

Cascade County

Fox Farm State Lands Project

DNRC Easement Application

Packet Inclusion

\$50 Application Fee

Easement Application Form

Exhibit A – Notarized Surveyor form

Exhibit B – Legal Description & Applicant Signature

Exhibit C – Certificate of Survey

Attachment #1 - Project Explanation

Attachment #2 - Project maps

March 14, 2023

APPLICATION FOR RIGHT OF WAY EASEMENT IN STATE LANDS

(Application Fee -- \$50.00)

NOTE: Easement requests are processed on a first come, first served basis. Department review of complete application packages may take a minimum of 120 days. Incomplete applications and those requiring further information may take longer.

The best method of describing the land needed for the right of way in all such cases is to describe the centerline and give the width on each side.

Please locate the starting point of the proposed right of way by giving its distance and bearing from the nearest public survey monument in the same section; then give the bearing and distance of each course of the line; and locate the terminus in the same manner as the starting point; whenever the line intersects a quarter section line, locate the point of intersection in the same manner also.

The description given in the application will be copied into the right of way deed. It must be so definite and complete that from it the right of way may readily be located upon the ground without the plat.

If the right of way runs through an intervening tract which is *not* state land, it may be shown on the tracing or plat, but *must not* be included in the description in the application as this might result in errors in writing the deed.

No application should include land in more than one section. Show the acreage required for the right of way in each forty-acre tract of State land in the place provided in this blank.

The application must be signed by or for the applicant, and certified correct by the endorsement of the engineer. Write the name of the applicant exactly the way it is to appear in the deed.

TRACING OR PLAT. Tracings or plats must accompany the application. These tracings or plats should be so plain that anyone can readily ascertain the section, township and range and see what forty-acre tracts the right of way runs through. A scale of 1 inch to 400 feet is commonly used.

There must be two copies of the tracing or plat duly verified by the affidavit of the land surveyor who has prepared the same endorsed thereon. They must show the "quantity of land taken by the proposed highway or street or other easement from each forty-acre tract or government lot of State land over or through which it passes and also the amount of land remaining in each portion of such forty-acre tract or government lot." (Part of Section 77-2-102(2) Montana Code Annotated)

For the sake of reference other than State lands may be shown on the plat, but they should be indicated by different colors. If the proposed right of way follows a river or railroad right of way or other right of way, such river or right of way should be shown and also the area of the intervening strip, if any.

The affidavit of the surveyor or professional engineer to be endorsed on the tracing or plat should be substantially in the following form:

STATE OF MONTANA,

County of CASCADE

SS

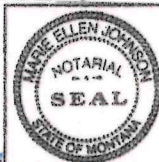
James S. Kendall

being duly sworn says: That he/she is the LAND SURVEYOR who made the survey of the right of way shown hereon; that the survey was correctly and accurately made; that the tracing or plat thereof is true and accurate and that it correctly shows the quantity of land required for the right of way in each forty-acre tract or government lot and also the amount of land remaining in each portion of such forty-acre tract or government lot.

Subscribed and sworn to before me this 7th

day of March

April, 2021



MARIE ELLEN JOHNSON
NOTARY PUBLIC for the
State of Montana
Residing at Great Falls,
Montana
My Commission Expires
February 21, 2023

Notary Public for the State of Montana

To the State Board of Land Commissioners

Montana, APRIL 7, 2021

State of Montana

Application is hereby made under the provisions of Section 77-2-101 through Section 77-2-107 of the Montana Codes Annotated, 1979, and Acts amendatory thereto by Cascade County for a right of way easement for Public Park Recreational use on 79.27 acres through Government Lots 6 + 7, Section 23, Township 20N, Range 3E, County of Cascade.

Duly verified tracings or plats in duplicate accompany this application and are made a part hereof. The tract or strip of land required for the said right of way is more particularly described as follows:

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

DESCRIPTION

See attached exhibit

ACREAGE TAKEN FROM EACH FORTY OR GOVERNMENT LOT OF STATE LAND

		Forwarded		acres
NE 1/4 NE 1/4	acres	NE 1/4 SW 1/4		"
NW 1/4 "	"	NW 1/4 "	Gov't Lot 4	47.92 Acres
SW 1/4 "	"	SW 1/4 "	Gov't Lot 5	37.00 Acres
SE 1/4 "	"	SE 1/4 "		"
NE 1/4 NW 1/4	acres	NE 1/4 SE 1/4		acres
NW 1/4 "	"	NW 1/4 "		"
SW 1/4 "	"	SW 1/4 "		"
SE 1/4 "	"	SE 1/4 "		"
Forward	acres	Total		acres

Signature of Applicant
(as the same is to appear in
the deed)

Rae Gruikowski

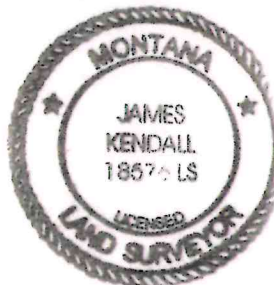
By Rae Gruikowski, Chair
Cascade County Board of Commissioners
Address 325 2nd Avenue North,
Great Falls, MT 59401

(SEAL)

LAND SURVEYOR

I James Kendall, the Land Surveyor who surveyed the right of way for which application is hereby made, do hereby certify that the description of the right of way as given in this application is accurate and correct in every particular according to the survey and that the acreage required for the right of way through each forty-acre tract under this petition is correctly given.

Dated at 11:25 a.m., this 7th day of APRIL, 2021



KENDALL LAND SURVEYING, INC.

Address 510 4th Ave. No. APT. 1
Great Falls, MT 59401

— BEING THE RETACEMENT OF EXISTING TRACTS OF RECORD FOR THE ISSUANCE OF A PERMANENT EASEMENT FOR PARK PURPOSES Affecting Government Lots 6 & 7 of Section 23, T20N, R3E, P.M.M., Cascade County, Montana



PARCEL & EASEMENT DESCRIPTIONS

COVENANTS, EASEMENTS, ETC.: A parcel of land lying in the Railroad Quarter (881/4), Section 23, T20N, R03E, Principal Meridian, Cassade County, State of Michigan, more particularly described as:

[illegible]

INCORPORATED JAN. 7, 1904. D.F.S. D.M.A. : A parcel of land lying in the Southwest Quarter (SW/4), Section 23, T20N, R12E, Principal Meridian Hardware, Comstock County, State of Montana, more particularly described as:

Correspondence of Dr. Richard D. Long, a Wildlife Specialist, Department of Transportation, Bureau of Transportation Statistics, 400 7th Street, N.W., Washington, D.C. 20423.

NOTES & LEGEND

The limits of boundaries for this survey is the West line of Section 23, T20N, R2E as located and monumented herein. Said line bears N09°03'00"W from the SE corner of Section 23 to the West 1/4 Corner of Section 22.

2000

- (v) Indicates a 5/8" diameter roller, 26" in length, with a minimum top load of 11902LB.5" found this survey.
 (vi) Indicates a 5/8" diameter roller with plastic top load increased "Unstuck 88445" found this survey.
 (vii) Indicates a 5/8" roller with plastic top load increased "Therapy Engineering 62329LB.5" found this survey.
 (viii) Measured Boring and Distance for this survey.
 (ix) Record/Read Boring and Distance.
 (x) Point of Commencement
 (xi) Point of Intersection
 (xii) Right of Intersection

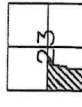
State of Montana)
County of Cascade)

Dated this ____ day of FEBRUARY, 2022

SIGNED: _____

James S. Kendall, being duly sworn says: That he is the Professional Land Surveyor (Montana Registration Number 18276-S) who made the survey of the above described land; that the said survey was made by him personally or under his direct supervision and that he is fully qualified to make such surveys; that the monument locations shown on the plat were correctly located and are true and correct and that it exactly shows the quantity of land required for the Proposed Permanent Easement; For Part Purposes in each government lot and also the amount of land remaining in each section.

Subscribed and sworn to, before me, on this ____ day of FEBRUARY, 2022 Signature: _____
Notary Public for the State of Montana



0074 1073 647. Sanders :
TAM, RIE, P.M.M.

KENDALL LAND SURVEYING, INC.
GREAT FALLS, MONTANA 59401
406-217-7707

Fox Farm State Lands Project

BACKGROUND: DNRC has a fiduciary responsibility to maximize income on state lands for Montana Schools. Income from the Fox Farm state lands parcel has been minimal for many years. In 2017 and 2018 DNRC approached city and county officials to discuss future options for the Fox Farm state lands parcel. During this initial discussion phase, a group of local citizens approached DNRC on possible conservation/recreational use opportunities for the parcel.

DNRC PROJECT EXPLANATION: By Montana law, DNRC must allow a time for people or groups to come forward with a “conservation interest”. According to administrative rule “Conservation” means a primary land use for open space, preservation of habitat, natural areas, parks, or related public purposes. There are various ways to accomplish this, some of them are permanent and some more in line with the term of any development, but generally any permanent restriction would be an easement.

Under MCA 77-2-101, the Montana State Land Board can only grant an easement on the Fox Farm parcel for public use to a local government or state government entity with authority to hold the easement. This includes easement for parks, trails, etc. As a practical matter, this means any group that wanted to affect this land in perpetuity would need to both pay for that use and find a government entity to hold the easement.

By law the DNRC is required to charge the fair market value of the encumbered land when selling an easement. An appraisal will be required.

LOCAL GOVERNMENT ENTITY TO HOLD EASEMENT: In 2020, the newly formed group, Missouri River Open Lands Preservation (MROLP) met with Cascade County commissioners requesting the county enter into a lease with DNRC for a public park recreational use easement as described by Montana MCA. On April 28, 2020, the Cascade County commissioners notified DNRC in a letter they desire to pursue an easement as requested by the MROLP.

DELAYS: In 2020 and 2021 the COVID-19 outbreak caused significant delays in the pursuit of an easement by the MROLP and Cascade County. Because of those delays, the county requested additional time to complete the agreement and an official vote.

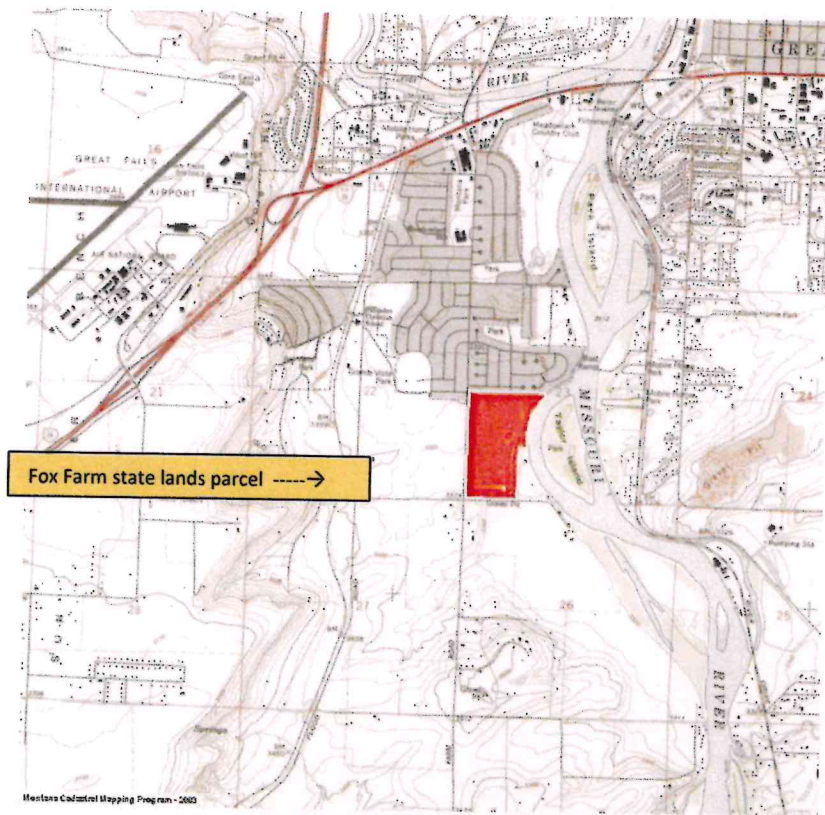
FINALLY, PROGRESS: At a February 27, 2022 meeting with DNRC, Cascade County and MROLP – all participants said they approved the proposed agreement between DNRC and the county. With that major hurdle resolved, Cascade County commissioners stated they would add this topic to the March 8th commissioners work session and vote to proceed with the application at their March 14th public meeting.

APPLICATION: At the March 14, 2023 Cascade County Commissioner’s public meeting they approved a motion to submit an application for easement for the Fox Farm state lands.

Fox Farm State Lands Project



GENERAL PROJECT MAPS



**BEFORE THE BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA**

**IN THE MATTER OF THE SUBMISSION
OF APPLICATION TO DNRC FOR A
STATE LAND EASEMENT**

RESOLUTION 23-14

WHEREAS, the Board of Cascade County Commissioners (Board) has been approached by the Missouri River Open Lands Preservation (MROLP) asking the Board to acquire a Public Recreation Park easement over about 79 acres of State Trust Land (State Trust Land), a process described under Title 77, Montana Code Annotated; and

WHEREAS, the State Trust Land is further described as Government Lots 6 & 7, Section 23, Township 20 North, Range 3 East, along Fox Farm Road in Great Falls, Montana; and

WHEREAS, MROLP desires to contract with the Board in order to be assigned the easement, allowing MROLP to create an open space to allow recreation by hikers, dogwalkers, bird watchers, and nature enthusiasts in the community, as provided for by MCA Section 77-2-101; and

WHEREAS, MROLP intends that the State Trust Land and its vegetation shall be preserved in a natural state to protect its ecological integrity, wildlife habitat, and water quality; and

WHEREAS, the Department of Natural Resources and Conservation (DNRC) requires that an Easement Application Form (Application) be submitted to the DNRC in order to begin the process of appraisal and potential sale of the Easement, as further specified under MCA Section 77-2-102; and

WHEREAS, the Board intends to work concurrently with MROLP to prepare and submit the application and start the process of potentially acquiring this Public Recreation Park easement on this 79 acres of State Trust Land;

WHEREAS, if the Board decides to move forward with the agreement with MROLP, after submission of the application to DNRC, the cost of acquiring the State Trust Land Easement and any other associated costs, will be paid solely by MROLP with no costs paid for by the County; and

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Cascade County, Montana that the application to the DNRC for a Public Recreation Park easement on Government Lots 6 & 7, Section 23, Township 20 North, Range 3 East, shall be submitted. MROLP shall pay any and all fees associated with this submission.

PASSED AND ADOPTED by the Board of County Commissioners of Cascade County, Montana, this 14th day of March, 2023.

BOARD OF COUNTY COMMISSIONERS,
CASCADE COUNTY, MONTANA

Rae Grulkowski
Rae Grulkowski, Chair

Jim Larson
Jim Larson, Commissioner

Joe Briggs
Joe Briggs, Commissioner

Attest

On this 14th day of March, 2023, I hereby attest the above-written signatures of the Board of Cascade County Commissioners.

Sandra Merchant
by Deputy
Sandra Merchant
Cascade County Clerk and Recorder



* APPROVED AS TO FORM:
Josh Racki, County Attorney

Josh Racki
DEPUTY COUNTY ATTORNEY

* THE COUNTY ATTORNEY HAS PROVIDED ADVICE AND APPROVAL OF THE FOREGOING DOCUMENT LANGUAGE ON BEHALF OF THE BOARD OF CASCADE COUNTY COMMISSIONERS, AND NOT ON BEHALF OF OTHER PARTIES OR ENTITIES. REVIEW AND APPROVAL OF THIS DOCUMENT BY THE COUNTY ATTORNEY WAS CONDUCTED SOLELY FROM A LEGAL PERSPECTIVE AND FOR THE EXCLUSIVE BENEFIT OF CASCADE COUNTY. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE COUNSEL.