Conservation Easement Appraisal of the Douglas C. and Ronda M. Potter Property

Randall A. Biehl, RPRA
Biehl Appraisal Service, LLC
809 W Hallmark Ln
Missoula, Montana 59804
USPAP
APPRAISAL REPORT

of the
Douglas C. and Ronda M. Potter Property

CONSERVATION EASEMENT

3,109.205 Deeded Acres

LOCATED EAST OF HELENA, MONTANA
IN THE SPOKANE HILLS AREA

LEWIS & CLARK AND BROADWATER COUNTY

Effective Date: December 18, 2019

Prepared for:

Mr. Travis Vincent
Prickly Pear Land Trust
40 W. Lawrence Street, Suite A
Helena, MT 59601
# TABLE OF CONTENTS

Transmittal Letter ................................................................................................................................. 4

Summary of Salient Facts .......................................................................................................................... 7

Property Identification ............................................................................................................................... 11

Authorization ............................................................................................................................................ 12

Scope of the Appraisal ............................................................................................................................... 12

Client, Intended Users, and Intended Use ............................................................................................. 14

Legal Description ...................................................................................................................................... 14

Definition of Value and Distribution of Value ...................................................................................... 18

Date of Value Estimate ............................................................................................................................. 19

Type of Report, Competency Statement ............................................................................................... 19

Property Rights Appraised ...................................................................................................................... 20

Ownership and Previous Sales History ................................................................................................. 21

Use History and Present Use ................................................................................................................ 21

Area-Regional Analysis .......................................................................................................................... 22

Property Description ............................................................................................................................... 31

  Location and Access ............................................................................................................................. 31

  Land Description ................................................................................................................................. 32

  Water Rights ........................................................................................................................................ 38

  Aesthetic and Recreational Amenities ............................................................................................... 38

  Mineral Rights ..................................................................................................................................... 39

  Utilities ................................................................................................................................................ 39

  Easements and Encroachment ............................................................................................................ 39

  Zoning ................................................................................................................................................ 39

  Improvements .................................................................................................................................... 39

  Soils Description ................................................................................................................................. 42

  Hazards/Condition/Environmental ................................................................................................... 44

  Timber ............................................................................................................................................... 45
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appraisal Process</td>
<td>61</td>
</tr>
<tr>
<td>Highest and Best Use – Before Easement</td>
<td>65</td>
</tr>
<tr>
<td>Approaches to Value</td>
<td>70</td>
</tr>
<tr>
<td>Sales Comparison Approach – Before Easement</td>
<td>71</td>
</tr>
<tr>
<td>Reconciliation – Before Value</td>
<td>81</td>
</tr>
<tr>
<td>Valuation After Value - Introduction</td>
<td>82</td>
</tr>
<tr>
<td>Highest and Best Use – After Value</td>
<td>90</td>
</tr>
<tr>
<td>Approaches to Value – After Value</td>
<td>95</td>
</tr>
<tr>
<td>After Easement Valuation</td>
<td>96</td>
</tr>
<tr>
<td>Reconciliation – After Value</td>
<td>102</td>
</tr>
<tr>
<td>Determination of Effect on Value</td>
<td>102</td>
</tr>
<tr>
<td>Assumptions and Limiting Conditions</td>
<td>103</td>
</tr>
<tr>
<td>Certificate</td>
<td>106</td>
</tr>
<tr>
<td>Exhibits</td>
<td>108</td>
</tr>
</tbody>
</table>
December 31, 2019

Mr. Travis Vincent
Prickly Pear Land Trust
40 W. Lawrence Street, Suite A
Helena, MT 59601

RE: Conservation Easement Appraisal of the Douglas C. and Ronda M. Potter Property

Dear Mr. Vincent:

In accordance with your request, I have personally inspected and appraised the Montana real property ownership referenced herein as the Douglas C. and Ronda M. Potter Property. This appraisal assignment entails the evaluation of a 3,109.205+- acre property that is located east of Helena on the west side of the Spokane Hills of the Helena Valley.

The subject is a diverse property with agricultural and recreational resources. Situated on various tiers, the subject is a mixture of land uses. There is dry cropland fenced separate, grassland with scattered ponderosa pine on elevated benches with dry cropland interspersed, and steeper open pasture with scattered timber; all with a westerly slope. There is dry cropland on a bench west of Spokane Creek with a northeasterly slope.

The aesthetics and recreational attributes of the property are dominated by aesthetic views of the Continental Divide of the Rocky Mountains, Big Belt Mountains and the Elkhorn Mountains. With diverse land uses and habitats, the property provides on-site habitat for area wildlife dominated by elk and deer. The property lies adjacent to BLM property in the Spokane Hills area.
The purpose of this appraisal is to provide an opinion of market value of a proposed conservation easement area before placement of the easement and an opinion of market value of the proposed easement area as if the easement is in place. The difference between the two values will be the effect on value of the conservation easement on the subject property.

The intended use of the appraisal is to estimate the effect on value of a proposed Prickly Pear Land Trust (PPLT) conservation easement on the market value of the subject. It is for use by PPLT and funding source Lewis & Clark County. The funding source is considering the acquisition of a proposed conservation easement interest in the subject property.

This appraisal is completed on the basis of providing an opinion of market value under two separate ownership conditions. Initially, the property is valued in its fee simple estate – this conclusion renders what is set forth in this appraisal as the before value. The property is then appraised based on its allowed uses as stipulated by a conservation easement to determine its after value. In each valuation, a different set of market evidence is studied.

For purposes of this assignment, a hypothetical condition is used in that the proposed conservation easement is in place as of the effective date of this report and for the purpose of estimating the after value. Use of this hypothetical condition does affect the assignment results and conclusions.

In addition, there are 2 other hypothetical conditions that are:

- Concurrently at closing, all property will be owned by Douglas C. Potter and Ronda M. Potter;

- There is an easement for unlimited uses for ingress and egress and utilities across other lands owned by Douglas C. and Ronda M. Potter but excluded from the valuation.

Use of these hypothetical conditions do have an effect on the assignment results and conclusions.

The client is the Prickly Pear Land Trust. The intended users include the Prickly Pear Land Trust, Lewis & Clark County, the owners and their professional advisors.
A copy of the subject’s proposed conservation easement was provided in conjunction with this assignment. The easement limits much of the property to open space. The property can have two splits, but any further subdivision rights are eliminated. Residential use is limited to a designated building envelope.

The proposed conservation easement imposes restrictive elements and obligations that have diminished the bundle of rights controlled by the real property ownership. The property has fewer use or operational alternatives, as the overall use has been perpetually and legally restricted. The easement limits or affects ownership rights and diminishes its investment opportunities.

Given the characteristics and location of the subject property, as well as the indications of the sales data set forth in this report, the market value of the property has been reduced by the placement of the conservation easement as described herein. I conclude the following values as of December 18, 2019:

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before Easement Value:</td>
<td>$5,694,000</td>
</tr>
<tr>
<td>After Easement Value:</td>
<td>$4,139,000</td>
</tr>
</tbody>
</table>

I conclude that the value of the ownership rights surrendered or encumbered by placement of the easement, which coincides with the effect on value due to imposition of the conservation easement is $1,555,000.

If you have any questions or would like to discuss this appraisal report further, please contact me.

Thank you for the opportunity to work with you and the Prickly Pear Land Trust and on behalf of Douglas C. & Ronda M. Potter and Lewis & Clark County.

Respectfully Submitted,

Randall A. Biehl, RPRA
Real Property Review Appraiser #23688
General Certified Appraiser, Montana (#326)
Summary of Salient Facts – Potter Property

CLIENT: The Prickly Pear Land Trust

INTENDED USERS: Owners of the subject property, professional advisors, Prickly Pear Land Trust, and Lewis & Clark County.

OWNERSHIP: Douglas C. & Ronda M. Potter

COUNTY: Lewis & Clark and Broadwater

LOCATION: East of Helena, Montana in the Spokane Hills area.

ACRES: 3,109.205 +/- deeded acres.

LEGAL DESCRIPTION: See report.

ACCESS: Paved State Highway 287 and Matt Staff Road, a gravel road.
SUBJECT PROPERTY: The appraised property encompasses 3,109.205 +/- deeded acres. It is a diverse property in terms of land uses and topography. It includes dry grassland with scattered timber situated on elevated benches, dry cropland on benches and in the creek bottom and a steeper timbered area on the eastern boundary. It is an aesthetically appealing property with an expansive viewshed on the upper bench.

INTENDED USE OF THE REPORT: For use by Lewis & Clark County and the Prickly Pear Land Trust and other intended users in connection with the acquisition of a proposed conservation easement interest in 3,109.205 +/- acres. Intended use is to determine the effect on value of a conservation easement.

EFFECTIVE DATE OF THE APPRAISAL: December 18, 2019

DATE OF THE APPRAISAL REPORT: December 31, 2019

CURRENT USE: Predominately agriculture for pasturing livestock and dry cropland. Inherent are the aesthetic and recreational attributes of the property.

PROPERTY INTEREST APPRAISED: Before Value - Surface rights of the fee simple estate less any title exceptions of record. Included are water rights.
After Value - Fee simple estate of the surface rights, subject to any title exceptions, including the rights conveyed in the conservation easement. It is a partial ownership interest. Included are water rights.

**PURPOSE OF THE APPRAISAL:**
To provide an opinion of market value of the proposed conservation easement area before placement of the easement and an appraisal of the proposed conservation easement area as if the easement is in place.

**BEFORE HIGHEST AND BEST USE:**
Rural recreational investment property suitable for residential homesite(s). Agriculture is a complementary use.

**AFTER HIGHEST AND BEST USE:**
Restricted recreational/agricultural property with one building envelope. The conservation easement area is allowed to be divided twice with a maximum of three parcels. Appeal as an investment property is diminished due to the severance of rights.

**HYPOTHETICAL CONDITIONS:**
i) For purposes of the after valuation of the subject as encumbered, the proposed conservation easement is in place as of the effective date. Use of this hypothetical condition does have an effect on the assignment results and conclusions.
ii) Concurrently at closing, all property will be owned by Douglas C. Potter and Ronda M. Potter. Use of this hypothetical condition does have an effect on the assignment results and conclusions.

iii) There is an easement for unlimited uses for ingress and egress and utilities across other lands owned by Douglas C. & Ronda M. Potter but excluded from the valuation. Use of this hypothetical condition does have an effect on the assignment results and conclusions.

**VALUE CONCLUSION:**

**BEFORE:** $5,694,000

**AFTER:** $4,139,000

**Effect on Value:** $1,555,000
A. Identification, Authorization, and Scope of the Appraisal

1. Property Identification: The purpose of this assignment is to consider the effect on value of a conservation easement on 3,109.205 acres that are located east of Helena in the Spokane Hills area of west central Montana.

The subject is a diverse property with agricultural and recreational resources. It is a diverse property in terms of land uses and topography. It includes dry cropland, dry grassland with scattered ponderosa pine, and a creek bottom. The subject encompasses multiple tiers that are inclusive of the creek bottom, elevated benches and steeper hill sides that affords a vast viewshed of the Helena Valley, Rocky Mountain Continental Divide, Elkhorn Mountains, and Big Belt Mountains.
2. Authorization: I was authorized by Ms. Mary Hollow, with Mr. Travis Vincent being the contact person, of the Prickly Pear Land Trust to prepare a USPAP appraisal of the subject property.

The purpose of the appraisal is to provide an opinion of market value of the proposed easement area before placement of the conservation easement and an appraisal of the proposed easement area as if the easement is in place. The difference between these two values will be the effect on value of the conservation easement on the subject property.

The appraisal is to be used by Prickly Pear Land Trust and Lewis & Clark County in conjunction with their Open Space Program for funding purposes.

3. Scope: The scope of the appraisal process required for this valuation is specific to the needs of the intended users/client and the use of the report. This report serves a specific purpose in that it estimates the effect on value attributed to a conservation easement on 3,109.205 acres. The appraisal is being completed to comply with the Uniform Standards of Professional Appraisal Practice (USPAP).

In conjunction with this assignment, an initial inspection of the subject was completed with the owner Douglas Potter on October 24, 2019. Other cursory inspections of the subject were conducted on November 17, 2019 and on December 18, 2019 which coincides with the effective date of the appraisal.

For purposes of the inspections, the subject was viewed from public roadways and private roads/trails within the interior of the property. Portions of the property were viewed from strategic locations that provided an overview of the property and the area. In conjunction with the inspection, I have relied upon aerial photographs, GPS readings, satellite imagery, topography maps, parcel maps, and discussions with parties familiar with the property.

When appropriate, public agencies (USDA Farm Service Agency, Montana Fish, Wildlife and Parks, USDA Department of Natural Resources and Conservation, in addition to the Lewis & Clark and Broadwater County Courthouses) were contacted for specific information concerning the subject property. Information on soil types, water rights, potential land uses, and wildlife/natural resources, were obtained from these agencies. The total acres for the subject are as per information from the Montana Cadastral Survey site.
In addition to data on file, a research for comparable sales was completed. The most comparable and representative sales were used for valuation purposes. County records were perused, Multiple Listing Services (MLS) were researched, and active Realtors and appraisers were contacted for market data. All sales were verified with the buyer, seller, agents, or other parties having knowledge of the transaction.

Comparable sales were inspected to the extent possible. Trespass was avoided and owner permission was obtained when feasible. When a property was not accessible and/or was not inspected, aerial photos, maps, and discussions with parties familiar with the property were relied on.

Montana is a nondisclosure state; thus, aside from sale notices or deeds, no sales data is of record. No sale values are reported, and sale values must be personally confirmed. I have made a diligent effort to correctly ascertain the circumstances and values surrounding each sale and data provided by professional third parties are considered reliable. The investigation of this appraisal report included confirmation of sales with buyers, sellers or real estate professionals.

Given Montana is a nondisclosure state, privacy regulations and rules issued from the Federal Trade Commission, and to avoid any associated violation with the confidentiality section of the ethics rule in USPAP, the comparable sales are deemed confidential and proprietary information that are retained in the office of Biehl Appraisal Service, LLC. Sales information is provided to the extent that it supports conclusions and the report is credible.

In conjunction with this assignment, a draft of the conservation easement was provided. The terms of the conservation easement were reviewed and discussed with representatives of the Prickly Pear Land Trust and the owners.

All subject photographs within this appraisal were taken by Randall Biehl, RPRA. These are digital photographs and were not changed or manipulated in any manner.

Included within this appraisal report are multiple maps. These maps are meant to be a visual aid only as a representation of the property only. The maps were prepared by Part & Parcel LLC.
B. **Client, Intended Users, and Intended Use of the Report**

1. **Client:** The client for purposes of this appraisal is the Prickly Pear Land Trust.

2. **Intended Users:** A summary of the intended users of this report is as follows:
   
   i) The owners  
   ii) Professional advisors of the owners  
   iii) Prickly Pear Land Trust  
   iv) Lewis & Clark County

3. **Intended Use:** The appraisal is intended for use by the intended users in connection with the acquisition of a proposed conservation easement interest in the subject. It will estimate the effect on market value of the proposed PPLT conservation easement.

C. **Legal Description**

The legal description for the appraised property is a summary of the Title Commitment legal description, which is attached to the appraisal, and assumed to be correct. A parcel map is included on the following page.

<table>
<thead>
<tr>
<th>Legal Description (P.M.M.) Lewis &amp; Clark County, Montana</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 19, T10N, R1W: Government Lots 1 and 2, E2NW4 excluding 12-acre tract. Less and excepting therefrom the following parcels: Lots 1 and 2 of Harms Minor Subdivision as shown on plat filed under Document No. 3013656 and that certain tract described in Bool 261 of Deeds, Page 183.</td>
<td>124.35</td>
</tr>
<tr>
<td>Sec. 19, T10N, R1W: E2</td>
<td></td>
</tr>
<tr>
<td>Sec. 20, T10N, R1W: N2, SW4, Government Lots 2 &amp; 4, SW4SE4. Less and excepting therefrom: The Lilley Lodes MS #7007</td>
<td></td>
</tr>
<tr>
<td>Sec. 20, T10N, R1W: SE4SE4</td>
<td></td>
</tr>
<tr>
<td>Sec. 21, T10N, R1W: W2NW4, NW4SW4</td>
<td></td>
</tr>
<tr>
<td>Sec. 21, T10N, R1W: S2SW4</td>
<td></td>
</tr>
<tr>
<td>Sec. 28, T10N, R1W: NW4, N2SW4, SW4NE4, NW4SE4</td>
<td></td>
</tr>
<tr>
<td>Sec. 28, T10N, R1W: SW4SW4</td>
<td></td>
</tr>
<tr>
<td>Sec. 28, T10N, R1W: SE4SW4</td>
<td></td>
</tr>
<tr>
<td><strong>See Next Page</strong></td>
<td></td>
</tr>
</tbody>
</table>

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**Note:** The text above is in Markdown format for better readability.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 29, T10N, R1W: NE4, N2NW4, N2SE4, N2N2SE4NW4, SW4NW4</td>
<td>370.00</td>
<td></td>
</tr>
<tr>
<td>Sec 29, T10N, R1W: SE4SE4</td>
<td>40.00</td>
<td></td>
</tr>
<tr>
<td>Sec. 30, T10N, R1W: N2NE4, SE4NE4</td>
<td>111.60</td>
<td></td>
</tr>
<tr>
<td>Sec. 31, T10N, R1W: All that part of Northeast Quarter of the Southeast Quarter, more particularly described as follows: Beginning at the Southeast corner of the NE4SE4, running thence North along Section line 716.4 feet; thence West 170 feet; thence S. 11° 30’ W. 90.5 feet, thence S. 24° 30’ W. 272 feet; thence S. 23° E. 211 feet; thence S. 26° E. 207 feet: thence East 127.7 feet to the place of beginning. (Deed Reference – Book 189 of Deeds, page 456)</td>
<td>3.43</td>
<td></td>
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<tr>
<td>Sec. 32, T10N, R1W: N2SW4, W2SE4, NE4NE4, W2NE4, NW4</td>
<td>440.00</td>
<td></td>
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<tr>
<td>Sec. 32, T10N, R1W: E2SE4</td>
<td>80.00</td>
<td></td>
</tr>
<tr>
<td>Sec. 32, T10N, R1W: S2SW4</td>
<td>80.00</td>
<td></td>
</tr>
<tr>
<td>Sec. 33, T10N, R1W: W2NW4</td>
<td>80.00</td>
<td></td>
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<tr>
<td>Sec. 33, T10N, R1W: NE4NW4</td>
<td>40.00</td>
<td></td>
</tr>
<tr>
<td>Sec. 5, T9N, R1W: NW2 G. All G. Lot 4, portion of G. Lot 3, more particularly described as follows: Commencing at the Northwest corner of said Lot 3 and running east to the Northeast corner of said Lot, thence running Southwest to the Southwest corner of Lot 3, thence North to beginning. (Deed Reference – Book 289 of Deeds, Page 738)</td>
<td>62.19</td>
<td></td>
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<tr>
<td>Sec. 6, T9N, R1W: G. Lot 1</td>
<td>41.67</td>
<td></td>
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Legal Description (P.M.M.) Broadwater County, Montana

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 5, T9N, R1W: SW4NW4, portion of SW4SE4NW4, be more particularly described as follows: Commencing at the Southwest corner of said Southeast Quarter of Northwest Quarter and running thence east along south line of said subdivision to the Southeast corner thereof, thence Northwesterly to the Northwest corner of said subdivision, thence south to the place of beginning, EXCEPTING from above, a twenty foot strip along south line of the Northwest Quarter of Section 5 for roadway purposes. (Deed Reference – Book 59 of Deeds, Page 537)</td>
<td>57.00</td>
<td></td>
</tr>
<tr>
<td>Sec. 6, T9N, R1W: SE4NE4</td>
<td>40.00</td>
<td></td>
</tr>
</tbody>
</table>
D. Value Defined

The definition of “market value” is as per the Specification for appraisal of real property for the Agricultural Conservation Easement Program. It is defined as:

*The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:*

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

In applying the market value definition, a reasonable exposure time of 12 to 18 months is estimated. Exposure time is the estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal. Exposure time is always presumed to precede the effective date.

Value, in this report, applies to the described real estate. As noted herein and discussed further, a separate contributory value analysis of any appurtenant water rights is not made. This right is considered part of the value identified for the land in general and is inherent in the land value assigned. Consistent with the market, inherent in the land value assigned are land improvements such as roadways, trails, fences, crossings, utilities and stock watering systems, and drainage structures.
E. **Effective Date of the Appraisal and Date of the Report**

The effective date coincides with the most recent date of inspection of the subject which is December 18, 2019. This report was completed on December 31, 2019.

F. **Type of Report and Competency Statement**

1. **Type of Report:** In accordance with Standard 2 of the Uniform Standards of Professional Appraisal Practice (USPAP), an Appraisal Report has been prepared.

   The depth of discussion included in the report is specific to the intended use of the report and the needs of the client. Additional documentation that was used to support the appraiser’s conclusion may be retained in the appraiser’s file.

2. **Competency:** The Uniform Standards of Professional Appraisal Practice (USPAP) requires that prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently or:

   i. disclose the lack of knowledge and/or experience to the client before accepting the assignment; and

   ii. take all steps necessary or appropriate to complete the assignment competently; and

   iii. describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report.

I have been appraising rural, recreational and investment properties in the States of Montana, Washington, and Idaho since 1977. I am familiar with the geographical area in which the subject is located. Properties, which are physically and economically similar to the subject, have been common appraisal assignments. I have reviewed and if applicable appraised properties for purposes of valuing a conservation easement. Appraisal assignments have been completed in accordance with USPAP as well as UASFLA.
The appropriate steps have been taken to comply with the competency provision as required by USPAP. Requirements have been satisfied based on my experience, applicable education, knowledge of theory and appropriate techniques in appraising rural, transitional, and recreational real estate, familiarity with the area and experience with valuing conservation easements.

I am a State Certified General Appraiser in the State of Montana with continued education requirements being current. I hold the Real Property Review Appraiser (RPRA) designation which is awarded by the American Society of Farm Managers and Rural Appraisers to those members who have had years of experience, are technically trained, have passed a rigid examination, and subscribe to a high code of ethics. This professional designation is awarded on the basis of demonstrated competency in valuing the real property.

G. Property Interest Appraised

In the valuation of the property before the imposition of the proposed conservation easement, the property interest is the fee simple estate of the surface rights, subject to any outstanding rights or reservations of record.

In the valuation after the imposition of the proposed conservation easement, the property interest to be appraised is the fee simple estate of the surface rights, subject to any outstanding rights or reservations of record, including the rights conveyed in the conservation easement. The after value is therefore of a partial ownership interest.

Included are water rights that are appurtenant to the property and any access easement.
H. **Ownership and Sales History**

1. **Ownership:** The subject property is owned by Douglas C. & Ronda M. Potter as per hypothetical condition.

2. **Sales History:** USPAP standards require that any previous sales within a three-year period be reported. There have been no active sales or listings of the property over this three-year period. However, part of the property was deeded from Virginia Louise Potter Estate (Virginia Potter Trust) to Douglas C. Potter on 11/27/2018 recorded 11/28/2018 and another parcel to Douglas C. Potter and Kathryn P. Bushnell on 11/27/2018 recorded 11/28/2019. Douglas C. Potter deeded his interest to Douglas C. Potter and Ronda M. Potter on 11/27/2018 which was recorded 10/3/2019.

I. **Use History and Present Use**

The subject property has historically been used for agricultural purposes for the grazing of livestock and dry crop production. Inherent are the recreational uses of the property as well as providing habitat for wildlife.
J.  **Area – Regional Analysis**

The property to be appraised is located just outside the south eastern region of the Helena Valley. As part of the Helena area, the subject is located in west central Montana on the west side of Spokane Hills near the Canyon Ferry Reservoir. Helena, Montana the state capitol is located 25 minutes west of the subject and is the primary service and cultural center for Lewis & Clark County, northern Jefferson and Broadwater Counties of Montana. The majority of the growth is occurring in unincorporated areas of the Helena Valley. For purposes of this valuation, the regional description will emphasize the Helena Valley and Lewis & Clark County.

The subject’s area represents a community of multiple land uses that are generally residential, rural, agricultural, recreational, and suburban in nature. The area contains rural development for year-round as well as seasonal residential and recreational use. Land users vary from ranch, farm and large landowners to individual homeowners and cabin owners. The area is also heavily impacted by tourism, seasonal use and day users such as boaters, fishers, hikers, campers, skiers and other sports enthusiasts. The general area is regarded as a stable and prosperous community.
Four basic forces of value consisting of social ideals, economic factors, governmental controls, and environmental conditions influence real property values. Every parcel of real estate on the market is influenced by the interaction of these forces.

**Physical Characteristics**: Lewis & Clark County is located in the Helena Valley and the Rocky Mountains of west central Montana. The county is bordered on the north by Teton County, the Counties of Flathead and Powell to the west, Jefferson and Broadwater Counties to the south, and Meagher and Cascade Counties to the east.

The Helena Valley is bordered by the Continental Divide of the Rocky Mountains to the west and Elkhorn Mountains to the south, and the Big Belt Mountain range to the east. The Gates of The Mountains Wilderness is in the Big Belt Mountains. The Missouri River flows through the south eastern portion of Lewis & Clark County with three dams that create the Canyon Ferry Lake, Hauser Lake and Holter Lake, as indicated by the map.  

Helena was founded in 1864 as a gold camp during the Montana Gold Rush. The Montana Historical Museum offers information as to the rich history of Helena.

The northern portion of Lewis & Clark County overlaps the Continental Divide on both west and east side. It has the Scape Goat Wilderness and the Bob Marshal Wilderness.

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1 Helena Montana 2019 Vacation Guide
The primary transportation route serving the area is Interstate Highway 15, which runs north to south from Canada to Mexico. US Highway 12 runs east to west through Helena. Outlying areas are accessed primarily by county graveled and paved roads with forest service roads providing access into the National Forests.

The Helena Regional Airport provides worldwide connections through four hubs on three airlines which are Alaska Airlines, Delta Airlines and United Airlines. The airport is in the process of $12 million terminal expansion that will handle larger aircraft and more airline frequencies.

A distinct four-season climate is experienced in the Helena. The average low temperature in January is 9.6 ° and average July high is 85°. The average annual rainfall is 11.6 inches with the annual snowfall of 47.1 inches. The average number of sunny days is 186.

Due to the limited precipitation levels during critical times of the growing season, most crops in the valley are supplemented with irrigation water. Irrigation water is provided primarily from the Helena Valley Irrigation District and through private claims from creeks, streams, and rivers.

Social Considerations: Social forces are exerted primarily through population characteristics. With a county population of 68,700 in 2018, Lewis & Clark County has had an annual growth rate from 2010 to 2018 of 1%. The growth rate was 1.42% from 2016 to 2017 and 1.26% from 2017 to 2018. The growth had resulted in development of land for residential uses and has stressed local infrastructure such as schools, law enforcement, roads, and county services. In addition, land that was traditionally used for the production of agricultural crops had been split up into smaller parcels and used for residential developments of various sizes. The 2015 Growth & Development Trends has a conservative estimate for the Helena Valley area that in the next two decades that about 10,000 people will move into the area. Helena Valley Planning Area does not include the city limits of Helena and East Helena.

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2 Data from Montana Department of Commerce, Census & Economic Information Center
Helena is the Capitol of Montana and is the hub and primary service center for the Lewis & Clark County and northern Jefferson and Broadwater Counties. Other smaller towns and communities throughout the area include East Helena, Montana City, Clancy, Jefferson City, Rimini, Marysville and York. Helena is within 120 miles or less to Butte, Bozeman, Great Falls and Missoula. K-12 educational opportunities are available in Helena and East Helena. The Helena College University of Montana and Carroll College are available for post high school education. Full medical services are located in Helena, which includes the VA Hospital, Shodair Children’s Hospital and St Peter’s Hospital. There are churches of numerous denominations.

Year-round recreational opportunities are abundant in the area and are a primary attraction. The Rocky Mountain Continental Divide, Big Belt Mountains, and Elkhorn Mountains which consisting of the Scapegoat Wilderness area to the northwest and the Gates of the Mountains Wilderness to the northeast are popular recreational destinations. Canyon Ferry Lake, Hauser Lake and Holter Lake are water sports destinations. Recreational fishing is a popular activity in the area and is an important attraction for the tourism industry. The summer and fall outdoor activities include boating, camping, fishing, hiking, hunting, wildlife viewing, and horseback riding. Winter activities include x-country skiing, snowmobiling, and downhill skiing at Great Divide Ski Area near Marysville.

Big game consisting of elk, deer (Whitetail and Muley), moose, and black bear inhabit the mountain ranges and valley floors.
Economic Considerations: The economic base of the region is comprised of the service sector, government agencies, agriculture, small industries, and retail in addition to recreational opportunities.

Year-round tourism is an important industry for the economy. An influx of people come during the summer months to recreate on the Missouri River, associated lakes and the surrounding mountains. The fall season brings sports persons to the area in pursuit of big game. The winter season is traditionally the slower recreational time due to the lack of a destination ski resort similar to Whitefish Mountain in northwest Montana.

Top ten Helena employers by full time employees are State of Montana, local government (City, County, School District), federal government, St. Peter’s Hospital, Blue Cross Blue Shield, Wal-Mart, VA Hospital, Montana State Fund, Albertson/Safeway and Carroll College. These industries employ large numbers of people whom are typically local residents. It’s noted that many of the people residing in the Helena Valley and northern Jefferson and Broadwater Counties commute to Helena where there are more job opportunities at higher wages than available at a local level.

The Policom ranking for economic strength out of 577 micropolitan cities across the nation under 50,000 people has Helena ranked at 49th in 2019. Helena has been in the top 100 rankings since 2010. The 2013 ranking was 2nd and 2014 was 3rd. Historically Helena has the most stable economy of the larger cities in Montana. Helena’s share of Lewis Clark County’s employment & income is close to 90%.

Lewis & Clark County unemployment rate, not seasonally adjusted, as of October 2019 was 2.7% with the total labor force of 35,581 and 945 unemployed. Montana, not seasonally, adjusted rate is 3.1%.

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3 Montana Governor’s Office of Economic Development
4 2019 Trends Report, Helena, Montana sitting source as www.policom.com
5 Montana Labor Market Information
Agriculture enterprises consist predominately of hay, small grains, pasture, and livestock ranches. While there are some commercial sized operations, the majority of the operations in the Helena Valley consist of smaller part-time ranch/hobby farms that are supplemented with off-farm income. The production of small grains and hay provides the largest cash crops in Lewis & Clark County.7

Complementing the agriculture industry is a trend of small operations being used as hobby farms. This type of property is exploiting the recreational features of the area and characteristics of a specific property. The aesthetics and a rural style of living motivate this segment of the market. Since land values have surpassed what can be supported under typical agricultural uses, agriculture is typically a complementary use for this segment of the market.

Governmental Influences: Governmental forces are a result of federal, local, and state governments. Typically, local zoning and state subdivision regulations are the main forces that can affect a property and can dictate its present or future use.

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6 Helena Trends Report site source www.ourfactsyourfuture.org
7 2017 Census of Agriculture, Lewis & Clark County, Montana
Lewis & Clark County has historically only adopted “Part 1” zoning which allows the citizens of an area to petition the County Commission to create a zoning district with administration and final decision-making authority through a Planning and Zoning Commission consisting of the County Commissioners, citizens from the zoning district, and other public officials. The county had 34 Part 1 zoning districts in 2015.

Historically, the fact the county was unzoned had created unplanned development and a menagerie of land uses. Unless a property has been previously split-up into parcels smaller than 160 acres, a survey must be completed, and the property must go through a subdivision review process. This is required to comply with the Montana Subdivision and Platting Act.

**Environmental Factors:** Environmental forces that influence property values can be both natural and man-made. Environmental forces include the climate, wetlands, soil quality, topography, fires, and contamination (hazardous wastes). Many areas along small streams and rivers are susceptible to flooding, which limits the use of the land.

Currently Lewis & Clark County has two sites listed on the Environmental Protection Agency’s (EPA) National Priority List (NPL). The listed sites are the East Helena Smelter and Upper Tenmile Creek Water Shed (Rimini).
K. **Subject Property Description**

**Location and Access:** Lying on the *westside* of the Spokane Hills, which are on the east side of the Helena Valley growth area, the subject is located five miles east of East Helena and 9 to 10 miles east of Helena. It lies westerly of Canyon Ferry Lake, which is on the east side of the Spokane Hills.

While variable in terms of physical access, the subject has multiple means of legal access that encompass public roadways and an appurtenant access easement; which is a hypothetical condition. There are private roads and trails within the interior, some of which are seasonal in nature.

**Spokane Creek Road (MT Highway 284):** The northwestern portion of the subject is adjacent to the Spokane Creek Road. The existing access road route is through land owned by Potters but excluded from the appraisal. The hypothetical condition is used to recognizes an easement through that property. Such an easement is necessary to provide access to the northern portion of the property and to the two-track trail that meanders from the northwest part of the property to the southern portion.

**North Three Bar Road:** There is a quit claim deed easement for access on this road to the NW4NE4 of Section 30, T10N, R1W.

**Agricultural access easement** across northern part of Tract 26 of C.O.S. 314837 in Section 31, T10N, R1W to provide access to NW4 of Sec. 32, T10N, R1W. This is more for convenience than a necessity.

**Matt Staff Road:** A driveway to the southern building envelope starts at the Matt Staff Road, a gravel county road, and continues on to the dwelling. A two-track farm road branches off to the south then continues on to the eastern portion of the subject then meanders north to the northern portion of subject and exits at the exclusion area. See C.O.S. 314837 for more details.
Amber Lane: Is a public road maintained by the owners of property. It provides access to the southern part of the SW4NW4 and SW4SE4NW4, Sec. 5, T9N, R1W in Broadwater County.

Summary: Overall, the subject has multiple means of legal access. The physical access is adequate for its current use. The physical access would have to be developed and improved for a residential development use.

Land Description: The subject property consists of 3,109.205 acres. This is a contiguous property with an irregular shaped boundary. It lies adjacent to other private lands comprised of various sized subdivided parcels.

The subject is a diverse property in terms of its land uses and topography. It consists predominately of three distinct areas that vary on the basis of elevation. This includes an elevated bench, a transitional hillside(s), and gently sloping cropland west of Spokane Creek.

The map shows a mining claim inholding that has no legal access and is not fenced separate from the subject. Does not impact the value of the property.
With a westerly slope, the elevated benches encompass an estimated 282.12 acres of summer fallowed cropland within the south portions of the subject east of Spokane Creek. The cropland appears to be in good condition ready for planting. There is an additional 68.86 +/- acres of cropland that is covered with mature cheat grass on the bench. There are approximately 129.77 acres of cropland that is on the bench west of Spokane Creek that has mature cheat grass, not summer fallowed. There is cross fencing on the west side of Spokane Creek but east of the cropland on the west bench. The slope is mostly 0 to 9% except for the draws with a slope between 10 to 24.9% and some greater than 25%. The southern portion encompasses an estimated 785 +/- acres. The annual precipitation varies from 11 to 12 inches on the western portion to 13 to 14 inches on the upper east benches.

There are 375.72 +/- acres of cropland with mature cheat grass on the benches in the northern portion as depicted by the above photo. The owner plans on controlling the cheat grass in 2020 so he can plant grain crops or tame pasture in 2021. This would require 2.5 miles of cross fence to be built. There is also 88.10 acres of crested wheat grass.
There is only about ¾ mile permanent cross fencing in the northern and middle portions of the subject. There is a cross fence between that and the lower portion of the subject. There is no boundary fence between the BLM and subject. The northern portion is sloped from 0 to 9.9% on the benches and 10 to 24.9% on the rest, but some draws with slopes 25% and greater.

The northern and middle portion of the ranch encompass an estimated 2,324.915 +/- acres. The annual precipitation varies from 11 to 12 inches on the lower west portion and from 13 inches increasing to 16 inches as you proceed east up the hill.

The middle portion is mostly sloping (10 to 24.9%) grassland with scattered timber except for the east 80 acres that is half grassland and timber with slopes over 25%. The pasture is in good to excellent condition with mostly native grass.
The middle of this picture depicts the 80 acres that is the most eastern of the middle portion of the ranch. This is the highest elevation of the subject and receives an average of 14 to 16 inches annual precipitation. The grass is good to excellent condition.
**Water Rights:** Appurtenant to the subject are private water rights for domestic and stock purposes. The following information from search online from MT. Dept. of Natural, Resources & Conservation Water Right Query System and Montana Ground Water Information Center.

<table>
<thead>
<tr>
<th>Type</th>
<th>Number</th>
<th>Source, priority date</th>
<th>Use</th>
<th>Maximum</th>
<th>Place of use on subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Right - Surface</td>
<td>41I 113607-00</td>
<td>Spokane Creek, 12/31/1915</td>
<td>Lawn &amp; garden, flood</td>
<td>1 acre</td>
<td>NENWNW Sec. 5, T9N, R1W</td>
</tr>
<tr>
<td>Water Right - Surface</td>
<td>41I 133624-00</td>
<td>Spokane Creek, 5/13/1915</td>
<td>Irrigation, flood</td>
<td>8 acres</td>
<td>W2NWSW Sec. 32, T10N, R1W</td>
</tr>
<tr>
<td>Well Log</td>
<td>60607</td>
<td>Well 90 ft, 1920 Well 15 ft, 1952</td>
<td>Stock water</td>
<td>10 gal./min.</td>
<td>Not on subject. SW4 Sec. 32, T10n, R1W</td>
</tr>
<tr>
<td>Well Log</td>
<td>181182</td>
<td>Well 140 ft, 12/13/99</td>
<td>Domestic</td>
<td>35 gal./min.</td>
<td>NWSW Sec 32, T10N, R1W</td>
</tr>
<tr>
<td>Well Log</td>
<td>166226</td>
<td>No data</td>
<td>No use assigned</td>
<td>No test data</td>
<td>SESWNENWW Sec. 20, T10N, R1W</td>
</tr>
</tbody>
</table>

The stock water is adequate with the developed and undeveloped springs. It appears no water right claims have been filed on those springs. There is no indication of irrigation use for 8 acres in Sec 32, T10N, R1W at this time and the Montana Cadastral Survey does not show any irrigation.

**Aesthetic/Recreational:** The on-site amenities and recreational attributes of the subject emphasize its aesthetic viewshed and its diverse land uses and habitats. The property has scenic views of the Continental Divide of the Rocky Mountains, the Big Belt Mountains and the Elkhorn Mountains.

Complemented by area public land, the subject provides habitat for wildlife common for the area. This includes a small elk herd and deer. Through the seasons, various songbird and raptors can be seen on the property. Also, Spokane Creek and the drainages with springs provide local water source for wildlife.
As shown by the map above the subject is adjacent to 800 acres of State land and approximately 6900 acres of BLM land. The State land borders the subject for ¾ mile, and the BLM land borders the subject for 2 miles on the east side. They have a lease on 480 acres of the State land and from 900 to 1000 acres of the BLM land. Neither lease will be valued in this appraisal.
The subject also lies within close proximity of other recreational opportunities. This includes Canyon Ferry Lake to the east, Hauser Lake to the north and the mainstem of the Missouri River.

**Mineral Rights:** Mineral rights are not a measurable factor of value and retention of rights varies with each transaction. The status of the subject’s mineral rights is unknown.

**Utilities:** Utilities are at the building envelope. There are no utilities on the upper benches.

**Easements and/or Deed Restrictions:** There are no known adverse easements, encroachments or encumbrances that would impact the property as a whole.

**Zoning/Comprehensive Plan:** The subject is unzoned.

**Improvements:** The subject is improved with the following having contributory value. The value will be discussed later in the report.

Dwelling: Built around 1910 according to owner. Montana Cadastral does not list this dwelling. The dwelling is in good condition with new asphalt shingle roof, log construction with lath and plaster interior walls on main floor, ½ story has sheetrock walls, and full basement (poured concrete). The square footage is estimated from actual measurements. The main floor is 1170 sq. ft. with frame porches of 280 and 164 sq. ft. The main floor has kitchen, large dining/living room, master bedroom and full bath. The ½ story is estimated to be around 800 sq. ft. with 3 bedrooms and bathroom.

Grain bin: Steel round bin with concrete floor built around 1986. Estimated capacity at 5,400 bushels.

Grain bin: Steel round bin with concrete floor built around 1986. Estimated capacity at 4,800 bushels.

The following is a list of some other buildings that do not have contributory value due to condition:

Grain bin: Steel round bin with concrete floor but roof is starting to rust. Estimated capacity at 3,500 bushels.
2 Grain bins: Steel round bins with concrete floor but roof starting to rust. Estimated capacity at 3,000 bushels each.

2 Grain bins: Round constructed out of ¼ steel with ¼ steel floor and roof, age around 1960 or older, with a capacity of 800 bushels.

Pole building with 2 sides open and closed sides warped and falling apart. Used for machinery storage at date of inspection. 30 ft X 48 ft.

Many other buildings in very poor conditions of no value.
Soils: Although the market is not dependent on specific soil types, the subject’s soils are as follows:
The primary soils are as follows:

<table>
<thead>
<tr>
<th>Map Unit Symbol</th>
<th>Map Unit Name</th>
<th>Percent of AOI</th>
</tr>
</thead>
<tbody>
<tr>
<td>MxE</td>
<td>Musselshell-Crago cobbly loams, 8 to 20 percent slopes</td>
<td>0.3%</td>
</tr>
<tr>
<td>SaB</td>
<td>Sappington clay loam, 2 to 5 percent slopes</td>
<td>2.6%</td>
</tr>
<tr>
<td>Uf</td>
<td>Ustic Torrifluvents</td>
<td>0.2%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subtotals for Soil Survey Area</th>
<th>3.2%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1B</td>
<td>1.1%</td>
</tr>
<tr>
<td>26C</td>
<td>18.7%</td>
</tr>
<tr>
<td>26D</td>
<td>12.5%</td>
</tr>
<tr>
<td>27F</td>
<td>2.0%</td>
</tr>
<tr>
<td>33B</td>
<td>0.5%</td>
</tr>
<tr>
<td>33C</td>
<td>0.4%</td>
</tr>
<tr>
<td>163D</td>
<td>2.3%</td>
</tr>
<tr>
<td>263E</td>
<td>7.3%</td>
</tr>
<tr>
<td>385E</td>
<td>32.1%</td>
</tr>
<tr>
<td>433E</td>
<td>16.3%</td>
</tr>
<tr>
<td>532B</td>
<td>0.4%</td>
</tr>
<tr>
<td>567D</td>
<td>3.2%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subtotals for Soil Survey Area</th>
<th>96.8%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Totals for Area of Interest</td>
<td>100.0%</td>
</tr>
</tbody>
</table>
Hazards/Environmental Concerns: There are no known environmental concerns that would impact the property. The floodplain map is included below, it indicates a narrow area around Spokane Creek. The flood zone does not impact building sites.
**Timber:** The subject does have areas of scattered timber. The timber is mostly ponderosa pine. The timber on the property is more of an amenity/complementary attribute versus an economic resource. Consistent with the market, the value of the timber is inherent with the land.
All of the following pictures were taken by Randy Biehl on October 24, 2019 unless noted otherwise. The pictures were not altered.
This is the only picture taken on 11/17/2019 by Randy Biehl. The summerfallow fields in middle of picture are part of subject as is the upper part with scattered timber.

The Pictures on the following pages were taken on 12/18/2019 by Randy Biehl.
Farmstead from drone on 12/18/2019.
L. **Appraisal Process**

The appraisal process is a methodical procedure leading to a conclusion of value for a specific property. As per the 14th Edition of the Appraisal of Real Estate, the process encompasses the following steps:

1. **Definition of the Problem**
   - Identification of real estate
   - Identification of property rights to be valued
   - Date of value estimate
   - Use of appraisal
   - Definition of value
   - Other limiting conditions

2. **Preliminary Analysis and Data Selection and Collection**
   - General Data
     - social
     - economic
     - governmental
     - environmental
   - Specific Data
     - site & improvements
     - sales & listings
     - cost & depreciation
     - income/expense & capitalization rate

3. **Highest and Best Use Analysis**
   - Land as though vacant
   - Property as improved

4. **Application of the Three Approaches**
   - Cost Approach
   - Sales Comparison Approach
   - Income Approach

5. **Reconciliation of Value Indication and Final Value Estimate**
As per the Real Estate Appraisal Terminology, Revised Edition the appraisal process is defined as:

“A systematic analysis of the factors that bears upon the value or utility of real estate. An orderly program by which the problem is defined, the work necessary to solve the problem is planned, and the data involved are acquired, classified, analyzed, and interpreted into a final opinion or conclusion.”

Value is based on four independent economic factors: utility, scarcity, desirability, and effective purchasing power. In order for anything to have value it must have utility, be relatively scarce, have desirability, and there must exist a market that has effective purchasing power.

In the appraisal of real estate, appraisal theory indicates that there are three commonly accepted approaches in determining value. These include the Cost Approach, the Income Approach and the Direct Sales Comparison Approach. Each approach to value is based on economic principles that influence value or utility. As outlined in the definition, the appraisal process involves the identification of the appraisal problem including the type of value to be estimated, the property rights to be appraised, and the purpose of the appraisal.

Once the appraisal problem has been defined, the preliminary analysis begins. This involves developing a work plan to gather and analyze pertinent data that will be used in solving the appraisal problem (estimating defined value).

The appraiser considers relevant data, both specific (site) and general (non-site), documenting this data to support the conclusions stated in the appraisal.

When appraising a property, as many of these methods that apply should be used in the valuation process. In some instances, all three approaches are pertinent and provide reliable estimates of value. In other cases, only one or two approaches may be applicable.

For example, in the recreational mountainous area of the Montana ranch market, the income approach may not provide a reliable value estimate as the market is being driven by aesthetics and emotion rather than concern over potential earnings. The direct sales comparison approach may not be applicable for a cattle feedlot in a dry cropland market where there have not been any feedlot sales. The direct sales comparison approach is also difficult to complete when there is a lack of sales data with directly comparable components.
Cost Approach: The cost approach is based upon the proposition that an informed buyer would pay no more for a property than the cost of the land plus the current cost of replacing the improvements less the applicable depreciation from all causes charged to the improvements. This approach can be useful when valuing rural properties that have relatively new improvements or specialized improvements on rural properties when the market is homogeneous and informed.

Current replacement and reproduction costs can be estimated from cost estimation guides, or from builders and contractors depending on which is more applicable to the appraisal problem. The amount of depreciation to apply to the replacement cost new of the improvements is based upon market driven conclusions. The depreciated or market value of the improvements is then added to the land value for a total value estimate.

Direct Sales Comparison Approach: This approach is based upon the assumption that an informed purchaser would pay no more for a property than the cost of acquiring an existing one with the same utility.

The appraiser must judge the amount of difference between the selected comparable sales and the subject property.

The appraiser then makes either quantitative or qualitative adjustments to each comparable sale for each of the factors. If for example, the comparable sale has inferior land, then a positive adjustment to that comparable sales price would be made. If the comparable sale has a location that is superior to the subject’s location, then a negative adjustment would be made to the sale.
**Income Approach:** The income approach is used by the appraiser to convert an expected income stream for the subject property into a value indication. It is based upon the following relationships:

\[
\text{Income} \div \text{Rate} = \text{Value} \quad \text{and} \quad \text{Income} \times \text{Factor} = \text{Value}
\]

The appraiser estimates the rate or factor to use through market research of comparable sales. First the selected comparable sales need to be analyzed to determine the relationship between their estimated income and their sale prices. From this relationship a capitalization rate or an income multiplier factor can be estimated to aid in analyzing the subject. The subject property should then be investigated to determine the quality and quantity of the anticipated income streams. Once the appraiser determines a reasonable income stream for the subject property, either the market derived capitalization rate or the income multiplier factor can be applied to the anticipated income stream to calculate an estimated value for the subject property.

**Reconciliation:** The critical step in the valuation process is where the appraiser reconciles the different value indications from each of the approaches to arrive at a final estimate of value. During the reconciliation process, the appraiser examines why the approaches differ in the value indications and determines the strengths and weaknesses of each approach. The appraiser must then communicate to the reader why one approach might be given primary consideration or why another approach is not emphasized.

The appraisal assignment is completed when the appraiser delivers the estimate of value, subject to the stated assumptions and limiting conditions, to the client. Typically, a written report documenting both the general and specific data that was used in the valuation process is prepared and delivered to the client. This aids the user in understanding how certain conclusions were reached by documenting the reasoning behind these conclusions.

This appraisal assignment requires the evaluation of the subject under two different scenarios. The initial appraisal values the subject unencumbered available to be put to its highest and best use and establishes a base fee value. A subsequent evaluation of the subject is completed with considerations to the conservation easement – the after value.
M. **Highest and Best Use Analysis – As Unencumbered**

The analysis and the conclusion of the highest and best use is the basis of identifying the appropriate use or uses of the subject that will produce the greatest economic benefit for the owners. It is also used in the selection of comparable sales that are influenced by similar market conditions with a highest and best use consistent with that of the subject. In arriving at the highest and best use conclusion, trends as indicated by sales, uses of similar properties in the area, economic conditions, and characteristics of the subject are all considered.

According to the 14th Edition of *The Appraisal of Real Estate* highest and best use is defined as:

> "The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value."

To be at the highest and best use, the property must meet four criteria.

- legally permissible
- physically possible
- financially feasible
- maximally productive

The analysis of highest and best use begins with the discovery of what uses are legally permissible. Are there laws, covenants, regulations, or zoning that prevent certain uses of the subject property? Of those legally permissible uses, which uses are physically possible? Of those legally permissible and physically possible uses, which uses are financially feasible? Do the anticipated returns outweigh the anticipated costs? Finally, of the uses shown to be legally permissible, physically possible, and financially feasible, which use will generate the greatest net return or prove to be maximally productive? That use, which satisfies these four criteria, is the appraised property’s highest and best use.

Real estate is valued in terms of its highest and best use. The highest and best use of the land or site, if vacant may be different from the highest and best use of the property if improved. This will occur when the improvement is not an appropriate use, but it still makes a contribution that causes the total property value to be greater than the value of the site alone.
Highest and Best Use as Unimproved:

The appraised property is located in a rural and recreational area of the Spokane Hills east of East Helena in the vicinity of Canyon Ferry Lake. Within the area, there is no traditional commercial or industrial use of land or development occurring. Overall, commercial use of the subject in whole or part would not be a typical or probable use as indicated in the market and will not be discussed any further.

Within the vicinity of the subject, typical uses of land in the area include a combination of residential on various sized parcels (see parcel map), recreational, and agricultural with associated investment opportunities within the market. Due to influences in the market, property in the area does not typically sell exclusively for agricultural purposes although it is a complementary use and often times, a continued physical use of the property.

In determining the highest and best use of the subject, I will focus on typical uses indicated by the market, which would include residential homesites, agricultural, recreational and investment purposes which includes subdivision and development - all of which are not mutually exclusive of each other.

Is it legally permissible? The subject is unzoned and there are no deed restrictions affecting any permissible uses of the property. Thus, legally permissible uses run the gamut of potential uses as indicated by the market.

The subject is currently described as 22 parcels of land. There are 5 parcels that could be split into not less than 160-acre parcels without having to comply with subdivision act. Further subdivision and development of the subject must be in compliance with the Montana Platting and Subdivision Act – which may include family transfers and boundary adjustments.

While there are many legally permissible uses of the subject property, the most typical and probable would be for agricultural, recreational, residential and/or investment purposes, which may include further subdivision and/or development in response to the demand of the market. These uses are not mutually exclusive of each other.

Is it physically possible? Typical physical characteristics of any property that would have an impact on highest and best use include soils, topography, access/roads, utilities, floodplain, water table, and other land uses. With respect
to the physical characteristics of the subject, the following factors are noted.

• The access is available via multiple means that include public roads and an appurtenant easement. While adequate for current use, the roads would need improvements for purposes of a residential development use.

• Topography is variable consisting of gentle slopes with some areas of steep hillsides. Topography is a physical constraint for a small portion of the subject for homesites with slopes ≥ 30 percent.

• The recreational aspects of the subject are good and a dominant component of the property. The subject’s upper benches afford an aesthetic viewshed from a homesite standpoint that is also private. Other aspects of the subject include on-site habitat for area wildlife including elk and deer.

• There are multiple potential homesites on the property. The most probable and desirable homesites would be concentrated on the upper benches.

• Utilities are on the property at the northwest access and southwest farmstead.

• From an agricultural standpoint, the subject does have productive resources in terms of varying condition dry cropland and good to excellent condition pasture.

With respect to the legally permissible uses that are physically possible, the subject is deemed a rural recreational investment property suitable for homesite(s) purposes. Complementing the subject are the agricultural resources.

Is it financially feasible and maximally productive? This test is applied to the uses that have passed the previous criteria. If the revenues exceed the expenses, the use is generally considered to be financially feasible. With commercial or industrial properties, it is generally understood and accepted that for a use to be financially feasible, the net revenue generated from that use must be sufficient to satisfy the required rate of return on the investment.

Use of property like the subject is viewed as a long-term investment with additional returns being generated from income generating sources that are not related to the production of the land. This may include long-term appreciation,
subdivision, and other avenues including the donation/sale of a conservation easement.

Buyers place a degree of intrinsic value on the personal amenities and uses the property may allow them during this ownership. These may be as simple as enjoying the aesthetic quality and features of the property and the rural lifestyle. This is an integral consideration for the subject.

From an investment perspective and specific to properties like the subject, there is a demand for those parcels that are well-suited for a long-term investment for eventual development.

Within the current market, appreciation on an immediate/short-term basis is not integral nor does it contribute significantly to the investment matrix of buyers.

There is however an increase at the county level for proposed subdivisions and is concentrated to properties that are well-suited for this use with good access, utilities throughout, and limited constraints relative to topography and floodplain. While the subject does not meet this criterion for a traditional subdivision, this doesn’t limit the ability to create multiple tracts via family transfers.

With respect to the subject as a whole, the subject is deemed a recreational investment property suitable for homesite(s) purposes with complementary agricultural uses. Agricultural uses will not yield enough income to support the transition value (agricultural transitioning to rural subdivision). The recreational investment for possible homesites does support the transition value.

**Conclusion:** I conclude that the unencumbered unimproved highest and best use of the subject is as recreational investment property suitable for homesite(s) purposes with complementary agricultural uses.
**Highest and Best Use as Improved:**

The subject’s 3,109.205 acres is improved with a single-family residence and two grain bins. The residence and residential use is consistent with the market and conforms with the highest and best use as unimproved.

Overall, the highest and best use as improved is the same as unimproved, which is as recreational investment property suitable for homesite(s) purposes with complimentary agricultural uses.
N. **Approaches to Value – Before Valuation**

When practical, the appraiser uses the three recognized approaches to value: the sales comparison approach, the cost approach, and the income approach. In selecting the different approaches to value, the intended use of the appraisal is considered, and the appraisal problem addressed.

The market for rural and recreational property with non-agricultural influences is not motivated by the earning potential of the property in terms of products produced from the land. The market is also influenced by the potential for other investment opportunities, aesthetics and recreational opportunities. Purchasers consider the income tax benefits, which may include the granting or selling of a conservation easement, to offset other earned income.

The subject is an income producing property from the standpoint it has agricultural (ag) resources. Capitalization rates for rural property influenced by non-agricultural factors like the subject are typically below 2% on a cash-lease basis. With low capitalization rates, the reliability of the income approach is adversely affected since small changes in capitalization rates results in a significant difference in value. It’s also noted that properties such as the subject are evaluated by participants more so on the basis of the principle of substitution versus the anticipation of returns. Thus, it is concluded that the income approach is not a reliable approach to estimate value for the subject and it was not completed.

The cost approach is based on the premise that the value of the land plus the depreciated value of the buildings is equal to the value of the property as a whole. With respect to the subject’s buildings, they are mostly older structures with minimal utility as a whole. Thus, depreciation becomes challenging to abstract from the market. Due to the age, condition, and/or utility of the buildings, the cost approach was not completed.

For purposes of this assignment, the sales comparison approach will be completed. The exclusion of the cost approach and the income approach does not adversely affect the reliability or credibility of this valuation or would they be completed by peer appraisers.
O. **Sales Comparison Approach – Before Valuation**

1. **Overview of Approach:** The sales comparison approach is based on the premise that the market value of a property is related to the prices of comparable, competitive properties that have sold in the market. This approach is based on the principle of substitution where the value of a property tends to be set by the price that would be paid to acquire a substitute property of similar utility and desirability, or that a knowledgeable buyer would pay no more for a property than they would pay for a substitute of equal utility.

The comparable sales are adjusted for dissimilar factors and a final estimate of value is made. Factors that may have to be accounted for include: conditions of sale, financing, time, property rights, land use, differences in improvements, location, and physical characteristics (recreation, size, topography, lay-out, land uses, utilities, quality, etc.).

The sales comparison approach uses a direct comparison to other transactions on some common unit of comparison such as number of acres, thousand board feet (MBF) animal units (AU), etc. While the number of deeded acres may be used, this sales comparison approach is being completed on a component basis with consideration to the land and the buildings separately as they contribute to the property as a whole. The completion of the sales comparison approach on a component basis is appropriate for purposes of this analysis.

The component approach takes into consideration the depreciated value of the improvements and the value of the land that is consistent with the highest and best use of the subject.

2. **Estimate of Value:** In this section of the valuation, an estimate of value is completed for the subject.

*Selection of Sales:* An extensive search was conducted for sales data within the Helena Valley and surrounding area that would be representative of the subject. Sale 1 was the only sale deemed comparable to the subject. Due to limited data, it was necessary for me to expand my search for sales to areas that would be comparable in terms of market and population trends. I expanded my search for sales to areas in the same population bracket, similar percentage of increase in population in from 2016 to 2018 and bare lot sale value and demand. Lewis & Clark County (68,700) and Ravalli (43,172) are in the same bracket as to
population. Ravalli County market is influenced by Missoula, but the market statistics will automatically take that into consideration.

The table below reflects the other data:

<table>
<thead>
<tr>
<th>County</th>
<th>Growth rate</th>
<th>Market Statistics 2018</th>
<th>Market Statistics 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2016 to 2017</td>
<td>2017 to 2018</td>
<td></td>
</tr>
<tr>
<td>Lewis &amp; Clark</td>
<td>1.42% (947)</td>
<td>1.26% (854)</td>
<td>$113,179 153/651 or 24%</td>
</tr>
<tr>
<td>Ravalli</td>
<td>1.54% (644)</td>
<td>1.47% (624)</td>
<td>$130,963 229/1238 or 18%</td>
</tr>
</tbody>
</table>

Lewis & Clark County and Ravalli County are very similar markets. Therefore, I selected 2 sales from Ravalli County that are considered transitional property with similar traits as the subject except for size, which will be considered in the sales comparison approach. There were no recent sales as large as the subject with similar traits in the Ravalli County market.

Adjustments: In a market driven by non-economic factors (aesthetics, wildlife habitat, personal attractions, buyer/seller motivations, and recreational opportunities, etc.) it is reasonable to expect a variance in value between similar properties.

For purposes of this appraisal, I have considered various factors that may have an influence on value. In some cases, these factors can be measured in the market (quantitative adjustment) while others are more subjective that cannot be measured directly through the pairing of sales data but are known to be a consideration by market participants (qualitative adjustment).

Quantitative Adjustments: In my research of the market and the analysis of the data, I considered factors that could be measured in the market that were less subjective and variable. Quantitative adjustments applied for purposes of this report include consideration for buildings to isolate a land value. I will also address trends in the market in terms of time and appreciation. Other factors of value that were more difficult to isolate and abstract are recognized as a qualitative adjustment.
**Buildings:** For purposes of isolating a land value, an adjustment was made to account for the buildings. In analyzing the overall sale, an allocation to the land and buildings was completed. In the case of the buildings, the size, age and utility of the structure were considered. In addition to discussions with buyers, sellers, and/or agents, estimates have been made on a residual basis. In all of the improved sales, the land component accounted for the majority of the overall value.

**Time/Market Conditions:** The Helena Valley sale is current. The Bitterroot Valley sales are in 2016. In October 2018, a sale indicated a value for land of $1,735/acre along the Sapphire Mountains east of Stevensville. Two 2016 sales in the area had previously sold for $1,500/acre in December 2016 and $1,600/acre in September 2016. Based on a mid-range of $1,550, this would show an increase of 12% or 5.8%/year. But most of the increase has been recent so an increase of 12% would be indicative of the market increase for any sales since 2016 to current value for the Bitterroot Valley sales.

**Qualitative Adjustments:** The qualitative factors are ones that are considered by the market but are more subjective and/or difficult to measure and quantify. For purposes of accounting for the qualitative factors, these will be considered when the sales are compared directly to the subject for purposes of establishing or bracketing value.

Some of the factors considered on a qualitative basis vary greatly between market participants. One participant may emphasize views, hunting opportunities, agricultural production, surface water, etc. while others may not give as much consideration to these factors. This is the intricacy of this market, which does account for some of the variability between prices. Although a measurable difference in value may not be directly abstracted from the market for the qualitative factors, they are considerations, which will assist in determining a value for the subject.

**Size:** All of the sales are smaller in size to the subject’s 3,109.205 acres. At the same time, it’s recognized that there are inconsistencies in the market relative to this factor between 568 acres and 3,100 acres. There are no current sales larger than 568 acres in the Helena Valley.
**Investment Quality:** Properties that are comprised of multiple parcels would be more desirable than say a single tract of land. In addition, the suitability of the property for further development with respect to infrastructure (distribution of power, roads, etc.) and suitability for septic are considered.

The subject, with the 22 parcels, has subdivisions on the south, west and north sides indicating a demand for subdivision property. On the basis of the subject’s current state of interior access and utilities, there would be a long-term investment potential for possible subdivision. This is not to say that other avenues including the use of a family transfer and boundary adjustments could not be utilized for immediate partitioning.

**Physical Considerations:** Interrelated to the investment quality of the subject, the physical conditions of the property are noted. The subject’s cropland that invaded by cheat grass is detrimental to condition of the property. The sales have varying slopes that must be considered as to whether portions of the sales and subject are suitable for homesites.

**Location:** Sale 1 is located in the Helena Valley. Sale 2 and 3 are located in the Bitterroot Valley. While there are locational differences between each sale and the subject, which may make it more or less desirable, these factors would be considered separately within its aesthetics, access and/or recreational opportunities which will be discussed separately. As already discussed, the average market value for vacant land in the Bitterroot Valley is very similar to the Helena Valley. This is mainly residential lots, but this would have a direct influence on investment transitional land. The demand as indicated by number of sold lots compared to active listing is about equal for the two areas.

**Access:** The type and quality of access is acknowledged as a factor of value. While the subject has legal and physical access, the physical access would not be to the same extent as the Sale 1 but better than Sale 3.

**Recreational and Aesthetics:** This is more of an all-encompassing term that cover a wide segment of features. These are factors that buyers and sellers place varying emphasis on. It’s noted that many of the detailed factors addressed below are interrelated and not mutually exclusive of each other. Thus, the differences in qualitative factors are not cumulative to each other. For purposes of this analysis, recreational and amenity factors that would be considered by the market include:
-Surface Water: Properties with surface water demand a premium in the market. The quality and quantity of the water, flow, etc. are all taken into consideration. The subject is associated with Spokane Creek and springs.

Land Use Diversity/Agricultural Resources: Land use diversity does influence value. While the ag resources are considered, the market for those properties considered herein are not motivated nor heavily influenced by the production capabilities of the property. While noted, it is not emphasized. Sale 2 compared to sale 3 indicates the market does consider improved pasture.

-Viewshed: Properties with aesthetic views are typically more desired by the market. The subject has views of the Rocky Mountain Continental Divide, Elkhorn Mountains and Big Belt Mountains. However, the sales 2 and 3 have views of the Selway-Bitterroot Wilderness with rugged peaks that provide a more spectacular view.

SUMMARY: When considering each factor individually, an overall comparison of each sale to the subject can be made. Under this analysis, the market influence or importance of each factor is considered. The significance in terms of effect on market value is analyzed, whereby more weight or emphasis is placed on certain factors over others. Thus, the overall comparison is not merely a summation of the individual ratings, but an overall rating based on the most significant factor or combination of factors. Within this analysis, market conditions, agricultural resources and recreational attributes are emphasized.
<table>
<thead>
<tr>
<th>Sale Id</th>
<th>Subject</th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reference</td>
<td>8118</td>
<td>7126</td>
<td>5683</td>
<td></td>
</tr>
<tr>
<td>Date of sale</td>
<td>2019</td>
<td>2016</td>
<td>2016</td>
<td></td>
</tr>
<tr>
<td>Sale price</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building/other value</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land Value</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Size (Acres)</td>
<td>3109.205</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S/Acre Land Value</td>
<td>1,501</td>
<td>1,500</td>
<td>1,600</td>
<td></td>
</tr>
<tr>
<td>Financing</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Time Adjustment</td>
<td>0</td>
<td>180</td>
<td>192</td>
<td></td>
</tr>
<tr>
<td>Adjusted Value</td>
<td>1,501</td>
<td>1,680</td>
<td>1,792</td>
<td></td>
</tr>
<tr>
<td>Qualitative adjustments</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Size - acres</td>
<td>3109.205</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment Quality</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of parcels</td>
<td>Cadastral - 22 parcels. Subdivisions adjacent to west, south and north</td>
<td>Cadastral - One parcel. Subdivision adjacent east and north</td>
<td>Cadastral - 13 parcels. Subdivision to west and adjacent south</td>
<td>Cadastral - 5 parcels. Subdivision adjacent north</td>
</tr>
<tr>
<td>Utilities</td>
<td>Utilities onsite at edge</td>
<td>Utilities onsite at edge</td>
<td>Utilities onsite but into interior</td>
<td>Utilities adjacent</td>
</tr>
<tr>
<td>Overall Investment Quality</td>
<td>＋</td>
<td>－</td>
<td>＋</td>
<td></td>
</tr>
<tr>
<td>Physical considerations</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conditions</td>
<td>Mostly Good with some fair</td>
<td>Good</td>
<td>Good</td>
<td>Good</td>
</tr>
<tr>
<td>Topography</td>
<td>Elevation 3,840 ft. to 5,320 ft. Slope 36.2 percent less than 15%, 62 percent between 4 to 35%, and 2 percent 25 to 60%</td>
<td>Elevation 3940 ft. to 4,300 ft. Slope 14 percent 2 to 8%, 5 percent 4 to 35%, and 81 percent 8 to 45%</td>
<td>Elevation 3960 ft. to 5,200 ft. Slope 39 percent 4 to 15%, 22 percent 15 to 45%, 38 percent 1 to 60% and 30 to 60%</td>
<td>Elevation 4,160 to 5,080 ft. Slope 49 percent less than 18%, 18 percent 1 to 35%, 30 percent 15 to 50%</td>
</tr>
<tr>
<td>Overall Physical considerations</td>
<td>＋</td>
<td>－</td>
<td>＝</td>
<td>＋</td>
</tr>
<tr>
<td>Recreation and Aesthetics</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surface Water</td>
<td>Creek</td>
<td>None +</td>
<td>Creek</td>
<td>Creek</td>
</tr>
<tr>
<td>Land Use Diversity/agricultural resources.</td>
<td>Foothill pasture with scattered timber and dry cropland</td>
<td>Foothill pasture +</td>
<td>Foothill pasture with scattered timber +</td>
<td>Mostly improved pasture with some Native pasture</td>
</tr>
<tr>
<td>Adjacent Public lands</td>
<td>BLM &amp; State</td>
<td>None +</td>
<td>120 acres State +</td>
<td>480 acres State /+</td>
</tr>
<tr>
<td>Views</td>
<td>Helena Valley and Rocky Mountain Continental Divide and area Mtns</td>
<td>Helena Valley and area Mtns +</td>
<td>Bitterroot Valley and Selway-Bitterroot Wilderness -</td>
<td>Bitterroot Valley and Selway-Bitterroot Wilderness -</td>
</tr>
<tr>
<td>Overall Recreation and Aesthetics</td>
<td>＋</td>
<td>＋</td>
<td>－</td>
<td>－</td>
</tr>
<tr>
<td>Market Location</td>
<td>Spokane Hills</td>
<td>Helena Valley</td>
<td>Bitterroot Valley</td>
<td>Bitterroot Valley</td>
</tr>
<tr>
<td>Access</td>
<td>Public road at 3 points and one easement private gravel road, interior dirt</td>
<td>Public paved and gravel road adjacent</td>
<td>One private road but good interior</td>
<td>2 public roads, but main one is dirt, interior dirt</td>
</tr>
<tr>
<td>Overall Indicated value/acre</td>
<td>Greater than</td>
<td>Greater than</td>
<td>Slightly greater than</td>
<td>－</td>
</tr>
<tr>
<td>＝</td>
<td>＝</td>
<td>＝</td>
<td>＝</td>
<td>＝</td>
</tr>
<tr>
<td>＋</td>
<td>＋</td>
<td>＋</td>
<td>＋</td>
<td>＋</td>
</tr>
</tbody>
</table>

N/A: Non-applicable

(0) or (=) Sale and subject are equivalent to each other. (−) Sale is better than the subject, which implies a negative adjustment
(+) Sale is inferior to the subject, which implies a positive adjustment. (/) Means slightly negative or positive
Estimate of Value: The sales indicate an initial time adjusted range in value from $1,500 to $1,792 per acre. The comparability of these sales is further discussed that will facilitate the bracketing of the subject.

-Sale 1 ($1,500/acre) is the most current sale of a recreational investment property located west of the subject on the northwest side of the Helena Valley. It is superior on the basis of size and having public access adjacent on two sides. This would be more than offset by the subject’s superior investment quality (long term investment opportunities due to 22 parcels on subject compared to possibly three on sale) and overall recreation and aesthetics. Sale 1 indicates a value greater than $1,500/acre.

-Sale 2 ($1,680/acre) is a smaller sale in the Bitterroot Valley. This property is smaller and consists of 13 contiguous parcels. It has one access by private road, an interior road, and utilities to the interior. The property is superior on the basis of overall investment quality. The subject is superior on the basis of overall physical considerations and overall recreation and aesthetics (diversity and adjacent public land). Given the topography of Sale 2 a value greater than $1,680 per acre is supported.
Sale 3 ($1,792/acre) is the most physically comparable to the subject but slightly inferior due to 30 percent of the slope being 15% to 50%. The sale is superior as to size and viewshed. However, the subject has superior access and overall investment quality. Thus, sale 3 is a slightly inferior and would support a value slightly higher than $1,792 per acre.

Conclusion of Value: Recognizing that sale 3 is most comparable and the value would be slightly greater than $1,792 per acre a value of $1,800 per acre is the indicated value.

With an emphasis on the value of sale 3, a probable value $5,596,569 rounded to 5,597,000 is indicated. Based on the data presented the value concluded for the subject’s land as a whole is $5,597,000.

3. Estimate of Building Value: For purposes of this valuation, I have referenced improved sales of rural/recreational properties to estimate the contributory value(s) of the buildings for the subject. The data is summarized to reflect a total contributory value as part of a larger property with individual building values being assigned. Values are dependent on the structure’s utility, condition, and age.

In analyzing the overall sale, an allocation to the land and buildings was completed. In the case of the buildings, the size, age and utility of the structure were considered. In addition to discussions with buyers, sellers, and/or agents, estimates have been made on a residual basis. The table on the following page discusses the sales.
**Reference** | **Total** | **Comments**
--- | --- | ---
7206 | $125,000 | A 1971 dwelling with 1248 s.f. total living area finished attic partial basement at $60/s.f.; 880 s.f. attached finished garage at $12/s.f.; 1,200 s.f. 1977 metal siding shed at $10/s.f.; 3-1974 grain bins with 3,300 bu. each at $0.70 and one 1955 grain bin 3000 bu. at $0.40/bu.
8178 | $30,182 | Quonset built 1980 with 2800 s.f. at $6/s.f.; three 5,600 bu. 1980 grain bins at $0.80/bu.
7239 | $180,000 | A dwelling built 1986 with 1680 sf., full basement with 1300 s.f. finished at $87.60/s.f.; shed built 1974 with 2,240 s.f. at $7.50/s.f.; 2 grain bins built 1979 at 5.400 bu. and 3,000 bu. at $0.80/s.f., one grain bin built 1984 at 5,400 bu. At $0.80/s.f., and misc. outbuildings at $5,000.
7471 | $100,000 | A 1910 dwelling with 1504 s.f. living area at $52/s.f.; 1985 quonset 3,403 s.f. at $6/s.f.; a grain bin built 1991 with 2000 bu. at $0.80/bu.
8118 | $101,000 | A 1960 dwelling in dated condition 1196 s.f. with full basement at $69/s.f.; machine shed built 1976 with 1196 s.f. at $8/s.f., 1980 garage at 720 s.f. at $8/s.f., misc. outbuildings $3,000.

The improvement value for the subject is concluded as follows: The subject’s dwelling is inferior in condition to 7206, 7239, and 8118, but slightly inferior to sale 7239. A value of $45/s.f. is concluded. The value of the subject’s 2 grain bins per/bu. is considered similar to the ones on sales 7239 and 7471.

<table>
<thead>
<tr>
<th>Farmstead</th>
<th>Size</th>
<th>$/s.f.</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwelling</td>
<td>1,970 living area</td>
<td>$45</td>
<td>$88,650</td>
</tr>
<tr>
<td>Grain bin</td>
<td>5,400 bu.</td>
<td>$0.80</td>
<td>$4,320</td>
</tr>
<tr>
<td>Grain bin</td>
<td>4,800 bu.</td>
<td>$0.80</td>
<td>$3,840</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>$96,810</td>
</tr>
<tr>
<td>Rounded</td>
<td></td>
<td></td>
<td>$97,000</td>
</tr>
</tbody>
</table>

A total value of $97,000 is indicated for the subject’s buildings. This total value is further supported by sales 7471 and 8188.
4. **Summary of Value:** Based on the analyses presented, the following summary of value is provided:

<table>
<thead>
<tr>
<th>Parcel</th>
<th>Concluded Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land</td>
<td>$5,597,000</td>
</tr>
<tr>
<td>Buildings</td>
<td>$97,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$5,694,000</strong></td>
</tr>
</tbody>
</table>

**Indicated Value by the Sales Comparison Approach - Unencumbered**

$5,694,000
P. Reconciliation of Concluded Value – Before Easement

The reconciliation process is where the appraiser weighs the value indications and other pertinent data to arrive at a final estimate of value for the appraised property. The value of the subject was estimated on the basis of the sales comparison approach.

The strength in the sales comparison approach was the ability to utilize sales located in similar markets. The limitation was the quantity of sales in the local area and similar market areas that were similar in size. The data allowed for a primary sale that further facilitated the confinement of a probable range in value for the subject.

Based on the sales comparison approach, a value of $5,694,000 is concluded for the subject property on an unencumbered basis.

Concluded Before Value
$5,694,000
Q. **Valuation After Easement - Introduction**

As set forth in this report, the purpose of this appraisal is to provide an opinion of market value both before and after placement of a conservation easement on the subject property. This is a proposed conservation easement to be administered by the Prickly Pear Land Trust – with some rights conveyed to Lewis & Clark County. In this section of the appraisal, an opinion of market value of the property, subject to a conservation easement will be addressed.

The proposed conservation easement has defined permitted uses and practices of the property as well as those uses that are prohibited. The conservation easement has diminished the bundle of rights appurtenant to the subject and its owner. In effect, the easement places a cloud on the title of the property and creates a divided fee estate with the landowner having physical control and the easement holder having non-possessory ownership rights.

A deed of conservation easement separates nonpossessory ownership rights away from a fee simple parcel of land, creating a nonpossessory ownership in favor of the holder of the conservation easement. While the easement itself transfers specific rights to the easement holder, it also encumbers or lessens the fee simple estate associated with the subject property. Herein lays the issue of valuation addressed in this appraisal: the deed of conservation easement results in a perpetual and legal fragmentation of the physical use and legal title of the property.

A comprehensive definition of a conservation easement is provided in the Uniform Conservation Easement Act:

"Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archeological, or cultural aspects of real property.8

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Montana Code 76-6-104 states:

“…an easement or restriction, running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of such easement or restriction any and all rights to construct improvements upon the land or the substantial alteration of the natural character of the land except for this right is expressly reserved in the instruments evidencing the easement or restriction.”

Treas. Reg. Section 1.170A-14(b)(2) defines perpetual conservation restriction as:

A perpetual conservation restriction is a qualified real property interest. A ‘perpetual conservation restriction’ is a restriction granted in perpetuity on the use which may be made of real property—including, an easement or other interest in real property that under state law has attributes similar to an easement (e.g., a restrictive covenant or equitable servitude). For purposes of this section, the terms ‘easement’, ‘conservation restriction’, and ‘perpetual conservation restriction’ have the same meaning.”

The interest conveyed by the conservation easement prevents the landowner from impairing the conservation values of the property. Title to the land parcel remains in the easement grantor’s name. This title remains freely transferable, although it is permanently burdened with the conservation easement.9

In the situation of the before-easement appraisal, the rights being valued were equivalent of a fee simple interest, which is the fullest embodiment of land ownership. Fee simple ownership not only implies legal control of the property but also includes tangible and intangible levels of utility.

With every parcel of property come tangible rights: to occupy and use, to future development, to subdivide accordingly, to harvest crops, recreate, hunt, to peacefully enjoy; the list continues, ad infinitum, generally to the exclusion of others.

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The combination of these rights constitutes the "bundle of rights" theory, which is defined as follows:

"The concept that compares property ownership to a bundle of sticks with each stick representing a distinct and separate right of the property owner, e.g., the right to use real estate, to sell it, to lease it, to give it away, or to choose to exercise all or none of these rights.

All ownership rights are beneficial to the property and may have a direct impact on use and ultimately the value of a property. Under the equivalent of fee simple ownership, the property owner has the flexibility to respond to changes in the market, which include future advances in technology, changes in laws, demand of property, etc. The easement that is proposed to be applied to the subject, has removed some of these rights into perpetuity - forever.

The bundle of rights is also known as beneficial interests. These are directly related to the value and use of a property. The owner’s right to choose to exercise all or none of these rights is impaired by the easement. As set out herein, the easement restricts many property rights, reducing the property’s overall use as well as the owner’s unlimited sense of intangible property rights. The easement grantor has diminished dominion over the property and, in the event of sale, cannot transfer a fee simple ownership or entitlements – which impacts the appeal of the property from an investment standpoint. Additionally, the owners have limited their operational alternatives and their ability to capitalize on changing market demands and uses such as further land divisions. The ownership is perpetually restricted to a fractionalized fee estate.

Some of the rights and uses restricted by the easement may be considered consistent with prudent landowner operation of the property. However, as indicated, the easement makes such operation and use of the property a binding requirement of ownership. In a fair market transaction, such property owner rights contribute to the purchase price and value of the property, whether or not they are tangible at the time of sale. This is plainly illustrated in the area land market, for purchase values exceed income potential to a large degree.

As previously discussed, the purpose of this appraisal is to estimate the effect on the value of the subject due to the placement of a conservation easement (CE). This entails estimating value for the property both before and after imposition of the conservation easement. A copy of the proposed conservation easement is included as an exhibit to this report.
The purpose of the easement is to preserve and protect in perpetuity, to enhance upon mutual agreement, and in event of their degradation or destruction, to restore the open space and significant relatively natural features and values of the property. It is further the specific purpose to protect the property from fragmentation due to subdivision and unrestricted residential and/or commercial development and to conserver important habitat for grassland birds, black bears, mountain lion, deer, elk, bobcats and ermine; to protect rare or unique native plants; and conserve the diverse grassland, forest, and riparian communities and the wildlife inhabiting these communities.

The easement shall confine the uses of the property to continuation of such ranching, residential and other uses of the property as may be conducted with the conservation values protected in the easement. Any and all rights or interests of the landowner not specifically conveyed to the Land Trust or specifically prohibited by the easement are reserved to the landowner.

The primary terms of the conservation easement are summarized below but are not all inclusive, see CE for further details.

**Rights of PPLT:**

- To identify, to preserve and protect in perpetuity and in the event of their degradation or destruction to restore, the conservation values of the property.

- There is the conveyed right of access to PPLT. These rights are stipulated in the easement.

- To enjoin any activity on or any use of the property that is inconsistent with the CE and to enforce the restoration of such area or features as may be damaged by such activities.

**Consistent Uses of the Property:**

- Livestock grazing is permitted, including cattle, horses, and bison.

- Raising and harvesting of hay and other crops, including plowing, planting native and non-native plant species, irrigating and harvesting, on those areas that have been previously cultivated as depicted in Baseline Report (Report). Areas identified in the Report as abandoned cropland may be cultivated and seeded to perennial cover, with seed mix subject to advanced approval by PPLT.
• Construction of new buildings and structures within the designated “Building Envelope”, so long as these actions conform to applicable federal, state or local laws, or regulations.

• Outside of the “Building Envelope,” construction of reasonably new non-residential ag buildings and structures, which are necessary for the operation of the property as a working agricultural property. Any structure exceeding 5,000 sq. ft. in footprint may only be built with prior approval of PPLT.

• Use, maintenance and repair of all existing and permitted buildings and structures. In the event of their destruction, the right to reconstruct them on the same site with buildings of equal or smaller size. Use of these structures for residential purposes, if outside of the established building envelope, is prohibited.

• Maintenance and improvement of existing roads, construction of new roads to access new buildings and facilities, provided that roads may only be improved to the minimum standard necessary for agricultural and property management. Provided that construction of new roads outside the building envelope is subject to prior approval by PPLT. All roads shall not be paved or oiled or have calcium carbonate applied or otherwise be improved with chemical coatings or other non-natural materials.

• Maintenance, repair and reconstruction of existing fencing and construction of new fences. New or reconstructed boundary or pasture-division fences may not exclude or prevent wildlife from moving through the property. Other fencing may be built to exclude wildlife from residential yard area, gardens, haystacks, newly seeded areas and temporary vegetative restoration areas.

• Use and storage of ag chemicals in compliance with applicable law as may be necessary to carry out agricultural and ranching activities.

• Introduction of biological weed and pest control agents in compliance with applicable laws.

• Removal of surface sand and gravel in limited quantities, for use solely in ranch operations and on roads and driveway on the property. No commercial use of sand or gravel located on property.
• Construction of utility systems for uses permitted in this easement.

• Maintenance, repair and reconstruction of existing ag and residential water facilities and the development of new water resources and facilities for ag and residential use. Provided that any maintenance, repair, reconstruction, construction or development activities do not cause significant or long-term impairment of riparian values. Construction of ponds requires prior approval from PPLT.

• In accordance with all applicable state and federal laws, the control of predatory and problem animals, excluding raptors, that caused damage to persons, livestock, or other property.

• Harvesting of timber and cutting trees using Best Management Practices, see CE for more precise information.

Inconsistent Uses of the property: The following uses and practices on the property shall be prohibited, except as provided above.

• Storage, dumping or other disposal of toxic and/or hazardous materials, except that petroleum products such as oil and gas for use exclusively by the landowner may be stored in accordance with applicable state and federal regulations.

• Dumping or other disposal of garbage, tires, inoperable machinery, or other refuse; or any items that could be an attractant to bears or other wildlife. Does not include domestic livestock that dies on the property or involved in MT Depart. FW&P Carcass Redistribution Program.

• Filling, excavating, dredging, mining, drilling and the exploration for or extraction of minerals, hydrocarbons, soils, sand, gravel rock or other materials on or below the surface of the property.

• Establishment or maintenance of any commercial or industrial activity, including but not limited to game farms, motels or hotels, trailer or recreational vehicle parks. Shall not include ranching.

• Establishment or maintenance of a feedlot.
• The partition, division, subdivision, or de facto subdivision of the property, including but are not limited to, any subdivision, short subdivision into remainder tracts, platting, testamentary division, partitions among tenants-in-common or joint tenants, judicial partitions, allocation of title or property rights among partners, shareholders, trustees or trust beneficiaries or members of any business entity, subdivision for purpose of providing new security for a mortgage, timeshare or interval ownership arrangements, or other process by which land is divided into lots or in which title to different portions of the land are held by different owners.

Notwithstanding the above, the sale, exchange, devise or gift ("Transfer") of a portion of the property for agricultural, or timber management purposes shall be allowed, provided that no more than three (3) parcels may be created from the property covered by this Easement (i.e. up to two divisions, for a maximum of three total parcels), and provided further that any such Transfer(s) must be effected with an express provision reflecting that said land is subject to the terms and conditions of the Easement, without modification or expansion of such terms. In the event of any such Transfer(s), no additional structures shall be allowed upon any portion of the property beyond those structures already authorized in this Easement, and all other terms of this Easement shall continue to apply. With the exception of such authorized Transfers, no subdivision or de facto subdivision of the Property shall be allowed. Transfer of any portion of the property for residential use shall be expressly prohibited. Furthermore, if the property is so divided, the Landowner must comply with all applicable federal, state, and local laws, ordinances, and regulations concerning subdivision, including, if required, the surveying of the parcels to be conveyed and the submission of the proposed separate tract(s) to state and/or local review authority for approval. PPLT shall be furnished with a copy of the pertinent portion of any document or conveyance utilized to affect such a transfer at least thirty (30) days prior to the execution of the same.

• Construction or placement of any buildings, temporary living quarters of any sort, utility towers, or other structures, except as provided for in the Easement and except that vehicular campers owned by Landowner or guests may be parked on the property as appropriate to accommodate normal visitation.

• Construction of any new roads or vehicle trails, except as provided CE.
• The change, disturbance, alteration, or impairment of the significant relatively natural ecological features and values; or the destruction of any of the conservation values on the property.

• Any change in the topography of the property through the placement therein of soil, land fill, dredging spoils, or other material, except as incidental and necessary to the activities permitted hereunder.

• Except as specifically permitted for the purpose of maintaining and enhancing the Conservation Values, the following activities are prohibited: rip-rapping and any other manipulation, diversion, or other alteration of natural water courses, wetlands, or other bodies of water; any activity which may destabilize the banks of any course or body of water; and any uses or activities which would pollute, degrade, or drain the Property’s surface or sub-surface waters are prohibited. Additionally, the removal of woody riparian vegetation is prohibited unless incidental to the establishment and/or maintenance of fences, water gaps, water tanks, irrigation structures and other practices compatible with the permitted uses of the Property and the protection of the established Conservation Values.

• There shall be no construction, maintenance, or erection of any billboards on the Land. Roadside signs are permitted only for the purposes of posting the name of the Land, advertising any business permitted on the Land, controlling public access, providing public notification of this Easement, or advertising property for sale. Any other use of signs requires the Prior Approval of the PPLT.
R. **Highest and Best Use - After Easement**

The analysis and the conclusion of the highest and best use must now consider the subject property as encumbered with the proposed conservation easement. The same criterion that was previously considered in the highest and best use analysis on an unencumbered basis will be followed.

Once a property is subjected to a conservation easement, the bundle of rights or potential uses associated with that property are diminished. While in some instances the overall highest and best use of the subject property may not have changed, the utility or intensity of use applicable to that highest and best use is disturbed. While a property may have development potential in the before easement analysis, it can also have development potential in an after-easement analysis subject to the allowances of the easement. However, unrestricted development and use potential in the before easement situation is replaced by a specified or diminished development potential as an encumbered property. In the case of the subject, residential development is limited to one building envelope (approximately 10 acres).

In addition to specific uses affecting the highest and best use or operation of the property, conservation easements often remove or disturb additional property rights relative to the future use and anticipated value of the property as well as its appeal from the standpoint of an investment. The easement described herein restricts or eliminates uses of the property which, while not having direct relevance to the highest and best use on an income or anticipated basis at the present time, may become more prominent or important in the future as real estate markets change and property development occurs – all of which creates a degree of uncertainty to a market participant. Also, the easement may allow potential uses of the property, which at the time is not justified, or apparent as having any measurable or direct bearing on value based on conditions within the current market.

With consideration to the subject, the highest and best use becomes more defined – especially from the standpoint of legally permissible uses. The criterion of highest and best use is now addressed.
Is it legally permissible? As per the terms of the conservation easement, the legally permissible uses of the subject that are deemed typical for the market are limited to agricultural uses, timber management, private recreational activities and defined residential development. Residential development is limited to one building envelope. The property is a 3,109.205 acre tract that is allowed to have two divisions, for a maximum of three total parcels.

The building envelope is situated to include the existing farmstead (shaded in red below) with the dwelling with access road and is fixed in this location. The boundary is approximate as portion of west boundary is on the west side of creek. While the current retained envelope is in a desirable area, there are other desirable sites that will not be buildable.

Overall, the legally permissible uses of the subject typical for the market is deemed as a restricted recreational homesite with ancillary recreational and agricultural uses.
Is it physically possible? Given the legally permissible uses, the subject property is physically capable of supporting a residential use and can be used for agricultural, timber management, and recreational purposes. These uses however, are not without associated restrictions atypical of the market – especially when one considers that the subject cannot be subdivided and must not be divided into more than three parcels of land. Recreational activities and uses are allowed. The dominant physical use of the property is associated with its agricultural production.

The subject’s residential building envelope is located in the creek bottom area and next to the bench with appealing surrounding trees. The following photos are one from a drone and one from the west boundary access point. Notice all the buildings except the dwelling are in poor condition with missing roofing.
Is it financially feasible and maximally productive? Given the terms of the easement, defined residential, agricultural, and recreational uses of the subject are financially feasible and deemed to be maximally productive. Timber management is not an existing financial resource, but a long-term future income given the scattered locations and existing growth stage. These uses are the most probable and not mutually exclusive of each other.

By eliminating the ownership rights identified, the financial feasibility of owning this property over a certain holding period in order to realize appreciation and return on investment is diminished and the ability to benefit from current or future conservation easement value is compromised. Further subdivision and development of the subject, which may utilize family transfers and/or boundary adjustments with neighboring properties are not possible. Thus, from an investment standpoint, the only means of realizing a return is through appreciation only – which can vary over time.
The easement creates uncertainty in terms of liquidity and the potential of extended marketing times through a smaller pool of buyers and tendencies of mispricing. The third-party interests of the easement holder (which also includes an interest by Lewis & Clark County) and the severance of rights is a deterrent in and by itself. Thus, the impact on value of a conservation easement goes beyond just that of the development potential of the property.

Given the terms of the easement, agriculture, recreational and defined residential use are the only financially feasible and maximally productive uses of the encumbered property. These uses however are under circumstances atypical of the market with respect to property interests.

**Conclusion:** The highest and best use of the subject is dictated by the terms of the conservation easement. As encumbered, the highest and best for the property as a whole is as a restricted 3,109.205 acre recreational/agricultural property with one building envelope.

As encumbered, the desirability of the subject as an investment property is compromised due to the inability for further subdivision, the inability to grant or donate a conservation easement, and the fact the conservation easement creates a smaller pool of buyers that may be averse to this level of encumbrance.
S. **Approaches to Value - After Easement**

The primary valuation method followed in this appraisal report is the “before” and “after” appraisal analysis - a method in the valuation of conservation easements accepted by both private and federal UASFLA standards. IRS guidelines regarding the valuation of conservation easements identify the “before” and “after” method as an applicable and acceptable method of valuation for conservation easements.

Consistent with the before valuation, the sales comparison approach will be utilized to estimate value for the subject.

While the physical uses (i.e. agricultural and timber) become more of an integral factor as a conservation easement encumbered property, the market is influenced by other factors – which impacts capitalization rights and therefore the dependability of the income approach. In addition, the market is driven by the principle of substitution.

The cost approach is based on the premise that the value of the land plus the depreciated value of the buildings is equal to the value of the property as a whole. With respect to the subject’s buildings, they are mostly older structures with minimal utility as a whole. Thus, depreciation becomes challenging to abstract from the market. Due to the age, condition, and/or utility of the buildings, the cost approach was not completed.

For purposes of this assignment, the sales comparison approach will be completed. The exclusion of the cost approach and the income approach does not adversely affect the reliability or credibility of this valuation given the intended use of the appraisal.
T.  **After Easement Valuation**

1. **Overview of Approach:** The sales comparison approach is based on the premise that the market value of a property is related to the prices of comparable, competitive properties that have sold in the market. This approach is based on the principle of substitution where the value of a property tends to be set by the price that would be paid to acquire a substitute property of similar utility and desirability, or that a knowledgeable buyer would pay no more for a property than they would pay for a substitute of equal utility.

The comparable sales are adjusted for dissimilar factors and a final estimate of value is made. Factors that may have to be accounted for include: conditions of sale, financing, time, property rights, land use, differences in improvements, location, and physical characteristics (recreation, size, topography, lay-out, land uses, utilities, quality, etc.).

The sales comparison approach uses a direct comparison to other transactions on some common unit of comparison such as number of acres, thousand board feet (MBF) animal units (AU), etc. While the number of deeded acres may be used, this sales comparison approach is being completed on a component basis with consideration to the land and the buildings separately as they contribute to the property as a whole. The completion of the sales comparison approach on a component basis is appropriate for purposes of this analysis.

The component approach takes into consideration the depreciated value of the improvements and the value of the land that is consistent with the highest and best use of the subject.

2. **Estimate of Value:** In this section of the valuation, an estimate of value is completed for the subject as encumbered with the Prickly Pear Land Trust (PPLT) conservation easement.

*Selection of Sales:* For purposes of valuing the subject, I’ve referenced sales that consisted of conservation easement encumbered properties with varying degrees of utility. An emphasis was given to restricted sales with a sustained degree of use for residential, agricultural, and recreational purposes.

Four encumbered sales that are located in the Lewis & Clark and Broadwater Counties plus one pending sale are referenced.
Adjustments: The adjustments include consideration for quantitative and qualitative factors.

Quantitative Adjustments: Quantitative adjustments were made to account for differences in building improvements.

Buildings: The difference in building improvements between the subject and the sales is accounted for on a per acre basis.

Time/Market Conditions: There are sales in Broadwater County that are resales. One is A2 that indicates from 2015 to October of 2017 a 5.35% yearly increase. Another resale in the same area that is not a CE resale indicates 6.67% increase from March of 2016 to November 2019, however part of the increase may have been from the recovery from the 2000 Maudlow/Toston fire. It was intensely burned. Sale A2 only had scattered burned areas from Maudlow/Toston fire with most of its timber surviving. Therefore, I will use as a time adjustment 6% annual increase to mid-2019.

Qualitative Adjustments: The qualitative factors are ones that are considered by the market but are more subjective and/or difficult to measure and quantify. For purposes of accounting for the qualitative factors, these will be considered when the sales are compared directly to the subject for purposes of establishing or bracketing value.

Market Location: While two sales are located in Broadwater County and two sales are located in Lewis & Clark County the Sale A1 would be considered somewhat inferior as it is further away from larger cities than the subject and the comparable sales. The pending sale A5 is located in Lewis & Clark County.

Size: Sales A1 and A2 are smaller and would probably sell for a higher amount per acre if all things were equal. There are more people with the necessary resources to purchase a smaller property than a larger property. The higher demand results in more competition for the smaller property and results in a higher price/acre. Sale A4 is twice as large as subject and probably sell for a lower amount per acre if all things were equal. There is not enough market information to derive a quantitative adjustment, therefore a qualitative adjustment is warranted.

Agricultural Resources: The ag resources are a consideration. While these are all recreational oriented properties except sale A4 and this is an emphasis, it’s
recognized that sale A4 is dominated by dry cropland. Sales A2 and A3 have no cropland.

**Recreational and Aesthetics:** The amenities of the property and their recreational resources are all considered. This would include a water amenity and/or viewshed. Of the properties considered, sale A3 is recreationally intensive.

**Use limitations/restrictions:** The terms of the conservation easement restrictions and their effect on the use of the property are considered. While it is not possible to isolate and establish an effect on value for individual easement terms, the cumulative effect of the easement has an overall impact on the property. Some conservation easements are more liberal while others are more restrictive. In the context of all the sales, each have sustained utility for residential, agricultural production, and private recreational uses; but to varying degrees.
<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
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<td>Sale Id</td>
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<td>A2</td>
<td>A3</td>
<td>A4</td>
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<td>Building/other value</td>
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<td>Land Value</td>
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<td>Size (Acres)</td>
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<tr>
<td>15</td>
<td>Agricultural Resources</td>
<td>Scattered timbered pasture, dry cropland and poor condition dry cropland</td>
<td>Steep pasture w/rock outcroppings and rolling dry cropland</td>
<td>Mtn foothills pasture</td>
<td>Mtn foothills pasture with benches and steep areas</td>
<td>All cropland (great condition) with incidental pasture</td>
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<td>Recreation and Aesthetics</td>
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<td>Adjacent public lands</td>
<td>BLM &amp; State</td>
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<td>USFS</td>
<td>Adjacent State wildlife lands, but has trails, cabins &amp; lodge -</td>
<td>None +</td>
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<td>Views</td>
<td>Helena Valley and area mtns</td>
<td>Rocky Mtns</td>
<td>Area Mtns</td>
<td>Area Mtns</td>
<td>Local Mtns</td>
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<td>Overall Recreation and Aesthetics</td>
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<td></td>
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<tr>
<td>21</td>
<td>Use limitations/restrictions</td>
<td>2 splits (max 3 parcels)</td>
<td>Right to sell 3 acres</td>
<td>One building envelope, no splits</td>
<td>No splits, can construct limited additional buildings</td>
<td>3 splits (max 4 parcels) but 3 parcels not less than 640 acres</td>
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<td>Overall Indicated value/acre</td>
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<td>Slightly less than</td>
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</tbody>
</table>

Explanation:

- (+) Sale is inferior to the subject, which implies a positive adjustment.
- (0) or (=) Sale and subject are equivalent to each other.
- (-) Sale is better than the subject, which implies a negative adjustment.
- (/) Means slightly negative or positive.
Determination of Value:

The sales indicate an initial wide range in value from $802 to $1,322 per acre. The comparability of the sales will be discussed, which will bracket the subject.

-Sale A1 ($802/acre) is a located NW of Wolf Creek and is the furthest from any of the largest cities. Sale is smaller than the subject and would probably bring more per acre if all things were equal except size. The steep pasture w/rock outcroppings are a deterrent for agriculture resources. The sale is not adjacent to public land, so it does not have the recreation potential that the subject has. The landowner has the right to sell a 3-acre parcel from the balance of the property. Overall the sale indicates a value greater than $802/acre is warranted.

-Sale A2 ($943/acre) is east of Townsend adjacent to USFS. The size is smaller than the subject and would warrant a higher value per acre if all things were equal except size. It has no cropland. Thus, the sale would be inferior on agricultural resources. It has one building envelope and no splits, which results in a lower value per acre so the sale would be considered inferior to the subject. Sale A2 would support a value greater than $943 per acre.

-Sale A3 ($1,322/acre) is an appealing recreational property NW of Helena. It has some physical comparability on the basis it includes some bench land but has a higher ratio of steep land. It does not have any cropland. It would be superior
however on the basis of its developed recreational nature such as trails, cabins and lodge. It is also adjacent State wildlife lands. The sale has no splits but can construct a limited amount of additional buildings. Sale A3 is slightly superior property overall. A value slightly less than $1,322 per acre is probable.

-Sale A4 ($1,250/acre) is an agricultural property mostly in dry cropland with little recreational appeal. However, it is considered one of the higher yielding dry cropland farms in the area which would be superior to the subject’s cropland. It is twice as large as the subject, indicating a lower value per acre if all things were equal except size. The property allows three splits (four max parcels) but three of the parcels must not be smaller than 640 acres each. This would result in a slightly higher value in the encumbered state. Overall the sale is inferior to the subject and a value greater than $1,250 per acre is supported.

-Pending A5 ($1296/acre) is a recreational property. The property is slightly inferior to subject. The sale has not closed and therefore will not be relied on to determine the final value.

**Conclusion:** Of the data presented, sales A4 and A3 are indicators of value and emphasized for purposes of bracketing the subject. These sales indicate a range in value from $1,250 to $1,322 per acre or a mid-range of $1,286 per acre. With consideration to the mid-range, I’ve put more weight on sale A3 as an indicator of value given this is the most comparable sale. A value of $1,300 per acre is concluded to be the encumbered final land value.

With an emphasis on the value of sale A3, a value of $4,041,967 rounded to $4,042,000 is indicated. Based on the data presented the value **concluded for the subject’s land encumbered as a whole is $4,042,000.**

**3. Estimate of Building Value:** The building value is not affected by the Conservation Easement, therefore the value for the buildings is the same as the unencumbered value. A total value of $97,000 is indicated for the subject’s buildings.
4. Summary of Value: Based on the analyses presented, the following summary of value is provided:

<table>
<thead>
<tr>
<th>Parcel</th>
<th>Concluded Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land</td>
<td>$4,042,000</td>
</tr>
<tr>
<td>Buildings</td>
<td>$97,000</td>
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<tr>
<td>TOTAL</td>
<td>$4,139,000</td>
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</table>

Indicated Value by the Sales Comparison Approach - Encumbered

$4,139,000

U. Reconciliation After Value

While all three approaches to value were considered in the after analysis, this appraisal is based on the sales comparison approach. The sales comparison approach was based on sales of easement encumbered properties that had similar utility as the subject. The data included sales within Lewis & Clark and Broadwater Counties. The data allowed for the bracketing of the subject.

The value of the subject property as encumbered is concluded to be $4,139,000.

Concluded After Value

$4,139,000

V. Summary of Values

The “before” value of the property was presented in this report. The encumbered or “after” value was estimated based upon sales of easement encumbered properties. The final step in the process is to report the difference in value between the before and after values. Based on the information summarized in this report, the following values have been determined.

<table>
<thead>
<tr>
<th>Difference in Value</th>
<th>Subject</th>
</tr>
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<tr>
<td>Before Easement Value</td>
<td>$5,694,000</td>
</tr>
<tr>
<td>After Easement Value</td>
<td>$4,139,000</td>
</tr>
<tr>
<td>Difference in Value</td>
<td>$1,555,000</td>
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ASSUMPTIONS AND LIMITING CONDITIONS

The certification of the Appraiser appearing in the appraisal report is subject to the following conditions and to such other specific and limiting conditions as set forth in the report.

1. The Appraiser assumes no responsibility for matters of a legal nature affecting the property appraised or the title thereto, nor does the Appraiser render any opinion as to title, which is assumed to be good and marketable. The property is appraised as though under responsible ownership.

2. Sketches in the report may show approximate dimensions and are included only to assist the reader in visualizing the property. The Appraiser has made no survey of the property. Drawings and/or plats are not represented as an engineer’s work product, nor are they provided for legal reference.

3. The Appraiser is not required to give testimony or appear in court because of having made the appraisal with reference to the property in question, unless arrangements have been previously made.

4. Any distribution of the valuation in the report applies only under the existing program of utilization. The separate valuations of components must not be used outside of this appraisal and are invalid if so used.

5. The Appraiser has, in the process of exercising due diligence, requested, reviewed, and considered information provided by the ownership of the property and client, and the Appraiser has relied on such information and assumes there are no hidden or unapparent conditions of the property, subsoil, which would render it more or less valuable. The Appraiser assumes no responsibility for such conditions, for engineering which might be required to discover such factors, or the cost of discovery or correction.

6. While the Appraiser has inspected the subject property and has considered the information developed in the course of such inspection together with the information provided by the ownership and client, the Appraiser is not qualified to verify or detect the presence of hazardous substances by visual inspection or otherwise, nor qualified to determine the effect, if any, of known or unknown substances present. Unless otherwise stated, the final value conclusion is based on the subject property being free of hazardous waste contaminations.
7. Information, estimates, and opinions furnished to the Appraiser, and contained in the report, were obtained from sources considered reliable and believed to be true and correct. However, no responsibility for accuracy of such items furnished the Appraiser can be assumed by the Appraiser.

8. The presence of mineral or mineral rights have not been investigated by the Appraiser. It is assumed that influences from mineral, deposits, mineral reservations, and mineral rights are included in the overall market rationale and therefore included in the value conclusion unless otherwise specifically identified. Unless specifically cited, no value has been allocated to mineral rights or deposits.

9. Water requirements and information provided has been relied on and, unless otherwise stated, it is assumed that:

   a.) All water rights to the property have been secured or perfected, that there are no adverse easements or encumbrances, and the property complies with Bureau of Reclamation or other state and federal agencies.
   b.) Irrigation and domestic water and drainage system components including distribution equipment and piping, are real estate fixtures:
   c.) Any mobile surface piping or equipment essential for water distribution, recovery, or drainage is secured with the title to real estate; and
   d.) Title to all such property conveys with the land.

10. Disclosure of the contents of this report is governed by applicable law and/or by the Bylaws and Regulations of the professional appraisal organization(s) with which the Appraiser is affiliated.

11. Neither all nor any part of the report, or copy thereof, shall be used for any purposes by anyone but the client specified in the report without the written consent of the Appraiser. This report was prepared for the client’s use at the client’s sole discretion within the framework of the function stated in the report and its use for any other purpose is beyond the scope contemplated in the appraisal.

12. Acreage of land types and measurements of improvements are based on physical inspection of the subject property unless otherwise noted in this appraisal report.
13. Where the appraisal conclusions are subject to satisfactory completion, repairs, or alterations, the appraisal report and value conclusion are contingent upon completion of the improvements in a workman like manner consistent with the plans, specifications and/or scope of work relied upon in the appraisal.

14. EXCLUSIONS. The Appraiser(s) considered and used the three independent approaches to value (cost, income, and sales comparison) where applicable in valuing the resources of the subject property for determining a final value conclusion. Explanation for the exclusion of any of the independent approaches to value in determining a final value conclusion has been disclosed in this report.

15. No one provided significant professional assistance.

16. The Appraiser's liability is limited to the fee charged for the report and professional services.

17. Acceptance of the report by the client constitutes acceptance of all assumptions and limiting conditions contained in the report.

18. To the extent any third party relies on or uses this appraisal, the appraiser making this appraisal hereby disclaim any liability for the contents herein and for any changes that may have occurred since the date of the appraisal.

HYPOTHETICAL CONDITION:

1. For purposes of the after valuation of the subject as encumbered, the proposed conservation easement is in place as of the effective date. Use of this hypothetical condition does have an effect on the assignment results and conclusions.

2. That concurrently at closing all property will be owned by Douglas C. Potter and Ronda M. Potter. Use of this hypothetical condition does have an effect on the assignment results and conclusions.

3. That there is an easement for unlimited uses for ingress and egress and utilities across other lands owned by Douglas C. and Ronda M. Potter but excluded from the valuation. Use of this hypothetical condition does have an effect on the assignment results and conclusions.
CERTIFICATE

-The Appraiser has no present or contemplated future interest in the property appraised; and neither the employment for the appraisal or compensation for it is contingent upon the appraised value of the property.

-The Appraiser has no personal interest or bias with respect to the subject of the appraisal report or the participants to the sale or in the property appraised. The "estimate of value" in the appraisal report is not based in whole or in part upon the race, color, or national origin of the prospective owners or occupants of the property appraised, or upon the race, color, or national origin of the owners or occupants of the properties in the vicinity of the property appraised.

-The Appraiser has inspected the subject property. To the best of the Appraiser's knowledge and belief, all statements and information in this report are true and correct, and the Appraiser has not knowingly withheld any significant information, which would have an impact on valuation.

-All contingent and limiting conditions are contained herein (imposed by the terms of the assignment or by the undersigned affecting the analyses, opinions, and conclusions contained in this report).

-The Appraiser's analyses, opinions, & conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.

-This appraisal report has been made in conformity with and is subject to requirements of the Code of Professional Ethics and Standards of Professional Conducts of the appraisal organizations with which the Appraiser is affiliated, and/or State license/certification requirements of the state in which the property appraised is located.

-All conclusions and opinions concerning the real estate are set forth in the appraisal report, along with the analysis of relevant data, were prepared by the Appraiser whose signature appears on the appraisal report and no one provided significant professional assistance. No change of any item in the appraisal report shall be made by anyone other than the Appraiser and the Appraiser shall not be responsible for any such unauthorized changes.
-The appraiser is a Certified General Appraiser with the State of Montana. All state continuing education requirements have been met. The appraiser is an Accredited Rural Appraiser with the American Society of Farm Managers and Rural Appraisers.

-I have not performed any services with respect to the subject property three years prior to the date of this valuation.

-It is the Appraiser’s opinion that the effect on value of the subject’s proposed conservation easement as of December 18, 2019 is $1,555,000 and is based on the following value conclusions:

Before Easement Value: $5,694,000
After Easement Value: $4,139,000

Randall A. Biehl, RPRA
Real Property Review Appraiser #23688
General Certified Appraiser, Montana (#326)
EXHIBITS

-Appraiser Qualifications

-Appraiser Certificate

-Proposed Conservation Easement

-Title Commitment Legal Description (Schedule A)

-COS 314837

-Maps

-Redacted Comparable Sales
Appraiser’s Name: Randall A. Biehl
Employer: Biehl Appraisal Service LLC
Title: Appraiser/owner
Business Address: 809 W. Hallmark Ln, Missoula, MT 59801
Email: rand4g@gmail.com
Phone: 406-788-0743
Member of ASFMRA with Real Property Review Appraiser (RPRA) designation
Montana Certified General Appraiser #326, expires 3/31/2020
Certified - April 7, 1994
Formal Education:
Experience Summary:
Biehl Appraisal Service LLC – 9/18/17 to present
USDA- Forest Service - 10/24/2009 to 9/30/17
  Senior Review Appraiser
  USFS duties:
    Complete Appraisal reviews in accordance with UASFLA
      Appraisals for purchase of timbered properties
      Appraisals for purchase of mining claims
      Appraisals for purchase of CE encumbered properties
      Appraisals for exchanges
      Appraisal for CE Forest Legacy projects
    Complete Appraisals in accordance with UASFLA
    Complete Appraisal Consultations for sale of USFS property
      Residences, warehouses, work camps
    Consult on Waiver Valuations and training
USDA- Farm Service Agency (formerly Rural Development and Farmers Home Administration)
  Farm Loan Program Reviewer 12/5/1995 to 10/23/2009 (over 50% time appraisal duties)
  Ag Credit Appraiser/Specialist 10/1/1995 to 12/4/1995 (over 50% time appraisal duties)
  FSA Appraisal Duties 1995 to 10/23/2009
    Complete Farm/Ranch appraisals
    Review Farm Ranch appraisals per year
    Review NRCS WRP easement appraisals per year
    Completed NRCS GRP easement appraisals
    Reviewed NRCS GRP easement appraisals
    Completed Appraisal for FSA on USFWS easement
    Reviewed several USFWS easements for FSA
Reviewed Single Family Dwelling appraisals

USDA-FmHA and RD
  District Specialist 1/26/1992 to 9/30/1995 (over 50% of work involved completing or reviewing appraisals)
  County Supervisor 7/15/79 to 1/25/1992
  Assistant County Supervisor 12/6/76 to 7/14/79
  Certified to complete Farm and Ranch appraisals 10/21/1977
  Certified to complete FmHA Single Family Residential appraisals 3/2/1978 (Includes inspection for repairs in accordance with HUD guidelines)
  Completed Farm & Ranch Appraisals
  Completed FmHA Single Residential appraisals
  County Supervisor 7/15/79 to 1/1991
  District Specialist (Appraiser) 1/1991 to 1995
  Completed Multi Family Appraisals and reviews
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<td>Principals of Farm, Ranch &amp; Rural Appraising</td>
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<td>5.1 Institutions Regulations of RE Appr.</td>
<td>Feb 18, 1993</td>
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<td>A-20 Principals of Rural Appraising</td>
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<td>Multi Family (Appraising of Income Producing Property)</td>
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<td>Sep 26-Oct 2, 1993</td>
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<td>II-430 Standards of Prof. Practice, Part C</td>
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<td>May 12-15, 2004</td>
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<td>Estate Appraisal Requirements</td>
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<td>Brief Summary of Oil and Gas law - MT</td>
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Area of Appraisal Activity:

Fee Appraiser since September 2017- Montana- Lake County, Missoula County, Teton County, Cascade County, Mineral County, Sanders County, Powell County, Granite County, Ravalli County, Flathead County

Forest Service – Region 1 (Areas in Montana, Idaho, North Dakota & South Dakota); Region 10 (Areas in Alaska)

Renew online at [https://ebiz.mt.gov/pol](https://ebiz.mt.gov/pol) by signing in with your username and password.

The renewal cycle for your board opens 60 days prior to the expiration date on your current license.

Renew your license prior to your expiration date to avoid being charged a late fee(s).

Remember to maintain your online account information with a password, security question and a valid email address. You can update your account information by accessing the 'Account Management' link when logged in.
RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
Prickly Pear Land Trust
PO Box 892
Helena, MT 59624

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is made this _____ day of
___________________, 2019 by and between Douglas and Ronda Potter, whose address is, 6192
Matt Staff Road, East Helena, Montana 59635 (the "Landowner") and PRICKLY PEAR LAND
TRUST, a Montana nonprofit corporation, whose principal address is 40 W. Lawrence Street, Suite
A, Helena, Montana 59601 (the "Land Trust").

Exhibits to this Deed of Conservation Easement include the following:

Exhibit A - Legal Description of the Property
Exhibit B - Acknowledgment of Baseline Documentation Report
Exhibit C - Map of the Property
Exhibit D - Map of the Building Envelope
Exhibit E - Map of Excluded Property

WITNESSETH THAT:

A. Landowner is the owner of certain real property in Lewis & Clark County, Montana,
consisting of _____ acres, more or less, more particularly described and shown in Exhibits A and C
attached hereto and incorporated herein by this reference (the "Property");

B. The Property currently remains in a relatively natural state and has significant ecological
and open-space values as defined in Section 76-6-104, et seq., Montana Code Annotated (MCA),
and provides significant relatively natural habitat for native plants and wildlife;

C. Protection of the Property will contribute to the ecological integrity of the Spokane Hills
and conserve significant relatively natural habitat for wildlife and plants;

D. All of these natural elements and ecological values are of great importance to
Landowner and to the people of the State of Montana, and are worthy of preservation;

E. Landowner, as owner of the Property, owns the affirmative rights to identify, preserve,
and protect in perpetuity its open space character and its significant relatively natural features and
values;

F. Landowner desires and intends to transfer such rights to the Land Trust;
G. The State of Montana has recognized the importance of private efforts toward the preservation of natural systems in the state by enactment of Section 76-6-101, et seq., MCA;

H. The Lewis and Clark County Commissioners have expressly recognized in Lewis and Clark County Resolution No. 2008-97, recording # 3153419, passed and adopted August 12, 2008, and in the Lewis and Clark County Growth Policy, adopted in 2004 and updated in 2016 per Resolution No. 2016-13, the importance of preserving open-space lands, including working lands and land for protecting water and wildlife, in Lewis and Clark County, Montana; and in furtherance of such Resolution and Growth Policy have specifically committed funds for the purchase of all or a portion of this Easement; and

I. The Land Trust is a private organization organized to protect and conserve natural areas and ecologically significant land for scientific, charitable and educational purposes, and is a "holder" under the terms of Section 76-6-104(5) and Section 76-6-204, MCA, and is a "qualified organization" within the provisions of Section 170(h) of the Internal Revenue Code of 1986, as amended (the "IRS Code"), qualified to acquire and hold conservation easements and meets the requirements of the IRS Code as a Sec. 501(c)(3) exempt organization.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, pursuant to Section 76-6-101, et seq., MCA, Landowner hereby conveys to Land Trust, its successors and assigns, a perpetual Conservation Easement consisting of the rights and restrictions enumerated herein, over and across the Property (the "Easement").

1. Purposes. It is the purpose of the Easement to preserve and protect in perpetuity, to enhance upon mutual agreement, and in the event of their degradation or destruction, to restore the open space and significant relatively natural features and values of the Property. It is further the specific purpose of this Easement to protect the Property from fragmentation due to subdivision and unrestricted residential and/or commercial development and to conserve important habitat for grassland birds, black bears, mountain lion, deer, elk, bobcats and ermine; to protect rare or unique native plants; and to conserve the diverse grassland, forest, and riparian communities and the wildlife inhabiting these communities (such purposes, collectively, the "Conservation Values"). In achieving these purposes, it is the intent of the Easement to ensure the continuation of such ranching, residential and other uses of the Property as may be conducted consistent with the Conservation Values protected herein. Any and all rights or interests of the Landowner not specifically conveyed to the Land Trust or specifically prohibited by the Easement are reserved to the Landowner.

2. Baseline Documentation Report. A collection of baseline data on the Property and its resources has been prepared and the data and explanatory text are presented in the “Potter Baseline Documentation Report", dated ____________________, 20__ (the "Report"). A copy of the Report is on file with both Landowner and Land Trust and by this reference made a part hereof. The parties acknowledge that the Report is intended to establish the condition of the Property
subject to the Easement as of the date written above and that both Landowner and Land Trust have acknowledged in a signed statement, a copy of which is attached hereto as Exhibit B, that the Report accurately represents the condition of the Property at the time of conveyance.

The parties agree that, in the event a controversy arises with respect to the nature and extent of the biological or physical condition of the Property, the parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other information to assist in the resolution of the controversy.

3. Rights of the Land Trust. The rights conveyed to the Land Trust by the Easement are the following:

A. To identify, to preserve and protect in perpetuity, and in the event of their degradation or destruction to restore, the Conservation Values of the Property.

B. To enter upon the Property to enforce the rights herein granted, to study and make scientific observations of its ecosystems, and to determine that Landowner's activities are in compliance with the terms of the Easement, all upon prior notice to Landowner and in a manner that does not unreasonably disturb the use of the Property by Landowner consistent with the Easement.

C. To enjoin any activity on or any use of the Property that is inconsistent with the Easement and to enforce the restoration of such areas or features of the Property as may be damaged by such activities.

4. Consistent Uses of the Property. The following uses and practices by Landowner, though not an exhaustive recital of consistent uses and practices, are consistent with the Easement. Certain of these consistent uses and practices are identified as being subject to specified conditions or to the requirement of and procedures for prior approval by Land Trust; procedures for prior approval are provided below. The remainder of these consistent uses shall not be precluded, prevented, or limited by the Easement.

A. Grazing of livestock, including cattle, horses, and bison.

B. Construction of new buildings and structures within the designated “Building Envelope,” whose general location is depicted in Exhibit D, so long as these actions conform to applicable federal, state or local laws, or regulations, and Landowner shall be solely responsible for securing any required governmental approval or permits.

C. Outside of the “Building Envelope,” construction of reasonably sized new non-residential agricultural buildings and structures, such as calving sheds, hay sheds, and corrals, which are necessary for the operation of the Property as a working agricultural property. Any structure exceeding 5,000 square feet in footprint may only be built with the prior approval of the Land Trust.
D. Use, maintenance, and repair, of all existing and permitted buildings and structures, and in the event of their destruction, the right to reconstruct them on the same site with buildings of equal or smaller size. Use of these structures for residential purposes, if outside of the established building envelope, is prohibited.

E. Maintenance and improvement of existing roads, and construction of new roads to access new buildings and facilities, provided that roads may only be improved to the minimum standard necessary for agricultural and property management purposes, and provided, further, that construction of new roads outside the Building Envelope is subject to prior approval by Land Trust. All roadways and driveways shall be of unimproved dirt or gravel surfaces and shall not be paved or oiled or have calcium carbonate applied or otherwise be improved with chemical coatings or other non-natural materials.

F. Maintenance, repair, and reconstruction of existing fencing and construction of new fences. New or reconstructed boundary or pasture-division fences may not exclude or prevent wildlife from moving through the Property, but other fencing may be built to specifically exclude wildlife from residential yard areas, gardens, haystacks, newly-seeded areas and temporary vegetative restoration areas.

G. Use and storage of agricultural chemicals, including fertilizers, pesticides, herbicides, insecticides and rodenticides in compliance with applicable law as may be necessary to carry out agricultural and ranching activities. The use of such agents shall be conducted in such a manner as to minimize adverse effects upon the natural values of the Property and the natural ecosystem. Herbicides may not be used to treat or control native plants, except that incidental treatment as part of noxious weed control is permitted.

H. Raising and harvesting of hay and other crops, including plowing, planting of native and non-native plant species, irrigating and harvesting, on those areas that have been previously cultivated as depicted in the Report. Areas identified in the Report as abandoned cropland may be cultivated and seeded to perennial cover, with the seed mix subject to advanced approval by Land Trust. Establishment and maintenance of a garden for personal use shall also be allowed within the building envelope provided it does not constitute a nuisance attractant for wildlife.

I. Introduction of biological weed and pest control agents in compliance with applicable law as may be necessary to carry out agricultural and ranching activities.

J. Removal of surface sand and gravel in limited quantities, for use solely in ranch operations and on roads and driveways on the Property, consistent with historical practices. Under no circumstances is any commercial use of sand or gravel located on the Property permitted by this Easement, nor may any sand or gravel be mined for any purpose, either commercial or non-commercial. All sand and gravel extraction permitted hereunder shall have only limited, localized impacts, and shall be suspended if Land Trust determines such removal impairs any of the Conservation Values protected by this Easement.

K. Construction of utility systems for the uses permitted in this Easement.
L. Maintenance, repair, and reconstruction of existing agricultural and residential water facilities and the development of new water resources and facilities, including the diversion, withdrawal and use of water, consistent with valid water rights, for agricultural and residential uses provided for herein; provided that any maintenance, repair, reconstruction, construction or development activities do not cause significant or long-term impairment of riparian values. Notwithstanding the foregoing, construction of ponds requires prior approval from Land Trust.

M. In accordance with all applicable state or federal laws, the control of predatory and problem animals, excluding raptors, that have caused damage to persons, livestock, or other property. Wherever possible, measures used for control of predatory or problem animals shall be limited in the application to specific animals that have caused damage to livestock or other property, provided, however, that if it is not possible to identify a specific predatory or problem animal, Landowner may use appropriate preventive control techniques. Trapping of beaver is expressly permitted under this section, provided that such trapping may not be conducted in a manner so as to eradicate the beaver population and provided that appropriate precautions are taken to avoid trapping river otter or other non-target species. Modification or removal of beaver dams is also permitted, provided that such activities are limited in application to specific dams whose removal or modification is required to protect existing and permitted buildings or irrigation structures. Any beaver dam removal permitted here under shall have only limited, localized impacts and must conform to applicable federal, state or local laws, or regulations, and Landowner shall be solely responsible for securing any required governmental approval or permits.

N. Harvesting of timber and cutting of trees using Best Management Practices as set forth in Montana State University Extension Service Publication Number EB0096 and its subsequent updates ("Best Management Practices"), including stringent protection of soil and watershed values, riparian areas, and wildlife habitat; provided that such harvest is consistent with the following provisions:

i. Without prior approval, tree cutting is permitted only for firewood and fencing to be used on the Property, and for the protection of persons and property.

ii. With prior approval by Land Trust tree cutting is permitted for other purposes so long as all tree cutting achieves at least one of the following objectives: controlling forest disease; improving forest health; forest restoration; controlling encroachment of timber into grassland areas; and enhancing wildlife habitat. Landowner must submit a written Timber Harvest Plan for review by Land Trust. The Timber Harvest Plan must include timber inventory data, purpose of the harvest, anticipated future stand condition, selection criteria for tree removal, provisions for the protection of streamside zones and wildlife habitat, harvest and skidding methods, slash disposal techniques, reforestation plans, and other relevant information necessary to an evaluation of the proposed harvest. Tree cutting and timber harvest should emphasize treatments that maintain or restore a natural ecological condition.
5. **Inconsistent Uses of the Property.** The following uses and practices on the Property shall be prohibited, except as specifically provided for under Section 4 herein.

   A. Storage, dumping or other disposal of toxic and/or hazardous materials, except that petroleum products such as oil and gas for use exclusively by the Landowners may be stored in accordance with applicable state and federal regulations for permitted uses set forth herein.

   Notwithstanding anything in this Easement to the contrary, this prohibition does not make Land Trust an owner of the Property, nor does it permit Land Trust to control any use of the Property by the Landowner which may result in the storage, dumping or disposal of hazardous or toxic materials; provided, however, that Land Trust may bring an action to protect the Conservation Values of the Property, as described in this Easement. (This prohibition does not impose liability on Land Trust, nor shall Land Trust be construed as having liability as a "responsible party" under CERCLA or similar federal or state statutes.)

   B. Dumping or other disposal of garbage, tires inoperable machinery, or other refuse; or any items that could be an attractant to bears or other wildlife. This prohibition does not include animal carcasses involved in the Montana Department of Fish, Wildlife and Parks’ “Carcass Redistribution Program” or domestic livestock that dies on the Property.

   C. Filling, excavating, dredging, mining, drilling, and the exploration for or extraction of minerals, hydrocarbons, soils, sand, gravel, rock, or other materials on or below the surface of the Property.

   D. Establishment or maintenance of any commercial or industrial activity, including but not limited to game farms, motels or hotels, trailer or recreational vehicle parks. Prohibited commercial and industrial uses shall not include ranching, all as specifically provided for in Section 4, any commercial activity that can be conducted from existing or authorized structures in a manner that is otherwise consistent with the conservation purposes of the Easement, and other commercial uses that may be permitted with prior approval of Land Trust. In order to preserve the potential for further reduction of estate taxes in accordance with Subsection 2031(c) of the IRS Code only *de minimus* commercial recreational use shall be allowed.

   E. Intentional introduction of non-native plant species or farming, plowing, discing, chiseling, interseeding, or any type of cultivation, except as provided for in Section 4H.

   F. Establishment or maintenance of a feed lot. For purposes of this Easement, "feed lot" is defined as a permanently constructed confined area or facility within which the property is not grazed or cropped annually, and which is used and maintained for purposes of feeding of livestock. Nothing in this section or Section 5D shall prevent Landowner from seasonally confining Landowner’s livestock into an area for feeding and nothing in this section shall prevent Landowner from leasing pasture for the grazing of livestock owned by others.

   G. The partition, division, subdivision, or *de facto* subdivision of the Property, including but are not limited to, any subdivision, short subdivision into remainder tracts, platting, testamentary
division, partitions among tenants-in-common or joint tenants, judicial partitions, allocation of title or property rights among partners, shareholders, trustees or trust beneficiaries, or members of any business entity, subdivision for purpose of providing new security for a mortgage, time-share or interval ownership arrangements, or other process by which the Land is divided into lots or in which title to different portions of the Land are held by different owners.

Notwithstanding the above, the sale, exchange, devise or gift ("Transfer") of a portion of the Property for agricultural, or timber management purposes shall be allowed, provided that no more than three (3) parcels may be created from the Property covered by this Easement (i.e. up to two divisions, for a maximum of three total parcels), and provided further that any such Transfer(s) must be effected with an express provision reflecting that said land is subject to the terms and conditions of the Easement, without modification or expansion of such terms. In the event of any such Transfer(s), no additional structures shall be allowed upon any portion of the Property beyond those structures already authorized in this Easement, and all other terms of this Easement shall continue to apply. With the exception of such authorized Transfers, no subdivision or de facto subdivision of the Property shall be allowed. Transfer of any portion of the Property for residential use shall be expressly prohibited. Furthermore, if the Property is so divided, the Landowner must comply with all applicable federal, state, and local laws, ordinances, and regulations concerning subdivision, including, if required, the surveying of the parcels to be conveyed and the submission of the proposed separate tract(s) to state and/or local review authority for approval. Land Trust shall be furnished with a copy of the pertinent portion of any document or conveyance utilized to effect such a transfer at least thirty (30) days prior to the execution of the same.

H. Construction or placement of any buildings, temporary living quarters of any sort, utility towers, or other structures, except as provided for in the Easement and except that vehicular campers owned by Landowner or guests may be parked on the Property as appropriate to accommodate normal visitation.

I. Construction of any new roads or vehicle trails, except as provided for in Section 4E.

J. The change, disturbance, alteration, or impairment of the significant relatively natural ecological features and values; or the destruction of any of the Conservation Values on the Property.

K. Any change in the topography of the Property through the placement therein of soil, land fill, dredging spoils, or other material, except as incidental and necessary to the activities permitted hereunder.

L. Except as specifically permitted for the purpose of maintaining and enhancing the Conservation Values, the following activities are prohibited: rip-rapping and any other manipulation, diversion, or other alteration of natural water courses, wetlands, or other bodies of water; any activity which may destabilize the banks of any course or body of water; and any uses or activities which would pollute, degrade, or drain the Property's surface or sub-surface waters are prohibited. Additionally, the removal of woody riparian vegetation is prohibited unless incidental to the establishment and/or maintenance of fences, water gaps, water tanks, irrigation structures
and other practices compatible with the permitted uses of the Property and the protection of the established Conservation Values.

M. There shall be no construction, maintenance, or erection of any billboards on the Land. Roadside signs are permitted only for the purposes of posting the name of the Land, advertising any business permitted on the Land, controlling public access, providing public notification of this Easement, or advertising property for sale. Any other use of signs requires the Prior Approval of the Land Trust.

6. Prior Notice and Approval. Landowner shall not undertake or permit any activity requiring prior approval by Land Trust without first having notified and received approval from the Land Trust as provided herein.

Prior to the commencement of any such activity, Landowner shall send the Land Trust written notice of his/her intention to undertake or permit such activity. The notice shall inform the Land Trust of all aspects of the proposed activity, including location, design, materials or equipment to be used, dates and duration, and any other relevant information, and shall be sent by registered or certified mail, return receipt requested, to Prickly Pear Land Trust, P.O. Box 892, Helena, MT 59624, or such other addresses as Landowner may from time to time be informed of in writing by the Land Trust.

The Land Trust shall have forty five (45) days from receipt of the notice, as indicated by the date of the return receipt, to review the proposed activity and to notify Landowner of any objections thereto; provided that the 45-day period shall not begin until such time as the Land Trust has received adequate information from Landowner to evaluate the proposed activity. In the event that Land Trust requires additional information to evaluate the proposed activity, the Land Trust shall request the information from Landowner as soon as practicable and in any case not later than 30 days after the receipt of the notice of the proposed activity.

The Land Trust’s decision to approve or disapprove the activity proposed by Landowner shall be sent by registered or certified mail, return receipt requested, to Landowner at the address first stated above, or to such other address as the Land Trust may from time to time be informed of in writing by Landowner.

A decision by the Land Trust to disapprove a proposed activity must be based upon the Land Trust’s determination that the proposed activity is inconsistent with the conservation purposes of the Easement. If in the Land Trust’s judgment it is possible that the proposed activity can be modified to be consistent with the easement, the Land Trust’s decision notice shall inform Landowner of such modification(s). Once modification is made to the satisfaction of the Landowner or the Landowner otherwise concurs with the matters set forth in Landowner’s notice, the proposed activity may thereafter be conducted in a manner that is acceptable to the Landowner.

Should the Land Trust fail to post its response to Landowner’s notice within forty five (45) days of its receipt of notice or within forty five (45) days of the time that the Land Trust has received adequate information to evaluate the proposed activity, whichever is later, the proposed
activity is automatically deemed consistent with the terms of the Easement, the Land Trust having no further right to object to the activity identified by such notice.

7. Remedies, Breach and Restoration. In the event a violation of any restriction contained herein, whether by Landowner or a third party, comes to the attention of the Land Trust, the Land Trust shall notify Landowner in writing of the violation. Landowner shall have thirty (30) days after the receipt of such notice to undertake actions, including restoration of the Property, that are reasonably calculated to swiftly correct the conditions caused by such violation. If Landowner fails to take such corrective action, the Land Trust may at its discretion undertake such actions, including appropriate legal proceedings, as are reasonably necessary to effect such corrections, and the cost of the corrections, including the Land Trust’s expenses, court costs, and legal fees, shall be paid by Landowner, provided either Landowner, Landowner’s family, any shareholders in the Property, agents, guests, employees or other persons permitted by Landowner are determined to be responsible for the violation.

In the event that Landowner undertakes any activity requiring approval of the Land Trust without or in advance of securing such approval, or undertakes any activity in violation of the terms of the Easement, the Land Trust shall have the right to force, by appropriate legal or equitable action, including an action for injunction or specific performance, the restoration of that portion of the Property affected by the activity to the condition that existed prior to the undertaking of the unauthorized activity. In such case, the costs of restoration and the Land Trust’s costs of suit, including reasonable attorneys' fees, shall be borne by Landowner or those of his/her heirs, personal representatives, or assigns against whom a judgment is entered, or, in the event that the Land Trust secures redress without a completed judicial proceeding, by Landowner or those of his/her heirs, personal representatives, or assigns who are otherwise determined to be responsible for the unauthorized activity.

8. Enforcement. Enforcement of the terms and provisions of this Easement shall be at the discretion of the Land Trust. Any forbearance on behalf of the Land Trust to exercise its rights hereunder in the event of any breach by Landowner or his/her respective heirs, personal representatives, successors, or assigns shall not be deemed or construed to be a waiver of the Land Trust’s rights hereunder in the event of any subsequent breach. The Land Trust shall also have the right of immediate entry to the Property if such entry is necessary to prevent damage to or the destruction of the Conservation Values protected by the Easement, which will be reasonably exercised and will take into account Landowner’s right to engage in ranching, agricultural, and other activities consistent with the Easement.

A. Back-Up Grantee with Third-Party Right of Enforcement. If the Land Trust is unable or unwilling to enforce the terms of this Easement in the event of a violation or threatened violation of the terms hereof, the Landowner and the Land Trust expressly agree that Lewis and Clark County shall be the Backup Grantee. In Lewis and Clark County’s role as Backup Grantee, the County shall be construed as holding the Conservation Easement for purposes of enforcement pursuant to MCA § 76-6-211(2). As a public body holder of an easement, Lewis and Clark County shall have the right to enforce the terms of this Easement to protect the Conservation Values for the benefit of the public as described below.
The Land Trust will retain primary authority to monitor the Property and enforce the terms of the Easement. Lewis and Clark County recognizes and agrees that the Land Trust shall have discretion to assure that the Conservation Values are protected for the benefit of the public. Lewis and Clark County’s third-party right of enforcement may only be exercised pursuant to this Section 8A.

If a violation or threatened violation of the purposes or terms of this Easement come to the attention of Lewis and Clark County, Lewis and Clark County shall notify the Land Trust in writing of the violation or threatened violation. Upon receiving Lewis and Clark County’s written notice, the Land Trust shall have thirty (30) days to investigate the violation or threatened violation, determine whether a violation has occurred or is threatened or imminent, and communicate its findings to Lewis and Clark County in writing. If the Land Trust determines a violation has occurred or is threatened or imminent, the Land Trust may exercise its discretion to enforce, pursuant to the previous paragraph.

If Lewis and Clark County believes that the enforcement actions (or lack of enforcement) taken by the Land Trust are not sufficient to protect the Conservation Values for the benefit of the public and that the Land Trust’s actions are outside of its discretion in protecting those Conservation Values, Lewis and Clark County may notify the Land Trust and the Landowner of its intention to intervene and assert its right of enforcement to compel the Landowner to comply with the Easement in thirty days unless: (i) the Land Trust and the Landowner resolve the basis of Lewis and Clark County’s planned intervention to the County’s satisfaction, or (ii) the Land Trust agrees to undertake Lewis and Clark County’s planned intervention.

If, after thirty (30) days, neither (i) nor (ii) in the preceding sentence occurs, Lewis and Clark County may enforce the terms of this Easement to protect the Conservation Values for the benefit of the public pursuant to MCA § 76-6-211(2).

9. Liabilities. Landowner shall hold harmless, indemnify, and defend the Land Trust, Lewis and Clark County and the Land Trust’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, reasonable 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 Property. Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee or Backup Grantee to exercise physical or managerial control over activities on the Property or to become an “owner” or “operator” of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., (“CERCLA”), or the Montana Hazardous Waste Act, Sections 75-10-401, et seq., and 75-10-601 et seq., M.C.A., and similar state and federal statutes. This paragraph shall not apply in the case of any hazardous material or substance in any manner placed on the Property by the Land Trust, Lewis and Clark County or the Land Trust’s representatives or agents.
10. **Taxes and Costs.** Landowner agrees to pay any and all real property taxes and assessments levied by competent authority on the Property and to bear all costs of operation, upkeep, and maintenance of the Property, and does hereby indemnify the Land Trust therefor.

11. **Access.** Nothing herein contained shall be construed as affording the public access to any portion of the Property.

12. **Assignment.** Both the Land Trust and Lewis and Clark County may assign their interests under the Easement to another entity. However, Land Trust or Lewis and Clark County may only transfer or assign their interests to a “qualified organization,” within the meaning of Section 170(h)(3) of the Code or a “public body” under § 76-6-104(4), MCA and further described at § 76-6-204, MCA, and provided the Land Trust has notified and obtained the written approval of Lewis and Clark County, or Lewis and Clark County has notified and obtained written approval of the Land Trust. Land Trust and Lewis and Clark County also agree to solicit the opinion of Landowner in this matter and reasonably consider Landowner’s input. Approval shall not be unreasonably withheld. Any such qualified organization assigned an interest herein shall agree to enforce in perpetuity the conservation purposes of the Conservation Easement. Land Trust agrees that it will make a reasonable effort in the event of any assignment to suggest an assignee which is a qualified organization referred to in Section 170(h)(3) of the Code, which has the conservation of natural resources as a substantial organizational purpose, and Land Trust further represents to Landowner that its present intention is to assign its interest in this Easement only in connection with a dissolution of Land Trust.

13. **Change of Conditions.** The fact that any use of the Property that is expressly prohibited by this Easement, or any other use as determined to be inconsistent with the purpose of this Easement, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to uses that are not permitted thereunder, has been considered by the Landowner in granting this Easement. It is Landowner’s belief that any such changes will increase the benefit to the public of the continuation of this Easement, and it is the intent of both Landowner and the Land Trust that any changes should not be assumed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this paragraph. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to this paragraph.

14. **Condemnation and Other Extinguishment of the Easement.** Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Easement, or if the Easement is extinguished pursuant to Paragraph 16 herein, the Landowner, Lewis and Clark County and the Land Trust shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. The net proceeds shall be divided between the Landowner, the Land Trust and Lewis and Clark County in proportion to the fair market value of their interests in the Property on the date of execution of the Easement (as provided in Treas. Reg. Section 1.170A-14(g)(6)(i)) and pursuant to Section 76-6-107, MCA. The Land Trust shall use its share of the proceeds in a manner consistent with the purposes and
intent set forth herein, or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in Internal Revenue Code Section 170(h)(4)(a)(ii), as amended, and in regulations promulgated thereunder.

15. Amendment. If circumstances arise under which an amendment to or modification of the Easement would be appropriate, the Land Trust, Landowner, and Lewis & Clark County may jointly amend the Easement; provided that no amendment shall be allowed that affects the qualification of the Easement under the IRS Code or relevant Montana law. Any such amendment shall be consistent with the purposes of the Easement, shall not affect its perpetual duration, shall not permit additional development or improvements to be undertaken on the Property other than development or improvements currently permitted by the Easement, and shall not impair any of the significant Conservation Values of the Property. Any such amendment shall be recorded in the official records of Lewis & Clark County, Montana.

To obtain the approval of Lewis and Clark County, a request to amend must be submitted in writing to the County’s Community Development and Planning Office together with proof that the conservation values will not be adversely affected. The request must be placed on the Commissioners’ agenda for the next available regularly scheduled public meeting of the County Commission, and a public hearing must be held on the request.

Lewis and Clark County’s approval of amendments sought jointly by Landowner and Land Trust shall not be unreasonably withheld, as long as there is (1) no adverse impact on conservation values and (2) no private inurement or financial benefit back to the landowner.

16. Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether with respect to all or part of the Property, by judicial proceeding in a court of competent jurisdiction, and the amount of the compensation to which Land Trust and Lewis and Clark County shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Montana law at the time, in accordance with this Section 16 and as provided for in Treasury Regulation Section 1.170A-14(g)(6)(ii). Land Trust and Lewis and Clark County shall use any such proceeds in a manner consistent with the conservation purposes of the original contribution.

A. Compensation. This Conservation Easement constitutes a real property interest immediately vested in Land Trust, which, for purposes of this Section 16, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Conservation Easement at the time of this grant to the value of the Property, without deduction for the value of the Conservation Easement, at the time of this grant. The values referred to in the preceding sentence shall be those values established by Landowner’s qualified appraisal (pursuant to Treasury Regulation 1.170A-13 and 1.170A-14(h)) for federal income, gift or estate tax purposes. For the purpose of this paragraph, the ratio of the value of the Conservation Easement to the value of the Property unencumbered by the Conservation Easement, at the time of the qualified appraisal, shall remain constant.
In the event that this Easement is extinguished Land Trust will allocate a proportional share of proceeds from the extinguishment of the Easement to Lewis and Clark County in recognition of the Open Space Bond funds Lewis and Clark County contributed to the acquisition of this Easement and pursuant to Section 76-6-107, MCA. For the purposes of this paragraph, Lewis and Clark County’s proportional interest shall be the value of Lewis and Clark County’s contribution toward the purchase of the Easement to the value of the Easement at the time of the grant, and Lewis and Clark County’s proportional value shall remain constant.

B. Eminent Domain and Condemnation. If all or a portion of the Property is taken for a public purpose in exercise of eminent domain so as to abrogate the restrictions imposed by this Conservation Easement, Landowner, Lewis and Clark County and Land Trust may join in appropriate actions to recover the value of each party’s proportionate interest in the Property (or portion) taken, as established in paragraph 16A, including the value of Land Trust’s Conservation Easement as it pertains to the condemned property at the time of the taking or condemnation. Landowner, Lewis and Clark County and Land Trust shall be entitled to any proceeds resulting from such taking or condemnation, in proportion to their interest in the rights which are taken or condemned. Proceeds shall be divided between Landowner, Lewis and Clark County and Land Trust as set forth above, and Land Trust shall use any such proceeds received from easement condemnation in a manner consistent with the conservation purposes of this Easement.

17. Interpretation. The provisions of this Easement shall be construed to effectuate their purpose of preserving and protecting habitat for wildlife, unique native plants, and diverse vegetative communities. The parties acknowledge that each party and its counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Easement.

18. Miscellaneous.

A. Governing Law. The laws of the State of Montana (without regard to conflicts of law principles) shall apply to the interpretation and enforcement of this Easement.

B. Definitions. The terms “Landowner” and “Land Trust” as used herein shall be deemed to include, respectively, the Landowner, the Landowner’s heirs, successors, personal representatives, and assigns, and the Land Trust, its successors and assigns.

C. Binding Effect. Landowner intends that the Easement shall run with and burden title to the Property in perpetuity, and shall bind Landowner, his/her heirs, successors, personal representatives, and assigns.

D. Severability. If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions hereof and the application of such provision to persons or circumstances other than those to which it is found to be invalid, shall not be affected thereby.
E. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 15 above.

TO HAVE AND TO HOLD the said Easement unto the said Land Trust, its successors and assigns, forever.

IN WITNESS WHEREOF, Landowner has hereunto set its hand this ___ day of _________, 20__. 

LANDOWNER:

____________________________

Accepted this _day of _______________________, 20___, by Prickly Pear Land Trust.

____________________________

Executive Director of Prickly Pear Land Trust
ACKNOWLEDGMENT

STATE OF )
) ss.
COUNTY OF )

On this ___ day of __________________, 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared ___________________________ and ___________________________, known to me to be the persons whose name are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Print Name ___________________________
Notary Public for the State of __________
Residing at ___________________________
My Commission Expires _____________, 20__
EXHIBIT A
Property Description

All that certain real estate situated in Lewis and Clark and Broadwater Counties, Montana, consisting of _______ acres, more or less, more particularly described as follows:

S19, T10 N, R01 W, LTS 1-2, E2NW*
S19, T10 N, R01 W, E2
S20, T10 N, R01 W, N2, SW4, LTS 2 & 4, SWSE
S20, T10 N, R01 W, SESE
S21, T10 N, R01 W, W2NW, NWSW
S21, T10 N, R01 W, S2SW
S28, T10 N, R01 W, NW4 N2SW SWNE NWSE
S28, T10 N, R01 W, SWSW
S28, T10 N, R01 W, SESW
S29, T10 N, R01 W, NE4 N2NW N2SE N2N2SENW SWNW
S29, T10 N, R01 W, SESE
S30, T10 N, R01 W, N2NE SENE
S32, T10 N, R01 W, N2SW4, W2SE4, NE4NE4, W2NE4, NW4
S32, T10 N, R01 W, E2SE4
S32, T10 N, R01 W, S2SW4
S33, T10 N, R01 W, W2NW
S33, T10 N, R01 W, NENW
S05, T09 N, R01 W, NW2 G.LOT 3, ALL G.LOT 4
S06, T09 N, R01 W, LT 1
S05, T09 N, R01 W, SW4NW4; SW4SE4NW4
S06, T09 N, R01 W, SE4NE4
S31, T10 N, R01 W, M&B TRACT IN NE4SE4

*Excludes portion described in Exhibit E
EXHIBIT B
Acknowledgement of Baseline Documentation Report

Landowner and the Land Trust acknowledge that each has read the "Potter Baseline Documentation Report", dated ________________________, 2019, and that the report accurately reflects the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

____________________________________  __________________________________
Landowner                                           Date

____________________________________  __________________________________
Prickly Pear Land Trust                                Date
EXHIBIT C
Map of the Property and Building Envelope
EXHIBIT D
Map of the Building Envelope
EXHIBIT E
Map of the Exclusion
Legal Description

PARCEL 1:
Government Lots 1 and 2 and the E1/2 of the NW1/4 of Section 19, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference - Book 287 of Deeds, Page 187)
Less and excepting therefrom the following parcels: Lots 1 and 2 of Harms Minor Subdivision as shown on Plat filed under Document No. 3013656 AND that certain tract described in Book 261 of Deeds, Page 183.

PARCEL 2:
The E1/2 of Section 19, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana.

PARCEL 3:
The N1/2, SW1/4, Government Lots 2 and 4 and SW1/4SE1/4 of Section 20, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana.
Less and excepting therefrom: The Lilley Lode MS #7077.

PARCEL 4:
The SE1/4SE1/4 of Section 20, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book M5, Page 6900)

PARCEL 5:
The W1/2NW1/4 and the NW1/4SW1/4 of Section 21, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book M11, Page 4976)

PARCEL 6:
The S1/2SW1/4 of Section 21, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book M5, Page 6900)

PARCEL 7:
The NW1/4, N1/2SW1/4, SW1/4NE1/4 and the NW1/4SE1/4 of Section 28, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana.

PARCEL 8:
The SW1/4SW1/4 of Section 28, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 289 of Deeds, Page 738)

PARCEL 9:
The SE1/4SW1/4 of Section 28, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 185 of Deeds, Page 144)

PARCEL 10:
The NE1/4, N1/2NW1/4, N1/2SE1/4, N1/2N1/2SE1/4NW1/4 and the SW1/4NW1/4 of Section 29, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana.

PARCEL 11:
The SE1/4SE1/4 of Section 29, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 289 of Deeds, Page 738)

PARCEL 12:
The N1/2NE1/4 and the SE1/4NE1/4 of Section 30, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book M5, Page 6900)

PARCEL 13:
The N1/2SW1/4, W1/2SE1/4, NE1/4NE1/4, W1/2NE1/4 and the NW1/4 of Section 32, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 189 of Deeds, Page 456)

PARCEL 14:
The E1/2SE1/4 of Section 32, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 185 of Deeds, Page 144)

PARCEL 15:
The S1/2SW1/4 of Section 32, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 289 of Deeds, Page 738)

PARCEL 16:
The W1/2NW1/4 of Section 33, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 289 of Deeds, Page 738)

PARCEL 17:
The NE1/4NW1/4 of Section 33, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 185 of Deeds, Page 144)

PARCEL 18:
All of Government Lot 4 and that portion of Government Lot 3, more particularly described as follows: Commencing at the Northwest corner of said Lot 3 and running thence east to the Northeast corner of said Lot, thence running Southwesterly to the Southwest corner of Lot 3, thence North to the place of beginning. Both Lots being located in Section 5, Township 9 North, Range 1 West, P.M.M. Lewis and Clark County, Montana. (Deed Reference – Book 289 of Deeds, Page 738)

PARCEL 19:
Government Lot 1 in Section 6, Township 9 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference – Book 289 of Deeds, Page 738)

Parcel 20:
The SW1/4NW1/4 and that portion of the SW1/4SE1/4NW1/4, being more particularly described as follows: Commencing at the Southwest corner of said Southeast Quarter of Northwest Quarter and running thence East along the South line of said subdivision to the Southeast corner thereof, thence Northwesterly to the Northwest corner of said subdivision, thence South to the place of beginning, EXCEPTING from the above, a twenty foot strip along the South Line of the Northwest Quarter of Section Five (5) for roadway purposes. All being located in Section 5, Township 9 North, Range 1 West, P.M.M., Broadwater County, Montana. (Deed Reference - Book 59 of Deeds, page 537)

AND
The SE1/4NE1/4 of Section 6, Township 9 North, Range 1 West, P.M.M., Broadwater County, Montana. (Deed Reference - Book 59 of Deeds, page 537)

Parcel 21:
All that part of the Northeast quarter of the Southeast quarter (NE1/4SE1/4) of Section 31, Township 10 North, Range 1 West of the Montana Meridian, more particularly described as follows:
Beginning at the Northeast corner of the NE1/4SE1/4, running thence North along the Section Line 716.4 feet; thence West 170 feet; thence S. 11°30'W. 90.5 feet, thence S. 24°30' W. 272 feet; thence S. 23° E. 211 feet; thence S. 26° E. 207 feet; thence East 127.7 feet to the place of beginning. All being located in Section 31, Township 10 North, Range 1 West, P.M.M., Lewis and Clark County, Montana. (Deed Reference - Book 189 of Deeds, page 456)
Commitment No.: L&C109477

END
DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is made this ______ day of __________________, 2019 by and between Douglas and Ronda Potter, whose address is, 6192 Matt Staff Road, East Helena, Montana 59635 (the "Landowner") and PRICKLY PEAR LAND TRUST, a Montana nonprofit corporation, whose principal address is 40 W. Lawrence Street, Suite A, Helena, Montana 59601 (the "Land Trust").

Exhibits to this Deed of Conservation Easement include the following:

Exhibit A - Legal Description of the Property
Exhibit B - Acknowledgment of Baseline Documentation Report
Exhibit C - Map of the Property
Exhibit D - Map of the Building Envelope
Exhibit E - Map of Excluded Property

WITNESSETH THAT:

A. Landowner is the owner of certain real property in Lewis & Clark County, Montana, consisting of ______ acres, more or less, more particularly described and shown in Exhibits A and C attached hereto and incorporated herein by this reference (the "Property");

B. The Property currently remains in a relatively natural state and has significant ecological and open-space values as defined in Section 76-6-104, et seq., Montana Code Annotated (MCA), and provides significant relatively natural habitat for native plants and wildlife;

C. Protection of the Property will contribute to the ecological integrity of the Spokane Hills and conserve significant relatively natural habitat for wildlife and plants;

D. All of these natural elements and ecological values are of great importance to Landowner and to the people of the State of Montana, and are worthy of preservation;

E. Landowner, as owner of the Property, owns the affirmative rights to identify, preserve, and protect in perpetuity its open space character and its significant relatively natural features and values;

F. Landowner desires and intends to transfer such rights to the Land Trust;
G. The State of Montana has recognized the importance of private efforts toward the preservation of natural systems in the state by enactment of Section 76-6-101, et seq., MCA;

H. The Lewis and Clark County Commissioners have expressly recognized in Lewis and Clark County Resolution No. 2008-97, recording # 3153419, passed and adopted August 12, 2008, and in the Lewis and Clark County Growth Policy, adopted in 2004 and updated in 2016 per Resolution No. 2016-13, the importance of preserving open-space lands, including working lands and land for protecting water and wildlife, in Lewis and Clark County, Montana; and in furtherance of such Resolution and Growth Policy have specifically committed funds for the purchase of all or a portion of this Easement; and

I. The Land Trust is a private organization organized to protect and conserve natural areas and ecologically significant land for scientific, charitable and educational purposes, and is a "holder" under the terms of Section 76-6-104(5) and Section 76-6-204, MCA, and is a "qualified organization" within the provisions of Section 170(h) of the Internal Revenue Code of 1986, as amended (the "IRS Code"), qualified to acquire and hold conservation easements and meets the requirements of the IRS Code as a Sec. 501(c)(3) exempt organization.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, pursuant to Section 76-6-101, et seq., MCA, Landowner hereby conveys to Land Trust, its successors and assigns, a perpetual Conservation Easement consisting of the rights and restrictions enumerated herein, over and across the Property (the "Easement").

1. Purposes. It is the purpose of the Easement to preserve and protect in perpetuity, to enhance upon mutual agreement, and in the event of their degradation or destruction, to restore the open space and significant relatively natural features and values of the Property. It is further the specific purpose of this Easement to protect the Property from fragmentation due to subdivision and unrestricted residential and/or commercial development and to conserve important habitat for grassland birds, black bears, mountain lion, deer, elk, bobcats and ermine; to protect rare or unique native plants; and to conserve the diverse grassland, forest, and riparian communities and the wildlife inhabiting these communities (such purposes, collectively, the "Conservation Values"). In achieving these purposes, it is the intent of the Easement to ensure the continuation of such ranching, residential and other uses of the Property as may be conducted consistent with the Conservation Values protected herein. Any and all rights or interests of the Landowner not specifically conveyed to the Land Trust or specifically prohibited by the Easement are reserved to the Landowner.

2. Baseline Documentation Report. A collection of baseline data on the Property and its resources has been prepared and the data and explanatory text are presented in the “Potter Baseline Documentation Report”, dated ________________, 20__ (the "Report"). A copy of the Report is on file with both Landowner and Land Trust and by this reference made a part hereof. The parties acknowledge that the Report is intended to establish the condition of the Property.
subject to the Easement as of the date written above and that both Landowner and Land Trust have acknowledged in a signed statement, a copy of which is attached hereto as Exhibit B, that the Report accurately represents the condition of the Property at the time of conveyance.

The parties agree that, in the event a controversy arises with respect to the nature and extent of the biological or physical condition of the Property, the parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other information to assist in the resolution of the controversy.

3. Rights of the Land Trust. The rights conveyed to the Land Trust by the Easement are the following:

   A. To identify, to preserve and protect in perpetuity, and in the event of their degradation or destruction to restore, the Conservation Values of the Property.

   B. To enter upon the Property to enforce the rights herein granted, to study and make scientific observations of its ecosystems, and to determine that Landowner's activities are in compliance with the terms of the Easement, all upon prior notice to Landowner and in a manner that does not unreasonably disturb the use of the Property by Landowner consistent with the Easement.

   C. To enjoin any activity on or any use of the Property that is inconsistent with the Easement and to enforce the restoration of such areas or features of the Property as may be damaged by such activities.

4. Consistent Uses of the Property. The following uses and practices by Landowner, though not an exhaustive recital of consistent uses and practices, are consistent with the Easement. Certain of these consistent uses and practices are identified as being subject to specified conditions or to the requirement of and procedures for prior approval by Land Trust; procedures for prior approval are provided below. The remainder of these consistent uses shall not be precluded, prevented, or limited by the Easement.

   A. Grazing of livestock, including cattle, horses, and bison.

   B. Construction of new buildings and structures within the designated “Building Envelope,” whose general location is depicted in Exhibit D, so long as these actions conform to applicable federal, state or local laws, or regulations, and Landowner shall be solely responsible for securing any required governmental approval or permits.

   C. Outside of the “Building Envelope,” construction of reasonably sized new non-residential agricultural buildings and structures, such as calving sheds, hay sheds, and corrals, which are necessary for the operation of the Property as a working agricultural property. Any structure exceeding 5,000 square feet in footprint may only be built with the prior approval of the Land Trust.
D. Use, maintenance, and repair, of all existing and permitted buildings and structures, and in the event of their destruction, the right to reconstruct them on the same site with buildings of equal or smaller size. Use of these structures for residential purposes, if outside of the established building envelope, is prohibited.

E. Maintenance and improvement of existing roads, and construction of new roads to access new buildings and facilities, provided that roads may only be improved to the minimum standard necessary for agricultural and property management purposes, and provided, further, that construction of new roads outside the Building Envelope is subject to prior approval by Land Trust. All roadways and driveways shall be of unimproved dirt or gravel surfaces and shall not be paved or oiled or have calcium carbonate applied or otherwise be improved with chemical coatings or other non-natural materials.

F. Maintenance, repair, and reconstruction of existing fencing and construction of new fences. New or reconstructed boundary or pasture-division fences may not exclude or prevent wildlife from moving through the Property, but other fencing may be built to specifically exclude wildlife from residential yard areas, gardens, haystacks, newly-seeded areas and temporary vegetative restoration areas.

G. Use and storage of agricultural chemicals, including fertilizers, pesticides, herbicides, insecticides and rodenticides in compliance with applicable law as may be necessary to carry out agricultural and ranching activities. The use of such agents shall be conducted in such a manner as to minimize adverse effects upon the natural values of the Property and the natural ecosystem. Herbicides may not be used to treat or control native plants, except that incidental treatment as part of noxious weed control is permitted.

H. Raising and harvesting of hay and other crops, including plowing, planting of native and non-native plant species, irrigating and harvesting, on those areas that have been previously cultivated as depicted in the Report. Areas identified in the Report as abandoned cropland may be cultivated and seeded to perennial cover, with the seed mix subject to advanced approval by Land Trust. Establishment and maintenance of a garden for personal use shall also be allowed within the building envelope provided it does not constitute a nuisance attractant for wildlife.

I. Introduction of biological weed and pest control agents in compliance with applicable law as may be necessary to carry out agricultural and ranching activities.

J. Removal of surface sand and gravel in limited quantities, for use solely in ranch operations and on roads and driveways on the Property, consistent with historical practices. Under no circumstances is any commercial use of sand or gravel located on the Property permitted by this Easement, nor may any sand or gravel be mined for any purpose, either commercial or non-commercial. All sand and gravel extraction permitted hereunder shall have only limited, localized impacts, and shall be suspended if Land Trust determines such removal impairs any of the Conservation Values protected by this Easement.

K. Construction of utility systems for the uses permitted in this Easement.
L. Maintenance, repair, and reconstruction of existing agricultural and residential water facilities and the development of new water resources and facilities, including the diversion, withdrawal and use of water, consistent with valid water rights, for agricultural and residential uses provided for herein; provided that any maintenance, repair, reconstruction, construction or development activities do not cause significant or long-term impairment of riparian values. Notwithstanding the foregoing, construction of ponds requires prior approval from Land Trust.

M. In accordance with all applicable state or federal laws, the control of predatory and problem animals, excluding raptors, that have caused damage to persons, livestock, or other property. Wherever possible, measures used for control of predatory or problem animals shall be limited in the application to specific animals that have caused damage to livestock or other property, provided, however, that if it is not possible to identify a specific predatory or problem animal, Landowner may use appropriate preventive control techniques. Trapping of beaver is expressly permitted under this section, provided that such trapping may not be conducted in a manner so as to eradicate the beaver population and provided that appropriate precautions are taken to avoid trapping river otter or other non-target species. Modification or removal of beaver dams is also permitted, provided that such activities are limited in application to specific dams whose removal or modification is required to protect existing and permitted buildings or irrigation structures. Any beaver dam removal permitted here under shall have only limited, localized impacts and must conform to applicable federal, state or local laws, or regulations, and Landowner shall be solely responsible for securing any required governmental approval or permits.

N. Harvesting of timber and cutting of trees using Best Management Practices as set forth in Montana State University Extension Service Publication Number EB0096 and its subsequent updates (“Best Management Practices”), including stringent protection of soil and watershed values, riparian areas, and wildlife habitat; provided that such harvest is consistent with the following provisions:

i. Without prior approval, tree cutting is permitted only for firewood and fencing to be used on the Property, and for the protection of persons and property.

ii. With prior approval by Land Trust tree cutting is permitted for other purposes so long as all tree cutting achieves at least one of the following objectives: controlling forest disease; improving forest health; forest restoration; controlling encroachment of timber into grassland areas; and enhancing wildlife habitat. Landowner must submit a written Timber Harvest Plan for review by Land Trust. The Timber Harvest Plan must include timber inventory data, purpose of the harvest, anticipated future stand condition, selection criteria for tree removal, provisions for the protection of streamside zones and wildlife habitat, harvest and skidding methods, slash disposal techniques, reforestation plans, and other relevant information necessary to an evaluation of the proposed harvest. Tree cutting and timber harvest should emphasize treatments that maintain or restore a natural ecological condition.
5. **Inconsistent Uses of the Property.** The following uses and practices on the Property shall be prohibited, except as specifically provided for under Section 4 herein.

   A. Storage, dumping or other disposal of toxic and/or hazardous materials, except that petroleum products such as oil and gas for use exclusively by the Landowners may be stored in accordance with applicable state and federal regulations for permitted uses set forth herein.

   Notwithstanding anything in this Easement to the contrary, this prohibition does not make Land Trust an owner of the Property, nor does it permit Land Trust to control any use of the Property by the Landowner which may result in the storage, dumping or disposal of hazardous or toxic materials; provided, however, that Land Trust may bring an action to protect the Conservation Values of the Property, as described in this Easement. (This prohibition does not impose liability on Land Trust, nor shall Land Trust be construed as having liability as a "responsible party" under CERCLA or similar federal or state statutes.)

   B. Dumping or other disposal of garbage, tires inoperable machinery, or other refuse; or any items that could be an attractant to bears or other wildlife. This prohibition does not include animal carcasses involved in the Montana Department of Fish, Wildlife and Parks’ “Carcass Redistribution Program” or domestic livestock that dies on the Property.

   C. Filling, excavating, dredging, mining, drilling, and the exploration for or extraction of minerals, hydrocarbons, soils, sand, gravel, rock, or other materials on or below the surface of the Property.

   D. Establishment or maintenance of any commercial or industrial activity, including but not limited to game farms, motels or hotels, trailer or recreational vehicle parks. Prohibited commercial and industrial uses shall not include ranching, all as specifically provided for in Section 4, any commercial activity that can be conducted from existing or authorized structures in a manner that is otherwise consistent with the conservation purposes of the Easement, and other commercial uses that may be permitted with prior approval of Land Trust. In order to preserve the potential for further reduction of estate taxes in accordance with Subsection 2031(c) of the IRS Code only *de minimus* commercial recreational use shall be allowed.

   E. Intentional introduction of non-native plant species or farming, plowing, discing, chiseling, interseeding, or any type of cultivation, except as provided for in Section 4H.

   F. Establishment or maintenance of a feed lot. For purposes of this Easement, "feed lot" is defined as a permanently constructed confined area or facility within which the property is not grazed or cropped annually, and which is used and maintained for purposes of feeding of livestock. Nothing in this section or Section 5D shall prevent Landowner from seasonally confining Landowner’s livestock into an area for feeding and nothing in this section shall prevent Landowner from leasing pasture for the grazing of livestock owned by others.

   G. The partition, division, subdivision, or *de facto* subdivision of the Property, including but are not limited to, any subdivision, short subdivision into remainder tracts, platting, testamentary
division, partitions among tenants-in-common or joint tenants, judicial partitions, allocation of title or property rights among partners, shareholders, trustees or trust beneficiaries, or members of any business entity, subdivision for purpose of providing new security for a mortgage, time-share or interval ownership arrangements, or other process by which the Land is divided into lots or in which title to different portions of the Land are held by different owners.

Notwithstanding the above, the sale, exchange, devise or gift ("Transfer") of a portion of the Property for agricultural, or timber management purposes shall be allowed, provided that no more than three (3) parcels may be created from the Property covered by this Easement (i.e. up to two divisions, for a maximum of three total parcels), and provided further that any such Transfer(s) must be effected with an express provision reflecting that said land is subject to the terms and conditions of the Easement, without modification or expansion of such terms. In the event of any such Transfer(s), no additional structures shall be allowed upon any portion of the Property beyond those structures already authorized in this Easement, and all other terms of this Easement shall continue to apply. With the exception of such authorized Transfers, no subdivision or de facto subdivision of the Property shall be allowed. Transfer of any portion of the Property for residential use shall be expressly prohibited. Furthermore, if the Property is so divided, the Landowner must comply with all applicable federal, state, and local laws, ordinances, and regulations concerning subdivision, including, if required, the surveying of the parcels to be conveyed and the submission of the proposed separate tract(s) to state and/or local review authority for approval. Land Trust shall be furnished with a copy of the pertinent portion of any document or conveyance utilized to effect such a transfer at least thirty (30) days prior to the execution of the same.

H. Construction or placement of any buildings, temporary living quarters of any sort, utility towers, or other structures, except as provided for in the Easement and except that vehicular campers owned by Landowner or guests may be parked on the Property as appropriate to accommodate normal visitation.

I. Construction of any new roads or vehicle trails, except as provided for in Section 4E.

J. The change, disturbance, alteration, or impairment of the significant relatively natural ecological features and values; or the destruction of any of the Conservation Values on the Property.

K. Any change in the topography of the Property through the placement therein of soil, land fill, dredging spoils, or other material, except as incidental and necessary to the activities permitted hereunder.

L. Except as specifically permitted for the purpose of maintaining and enhancing the Conservation Values, the following activities are prohibited: rip-rapping and any other manipulation, diversion, or other alteration of natural water courses, wetlands, or other bodies of water; any activity which may destabilize the banks of any course or body of water; and any uses or activities which would pollute, degrade, or drain the Property's surface or sub-surface waters are prohibited. Additionally, the removal of woody riparian vegetation is prohibited unless incidental to the establishment and/or maintenance of fences, water gaps, water tanks, irrigation structures
and other practices compatible with the permitted uses of the Property and the protection of the established Conservation Values.

M. There shall be no construction, maintenance, or erection of any billboards on the Land. Roadside signs are permitted only for the purposes of posting the name of the Land, advertising any business permitted on the Land, controlling public access, providing public notification of this Easement, or advertising property for sale. Any other use of signs requires the Prior Approval of the Land Trust.

6. Prior Notice and Approval. Landowner shall not undertake or permit any activity requiring prior approval by Land Trust without first having notified and received approval from the Land Trust as provided herein.

Prior to the commencement of any such activity, Landowner shall send the Land Trust written notice of his/her intention to undertake or permit such activity. The notice shall inform the Land Trust of all aspects of the proposed activity, including location, design, materials or equipment to be used, dates and duration, and any other relevant information, and shall be sent by registered or certified mail, return receipt requested, to Prickly Pear Land Trust, P.O. Box 892, Helena, MT 59624, or such other addresses as Landowner may from time to time be informed of in writing by the Land Trust.

The Land Trust shall have forty five (45) days from receipt of the notice, as indicated by the date of the return receipt, to review the proposed activity and to notify Landowner of any objections thereto; provided that the 45-day period shall not begin until such time as the Land Trust has received adequate information from Landowner to evaluate the proposed activity. In the event that Land Trust requires additional information to evaluate the proposed activity, the Land Trust shall request the information from Landowner as soon as practicable and in any case not later than 30 days after the receipt of the notice of the proposed activity.

The Land Trust’s decision to approve or disapprove the activity proposed by Landowner shall be sent by registered or certified mail, return receipt requested, to Landowner at the address first stated above, or to such other address as the Land Trust may from time to time be informed of in writing by Landowner.

A decision by the Land Trust to disapprove a proposed activity must be based upon the Land Trust’s determination that the proposed activity is inconsistent with the conservation purposes of the Easement. If in the Land Trust’s judgment it is possible that the proposed activity can be modified to be consistent with the easement, the Land Trust’s decision notice shall inform Landowner of such modification(s). Once modification is made to the satisfaction of the Landowner or the Landowner otherwise concurs with the matters set forth in Landowner’s notice, the proposed activity may thereafter be conducted in a manner that is acceptable to the Landowner.

Should the Land Trust fail to post its response to Landowner’s notice within forty five (45) days of its receipt of notice or within forty five (45) days of the time that the Land Trust has received adequate information to evaluate the proposed activity, whichever is later, the proposed
activity is automatically deemed consistent with the terms of the Easement, the Land Trust having no further right to object to the activity identified by such notice.

7. Remedies, Breach and Restoration. In the event a violation of any restriction contained herein, whether by Landowner or a third party, comes to the attention of the Land Trust, the Land Trust shall notify Landowner in writing of the violation. Landowner shall have thirty (30) days after the receipt of such notice to undertake actions, including restoration of the Property, that are reasonably calculated to swiftly correct the conditions caused by such violation. If Landowner fails to take such corrective action, the Land Trust may at its discretion undertake such actions, including appropriate legal proceedings, as are reasonably necessary to effect such corrections, and the cost of the corrections, including the Land Trust’s expenses, court costs, and legal fees, shall be paid by Landowner, provided either Landowner, Landowner’s family, any shareholders in the Property, agents, guests, employees or other persons permitted by Landowner are determined to be responsible for the violation.

In the event that Landowner undertakes any activity requiring approval of the Land Trust without or in advance of securing such approval, or undertakes any activity in violation of the terms of the Easement, the Land Trust shall have the right to force, by appropriate legal or equitable action, including an action for injunction or specific performance, the restoration of that portion of the Property affected by the activity to the condition that existed prior to the undertaking of the unauthorized activity. In such case, the costs of restoration and the Land Trust’s costs of suit, including reasonable attorneys' fees, shall be borne by Landowner or those of his/her heirs, personal representatives, or assigns against whom a judgment is entered, or, in the event that the Land Trust secures redress without a completed judicial proceeding, by Landowner or those of his/her heirs, personal representatives, or assigns who are otherwise determined to be responsible for the unauthorized activity.

8. Enforcement. Enforcement of the terms and provisions of this Easement shall be at the discretion of the Land Trust. Any forbearance on behalf of the Land Trust to exercise its rights hereunder in the event of any breach by Landowner or his/her respective heirs, personal representatives, successors, or assigns shall not be deemed or construed to be a waiver of the Land Trust’s rights hereunder in the event of any subsequent breach. The Land Trust shall also have the right of immediate entry to the Property if such entry is necessary to prevent damage to or the destruction of the Conservation Values protected by the Easement, which will be reasonably exercised and will take into account Landowner’s right to engage in ranching, agricultural, and other activities consistent with the Easement.

A. Back-Up Grantee with Third-Party Right of Enforcement. If the Land Trust is unable or unwilling to enforce the terms of this Easement in the event of a violation or threatened violation of the terms hereof, the Landowner and the Land Trust expressly agree that Lewis and Clark County shall be the Backup Grantee. In Lewis and Clark County’s role as Backup Grantee, the County shall be construed as holding the Conservation Easement for purposes of enforcement pursuant to MCA § 76-6-211(2). As a public body holder of an easement, Lewis and Clark County shall have the right to enforce the terms of this Easement to protect the Conservation Values for the benefit of the public as described below.
The Land Trust will retain primary authority to monitor the Property and enforce the terms of the Easement. Lewis and Clark County recognizes and agrees that the Land Trust shall have discretion to assure that the Conservation Values are protected for the benefit of the public. Lewis and Clark County’s third-party right of enforcement may only be exercised pursuant to this Section 8A.

If a violation or threatened violation of the purposes or terms of this Easement come to the attention of Lewis and Clark County, Lewis and Clark County shall notify the Land Trust in writing of the violation or threatened violation. Upon receiving Lewis and Clark County’s written notice, the Land Trust shall have thirty (30) days to investigate the violation or threatened violation, determine whether a violation has occurred or is threatened or imminent, and communicate its findings to Lewis and Clark County in writing. If the Land Trust determines a violation has occurred or is threatened or imminent, the Land Trust may exercise its discretion to enforce, pursuant to the previous paragraph.

If Lewis and Clark County believes that the enforcement actions (or lack of enforcement) taken by the Land Trust are not sufficient to protect the Conservation Values for the benefit of the public and that the Land Trust’s actions are outside of its discretion in protecting those Conservation Values, Lewis and Clark County may notify the Land Trust and the Landowner of its intention to intervene and assert its right of enforcement to compel the Landowner to comply with the Easement in thirty days unless: (i) the Land Trust and the Landowner resolve the basis of Lewis and Clark County’s planned intervention to the County’s satisfaction, or (ii) the Land Trust agrees to undertake Lewis and Clark County’s planned intervention.

If, after thirty (30) days, neither (i) nor (ii) in the preceding sentence occurs, Lewis and Clark County may enforce the terms of this Easement to protect the Conservation Values for the benefit of the public pursuant to MCA § 76-6-211(2).

9. Liabilities. Landowner shall hold harmless, indemnify, and defend the Land Trust, Lewis and Clark County and the Land Trust’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, reasonable 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 Property. Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee or Backup Grantee to exercise physical or managerial control over activities on the Property or to become an “owner” or “operator” of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., (“CERCLA”), or the Montana Hazardous Waste Act, Sections 75-10-401, et seq., and 75-10-601 et seq., M.C.A., and similar state and federal statutes. This paragraph shall not apply in the case of any hazardous material or substance in any manner placed on the Property by the Land Trust, Lewis and Clark County or the Land Trust’s representatives or agents.
10. **Taxes and Costs.** Landowner agrees to pay any and all real property taxes and assessments levied by competent authority on the Property and to bear all costs of operation, upkeep, and maintenance of the Property, and does hereby indemnify the Land Trust therefor.

11. **Access.** Nothing herein contained shall be construed as affording the public access to any portion of the Property.

12. **Assignment.** Both the Land Trust and Lewis and Clark County may assign their interests under the Easement to another entity. However, Land Trust or Lewis and Clark County may only transfer or assign their interests to a “qualified organization,” within the meaning of Section 170(h)(3) of the Code or a “public body” under § 76-6-104(4), MCA and further described at § 76-6-204, MCA, and provided the Land Trust has notified and obtained the written approval of Lewis and Clark County, or Lewis and Clark County has notified and obtained written approval of the Land Trust. Land Trust and Lewis and Clark County also agree to solicit the opinion of Landowner in this matter and reasonably consider Landowner’s input. Approval shall not be unreasonably withheld. Any such qualified organization assigned an interest herein shall agree to enforce in perpetuity the conservation purposes of the Conservation Easement. Land Trust agrees that it will make a reasonable effort in the event of any assignment to suggest an assignee which is a qualified organization referred to in Section 170(h)(3) of the Code, which has the conservation of natural resources as a substantial organizational purpose, and Land Trust further represents to Landowner that its present intention is to assign its interest in this Easement only in connection with a dissolution of Land Trust.

13. **Change of Conditions.** The fact that any use of the Property that is expressly prohibited by this Easement, or any other use as determined to be inconsistent with the purpose of this Easement, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to uses that are not permitted thereunder, has been considered by the Landowner in granting this Easement. It is Landowner’s belief that any such changes will increase the benefit to the public of the continuation of this Easement, and it is the intent of both Landowner and the Land Trust that any changes should not be assumed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this paragraph. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to this paragraph.

14. **Condemnation and Other Extinguishment of the Easement.** Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Easement, or if the Easement is extinguished pursuant to Paragraph 16 herein, the Landowner, Lewis and Clark County and the Land Trust shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. The net proceeds shall be divided between the Landowner, the Land Trust and Lewis and Clark County in proportion to the fair market value of their interests in the Property on the date of execution of the Easement (as provided in Treas. Reg. Section 1.170A-14(g)(6)(I)) and pursuant to Section 76-6-107, MCA. The Land Trust shall use its share of the proceeds in a manner consistent with the purposes and
intent set forth herein, or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in Internal Revenue Code Section 170(h)(4)(a)(ii), as amended, and in regulations promulgated thereunder.

15. Amendment. If circumstances arise under which an amendment to or modification of the Easement would be appropriate, the Land Trust, Landowner, and Lewis & Clark County may jointly amend the Easement; provided that no amendment shall be allowed that affects the qualification of the Easement under the IRS Code or relevant Montana law. Any such amendment shall be consistent with the purposes of the Easement, shall not affect its perpetual duration, shall not permit additional development or improvements to be undertaken on the Property other than development or improvements currently permitted by the Easement, and shall not impair any of the significant Conservation Values of the Property. Any such amendment shall be recorded in the official records of Lewis & Clark County, Montana.

To obtain the approval of Lewis and Clark County, a request to amend must be submitted in writing to the County’s Community Development and Planning Office together with proof that the conservation values will not be adversely affected. The request must be placed on the Commissioners’ agenda for the next available regularly scheduled public meeting of the County Commission, and a public hearing must be held on the request.

Lewis and Clark County’s approval of amendments sought jointly by Landowner and Land Trust shall not be unreasonably withheld, as long as there is (1) no adverse impact on conservation values and (2) no private inurement or financial benefit back to the landowner.

16. Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether with respect to all or part of the Property, by judicial proceeding in a court of competent jurisdiction, and the amount of the compensation to which Land Trust and Lewis and Clark County shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Montana law at the time, in accordance with this Section 16 and as provided for in Treasury Regulation Section 1.170A-14(g)(6)(ii). Land Trust and Lewis and Clark County shall use any such proceeds in a manner consistent with the conservation purposes of the original contribution.

A. Compensation. This Conservation Easement constitutes a real property interest immediately vested in Land Trust, which, for purposes of this Section 16, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Conservation Easement at the time of this grant to the value of the Property, without deduction for the value of the Conservation Easement, at the time of this grant. The values referred to in the preceding sentence shall be those values established by Landowner’s qualified appraisal (pursuant to Treasury Regulation 1.170A-13 and 1.170A-14(h)) for federal income, gift or estate tax purposes. For the purpose of this paragraph, the ratio of the value of the Conservation Easement to the value of the Property unencumbered by the Conservation Easement, at the time of the qualified appraisal, shall remain constant.
In the event that this Easement is extinguished Land Trust will allocate a proportional share of proceeds from the extinguishment of the Easement to Lewis and Clark County in recognition of the Open Space Bond funds Lewis and Clark County contributed to the acquisition of this Easement and pursuant to Section 76-6-107, MCA. For the purposes of this paragraph, Lewis and Clark County’s proportional interest shall be the value of Lewis and Clark County’s contribution toward the purchase of the Easement to the value of the Easement at the time of the grant, and Lewis and Clark County’s proportional value shall remain constant.

B. Eminent Domain and Condemnation. If all or a portion of the Property is taken for a public purpose in exercise of eminent domain so as to abrogate the restrictions imposed by this Conservation Easement, Landowner, Lewis and Clark County and Land Trust may join in appropriate actions to recover the value of each party’s proportionate interest in the Property (or portion) taken, as established in paragraph 16A, including the value of Land Trust’s Conservation Easement as it pertains to the condemned property at the time of the taking or condemnation. Landowner, Lewis and Clark County and Land Trust shall be entitled to any proceeds resulting from such taking or condemnation, in proportion to their interest in the rights which are taken or condemned. Proceeds shall be divided between Landowner, Lewis and Clark County and Land Trust as set forth above, and Land Trust shall use any such proceeds received from easement condemnation in a manner consistent with the conservation purposes of this Easement.

17. Interpretation. The provisions of this Easement shall be construed to effectuate their purpose of preserving and protecting habitat for wildlife, unique native plants, and diverse vegetative communities. The parties acknowledge that each party and its counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Easement.

18. Miscellaneous.

A. Governing Law. The laws of the State of Montana (without regard to conflicts of law principles) shall apply to the interpretation and enforcement of this Easement.

B. Definitions. The terms “Landowner” and “Land Trust” as used herein shall be deemed to include, respectively, the Landowner, the Landowner’s heirs, successors, personal representatives, and assigns, and the Land Trust, its successors and assigns.

C. Binding Effect. Landowner intends that the Easement shall run with and burden title to the Property in perpetuity, and shall bind Landowner, his/her heirs, successors, personal representatives, and assigns.

D. Severability. If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions hereof and the application of such provision to persons or circumstances other than those to which it is found to be invalid, shall not be affected thereby.
E. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 15 above.

TO HAVE AND TO HOLD the said Easement unto the said Land Trust, its successors and assigns, forever.

IN WITNESS WHEREOF, Landowner has hereunto set its hand this ___ day of __________, 20__. 

LANDOWNER:

______________________________________________

Accepted this _day of ________________________, 20__, by Prickly Pear Land Trust.

______________________________________________

Executive Director of Prickly Pear Land Trust
ACKNOWLEDGMENT

STATE OF )
COUNTY OF ) ss.

On this ___ day of ________________, 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared __________________________ and __________________________, known to me to be the persons whose name are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Print Name__________________________
Notary Public for the State of ____________
Residing at__________________________
My Commission Expires ____________, 20__
EXHIBIT A
Property Description

All that certain real estate situated in Lewis and Clark and Broadwater Counties, Montana, consisting of _______ acres, more or less, more particularly described as follows:

S19, T10 N, R01 W, LTS 1-2, E2NW*
S19, T10 N, R01 W, E2
S20, T10 N, R01 W, N2, SW4, LTS 2 & 4, SWSE
S20, T10 N, R01 W, SESE
S21, T10 N, R01 W, W2NW, NWSW
S21, T10 N, R01 W, S2SW
S28, T10 N, R01 W, NW4 N2SW SWNE NWSE
S28, T10 N, R01 W, SWSW
S28, T10 N, R01 W, SESE
S29, T10 N, R01 W, NE4 N2NW N2SE N2N2SENW SWNW
S29, T10 N, R01 W, SESE
S30, T10 N, R01 W, N2NE SENE
S32, T10 N, R01 W, N2SW4, W2SE4, NE4NE4, W2NE4, NW4
S32, T10 N, R01 W, E2SE4
S32, T10 N, R01 W, S2SW4
S33, T10 N, R01 W, W2NW
S33, T10 N, R01 W, NENW
S05, T09 N, R01 W, NW2 G.LOT 3, ALL G.LOT 4
S06, T09 N, R01 W, LT 1
S05, T09 N, R01 W, SW4NW4; SW4SE4NW4
S06, T09 N, R01 W, SE4NE4
S31, T10 N, R01 W, M&B TRACT IN NE4SE4

*Excludes portion described in Exhibit E
EXHIBIT B
Acknowledgement of Baseline Documentation Report

Landowner and the Land Trust acknowledge that each has read the "Potter Baseline Documentation Report", dated ____________________________, 2019, and that the report accurately reflects the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

_________________________  __________________________
Landowner  Date

_________________________  __________________________
Prickly Pear Land Trust  Date
EXHIBIT C
Map of the Property and Building Envelope
EXHIBIT D
Map of the Building Envelope
EXHIBIT E
Map of the Exclusion