



## DECISION NOTICE

### MONTANA GREAT OUTDOORS CONSERVATION EASEMENT PHASE 1

June 20, 2024

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#### **Action: Decision Notice**

Montana Fish, Wildlife & Parks (“FWP”) shall prepare a Decision Notice (“DN”) for the proposed action. The DN must identify the agency decision, the reasons for the decision, and any special conditions surrounding the decision or its implementation.

With this action, FWP hereby adopts the Draft Environmental Assessment (“Draft EA”) for the Montana Great Outdoors Conservation Easement, Phase 1, as final, without modification, and approves Alternative 2, the Proposed Action.

#### **Authority: Montana Environmental Policy Act**

According to the applicable requirements of the Montana Environmental Policy Act (“MEPA”) and its implementing rules and regulations, before a proposed action may be approved, environmental review must be conducted to identify, consider, and disclose potential impacts of the proposed action on the affected human environment. The level of environmental review for a proposed action will vary. FWP is responsible for conducting environmental review at a level that accounts for such variable factors as the complexity and seriousness of environmental issues involved and the level of public interest. Title 75, Chapter 1, Parts 1-3, Montana Code Annotated.

Based on these factors, FWP determined that the appropriate level of review for the Proposed Action is a Standard EA (Draft EA). Therefore, to assess and disclose potential impacts of the proposed action, FWP prepared a Draft EA for public review and comment. See *Public Participation Process* below.

Further, FWP must consider any substantive comments received in response to an EA and proceed in accordance with one of the following steps:

- determine the EA did not adequately reflect the issues raised by the proposed action and issue an Environmental Impact Statement (“EIS”);
- determine the EA did not adequately reflect the issues raised by the proposed action and issue a supplemental EA; or,
- determine the Draft EA adequately addressed the issues raised by the proposed action and – with appropriate modification resulting from the analysis provided in the Draft EA and the analysis of any substantive public comments received – issue a final decision.

See *Public Comment and FWP Response* below.

### **Description Of Proposed Action**

FWP’s Proposed Action is the purchase of a 32,981-acre conservation easement: the Montana Great Outdoors Conservation Easement – Phase 1. The Proposed Action is the first phase of a potential two-phased conservation easement project totaling 85,792 acres of important timberland and fish and wildlife habitat currently owned by Green Diamond Resources Company (“Green Diamond”) in northwest Montana. The proposed conservation easement, to be held by FWP, would ensure the opportunity for landowners to sustainably harvest wood products from these timberlands, preclude residential or commercial development of these timberlands, protect important wildlife habitat and associated key landscape connectivity, and provide permanent, free public access to the incorporated affected property.

### **Purpose And Need**

The purposes of this conservation easement include maintaining the availability of sustainable timber harvest, protecting fish and wildlife habitat, and acquiring permanent free access to the property on behalf of the public. Without a conservation easement, current or future landowners could develop the property or prohibit public access to the property.

### **Alternatives Analyzed**

#### **Alternative 1: No-Action**

In addition to the proposed action, and as required by MEPA, FWP analyzes the "No-Action" alternative in the Draft EA. Under the No-Action alternative, the Proposed Action (purchase of the conservation easement) would not occur. The

No-Action alternative forms the baseline from which the potential impacts of the proposed action may be measured.

Under the No-Action alternative, the proposed project would not occur. Green Diamond would continue to own the property without the restrictions of the proposed conservation easement. Green Diamond may, at some future time, change their public access policies or decide to develop or sell some or all the affected property depending on company priorities and market conditions, which may open important wildlife habitat to the potential for residential, industrial, and/or commercial development; jeopardize key wildlife habitat and connectivity corridors; and eliminate FWP's objective to build on the successes of other nearby conservation projects.

### **Alternative 2: Proposed Action**

Under the Proposed Action, Alternative 2, FWP would purchase a 32,981-acre conservation easement on Green Diamond lands in northwest Montana. This would prevent current or future landowners from developing the property, thereby protecting fish and wildlife habitat and the potential for future sustainable timber harvest. The Proposed Action alternative would also maintain free recreational public access in perpetuity.

### **Public Participation Process**

The Draft EA was put forth for public review and comment from April 15 through May 15, 2024. Public hearings were held in Kalispell on April 30 and in Libby on May 1. The Draft EA was posted on FWP's Public Notice webpage (<https://fwp.mt.gov/news/public-notices>). The Draft EA was also made available for public review on the Environmental Quality Council website (<https://leg.mt.gov/mepa>), by individual request, and through notice to interested parties. FWP received numerous comments during the public comment period.

### **Public Comment and FWP Responses**

FWP received substantive public comment on the Draft EA. A substantive public comment is defined as a comment that identifies a specific issue or impact. The following constitutes a synopsis of public input received and FWP's response to those comments. In some cases, multiple individuals provided the same or similar comment. Such comments have been categorized and summarized, and a single FWP response has been provided for each category.

## 1. **Public Access**

FWP received substantive comments expressing concern that the conservation easement would lock up public lands or prevent the public from accessing these lands.

### **FWP Response**

Thank you for your comments. The conservation easement would guarantee permanent free year-round public access to the property, which is privately owned by Green Diamond. These terms would stay with the land and future landowners would also be required to allow public access to the property. Public access to this private property is currently allowed through short-term block management agreements and voluntary open land policies. Without a conservation easement the landowner could prohibit public access at any time. The conservation easement would not lock up public lands, rather it would secure access to both private lands (currently owned by Green Diamond) and to public land parcels surrounded by private lands located within the conservation easement boundary.

## 2. **Recreation**

A commenter requested information on types of recreation that would be allowed on the property and specifically inquired about trapping and hound hunting.

### **FWP Response**

Thank you for your comment. The conservation easement guarantees the right of the public to access and use the land for non-commercial dispersed recreation, including, but not limited to, hunting, huckleberry picking, fishing, trapping, hiking, camping, snowshoeing, skiing, biking, and wildlife viewing. The public would be able to hunt, fish and trap on the property according to regulations adopted by the State of Montana as well as rules outlined in Green Diamond's Open Lands Policy (Appendix C of the Draft EA, pages 86-87). Hound hunting is not specifically discussed within the conservation easement but is allowed per regulations adopted by the State of Montana (§ 87-6-404, MCA). Trapping is also allowed on the property with some additional restrictions outlined in Green Diamond's Open Lands Policy (Appendix C of the Draft EA, page 86).

## 3. **Role of Environmental Organizations**

A commenter expressed concern the conservation easement would allow environmental groups to dictate land management on the affected property.

### **FWP Response**

Thank you for your comment. The landowner (Green Diamond) and FWP are the only signatories to the conservation easement and multi-resource management plan (“MRMP”). Environmental groups and land trusts are not signatories to these agreements and do not have a role in land management decisions. The conservation easement is binding in perpetuity while the MRMP may be updated. However, updates to the MRMP may only occur if the signatories (the landowner and FWP) and the Montana Department of Natural Resources and Conservation State Forester’s Office agree to the proposed changes.

#### **4. Habitat Management**

Commenters expressed both opposition to timber harvest as well as a desire for more active habitat management. A commenter was specifically concerned about the management plan requirement to promote multi-storied canopies and retain shade-tolerant trees. This commenter suggested that it might be better to “describe the desirable areas for such multi storied stands such as riparian areas and ecological zones where this would be appropriate”.

### **FWP Response**

Thank you for your comments. One of the purposes of the conservation easement is to “perpetuate the use of the Land as working forest by ensuring the opportunity for continued, long term, professional management of the forest resources through forest management activities” per the federal Forest Legacy Program, which will provide \$20 million in funding to purchase the conservation easement (Appendix B of the Draft EA, Section II.A.1, page 47). Green Diamond retains the right to harvest and sell timber products and intends to continue implementing both commercial timber harvest as well as thinning treatments designed to improve tree growth and forest health while also reducing fuel loading and the risk of wildfire. Green Diamond follows Best Management Practices for Forestry in Montana (BMPs) and prides itself on sound silvicultural approaches.

The MRMP requires the landowner to retain small, shade-tolerant trees (such as grand fir, subalpine fir, and Engelmann spruce) in pre-commercial thinning units to promote the development of multi-storied canopies (Appendix C of the Draft EA, pages 83-84). However, FWP agrees that multi-storied stands are not desirable in all forest types in Montana. For example, in dry ponderosa pine stands shade-tolerant trees would typically be removed frequently by low severity fires. Accordingly, the landowner is only required to retain shade-tolerant species where those species do not pose a competition risk to desired

crop trees, create or increase a risk to long-term fire resiliency, or create or exacerbate forest health issues. Shade-tolerant trees may also be removed without restriction once the stand is aged and is commercially harvested.

## 5. **Noxious Weeds**

A commenter stated “I’d also add a little to the noxious weed sections including adherence to the Montana Weed Control Act, the Montana County Weed Act and individual County Weed Management Plans, use of seed and straw that is certified for Montana (example: Idaho does not have *Ventemata* listed and *Ventemata* seed can be in certified seed, forage and straw from Idaho). This is a contributor to Lincoln Counties battle with *Ventemata dubia*. By law (Montana County Weed Act) it is unlawful to permit noxious weeds to propagate – it is unlawful for any person to permit any noxious weed to propagate or go to seed on the person's land, except that any person who adheres to the noxious weed management program of the person's weed management district or who has entered into and is in compliance with a noxious weed management agreement is considered to be in compliance with this section.”

### **FWP Response**

Thank you for your comments. FWP agrees that preventing the propagation of *Ventemata dubia* is an important conservation goal for the property and will work with the landowner to address it, particularly regarding the issue of Idaho certified seed, forage, and straw potentially containing *Ventemata* seed. Noxious weed control and compliance with the Montana Weed County Act would remain the legal responsibility of current and future owners of this property; however, FWP staff will monitor the property for this and other noxious weeds during annual site visits and work with the landowner and county weed district to address any issues.

## 6. **Land Purchase Limitations**

A commenter asked, “Can this land be purchased by a private party or by the State at any time?”

### **FWP Response**

Thank you for your comment. The landowner, Green Diamond, may sell the conservation easement encumbered land to a private party or the State in the future if they choose to, but the number of subdivisions would be limited to three and the terms of the easement would run with the land and remain binding on all future owners.

## 7. **Enforcement**

A commenter expressed concern about the increasing use of the area and associated damage including illegal ATV use, target shooting, trash dumping, and other abuse of the area by the public. The commenter was concerned that FWP's wardens are overworked and may not have the capacity to address these issues. The commenter requested that FWP "Please explain how FWP is going to enforce these issues adding additional acres to this easement. Hiring additional wardens will be needed or someone with authority to issue citations."

### **FWP Response**

Thank you for your comment. FWP agrees that addressing damage to conservation easement lands is a challenging and increasingly difficult issue. Under the Proposed Action, the landowner would retain the responsibility to address violations to their open land policies such as illegal motorized vehicle use and trash dumping. However, public Liaison Team meetings with the landowner and FWP are held annually to discuss and address these types of issues. However, public Liaison Team meetings with the landowner and FWP are held annually to discuss and address these types of issues. Wardens would continue to enforce violations of hunting and fishing regulations and assist with education and property damage issues. FWP does not have plans to hire additional wardens currently but is considering hiring additional staff to address resource damage issues on all conservation easements located in FWP Region 1.

## 8. **Taxes**

A commenter asked, "How does this conservation easement affect the tax bases for Flathead, Lincoln, and Sanders Counties? And how will the easement offset any lost taxes as a result of these conservation easements?"

### **FWP Response**

Thank you for your comment. Green Diamond is currently and would continue to be responsible for the property's taxes, which contribute to the overall tax base in Lincoln, Sanders, and Flathead counties. Per § 76-6-208, MCA, state property taxes cannot be assessed at a lesser value due to a conservation easement. The conservation easement would preclude future residential, commercial, or industrial uses (excluding forestry and grazing activities) which are subject to higher tax rates in comparison to forestland. However, a potential reduction in taxes resulting from limiting development potential is dependent upon many factors such as the existing and future local economy, future development, or lack thereof, and future plans of the landowner, Green Diamond. Overall,

impacts of the conservation easement on the tax base are expected to be long-term, negligible, and either beneficial or adverse depending on these factors. There is not a mechanism in the conservation easement to offset potential lost taxes. Additional information can be found in the Draft EA, Section XII.B.4, page 30.

## 9. Land Ownership

The proposed Montana Great Outdoors - Phase 1 Conservation Easement identifies Green Diamond as the sole landowner of the subject property. WRH Nevada Properties, LLC (“WRH”) asserts that this statement is erroneous because it fails to account for WRH’s ownership of the mineral title.

### **FWP Response**

Thank you for your comment. Green Diamond is the sole owner of the surface rights to the Property that would be subject to the proposed conservation easement. Therefore, it is not contradictory for FWP to refer to Green Diamond as the sole landowner despite the mineral title being held by other entities, including WRH.

## 10. Forest Legacy Program Implementation

The Forest Legacy Program (“FLP”) is a United States Department of Agriculture Forest Service Program that would provide \$20,000,000.00 in funding for the proposed Montana Great Outdoors Conservation Easement – Phase 1. WRH asserts that FWP violated numerous 2017 FLP Guidelines.

- WRH asserts that FWP’s “failure to contact” WRH violates the 2017 FLP Implementation Guidelines.
- WRH asserts that the Montana Forest Action Plan and Assessment of Need do not meet FLP requirements.
- WRH asserts that FWP has violated FLP requirements by failing to ensure that the subject property is free of encumbrances.
- WRH also alleges that FWP violated FLP guidelines by failing to attempt to acquire WRH’s mineral holdings.

### **FWP Response**

Thank you for your comments. FWP respectfully notes that this project has been developed and advanced in consultation with FLP administrators from the United



States Department of Agriculture. The comments raised by WRH as to FWP's compliance with the FLP are beyond the scope of the Draft EA. FWP disclosed FLP funding was authorized for use in the conservation easement and the decision to award FLP funding was made at the discretion of the United States Department of Agriculture. FWP cannot speak on behalf of the Federal entity as to their internal decision-making process other than to state FWP's application for FLP funding was approved. Regarding encumbrances, mineral holdings, Montana's Forest Action Plan, and Montana's Assessment of Need, FLP administrators found that FWP's actions satisfy all applicable FLP requirements. Regarding FWP's "failure to contact" WRH, WRH received and responded to the Scoping Notice for the Montana Great Outdoors Project, which was published on February 2, 2022, prior to publishing the Draft EA.

## 11. Mineral Holdings

WRH alleges that FWP's acquisition of this conservation easement will have a material adverse impact on WRH's mineral holdings, and claims that the mineral determination is not credible. WRH asserts that they have data contradicting the conclusions of the mineral determination, but the data could not be made publicly available considering that it is proprietary information.

### **FWP Response**

Thank you for your comment. FWP notes that the conservation easement terms explicitly state that the conservation easement is subordinate to any mineral rights interests held by third parties. Therefore, WRH would not be precluded from accessing its mineral holdings by operation of the conservation easement.

WRH indicates that it has data contradicting the conclusions of the mineral survey conducted on FWP's behalf by Hydrosolutions. WRH, as a private entity, retains authority over disclosure of its information. FWP, as a public entity, is subject to Montana's Right to Know and Public Records laws, *See* § 2-6-1001, MCA, *et seq.* Therefore, WRH's decision to withhold such private information is at their discretion. The mineral remoteness report is credible per FLP administrators and was prepared by a Hydrosolutions Senior Hydrologist qualified to conduct mineral potential evaluations per USDA and IRS requirements.

## 12. Funding Eligibility

WRH alleges the State did not comply with 54 USC § 200305(b)(2) by failing to show an evaluation of the demand for and supply of outdoor recreation resources

and facilities in the State in Montana’s Statewide Comprehensive Outdoor Recreation Plan (“SCORP”).

### **FWP Response**

Thank you for your comment. Comments regarding FWP compliance with Montana’s SCORP (54 USC § 200305) and associated eligibility for Land and Water Conservation Funds, including the Forest Legacy Program, are beyond the scope of this EA. Overall, the proposed Montana Great Outdoors Conservation Easement is in alignment with the SCORP goal to “enhance public access to outdoor recreation resources and facilities.”

### **13. Compliance with MEPA**

WRH alleges that an EIS is required for the Proposed Action and that a cumulative economic impact effect and cost benefit of dramatic development restrictions imposed by the largescale piecemeal state acquisition of multiple conservation easements has not been effectively analyzed. WRH states, “Hundreds of thousands of mineralized acres have been effectively withdrawn by the state’s action at a time when the need for minerals known to be present is of growing strategic importance.”

### **FWP Response**

Thank you for your comment. FWP disagrees that an EIS is required to addresses concerns regarding the cumulative economic impacts of the Proposed Action on mineral rights. Section III of the Draft EA (page 9), “General Setting of the Affected Environment, Mining and Mineral Rights,” states, in relevant part “...Regardless of actual mineral potential, pursuant to Montana Law and the explicit language of Paragraph II.C.7 of the conservation easement, *the easement’s terms would apply only to the owner of the surface rights and would not impact third-party owners of mineral rights within the project area (unless those rights are subordinate to the conservation easement). Should a third-party mineral right holder discover marketable mineral resources in the project area, the conservation easement would not preclude that entity from developing and extracting those resources.*” (emphasis added). The proposed action does not prevent WRH—or any other affected mineral rights holder—from accessing its privately held mineral resources located within the proposed conservation easement. Therefore, no adverse direct, secondary, or cumulative impacts to the economy associated with mineral resources would be anticipated.

Concerning the appropriate level of environmental review (EA or EIS), if FWP's action has a potential impact on the affected human environment (adverse,

beneficial, or both) and if the action is neither categorically excluded nor otherwise exempt from MEPA review (by statute, rule, other), then some form of environmental review is required. Also, according to ARM 12.2.431(2), “An impact may be adverse, beneficial, or both. If none of the adverse effects of the impact are significant, an EIS is not required...” Pursuant to ARM 12.2.431, because the Draft EA prepared for the proposed action did not identify any significant adverse impacts, the proposed action *does not* constitute a “...major action of state government significantly [and adversely] affecting the quality of the human environment.” Therefore, EIS-level environmental review is not required for the proposed action and FWP properly determined the appropriate level of environmental review for the proposed action is a Standard EA and associated public process. Additional details regarding compliance with the Montana Environmental Policy Act are available on pages 3-4 of the Draft EA.

#### 14. Comment Period

WRH requests the public comment period be extended, noting the need for more time to analyze and comment on foundational information referenced and relied on in the Draft EA. WRH asserts that they were not contacted by any person associated with the project.

#### **FWP Response**

Thank you for your comment. FWP did receive several public record requests which it processed as expediently as possible. FWP notes the general theme of the requested information spoke to FWP’s application for FLP funding and compliance with program requirements. While this information is within WRH’s Right to Know, scrutiny of the decision by the United States Department of Agriculture to award such funding to FWP is beyond the scope of this EA. Given the requests for information by WRH pertain to information that is beyond the scope of this EA, FWP does not find good cause to extend the comment period beyond 30 days (ARM 12.2.439). Additionally, WRH was contacted early in the development of this project and received and responded to the Scoping Notice for the Proposed Action, which was published on February 2, 2022.

### **DECISION**

Based on the environmental review provided in the Draft EA, and in accordance with all applicable laws, rules, regulations, and policies, FWP determined the Proposed Action (i.e., Alternative 2) will not have significant adverse impacts on the human environment and constitutes a reasonable and appropriate strategy to achieve identified objectives. Therefore, preparation of an EIS is unnecessary.

FWP hereby approves Alternative 2, the Proposed Action (purchase of the Montana Great Outdoors Conservation Easement – Phase I (FWP-SEA-WLD-R1-23-011) and adopts the Draft EA as final.

Sincerely,

*Lee Anderson*

Lee Anderson

Region 1 Supervisor

Montana Fish, Wildlife & Parks