

After Recording, Return to:
Rocky Mountain Elk Foundation
Attn: Lands and Conservation Programs
P.O. Box 8249
Missoula, MT 59807-8249

Deed of Conservation Easement Birch Creek, Montana

THIS DEED OF CONSERVATION EASEMENT ("Easement"), dated this 16th day of December, 2009, is made by Kevin Wetherell, whose address is PO Box 806, Seeley Lake, MT 59868 (the "Grantor"), and the ROCKY MOUNTAIN ELK FOUNDATION, INC., a Montana non-profit corporation whose address is 5705 Grant Creek Road, P.O. 8249, Missoula, Montana 59807-8249 as Grantee (the "RMEF");

RECITALS:

A. The Grantor is the sole owner in fee simple of certain real property in Meagher County, Montana, described in the attached Exhibit A (the "Property") and approximately located on the map attached as Exhibit B, and owns the rights to identify, to conserve and protect in perpetuity, and to enhance by restoration the Property's significant, relatively natural habitat of fish, wildlife and plants which is the Conservation Purpose identified in Section 170(h)(4)(A) of the Internal Revenue Code; and

B. The protection of the Property's Conservation Values provide for the preservation of native plants or animals and biotic communities is authorized by and recognized in the Montana Open-Space Land and Voluntary Conservation Easement Act, Mont. Code Ann. §§ 76-6-101 through 76-6-211 (2007); and the Grantor intends to convey this Easement under Mont. Code Ann. § 76-6-207 (2007), and other applicable provisions of Montana statutory and common law; and

C. The Property constitutes a valuable element of the relatively natural habitat of the Little Birch Creek and Big Birch Creek watershed and associated ecosystem; the Property provides significant habitat for elk and provides habitat for deer, bear, mountain lion, and other regional Montana wildlife, and the maintenance of such natural habitat helps support wildlife populations. In particular, the primary Conservation Values of the Property include:

i) Relatively natural habitat for native plants, fish, and wildlife, including significant habitat and critical winter range for elk, moose, whitetail deer, mule deer, and other regional Montana wildlife, containing a mixture of open grassland communities and heavy forested Lodgepole pine, Douglas fir, and spruce forest.

ii) Further, the Property is adjacent to Helena National Forest public lands and State of Montana public lands and the protection of the Property contributes to the ecological viability of these public lands by conserving adjacent land to these public lands that contain the Big and

Little Birch Creek watersheds and associated habitats and preventing subdivision and residential development in these private lands.

The Conservation Values are further described in the Baseline Documentation which is incorporated here in by reference. These Conservation Values are of great importance to the Grantor and to the people of the State of Montana, and are worthy of conservation; and

D. The Grantor desires and intends that the Conservation Values of the Property be conserved and maintained by the continuation, initiation, or introduction of activities on the Property that will not interfere with or substantially disrupt the Conservation Values, including the Permitted Uses identified in Section III; and

E. The RMEF is organized to conserve and protect natural areas and significant wildlife habitat for ecological, scientific, charitable, and educational purposes; and the RMEF is a qualified private organization and conservation easement holder under the terms of the Montana Open-Space Land and Voluntary Conservation Easement Act, Mont. Code Ann. §§ 76-6-101 through 76-6-211 (2007); and

F. The RMEF is a qualified organization as that term is defined in § 170(h)(3) of the Internal Revenue Code and is a charitable organization that meets the conditions of the Internal Revenue Code § 501(c)(3); and

G. The RMEF has received letters from the Internal Revenue Service dated September 18, 1984 and July 18, 1990, kept on file at the offices of RMEF, to the effect that the RMEF is a "publicly supported" organization under § 509(a)(2) of the Code and is not a private foundation within the meaning of § 509(a) of the Code; and

H. Grantor and the RMEF recognize the Conservation Values of the Property, and have the common purpose of the conservation and protection in perpetuity of the Property through the use of restrictions granted in perpetuity on use of the Property as described in § 170(h)(2)(C) of the Code and intending the grant of such restrictions and rights to qualify as a "qualified conservation contribution" under § 170(h) of the Code;

I. Grantor recognizes that the RMEF, as a qualified organization, in accepting this Easement, undertakes the obligation, in perpetuity, to monitor and protect the conservation values existing on the Property; to enforce the terms and conditions of the Easement against actual or potential violation; and to defend the Easement against any and all legal and equitable claims or challenges. Grantor further recognizes that the obligations hereby undertaken by the RMEF create a substantial financial burden and responsibility for the RMEF.

The Granting of Perpetual Easement. NOW, THEREFORE, in consideration of the mutual covenants contained herein, and pursuant to the Montana Open-Space Land and Voluntary Conservation Easement Act, Mont. Code Ann. §§ 76-6-101 through 76-6-211 (2007), and other applicable provisions of Montana statutory and common law, the Grantor hereby grants, conveys and warrants to the RMEF this perpetual Easement over the Property. The scope of this Easement is set forth in this Deed of Conservation Easement.

Section I: Purpose and General Effect of Easement

- A. **Purpose:** It is the purpose of this Easement to protect forever the significant relatively natural wildlife habitat of the Property described herein for conservation purposes through private conservation efforts, and to prevent any use of the Property that is not consistent with the Easement and will significantly impair or interfere with the Conservation Values of the Property.
- B. **Perpetual Restrictions:** This Easement shall run with the land and encumber the title to the Property in perpetuity and shall bind the Grantor and all future owners, tenants, licensees, occupants and users of the Property.
- C. **Permitted Uses in General:** This Easement shall confine the use of the Property to the Permitted Uses, discussed in Section III below, which are to be conducted in a manner consistent with the purposes and terms of this Easement. Any activity on or use of the Property inconsistent with the purposes or terms of this Easement or detrimental to the Conservation Values is expressly prohibited.
- D. **Dedication of Property:** Pursuant to the terms of the Montana Open-Space Land and Voluntary Conservation Easement Act, Mont. Code Ann. §§ 76-6-101 through 76-6-211 (2007), the Property conserved by this Easement is declared to be relatively natural habitat and may not be converted or directed to any uses other than those provided in this Easement.

Section II: Rights of RMEF

The rights conveyed by the Grantor to the RMEF to perpetually maintain the Conservation Values of the Property in this Easement include the following:

- A. **Identification and Protection:** The RMEF has the right to identify, to conserve and protect in perpetuity, and to enhance by mutual agreement the Conservation Values on the Property in the manner set forth in this Easement, subject, however, to the Grantor's reserved rights in this Easement.
- B. **Access:** The general public is not granted access to the Property under this Easement. The RMEF shall have the right of immediate entry upon the Property after making a good faith attempt to provide notice to Grantor, if, in the RMEF's sole judgment, such entry is necessary to prevent immediate damage to or the immediate destruction of the Conservation Values of this Easement.

The RMEF also has the right to enter upon the Property to inspect, monitor, and enforce compliance with this Easement at reasonable times. The RMEF also has the right to enter upon the Property with advance notice to and permission from the Grantor or Grantor's agent to undertake observations or ecological studies of natural resources protected by this Easement in a manner that will not unreasonably interfere with the use of the Property by the Grantor.

- C. **Conservation, Enforcement, Injunction, and Restoration:** The RMEF has the right to enjoin any practice or use on the Property that violates the terms of this Easement and to enforce the restoration of such areas of the Property that may be damaged by such prohibited practice or

use and to seek and recover damages and costs, all pursuant to Section VI, below.

D. **Signs:** The RMEF has the right to place signs on the Property which identify the Property as being protected by this Easement. The number, size and location of the signs are subject to the Grantor's approval.

Section III: Permitted Uses and Practices

The following uses and practices of the Grantor, subject to the provisions below and any specific standards or conditions provided in connection with such use or practices, are consistent with the Conservation Purposes of, and are permitted by, this Easement. These uses and practices may not be precluded or prevented by this Easement, except when this Easement requires prior approval of an activity by the RMEF as provided in Section IV of this Easement or when such use or practice is conducted or allowed to take place in a manner which violates the terms of this Easement, poses a serious threat of material damage to the Conservation Values protected by this Easement, or constitutes a prohibited use or practice as set forth in Section V of this Easement. The property shall remain available for farming, ranching, and timber use, as described herein.

A. **Residential Facilities:** No residences or associated outbuildings currently exist on the property

- i. **Single-Family Residence:** The Grantor has the right to construct or place (one) 1 single-family residence in the (3) three acre Residential Lot Site A within the 24.6 acre Building Envelope in Parcel 1 identified as Building Envelope A as described in Exhibit B.
- ii. **Cabins:** The Grantor has the right to construct or place (two) 2 residential cabins on the Property, with each cabin having a footprint of no more than 2,500 square feet in size, which cabins shall be located in no more than (two) 2, (three) 3 acre Residential Lot Sites. The Residential Lot Sites and two cabins can be located in either Parcel 1 or Parcel 2 at a future date. The locations of the two (2) Residential Lot Sites for the cabins will minimize the impacts to the Conservation Values of the Property, and will be subject to RMEF's prior approval pursuant to Section IV and RMEF's approval will not be unreasonably withheld. Both cabins may be constructed in one Residential Lot Site.
- iii. **Outbuildings:** The Grantor may place or construct up to three (3) outbuildings in Residential Lot Site A and up to two (2) outbuildings with each cabin, for maximum of seven (7) outbuildings. The outbuildings associated with each cabin shall be in the Residential Lot Site in which such cabin is located. Both cabins and associated outbuildings may be located in one Residential Lot Site. The outbuildings can be used for necessary purposes associated with the allowed residence or cabins, such as small garages for motor vehicles, sheds and greenhouses, in the Residential Lot Site(s). Structures necessary for utility and power sources necessary for permitted uses under this Easement shall be permitted within the Residential Lot Site(s), shall not be considered outbuildings and can be

in addition to allowed outbuildings. Outbuildings and utility and power structures shall not include dwelling spaces of any kind nor be used for human habitation.

- iv. **RMEF Approval:** Prior to any construction or site preparation of a new residence, cabin or outbuilding, the Grantor must obtain prior approval from the RMEF pursuant to Section IV and will choose the building envelope that will be least impact the Conservation Values of the Property.
- v. **Repair, Modification or Replacement:** Any existing or allowed residence, cabin or associated outbuilding may be repaired or replaced with a structure located within the Residential Lot Site(s), so long as the repaired, modified or replaced residence, cabin or associated outbuilding is allowed by, and consistent with the terms and limitations of, this Easement. The Grantor also has the right to construct, reconstruct, maintain and repair, if necessary, utilities and an access road to each residence, and associated outbuilding, including a road to a cabin site on Parcel B that originates in Parcel A. Any utility corridor and/or roadway must follow the least damaging feasible route.

B. Recreational Uses: Unless otherwise restricted herein, any non-commercial recreational use that does not require, result in or potentially result in, surface alteration or other development of the land or adversely impact the Conservation Values, in particular wildlife and wildlife habitat, is permitted. Hunting, fishing, trapping and predator control, in a manner consistent with state and federal laws and regulations, are expressly permitted on the Property, as are non-motorized recreational activities

C. Ranching Facilities: The Grantor may maintain, replace, and repair, for ranching purposes, the fences, corrals, barns and sheds, and other ranching or agricultural improvements located on the Property as of the date of this Easement, as identified in the Baseline Documentation referred to in Section X, provided such fence, corral, barn, or shed is maintained, replaced or repaired in its original approximate size and general location, and is used for ranching purposes. The Grantor may also construct, maintain, replace and repair, for ranching purposes, corrals, barns, sheds, and other ranching and agricultural improvements, provided that such facilities do not degrade the conservation values of the Property. If any or all of such facilities are removed or destroyed, the Grantor may replace them with similar structures of the same approximate size in the same general locations to serve the same or similar ranching purposes.

Localized fences may be constructed as necessary to control drifting snow without prior approval of RMEF. The Grantor has the right to build, use, maintain, repair, and relocate fences anywhere on the Property, as necessary for permitted agricultural uses, to protect landscaping within the approved Building Envelope(s), and to fence the perimeter of the Property, provided that any new or replacement interior fencing does not unreasonably interfere with the movement of wildlife on or across the Property. The Grantor agrees that in the event that existing interior fencing on the Property is modified, repaired or relocated it

will be built to accommodate the movement of big game wildlife on and across the Property. Big game proof fences are permitted around harvested crops (e.g., haystacks), temporarily around cultivated areas to establish new crops, and other areas within the Residential Lot Sites without prior approval of RMEF. Pursuant to Section V, Subsection R, no other big game proof fences will be constructed on the Property. It is understood that any perimeter fence on the Property will not be constructed as a big game proof fence.

Ranch/agricultural buildings built upon other lands of the Property shall be constructed of a size reasonably necessary to accommodate the structure's ranching or agricultural purposes. No such structure constructed, maintained, repaired or replaced for ranching/agricultural purposes may be used for a dwelling place or human habitation.

D. Utilities/Renewable Energy Options: The Grantor may construct or install utility structures and/or systems, including renewable energy structures such as a windmill and solar panels or geothermal systems, which are necessary for the permitted ranching and recreational activities and/or existing or permitted residential and associated outbuilding facilities on the Property, provided that all such equipment shall be sized and located as to minimize impact on the Conservation Values. Any incidental sale of energy to the grid shall not be deemed in violation of this provision, provided the renewable energy system is primarily designed and scaled to solely provide energy for the Property and its permitted uses. The Grantor may not grant a major utility corridor right-of-way across the Property. However, in the circumstance where eminent domain statutes apply and clear public necessity has been demonstrated to the parties, such a right-of-way may be granted by the mutual agreement of the parties.

E. Roads: The Grantor may maintain existing roads, and with prior approval of the RMEF pursuant to Section IV may construct new roads as necessary for the permitted uses of the Property under the terms of this Conservation Easement. Provided, however, any road shall be sited, constructed, and maintained to minimize adverse effect on the Conservation Values of the Property. New roads may be constructed on a temporary basis to accommodate timber management/ harvest operations.. Other than roads expressly permitted in Sub-Section III A and E, RMEF may refuse to approve any new road which threatens to adversely impact the Conservation Values of the Property. Any road constructed for temporary use must be stabilized and protected from erosion and weed invasion within six (6) months after discontinued use. The Grantor may only grant right-of-way easements across the Property with the prior approval of the RMEF.

F. Range Management and Ranching Activities: The Grantor may use the Property for common or typical ranching and farming activities, including hay production, grazing, feeding, breeding, raising, and managing livestock, provided these activities do not materially jeopardize the Conservation Values. The term "livestock" includes livestock that are considered "traditional" at the time of the execution of this Easement and within the local area surrounding the Property, provided that traditional livestock shall not include any of the game farm animals discussed in Section V, of this Easement.

Sound range stewardship and livestock management are integral to the protection of the wildlife habitat and other Conservation Values protected by this Easement. As such, all

activities affecting range health will be conducted in a manner that fosters and/or maintains the ecological function of the land, water processes and plant community succession.

Livestock grazing shall not exceed a degree of use described as moderate by the United States Department of Agriculture - Natural Resource Conservation Service, as identified in Exhibit C, attached hereto, and shall not materially degrade or deteriorate the range and aquatic resources and wildlife and riparian habitats. It is acknowledged by the Grantor and RMEF that due to the nature of feeding and watering livestock there may be localized areas of high impact on the Property. These high impact areas may permissibly exceed the degree of use described as moderate in Exhibit C, provided such overused areas are not representative of the overall range condition of the Property, comprise less than 10 percent of pasture area, are not a permanent condition on the Property in that they are provided an opportunity to recover from time to time throughout the year, and do not impair or interfere with the Conservation Values protected by this Easement.

If the RMEF, in its sole discretion, decides that the grazing on the Property exceeds the degree of use beyond the localized areas of high impact described above, or the Grantor decides to use a different grazing system, or range management is detrimental to the Conservation Values, the Grantor will prepare or have prepared a Grazing Management Plan ("GMP") to govern grazing activity on the Property. The GMP shall be prepared by a qualified natural resource specialist and reviewed and approved by the RMEF, as provided in Section IV. Any modifications to the GMP shall be reviewed and approved by the RMEF, as provided in Section IV. The RMEF reserves the right to have professional consultants review the GMP and make on-site evaluations to provide recommendations to the RMEF and the Grantor.

If a GMP is required, the GMP shall be prepared within one year of the RMEF's notice that a GMP is required and shall be paid for by the Grantor. The GMP will consider the long-term health of the range resource and wildlife habitat. The GMP will describe appropriate use levels, seasons of use, kinds of livestock that will be grazing and necessary management practices. The GMP must meet all applicable state and federal laws, policies, guidelines, and regulations. Once a GMP is approved by RMEF, all livestock grazing taking place on the Property must comply with the GMP.

G. Division or Subdivision of the Property: Notwithstanding that the Property may have been divided or subdivided prior to this Easement, the Property subject to this Conservation Easement may only be conveyed in no more than separate 3 tracts as expressly permitted in this Easement. The Grantor has the right to divide the larger Parcel A once and convey such Parcel A in two tracts. This division may be accomplished by a boundary line relocation of currently existing parcels or through subdivision at Grantor's discretion. The smaller Parcel B shall not be subdivided, but may be conveyed as a separate tract. The right to divide, subdivide, or take any action that creates an actual or *de facto* division or subdivision of the Property being expressly prohibited in Section V, provided, however, that the Grantor may adjust the boundaries of the Property and convey separately any portions of the Property absorbed into adjoining parcels as a result of such adjustment, a maximum of two times, provided that (i) all land subject to this Easement prior to such adjustment remains subject to this Easement after the adjustment; (ii) the boundary adjustment does not result in any development that could not

occur but for such adjustment or otherwise significantly impact on the Conservation Values; and (iii) the Grantor has obtained the prior approval from RMEF pursuant to Section IV.

Whether conveyed as a single tract or as separate parcels, as expressly allowed by this Subsection III F, any document conveying this Property shall expressly state that the Property is subject to all the terms and conditions of this Conservation Easement. In the event of any division or subdivision of the Property, prior to or simultaneous with the division the Grantor and RMEF shall enter into an amended conservation easement to reflect the division of the Property and the allocation of residential and cabin rights. In the event the Property is conveyed without such amendment and no allocation of the residential or cabin rights is made in the documents of conveyance, none of the additional residences or cabins will be permitted on the transferred parcels. Furthermore, if the Grantor elects to undertake permitted division or subdivision the Property, the Grantor shall notify RMEF at least thirty (30) days prior to such division or subdivision.

Any division of ownership will result in an additional burden on the monitoring and enforcement responsibilities of RMEF; therefore, the transfer of any parcel less than the entire Property described in Exhibit A shall require the payment of a donation to the RMEF's Conservation Easement Protection Fund. The fee shall be equal to one percent (1%) of the actual sales price of the property transferred, however, RMEF may, at its sole discretion, reduce the fee. Once a parcel has been transferred and a fee paid, no further fee will be required unless the parcel is further divided or subdivided. Any tracts so transferred shall remain subject to the terms and conditions of this Easement.

If Grantor elects to divide the Property as herein provided, Grantor must comply with all federal, state and local laws, ordinances and regulations concerning subdivision, as applicable, including the surveying of the parcel to be sold and the submission of the proposed creation of a separate tract to state and local review. Grantor shall furnish RMEF with a copy of any document or conveyance utilized to affect the transfer of the Property within thirty (30) days of the execution of said document or conveyance.

H. Water Resources: In accordance with applicable laws and regulations, the Grantor may maintain, enhance and develop any new or existing water resources on the Property for permitted agricultural and ranching activities, domestic needs, and fish and wildlife uses or activities. Such activities may include stream bank stabilization, improvement to the quality and quantity of water available, and development of watering facilities and ponds, provided such activities are conducted in a manner consistent with state and federal laws and regulations and do not conflict with the intent of this Easement. The Grantor may construct, maintain, replace and repair existing stream crossings, culvert and bridges on the property such as across Little Birch or Big Birch Creek according to all applicable, local, county, state and federal laws and regulations. The Grantor may not sever any water rights from the Property except to legally designate those water use rights for in-stream flows. The Grantor will make reasonable efforts to ensure continuation of instream flows.

I. Agrichemicals and Biological Controls: The Grantor may use agrichemicals and biological controls, including but not limited to insects, fertilizers, biocides, herbicides, pesticides,

insecticides and rodenticides, but only in accordance with all applicable laws and in those amounts and with that frequency of application constituting the minimum necessary to accomplish reasonable ranching and grazing objectives and/or to improve wildlife habitat. The use of such agents shall be conducted in such a manner as to minimize any adverse effect upon the Conservation Values of the Property and to avoid any impairment of the natural ecosystems and their processes.

- J. **Forest Management:** Maintenance of a healthy forest and tree cover is integral to wildlife, wildlife habitat, and water quality. As such, all activities affecting the forest and tree cover will be conducted in a manner that maintains healthy forest conditions over time and sustains and perpetuates the mix of naturally occurring species in representative ages and group sizes, in accordance with sound silvicultural practices and with best management practices for the benefit of wildlife.

The Grantor may: (i) cut trees for posts and poles; (ii) cut and gather dead, dying and down trees commercially or for firewood and to abate disease and infestation; (iii) cut or prune trees and brush, which constitute a hazard to persons, property, or road; (iv) cut trees within the Residential Lot Site(s), and (v) cut trees for non-commercial personal uses on the Property.

All other proposed tree cutting, to perpetuate a healthy forest, or to provide or enhance diverse habitat for elk and other wildlife, and any other commercial timber harvesting, will be conducted in accordance with an approved Timber Management Plan ("TMP") prepared by a qualified natural resource manager or professional forester. The TMP must be approved by the RMEF, as provided in Section IV, prior to any tree cutting activity other than that listed in parts i-iv in the immediately preceding paragraph. The RMEF reserves the right to have professional consultants review the TMP and make on-site evaluations to provide recommendations to the RMEF and the Grantor.

The TMP will encompass the long-term management of the forestland to provide diverse habitat for elk and other wildlife, to perpetuate a healthy forest, and to abate fuels and erosion. Timber harvest activity will be undertaken at times and by methods that will have the most reasonably minimum impact on the use of the Property by wildlife. All applicable state and federal forestry laws, plans, practices, guidelines and regulations must be met. The TMP may incorporate requirements from Forest Practices Acts of other states or jurisdictions as enforceable contractual provisions between the parties.

- K. **Cultivation or Farming:** The Grantor may plow, cultivate and/or farm within the Residential Lot Site(s) and on those lands identified as plowed, cultivated or farmed lands in the Baseline Documentation referred to in Section X, the introduction of any noxious or detrimental species being expressly prohibited in accordance with the provisions of Section V. Any other plowing, cultivation or farming on the Property, including plowing associated with planting food plots or for weed control, must have the RMEF's prior written approval, pursuant to Section IV of this Easement.
- L. **Habitat Improvement:** Subject to other provisions of this Easement, the Grantor reserves the right to undertake habitat improvement projects that will enhance aquatic and terrestrial

wildlife habitat, with an emphasis on improving the land as elk habitat. All such activities shall be undertaken in order to protect or enhance the Conservation Values of the Property. Pursuant to Section V, the Grantor will not introduce into the Property any plant species as defined or listed as noxious or detrimental to wildlife by local, state, or federal land or wildlife agencies. The Grantor may reseed disturbed areas with high quality, certified weed-free seed that is commonly used and that is acceptable to the natural resource agencies in Montana.

- M. **Home-based business.** Persons living on the Property may conduct home-occupancy commercial, or professional, uses contained entirely within a reserved principal residence, cabin or permitted outbuildings within the Residential Lot Site(s), provided any such business does not generate more than a minimal increase in traffic on the Property. Such uses shall involve no outside storage of materials, or storage, or parking of equipment on the Property.
- N. **Residual Rights:** Except as limited by this Easement, the Grantor may exercise and enjoy all rights as owner of the Property, including the right to use the Property for any purpose consistent with this Easement. The rights reserved pursuant to this Subsection N shall not be deemed "expressly reserved" for any other purpose of this Easement.
- O. **Aircraft Facilities:** The Grantor reserves the right to locate, construct, use, repair and maintain one (1) helicopter landing pad which may be surfaced only with grass or gravel capable of handling one helicopter in the approximate location described in Exhibit B that was selected to minimize any impacts to the conservation values of the Property. .
- P. **Commercial Outfitting Business:** The Grantor has the right to conduct a commercial outfitting business on the Property provided it does not impact the Conservation Values of the Property and the business and the hunting, fishing, and outdoor recreational activities are conducted according to applicable local, county, state or federal laws.

Section IV: Prior Approval of Actions by RMEF

If any provision of this Easement requires the Grantor to obtain the prior approval of the RMEF before performing any activity or undertaking any use on the Property, or if the Grantor proposes to undertake any activity or use that is contemplated but not expressly addressed in Section III or Section V of this Easement, then the Grantor shall not perform that activity or undertake that use until Grantor has satisfied the notice and approval provisions of this Section. Nothing in this Section shall prohibit or limit in any manner the ability of the RMEF to obtain writs or injunctive relief relating to any violation of this Easement.

- A. **Grantor's Written Notice:** Prior to the commencement of any activity in or use of the Easement Areas which requires the RMEF's approval or notice to RMEF, the Grantor will notify the RMEF in writing of the activity or use which the Grantor intends to undertake. This notice must inform the RMEF of all material aspects of such proposed activity or use. The Grantor will send such notices to the RMEF by registered or certified mail, return receipt requested, or by recognized commercial courier service, addressed to the RMEF at P.O. Box 8249, Missoula, Montana 59807-8249 and 5705 Grant Creek Road, Missoula, Montana 59808 (for commercial

courier delivery), Attention: Lands and Conservation Department, or to such other address as the RMEF may designate in writing. In the event notice only is required, such notice is complete upon RMEF's receipt of the notice.

B. RMEF's Response: If Grantor's proposed activity requires approval, the RMEF shall have forty five (45) days from the date that it receives such notice to review the proposed activity or use and to approve such use or to notify the Grantor of any objections that it may have.. The objections, if any, shall be based upon the RMEF's opinion that the proposed activity or use may cause damage to the Conservation Values and is therefore inconsistent with the Conservation Purpose and/or provisions of this Easement. If in RMEF's sole opinion, the notice does not inform RMEF of all material aspects of such proposed activity or use, the RMEF's response may be a temporary objection, specifically requesting additional material information. RMEF shall then have thirty (30) days from the date it receives additional requested information, as indicated by the registered or certified return receipt, to review the proposed activity, use, and to notify the Grantor of any objections that it may have to the activity, or use. If, in the RMEF's judgment, the proposal set forth by the Grantor can be modified to avoid damage to the Conservation Values and therefore conform to the Conservation Purposes and provisions of this Easement, then the response shall inform the Grantor of the manner in which the proposed activity or use can be modified to be consistent with this Easement. Except as provided in Subsection C of this Section, the Grantor may commence or conduct the proposed activity or use only if it receives the RMEF's express written approval, and only in the manner explicitly proposed by the Grantor and approved by the RMEF. The RMEF will send such response to the Grantor by registered or certified mail, return receipt requested, addressed to the Grantor at PO Box 806, Seeley Lake, MT 59868, or to such other address as the Grantor may designate in writing.

C. RMEF's Failure to Respond: If the RMEF fails to post its response to a proposal sent to it by the Grantor within forty five (45) days after it receives the proposal, then the proposed activity or use shall automatically be deemed consistent with the terms of this Easement, and the RMEF will have no further right to object to the activity, use or enterprise described in the proposal.

D. Force Majeure: The Grantor will not be obligated to send any prior notice to the RMEF, and the RMEF will not be entitled to bring any action against the Grantor, with respect to any prudent, good faith activity undertaken by the Grantor to prevent, abate, or mitigate injury to the Property immediately before, during, or immediately following fire, flood, storm, earth movement, acts of war, and similar causes beyond the control of the Grantor. The Grantor will promptly inform the RMEF of injury to the Property caused by such events or actions. In the event the Grantor wishes to take reasonable actions, not otherwise permitted under this Easement to prevent, abate or mitigate less immediate threats to the Property, Grantor and RMEF must mutually agree in writing to any action. RMEF shall not unreasonably withhold approval of any such action that does not materially impact the Conservation Values this Easement protects.

Section V: Prohibited Uses and Practices

Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement or which is likely to cause material damage to the Conservation Values is expressly prohibited. The Grantor states and agrees that the following uses and practices, though not an

exhaustive recital of inconsistent uses and practices, are deemed to be inconsistent with the purposes of this Easement, and shall be prohibited.

A. **Commercial or Industrial Facilities and Activities:** Any commercial activities that damage or interfere with the Conservation Values or adversely impact wildlife or wildlife habitat are prohibited. Industrial activities are prohibited. The Grantor will not establish, allow or conduct any commercial or industrial facilities or activities on the Property, other than those expressly permitted in any Subsection of Section III of this Easement. Prohibited commercial uses include, but are not limited to, any restaurant, night club, campground, trailer park, bed and breakfast, motel, hotel, commercial swimming pool, snowmobiling, gas station, equestrian park, ski area, retail outlet or facility for the manufacture or distribution of any product that would likely cause material damage to the Conservation Values.

B. **Game Farming or Game Farm Animals:** The Grantor shall not construct, conduct, or operate a game farm, or raise or hold game farm animals or alternative livestock on the Property. Game farm animals include penned, enclosed or privately-owned caribou, black bear, grizzly bear, mountain lion, white-tailed deer, mule deer, black-tailed deer, coues deer, elk, moose, antelope, mountain sheep, mountain goat, red deer, and any other cloven-hoofed ungulate which is indigenous to Montana and any non-indigenous or exotic cloven-hoofed ungulate which could interbreed with or spread disease to any cloven-hoofed ungulate indigenous to Montana, provided however that "traditional" domestic livestock, including domestic cattle, domestic sheep, domestic goats, domestic pigs, domestic buffalo and domestic llamas are not included in the definition of game farm animals.

C. **Wildlife Harassment:** Harassment of elk or other wildlife, as defined by Montana law, by people, vehicles or domestic animals is prohibited. Lawful hunting and hazing of wildlife as directed and recommended by the local state wildlife management agency as a management technique is not wildlife harassment.

D. **Alteration of Watercourses and Topography:** The Grantor shall not change, disturb, alter, excavate, or impair any watercourse or wetland on the Property, except as expressly reserved in Section III of this Easement. The Grantor will not change the topography of the surface of the Property except as incidental and necessary to expressly reserved uses and activities.

E. **Noxious and Detrimental Species.** The Grantor shall not introduce into the Property any plant species designated as noxious or detrimental to wildlife by local, state, or federal land or wildlife agencies.

F. **Subdivision:** Notwithstanding that the Property may have been subdivided prior to the granting of this Easement, except as expressly reserved in Sub-Section III F. of this Easement, the Grantor does not have the right to divide, subdivide, or take any action which creates an actual or *de facto* subdivision of the Property

G. **Construction:** The Grantor shall not construct any structures or facilities except as expressly reserved in Section III. The Grantor shall not construct, modify or use any structure for human habitation or dwelling except for the residential structures expressly reserved in Section

III.

H. **Roads:** The Grantor shall not construct any new roads except as expressly reserved in Section III.

I. **Off-Road Vehicles:** The Grantor shall not use vehicles off of existing roads and travelways in a manner that may result in significant erosion or compaction of the soil, impact the natural appearance of the Property, damage or destruction to vegetation, or interference with use of the natural habitats by the wildlife species occurring on the Property. Off-road vehicle use shall be expressly allowed for uses necessary for fire suppression, emergency or severe weather access; normal maintenance, reserved agricultural uses, as may be necessary in property management and for retrieval of harvested big game animals, and such limited use is therefore expressly permitted, provided that all reasonable efforts are made to minimize any adverse impact of the use, consistent with the terms and intent of this Easement. Any off-road vehicle use must not constitute wildlife harassment.

J. **Commercial Feed Lot:** The Grantor shall not establish or maintain any commercial feedlot. For the purposes of this Easement, a commercial feed lot shall be defined as a confined area or facility where livestock are fed and fattened for commercial slaughter as opposed to the grazing of livestock on growing vegetation in open fields or pastures..

K. **Dumping and Deposit of Hazardous Waste:** No trash, debris, ashes, sawdust, and other non-compostable refuse may be dumped or otherwise disposed of on the Property, except that waste generated by the uses permitted in this Easement, and permitted by applicable state and federal laws may be disposed of on the Property so long as there are no adverse impacts to the Conservation Values. If the Grantor becomes aware of any accidental, illegal, or other placement or spilling of hazardous waste or toxic materials on the Property, the Grantor shall notify the RMEF on a timely basis.

L. **Utilities:** Other than those expressly reserved in Section III, additional utility structures and systems are prohibited.

M. **Mineral Activities:** There shall be no extraction or removal of minerals by any surface mining method within the meaning of Internal Revenue Code Section 170(h)(5)(b) and the regulations promulgated thereunder and any activities in compliance with IRS Section 170(h)(5)(b) and the regulations promulgated thereunder, must be exercised only for non-commercial use on the Property. Any surface disturbance resulting from permitted exploration or extraction activities shall be restored upon completion of such activities to a condition similar or equivalent to its state prior to the disturbance by restoring soils and replanting suitable native vegetation. There shall be no exploration for or extraction of oil, gas, or other minerals, by any sub-surface method if such activity is inconsistent with the Conservation Purposes for which this Easement was granted.

N. **Timber Harvesting:** The Grantor does not have the right to harvest timber on the Property except as expressly reserved in Section III.

- O. **Billboards:** The Grantor shall not construct, maintain, or erect any commercial signs or billboards on the Property. Small signage may, however, be displayed to state the name of the owner and the Property and that the Property is protected by this Easement, to prohibit any unauthorized entry or use, or to advertise for the sale of the Property or goods produced on the Property.
- P. **Aircraft Facilities:** The Grantor shall not construct or erect any aircraft facilities or aircraft landing facilities on the Property other than those allowed for in Section III O.
- Q. **Cultivation or Farming:** Farming, plowing or any type of cultivation outside of existing cultivated areas is prohibited, except that gardening for personal use and residential landscaping in the Residential Lot Site(s) are permitted.
- R. **Game Proof Fences:** Grantor shall not construct any big game proof fences, defined as any fence which cannot be crossed by elk, deer or other big game wildlife, except in the Residential Lot Site(s), and temporarily placed around sensitive agricultural areas such as cultivated crops experiencing depredation by big game as documented by the local state wildlife agency, calving areas, etc. or as specifically permitted in Section III.

Section VI: Breach, Restoration, and Remedies

- A. **Right to Injunction:** The Grantor and RMEF recognize that money damages, or other non-injunctive relief, may not adequately remedy a violation of the terms of this Easement. Therefore, the Grantor and RMEF hereby agree that any violation shall be subject to injunctive proceedings, including the imposition of temporary restraining orders, preliminary injunctions, specific performance, or any other legal means. The Parties also agree that no proof of damages, or the inadequacy of other remedies, shall be required of either Party, in seeking any such injunctive relief.
- B. **Right to Restoration.** In addition, RMEF shall have the right, to enforce the restoration of any, and all, of the Conservation Values damaged by activities in violation of this Easement. Such restoration shall be, as nearly as possible, to the condition that existed prior to such injury.
- C. **Right to Recover Damages.** In the event of a violation of the terms of this Easement, in addition to the other remedies provided for in this Section VI, and any other remedies available in law or equity, the RMEF shall also be entitled to recover all damages necessary to place the RMEF in the same position that it would have been in before the violation, including, but not limited to, the costs of restoration of the Property as provided in Section VI.B above.
- D. **Costs and Attorney's Fees.** In addition to any other damages to which it may be entitled, RMEF shall be entitled to recover the costs of enforcement of any of the terms of this Easement, including actual attorney's fees, expenses and court costs, provided that it is, at least in substantial part, the prevailing party in any such action.
- E. **Cumulative Remedies:** The remedies of the RMEF set forth in this Easement are cumulative. Any, or all, of the remedies may be invoked by the RMEF if there is an actual or

threatened violation of this Easement.

F. **Delay in Enforcement:** Any forbearance on behalf of the RMEF to exercise its rights hereunder in the event of any breach by Grantors or their respective heirs, personal representatives, or assigns shall not be deemed or construed to be a waiver of the RMEF's rights hereunder in the event of any subsequent breach.

G. **Other Parties:** These remedies may be sought by any other party authorized by state law to enforce the terms and conditions of Conservation Easements.

Section VII: Costs and Taxes

The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including responsibility for the control of noxious weeds in accordance with any applicable laws. The Grantor shall pay before delinquency any and all lawful taxes, assessments, fees, and charges (collectively "taxes") levied by competent authority on the Property. The RMEF is authorized, but in no event obligated, to make or advance any payment of taxes upon 3 days prior written notice to the Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the Grantor shall be obligated to repay RMEF for all costs it incurs in making such payment, together with interest at the maximum rate allowed by law until all sums are paid by the Grantor.

Section VIII: Indemnity

The Grantor shall hold harmless, indemnify, and defend the RMEF and the RMEF's members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, actual attorney's fees, arising from or in any way connected with the presence or release of any hazardous material or substance of any kind on the Grantor's Property. This paragraph shall not apply in the case of any hazardous material or substance in any manner placed on the Grantor's Property by the RMEF or the RMEF's representatives or agents.

Section IX: Assignment of Easement

The RMEF may not transfer or assign its interest in the Property created by this Easement except to a "qualified organization" (within the meaning of §170(h) (3) of the Internal Revenue Code) which is organized or operated primarily or substantially for one or more of the conservation purposes specified in §170(h)(4)(a) of said Code. Any such qualified organization shall agree to enforce the conservation purposes of this Easement.

Section X: Baseline Documentation

The parties agree that the specific Conservation Values of the Property and other natural resources and development on the Property are documented in a report furnished by the Grantor

to the RMEF to be kept on file at the offices of the RMEF, which documentation ("Baseline Documentation") the parties agree provides an accurate representation of the Property as of the effective date of this Easement in accordance with Treasury Regulation §1.170A-14(g)(5)(i). The Baseline Documentation is intended to serve as an objective baseline for monitoring compliance with the terms of this Easement. Notwithstanding the foregoing, in the event of a controversy arising with respect to the nature of the biological and/or physical condition of the Property, the parties shall not be foreclosed from using any and all other relevant or material documents, surveys, reports and other information to assist in the resolution of that controversy.

In the event that range or habitat conditions significantly improve on the Property, the parties may agree to prepare an updated baseline documentation to reflect the improved conditions. The updated inventory of baseline data must be approved in writing by the parties. Upon approval by the parties, the updated baseline documentation will be used as the baseline for future monitoring and compliance with the terms of this Easement.

Section XI: Extinguishment of Development Rights

The Grantor and RMEF hereby acknowledge the extinguishment of all development rights except as specifically reserved by the Grantor in Section III, herein. For the purpose of this Section XI, development rights shall be deemed to include all potential rights that are now or hereafter allocated to or inherent in the division of the Property or density for industrial, commercial or residential units on the Property including, but not limited to, all subdivision and density rights as well as the right to use any of the acreage of the Property in any acreage calculation having the effect of creating or contributing to additional development on or off the Property. The Grantor unconditionally and irrevocably relinquishes the right to transfer any such development rights. The Grantor and RMEF agree that all such development rights are hereby terminated and extinguished.

Section XII: Extinguishment or Involuntary Conversion

The Grantor and the RMEF agree that the conveyance of this Easement gives rise to a property right, immediately vested in the RMEF. The RMEF's property right in this Easement shall be based on the condition and improvements on the Property at the time that the Easement is established, and this condition shall be documented as referred to in Section X, above. For purposes of this Section, the RMEF's property right shall be deemed to have a fair market value at least equal to the proportionate value that this Easement bears to the entire value of the Property as a whole at the time of its creation. In the event Grantor undertakes an appraisal in association with the conveyance of this Easement, the values established in that appraisal shall be used to determine the proportionate value that the Easement bears to the entire value of the Property as a whole at the time of its creation. That proportionate value of the RMEF's property rights shall remain constant. Should a change in conditions give rise to the extinguishment of this Easement, as provided in Treasury Regulation §1.170A-14(g)(6)(i), or extinguishment of a portion of the RMEF's rights under this Easement due to an exercise of eminent domain, a condemnation action, or an involuntary conversion of the Property or a portion of the Property, the RMEF shall be entitled to a portion of the proceeds at least equal to such proportionate value of this Easement as established at the time of its creation, unless otherwise provided by Montana law.

All interpretations of the RMEF's property rights shall follow Treasury Regulation §1.170A. The Grantor hereby agrees to provide RMEF with a copy of the appraisal used to support any tax deduction associated with the donation of this Easement, for valuation purposes.

In the event all or part of the Property is taken in exercise of eminent domain, or under claim of rights of eminent domain, by public, corporate, or other authority, by condemnation action or an involuntary conversion, so as to abrogate the restrictions imposed by this Easement, the Grantor shall and the RMEF may join in appropriate actions to recover the full value of the Property taken and all incidental or direct damages resulting from such taking. All reasonable expenses incurred by the Grantor and the RMEF in any such action shall first be reimbursed out of the recovered proceeds; the remainder of such proceeds shall be divided between the Grantor and the RMEF in proportion to their interest in the Property, as provided in the first paragraph of this Section. If the recovered proceeds are not sufficient to reimburse all reasonable expenses incurred by the Grantor and the RMEF, the recovered proceeds shall be divided between the Grantor and the RMEF in proportion to their reasonable expenses.

If a subsequent unexpected change in conditions surrounding the Property render the Conservation Purposes of this Easement impossible or impractical to accomplish, this Easement may be extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction as provided for in Treasury Regulations Section 1.170A-14(g)(6)(i). All of RMEF's proceeds, from such a subsequent sale, exchange or involuntary conversion of all or any portion of the Property, shall be used by RMEF in a manner consistent with the protection of the Conservation Purposes of the original conveyance of this Easement.

XIII. Subsequent Sale

The Grantor agrees that reference to this Easement will be made in any subsequent deed, and any other legal instrument, by means of which any interest in the Property (including any leasehold interest) is conveyed, and that a reference will be made that any use of this Property shall be subject to the terms and conditions of this Easement. The Grantor will notify the RMEF in writing of any conveyance of interest by sending written notice to the RMEF as provided in Section IV. The Grantor agrees to provide notice of this Easement to successor owners of interest, and to any potential purchasers or subsequent owners. In the event the Grantor elects to sell the Property, the Grantor agrees to provide notice of this Easement in any sale or solicitation materials or information. Any failure to comply with the terms of this paragraph shall in no manner render this Easement or any provisions of this Easement unenforceable. Failure to comply with the requirements of this paragraph shall in no way impact the perpetual nature or enforceability of this Easement.

Section XIV: Miscellaneous Provisions

A. **Partial Invalidity:** If any provision of this Easement, or the application of this Easement, or the application of this Easement to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement, and the application of such provisions to persons or circumstances other than those to which it is found to be invalid, shall not be affected thereby.

B. **Enforcement:** The Grantor intends that enforcement of the terms and provisions of this Easement shall be at the discretion of the RMEF, and that the RMEF's failure to exercise its rights under this Easement, in the event of any breach of this Easement by the Grantor, shall not be deemed or construed to be a waiver of the RMEF's rights under this Easement in the event of any subsequent breach.

C. **"Grantor" and "RMEF":** The term "Grantor," as used in this Easement, and any pronouns used in place thereof shall mean and include the above-named Grantor, and his heirs, personal representatives, executors, successors and assigns. In the event the Property encumbered by this Easement has been transferred by the original Grantor, then the term "Grantor" shall then refer to such successor or assign. The term "RMEF," as used in this Easement, and any pronouns used in place thereof shall mean the Rocky Mountain Elk Foundation, Inc., and its successors and assigns.

D. **Titles:** Section and Subsection titles and subtitles are for convenience only and shall not be deemed to have legal effect.

E. **Liberal Construction:** This Easement shall be liberally construed in favor of maintaining the Conservation Values of the Property, and in accordance with the Montana Open-Space Land and Voluntary Conservation Easement Act, Mont. Code Ann. §§ 76-6-101 through 76-6-211 (2007).

F. **Perpetuity of Easement:** This Easement shall run with and burden the title to the Property in perpetuity and is binding upon, and will inure to the benefit of the Grantor's and the RMEF's successors in interest and assigns. All subsequent owners of the Property are bound to all provisions of this Easement to the same extent as the Grantor.

G. **Governing Law:** This Easement will be construed in accordance with Montana law.

H. **Entire Agreement:** This Easement sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.

I. **Compliance with Law:** All uses and practices permitted by this Easement, including the Permitted Uses, will not exceed or violate but will be in full compliance with all applicable state and federal laws.

J. **Amendment:** If an amendment to or modification of this Easement is made, the amendment or modification must be in compliance with the terms of this Easement, must strengthen the protection of the Conservation Values protected by this Easement and may not affect its perpetual duration. Any amendment must be in writing, signed by both the parties and any other party required by law, and recorded in the official records of Meagher County, Montana. The Grantor or, in the event of the Grantor's death, the personal representative of the Grantor, may amend this Easement to be more restrictive regarding commercial recreational activities, if needed, in order to comply with the *de minimis* standard set forth in 26 U.S.C. §2031(c).

K. **Effective Date:** This Easement shall be effective when signed by all parties, and it is the intent of the parties that this Easement shall be effective in the year 2009.

IN WITNESS WHEREOF, the Grantor and the RMEF execute this Easement.

GRANTOR:

RMEF:

By

Kevin Wetherell
Kevin Wetherell

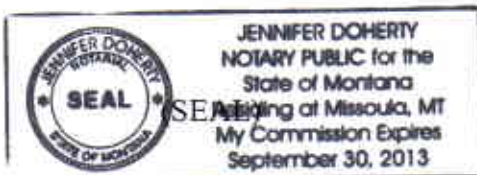
By

Rodney J. Triepke
Rodney J. Triepke, Chief Operating Officer

STATE OF MONTANA)
) ss.
County of Missoula)

The foregoing instrument was acknowledged before me this 16th day of December, 2009, by Kevin Wetherell.

IN WITNESS WHEREOF, I hereunto set my hand and affix my notarial seal on the date above written.

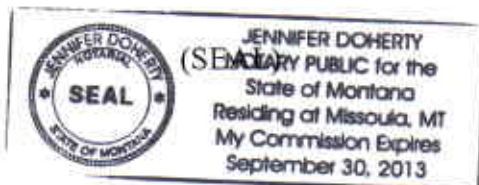


Jennifer Doherty (signature)
Jennifer Doherty (printed name)
Notary Public
Residing at Missoula, MT
My commission expires Sept 30, 2013

STATE OF MONTANA)
) ss.
County of Missoula)

This instrument was acknowledged before me on Dec. 16th, 2009, by Rodney J. Triepke, who is known to me to be the Chief Operating Officer of the Rocky Mountain Elk Foundation, Inc. for which the instrument was executed.

IN WITNESS WHEREOF, I hereunto set my hand and affix my notarial seal on the date above written.



Jennifer Doherty (signature)
Jennifer Doherty (printed name)
Notary Public for the State of Montana
Residing at Missoula, MT
My commission expires Sept 30, 2013

Exhibits:

- A- Legal Description of Property
- B- Map of Property
- C- NRCS Degree of Use

Exhibit A

Legal Description

Real property in the County of Meagher, State of Montana, described as follows:

PARCEL I:

Township 9 North, Range 4 East, M.P.M., Meagher County, Montana

Section 35: E $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$,
S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$

PARCEL II:

Township 9 North, Range 4 East, M.P.M., Meagher County, Montana

Section 35: NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$

PARCEL III:

Township 8 North, Range 4 East, M.P.M., Meagher County, Montana

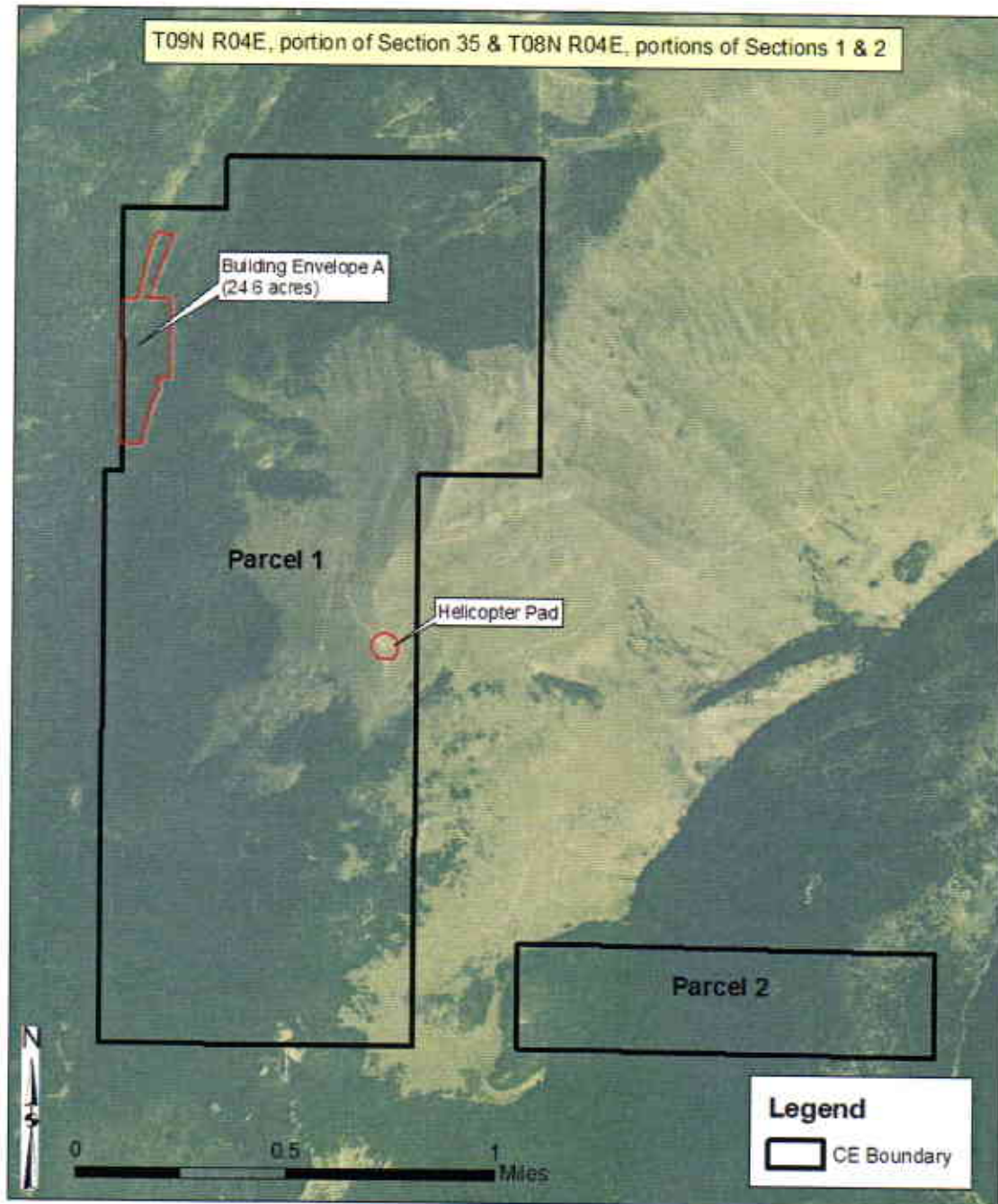
Section 1: S $\frac{1}{2}$ S $\frac{1}{2}$

Section 2: SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and Government Lots 2, 3, 4, 5, 6, 7, 10,
11, and 12

PARCEL IV:

All of Tract 5, located in Section 35, Township 9 North, Range 4 East, P.M.M., Meagher County, Montana according to Certificate of Survey : To Retrace an Existing Parcel, filed for recorded May 31, 2005 in Book F&I, page 413, as Document No. 114559, in the office of the County Clerk and Recorder of said Meagher County.

Exhibit B
Birch Creek Conservation Easement
Meagher County, Montana



Please Note: This map is intended as a general visual reference only.
Refer to the full legal description for details.

Exhibit C**NRCS Degree of Use**

UNITED STATES DEPARTMENT OF AGRICULTURE
Soil Conservation Service

MT-JS-WS-502
RANGE (Rev. July 1986)

Guide to Degree of Use

<i>Degree of Use</i>	<i>Description</i>
Unused 0 percent	No livestock use.
Slight 1-20 percent	Practically undisturbed. Only choice areas and Choice forage grazed.
Moderate 21-40 percent	Most of the accessible range shows grazing. Little or no use of poor forage. Little trailing to grazing.
Full (<i>This or less Use is Proper Use</i>) 41-50 percent	All fully accessible areas are grazed. Major sites have key forage species properly utilized. Overused areas less than 10 percent of pasture area.
Close 51-60 percent	All accessible range plainly shows use and major sections are closely cropped. Livestock forced to use much poorer forage.
Severe 61-80 percent	Key forage species almost completely used. Low-value forage carrying grazing load. Trampling damage is wide-spread in accessible area.
Extreme 81-100 percent	Range appears stripped of vegetation. Key forage species are weak from continual grazing of regrowth. Poor quality forage closely grazed.

1. Determine the degree of use at or near the end of the grazing period.
2. Proper use determination is based on key species on major sites, not total vegetation.
3. When properly grazed, the vegetation left will supply adequate cover for soil protection and will maintain or improve the quantity and quality of desirable vegetation.

Proper use of Annual Growth Depends on SEASON OF USE:

Spring Use	(Moderate)
Summer and Early Fall Use	(Full)
Late Fall and Winter Use	Dormant season (Close)

Remarks: