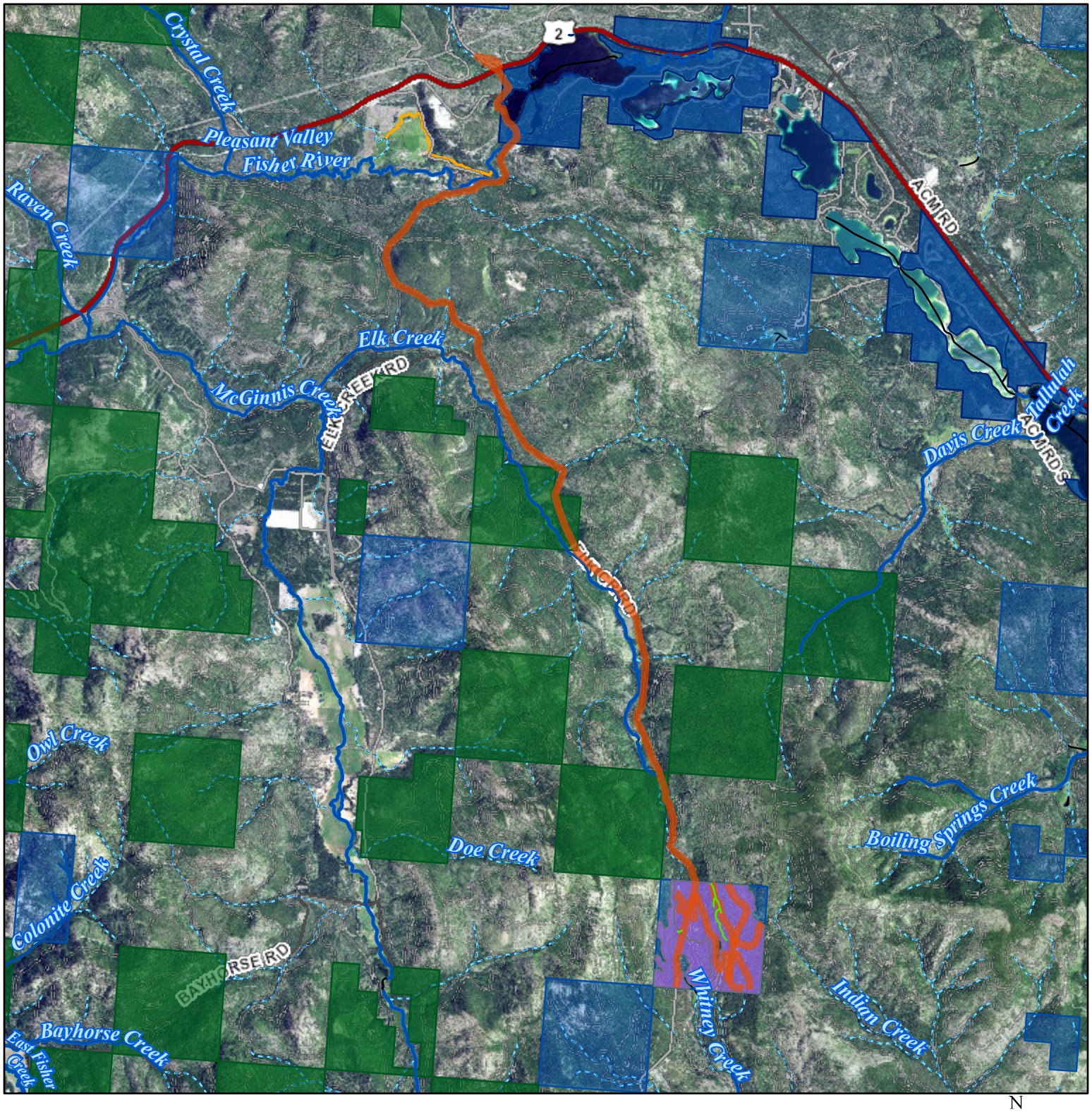
Haul Route
New Road
Elk Sales Harvest Units
Existing Road
Intermittent Stream
Montana State Trust Lands
US Forest Service

N

MONTANA DNRC
FOREST MANAGEMENT
TRUST LAND MANAGEMENT DIVISION

0 0.13 0.25 Miles

Elk Sales Haul Route



Haul Route
New Road
Elk Sales Harvest Units
Perennial Stream
Intermittent Stream
Montana State Trust Lands
Montana Fish, Wildlife, and Parks
US Forest Service
County Government

N

MONTANA DNRC
FOREST MANAGEMENT
TRUST LAND MANAGEMENT DIVISION

0 0.75 1.5 Miles

1120-2

FOREST MANAGEMENT BUREAU FILING ADOPTION NOTICE FOR PUBLICATION IN THE MONTANA ADMINISTRATIVE REGISTER AND COMPLETING THE MONTANA ADMINISTRATIVE PROCEDURE ACT FOR AMENDMENT AND REPEAL OF RULES FOR FOREST MANAGEMENT

Land Board Agenda Item
November 16, 2020

1120- 2 Forest Management Bureau Filing Adoption Notice for publication in the Montana Administrative Register and completing the Montana Administrative Procedure Act for amendment and repeal of rules for forest management

Item Summary
Approval of the Forest Management Bureau filing the attached Adoption Notice to finalize the Montana Administrative Procedure Act (MAPA) amending and repealing a subset of the Administrative Rules for forest management. Minor clarifications and additions to the Department definitions and four originally proposed rules were amended based on public comment and stakeholder involvement. The final adoption notice is now proposed for approval by the Land Board. If approved, the final rules would be effective upon publication in the Montana Administrative Register on December 11, 2020.

Item Timeline
Five primary categories of rule amendments and repeals were originally proposed and approved by the Board on June 15, 2020, which included: **1.** general rule clarification and revision; **2.** adopting specific conservation strategies in the Departments Habitat Conservation Plan (HCP); **3** updating federally listed threatened and endangered species status **4.** sensitive species changes, and **5.** statute updates from legislative action in the 2019 session.

The Department's Proposal Notice was published in the Montana Administrative Register on June 26, 2020. A public hearing was held virtually on July 22, 2020. The Environmental Analysis (EA) analyzing the effects of the proposed rule amendments and responses to public comment received during the MAPA scoping process was published on September 11, 2020.

Public Comments
Five letters were received from the following organizations: Friends of the Wild Swan, Weyerhaeuser, Montana Wood Products, American Forest Management, and F.H. Stoltze. Seven individuals and organizations provided oral testimony at the public hearing. Primary concerns included the number of changes being proposed, adopting specific HCP conservation strategies into rule, potential impacts to the Annual Sustainable Yield, conflicts with the Streamside Management Zone laws, expansion of Grizzly Bear management rules, and potential grazing lease impacts.

Many commenters support the statute changes and revisions. Some commenters suggested definition edits and rule clarifications which have been adopted. Comments and responses can be found in the attached Adoption Notice.

DNRC Recommendation
The director recommends the Land Board direct DNRC to file the Adoption Notice with the Montana Secretary of State office to finalize the MAPA process.

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

In the matter of the amendment of ARM 36.11.402 through 36.11.404, 36.11.411, 36.11.421, 36.11.423, 36.11.425, 36.11.426, 36.11.427, 36.11.428, 36.11.432, 36.11.436, 36.11.444, 36.11.447, and 36.11.450, and the repeal of ARM 36.11.429, 36.11.430, 36.11.431, 36.11.433, 36.11.434, 36.11.435, 36.11.437 through 36.11.442, and 36.11.451 through 36.11.456 regarding the management of state forested trust lands.	)))))))))))	NOTICE OF ADOPTION AND REPEAL

To: All Concerned Persons

1. On June 26, 2020, the Department of Natural Resources and Conservation (department) published MAR Notice No. 36-22-203 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1046-1086 of the 2020 Montana Administrative Register, Issue Number 12.

2. The department has amended the following rules as proposed: ARM 36.11.402, 36.11.404, 36.11.423, 36.11.426, 36.11.427, 36.11.428, 36.11.436, 36.11.444, 36.11.447, and 36.11.450, and the repeal of ARM 36.11.429, 36.11.430, 36.11.431, 36.11.433, 36.11.434, 36.11.435, 36.11.437 through 36.11.442, and 36.11.451 through 36.11.456 regarding the management of state forested trust lands.

3. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

36.11.403 DEFINITIONS (1) through (10) remain as proposed.

(11) "Biological infestation" means any situation where animals, insects, or diseases are present in sufficient amounts to threaten mortality to 25 percent or more of the standing live trees at the stand level.

(12) through (29) remain as proposed.

(30) "Fire or other damage" means damage to the trees by fire or other natural agents that ~~cause the tree to die~~ threatens mortality or causes tree damage.

(31) through (47) remain as proposed.

(48) "Minimum asking price" means the lowest purchase price per unit ~~volume~~ of wood the department will accept on a timber sale.

(49) through (69) remain as proposed.

(70) "Riparian Area" means greens zones associated with lakes, reservoirs, estuaries, potholes, springs, bogs, fens, wet meadows, and ephemeral, intermittent,

or perennial streams. The riparian/wetland zone occurs between the upland or terrestrial zone and the aquatic or deep water zone.

(70) through (107) remain as proposed but are renumbered to (71) through (108)

(109) "Windthrow" means trees blown to the ground or damaged by wind.

(109) remains as proposed but is renumbered to (110)

36.11.411 BIODIVERSITY - SNAGS AND SNAG RECRUITS (1) remains as proposed.

(a) ~~On the warm and moist HTG and the wet HTG, the~~ ~~on all habitat type groups~~ in all timber harvest units post-harvest, the department shall retain an average of approximately two snags and two snag recruits over 21 inches DBH, per acre~~.~~;

(b) through (e) remain as proposed.

36.11.421 ROAD MANAGEMENT (1) through (11) remain as proposed.

(12) The department shall assess road maintenance needs by inspecting conditions on both open and restricted roads as determined by the inventory schedule described in the departments HCP ~~every five years~~. The department shall then prioritize maintenance operations considering the results of the inspections and the resource value in the watershed as determined by the department HCP.

(13) and (14) remain as proposed.

36.11.425 WATERSHED MANAGEMENT – STREAMSIDE MANAGEMENT ZONES, EQUIPMENT RESTRICTION ZONES AND RIPARIAN MANAGEMENT ZONE (1) through (4) remain as proposed.

(5) The department shall establish an RMZ ~~when timber harvests are proposed adjacent to all class 1 streams or lakes, which will~~, which includes the minimum width of the SMZ required under ARM 36.11.302, when timber harvests are proposed on sites adjacent to fish bearing streams and lakes and on HCP covered lands adjacent to all class 1 streams or lakes, which will:

(a) have a minimum width equal to the 100-year site index tree height~~, or 80 feet, whichever is greater~~;

(b) remain as proposed.

(c) maintain a 50-foot wide ~~no-harvest~~ buffer within class 1 RMZs, which:

(i) remain as proposed

(ii) within the 50-foot wide ~~no-harvest~~ buffer, it may be necessary to allow corridors associated with cable logging systems to fully suspend logs across streams, and

(iii) in these situations, the minimum corridor spacing will be 150 feet with no more than 15 percent of the 50-foot wide ~~no-harvest~~ buffer affected;

(f) remain as proposed.

(6) The department will extend RMZs on HCP lands in situations where channel migration is likely to influence riparian functions that are potentially affected by timber harvests by:

(a)(i) through (ii) remain as proposed.

(iii) the 50-foot ~~no-harvest~~ buffer will not be extended on a Type 1 CMZ;

(b) remain as proposed.

(i) on a Type 2 CMZ the normal 50-foot RMZ ~~no-harvest~~ buffer is extended to include the entire flood prone area plus an additional 50 feet within the RMZ;

(ii) remain as proposed.

(iii) the delineation of the normal RMZ, including the additional 50-foot ~~no-harvest~~ buffer, will begin at the edge of the flood prone width, and;

(iv) remain as proposed.

(7) remain as proposed.

(8) Allowances for harvest within ~~the no-harvest portion of~~ class 1 RMZ~~s~~ buffers shall include:

(a) thru (b) remain as proposed.

(c) the salvage harvest of dead or downed trees which may exceed the normal 50 percent retention requirement in that portion of the RMZ outside of the 50-foot ~~no-harvest~~ buffer in areas within an RMZ that have been subjected to windthrow and/or severe or stand-replacement fires; but:

(i) remain as proposed.

(ii) no salvage harvest of fire-killed trees will occur within the 50-foot ~~no-harvest~~ buffer;

(d) remain as proposed.

(i) remain as proposed.

(ii) a 50-foot wide ~~no-harvest~~ buffer will not be required in these situations; and

(iii) remain as proposed.

(9) remain as proposed.

36.11.432 GRIZZLY BEAR MANAGEMENT AND PROGRAMMATIC RULES

(1) through (4)(g)(vi) remain as proposed

(vii) the department will minimize the duration of administrative ~~low intensity forest management~~ activities near security zones to the extent practicable;

(4)(g)(viii) through (7) remain as proposed.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

Comment 1: A number of commenters recommended that the department limit administrative rulemaking to only those required by statutory changes. Further recommending future rulemaking efforts be broken up so that the full detail on the many changes can be thoroughly discussed. Commenters expressed concern over expanding the HCP to the entirety of the department’s land base. Commenters suggested stakeholder engagement before implementing the rule changes. Commenters suggested to delay a full-scale adoption of the proposed changes because it is difficult to make a fully informed decision on what the changes will mean with only part of the information available. Commenters further expressed concern that the proposed changes could also result in an increase in department FTE’s to implement, lower grazing permit revenues, and add further constraints on timber management.

Response to Comment 1: In winter 2019, the department Forest Management Bureau (Bureau) Planning Team was directed by the Bureau Chief with comprehensively evaluating the existing administrative rules for necessary revisions. To ensure a thorough review, the planning team carefully examined the entire State Forest Land Management subchapter. More specifically, the planning team reviewed all portions of the administrative rule, including: definitions that were out of date or inconsistent with other plans; definitions needed to address new science; or required revision to help field staff effectively implement and interpret important measures needed to ensure legally defensible project implementation on state trust lands. In conjunction with this review, and as periodically required for all state agencies, the decision was made to incorporate all applicable commitments of the Forest Management Habitat Conservation Plan (HCP) into rule for clarity, efficiency, and consistency; and to replace 36.11.470, adopted in 2012, which served to implement the HCP in whole by reference. In January 2020 the fully revised draft rule was provided to all Forest Management Program (Program) personnel to review for accuracy, clarity, and implementation feasibility. All comments were addressed in conjunction with communication with managers, field foresters, and resources specialists. Minor revisions to the administrative rules had been completed several times since the original adoption in 2003 to address statutory changes in timber permit allowances; adoption of the HCP in 2012; an HCP settlement agreement to comply with a federal court order, and to clarify the legal implementation requirements associated with conservation easements tied to many acres of land recently acquired by the department (36.11.471). Additionally, since the original rules were adopted in 2003, the department acquired approximately 100,000 acres of forest land; the gray wolf and bald eagle were removed from the federal list of threatened and endangered species; and recent legislation was passed that effectively repealed the timber conservation license process (36.11.451 through 36.11.456) further underscoring the need to revise and the current administrative rules. The following reasons answer why the Bureau has chosen to embark on such a large, comprehensive revision of the Forest Management administrative rules at this time, rather than conducting rulemaking under several smaller processes.

First: the Montana Administrative Procedure Act (MAPA) process is an important, involved programmatic endeavor that typically requires three to six months to complete. While it may seem that it would be beneficial to break up the process into smaller segments, it would undoubtedly require considerably more time and resources to complete - possibly up to two additional years. Scaling back considerably on the scope of the administrative rule revisions at this juncture would likely result in the loss of at least six months of work, and a restart of this process, given the maximum six-month timeframe required by MAPA to complete.

Second: during the time expended on additional rule making under a piecemeal approach, inconsistencies, and project implementation and analysis inefficiencies would persist unnecessarily. Further, a piecemeal approach would not address operational inconsistencies and possible Program legal vulnerabilities right now and could potentially maintain disarray in the department’s forest management guiding policy for some time.

Third: the analysis work is complete. The proposed rule revisions, with a few exceptions, represent the culmination of ten years of staff investment, negotiation, environmental analysis (EA), and public involvement associated with the 2012 HCP and 2018 amendment, and codifying this work in rule is the final step. Further, the vast majority of the proposed changes have been implemented in the Program in practice since 2012 under the HCP as required under the "rule-by-reference" 36.11.470. All of the corresponding Montana Environmental Policy Act (MEPA) decisions, National Environmental Policy Act (NEPA) decisions, Biological Opinions (BiOps), and court ordered settlement agreement are a part of the public record and are available upon request. From the onset of the rulemaking process the planning team recognized that the number and scope of proposed revisions may appear daunting to reviewers, and we are sympathetic to that fact. While large and ungainly to those largely unfamiliar with the content of the HCP, the planning team believes finalizing these administrative rules is necessary to ensure the viability and defensibility of the Program. The department believes the most appropriate and responsible action to take is to make all known and necessary revisions now in this important comprehensive process. It makes little sense to omit some administrative rules to be addressed at another time, when all proposed revisions are both known and warranted at this time, and when the vast majority of work has been completed to finalize the process.

Comment 2: Commenter noted that to incorporate the entire HCP into rule seems overly complicated. Please explain why the department rules cannot simply adopt the HCP requirements by reference, as, for example, Montana Department of Environmental Quality (DEQ) does with the numeric water quality standards.

Response to Comment 2: In 2012, the department adopted the HCP by reference under 36.11.470 to provide clarity as to what rules and policies should be applied if conflict arose. This rule was always meant to be a short-term solution to adopting the HCP conservation strategies into rule for long-term assurances, programmatic consistency, effective and efficient implementation, monitoring and reporting. See also Response to Comment 1.

Comment 3: Commenter is concerned about expanding many HCP requirements to other State Trust Lands. The rationale for this is to make things easier on department foresters, who currently have to implement two sets of streamside protections. This explanation is lacking for several reasons: Currently it is only department foresters in specific geographic areas that have to deal with two sets of requirements. Many just work with one set or the other.

Response to Comment 3: Foresters on the Stillwater Unit, Swan Unit and Clearwater Unit can have up to four or more sets of requirements and monitoring to incorporate due to blocked vs. scattered lands requirements; the presence of some manageable non-HCP lands, and various conservation easements. Many of our core timberlands occur on these units. While consistent implementation for field staff is one benefit of adopting the proposed rules, additional benefits include consistent Program direction in the form of implementation manuals, training materials,

monitoring, and reporting which provides measurable Program efficiencies, stability, and defensibility.

Comment 4: Commenter believes it is important that all department foresters be well versed in state Streamside Management Zone (SMZ) requirements, as this is what is being implemented all across the state on other ownerships, and the department is charged with enforcement of these regulations. There is concern if these rules are adopted, institutional knowledge of the SMZ law at the department will diminish

Response to Comment 4: The department adopted the State Forest Land Management Plan (SFLMP) in 1996 and the HCP in 2012, which committed the department to some measures beyond the strict adherence to the SMZ law. The department also owns and manages lands with a growing number of conservation easements attached to the deeds, which legally mandate the department to implement measures that vary from strict application of SMZ law. That said, SMZ law is the foundation for department Riparian Management Zone (RMZ) strategy developed under the HCP and provides the prescriptive baseline for tree retention requirements and prohibitions such as equipment operations, road construction, burning, and clear cutting. SMZ law will continue to be adopted under 36.11.301 thru 36.11.313 and implemented on every trust land timber sale. As a result, knowledge of SMZ law and its application is not expected to diminish.

Comment 5: Commenter noted that extending HCP riparian restrictions on all state trust forest lands provides more restriction, however it is not clear that this financial impact has been quantified. Commenter also noted that it is unlikely that this restriction was incorporated into the recently updated sustainable yield calculation (SYC) for trust lands.

Response to Comment 5: The 2020 SYC had approximately 750,000 acres of commercial forest land available for harvest before constraints were applied. This includes both classified forest and non-forest lands. Approximately 630,000 of these acres, or 84 percent, has been managed under the proposed administrative rule revisions for the past ten years, equating to approximately 85 percent of the sustainable yield for this same ten-year period. Application of the proposed rules to lands outside of the current HCP project area would result in approximately 1,977 acres of managed RMZ. Further, the proposed rules were modeled as constraints in the 2020 SYC. This set of constraints, and the addition of approximately 14,000 additional acquired lands, (representing 1.9 percent of the 750,000 commercial timber base) resulted in a 17 percent increase in the annual sustainable year, further supporting that no further economic impact would result to trust beneficiaries as a result of adopting the proposed rules. This RMZ analysis is contained in the environmental assessment (EA) for the proposed rules. The department has provided numerous economic assessments pertaining to the cost and feasibility of implementing constraints on the department state trust lands. The HCP Final Environmental Impact Statement (FEIS) analysis and subsequent SYC conducted in 2011 addressed and disclosed the cost t of implementing the strategies. The most recent SYC provides one of the best stepwise analyses of the cumulative reduction

of volume the various Program constraints represent across both HCP and non-HCP covered commercial forest lands. These analyses can be found on the department website and are available upon request.

Comment 6: Commenter appreciates the opportunity to comment and praised the department for its excellent management of forested land for the benefit of the trust. Commenter feels strongly that the department should not "de-couple" trust lands from the SMZ law, without very good reason

Response to Comment 6: While consistent implementation for field staff is one benefit of adopting the proposed rules, additional benefits include consistent Program direction in the form of implementation manuals, training materials, monitoring, monitoring and reporting provide measurable Program efficiencies, stability, and defensibility.: The department thanks the commenter and appreciates recognition of its work in forest management. The department is in no means "de-coupling" trust lands from MZ law. SMZ law remains the foundation of the riparian timber harvest conservation strategy in the HCP and is the primary regulatory policy on all streams on state trust lands. SMZ law remains in 36.11.301 through 36.11.313 and will continue to be implemented on all state trust land timber sales. However, by adopting the SFLMP, the HCP and acquiring numerous new forested lands with attached conservation easements, the department has further legal obligations pertaining to timber management within riparian habitats. The department believes that having these administrative rules in place will greatly aid the consistent, effective, and efficient analysis and implementation of forest management activities on state trust lands. The HCP clarifies the department’s obligations under the Endangered Species Act (ESA) and provides forest management certainty into the future. Further, trust beneficiaries have recently realized considerable sustainable volume increases associated with new land acquisitions containing conservation easements. The department believes these are important realities to consider when evaluating what is in the best interest of trust beneficiaries.

Comment 7: Several commenters expressed concern about revisions to the definitions and administrative rules regarding grizzly bear management, including: 1) asking why the grizzly bear management unit (BMU) definition was removed; 2) inquiring why the grizzly bear management unit subunit was removed; 3) observing that including terms in the definitions is confusing, duplicative and has the potential to conflict with other sections of the rules;

Response to Comment 7: Conservation measures pertaining to grizzly bears under the HCP to be adopted under this rule revision no longer require use of this term for the purpose of implementation.

Comment 8: Commenter recommends that Habitat Type Group definition should be retained.

Response to Comment 8: This term is no longer necessary to implement 36.11.411(a). The revised rules improve clarity by replacing the phrase "On all

habitat type groups" with "In all timber harvest units post-harvest" that currently remains in the proposed administrative rule. Removal of the term "Habitat Type Group" from definitions or its current use in rule has no influence on interpretation or implementation of any other existing administrative rules, particularly those pertaining to old growth.

Comment 9: Several Commenters asked about the revisions related to Canada lynx, including inquiring why the definition of lynx denning habitat was removed.

Response to Comment 9: Conservation measures pertaining to Canada lynx under the HCP adopted under this rule revision no longer require use of this term for the purpose of implementation. Through negotiations with the U.S. Fish and Wildlife Service (USFWS) after consulting with U.S. Forest Service research biologist Dr. John Squires (Squires), the need to define specific habitat patches exhibiting specific structural conditions for lynx denning was reconsidered and is no longer necessary. As a part of housekeeping and clean-up of the administrative rules, all unused definitions are repealed.

Comment 10: Commenter asks why lynx mature foraging habitat was removed, noting department should use the definition of multi-story mature or late successional forest that is in the Northern Rockies Lynx Management Direction.

Response to Comment 10: The lynx mature foraging definition is outdated and no longer in use. The department agrees that these described conditions are important for lynx. As with the definition for lynx denning habitat noted in Response to Comment 9, the definition of Mature Foraging Habitat was reconsidered with the USFWS at the time the HCP was negotiated. Following review and consideration of new scientific information provided by Squires in 2010 regarding documented habitat use by radio-collared lynx, the definition of Mature Foraging Habitat was replaced with "Winter Foraging Habitat". Winter Foraging Habitat is a very similar condition both structurally and ecologically to the original Mature Foraging Habitat definition. However, habitat filters were slightly modified to more closely fit the stand conditions Squires observed to be most important for lynx in western Montana. The word "Winter" was emphasized in the revised habitat class name to reflect the seasonal importance as observed by Squires and other researchers.

Comment 11: Commenter suggests revising the definition of "old growth" to: "old growth" means forest stands that meet or exceed the criteria for number, diameter, and age of large trees, stand basal area and associated characteristics contained in "Old-Growth Forest Types of the Northern Region"....

Response to Comment 11: The department uses this definition to clearly define when stands meet a minimum objective standard as old growth or not. Green, et al. clearly states that the minimum criteria of number and average age of large live trees and stand basal area should be used to identify old growth stands, and those minimum criteria were selected by Green, et al. to distinguish stands dominated by large, old trees. The associated characteristics for each old growth type described

by Green, et al. describe the expected ranges or probabilities of other old growth-associated attributes in stands that meet the minimum criteria, but, as clearly stated by Green, et al., should not be used as minimum criteria to identify old growth stands. Given that the associated characteristics describe ranges or probabilities, the suggestion to include the phrase... "and associated characteristics" muddies this criteria for identifying old growth stands by including such attributes as presence of two or more canopy levels, stand decadence, levels of snags and down logs, etc., that do not have clearly defined thresholds. The department acknowledges the associated characteristics described by Green, et al. are ecologically important in old growth stands. However, to exclude stands that may be low in one or more of these additional attributes would not give ample ecological consideration for stands of lesser structural or attribute complexity that otherwise would be defined as old growth. To address the presence of such attributes in old growth stands and the level of development or presence of those attributes, the department applies a tool called the Full Old Growth Index to quantify presence and development of those attributes relative to other old growth stands.

Comment 12: Commenter suggests defining "open road density".

Response to Comment 12: Conservation measures pertaining to grizzly bears under the HCP adopted under this rule revision no longer require use of this term for the purpose of implementation. In this case, the road miles and locations associated with the transportation plans for the Stillwater and Swan River State Forests, and road mile caps for scattered lands serve as the monitored measurement metrics that provide firm sideboards for road amounts associated with conducting forest management activities. As a part of housekeeping and clean-up of the administrative rules, all unused definitions are repealed. The department will continue to disclose road density estimates for project analyses when warranted under MEPA and to provide estimates for interagency cooperative monitoring efforts pertaining to the recovery of grizzly bears.

Comment 13: Several Commenters expressed concern over the definition of "reclaimed road". Some stated it should be consistent with the proposed HCP - Alternative 2) HCP definition": *A road that is impassable due to effective closure. It has been stabilized, and culverts and other structures, if present, have been removed, but the road prism may remain. A reclaimed road will not receive motorized use for low-intensity forest management activities or commercial forest management activities*. Others suggested changing "reclaimed" to "stored."

Response to Comment 13: The proposed definition reflects minor editorial revisions suggested by the Office of the Secretary of State and internal field staff, which were incorporated to improve conciseness and clarity without affecting interpretation. Upon further review, the department believes the proposed definition captures all of the key elements important for precise interpretation and application as intended in proposed administrative rule amendments and repeals, as well as in the HCP. The term "Reclaimed Road" was formally agreed to and incorporated in the development of the HCP. This definition has received considerable internal and public review during the HCP analysis and Supplemental EIS amendment processes

during the last ten years. We believe this definition clearly describes what is required and it has been in use during the last ten years. 36.11.403(68) "Reclaimed road" means a road that is impassable to motorized vehicles, but has been stabilized, and drainage features, if present, have been removed. The road prism may remain but is restricted to motorized vehicles by a non-passable barrier or vegetation. A reclaimed road will not receive motorized use, including low-intensity or commercial forest management activities. At the department's discretion under this definition, reclaimed roads may be re-constructed for future use given that the prism may remain intact, or they may be more permanently "put to bed" through re-contouring or use of similar methods to meet site-specific management objectives. Often roads targeted for reclamation are in poor locations that do not meet Best Management Practices (BMPs) and/or are not necessary for future management.

Comment 14: Commenter suggests revising definition of "Temporary road" so it no longer functions as an open road, restricted road, or trail.…

Response to Comment 14: The definition of a Reclaimed Road as proposed in the Temporary Road definition requires that it not be passable by motorized vehicles, which ensures no public, administrative, or commercial motorized activity is possible. Thus, this additional suggested language is unnecessary.

Comment 15: Commenter asks that a definition of riparian be included.

Response to Comment 15: Comment noted, and the department thanks the Commenter for their input. The department has added 36.11.403(70) to define riparian area.

Comment 16: Commenter suggests revising 36-11-411(1)(a) to be consistent with Green, et al. habitat type codes for snags which is a range and varies by the habitat types. Others noted that in the 2020 SYC snags and snag recruits were a specific constraint placed on the model and asked to ensure that the proposed administrative rule changes are in line with the SYC constraints.

Response to Comment 16: The intent of this rule is to provide a minimum density of large trees and snags on the department's forested land base, regardless of climax community type classifications. The requirements pertain to the largest tree cohorts in a forest stand. This revised rule provides levels consistent with ranges of large trees across cover types in unmanaged conifer stands in western Montana reported by Harris (1999). The department monitoring conducted since 1999 has indicated that such large snags are often not available for retention due to past management practices, and that they can be difficult to maintain on managed landscapes, particularly with regard to firewood cutting and wind. Thus, this selected density for retention ensures a base level for minimum retention and provides greater simplification and clarity for implementation than the existing administrative rules, which specifies retention level by habitat type group. Large trees and snags have been the focus of this rule revision, given the substantial length of time required to grow large trees, and difficulties with retaining and protecting large snags given operational realities. This administrative rule does not preclude the retention of

additional snags in smaller size classes which may be retained where feasible by forest managers. The 2020 SYC model constraints regarding the administrative rule that address snag and recruitment retention (36.11.411) were specifically developed to ensure compatibility with these administrative rules (See Montana DNRC SYC Report, April 9, 2020; Table 15 p. 40, and Appendix D p. 69. Appendix N p. 122). Additional volume-reducing constraints in future calculations would not be required following adoption of this revision

Comment 17: Commenter suggests revising 36.11.421 to read: "The department shall consider for reclamation roads that are deemed non-essential. The department shall leave reclaimed roads in a condition that provides adequate drainage and stabilization including removing culverts, while leaving intact the road prism and capital investment needed to construct that road."

Response to Comment 17: The definition of a reclaimed road specifically requires that all culverts must be removed, and it is also a requirement of the HCP. The reference to reclaimed roads in this rule, directly indicates by definition that all drainage structures will be removed. This includes culvert and bridges. Therefore, inclusion of the suggested edit is redundant and unnecessary.

Comment 18: Commenter suggests revising 36.11.421(12) to read "The department shall assess road maintenance needs by inspecting conditions, including culverts, on both open and restricted roads annually." Another commenter asked that 36.11.421 be revised to contain less prescriptive language such as providing a range of time for reinspection while maintaining some level of accountability relative to road management.

Response to Comment 18: The department agrees and has edited the 36.11.421(12) to reference road and culvert inspections and corrective action timelines committed to in the HCP. Under road inventory procedures outlined in the HCP, all culverts would be inventoried and evaluated as part of the road inventory process. Corrective actions will be completed on all identified sites with high risk of sediment delivery located within bull trout watersheds by 2026 as described in the HCP. Corrective actions will be implemented at all identified high-risk sites in watersheds supporting westslope cutthroat trout or Columbia redband trout by 2036 as described in the HCP. The department will continue to implement the road sediment source inventories and corrective actions on a project level basis after HCP commitments are achieved

Comment 19: Commenter asks that the third sentence of 36.11.421(14) not be deleted, but rather be revised to: Inspections would occur at least annually.

Response to Comment 19: The department annually inspects primary closures on restricted roads in Grizzly Bear Recovery Zones, which represents approximately 650 closures, prior to each fall hunting season. Closures outside grizzly BMU are inspected during road inventory timelines, during project development and ongoing administrative duties. This approach prioritizes closures protecting high resource value areas while balancing inspection timelines committed

to under the HCP and department staff resources. Based on public comment, this language was revised to clarify the role of the HCP inventory schedule and resource value assessment in determining the prioritization of road monitoring Please see Response to Comment 18.

Comment 20: Commenter asks that 36.11.425(1) retains "or on sites that are adjacent to fish bearing streams or lakes."

Response to Comment 20: The reference to sites adjacent to fish bearing streams and lakes has been retained in ARM 36.11.425(5) per the commenters recommendation.

Comment 21: Commenter asks that 36.11.425(4)(b)(ii) be revised to read: The department shall not allow the operation of wheeled or tracked equipment within an ERZ when it located on slopes less than 35 percent.

Response to Comment 21: Soil monitoring results conducted by the department (DNRC 2009, 2011) has consistently shown soil impacts increase as local ground slope increases. Data from this monitoring efforts supports the prohibition of equipment operations within Equipment Restriction Zones (ERZ) when local slopes exceed 35 percent. Soil monitoring data and BMP audit results also provide evidence that frozen, dry, or snow-covered conditions is an excellent mitigation against excessive soil displacement, compaction, and subsequent erosion. Between prohibitions and restrictions within ERZ rules and SMZ law, the department is confident water quality can be fully protected from sediment delivery adjacent to streams during forest management activities without the requested language revision.

Comment 22: Commenter notes that 36.11.425(5)(a) is not consistent with the HCP at page 2-69 which states: "Site index tree height at age 100 years for a given site was selected as the most practical and effective indicator for identifying the area where forest practices are most likely to affect riparian functions and biological objectives addressed under this strategy. The site index tree height at age 100 years in most DNR streamside riparian stands generally ranges from approximately 30 - 120 feet. The actual site index is largely dependent on the soil and climate of the landscape and other factors affecting the specific productivity of an individual site, but it is measurable at each site."

Response to Comment 22: The department has restricted the minimum width of the RMZ to 80 feet adjacent to all class one streams on HCP covered lands. There is no maximum constraint, though site potential tree height at 100 years in Montana is rarely over 120 feet.

Comment 23: Commenter notes that 36.11.425(5)(a) should not mandate that the RMZ be capped at 80 feet.

Response to Comment 23: The department has restricted the minimum width of the RMZ to 80 feet adjacent to all class one streams on HCP lands. There is no

maximum constraint, though site potential tree height at 100 years in Montana is rarely over 120 feet.

Comment 24: Commenter notes that 36-11-432(4)(d) is not consistent with the HCP at page 2-21 which states:
"In addition to the permanent roads identified in the transportation plan, the department may maintain up to eight miles of temporary roads at any one time. These roads will be built to a minimum standard and abandoned or reclaimed within one operating season following completion of project-related activity." Commenter adds that the administrative rules should conform to the HCP, which only allows up to eight miles of temporary roads at any one time.

Response to Comment 24: The allowance of temporary road up to 15 miles includes seven additional miles of temporary road allowance for lands not covered under the HCP that are newly acquired on the Stillwater Unit. Allowing for temporary road construction and use greatly reduces the need to create and maintain permanent drivable restricted roads on the landscape. As such, they are an important conservation tool used to lessen disturbance to grizzly bears. The added seven miles include only those amounts allowed under conservation easements tied to newly acquired lands. The department must track, and not exceed, amounts strictly allowed under each easement. See also 36.11.432(4)(d)(i) and (ii). Adhering to the original eight miles of temporary road identified for HCP-covered lands would allow for no proportional increase associated with the recent acquisitions, which would impair the ability to meet sustainable harvest objectives for Stillwater Unit.

Comment 25: Commenter asks the department to correct the proposed amendments to be consistent with the settlement agreement between *Friends of the Wild Swan, et al. v. DNRC* that apply to the seven geographically distinct security zones in the Stillwater block that comprise 22,007 acres. The revised rules (36.11.432) state, "the department will minimize the duration of low intensity forest management activities near security zones to the extent practicable." The settlement agreement between *Friends of the Wild Swan, et al. v. DNRC* at 2g states, "The department will minimize the duration of administrative activities near Security Zones to the extent practicable."

Response to Comment 25: Comment noted, and the department thanks the Commenter for their input. The department agrees and has revised 36.11.432(4)(g)(vii) accordingly.

Comment 26: Commenter notes that 36.11.432(4)(g)(xii) differs from the settlement agreement between *Friends of the Wild Swan, et al. v. DNRC* at 2b, which reads, "Motorized activities will be allowed during the grizzly bear denning season only, November 16 - March 31 (denning season)." Commenters suggested eliminating Wetland Management Zones and instead focus on the management of wetlands based on the current SMZ law and BMP guidelines. Additional comments noted, the "Reasonable Necessity" states that the proposed amendments were to define a previously undefined acronym. Commenters questioned why the undefined acronym was not addressed under 36.11.403-Definitions.

Response to Comment 26: The amendment in question was originally included as 36.11.432(1)(b)(iii) in the June 2016 rule revision written as: " allow commercial forest management activities below 6,300 feet elevation during the denning period of each year." The slight difference in wording simply reflects editorial changes to improve the consistency of rule language for this revision. Also note that 36.11.432(4)(g)(iii), is important for interpretation of 36.11.432(4)(g)(xii), which prohibits all defined forms of motorized use outside of the November 16 – March 31 denning season. Together these rules clarify with appropriate definitions what activities are and are not allowed within security zones as agreed. The department has written these administrative rules to implement the exact intent and dates of the settlement agreement language. Specifying that commercial forest management activities are allowed in security zones during the winter period below 6,300 feet is an important HCP restriction required to reduce potential disturbance of denning grizzly bears in winter at high elevations. The department believes this language accurately captures the requirements of the settlement agreement and the HCP, while providing clarity needed by the department specialists and managers for proper implementation. regarding adding additional self-imposed layers of regulation without need. The acronym "WMZ" 36.11.403(94) was identified in rule in 2003 and as a result was spelled out in 36.11.426(1) in this proposal rather than using the acronym. Management within and adjacent to WMZ's is guided by the SMZ law and provisions in the rule. The term WMZ was used and adopted in the HCP in 2012 and wetland considerations are referenced numerous times in the HCP. Two specific grizzly bear commitments (GB-PR4, and GB-PR6) now also rely on the term and definition and have been applied since 2012. The definition of WMZ would remain in the final version of administrative rules following their formal adoption. Please note, as changes are not being proposed to this definition, it is not depicted in the current draft.

Comment 27: Commenter noted the 36.11.432(6)(f)(iv) does not include the Missoula Unit - 45 days

Response to Comment 27: When the HCP was adopted in 2012, the department was also in the process of relinquishing all Missoula Unit-managed lands existing within the Northern Continental Divide Ecosystem (NCDE) Grizzly Bear Recovery Zone to the Confederated Salish and Kootenai Tribes. The Missoula Unit no longer has ownership in the recovery zone, nor need for this 45-day allowance, and as such was removed.

Comment 28: Several commenters asked what impact will the expansion have on RMZ's and ERZ's on lands outside of the HCP? Commenters also stated that the recent adoption of the SYC shows that management constraints result in a twenty-five percent reduction in the annual sustained yield noting the economic impact of the expansion needs to be fully understood and disclosed. Some commenters noted this process is backwards, changing the constraints placed on the department land management after adopting new harvest targets under existing constraints is self- defeating.

Response to Comment 28: Following close review, the proposed rule changes are consistent with the constraints in the 2020 SYC, and no additional constraints associated with these rules would be anticipated regarding future sustainable yield calculations. The stated 25 percent yield reduction is in reference to the level of constraint on harvestable timber volume the department expects from the maximum amount of volume that could be expected to be biologically produced on the department's commercial timberlands. It is important to note that a significant portion of the 25 percent referenced is influenced by deferred lands that simply cannot be conventionally or legally accessed at this time. Thus, this percentage reflects more than what would be constrained by rule alone. Constraints are an important and necessary reality for the Bureau to ensure Program credibility, sound stewardship, scientific defensibility, and viability into the future (SFLMP, ROD 1996; HCP amendment ROD, 2018). The 2020 SYC had 750,000 acres of commercial forest land available for harvest before constraints were applied. This includes both forest and non-forest lands. Approximately 630,000 of these acres or 84 percent, has been managed under the administrative rule revisions for the past ten years, equating to approximately 85 percent of the sustainable yield for this same ten-year period. Coupled with the addition of approximately 14,000 acres of acquired forest land and adjustments made to identified acreage deferrals, the 2020 SYC resulted in a 17 percent increase in the annual sustainable yield further supporting that no economic impact would result to trust beneficiaries as a result of adopting the proposed rules. The department has provided numerous economic assessments pertaining to the cost and feasibility of implementing constraints on the department lands. The HCP FEIS analysis and SYC conducted in 2011 addressed and disclosed the cost of implementing the strategies. The department agrees the most recent SYC provides one of the best stepwise analyses of the cumulative reduction of volume the various Program constraints represent across both HCP and non-HCP covered commercial forest lands. These analyses were disclosed to the public and can be found on the department website and are available upon request. The stated 25 percent yield reduction is in reference to the level of constraint on harvestable timber volume the department expects from the maximum amount of volume that could be expected to be biologically produced on the department's commercial timberlands. It is important to note that a significant portion of the 25 percent referenced is influenced by deferred lands that simply cannot be conventionally or legally accessed at this time. Thus, this percentage reflects more than what would be constrained by rule alone.

Comment 29: Commenter expressed concern that rule changes to biodiversity, road, and watershed management impacts the current SMZ law. and notes the stream buffers in the SMZ have proven effective in protecting resources for over 24 years.

Response to Comment 29: The department agrees that the SMZ law has been highly successful at preventing water quality impacts from sediment delivery during forest management activities. No changes to the law or its implementation on state trust land is occurring. While buffers applied under the SMZ law have been shown to provide sufficient protection to stream temperature, fish communities, and canopy cover in some instances, the

broader body of scientific research generally indicates that increased buffer width enhances protective measures afforded to aquatic resources. These findings largely corroborate results obtained from the department's monitoring of RMZs during the first five years of HCP implementation. Further research is warranted regarding the law's effectiveness with respect to other stream metrics such as, large woody debris recruitment, habitat complexity, microclimate modification and ramifications of climate change. The department's on-going monitoring efforts are focused on providing additional information and clarity to the above referenced response variables. See also Response to Comment 7.

Comment 30: Commenter expressed concern regarding the significant changes to threatened and endangered species, that the effects of expanding rules for lynx as adopted under the HCP to all trust lands has not been analyzed or disclosed, and if adopted, the effect will result in more complexity and management challenges, not less. Commenter also stated that the proposed changes to grizzly bear management and management of sensitive species have not been fully analyzed and will have significant impact on resource management.

Response to Comment 30: The proposed amendments to the administrative rules pertaining to threatened and endangered species may appear significant, but are not significant regarding implementation, as they simply reflect inclusion of the full text of HCP measures that have been in place since 2012 on 550,000 acres of the state trust land in western Montana. The application of measures to other lands as implied in this comment not currently covered under the HCP would be expected to have no measurable additional effect on the Program, given that the distribution of these two species and habitat suitability are considerably limited in eastern Montana. Continuing to have sound, science-based measures in place to limit potential "take" of threatened and endangered species is important given that the department is required, as are other state and private entities, to comply with Section 10 of the ESA, and not "take" listed species. This is true in the department's case even on lands not covered under the HCP. It is important to note that *existing administrative rules* are currently in place for these species in these same areas that are currently in administrative rule, which provide equally if not greater constraint effect on the Program. However, these existing rules are out of date and create confusion for field practitioners and the public. Under either administrative rules, given the lower general quality and amounts of suitable habitats found in areas in eastern Montana, constraining effects on the Program regarding implementation, procedures, or harvest volume would be very minimal. The benefits of having these clear, consistent forest management rules and definitions to be applied across the state are critically necessary to promote process efficiency and long-term defensibility of the Program. See also Response to Comment 1.

Comment 31: Several commenters asked about how the department has conducted MEPA, adding they the desire for an evaluation of the specific effects of the proposed changes to identify unintended consequences and inconsistencies.

Response to Comment 31: An environmental assessment (EA) was completed by the department that analyzed the effects of adopting these rules. Effects of the conservation strategies proposed in these rule changes have been significantly analyzed in the HCP EIS, Supplemental EIS and subsequent BiOps issued by the USFWS. Effectiveness of the proposed rule revisions have also been monitored for the past ten years and reported to the public, Board of Land Commissioners (Land Board), department leadership, and the USFWS - both annually and more in depth at five-year increments. These documents can be found on the department website (http://dnrc.mt.gov/divisions/trust/forest-management/hcp). Additional information regarding implementation of the administrative rules and HCP can be found in the SFLMP and Rules Monitoring Reports covering years 1997 to 2016.
In January 2020 the fully revised draft administrative rules were provided to all Program personnel to review for accuracy, clarity, and implementation feasibility. All comments from staff were addressed in conjunction with numerous calls and communications with managers, field foresters, and resources specialists. Throughout all HCP negotiations with the USFWS adoption of the HCP, and now during comprehensive review and revision of these administrative rules, the department staff have considered both negative, as well as positive impacts on the Program. The department believes it is also important to note that the SYC conducted in 2011, 2015, and most recently 2020, all incorporated constraints associated with the HCP, and no additional measurable constraints would be expected for future calculations that would be associated with any of the proposed rule revisions. See also Response to Comment 1.

Comment 32: Several Commenters noted that the revision of 36.11.402 expands the applicability of the entire forest management administrative rules to ALL state trust lands, beyond just classified forestland, which is a significant increase in the scope of application of these rules. Some Commenters asked if the impact of expansion of the rules to all lands been examined? Commenters noted inconsistent language within the general applicability which strikes the word "forested" to broaden the scope of applicability to encompass all state lands yet the announcement at the top of the page that defines which administrative rules will be affected states that it applies to the management of state *forested* trust lands. Some commenters questioned what is driving the desire to change the one word to prescribe a one size fits approach.

Response to Comment 32: Currently, the Trust Land Management Division manages approximately 5.2 million surface acres of land. The revised rules would only apply to forest management activities that occur on state trust lands, which in the 2020 SYC totaled approximately 750,000 acres. Of this commercial timber base, a sizable portion of the rules would not apply as threatened and endangered species rules are geographically explicit and would not be particularly constraining on most eastern Montana lands. It is also important to consider that many administrative rules have been in place since 2003 on lands not covered under the HCP, particularly in eastern Montana. In a number of cases, such rules would be replaced with definitions and measures consistent with the HCP. The department believes the proposed revisions provide a reasonable and responsible changes that will promote

analysis and management consistency, which are important program objectives. Overall, the department anticipates required constraint levels of the revised administrative rules in question to closely mirror those in existing rules, which does not represent a broad expansion of new requirements on additional lands.

Comment 33: Relative to 36.11.403(11), several commenters inquired how the agency will prove that an insect or disease outbreak will "threaten mortality to 25 percent or more of the standing live trees" and encouraged an alternate definition that does not include a specific percent threshold, defines the scale the infestation is to be measured on or leaves it up to the discretion of the department to define on a case by case basis. Others commented that the windthrow definition is too restrictive, and that wind events damage trees in many ways, even in the same location and suggested to allow more latitude to acknowledge trees damaged by a wind event.

Response to Comment 33: The sole purpose of this definition in rule is to provide a measurable metric and threshold necessary to determine when an RMZ harvest allowance may be triggered under 36.11.425(8). Maintaining the percentage in rule is important for objective and consistent application of the rule allowance. The scales of application would typically be the stand or project area, and determinations would be made on a case by case basis by resource specialists and project leaders. Visual estimation may be used for this determination where the percentage is clearly exceeded by the presence of dead or infested trees. In situations where the level of existing infestation may be questionable, measurable fixed or variable standard mortality plots would be used. We believe the definition is adequate for the intended purpose and would not in any way prevent discretionary choices made by field foresters to make judgements regarding necessary silvicultural treatments.

Comment 34: Several commenters observed that 36.11.403 (11) as written indicates a tree would need to be dead prior to salvage and encouraged more broad language so that when strictly interpreted the tree is not required to die before action is taken.

Response to Comment 34: The definition of 36.11.403(11)"Fire or Other Damage" would not itself require a tree to be dead prior to salvage, and the department would retain discretion in determination of the probability of mortality and salvage objectives for affected stands. Additional clarification regarding this topic is provided in the definition of "Salvage." 36.11.403(77) "Salvage" means the removal of dead trees or trees being damaged or killed by injurious agents other than competition, such as fire, insects, disease, or blowdown, to recover the economic value that would be otherwise lost.

Comment 35: Commenter suggested qualifying 36.11.403(35) concerning gravel quarrying to be in conjunction with trust land forest management activities.

Response to Comment 35: All definitions contained in rule are used strictly for the purpose of interpretation and application, as the terms are specifically used in rule. The department believes its use and inclusion in the revised rules is

appropriate and serves the intended purpose. Gravel quarrying is a defined forest management activity in the HCP. However, it's inclusion would not prevent revenue generation or development of gravel operations for other purposes. The numbers of active operations allowed at one time are managed across each administrative unit to minimize disturbance to grizzly bears. The department retains the discretion to determine which pits to manage as active and which pits to close. Gravel measures have been implemented in this manner since 2012 with minimal conflict under the HCP.

Comment 36: Commenter noted that the definitions concerning Canada lynx are relatively strict and descriptive, yet farther along there is a process where agency professionals define lynx habitat through mapping. Commenter questions if this sets up internal conflict between the definitions and the mapping exercise and encourages the department to re-write the definitions to give deference to designation by agency professionals.

Response to Comment 36: The definitions are descriptive definitions that have ample detail included to allow for their interpretation and application of the administrative rules for Canada lynx. Detailed mapping protocols that tie directly to the department's stand level inventory were cooperatively constructed with the USFWS with input from Squires at the time the HCP was developed. See also Response to Comment 11. These protocols tie directly to each type of lynx habitat as defined in the 36.11.403(44). The protocols and definitions were available for public review during the HCP development process and were originally adopted in the HCP in 2012. They were also deemed sufficient by both agencies during the HCP amendment review completed in 2018. The habitat mapping protocols may be found in the HCP (2012, Vol. 3) on the department website and are available upon request. Commitments the department made in the HCP require that any changes to the mapping protocols be made in cooperation with the USFWS given improved scientific information. The department is required to provide changes to lynx habitat acreages annually to the USFWS. After reviewing the definitions and applicable administrative rules the department has been following these HCP lynx habitat definitions and procedures since 2012, however, confusion regarding administrative rules pertaining to lynx that pre-date the HCP proven confusing and problematic for field practitioners.

Comment 37: Several commenters questioned why the department would reduce its management options by including snowmobiles in 36.11.428(4)(c), noting that winter is often the only time where access to some areas for vegetation analysis, pre-sale scouting and planning can take place.

Response to Comment 37: The department's management options have not been reduced by this rule. The department agrees that winter is an important time to conduct reconnaissance and timber sale preparation activities. This requirement is not a new measure and it has been in place since adoption of the HCP in 2012. It only applies in the case of grizzly bears in recovery zone areas on high elevation sites above 6,300 feet from November 15 through March 31 each year. Such areas on state trust lands represent a relatively small acreage and are typically marginally

accessible in winter, even by snowmobile, due to deep snow conditions. There are no administrative rules that constrain use of snowmobiles in lynx habitat other than 36.11.428(4)(c), which only prohibits use within 0.25 miles of a known active lynx den, which would be a rare occurrence. These measures were adopted after careful consideration of the best available science and the department's business needs, and they were fully analyzed and disclosed in the HCP development and adoption process.

Comment 38: Commenter noted that grizzly bear management restrictions are extensively covered in other various administrative rules including the definitions, and are confusing, duplicative, and potentially conflicting with other sections. Commenter advises department to include this level of detail elsewhere, not in definitions.

Response to Comment 38: Following additional review at the suggestion of this comment, we believe the definitions as worded are appropriate and necessary for consistent and accurate implementation of the administrative rules. As previously indicated in other responses, these definitions and measures have been in place for a number of years in association with implementation of the HCP and have been reviewed in detail by Program staff. We were unable to identify any conflicts with other sections in the administrative rules.

Comment 39: Several commenters expressed concern over the change in wording of 36.11.403(102) regarding "Visual Screening" stating that "capable of hiding a grizzly bear from view" was vague and could be problematic and asked the department to retain the original language.

Response to Comment 39: This definition of visual screening was formally adopted in 2012 under the HCP, and it has been implemented in rule by reference since 2016 (36.11.470). Difficulty achieving effective screening of bears depends on the local topography and vegetation. A bear behind a hill can easily be completely hidden from view as can bears behind dense shrub cover and conifer regeneration. The department has conducted validation surveys that indicated that conifer saplings at least six feet tall that were spaced 14 feet or less apart provide effective screening cover for grizzly bears. Patch size and width are also important considerations for effectively implementing measures involving visual screening cover. The department believes the definition conveys clear intent to aid the accurate and effective implementation of the associated [36.11.432(1)(g), 36.11.432(2)(d), and 36.11.432(3)(b) and (d)]. These same points raised in this comment were also raised by department foresters regarding how to provide cover in situations when it is simply absent on some sites. Thus, the concern was discussed at length with the USFWS during HCP development. As such, exception and allowance language were identified that addresses these concerns, which is now included to aid implementation and address this issue [See 36.11.432(2)(d)(i), and (3)(c)(ii), and (3)(d)(i) and (ii)].

Comment 40: Commenter noted that 36.11.425(8)(c) defines "Windthrow" too narrowly, as wind throw may only partially tip a tree, rather than blowing "to the ground".

Response to Comment 40: This definition occurs for descriptive purposes in 36.11.425(8)(c) which pertains to an allowance to, "salvage harvest of dead or downed trees which may exceed the normal 50 percent retention requirement in that portion of the RMZ outside of the 50-foot buffer in areas within an RMZ that have been subjected to windthrow and/or severe or stand-replacement fires." The department believes the definition is adequate for the intended purpose and would not in any way prevent discretionary choices made by field foresters to make judgements regarding necessary silvicultural treatments.

Comment 41: Commenter believes the changes to 36.11.411 are unnecessary as trust land managers regularly implement complex and site-specific constraints and management activities. Per the SYC, snag retention and recruitment is a significant constraint affecting long term production.

Response to Comment 41: Comment noted, and the department thanks the Commenter for their input. However, under the 2003 administrative rules, there has been confusion between foresters and resource specialists regarding the application of this rule. Harvest units often encompass numerous patches that occur within differing habitat type groups as described in Green, et al. (1992) creating confusion regarding how many and where to leave recruitment trees and snags, and how many snags are necessary on various sites when monitoring. Large trees, and snags, which ultimately become down logs over time, are important for maintaining long-term sources of seed for regeneration, soil structure, and soil productivity, as well as important habitat attributes used by many species of wildlife. As such, they are important forest components to consider and retain to promote biodiversity as required by the SFLMP (SFLMP ROD 1996). Monitoring conducted by the department since 2003 has frequently demonstrated that retention of large trees, and particularly snags, is often operationally difficult, and that large trees and snags in many cases are simply not available to retain due to past management practices. Large snags are also frequently removed for firewood on all accessible sites. While the modeled effect reflected in the 2020 SYC suggested that significant levels of volume may be constrained due to leave trees, the rules allow for a significant portion, if not all, of the associated trees to be non-merchantable and/or culled with minimal economic value. The proposed revision to these rules provides levels consistent with ranges reported by Harris (1999) regarding snag abundance in coniferous forests of western Montana. We believe that this revision to the existing rules to increase retention by one large tree and one large snag on sites in dry to moderately dry habitat type groups is reasonable, responsible, and consistent with the intent of the SFLMP.

Comment 42: Commenter strongly objects to the expanded buffers created in 36.11.425 regarding watershed management, especially in the context of expanding these rules to encumber all lands, not just lands previously under the HCP.

Response to Comment 42: The department acknowledges the significant work and subsequent results of the statewide BMP field reviews lead by the department Forestry Division. While the department recognizes that BMP audits are an effective mechanism to assess the application and effectiveness of SMZ Law requirements on timber sales across the state, they do not provide specific data regarding the magnitude of protections afforded to aquatic resources. Furthermore, the existing science generally indicates increased buffer width enhances protective mechanisms provided to aquatic resources, findings largely corroborated by department results from monitoring of RMZs conducted during the first five years of HCP implementation (Sweeney and Newboldt 2014). The revised rules will apply to approximately 750,000 acres of state trust lands where forest management activities were modeled in the 2020 SYC and not all 5.2 million acres. However, a smaller subset of these 750,000 acres actually contain streams where these specific administrative rules apply. Specifically, RMZs on this land base account for approximately 30,000 acres, which in the 2020 SYC were modeled as "grow only" within the SMZ buffer of Class I streams. The guidelines incorporated into the revised administrative rules are currently being implemented on approximately 22,000 acres of stream buffers on state trust land (73 percent). An additional 8,000 acres along Class I streams would be included under these rules with no effect to the annual sustainable yield and subsequent revenue. The managed portion of the RMZ (50 feet out to the site potential tree height), when applied to the additional lands under consideration in this rule, would be approximately 1,977 acres where 50 percent of the merchantable timber would be retained. The majority of these acres are within eastern Montana area offices, which are low in productivity due to their occurrence on warm, dry sites. These sites and associated stream networks are forecast to be most vulnerable to a warming climate as climate modeling has shown increases in background stream temperatures in Montana of up to three degrees Celsius by 2080 (Isaak, et al. 2017). It is reasonable, responsible, and appropriate for the department to expand this commitment to these lands which would be minimally impactful to the trust given the relative existing abundance of unsellable standing volume due to poor market conditions and limited infrastructure in the area.

Comment 43: Commenter expressed concern that under this rule change the number of acres affected by these restrictions is nearly doubling with NO analysis or disclosure of effects, despite the extensive environmental review, modeling, and characterization of effects of the proposed restrictions when the HCP was negotiated.

Response to Comment 43: It is an inaccurate assessment that the number of acres affected by the administrative rules revisions is nearly doubling. In the most recent SYC process, the department identified approximately 750,000 commercial forest acres. Of these acres 583,889 were allocated to management regimes and were included in solution (MBG 2020). The HCP covers approximately 630,000 acres of forested trust land where associated stream buffers are currently applied. Thus, the gross expanded area where the revised administrative rules would apply would be on approximately 120,000 acres, primarily on land offices in eastern Montana. On these acres there are approximately 280 miles of Class I streams that would be afforded protections on these added lands, which would result in

approximately 1,977 acres of additional managed RMZ, where 50 percent retention would be required. The additional stream buffers would provide further resource protection as climate modeling has shown increases in background stream temperatures in Montana of up to three degrees Celsius by 2080 (Isaak, et al. 2017). The EA completed by the department for this rule revision disclosed the additional acres that would be affected. The department further notes that coupled with the addition of approximately 14,000 acres of acquired forest land and adjustments made to identified acreage deferrals, the 2020 annual sustainable yield model that included the proposed administrative rules as a constraint increased the annual sustainable yield by 17 percent over the calculation in 2015. Important considerations the department has taken into account include added resource protection in the wake of climate change; statewide improvement of Program consistency; relatively low site productivity; and the fact that the availability of standing volume is not typically a limitation on these lands.

Comment 44: Commenter noted that this appears to be a wholesale expansion of management restrictions without good justification or adequate examination of effects.

Response to Comment 44: Comment noted, and the department thanks the Commenter for their input. Please see Response to Comment 45 below. The department foresters, with the aid of resource specialists, have been implementing these measures on HCP-covered lands since 2012. The department believes that reference to the proposed rule changes as a "wholesale expansion of management restrictions" is a mischaracterization. The department believes that what is being proposed represents a very minor expansion of resource protection and that the proposed changes promote efficiency, consistency and are reasonable and responsible considerations (see also Response to Comment 16 above). The results of the 2020 SYC show that the proposed rules would not limit the ability for the department to offer an increased volume of wood products to the market under the modeled constraints proposed in these rules. Further, the department adequately analyzed and disclosed the effects of the proposed rules both at a programmatic level and individually through multiple EIS and BiOps.

Comment 45: Commenter notes that under the HCP, the agency has chosen to utilize expanded riparian buffers for other uses, specifically wildlife travel corridors, however the Commenter believes that 36.11.425 implies that the buffers are necessary for protection of water resources, which is misleading and detrimental to the integrity and effectiveness of the SMZ law and BMP program.

Response to Comment 45: The department agrees that RMZs are often mitigation areas for numerous species and critical resources by providing such benefits as hiding cover, migration corridors, microclimate regulation, sediment filtering, flood attenuation, stream shade and woody debris recruitment. This was done by design for several species negotiated with the USFWS contained in the HCP. The department fails to see how the proposed rules are detrimental to the SMZ law as the SMZ law is still retained in 36.11.302 thru 36.11.313 with no proposed changes considered. During the last few years while undergoing

substantial programmatic policy development, the Bureau has provided appropriate analyses whenever warranted, ample opportunities for public comment, and transparency throughout our decision making and reporting processes. The department acknowledges the significant work and subsequent results of the statewide BMPs field reviews lead by the Forestry Division, as well as the effectiveness of the Montana SMZ law in protecting water quality impacts resulting from forest management activities. The department considers the forestry division BMP review program as the cornerstone for ensuring clarity, consistency, integrity, and effectiveness of the SMZ law and BMP program in Montana.

Comment 46: Commenter strongly disagrees with the blanket direction for "no harvest" buffers in the RMZ and Channel Migration Zone (CMZ) areas.

Response to Comment 46: Numerous opportunities exist in the proposed rules to manage within the "no harvest" portion of the RMZ as explicitly stated in 36.11.425(8). The outlined situations provide significant management flexibility to achieve desired future conditions within RMZs for a variety of species and/or beneficial uses. The 50-foot buffer measure originated as a negotiated component of the HCP, and the buffers pertain to the most sensitive sites in riparian systems. At the time of negotiation, the necessary width was highly scrutinized by the department to maintain the important balance between resource protection and revenue generation. The agreed-upon buffers help ensure adequate sediment filtration from upland sources, stream shading, and adequate large woody debris recruitment will be maintained. They further serve to buffer the effects of potential windthrow that can occur in association with adjacent harvest units intensively harvested to meet other important silvicultural objectives. Losses to windthrow can be substantial and often go unnoticed, particularly on parcels in isolated or remote locations. The buffers are one part of an important suite of resource protection measures the department implements to ensure our commitment is met to support biodiversity, and to maintain a defensible and viable Program over time.

Comment 47: Commenter expressed concern that the proposed changes to 36.11.428 regarding management of lynx habitat have not been adequately analyzed and disclosed, especially as lynx populations continue to expand, understanding how to manage lynx outside of the HCP area deserves some discussion and analysis.

Response to Comment 47: The department is not aware of any scientifically documented sustained expansion of lynx populations in Montana. See also Response to Comment 30.

Comment 48: Commenter notes that much of the proposed grizzly bear management on the Stillwater unit is outside of the HCP process and was part of a negotiated lawsuit settlement with no EA or public input. Similarly, the changes to the Swan Grizzly Bear Management program have been substantial over the last decade and will likely need future revision. Commenter is concerned that adoption current management practices in rule may not be practicable, noting the department regularly issues management direction based on current conditions and best science

that is responsive and allows for adaptive management to take place in a regional, site by site, case by case manner that accounts for best available information and changing conditions.

Response to Comment 48: The department is not arbitrarily expanding grizzly bear management direction across the state. Current administrative rules that are dated would still apply to state trust lands on eastside land offices when forest management activities are conducted. These dated administrative rules proposed for replacement have been in place since 2003. HCP measures have been implemented by the department since 2012 as required under 36.11.470. Under this process, the department is proposing to adopt revised rules and definitions based on improved scientific information, and that have received considerable prior public review and analysis in cooperation with the USFWS. As such, they serve to clarify the department's responsibilities under the ESA, provide an efficient and consistent implementation framework, and ensure the long-term defensibility and credibility of the Program with regard to endangered species concerns. These were identified as important beneficial objectives of the HCP. Application of these rules would not create new onerous hardship for the Program, given the minimally constraining characteristics of the amended rules themselves, and the limited distribution of grizzly bears and Canada lynx in eastern Montana. See also Response to Comment 22. All measures associated with the settlement agreement have been in place in the existing administrative rules since 2016. Revisions proposed now related to the agreement pertain solely to necessary administrative rule organization and housekeeping needs. The department is unclear what Swan Grizzly Bear Management "program" is referenced in the comment. The department management pertaining to grizzly bear habitat in the Swan Valley was consistently and cooperatively conducted under the Swan Valley Grizzly Bear Conservation Agreement from 1995 until 2018. This Agreement was dissolved on August 31, 2018 at the request of the department to the USFWS and U.S. Forest Service -- Flathead National Forest. At that time, the measures currently in use were analyzed and adopted through the 2018 HCP amendment process. These measures, with minor revisions, were originally crafted, proposed, and initially analyzed in the 2012 HCP public process. The relevant documentation can currently be found on the department's website. To be clear, the department undertook efforts to have measures in place for the Swan River State Forest in 2012 to ensure program and policy stability and viability into the future. These efforts were further analyzed and adopted in 2018. It is the department's intent that the measures currently being implemented on the Swan River State Forest will be those used for management with considerable certainty for the remainder of the HCP 50-year term. Again, to be clear, this effort only serves to provide more certainty in terms of future policy changes pertaining to grizzly bears. One of the most significant, primary department objectives for acquiring an HCP was for this stability and Program certainty with regard to protections for endangered species. The department maintains discretion regarding future rulemaking and has ample options through the adaptive management process to make necessary adjustments or allowances over time. Adopting measures now pertaining to the Swan River State Forest through this process is an important and necessary house-keeping task to better organize and clarify the department's commitments and protections for grizzly bears for field staff

and the public. The department believes that the level of detail provided in the HCP and associated administrative rules is adequate and appropriate for consistent, defensible, and efficient implementation on state trust lands. Adaptive management mechanisms are in place, and new, relevant scientific information is reviewed annually by the department in cooperation with the USFWS as a part of required coordination and monitoring discussions.

Comment 49: Commenter questioned if adopting prescriptive directives in these administrative rules is the best strategy when dealing with populations and habitats that are regularly evolving and changing. Allowing some flexibility for agency professionals to develop management strategies that best achieve multiple benefits while allowing for innovation and adaptation on site specific basis.

Response to Comment 49: Comment noted, and the department thanks the Commenter for their input. Developing and implementing clear, effective rules requires the continual balancing of a mix of both general and more prescriptive measures, depending on the species or resource and its requirements. We believe the administrative rule revisions provide the necessary prescriptive detail, as well as necessary room for flexibility when warranted. Many of the protection measures contained in these revised administrative rules have been in place and implemented for some time.

Comment 50: Commenter asks what effect will 36.11.444 have on existing grazing leases? Another commenter asked what are the potential economic impacts of this proposed grazing lease rule change and if the agency is acting in the best interest of the trust by limiting grazing leases and therefore it's potential economic return?

Response to Comment 50: The only potential effect the proposed rules would have on existing grazing leases would be that operations currently utilizing a grazing lease on state trust land in a grizzly bear recovery zone would not have the option to convert the existing lease from cattle to small livestock, such as goats or sheep. To date, this type of conversion has not been proposed to the department by a grazing lessee operating in grizzly bear recovery zones.

Comment 51: Several Commenters expressed support for the revision that are consistent with the changes in HB 70, including 36.11.447 - Categorical Exclusions, and 36.11.450 - Timber Permits

Response to Comment 51: Comment noted, and the department thanks the Commenters for their input.

Comment 52: Several Commenters expressed support for revisions regarding threatened and endangered species, including 36.11.429 - Bald Eagle and 36.11.430 - Gray Wolf, noting the changes are consistent with delisting from threatened and endangered list.

Response to Comment 52: Comment noted, and the department thanks the Commenter for their input.

Comment 53: Commenter observes they understand the pressures the agency is trying to balance, but questions why decisions are made that continually add layers of restriction and regulation, many of which are self-imposed.

Response to Comment 53: The department appreciates the acknowledgement of the many pressures facing agencies and forest managers today. The department must continue to make the best business choices possible for trust beneficiaries given a very complex and ever-changing economic, environmental, political, and policy environment. As such, the department continues to make concerted efforts to balance the many competing interests it faces while providing sound stewardship and accomplishing its overarching charge to generate revenue for trust beneficiaries. While the amendments and repeals of these administrative rules \may give the impression of adding more requirements or layers, they actually remove many measures entirely, and replace existing administrative rules with necessary and more current revisions. The final resulting rules represent a considerable and necessary improvement by providing a comprehensive set of implementation policy with current definitions and improved organization. These revisions will ultimately provide increased Program efficiency, defensibility, management flexibility, and long-term Program stability in the foreseeable future.

Comment 54: Commenter strongly feels that the best decisions are made on the ground by experienced and qualified professionals with site specific issues, conditions, and criteria in mind.

Response to Comment 54: See Response to Comment 22. The department is continually striving to balance the use of prescriptive measures and flexibility. While very prescriptive measures can be implemented at the cost of flexibility, they can provide considerable efficiency and Program consistency. These benefits can be realized from the beginning of each project from its development through implementation and monitoring phases. We believe the HCP and these administrative rules address these important considerations.

Comment 55: Commenter sincerely appreciates the opportunity for public participation and looks look forward to the response and deliberation on the issues we raised. Commenter notes that more importantly, they look forward to the department continuing to be a successful manager of the state trust lands assets for multiple benefits into the future and want to see administrative rules in place that support that venture.

Response to Comment 55: Comment noted, and the department thanks the Commenter for their input. We strongly believe this proposal appropriately and responsibly supports that venture.

Comment 56: Commenter feels that expanding the rules of the HCP to non-HCP lands exposes the agency to a greater risk of litigation, particularly as they relate to threatened and endangered species, and a multitude of recent lawsuits against the USFS on similar grounds supports this statement. Commenter opined that the expansion of HCP rules across the land base is unnecessarily burdensome to land managers and will have the opposite effect of the purported need for simplification and consistency on the landscape. Commenter strongly opposed the rules related to expanded riparian buffers as they are overly restrictive and there is no scientific basis that increased buffers and reduced tree harvest actually increase the protection of riparian and aquatic resources.

Response to Comment 56: Please see Response to Comment 32.

Comment 57: Commenter stated that the word "restriction" implies an absolute prohibition of operating equipment rather than an allowance with limitations in an ERZ and suggested changing the language to something like "Special Operation Zone", for example.

Response to Comment 57: ERZs would not limit tree retention within these zones but would limit what types and what conditions specific equipment can be used within them. The department believes the distinction between restriction and prohibition is clearly defined in 36.11.425(4)(b).

Comment 58: Commenter suggests adding additional activities to the definition of 36.11.403(1) to ensure bridge installation, culvert installation, culvert replacement, road construction, road reconstruction, road obliteration are included.

Response to Comment 58: The definition of low intensity forest management activities was negotiated with the USFWS during the development of the HCP. The specific activities that were included had negligible disturbance effects in duration and/or intensity to the surrounding area from equipment operations. As defined, culvert and bridge replacement are included under road maintenance. The activities of bridge installation and culvert installations are typically associated with road construction and are not considered low intensity likewise, for road reconstruction and reclamation.

Comment 59: Commenter notes there is likely conflict between the definitions and lynx specific management discussed in 36.11.428; and suggests striking definitions and keeping lynx management in 36.11.428 instead.

Response to Comment 59: The definitions indicated in the comment are descriptive definitions that have ample detail included to allow for their interpretation and application of the administrative rules for Canada lynx. Detailed mapping protocols that tie directly to the department's stand level inventory were cooperatively constructed with the USFWS with input from Squires at the time the HCP was developed. These protocols tie directly to each type of lynx habitat defined in the definition section as referenced in this comment. The protocols and definitions were available for public review during the HCP development process and were

originally adopted in the HCP in 2012. They were also deemed sufficient by both agencies during the HCP amendment review completed in 2018. The habitat mapping protocols may be found in the HCP (2012, Vol. 3) on the department website or are available upon request. Commitments the department made in the HCP require that any changes to the mapping protocols be made in cooperation with the USFWS given improved scientific information. The department is required to provide changes to lynx habitat acreages annually to the USFWS.

After reviewing the definitions and applicable rules given the prompt of this comment, we were unable to find any repetitive or confusing aspects warranting further clarification or revision. During completion of the original draft administrative rules under this MAPA process, the lynx rules and definitions were provided to all Program personnel to review for accuracy, clarity, and implementation feasibility. The department has been following these definitions and procedures since 2012 with few problems. However, confusion regarding administrative rules pertaining to lynx that pre-date the HCP that have remained have proven confusing and problematic for field practitioners. These are good examples of the types of rules we are proposing to clean up in this process.

Comment 60: Commenter noted the department typically sells its timber sales on a per ton basis, which is a unit of weight, not volume and suggests changing the language from "price per volume of wood" to "price per unit".

Response to Comment 60: The department agrees and has edited the definition accordingly.

Comment 61: Commenter stated the term "large-sized" is too subjective relative to the preferred habitat of the pileated woodpecker and asked if it is the department’s desire to provide more flexibility or more distinct focus to the habitat definition? If the latter, Commenter suggests adding a defined DBH range.

Response to Comment 61: This reference to "large-sized" trees of different species in the definition has been in place without issue since the original administrative rules were adopted in 2003. This portion of the definition does not reflect a proposed change. Rather it is a portion of the existing definition that provides ample reference to give users a general understanding of habitat needs that allows for more detailed inclusion of specific parameters that can be modeled using current scientific literature. The definition can necessarily be tailored to various elevational zones, age classes, and cover types used by the species. The portion of the definition proposed in this revision simply clarifies that habitat patches considered as suitable should at least 40 acres or more for analysis and modeling purposes etc.

Comment 62: Commenter supports the simplification of the definition of "restricted road".

Response to Comment 62: Comment noted, and the department thanks the Commenter for their input.

Comment 63: Commenter stated that 36.11.403(71)(b) appears to be the same intent as 36.11.403(67) for "reclaimed road" but has a different definition and suggests cleaning up/consolidating both definitions to provide more clarification.

Response to Comment 63: This definition relates to the type of closure that controls access to a road rather than the road classification for motorized use such as open, restricted, abandoned or reclaimed. A significant distinction is warranted between Class A and Class B road closures as Class A closures are passable -- typically gates, while Class B closures are impassable such as earthen berms or debris. These distinctions are important for road data management and analysis. These definitions have evolved and been integrated into GIS road tracking data during the last ten years, and they are key to implementation of the Stillwater and Swan transportation plans under the HCP.

Comment 64: Regarding grizzly bear definitions, commenter noted that grizzly bear provisions are covered elsewhere in the proposed administrative rules revisions and having duplicative definitions and rules can create conflict and leave implementation open to scrutiny. Commenter suggests dropping grizzly bear definitions and leaving their management directions to the specific administrative rules.

Response to Comment 64: Without additional information, the department is unclear how the proposed revisions to definitions regarding grizzly bears would create conflicts or leave implementation open to scrutiny. The intent was the opposite, and the department believes after lengthy reviews in the HCP process and internal review conducted by field staff, we have accomplished our intent. The terms in question that are defined, in most cases, occur many places in the administrative rules. Thus, a practitioner would likely have an extremely difficult time implementing a number of the rules that pertain to definitions 36.11.403(80), (89), and (90) without them. In some cases, there is purposeful consistent redundancy provided for things such as dates that pertain to particular periods or seasons, however we are not aware of any that are in conflict.

Comment 65: Commenter noted that the "Reasonable Necessity" for the proposed amendment states that expansion of HCP specific language to all Trust Lands "will increase the consistency of effects analyses across forest management projects on lands outside the HCP project area." Commenter states that easing analysis is hardly a compelling reason to expand a restrictive process with a specific footprint to lands across the state that makes no mention of the additional operational constraints the amendments will place on trust land forest management implementation. Commenter believes this is an administrative consideration with widespread and long-lasting impacts on the ground and strongly feels further discussion is required.

Response to Comment 65: The amended cumulative watershed effects rule does not ease analysis requirements by the department, but rather allows for consistent effects analyses to be completed on timber sale projects regardless of geographic location. The proposed rules would only apply to forest management activities that occur on trust lands, which in the 2020 SYC totaled approximately 750,000 acres. Of this commercial timber base, a sizable portion of the rules would not apply as threatened and endangered species rules are geographically explicit and would be minimally constraining on most eastern area lands. It is also important to consider that many administrative rules have been in place since 2003 on lands not covered under the HCP, particularly in eastern Montana. In a number of cases, such rules would be replaced with definitions and measures consistent with the HCP. That is, new administrative rules would replace the previously existing set. We believe the proposed revisions provide reasonable and responsible changes that will promote analysis and management consistency, which are important Program objectives. Overall, we anticipate required constraint levels of the revised administrative rules in question to closely mirror those in existing rules, which we believe does not represent a broad expansion of new requirements on additional lands.

Comment 66: Commenter states that this data collected and compiled by your very agency contradicts the need for changing existing administrative rules and instead indicates that the current rules work very well. Commenter also states that the proposed changes to the administrative rules in fact dispute the Forestry Assistance Bureau's consistent data driven assertation that the current set of rules are easy to interpret, provide flexibility of implementation across a broad landscape, and effectively protect resources within the SMZ corridor. If the proposed administrative rules were approved, they could undermine Montana's SMZ law and BMP guidelines and have long-term unintended consequences could require more FTE's to implement as the complexity increases.

Response to Comment 66: The SMZ law is the foundation for RMZ strategy developed under the HCP and provided the prescriptive baseline for tree retention requirements and prohibitions such as equipment operations, road construction, burning and clear cutting, among other prohibited actions. The SMZ law will continue to be adopted under rules for forest management (36.11.301 thru 36.11.313) and implemented on every trust land timber sale. Measures contained in the revised administrative rules for forest management apply strictly and solely to Montana state trust lands and would not undermine the application of the SMZ law or BMPs as applied to other state and private ownerships. In the most recent SYC process, the department identified approximately 750,000 commercial forest acres. Of these acres, 583,889 were allocated to management regimes and were included in solution (MBG 2020). The HCP covers approximately 630,000 acres of forested trust land where associated stream buffers would be applied. Thus, the gross expanded area where the revised rules would apply would be on approximately 120,000 acres, primarily on land offices in eastern Montana. On these acres there are approximately 280 miles of Class I stream protections on these added lands would result in approximately 1,977 acres of additional managed RMZ, where 50 percent retention would be required. The additional

stream buffers would provide further resource protection as climate modeling has shown increases in background stream temperatures in Montana of up to three degrees Celsius by 2080 (Isaak, et al. 2017). The EA completed by the department for this administrative rule revision process disclosed the additional acres that would be affected by some rules. We further note that, coupled with the addition of approximately 14,000 acres of acquired forest land and adjustments made to identified acreage deferrals, the 2020 annual sustainable yield model that included the proposed administrative rules as a constraint increased the annual sustainable yield by 17 percent over the calculation in 2015. Again, added resource protection in the wake of climate change, improving program consistency statewide, site productivity is relatively low, and that the availability of standing volume is not typically a limitation on these lands are important considerations that the department has taken into account.

Comment 67: The commenter noted a peer-reviewed article citing the efficacy of Montana's current SMZ and BMP approaches to forest management before enacting changes on a system that is already clearly exemplary.

Response to Comment67: The department agrees that the SMZ law and BMPs for Forestry have been highly successful at preventing water quality impacts from sediment delivery during forest management activities. No changes to the law and/or its implementation on state trust land is proposed here. The department agrees with the commenter regarding the contribution of the cited publication on furthering the scientific body of literature regarding the effectiveness of the SMZ law and BMPs. Further research is warranted regarding the law's effectiveness with respect to other stream metrics such as stream temperature, large woody debris recruitment, shade, habitat complexity, microclimate modification and ramifications of climate change. The department's on-going monitoring efforts are focused on providing additional information and clarity to the above referenced response variables.

Comment 68: We feel that the expansion of the HCP to all State Trust lands and the amendment of the current administrative rules to change application of SMZ's/ERZ's/RMZ's will unnecessarily burden the agency with additional self-mandated provisions, complicate implementation of what is now a simple and demonstrably effective set of rules, and undermine the current laws and practices governing private lands. It will also remove a significant portion of the State's land base from active management and instead adopt a "leave it alone" policy on streamside buffers that are widely recognized as critical corridors for both terrestrial and aquatic wildlife. A "leave it alone" policy removes the option for the department to manage these corridors in the event of major disturbance such as wildfire, wind or insects and can have unforeseen procedural and economic impacts. We suggest a thorough and collaborative review of streamside buffer rules be undertaken instead of the current proposed changes.

Response to Comment 68: In the most recent SYC process, the department identified approximately 750,000 commercial forest acres. Of these acres, 583,889 were allocated to management regimes and were included in solution (MBG 2020).

The HCP. Thus, the gross expanded area where the revised rules would apply would be on approximately 120,000 acres, primarily on land offices in eastern Montana. On these acres there are approximately 280 miles of class 1 streams protections on these added lands would result in approximately 1,977 acres of additional managed RMZ, where 50 percent retention would be required. The additional stream buffers would provide further resource protection as climate modeling has shown increases in background stream temperatures in Montana of up to 3 degrees Celsius by 2080 (Isaak, et al. 2017). The EA completed by the department for this administrative rule revision process disclosed the additional acres that would be affected by some rules. We further note that, the 2020 annual sustainable yield model that included the proposed administrative rules as a constraint coupled with the addition of approximately 14,000 acres of acquired forest land and adjustments made to identified acreage deferrals, increased the annual sustainable yield by 17 percent over the calculation in 2015. Again, added resource protection in the wake of climate change, improving Program consistency statewide, site productivity is relatively low, and that the availability of standing volume is not typically a limitation on these lands are important considerations that the department has taken into account.

RMZs have been implemented adjacent to fish bearing streams on state trust lands since the initial adoption of Forest Management administrative rules in 2003. This policy has been implemented statewide during forest management activities, regardless of land classification. The primary change under the HCP conservation strategy is the application of RMZ's on all Class I streams, regardless of the streams ability to support a fishery. This constraint was again modeled for the entirety of the commercial forest land base in the 2020 SYC in the form of a 50 foot "grow only" constraint on all Class I streams. The department maintains the management flexibility to harvest within this portion of the riparian buffer and as a result, will have no further economic impact to trust beneficiaries. The department addresses numerous resource needs and values when conducting forest management projects to comply with many laws and requirements, first and foremost are compliance with the SFLMP and generating revenue for trust beneficiaries. Some required measures the department must implement do include consideration of fragmentation, habitat connectivity, and movement corridors for wildlife. Addressing such issues is important for ensuring the credibility and long-term program viability of the Program will be maintained. The proposed measure revisions allow for considerable discretion and management flexibility for department foresters and resource specialists. In no way would the proposed revisions result in unnecessary burdens or prevent the department from addressing management needs such as salvage associated with wildfires, insects and disease, wind, or other natural events.

Comment 69: Commenter noted that this administrative rule change would apply HCP rules across the entirety of the trust lands land base, which does not lend itself well to the diversity found across the state, and has the appearance of prescribing HCP rules for bull trout and cutthroat trout on streams that may not have ever supported these species.

Response to Comment 69: Amendments provided in 36.11.427 update references to interagency plans the department is signatory to and provide clear direction regarding when fish passage will be addressed at a site, taking into consideration Montana Department of Fish, Wildlife and Parks (DFWP) population management goals. With respect to the applicability of rules regarding fish species, the department relies on site specific data for fisheries presence/absence either gathered by the department or DFWP and does not speculate on historic and/or future species status of a stream when applying rules related to a fish species.

Comment 70: Commenter supports the removal of bald eagle from 36.11.428.

Response to Comment 70: Comment noted, and the department thanks the Commenter for their input.

Comment 71: Commenter suggests the proposed administrative rule changes as they pertain to lynx be limited to one section rather than have potentially conflicting rules in in the definition section and under this threatened and endangered species section. Commenter suggests that the expansion of these rules to the entirety of the trust lands ownership is unnecessarily burdensome, provides little latitude for land management, greater complexity in implementation, and adds more acres deferred from management. Commenter elaborated that the 2020 SYC included 9,406 acres constrained by lynx habitat under the existing administrative rules, and asked how many additional acres will be encumbered by the proposed rule changes and how will that affect implementation of the sustained yield harvest on the ground? Commenter added this proposed rule change has the appearance of prescribing HCP rules for lynx onto areas that may not have ever supported these species.

Response to Comment 71: Having both clear, applicable definitions and administrative rule sections is consistent with MAPA and administrative rule requirements for state agencies. The proposed text changes to the administrative rules pertaining to threatened and endangered species appear significant but are not as they simply reflect inclusion of the full text of HCP measures that have been in place since 2012 on 550,000 acres of state trust land in western Montana under a rule adopted by reference (36.11.470). The application of measures to other lands, not currently covered under the HCP would be expected to have no measurable additional effect on the Program. This is because the distribution of this species and habitat suitability are limited considerably in eastern Montana. After further review, we are aware of no conflicting rules or definitions in the proposed administrative rules. Mitigation measures for lynx have been applied by the department since 2003 based on where habitat occurs in the state using current habitat mapping based on the department's stand level inventory data. If the department were to not adopt the revised administrative rules as proposed, *existing* outdated habitat definitions and administrative rules currently in place for this species in these same "expanded" areas would remain on the books, which provide equally if not greater constraining effects on the Program. Furthermore, retaining the outdated habitat definitions and measures in rule would perpetuate existing confusion and legal vulnerability for the Program. Under either administrative rules, given the lower general quality and

amounts of suitable habitat found in eastern Montana, constraining effects on the Program regarding implementation, procedures, or harvest volume would be virtually immeasurable. Having revised clear, consistent forest management rules and definitions applicable across the state are necessary to promote process efficiency and long-term defensibility of the Program. Constraints as applied for Canada lynx have remained very consistent since the 2011 calculation prior to adoption of the HCP. Detectable differences have primarily been related to the application of the calculation models to an expanding land base due to recent periodic land acquisitions where the same administrative rules and constraints have been applied. Detailed descriptions of how lynx habitat was constrained in the 2020 calculation may be found in Appendix N of the 2020 report (MBG 2020, pp. 120-125). Considerably more acres were constrained for lynx habitat in all of the calculations including 2011, 2015, and 2020 than the 9,406 acres referenced in the comment (See pp. 47 and 48 in MBG 2020 final report). Of note, in the 2020 calculation there was no apparent additional volume reduction associated with lynx constraints when they were run at their location in sequence with other previous constraints.

Comment 72: Commenter does not support the expansion of HCP rules written for a specific area and management objective be expanded to the entirety of the land base noting the proposed administrative rule changes place undue constraints on land managers without offering a compelling reason for expanding HCP rules to the entire land base. Commenter observed that the proposed rules are lengthy and far reaching and the consequences need to be thoroughly examined rather than rushed through in a bundled rules revision package. Commenter elaborated that the grizzly bear environment is rapidly evolving and placing specific constraints on an ever-changing environment seems short sighted, providing the example of the governor's Grizzly Bear Action Council (GBAC) which is comprised of multiple stakeholders as having difficulty agreeing on a path forward for grizzly bear management in the state. Commenter stated the proposed changes are hasty and may not be in alignment with forthcoming GBAC recommendations, and asked, additionally, how do the proposed changes impact acres deferred from management and how does this associate with the recently adopted 2020 SYC?

Response to Comment 72: The department is not expanding grizzly bear management direction across the state. Current administrative rules that are dated would still apply to state trust lands on eastside land offices when forest management activities are conducted if the proposed rules are not adopted. These dated administrative rules proposed for replacement have been on the books since 2003 when they were originally adopted. HCP measures have been implemented by the department since 2012 as required under 36.11.470. Under this process, the department is proposing to adopt revised rules and definitions based on improved scientific information that have received considerable prior public review and analysis in cooperation with the USFWS. As such, they serve to clarify the department's responsibilities under the ESA and ensure the long-term defensibility and credibility of the Program with regard to endangered species concerns, which were key important beneficial objectives identified in the HCP development process. We believe this is an important consideration. The proposed administrative rules reflect revision work that was initiated in 2004 with initiation of the HCP process.

Thus, we believe that development, analysis, public disclosure, and adoption of these measures to this point has been anything but rushed. Application of these administrative rules would not create new onerous hardship for the Program as implied, given the minimally constraining characteristics of the revised administrative rules themselves, and the limited distribution of grizzly bears in eastern Montana. The benefits of having these clear, consistent forest management rules and definitions to be applied across the state are necessary to promote process efficiency and long-term defensibility of the Program. The HCP associated 50-year Incidental Take Permit and administrative rules provide considerable management consistency, certainty and stability regarding an ever-changing policy environment and distribution regarding grizzly bears. While the GBAC serves an important role for informing grizzly bear management and recovery efforts in Montana, recommendations provided by that group are unlikely to substantially influence or circumvent HCP measures adopted as administrative rules in the foreseeable future. Any proposed future changes would require review from the USFWS, and analysis and disclosure in applicable MAPA and MEPA processes. These revised administrative rules would cause no additional deferrals of forested timberland, and all measures from these rules were considered and addressed in the 2020 SYC. Detailed descriptions of grizzly bear constraints applied in the 2020 SYC can be found on pages 119-124 of the final SYC report (MBG 2020).

/s/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Mark Phares
MARK PHARES
Rule Reviewer
Natural Resources and Conservation

1120-3

LAND BANKING PARCELS: PRELIMINARY APPROVAL FOR SALE

Land Board Agenda Item
November 16, 2020

1120-3 Land Banking Parcel: Preliminary Approval for Sale

Location: **Powell County**

Trust Benefits: **Common Schools**

Trust Revenue: **Appraisal to be completed after preliminary approval**

Item Summary

The Department of Natural Resources and Conservation (DNRC) is requesting preliminary approval to sell one parcel totaling 640+ acres nominated for sale in Powell County. The sale was nominated by the lessee and is located approximately 5 miles southwest of Helmville, Montana.

Sale #	# of Acres	Legal	Nominator	Trust
1168	640±	ALL, T13N-R12W, Sec. 36	Robert E. Meyer	Common Schools

The sale parcel has been used primarily for grazing purposes and can support 115 AUMs.

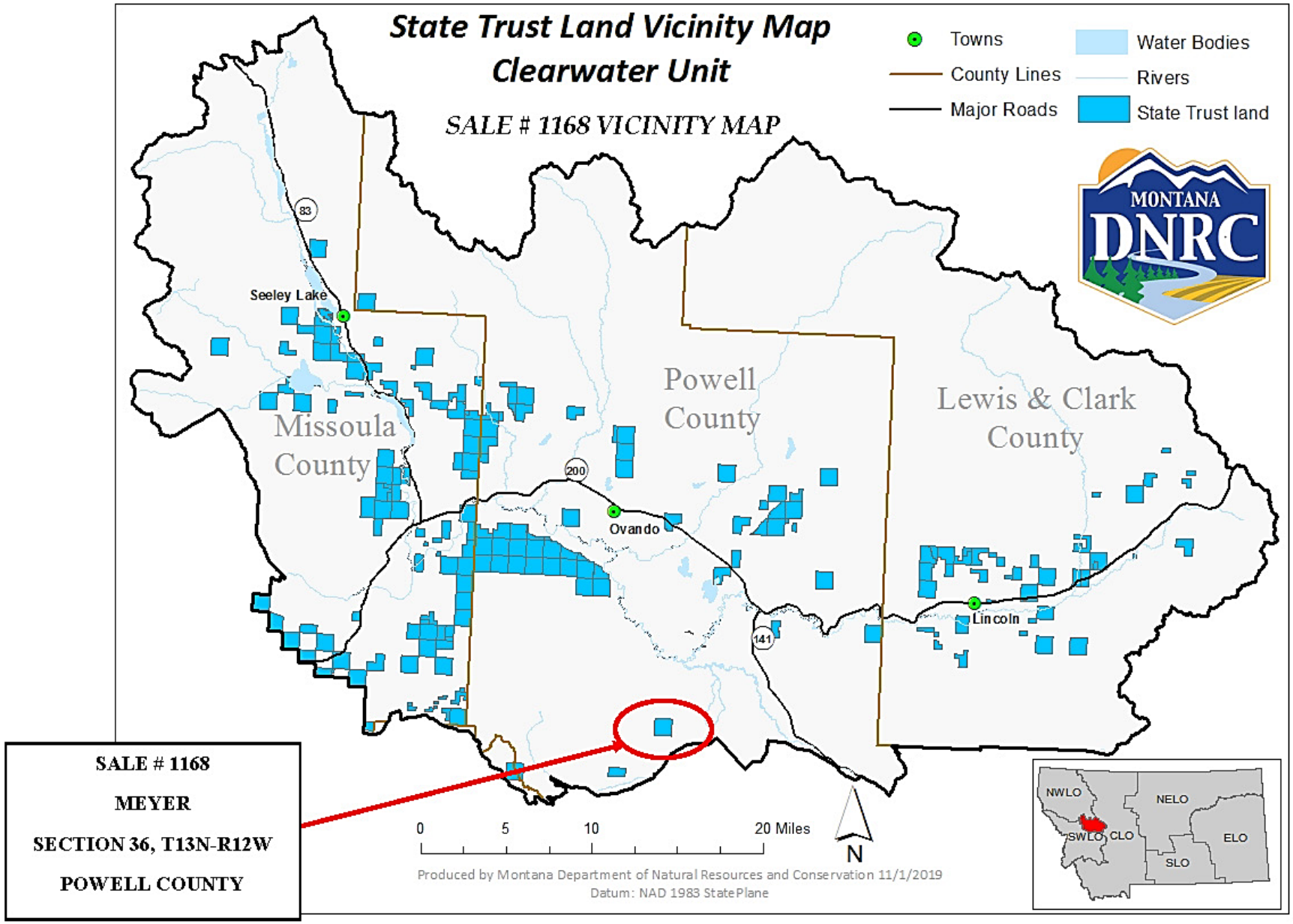
This sale parcel is surrounded by private land (Wales Brothers/Meyer Company Ranch) and is not legally accessible by the public.

Montana Environmental Policy Act (MEPA) scoping has been completed, with no potentially negative issues related to the sale of these parcels identified.

With the Land Board's preliminary approval to sell this parcel, DNRC can continue the due diligence necessary to fully evaluate and process this parcel for sale.

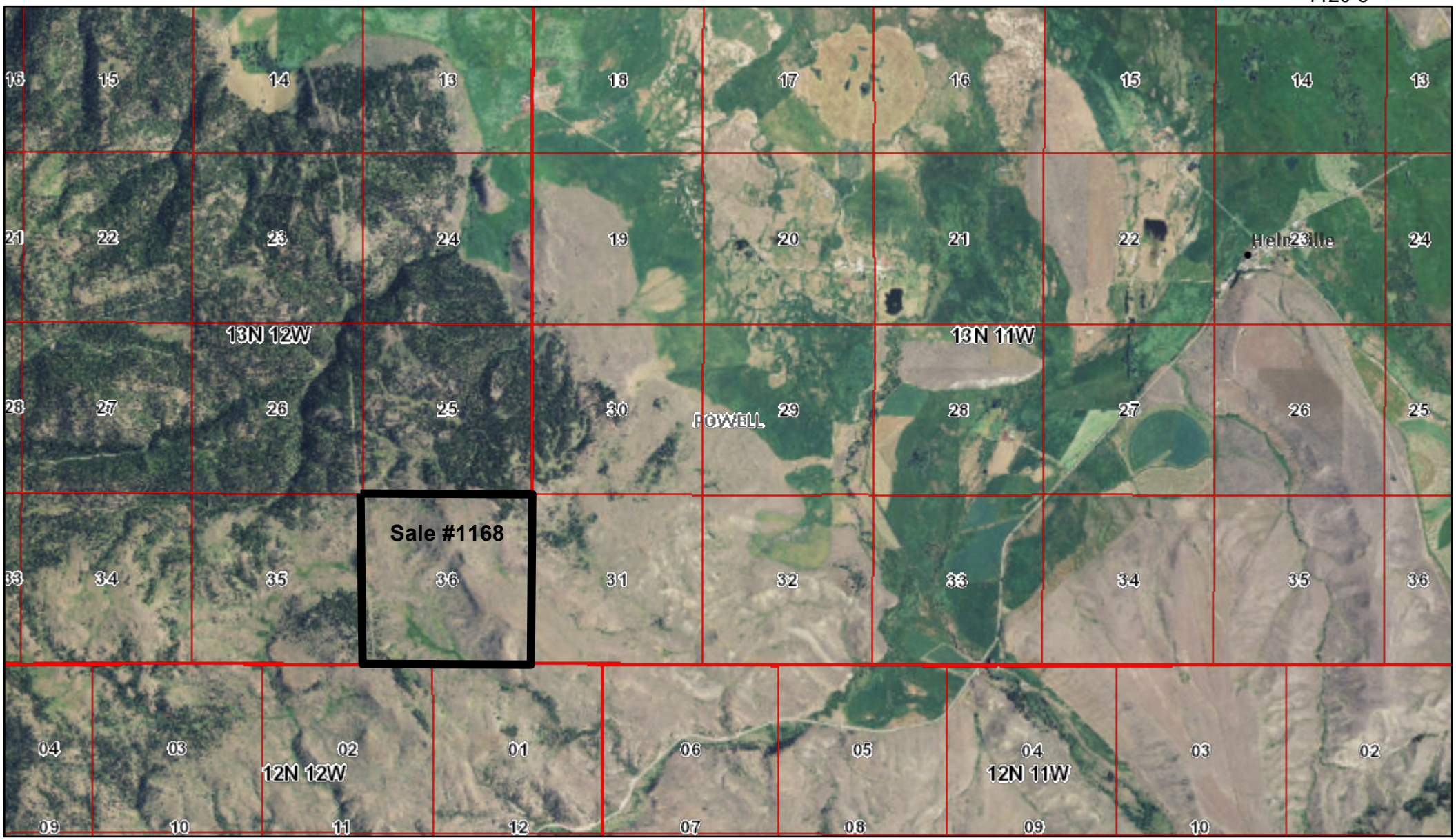
DNRC Recommendation

The director recommends the Land Board grant preliminary approval to sell this parcel.


State Trust Land Vicinity Map
Clearwater Unit
SALE # 1168 VICINITY MAP
Towns
County Lines
Major Roads
Water Bodies
Rivers
State Trust land
MONTANA
DNRC
Seeley Lake
Missoula County
Powell County
Lewis & Clark County
Ovando
Lincoln
83
200
141
SALE # 1168
MEYER
SECTION 36, T13N-R12W
POWELL COUNTY
0
5
10
20 Miles
N
Produced by Montana Department of Natural Resources and Conservation 11/1/2019
Datum: NAD 1983 StatePlane
NWLO
NELO
SWLO
CLO
ELO
SLO

MEYER RANCH LAND BANKING SALE

1120-3



October 28, 2020

1:72,224

0 0.42 0.85 1.7 mi

0 0.5 1 2 km

PLSS First Division

Section

Protracted Block

PLSS Township

Office Locations

StateParks

Non-Forest Service Wilderness Areas

Forest Service Wilderness Areas

Counties

Montana State Library, Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community, Montana

Map Author

1120-4

CABIN AND HOME SITES: SET MINIMUM BID FOR SALE

A. Flathead County

B. Missoula County

Land Board Agenda Item
November 16, 2020

1120-4A Cabin and Home Sites: Set Minimum Bid for Sale
A. Flathead County

Location: Flathead County
Trust Benefits: Montana Tech
Trust Revenue: $402,000

Item Summary
The Department of Natural Resources and Conservation (DNRC) is requesting to set the minimum bid for 1 cabin site nominated for sale in Flathead County. This sale was nominated by the lessees in conjunction with the Cabin and Home Site Sale Program.

Sale No.	Acres	Legal Description	Nominator	Trust
1106	0.64±	Lot 5, Echo Lake, COS 18885, Section 5, T27N-R19W	James Baird & Jolene Baird-Wynder	Montana Tech

The parcel is currently leased as a cabin site and produces an average income for residential leases statewide. The parcel will be sold with the access that is currently provided under the lease agreement and can be conveyed by DNRC.

Economic Analysis:
Short term – The average rate of return on this sale parcel is 2.603%. The parcel will continue to receive this return if it remains in state ownership.

Long term – The funds from the sale of this parcel would be combined with other sale funds to purchase replacement lands through DNRC's Land Banking program. Lands purchased are required to have an equal or greater rate of return than the combined lands that generated the sale funds used for the purchase. To date, the average annual rate of return on acquisitions has been 2.91% on acquisitions with income generated from annual lease payments.

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

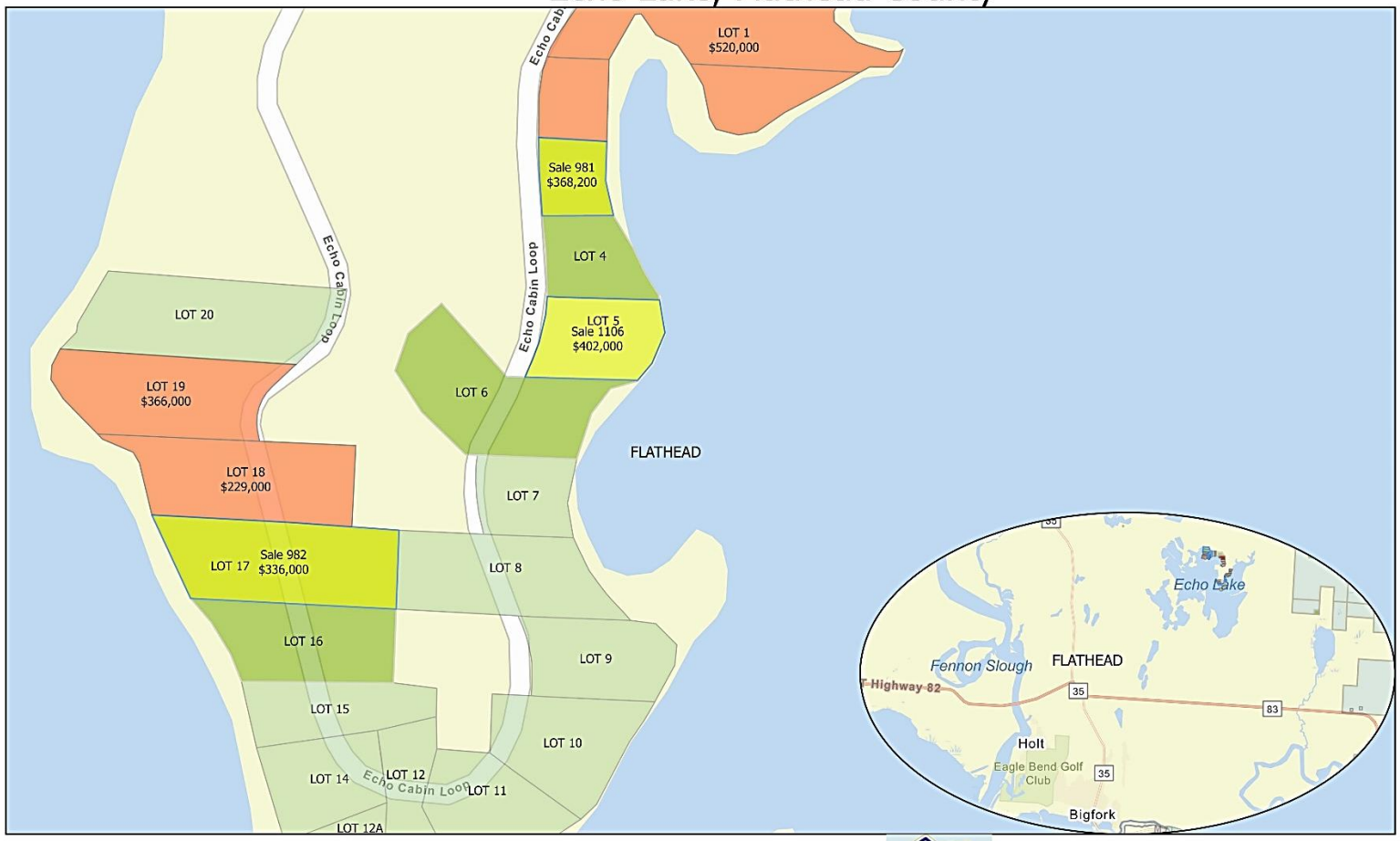
Appraised Values of Land and Improvements:

Sale No.	Appraised Land Value	Appraised Improvements Value
1106	$402,000	$111,000

DNRC Recommendation

The director recommends that the Land Board set the minimum bid for this cabin site at the appraised land value and the maximum value of compensation for the improvements shown above.

Echo Lake, Flathead County



LeaseStatus
- Active
- Vacant

Sale Year
- ≤2015
- 2016
- 2017
- 2018
- 2019
- 2020
- County
- Trust Lands

Pending Sales
- Pending Sales

Trust Lands Cabin Site Sales
Map Created by REMB staff
October 2020

Land Board Agenda Item
November 16, 2020

1120-4B Cabin and Home Sites: Set Minimum Bid for Sale
B. Missoula County

Location: Missoula County
Trust Benefits: MSU 2nd
Trust Revenue: $439,000

Item Summary
The Department of Natural Resources and Conservation (DNRC) is requesting to set the minimum bid for 5 cabin sites nominated for sale in Missoula County. These sales were nominated by the lessees in conjunction with the Cabin and Home Site Sale Program.

Sale No.	Acres	Legal Description	Nominator	Trust
1082	1.622±	Lot 12, Clearwater River West Shore, COS 5310, Section 10, T16N-R15W	Susan Hedahl	MSU 2nd
1083	2.471±	Lot 13, Clearwater River West Shore, COS 5310, Section 10, T16N-R15W	Michael England	MSU 2nd
1084	3.133±	Lot 14, Clearwater River West Shore, COS 5310, Section 10, T16N-R15W	Betty Dustin	MSU 2nd
1085	1.412±	Lot 15, Clearwater River West Shore, COS 5310, Section 10, T16N-R15W	Catherine M. White	MSU 2nd
1086	1.013±	Lot 16, Clearwater River West Shore, COS 5310, Section 10, T16N-R15W	Tim & Karen Tanberg	MSU 2nd

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

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

Sale No.	Rate of Return
1082	4.320%
1083	5.024%
1084	5.142%
1085	4.967%
1086	3.498%

Long term – The funds from the sale of these parcels would be combined with other sale funds to purchase replacement lands through DNRC's Land Banking program. Lands purchased are required to have an equal or greater rate of return than the combined lands that generated the sale funds used for the purchase. To date, the average annual rate of return on acquisitions has been 2.91% on acquisitions with income generated from annual lease payments.

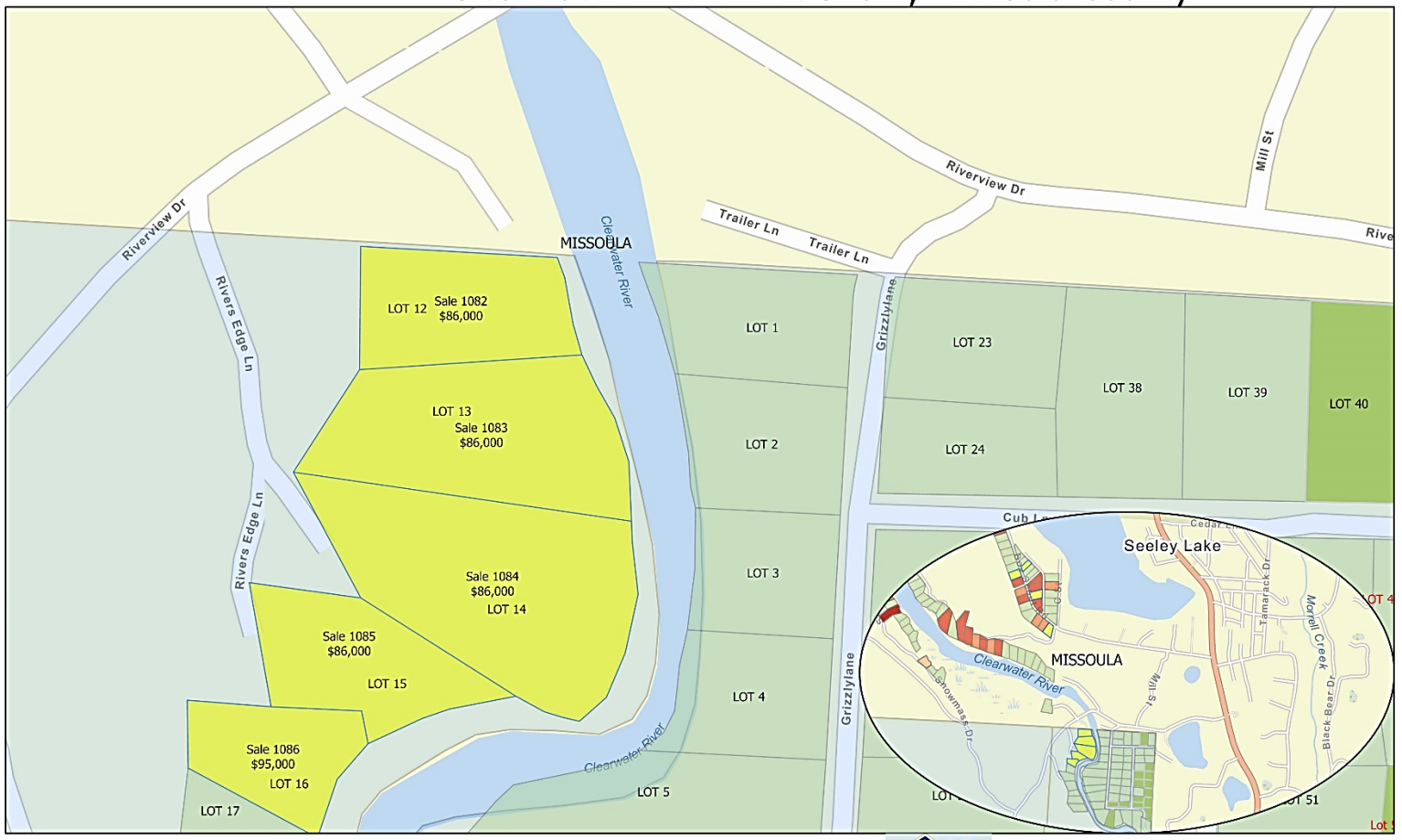
Cultural/Paleontological Resources:
A Class I level of cultural resource inventory was conducted for each of the proposed sales. Home sites typically contain numerous structures and the ground surfaces within most home sites have been variously disturbed over the course of many years of occupation and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

Appraised Values of Land and Improvements:

Sale Nos.	Appraised Land Value	Appraised Improvements Value
1082	$86,000	$46,000
1083	$86,000	$249,000
1084	$86,000	$263,000
1085	$86,000	$188,000
1086	$95,000	$351,000

DNRC Recommendation
The director recommends that the Land Board set the minimum bid for these cabin sites at the appraised land value and the maximum value of compensation for the improvements shown above.

Clearwater River West Shore, Missoula County



LeaseStatus
- Active
- Vacant

Sale Year
- 2016
- 2017
- 2019
- 2020
- County
- Trust Lands

Pending Sales
- Pending Sales

N

0 0.05 0.1 0.2 Miles

Trust Lands Cabin Site Sales
Map Created by REMB staff
October 2020

1120-5

LAND DONATION:

LBO Properties Limited Partnership

Land Board Agenda Item
November 16, 2020

1120-5 Land Donation - LBO Properties Limited Partnership

Location: Missoula County

Trust Benefits: Common Schools

Trust Revenue: N/A

Item Summary

L.B.O. Properties Limited Partnership proposes to donate 292.94± acres of their private property to the Montana Department of Natural Resources and Conservation (DNRC) for the financial benefit of the Common Schools Trust. The property is located approximately four miles southeast of Missoula, Montana in Pattee Canyon, Missoula County. The property consists of Tract 1, Certificate of Survey 06768, recorded in Missoula County.

Access to the property will consist of using County roads to the border of adjacent Tract 2, at which point access will be reserved across Tract 2 on the deed for that property. Additionally, access across the donated property, Tract 1, will be reserved on the deeds for adjacent Tracts 2, 3 & 4 of Certificate of Survey No. 06768 for access to those properties.

Newly re-constructed access roads exist in the northern portions of the land donation. The donation property is adjacent to an existing parcel of State Trust Land. The property is eased for roads, utilities, and development of a natural spring located on the subject parcel for the benefit of adjacent landowners.

Appraisal, HazMat, Public Notice

The parcel was appraised in October of 2020 by a certified general appraiser. The conclusion of value of the parcel is $900,000. As the proposal is to donate the parcel, no monetary compensation would be paid to L.B.O. Properties Limited Partnership.

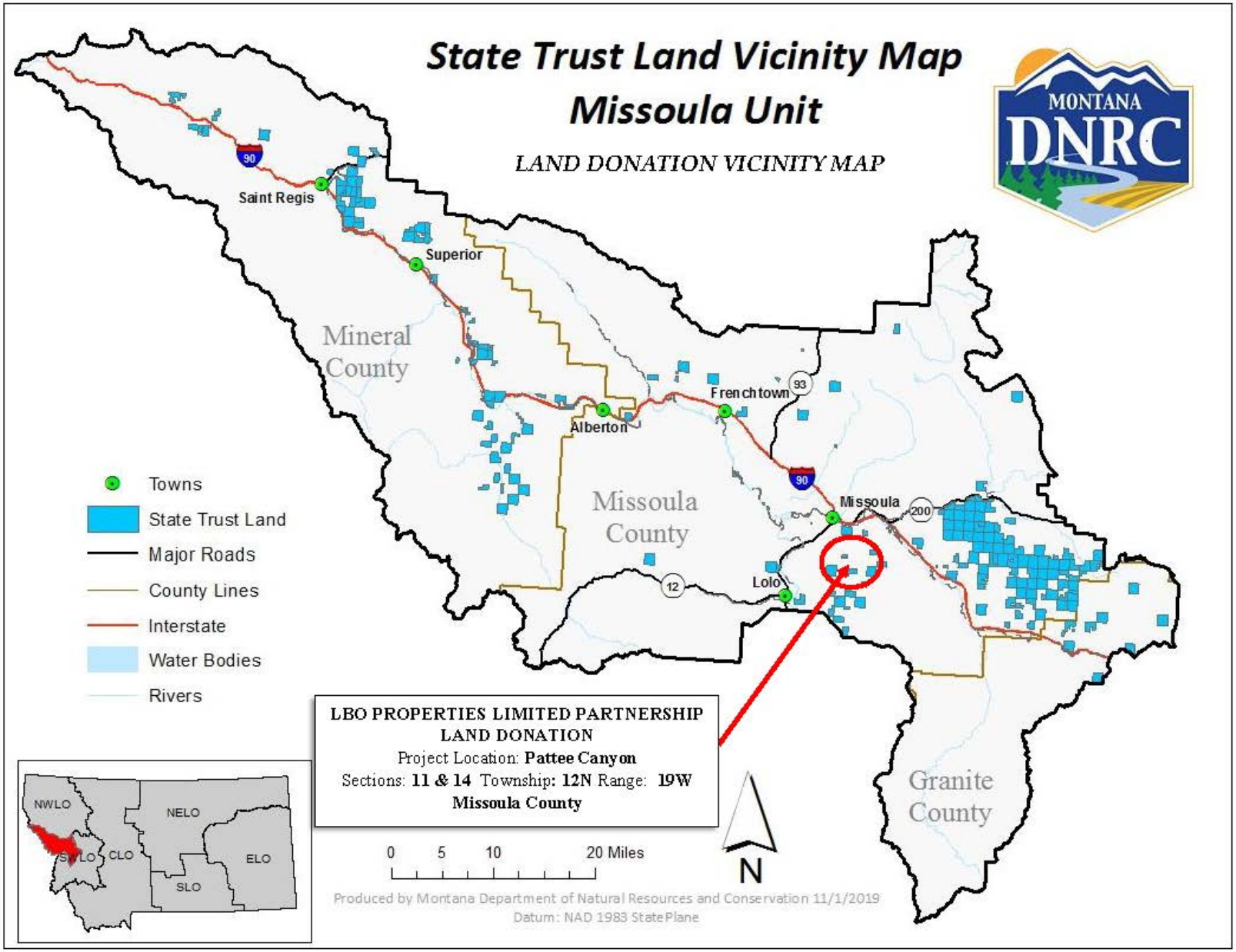
A Phase I environmental study was completed on the property in August 2020. The report did not identify any issues or concerns regarding hazardous materials and concluded that there are no environmental concerns associated with this parcel.

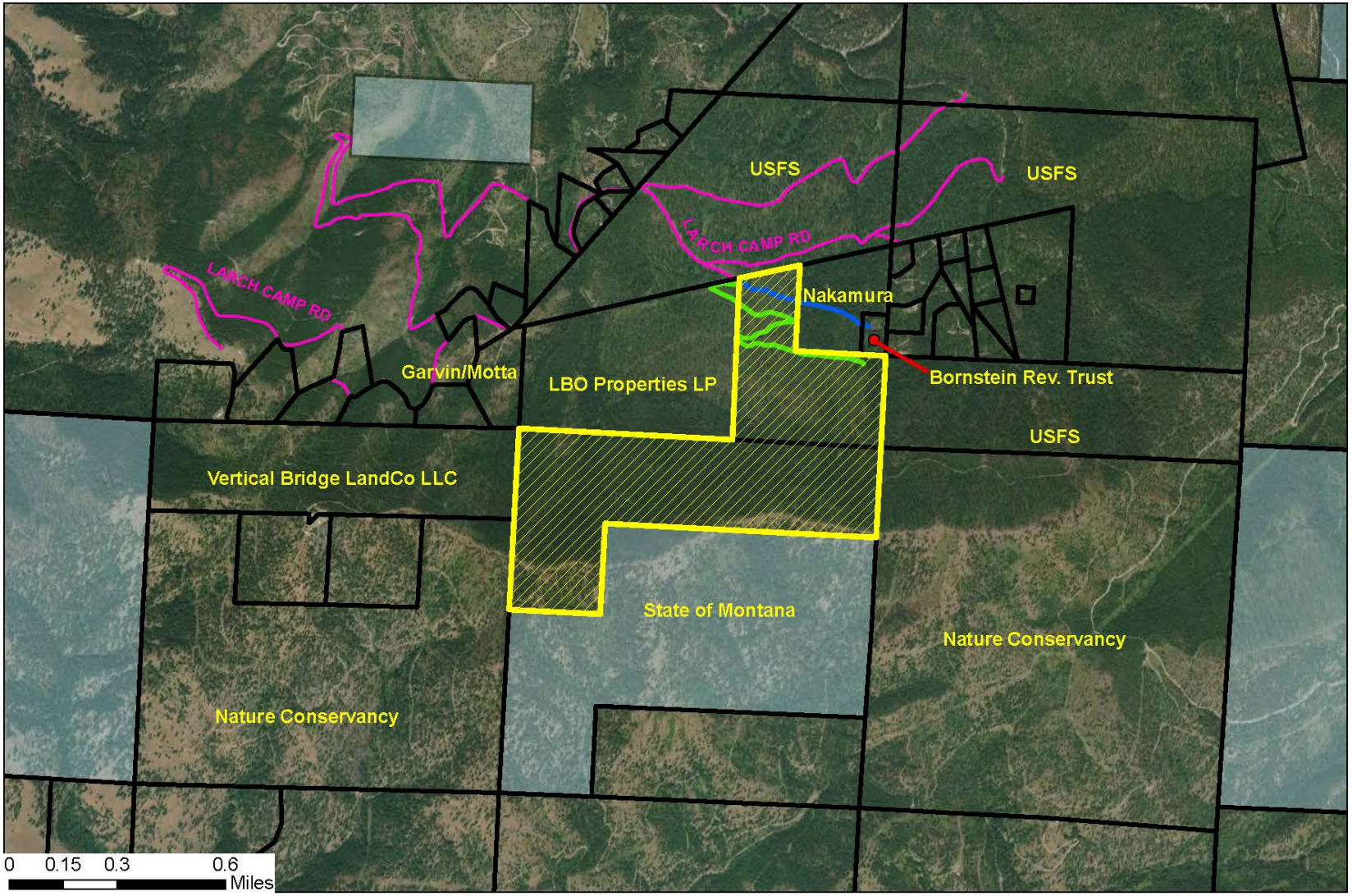
Public notice for the donation of this parcel was published in the Missoulian on October 25, 2020 and November 1, 2020.

DNRC is requesting permission from the Land Board to pursue actions necessary to acquire fee title in and to the property to be incorporated in the Trust Lands, Common Schools grant.

DNRC Recommendation

The director recommends approval of this land donation.


State Trust Land Vicinity Map
Missoula Unit
LAND DONATION VICINITY MAP
MONTANA
DNRC
Saint Regis
Superior
Mineral County
Alberton
Frenchtown
Missoula
Missoula County
Lolo
Granite County
90
93
200
12
Towns
State Trust Land
Major Roads
County Lines
Interstate
Water Bodies
Rivers
NWLO
NELO
SWLO
CLO
ELO
SLO
LBO PROPERTIES LIMITED PARTNERSHIP
LAND DONATION
Project Location: Pattee Canyon
Sections: 11 & 14 Township: 12N Range: 19W
Missoula County
0 5 10 20 Miles
N
Produced by Montana Department of Natural Resources and Conservation 11/1/2019
Datum: NAD 1983 StatePlane



Location: Missoula County S11,14 T12N R19W
Prepared on: 29 September 2020
Prepared By: DNRC REMB Staff

LBO Properties Limited Partnership Donation

- LBO Properties LP Donation
- Owner Parcels
- Montana Trust Land
- Public Roads
- All lawful Non-Public Road
- Private Easement

N

1120-6

RECIPROCAL ACCESS AGREEMENT – SPP#1

Land Board Agenda Item
November 16, 2020

1120-6 Reciprocal Access Agreement – SPP #1

Location: Flathead, Lake and Sanders

Trust Benefits: Common Schools, MT Tech, Public Buildings

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

I. Cooperator:

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

II. Purpose of Reciprocal Access Agreement:

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

III. Legal Description (R/W):

State Grant to SPP:

Flathead County:	Sec. 36, T26N, R21W -	0.55 road acres (C.S)
Lake County:	Sec. 16, T25N, R20W –	1.03 road acres (C.S)
	Sec. 8, T25N, R20W –	9.19 road acres (S.M.)

Total State to SPP 10.77 road acres, 1.53 miles

SPP Grant to State:-

Sanders County:	Sec. 4, T23N, R27W –	0.22 road acres
	Sec. 7,9, T22N, R26W –	0.44 road acres
	Sec. 30, T26N, R26W –	2.40 road acres
Lincoln County:	Sec. 31, T27N, R27W –	6.76 road acres
Flathead County:	Sec. 9,17, T27N, R25W –	11.13 road acres
	Sec. 25,30,31, T27N, R25W –	24.15 road acres
	Sec. 35, T27N, R26W –	1.16 road acres
	Sec. 21, T25N, R25W –	14.62 road acres

Total SPP to State 60.88 road acres, 8.37 miles

IV. Costs to be Borne by Each Party:

	EXCESS COSTS	
	State owes SPP	SPP owes State
Land Value	$ 86,767	$ 53,850
Total Value/Costs	$ 86,767	$ 53,850

Net Balance $ 32,917

The remaining Net Balance of $32,917 that the State owes SPP will be considered a donation upon approval of this Agreement by the Land Board and receipt of the "SPP#1 easement."

VI. Results of MEPA Analysis:

No significant impacts are expected, and no further analysis required

VII. Benefits to State:

1. *Describe the rights regarding which DNRC lands are being accessed.*

    - Provides full permanent access for all lawful purposes (including utilities) to 4,038 acres of State Trust Lands (Common Schools, Montana Tech and Public Buildings).

2. *Describe the public access situation and the effects of this agreement.*

    - As a result of this agreement, there will be no change to the access rights in favor of the public (no additional public access)

3. *Describe other benefits associated with completing the agreement.*

    - Provides for legal access for land management opportunities and other uses in a vastly changing ownership landscape.
    - State of Montana is receiving significant more miles of road than SPP and SPP is waiving/donating the value of excess costs that the State would otherwise be responsible to pay.

VIII. Recommendation:

The director recommends approval of the SPP #1 Reciprocal Access Agreement and further recommends a waiver of the conveyance fee obligation described in the Reciprocal and Easement Exchange Policy as a result of the net financial benefit to the State.

EXHIBIT 1

General Vicinity map

Reciprocal Access Agreement

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

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

LEGEND

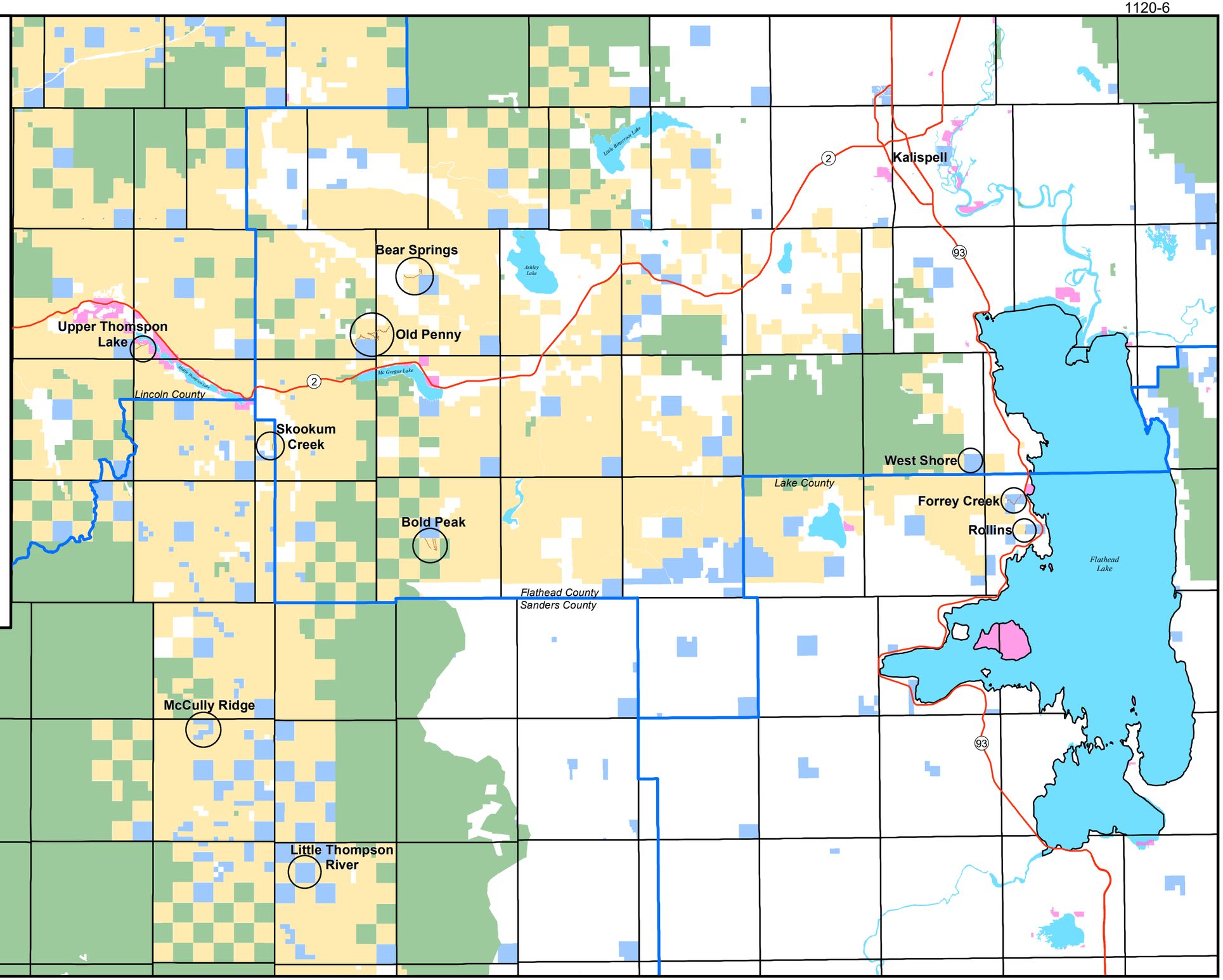
STATE	Montana Department of Natural Resources and Conservation
NFSL	National Forest System Land
FWP	Montana Department of Fish Wildlife and Parks
SPP	SPP Montana, LLC

R/W Length: 9.90 miles
R/W Area: 71.65 acres

0 5 10 Miles

NORTH

Prepared by GeoControl LLC 10-11-2020
www.geocontrolgis.com



1120-7

EASEMENTS:

Land Board Agenda Item
November 16, 2020

1120-7 Easements

Location: Lewis and Clark, McCone, Teton, Yellowstone

Trust Benefits: Common Schools, Pine Hills School

Trust Revenue: Common Schools = $ 6,428
Pine Hills School = $323

Item Table of Contents

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Yellowsone County 316 N. 26th Billings, MT 59101
Application No.:	18979
R/W Purpose:	a public county road known as Cottonwood Creek Road
Lessee Agreement:	N/A (Historic)
Acreage:	4.86
Compensation:	$3,402.00
Legal Description:	60-foot strip through E2SW4 Sec. 17 and 60-foot strip through NE4NW4, Sec. 20, Twp. 4S, Rge. 25E, Yellowstone County
Trust Beneficiary:	Common Schools

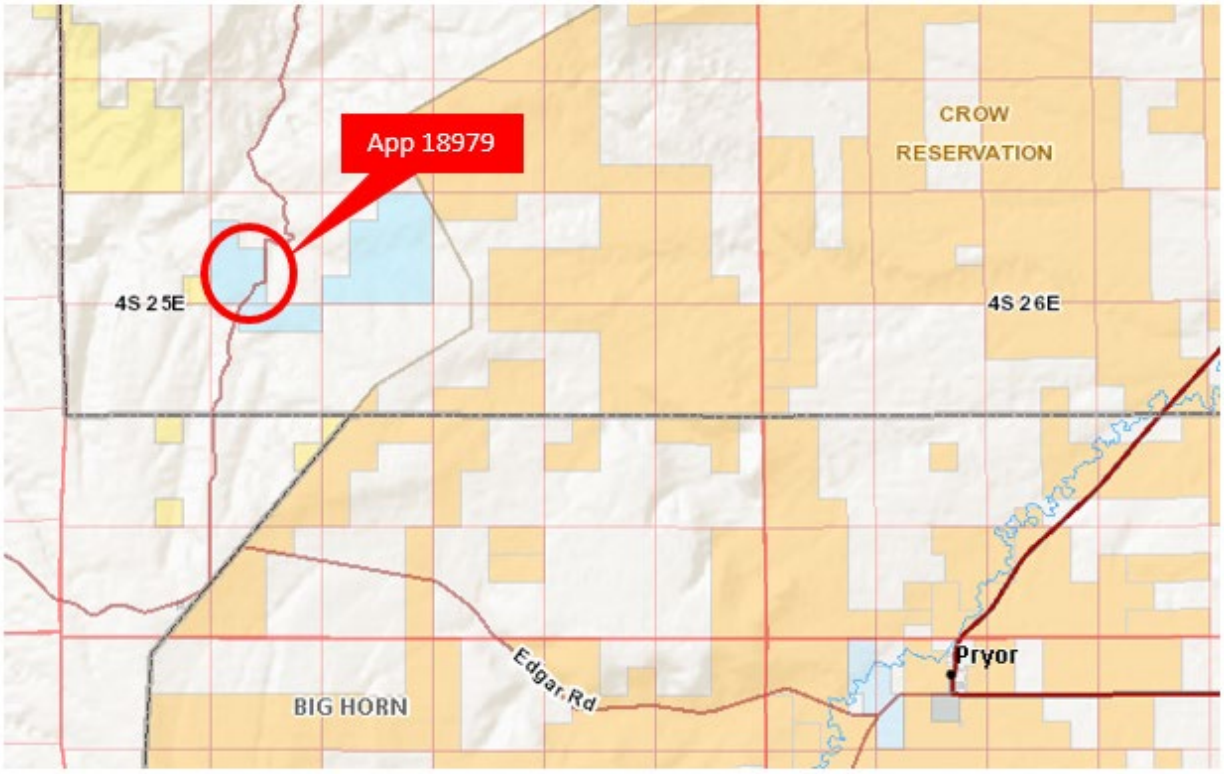
Item Summary

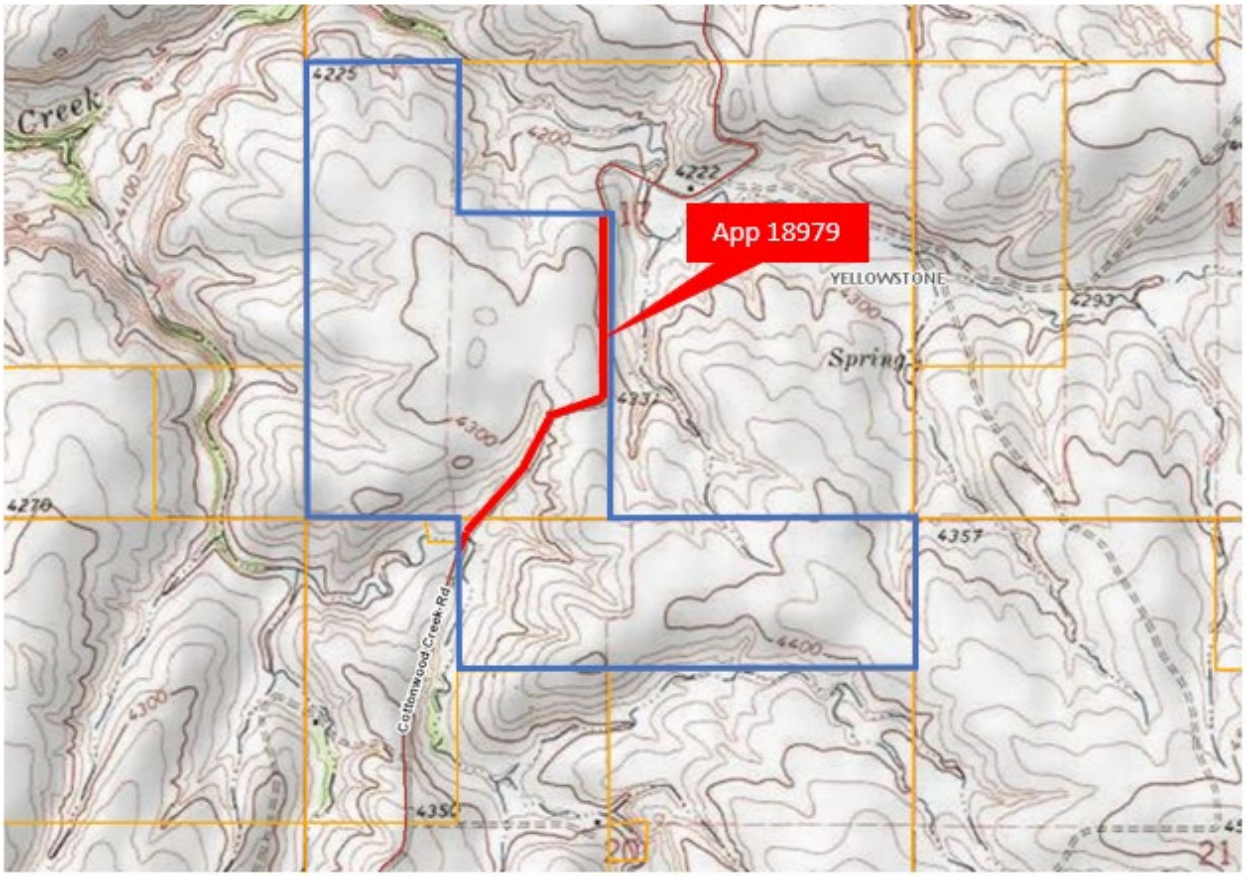
Yellowstone County has made application for this county road that was constructed on state lands many years ago without proper authorization from the Land Board. Pursuant to §77-1-130, MCA the county is requesting recognition of this road as a historic right of way.

DNRC Recommendation

The director recommends approval of this historic county road easement request.

R/W Application 18979





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Bradley S. McBratney and Lisa L. Grossman PO Box 261 Augusta, MT 59410
Application No.:	18980
R/W Purpose:	a private access road to conduct normal farming and ranching operations
Lessee Agreement:	N/A (Historic)
Acreage:	1.16
Compensation:	$696.00
Legal Description:	20-foot strip through SW4NW4, W2SW4, Sec. 14, Twp. 21N, Rge. 6W, Teton County
Trust Beneficiary:	Common Schools

Item Summary

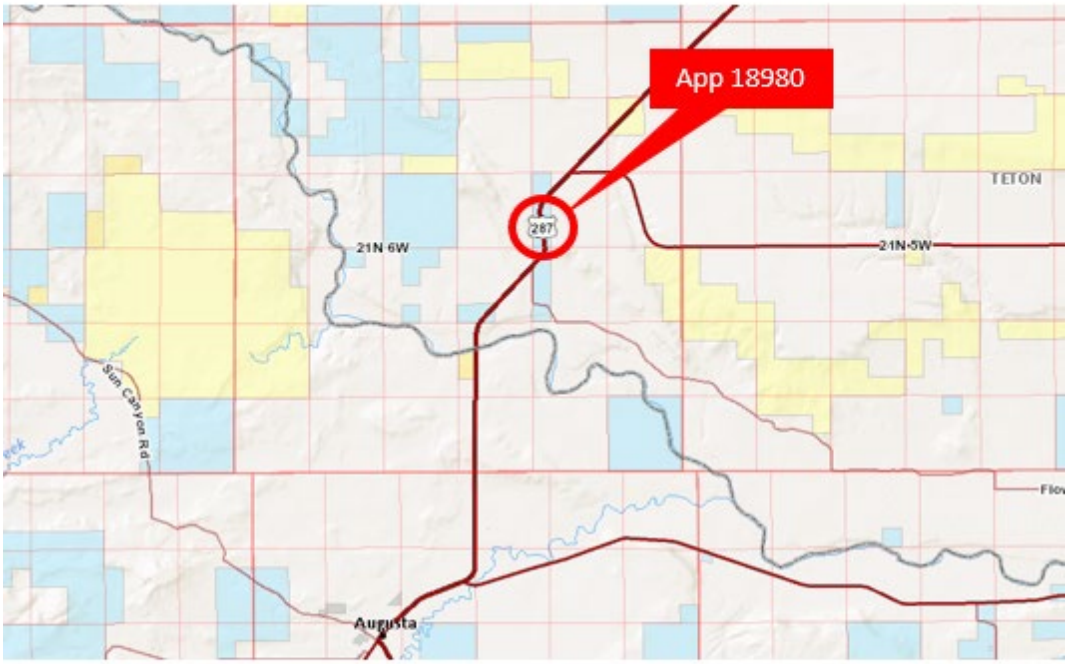
Bradley McBratney and Lisa Grossman have made application for the use of an existing road to conduct normal farming and ranching operations activities. The road has been in place for many years and authorization for continued use is being requested pursuant to §77-1-130, MCA, which allows for recognition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

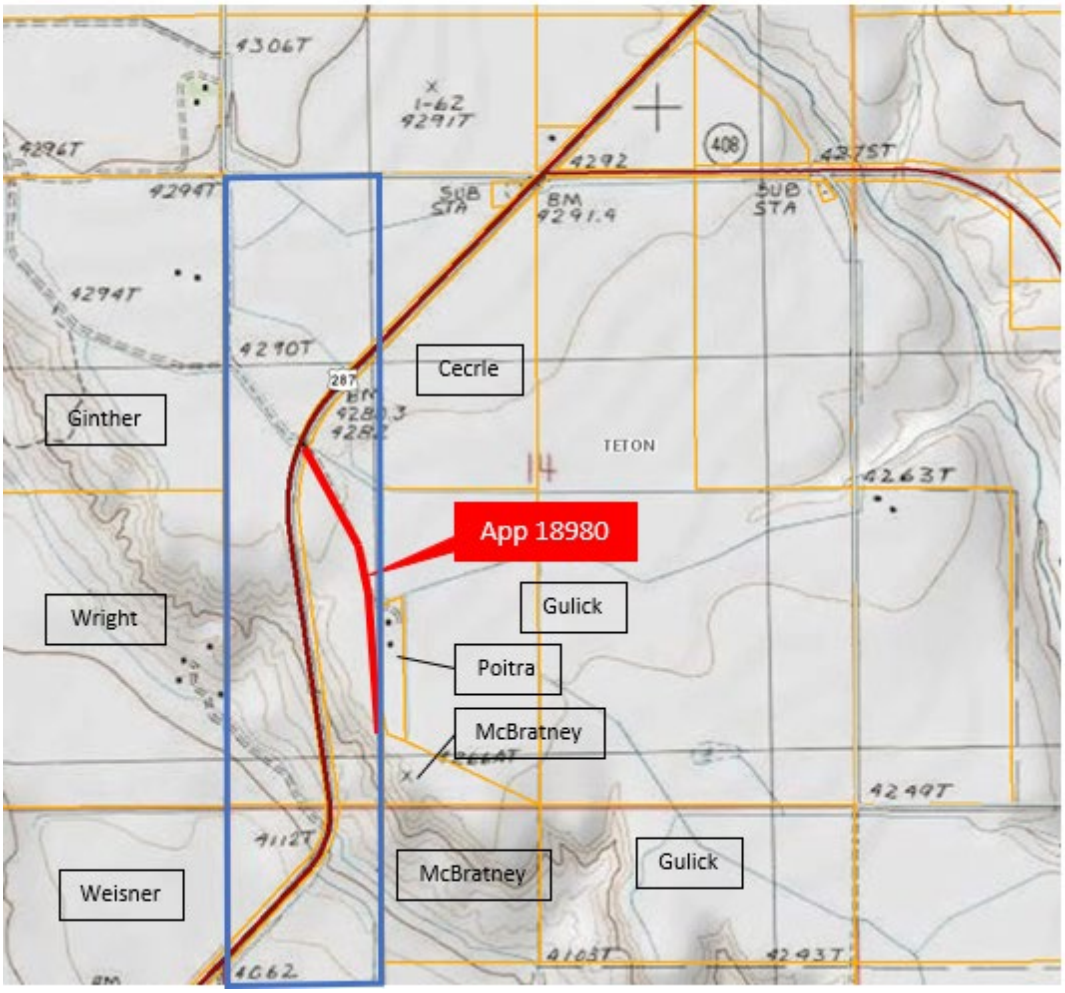
- Part SE4SW4, Sec. 14, Twp. 21N, Rge. 6W, Teton County
- NE4NW4, Sec. 23, Twp. 21N, Rge. 6W, Teton County

DNRC Recommendation

The director recommends approval of the application of Bradley McBratney and Lisa Grossman.

R/W Application 18980





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Jack Hinnaland 2566 MT Hwy 200 W. Brockway, MT 59214-8503
Application No.:	18981
R/W Purpose:	a private access road to a single-family residence and associated outbuildings and to conduct normal farming and ranching operations
Lessee Agreement:	N/A (Historic)
Acreage:	2.37
Compensation:	$830.00
Legal Description:	30-foot strip through W2SW4, Sec. 36, Twp. 19N, Rge. 44E, McCone County
Trust Beneficiary:	Common Schools

Item Summary

Jack Hinnaland has made application for the use of an existing road to access a single-family residence and associated outbuilding, and to conduct normal farming and ranching operations. The road has been in place for many years and authorization for continued use is being requested pursuant to §77-1-130, MCA, which allows for recognition of such historic access. There is no opportunity to reciprocate as the nearest public road system is at least 2 miles away and crosses lands of other private landowners.

The private property to be accessed is described as:

Township 19 North, Range 44 East, P.M.M., McCone County
All or portions of Sections: 1,2,11,12,13,14,15,21,22,23,24,25,26,33,34,35

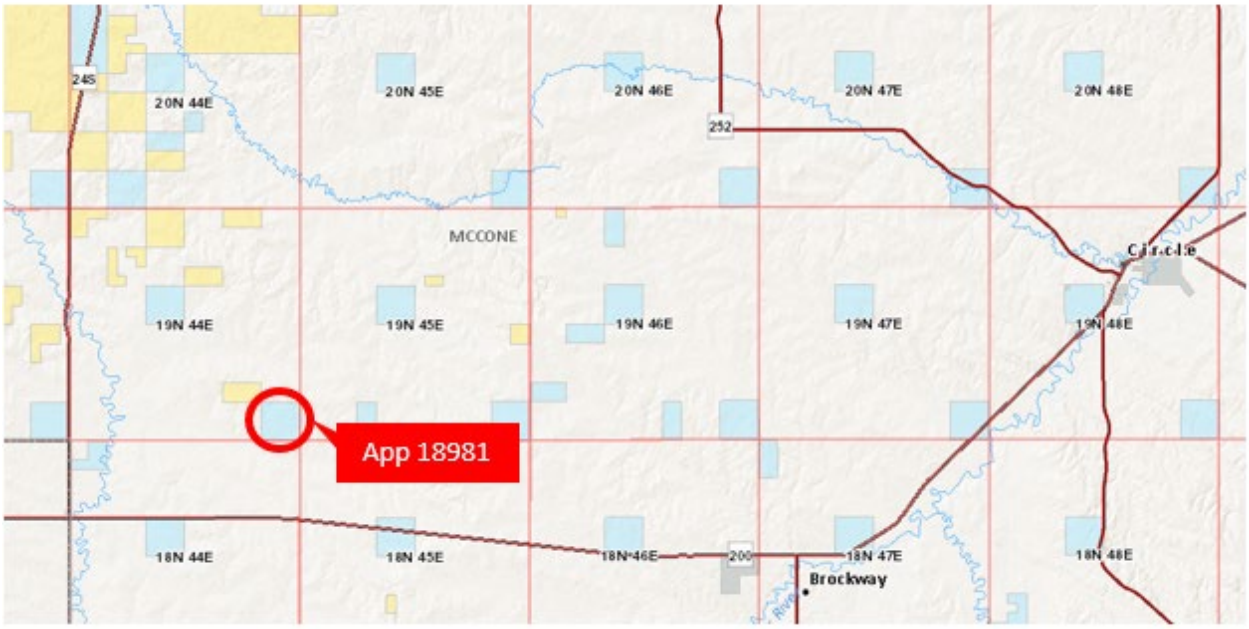
Township 19 North, Range 45 East, P.M.M., McCone County
Section 6: W2
Section 30: All

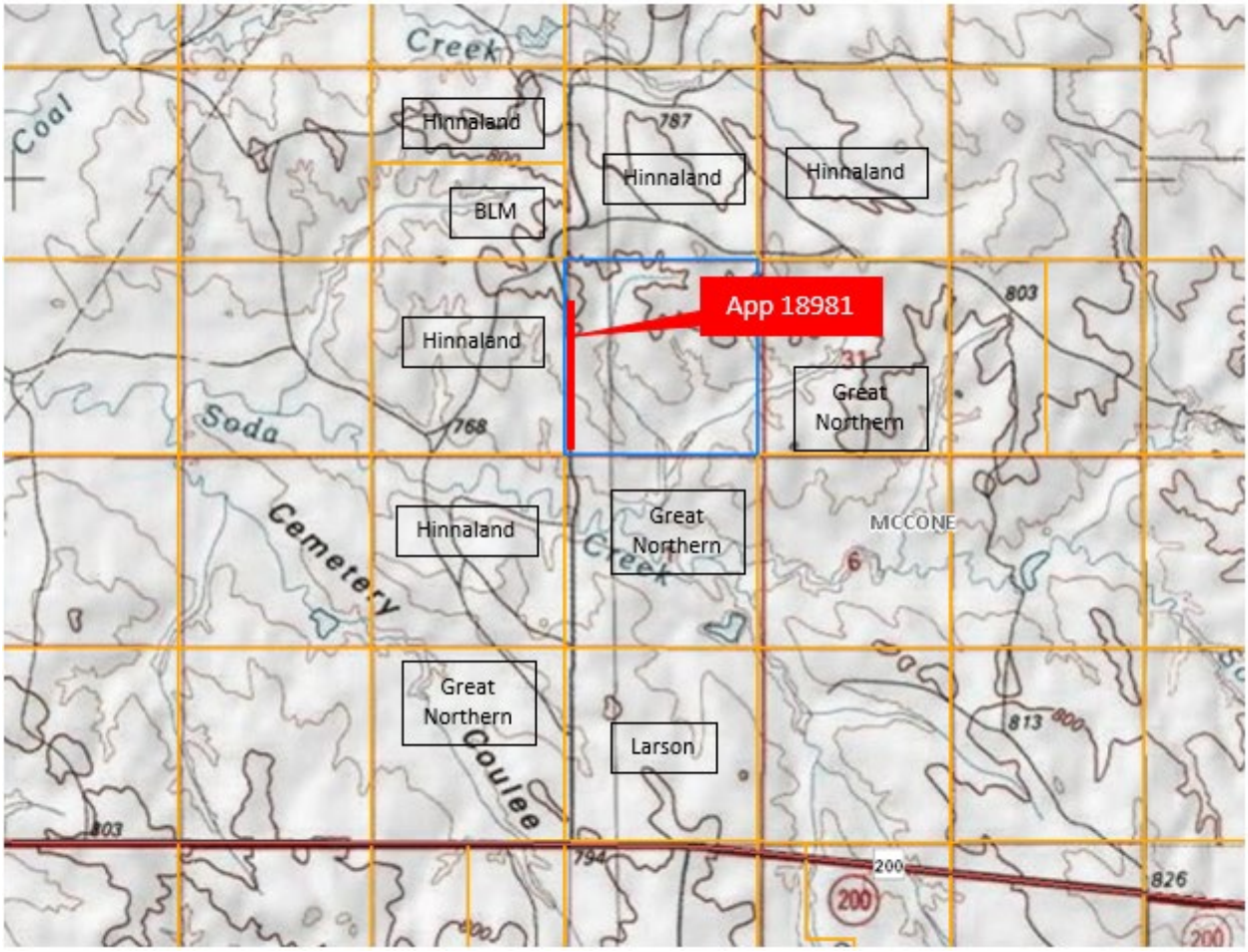
Township 18 North, Range 44 East, P.M.M., McCone County
Section 4: All

DNRC Recommendation

The director recommends approval of the applications of Jack Hinnaland.

R/W Application 18981





APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	William J. Egan, III P O Box 745 Bigfork MT 59912
Application No.:	18982
R/W Purpose:	a private access road to conduct normal farming and ranching operations
Lessee Agreement:	N/A (Historic)
Acreage:	0.43
Compensation:	$323.00
Legal Description:	15-foot strip through NE4SE4, Sec. 35, Twp. 21N, Rge. 7W, Lewis and Clark County
Trust Beneficiary:	Pine Hills School

Item Summary

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

- Government Lots 1-4, E2W2 Sec. 31, Twp. 21N, Rge. 6W, Lewis and Clark County

DNRC Recommendation

The director recommends approval of the application of William J. Egan, III.

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	William J. Egan, III P O Box 745 Bigfork MT 59912
Application No.:	18983
R/W Purpose:	a private access road to conduct normal farming and ranching operations
Lessee Agreement:	N/A (Historic)
Acreage:	2.00
Compensation:	$1,500.00
Legal Description:	15-foot strip through S2NW4, SW4NE4, , N2SE4, SE4NE4, Sec. 36, Twp. 21N, Rge. 7W, Lewis and Clark County
Trust Beneficiary:	Common Schools

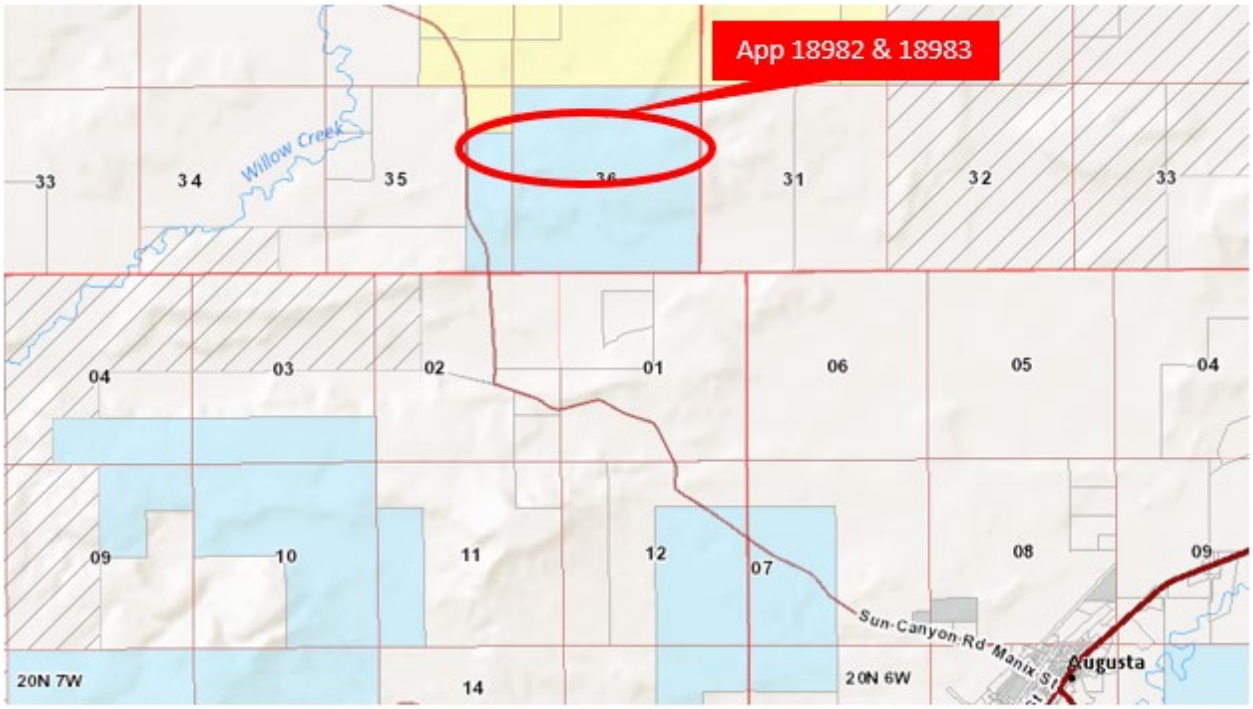
Item Summary

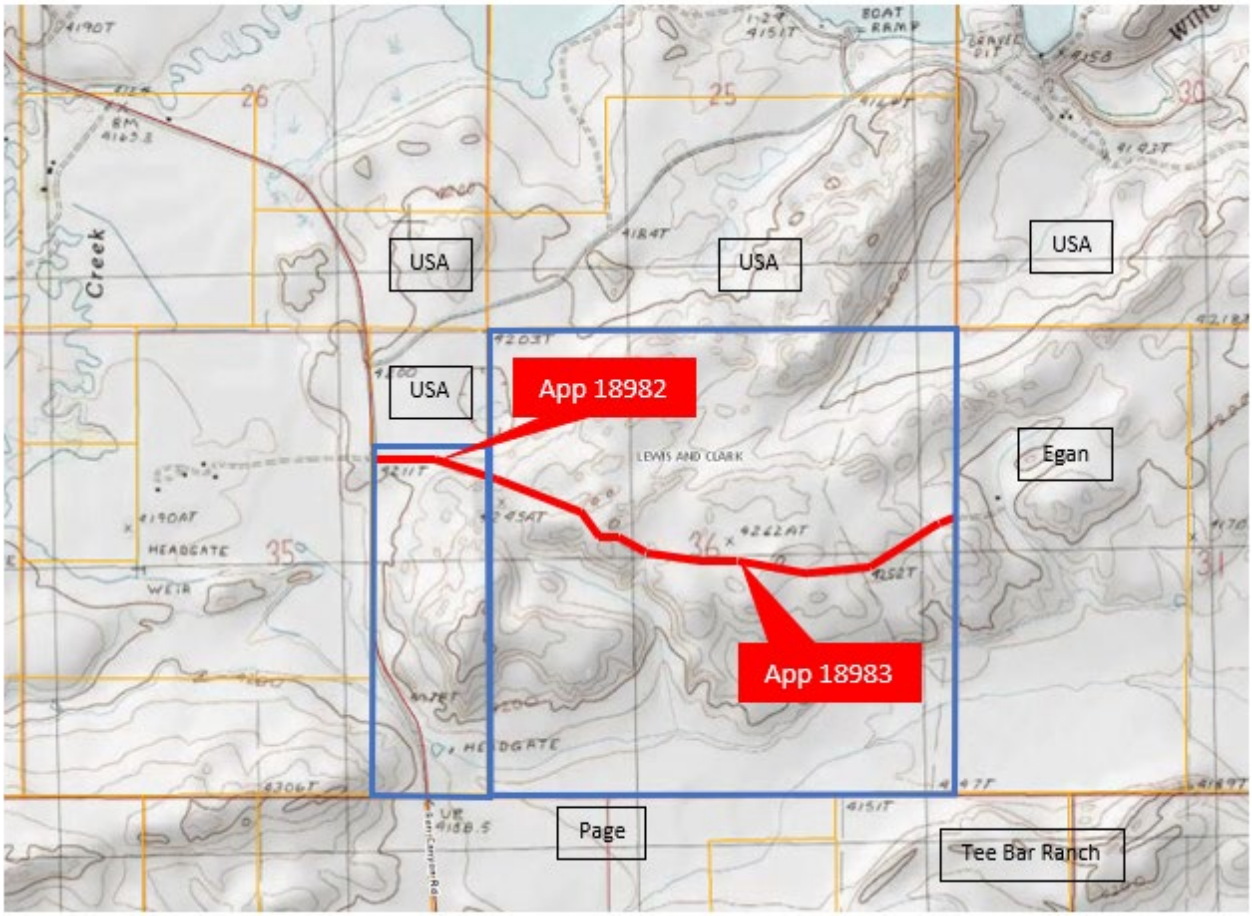
See page 84 for summary.

DNRC Recommendation

See page 84 for recommendation

R/W Application 18981





1120-8

INFORMATIONAL ITEM –
2020 REAL ESTATE PROJECT LIST

Land Board Agenda Item
November 2020

1120-8 INFORMATIONAL ITEM – 2020 REAL ESTATE PROJECT LIST

Location: Gallatin, Cascade, Custer, Flathead, Lincoln, Yellowstone, Missoula, Butte - Silverbow

Trust Benefits: Common Schools, University of Montana, Pine Hills School, Public Buildings

Trust Revenue: N/A

Item Summary
The Trust Lands Management Division (TLMD) is required to identify Real Estate Projects annually through a Project Identification Team (PIT) consisting of Real Estate Bureau and land office staff. The PIT must report their identified Real Estate Projects annually to land board per ARM 36.25.909(3)(A).

The 2020 Real Estate Project List replicates the 2019 list with one key addition – the Butte Industrial District parcel. (see attached map) This 350-acre tract lies adjacent to the Butte Tax Increment Industrial Financing District (TIFID) near Rocker, MT and currently has no legal access for development purposes. Annexation of this property in a new Targeted Economic Development District (TEDD) to succeed the TIFID, which expires 6/2022, is being explored and would greatly improve access and future industrial growth options. Adding the Butte area parcel to the Project List in no way obligates the Trust Land to be annexed. It merely allows The Department of Natural Resources and Conservation (DNRC) the opportunity to investigate any advantages that may be created. Acreage currently generates approximately $2000 yearly from an active grazing lease.

Background:
The *Real Estate Management Plan Record of Decision* (ROD) was approved in July 2005. The ROD provides the TLMD with consistent policy and direction in the selection and implementation of real estate activities on state Trust Lands.

The PIT selected the Projects on the following table in adherence to the ROD. The ROD defines a comprehensive process that includes both extensive site investigation and participation of the public and local units of government. These Projects successfully completed the required analysis which ensures development is physically possible and legally permissible. Further, the Projects meet the three goals of the Real Estate Management Plan:

Goal A: Share in Expected Community Growth – these Projects capture a share of development taking place in Montana's communities.

Goal B: Plan Proactively – department staff have participated in numerous neighborhood/community meetings and worked closely with local officials during design and ongoing development of these projects. The department works cooperatively with local communities in locating projects in designated growth areas and strategic rural areas.

Goal C: Increase Revenue for Trust Beneficiaries – the selected projects increase revenue from the lands proposed for development and generate the greatest amount of revenue per acre.

The Project list will be made available to the public on the DNRC website.

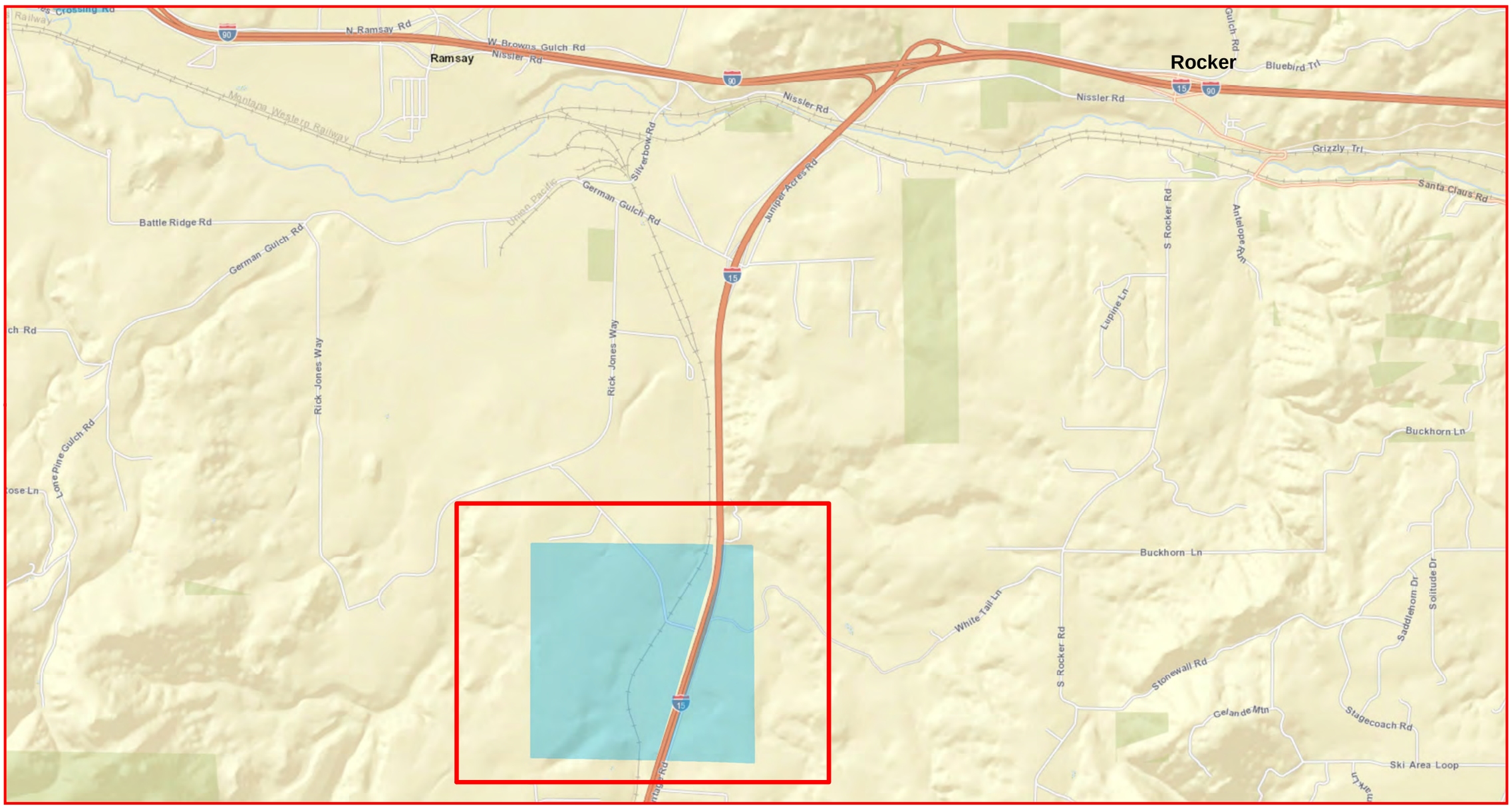
2020 REAL ESTATE PROJECT LIST

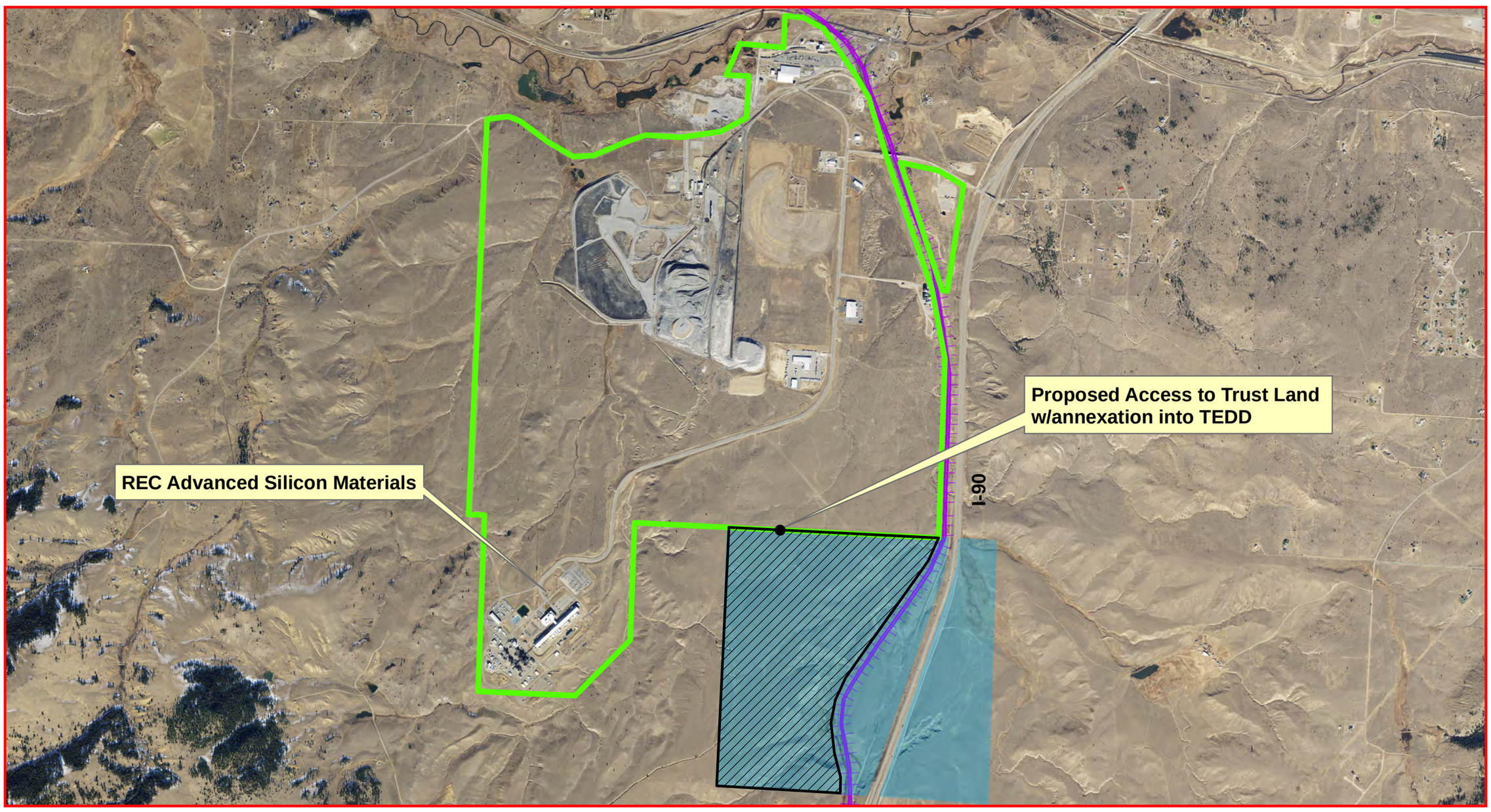
DNRC has identified the following Real Estate Projects in compliance with the agency's Real Estate Management Plan.

Real Estate Project	Description	Grant	Office	County	Acres	Urban/ Rural	Status
Alaska Road	**Belgrade:** Commercial/industrial development.	Common Schools	**CLO**	Gallatin	3.3	Urban	**Active Project:** This property is under commercial lease for a McKenzie River Pizza, and two additional pad sites. Income generated in FY20: **$8,900**
Amsterdam Road	**Belgrade:** Anticipated mixed use development; will require annexation and rezoning of parcel.	Common Schools	**CLO**	Gallatin	450	Urban	**Active Project:** FY20 – Commercial launch activities delayed due to Belgrade Sewer/Water capacity. Wastewater treatment plant expansion completion estimate is 2022. Department researching master planning strategies. FY21 – Consider possible entitlements, future transportation corridor contributions for immediate area and market timing. The property is currently occupied with an active agriculture lease and one home site.
Lewis & Clark Subdivision	**Bozeman:** Commercial/industrial development.	Common Schools	**CLO**	Gallatin	28	Urban	**Active Project:** All lots at Lewis and Clark are under Lease. Development continues on Block 2, Lot 3 which will now include a gymnastics facility. Block 2, Lot 4 is under lease and pending final site plan approval for an additional hotel. Income generated through the commercial lease development in FY20: **$293,862**
North Park	**Bozeman:** Commercial/industrial development.	Common Schools	**CLO**	Gallatin	178	Urban	**Active Project:** North Park East Option to Lease exercised and lease executed in 8/2019 for a multiphase commercial/industrial development. Developer is expected to begin infrastructure development in early FY20. Income generated through lease option in FY20: **$40,875**
Fox Farm	**Great Falls:** Anticipated mixed use development; will require annexation and rezoning of parcel. A portion of the property fronts the Missouri River.	U of M	**CLO**	Cascade	90	Urban	**Active Project:** In FY20 the Department received a formal proposal for conservation in lieu of development from Missouri River Open Lands Group to be held by Cascade County. Easement area is currently being surveyed and fundraising efforts are underway by MROLG to fund easement cost of approx.. $1,000,000.
Penwell Bridge	**Belgrade:** Anticipated commercial development; will require annexation and rezoning.	Common Schools	**CLO**	Gallatin	120	Urban	**Active Project:** In FY19, the Department received a letter of interest from the airport for long-term use of portions of the project area. Additionally, the City of Belgrade is planning for expansion of their sewage treatment capacity upon portions of the project area. In FY20, Lease option for Ten acres of the project area exercised – Lease executed on 10/01/2019 for a storage facility which is under construction. 1st year lease income of $**14,000**. FY21 - Continuing strategic planning that includes development of entitlements, consideration of airport and City expansions and pursue further commercial lease opportunities. Income generated through commercial lease option in FY19: **$3,750**
Bull Pasture Subdivision	**Miles City:** Commercial/industrial development.	Pine Hills School	**ELO**	Custer	60	Urban	**Active Project:** One of five lots are currently under lease. Income generated through commercial lease development in FY20: **$7,331**

Real Estate Project	Description	Grant	Office	County	Acres	Urban/ Rural	Status
Spring Prairie Commercial Infill (Section 36)	**Kalispell:** Commercial/professional development.	Common Schools	**NWLO**	Flathead	530	Urban	**Active Project:** Lease development on Kalispell's Section 36 is ongoing. FY21 – option to lease and lease for 22-acre Mountaineer parcel approved at September Land Board. Lease option executed 10/1/2020 & will generate $38,786 in 1st year. Lease will generate 1st year revenue of $106,661 which includes a reduced rent period in first 6 months and jumps to $145,059 for year two when executed. Currently there are 11 active leases on the section. Income generated through commercial lease development in FY20: **$886,126**
Cripple Horse Creek	**Libby:** Anticipated commercial recreation development adjacent to an existing commercial resort on Lake Kookanusa.	Public Buildings	**NWLO**	Lincoln	162.5	Rural	*Project pending market interest.*
Libby Creek/ Ponderosa Plantation	**Libby:** Anticipated residential development.	Common Schools	**NWLO**	Lincoln	120	Rural	*Project pending market interest. A feasibility study resulted in a conceptual design for a residential subdivision with 2.5 acre lots. ROW issues to serve the property with a county road have been resolved. The county recently constructed a road through the property that could potentially serve residential development.*
Libby Golf Club area lands	**Libby:** Anticipated residential development adjacent to the Libby Golf Club.	Common Schools	**NWLO**	Lincoln	640	Rural	*Project pending market interest.*
Libby area lands - Cabinet Range View	**Libby:** Anticipated low density residential development.	Common Schools	**NWLO**	Lincoln	800	Rural	*Project pending market interest.*
Libby area lands – Koocanusa River View	**Troy:** Anticipated low density residential development.	Common Schools	**NWLO**	Lincoln	45.9	Rural	*Project pending market interest.*
Skyview Ridge Subdivision	**Billings:** Mixed use development including lease for commercial development as well as sale of residential parcels.	Common Schools	**SLO**	Yellowstone	285	Urban	**Active Project:** FY20 – RFP launched 2/2020 just as Covid began – no proposals. In FY21 the Department will strategize on new approaches to marketing and leasing commercial property on the project area. Income generated through commercial communication site leases in FY20: **$23,773**
Reserve Street	**Missoula:** Commercial/professional development.	Common Schools	**SWLO**	Missoula	2.8	Urban	**Active Project:** In FY20 - A successful proposal was received for a veterinarian clinic location – proposer withdrew prior to signing option after deciding on new location. RFP re-launched 6/2020 - closed September 14, 2020 with no proposals. Strategic planning to be discussed at November 2020 Project Review Committee meeting.
Butte Industrial District	**Butte:** Commercial/industrial development.	Common Schools	**SWLO**	Butte – Silverbow	350	Rural	**Active Project:** Adjacent to Butte Tax Increment Industrial Financing District (TIFID) near Rocker, MT. Inclusion of this property in a new Targeted Economic Development District (TEDD) to succeed the TIFID is being explored. Several active large businesses presently on location in District. Annexation into the TEDD would improve access and future industrial growth options. Current Parcel currently generates approximately $2000 yearly from an active grazing lease.

Butte Industrial Parcel - Rocker, MT





MONTANA DNRC

Legend

- Butte Industrial Trust Land Parcel
- TIFID Boundary
- Trust Lands
- Union Pacific RR

Location: Silver Bow County, MT
Date: 10-28-2020
Prepared By: REMB Staff Member
Projection: NAD83 Montana State Plane

N

Inset Area from top map shown in bottom map

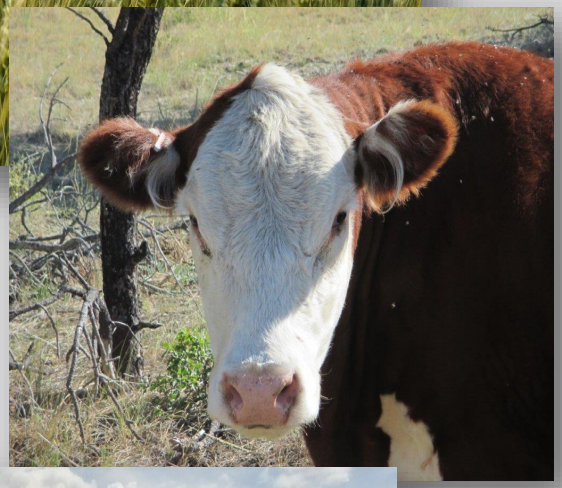
1120-9

INFORMATIONAL ITEM –
2020 STATE TRUST LANDS REPORT

Trust Lands Management
Fiscal Year 2020 Review

- K-12: 2020 School Year Enrollment: 149,178 public school children
- OPI Budget: $864.4 million
- OPI Pupil Budget: average state share per student $5,795

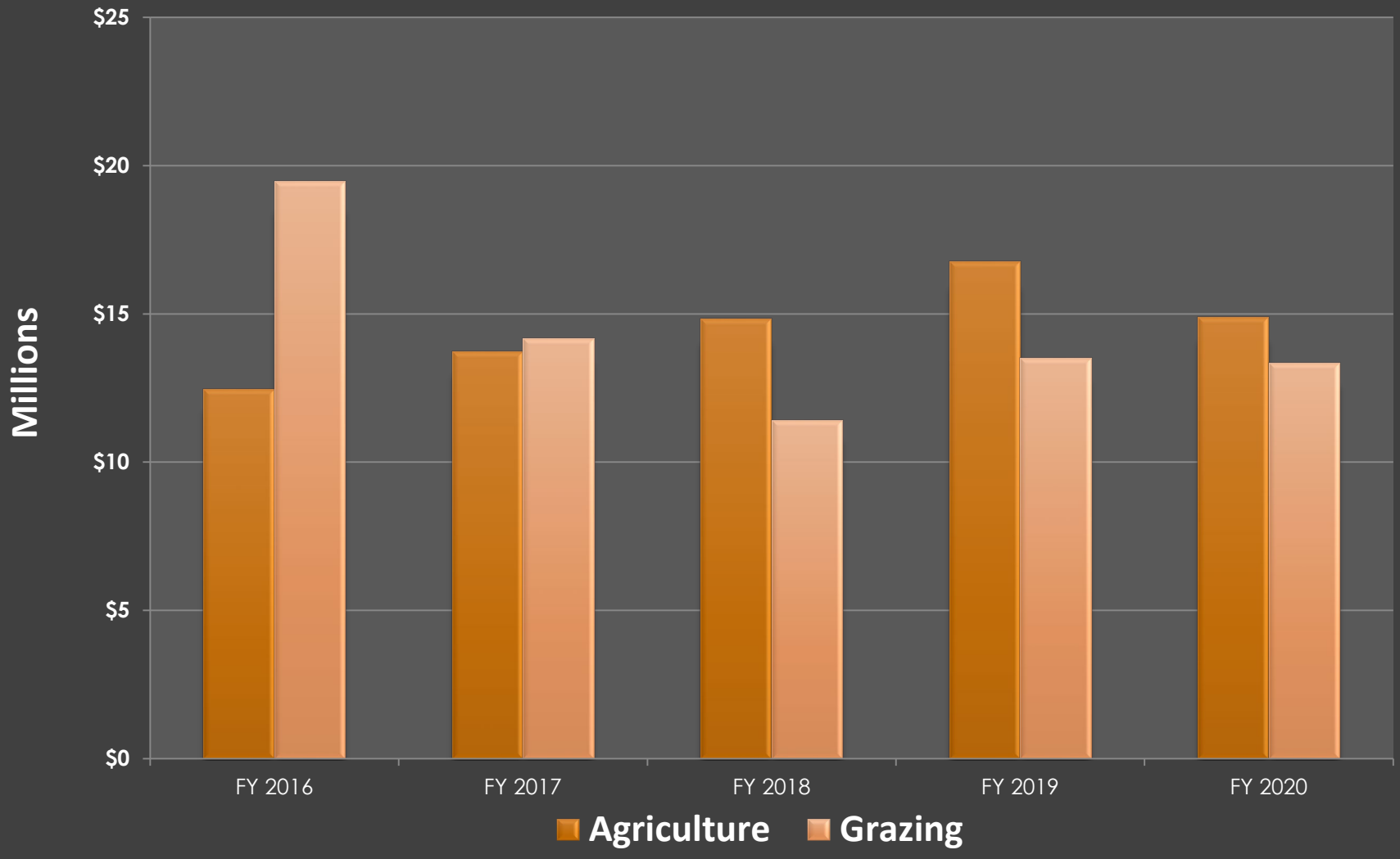
- **Trust Lands Common Schools Distribution: $41.2 million or $276 per student**
- **Trust Lands Contribution to the OPI Budget: 4.8%**
- **School Facility & Technology Fund: $1.7 million**



Agriculture & Grazing Management

- **Agriculture Lease Revenues: $14.8 million**
  - 8.36 million bushels of wheat
  - 1.0 million bushels of barley
  - 92.5 thousand tons of hay
- **Grazing Revenues: $13.3 million**
  - A decrease in beef cattle prices resulted in an decrease of the grazing rate from $13.10/AUM to $12.92/AUM.
- **Recreational Use**
  - 526,455 conservation licenses were sold, generating $1,052,910 for the trust beneficiaries.

Ag & Grazing Revenues
FY 2016 - FY 2020



Minerals Management

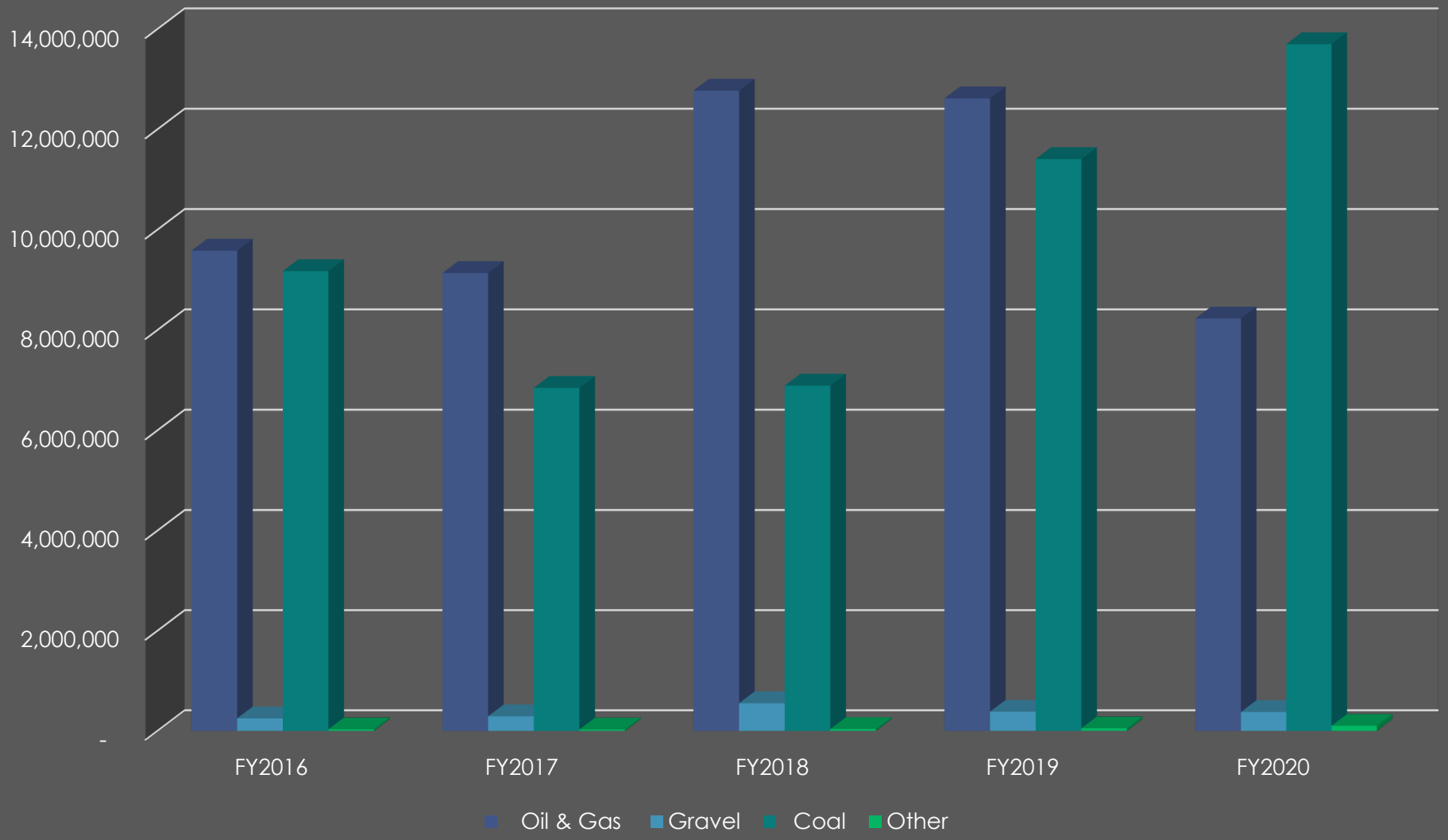
- In FY 2020, revenue from mineral activities totaled $22.4 million
- Average price per barrel: $43.53
- Oil & Gas royalty revenue: $7 million
- Coal royalty revenue: $13.6 million
- Oil & Gas rentals & bonus revenue: $1.8 million

- During FY 2020:
  - 500,123 acres under 1,295 lease agreements for Oil & Gas:
    - 615 leases are producing from 232,865 acres
    - 900 thousand barrels of oil
    - 2.1 million mcf (thousand cubic feet) of gas
  - 14,692 acres under 31 lease agreements for Coal:
    - 6 leases are producing from 2,520 acres.
    - 5.7 million tons of coal

Oil & Gas Lease Auctions

- Four quarterly auctions per year.
- Generated $359 thousand in bonus revenue in FY 2020.
- 67% increase over the previous 3-year average.
- However, wide fluctuations in quarterly lease auction revenues.

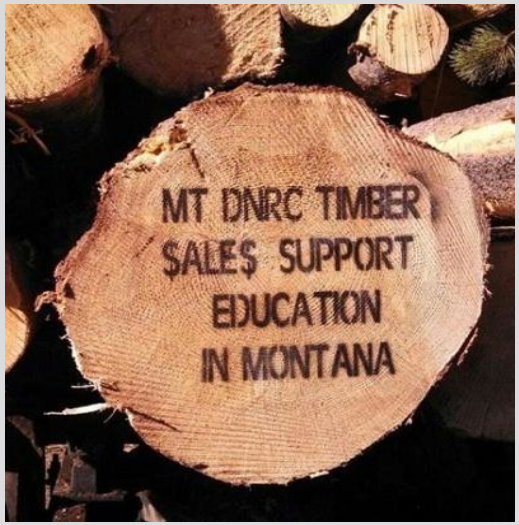
Figure 3
Mineral Revenues
FY2016 - FY2020



Forest Management

Fiscal Year 2020:

- 53.9 million board feet sold of the 59 offered
  - Value of $10.5 million
  - Average stumpage price decreased 12% to $171 per MBF.
- 45.3 million board feet harvested
  - Value of $10.5 million
- 326,926 seedlings planted

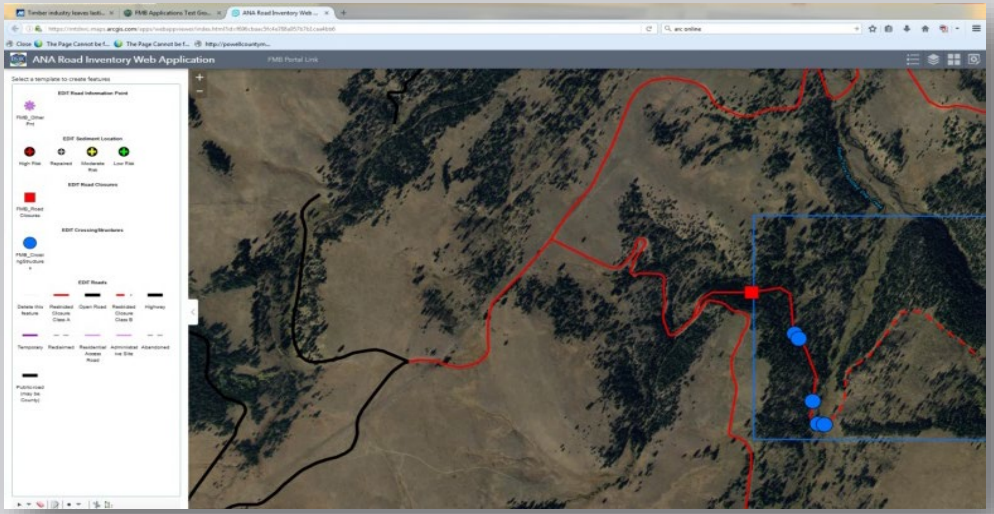


Forest Management

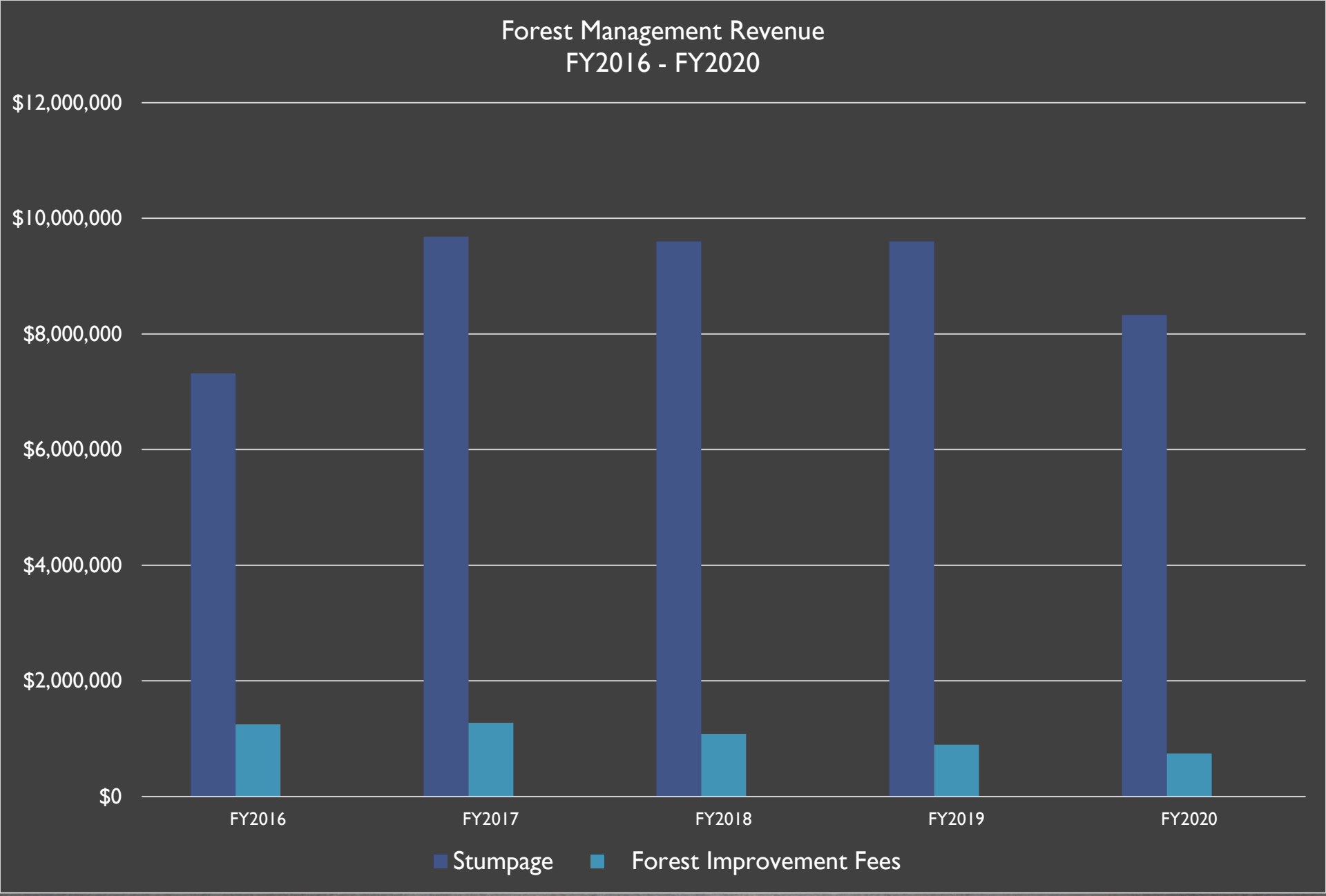
- Initiated the amendment process to include approximately 14,000 of acquired lands (Stillwater State Forest) in the Department Forest Management Habitat Conservation Plan.

- Completed and adopted the 2020 Sustainable Yield Calculation.

- Continued deployment and improvement of "NextGen" data and data systems to include FM Pro, a Forest Improvement data management application



Improved Data → **Restored Habitats** **Gained efficiency** → **Higher ROI**



Forest Management

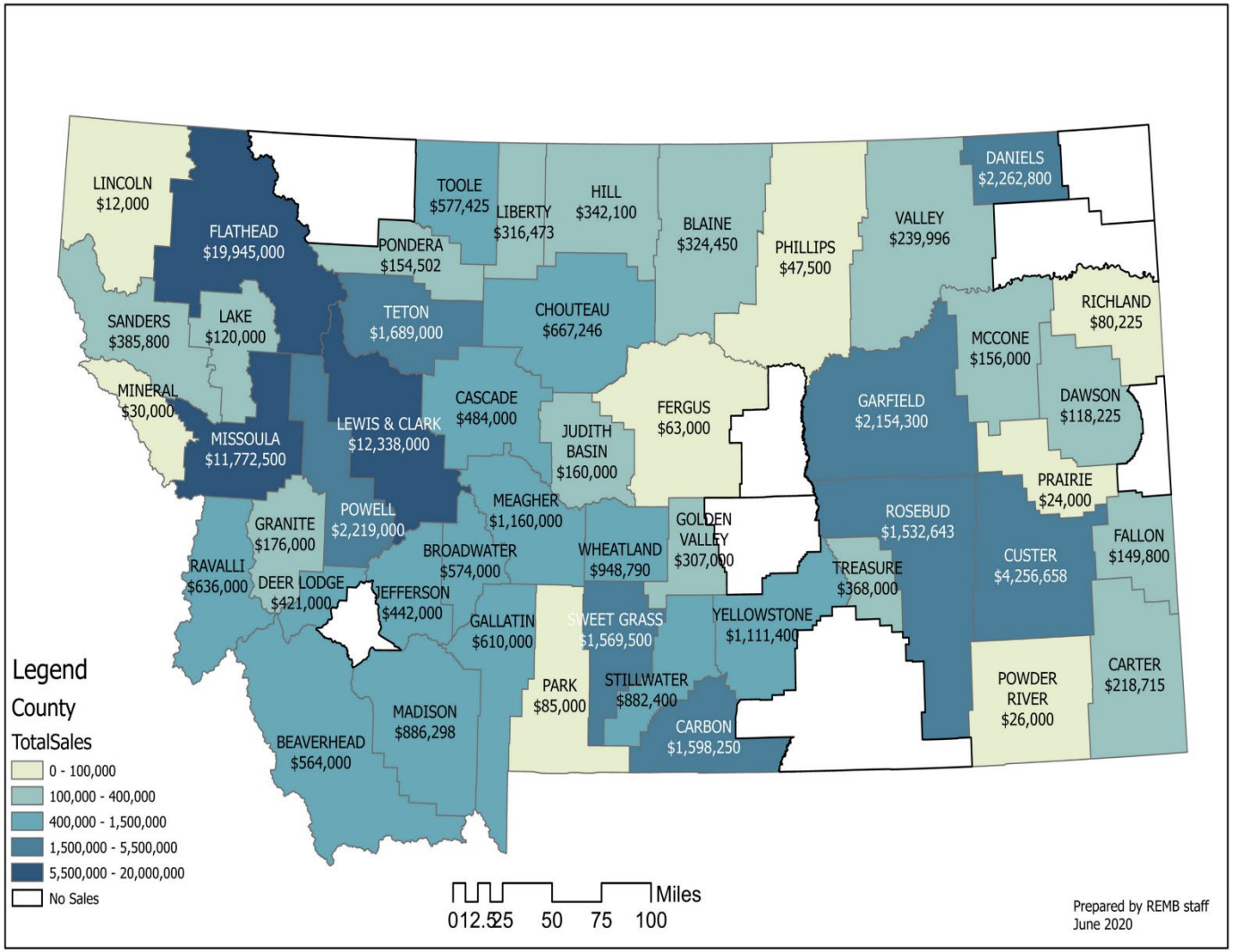
Real Estate Management

FY 2020 Revenue by Program

- ROW/Easement: $1.5 million
- Residential Leasing: $2.2 million
- Commercial Leasing and Licensing: $2.2 million
- Hydro Lease: $4.9 million* undistributed $20+ million in hydro revenue currently (held in escrow)

Land Banking Sales FY 2020

- Sold: 41 Cabin Sites for $7.5M
- Sold: 12 Land Sales of 5,640 acres for $3.6M
- Total Land Banking Sales: 53 parcels for $11.1M



N

Montana Trust Lands Land Banking
Total Sales by County, 2006 - June 2020

Land Banking
2006 -2020

Total Lands Sold:
86,231 Acres
$75.2 M

Total Lands Acquired:
98,228 Acres
$53.3M

Cabin Site Sales Highlights


Echo Lake cabin site

- 41 cabin sites sold in FY 2020
- 2020/2021 sale program
  - 200+ sites considered
  - 100+ sites being processed
  - 80+ expected to sell


Rogers Lake cabin site


Morrell Flats cabin site south of Seeley Lake

- 238 rights-of-way/easement applications approved by the Land Board.
- Conversion of Big Arm State Park/Fishing Access site from a lease to an easement, realizing a $10,000,000 benefit to the Common School permanent fund (payment made in FY21)
- 32 cabin site sale legal access easements issued
- Actively pursuing reciprocal easement exchanges to obtain and enhance legal access to trust land inholdings.

Rights-of-Way/Easements

Property Management

Commercial Leasing

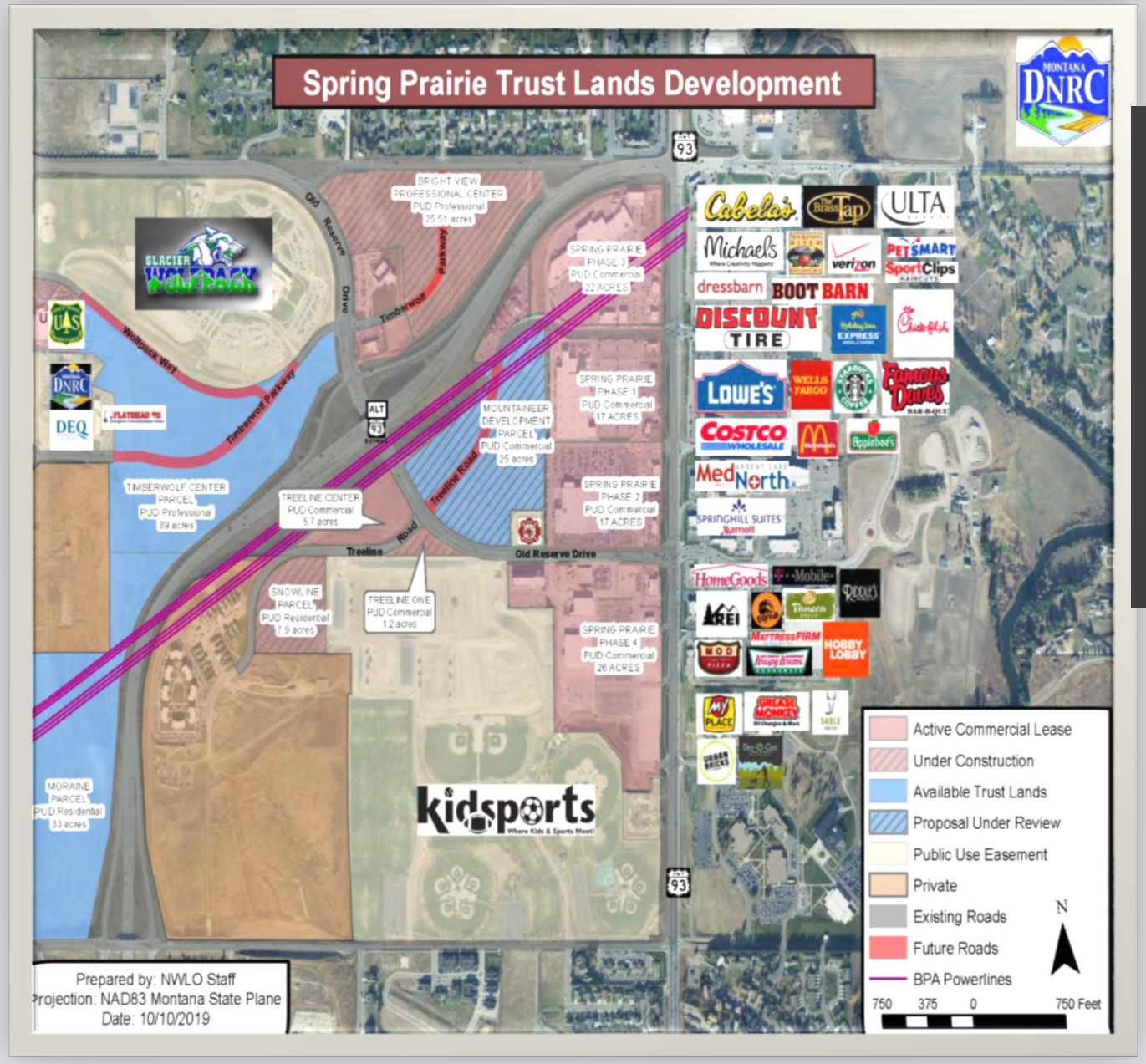
- Mountaineer Parcel (right) - Kalispell. Last remaining commercial zoned parcel in Spring Prairie – lease option signed 10/2020 – 1st year lease revenue - $145,000.
- Lands managed for intensive Real Estate leasing represent the smallest land classification at only 15,152 acres while generating 7 times more revenue per acre than all other programs.

Mountaineer Parcel – Spring Prairie – Kalispell

McKenzie River Pizza – Belgrade Interchange Opened May 2020

Property Management
Alternative Energy Leasing

- Average annual revenues increase of 11.15% over past 6 years.
- First year commercial lease revenue surpassed residential lease revenue.
- 3 wind development leases under consideration.

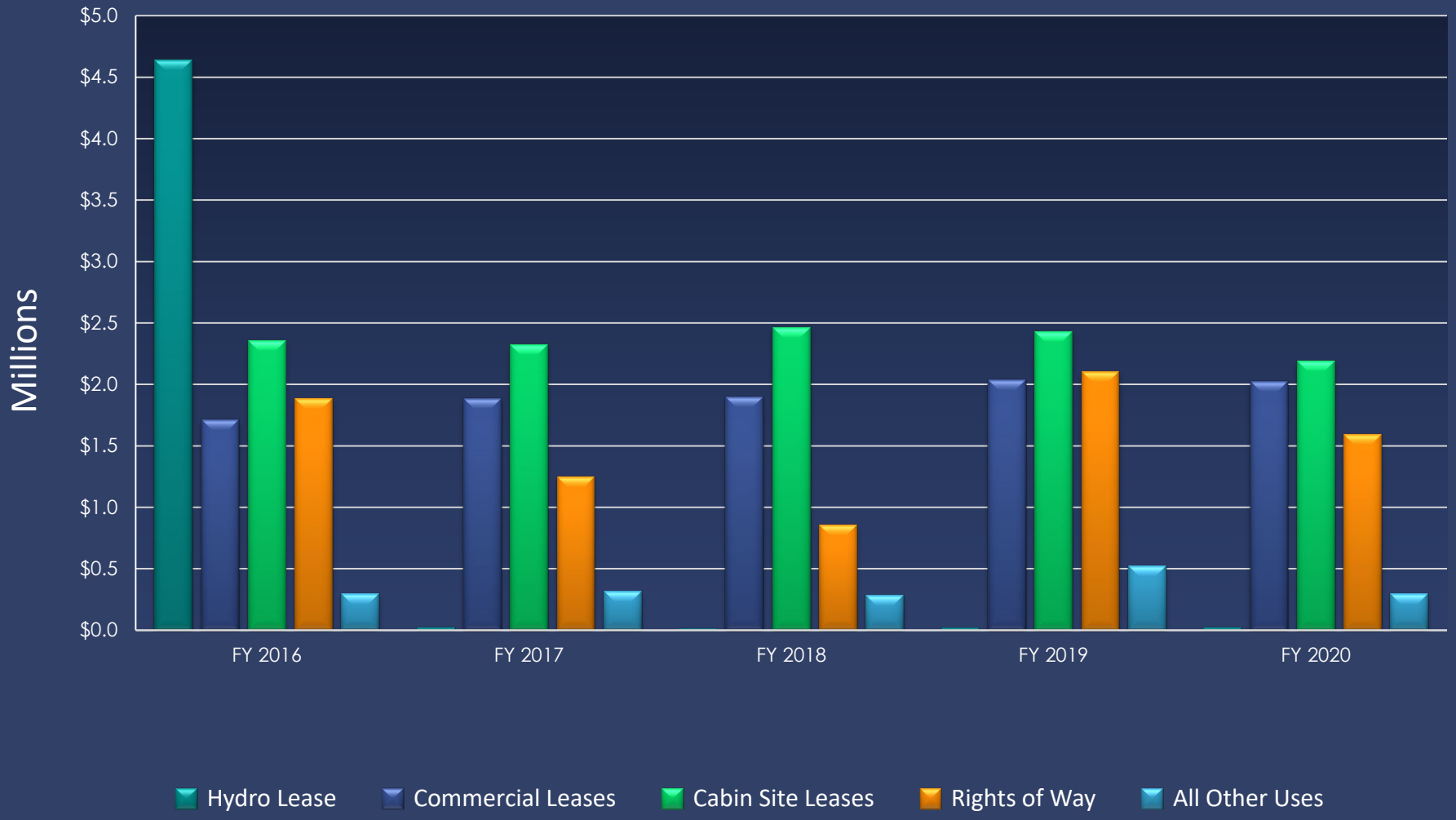


Anticipate strong demand and competitive RFP's for remaining in-fill sites.

The department is pursuing historic ROW easement grant with BPA Powerline for significant revenue potential.

Section 36 is currently producing $904,636 per year with 11 ground leases.

Real Estate Revenues
FY 2016 - FY 2020



Permanent Fund Balance

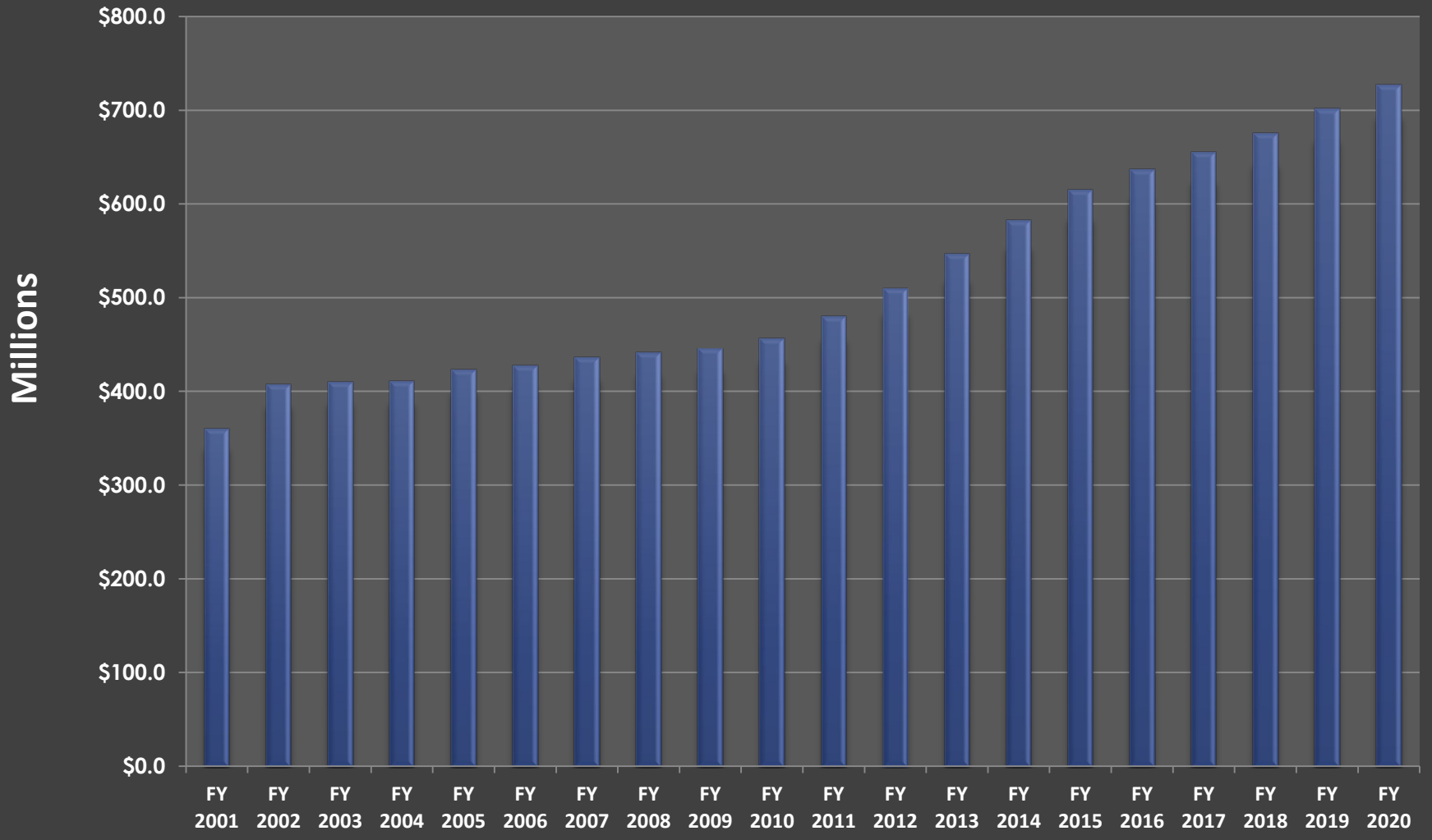
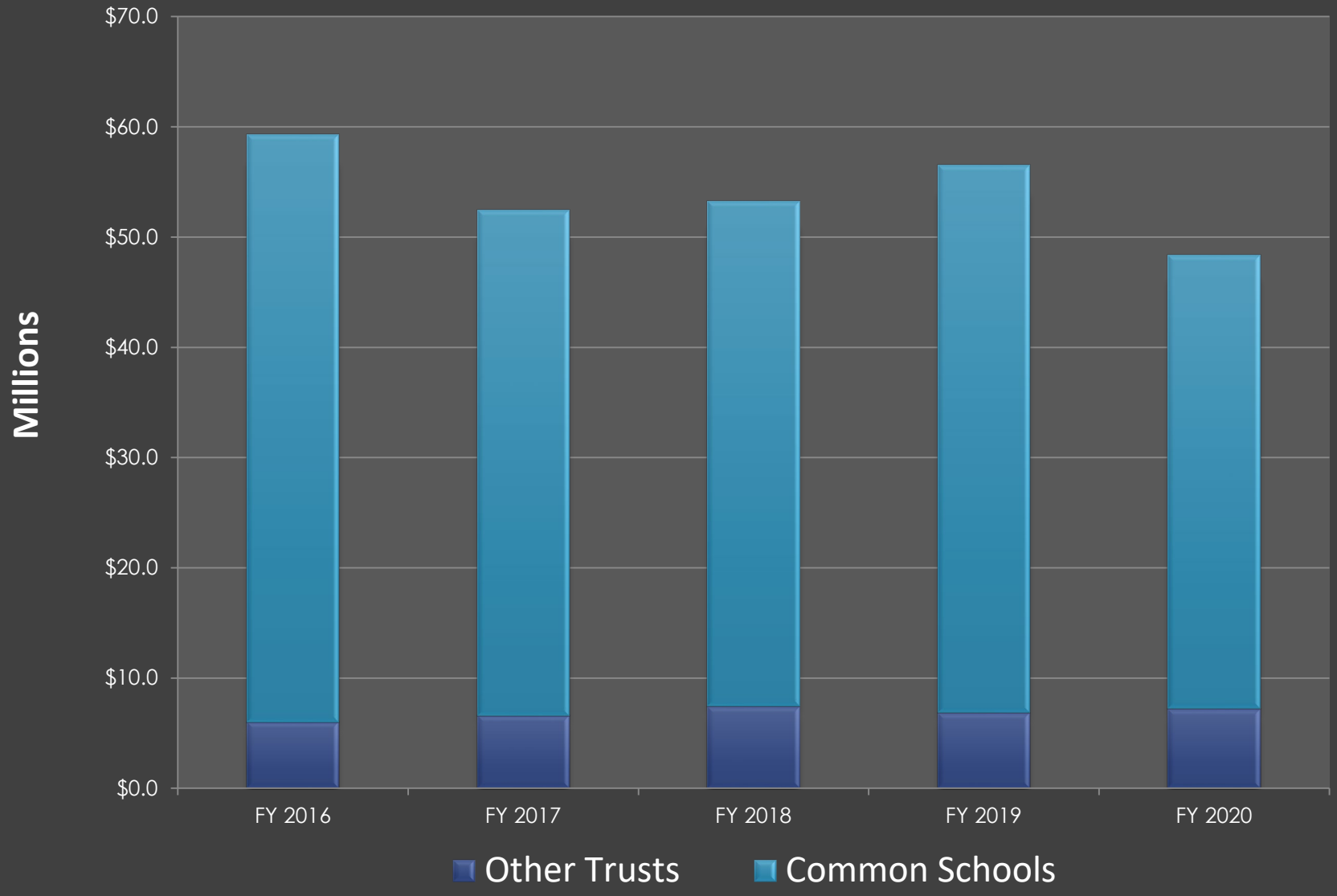
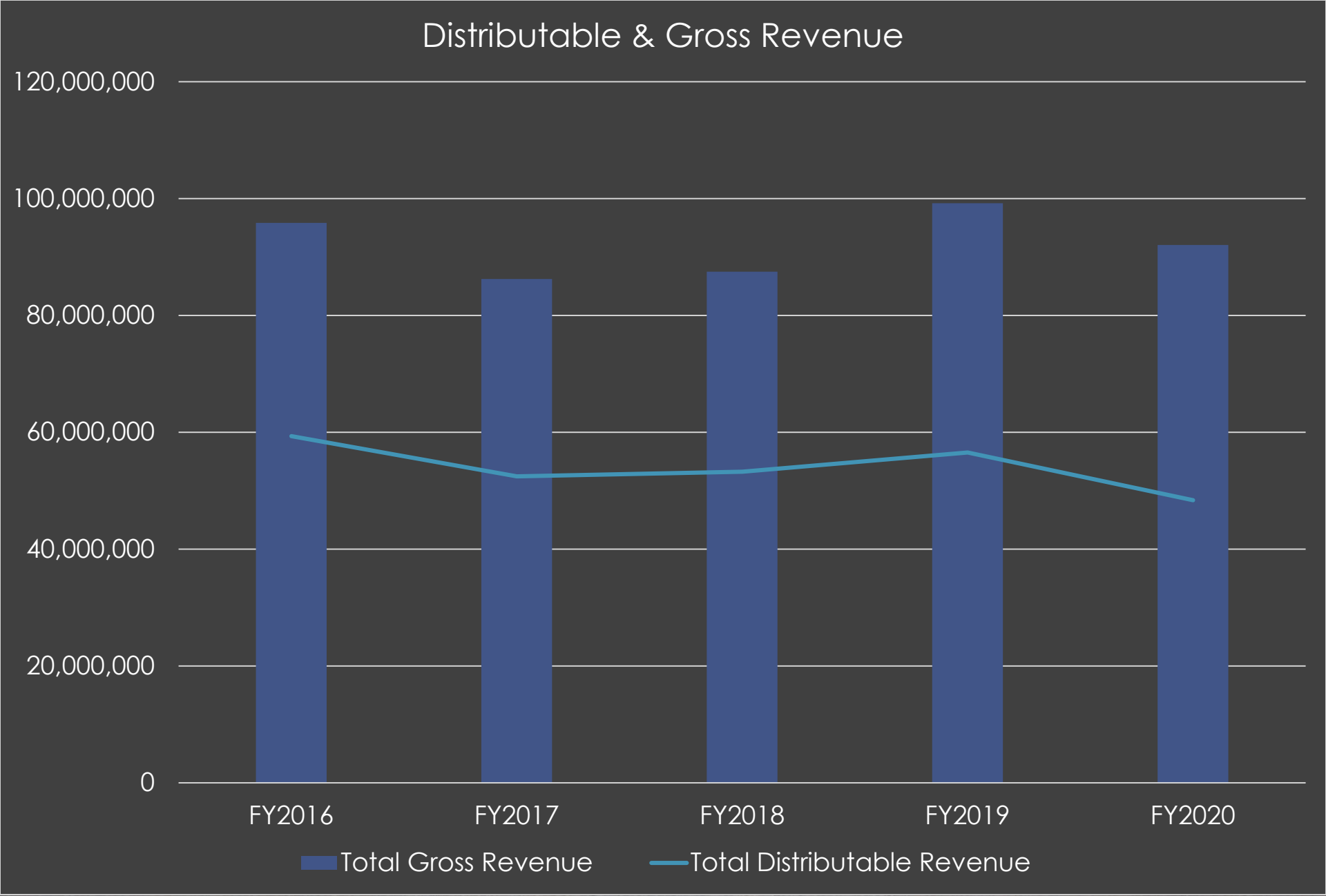


Figure 9
Net Distributable Revenues




Distributable & Gross Revenue
120,000,000
100,000,000
80,000,000
60,000,000
40,000,000
20,000,000
0
FY2016
FY2017
FY2018
FY2019
FY2020
Total Gross Revenue
Total Distributable Revenue

This concludes the presentation
Happy to answer any questions