



**Region One  
490 North Meridian Road  
Kalispell, MT 59901**

**DECISION NOTICE  
and  
Finding of No Significant Impact  
for the  
Kootenai Forestlands Phase II Conservation Easement**

**August 11, 2021**

**Description of Proposed Project**

The Montana Fish, Wildlife & Parks (FWP) proposes the purchase of a conservation easement to protect approximately 27,289 acres of important timberland and fish and wildlife habitat in northwestern Montana to the east and south of Libby, MT. The property is owned by the Stimson Lumber Company (Stimson), one of the oldest continuously operating integrated wood products companies in the United States with roots dating back to the 1850s. The proposed conservation easement, to be held by FWP, would allow Stimson to retain ownership of these timberlands for timber production, preclude residential and commercial development, protect important wildlife habitat and key landscape connectivity, and provide permanent public access and associated recreational opportunities.

The proposed project would protect key winter range and a movement corridor for elk, mule deer, white-tailed deer, and moose. In addition, it would protect critical habitat for bull trout, grizzly bear, and Canada lynx, Endangered Species Act listed Threatened species found on the property. The project would also reduce the potential for human-wildlife conflicts that often result when wildlife habitat is developed for residential use, especially conflicts with grizzly bears, black bears, and mountain lions.

The property currently provides over 26,500 days per year of public hunting and angling use which would be secured in perpetuity under this proposal. Completion of this project would build on the success of the nearby Forest Legacy Program-funded 142,000-acre Thompson-Fisher Conservation Easement, the 28,000-acre Kootenai Valleys Conservation Easement, and the 22,295-acre Kootenai Forestlands Phase I Conservation Easement, which was the first phase of this project. Forest Legacy projects in Montana and Idaho have cumulatively helped to conserve over 300,000 acres of working forestlands.

## Montana Environmental Policy Act (MEPA) Process and Public Involvement

FWP released a draft environmental assessment (EA) for public review on June 29, 2021 and asked for public comment through July 28, 2021. FWP held a public hearing on July 14, 2021, at 6:00 p.m. at the Libby City Hall. FWP ran legal ads describing the proposed project, the availability of the draft EA, and the public hearing information in the *Flathead Beacon*, *Daily Inter Lake*, *The Western News*, and *Helena Independent Record*. FWP also mailed postcards to neighboring landowners. The draft EA was posted on FWP's official website and was also available at the Region One headquarters in Kalispell and online for people with internet access or through internet service at public libraries.

The EA evaluated the potential impacts of the following alternatives:

### 1. Alternative A: Proposed Action

FWP would acquire a conservation easement on approximately 27,289 acres of forestland near Libby, Montana owned by Stimson Lumber Company. Stimson would continue to own and manage the land using sustainable forest practices while protecting the valuable fish and wildlife habitat found on the property and continuing to allow compatible public recreation opportunities.

### 2. Alternative B: No Action

If the project is not completed as proposed, Stimson would continue to own the property without any of the restrictions of the proposed conservation easement. They may, at some future time, change their public access policies or decide to develop or sell some or all of this land depending on company priorities and market conditions.

## Summary of Public Comment

FWP received 71 public comments with 68 of those in support of the acquisition of a conservation easement on the property, two opposed, and one with a question only. Below is a summary of questions and issues raised by commenters and FWP's response to each:

- One comment letter supported the acquisition of the conservation easement but stated the following: "How often are you going to have FWP personnel on this property to monitor wildlife habitat incursions, along with before and after wildlife counts including some wildlife cameras? And for tree management – overseeing the actual logging to make sure proper forest management designated by the State of Montana is actually monitored, corrected and fined if necessary? Are you going to limit and remove logging roads; require/allow helicopter and horse logging to protect wildlife? Research shows that roads interfere with wildlife migration, normal movement in the landscape including loud sounds from equipment and commercial users. Mountain bike versus hikers – the bikers win; us hikers have to jump, move, fall, etc. so I hope your forest roads will have speed limits, be wide enough and have signs on them 'be considerate of hikers and wildlife.' If FWP is like the US Forest Service, I worry that there will not be enough overseeing of this huge landscape. I hope you'll have signage telling loggers and recreators and hunters that this is a public conservation easement to protect wildlife and wildlife habitat as reminders and an education program to teach people about conservation and compassion for all users."

**FWP Response:** This is not a "public" conservation easement as stated in the comment. It is a conservation easement that FWP holds with the land remaining in private ownership. The main

goal of this conservation easement is to prevent residential and commercial development of the property while allowing the property to continue to be managed as a working forest. Public recreation access on the property would be allowed so long as it does not interfere with the conservation values, but decisions on how to approach conflicts between user groups would be up to the landowner, Stimson Lumber Company. The terms of the conservation easement or the Multi-Resource Management Plan (MRMP) are not prescriptive in the types of forest management practices allowed on the property. FWP would not be on-site managing the day-to-day activities occurring on this property because management of this property would remain the purview of the landowner, Stimson Lumber Company, as long as the terms of the conservation easement and guidance in the MRMP are adhered to. FWP would monitor the conservation easement property annually to ensure the terms of the conservation easement and guidance in the MRMP are being followed.

- One comment letter asked if these lands would be open to overnight camping, and if not, why.

**FWP Response:** The conservation easement property would not be open to overnight camping. As a general company policy, Stimson typically prohibits camping on its property.

- One comment letter stated the following: “I believe a compromise needs to be negotiated so that appropriate acreage can be sold for commercial and residential development. 5 - 10% of these lands should be suitable for such development. Suitable being not highly productive for forestries and readily accessible to maintained roads. I would like to see Stimson Lumber put this relatively small amount of land (5-10%) up for sale to any and all parties. Other wise I am fine with it as long as public hunting and other recreation will not be hindered by this proposed easement.”

**FWP Response:** While Stimson certainly could sell this acreage for development instead of placing all the land under conservation easement, it is counter to the company’s desire to maintain this forestland as an intact, working forest. Further, it would be counter to what Stimson and FWP are attempting to accomplish with this conservation easement. While keeping out 5-10% the lands for development seems rather minor, the most developable areas would be in the most sensitive wildlife habitat areas, such as creek bottoms and winter range, while also contributing to habitat fragmentation and loss of movement corridors. It is worth noting that Stimson just wrapped up its Montana lands disposition plan that included the sale of just over 73,000 acres. The company has an active sales program in eastern Washington and northern Idaho. Stimson and FWP believe the proposed conservation easement lands are strategically located where a conservation outcome makes the most sense for the company and for the fish and wildlife resources and public recreation access.

Public hunting and other recreation would not be hindered by the terms of the conservation easement.

- One comment stated that they would like to be able to use ATVs to access the area and to prospect for gold.

**FWP Response:** Stimson allows motorized access only on open roads. The terms of the conservation easement would not change the company’s ability to restrict or allow motorized

access as they see fit. FWP encourages the commenter to reach out to Stimson to determine if motorized access would be allowed in the area they are interested in reaching.

- One comment asked for the definition of sustainable harvest of timber and how it was determined if a harvest was sustainable and where they could find more information on the topic.

**FWP Response:** Stimson manages their lands and fiber sourcing under the Sustainable Forestry Initiative (SFI). The SFI definition of sustainable forestry is *“to meet the needs of the present without compromising the ability of future generations to meet their own needs by practicing a land stewardship ethic that integrates reforestation and the managing, growing, nurturing and harvesting of trees for useful products and ecosystem services such as the conservation of soil, air and water quality, carbon, biological diversity, wildlife and aquatic habitats, recreation and aesthetics.”* Stimson’s operations go through rigorous third-party audits annually to maintain their certification under SFI. Stimson believes one of the best ways to achieve sustainable harvest of timber is to assure that working forests remain working forests. It takes 45 – 60 years to grow a crop of trees in western Montana and a timberland operator must be committed to sustainable forestry to make the investment in time and money. There is significant pressure to develop timberlands for other more profitable uses, like subdivision. Conservation easements are a great tool to assure that timber companies can wait the necessary time to sustainably harvest their forests and to not sell them for conversion to non-forest uses. For more information, visit the SFI website: <https://www.forests.org/>.

- A seven-page comment letter was received from WRH Nevada Properties, LLC, (“WRH”) from Rexburg, Idaho, a company which owns mineral rights underlying approximately 3,560 acres of the proposed conservation easement. For purposes of this EA, however, FWP will generally respond to what it considers the essential issues raised in WRH’s comments.

**FWP Response:** With respect to the first issue – the impact of the conservation easement on WRH’s subsurface mineral rights – FWP has previously indicated that it agrees with WRH’s characterization that the mineral estate is the dominant estate under Montana law. FWP’s position has not changed. In its comments WRH has generally characterized Montana law regarding mineral rights development accurately. Likewise, as WRH correctly notes “Stimson has the right to sell or grant Stimson’s surface estate to whomever Stimson chooses....” By granting a conservation easement to FWP, Stimson is granting some of its rights (principally the right to develop the property) to FWP – exactly what WRH concedes Stimson can do.

Elsewhere, however, WRH alleges that the conservation easement would be “directly adverse” to their mineral rights. WRH goes on to state that the conservation easement “would place negative restrictions or prohibitions on the type and magnitude of development and will impact the value of WRH’s mineral estate.” This characterization of the conservation easement’s impact on WRH’s mineral rights seems at odds with WRH’s other characterizations of their mineral rights as “dominant.” As WRH has stated – and FWP concurs – Montana law guarantees a mineral owner the right to occupy the surface estate in order to access and develop its minerals. As grantee of the conservation easement, FWP only acquires rights that otherwise belong to Stimson. If Stimson cannot prevent WRH from accessing its rights to any underlying minerals – and all parties agree they cannot – neither can FWP as holder of the conservation easement.

WRH's second primary issue is its "buyback" rights, which allow WRH to buy back surface rights on up to 3,500 total acres across all its holdings under the buyback agreement. To the degree WRH is seeking to reserve those rights and put FWP on notice of them, FWP recognizes and acknowledges those rights.

Finally, WRH asserts that it has proprietary information showing that mineral development is likely under the property. Accordingly, WRH disagrees with the conclusion of Whitehall Geogroup, Inc., that the potential for development of the mineral estate underlying the proposed conservation easement is "so remote as to be negligible." WRH has not shared its information with FWP. In any event, the conclusion of Whitehall Geogroup, Inc. was based on standard industry practice using recognized techniques and was consistent with FWP's practice in all its conservation easement projects around the state. FWP is entitled to rely on such standard research and conclusions of experts. That conclusion was accepted by the U.S. Department of Agriculture's Forest Legacy Program, which is funding the conservation easement.

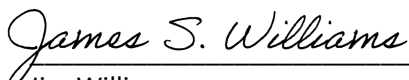
Finally, WRH alleges it has never been contacted by FWP concerning the acquisition of this conservation easement. This is inaccurate. FWP provided notice of the proposed conservation easement to WRH through a certified letter to WRH's attorney of record on April 20, 2021, and a notice of the release of the EA on June 30, 2021. The fact that WRH has submitted comments on this EA within the applicable public comment period demonstrates that WRH has been duly afforded its opportunity to participate in the public process associated with this proposal.

#### **FWP Recommended Alternative and Final Decision**

In reviewing all the public comment and other relevant information, and evaluating the environmental effects, I recommend that the Fish and Wildlife Commission approve the purchase of a conservation easement for Kootenai Forestlands Phase II as proposed in Alternative A, the Proposed Action.

Through the public review process described above, the public raised some issues/concerns with the project, but all have been addressed in this decision document. FWP found no significant impacts on the human or physical environments associated with this proposal; therefore, the EA is the appropriate level of analysis and an environmental impact statement is not required.

Noting and including the responses to public comments, the draft EA will become the final EA and together with this decision notice will serve as the final documents for this proposal. The anticipated timeline in the EA (p. 18) states this project would be brought before the Fish and Wildlife Commission on August 20, 2021, but it is now set for the October 28, 2021 Commission meeting.

  
Jim Williams  
Region One Supervisor

8/11/2021

Date