

After recording, please return to:

Land Unit
Montana Fish, Wildlife & Parks
P O Box 200701
Helena, Montana 59620-0701

30-YEAR [40-YEAR] CONSERVATION LEASE AGREEMENT

THIS AGREEMENT, is made by and between _____, whose address is _____, and his/her/its heirs, successors, assigns and persons claiming possessory rights (“Landowner”) and the Montana Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, Montana 59620-0701 (“Department”).

I. RECITALS

A. Whereas the Department recognizes that landscapes of predominantly native grass, shrub-lands, and wetland complexes provide important wildlife habitat for a number of priority wildlife species, especially sage-grouse, migratory grassland birds, big game, and other Montana species of concern, and are further described as five “focal wildlife habitats” that are among the highest importance for conservation: **Sagebrush grasslands** comprise sagebrush (*Artemisia* species) dominated steppe that includes an understory of perennial grasses and forbs. **Wetland habitats** include depressional wetlands, wet meadows, and backwaters of stream and river systems. **Riparian/floodplains** are plant communities influenced by shallow water tables and include adjacent lands that seasonally flood. They are dominated by deciduous woodlands and shrubs with an understory of herbaceous vegetation. **Mixed grasslands** are dominated by perennial grasses and forbs that in some areas are interspersed by coulees with woody vegetation. **Intermountain grasslands** include foothills and valley habitats dominated by perennial grasses or a mix of grasses and shrubs intermingled with timbered draws. Collectively, the focal habitats are valuable to resident and migratory priority wildlife species for seasonal and year-round life cycles.

B. Whereas the Landowner is the owner of certain real property containing one or more of the five focal habitats in _____ County, Montana, (“Land”) described in Exhibit A attached hereto and mapped in Exhibit B attached hereto and incorporated by this reference.

C. Whereas the Department and Landowner recognize that retaining and maintaining large tracts of the focal wildlife habitats through sustainable grazing benefits wildlife by improving soil health, water quality, and plant diversity and by providing a landscape that is more resilient to drought, fire, and other natural disturbances.

D. Whereas the Department and Landowner recognize that loss of native habitat is one of the greatest threats facing declining grassland birds, sage-grouse, waterfowl, and other wildlife species in Montana.

E. Whereas the Department has pursued this Conservation Lease Agreement (“Lease”) by voluntary, cooperative means.

F. Whereas the Department and Landowner recognize that hunting and recreational activities are effective tools for engaging the public in habitat conservation.

NOW, THEREFORE, for and in consideration of the promises contained herein and other valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

II. AGREEMENT

1. **PURPOSE:** The purposes of this Lease are:

a. to conserve, protect, and enhance wildlife habitat on the Land and to grant the Department the right to prevent certain activities on the Land and uses of the Land that have detrimental impacts to the focal wildlife habitats along with the right of the Department or its assigned agent to enter upon the Land to monitor and enforce the terms of the Lease;

b. to provide the public with recreational opportunities on the Land; and

c. to keep the Land in Active Agricultural Production in a manner that is compatible with and contributes to the quality of the focal wildlife habitats, to protect the productive natural resources of the state, to maintain the agriculture and agriculture-related economy of the state, and to assure continued production of food and agricultural products while preserving open space, plant diversity, soil health, water quality, and a resilient landscape vital to successful wildlife populations. As used in this Lease, “Active Agricultural Production” means the use of the Land primarily and directly for raising and marketing livestock, their offspring, or products derived from the livestock in the regular course of business, subject to Paragraph 5. Livestock includes cattle and any other livestock authorized under the terms of this Lease or by the Department. “Active Agricultural Production” includes activities and uses that are customary and necessary in raising livestock and preparing them, their offspring, or the products derived therefrom for market.

2. **TERM:** The term of this Lease shall be for [30][40] years, beginning on the date of the last signature on the Lease and terminating at midnight on the 30th [or 40th] anniversary of that date.

3. **BINDING EFFECT:** This grant of Lease, and the covenants and agreements contained herein, shall run with the Land and shall be binding upon and inure to the benefit of the parties to this Lease, their respective heirs, successors, assigns, any person claiming any possessory rights through the Landowner, and any person or entity that shall come into ownership or possession of the Land, until its expiration or termination.

4. **COMPENSATION:** Compensation for this Lease shall be in the form of a lump sum payment of _____ (Compensation Amount), payable in full within 30 days of the date of the last signature on the Lease unless otherwise agreed by the parties. The Compensation Amount is determined in accordance with a formula based on acreage in the Lease, term of the Lease and land types to be included in the Lease.

[Where feasible the Department may spread the payment out over two calendar years]

5. LANDOWNER OBLIGATIONS: The Landowner covenants and agrees that he/she/it will maintain the wildlife habitat existing on the Land in conjunction with Landowner's agricultural use. To accomplish the purpose of this Lease, the Landowner covenants and agrees as follows:

- a. Not to remove, destroy, control, or manipulate grassland, sagebrush, woody plants, and other native vegetation by any means, including but not limited to burning, plowing, chemically treating, or flooding the areas depicted as rangeland on the map attached as Exhibit B. [OPTIONAL include following only if property includes sagebrush habitat: If however, future research reveals that sagebrush management is found to be beneficial to sage-grouse and other sagebrush obligate species, Landowner may, with the prior written approval of the Department, manage sagebrush through methods approved in writing by the Department.] [OPTIONAL at landowner's request: Limited haying of enrolled acres may be permitted on a case-by-case basis after July 15 with prior written approval of the Department. Haying will not be permitted prior to July 15.] [OPTIONAL at landowner's request: With prior written approval of the Department, limited mowing, haying, or clearing of vegetation may be permitted on a case-by-case basis to serve as fire breaks to help minimize the spread of wildfire. Mowing, haying, or clearing of vegetation as an emergency response to an emerging wildfire that is threatening the Landowner's or neighboring properties is permitted under this Lease. However, the Landowner shall notify the Department of the actions taken as soon as practical.]
- b. To minimize damage to native plants, sagebrush, and wildlife, by limiting the use and type of pesticides and agrichemicals for noxious weed and insect control on the areas depicted as rangeland on Exhibit B. Landowner will limit use of such chemicals to the minimum amounts and frequency necessary to control noxious weeds and insects. Chemicals that lessen impacts to shrub and woody vegetation would be acceptable for this type of limited use.
- c. Not to convert hay land to cropland or an annually planted cropping system. Landowner may convert cropland to hay land, grasslands, or grazing lands.
- d. Not to drain, fill, dredge, or dike wetland or riparian areas.
- e. Not to develop the Land, including construction of buildings, solar or wind energy, or other surface developments.
- f. Not to develop, lease or sell oil, natural gas, or any other mineral substance owned by the Landowner under the Land except through forced pooling, unitization or prior approval by the Department. Department approval shall be granted only where such development, or plan for development after leasing or sale is shown to have no negative impact on the native habitat(s) protected by this lease or otherwise frustrate its purpose.

- g. If a third party proposes development of oil, natural gas, or any other mineral substance, Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity. Landowner and the Department shall confer to review the proposed activity and to determine proposals to best mitigate any potential impact on the Land and the wildlife habitat values of the proposed activities. Subject to Montana Code Annotated § 82-10-504, Landowner and the Department shall subsequently cooperate in an effort to encourage the third party to adopt recommended mitigating measures in the third party's exploration and development activities. Nothing in this section dealing with third-party mitigation measures shall be deemed to obligate Landowner to bear the costs of mitigation measures. Landowner's only responsibilities for mitigation on the Land are those already imposed on Landowner by applicable law, if any.

This Lease does not restrict any third parties owning or leasing any of the oil, natural gas, or any other mineral substances under the Land from a right of ingress or egress or prevent such third parties' use and occupancy of the surface of the Land. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

- h. Gravel extraction is prohibited. *[Existing or anticipated gravel sites can be excluded from lease enrollment.]*
- i. Concentrated animal feeding operations are prohibited.
- j. Subject to prior approval by the Department, Landowner retains the right to install or allow installation of utilities or rights of way such as a pipeline, distribution or transmission line, communications tower, or roadway. The Department may choose to allow, allow with modifications, or not allow the proposed development with associated justifications. For Prior approval, Landowner must notify the Department in writing not less than sixty (60) days prior to the date the Landowner intends to undertake the activity. Notice must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity to permit the Department to make an informed judgement as to its consistency with this Lease and its purposes.
- k. To allow free hunting and recreational wildlife or nature viewing to the Land and access to adjacent public lands for the term of this Lease as follows:
 - i) When demand exists and upon request by members of the public, the minimum number of recreation-days that the Landowner will allow is [redacted] recreation-days within a calendar year. Of those [redacted] recreation-days, at least [redacted] recreation-days must specifically be for hunting during all of the Fish and Wildlife Commission-approved hunting seasons from September 1-January 1. For those periods during which the Land is open for hunting and recreational use, the Landowner will allow a minimum of ___ recreation-days per week.

- ii) If the Land is adjacent to public lands, while a member of the public is on the Land during a recreation-day for hunting or recreational wildlife or nature viewing, he or she may access the adjacent public land.
- iii) A “recreation-day” is defined as one person who recreates on the Land during a calendar day.
- iv) Public access must be managed on a non-preferential and nondiscriminatory basis.
- v) Landowners, Landowners’ immediate family, shareholders, partners, and employees and their immediate families are not defined as members of the public for the purpose of calculating “hunter-days.” The term “immediate family” means a parent, grandparent, child, or grandchild of the Landowner related by blood or marriage; a spouse; a sibling of the Landowner or sibling’s spouse; or a niece or nephew. “Employee” is defined as a person who works full time and year-round for the Landowner as part of an active farm or ranch operation.
- vi) Landowner has the right to manage the distribution of recreationists on the Land to address reasonable concerns for the safety of persons and property, including livestock. Landowner may deny access to anyone who is not conducting or has not in the past conducted, herself or himself in a prudent, responsible, and safe manner and denial of access for this reason shall not be deemed preferential or discriminatory.
- vii) Charging fees for providing hunting or recreation access to the Land is prohibited. Outfitting may take place on the Land only if public recreation and hunting opportunities are not restricted and the Landowner gives written consent and annually provides a copy to the Department in January of each year of the Lease. The Landowner may participate in programs offered by the Department or other entities intended to reimburse or compensate the Landowner for the impacts of hunter use of the Land. However, the Landowner and the Department acknowledge that any such hunter-impact program is administered separately from this Lease; that such program may or may not persist through time; that such program may or may not be offered for the Landowner’s participation; and that nothing in this Lease provides any assurance that the Landowner will be offered the opportunity for or be accepted into any such program.
- viii) Landowner will provide Department with current information during the term of the Lease for how the public can secure access permission. Location of the Land and current Landowner permission details will be made known by the Department to the public through published guides, web-based information, or other means.
- ix) The Department may periodically request the Landowner to keep a record of recreation use or report on number of public access activities.

- l. Not to subdivide the Land, except for ranching purposes where the subdivision is 320 acres or greater. For the purposes of this Lease, subdivision is defined as transferring a portion of the Land to another landowner and ranching functions is defined as traditional livestock grazing that is part of a ranching operation. This definition does not include pasture space designated for hobby, recreation, or work animals including horses, mules, lamas, or similar stock.
- m. The Landowner and his/her/their successors, lessees, and assigns shall keep the Land in Active Agricultural production in a manner consistent with the purposes and terms of this Lease.
- n. To provide the Department with prior notice in writing no later than 30 days after any sale, transfer, or lease of the Land or a portion thereof, and to provide the buyer, transferee or lessee with a copy of this Lease no later than 15 days after entering into a contract to sell, transfer or lease the Land.
- o. To notify and furnish a copy of this Lease to any other person claiming any possessory rights through the Landowner at any time during the Lease term.

6. LIMIT TO LANDOWNER OBLIGATIONS: It is understood that this Lease imposes no other obligations or restrictions upon the Landowner and that neither the Landowner nor Landowner's heirs, successors, assigns, lessees, nor any other person or party claiming under them shall be restricted from using all of the Land in the customary manner for agricultural practices except as provided herein. Examples of customary agricultural practices include livestock grazing and land maintenance activities such as fencing, stock water, noxious weed control, and road maintenance.

The Landowner shall not be liable for violations resulting from fire, flood, acts of God, or similar natural events beyond the Landowner's control. However, after such event, if damage occurs to the wildlife habitat protected by this Lease, the Landowner shall notify the Department of the damage as soon as practical.

7. NOTICES: For general questions, the regional wildlife manager for FWP Administrative Region [REDACTED] at phone number [REDACTED], will serve as the Department's primary contact. For submitting a notice, Landowner shall send all written notices to Land Unit, Montana Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620. The Landowner shall respond to any requests from the Department to self-certify compliance with this Lease within 30 days of the request, unless additional time is allowed by the Department at Landowner's request. All notices from the Department to the Landowner shall be made in writing to the Landowner at the address specified on page one of this Lease. The Department may change its designated representative, and the Landowner may change his/her/its address, by either party notifying the other in writing via mail or email of such change. The Department shall contact the Landowner via mail, email, or phone to schedule a mutually acceptable time for the Department or its assigned agent to access the Land for the purpose of monitoring compliance with this Lease.

8. DEFAULT: If the Landowner violates any term of this Lease, the Department may give the Landowner written notice of such violation. If the violation is not cured within 60 days of the

notice or a reasonable time thereafter, the Department, in its sole discretion, may pursue any remedy available to it including recovery of damages, a court order to cure the violation, and/or termination of this Lease. If the Department chooses not to enforce a violation of this Lease, it does not waive enforcement of the same or any other violation.

9. DAMAGES UPON TERMINATION ARISING FROM DEFAULT. In the event this Lease is terminated as a result of Landowner's default, Department and Landowner agree that the actual damages would be extremely difficult to fix. Therefore, the Landowner shall repay to the Department an amount calculated under the following formula:

$$\text{Compensation Amount} \times \frac{\text{Number of months remaining in Lease Term}}{\text{Total \# of months in the original Lease Term}} + (\text{Compensation Amount} \times 0.25) = \text{Damages due to Department}$$

10. VOLUNTARY TERMINATION BY LANDOWNER. After the fifth year of the Lease, Landowner may, at Landowner's sole discretion, terminate the Lease upon 30 days prior written notice to the Department, provided that Landowner must, upon termination, repay to the Department an amount calculated under the following formula:

$$\text{Compensation Amount} \times \frac{\text{Number of months remaining in Lease Term}}{\text{Total \# of months in the original Lease Term}} + (\text{Compensation Amount} \times 0.25) = \text{Termination payment due to Department}$$

11. CONSERVATION EASEMENT TERMINATION OPTION: Subject to prior approval by Department Landowner may terminate this Lease for the sole purpose of replacing the temporary conservation protection of this Lease with a permanent conservation easement that provides similar, but permanent, habitat protection by paying the Department an amount using the following formula:

$$\text{Compensation Amount} \times \frac{\text{Number of months remaining in the Lease Term}}{\text{Total \# of months in the original Lease Term}} = \text{pro-rated termination payment.}$$

In order to gain prior approval to exercise this Conservation Easement Termination Option, Landowner must provide Department a copy of the proposed conservation easement and a copy of a purchase and sale agreement for said conservation easement that is contingent upon Department's approval no less than 30 days prior to the anticipated closing date. Repayment of the amount required under the above formula must be made to Department at the closing of the conservation easement.

12. LEASE SUBJECT TO EXISTING RIGHTS: This Lease is subject to all statutory rights of way and other valid existing rights of way for, including but not limited to, highways, roads, railroads, pipelines, canals, laterals, electric transmission lines, telegraph and telephone lines, cable lines, and mineral rights.

13. JURISDICTION AND VENUE: This Lease shall be governed by and construed in accordance with the laws of the State of Montana. Venue for any court action arising under this Lease will be in the First Judicial District for the County of Lewis and Clark.

14. ATTORNEYS' FEES. If any dispute arises between the parties with respect to this Lease that leads to a proceeding to resolve such dispute, the prevailing party in such proceeding shall be entitled to an award of reasonable attorneys' fees incurred in connection with such proceeding, in addition to costs and any other relief to which such prevailing party may be entitled.

15. ENTIRE AGREEMENT: This Lease constitutes the entire agreement between the parties hereto and may be amended only in a writing signed by the parties. No verbal agreements or representations made by either party shall be binding upon the other.

IN WITNESS WHEREOF, the parties execute this Lease on the date set out in the acknowledgement.

Landowner:

ACKNOWLEDGMENT

State of Montana)

County of _____)

This instrument was signed before me on _____ by _____
_____.

(STAMP)

Notary Public
Printed Name _____

Montana Department of Fish, Wildlife & Parks

By: _____
Dustin Temple, Director

ACKNOWLEDGEMENT

State of Montana)

County of Lewis & Clark)

This instrument was signed before me on _____ by Dustin Temple in his capacity as director of the Montana Department of Fish, Wildlife & Parks.

(STAMP)

Notary Public
Printed Name _____

EXHIBIT A
LAND DESCRIPTION

Less and excepting therefrom the excluded areas shown on the map in Exhibit B and attached hereto.

EXHIBIT B
CONSERVATION LEASE MAP

EXHIBIT C
ACREAGE TABLE