

Rerecord to add  
fully executed  
Management Agreement

**RESOLUTION 2019 - 6**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEWIS AND CLARK COUNTY, MONTANA APPROVING FUNDING OF THE OPEN LANDS PROGRAM PEAKS TO CREEKS ACQUISITION PROJECT**

WHEREAS, pursuant to Resolution 2008-97, in November 2008, voters in Lewis and Clark County, Montana, approved the Land, Water and Wildlife bond measure, a \$10 million general obligation bond measure for protecting drinking water sources and ground water quality; protecting water quality in and along rivers and streams; conserving working farm, ranch and forest lands; protecting wildlife areas; preserving open lands and natural areas; providing for recreation; and managing growth and development; and

WHEREAS, the primary purpose of the Open Lands Program is to conserve resources on private lands in Lewis and Clark County that fulfill the objectives of the bond measure; and

WHEREAS, funds generated by sales of these bonds are distributed through the County's Open Lands Program; and

WHEREAS, the County's Open Lands Program has received and processed an application for Open Lands funding from the Prickly Pear Land Trust, and

WHEREAS, in this project, referred to as the Peaks to Creeks Acquisition Project, Prickly Pear Land Trust proposes to apply for \$340,000 of County Open Lands bond funds applied towards the acquisition of two areas for the project:

1. Tenmile Creek Park:

Parcel I: Tract "C", being located in the NE1/4 of Section 22, Township 10 North, Range 4 West, M.P.M., Lewis and Clark County, Montana, as shown on the Certificate of Survey filed under Doc. No. 3038131.

Parcel II: Tract "D", being located in the NW1/4 of Section 23, Township 10 North, Range 4 West, M.P.M., Lewis and Clark County, Montana, as shown on the Certificate of Survey filed under Doc. No. 3038131.

Parcel III: Tract "E-1A", being located in the SE1/4 of Section 15, Township 10 North, Range 4 West, M.P.M., Lewis and Clark County, Montana, as shown on the Certificate of Survey filed under Doc. No. 3271589.

Parcel IV: Tract "F", being located in the SE1/4 of Section 15, Township 10 North, Range 4 West, M.P.M., Lewis and Clark County, Montana, as shown on the Certificate of Survey filed under Doc. No. 3038131.

2. Sevenmile Creek Property:

Tract H, being located in Sections 4, 9, and 10, Township 10 North, Range 4 West, Principal Meridian Montana, Lewis and Clark County, Montana, described as follows:

The west half of the southwest quarter of the southeast quarter (W1/2SW1/4SE1/4) and the southeast quarter of the southwest quarter of the southeast quarter (SE1/4SW1/4SE1/4) of

3332804 B: M55 P: 1362 COUNTY  
01/23/2019 08:36 AM Pages: 1 of 15 Fees: 0.00  
Paulette DeHart Clerk & Recorder, Lewis & Clark MT



3332265 B: M55 P: 938 COUNTY  
01/08/2019 03:20 PM Pages: 1 of 15 Fees: 0.00  
Paulette DeHart Clerk & Recorder, Lewis & Clark MT



said Section 4; the northeast quarter (NE1/4) of said Section 9; the west half of the northwest quarter (W1/2NW1/4), the southeast quarter of the northwest quarter (SE1/4NW1/4), the east half of the northeast quarter (E1/2NE1/4), the southwest quarter of the northeast quarter (SW1/4NE1/4), the northwest quarter of the southeast quarter (NW1/4SE1/4), and the south half of the southeast quarter (S1/2SE1/4) of said Section 10, as shown on the Certificate of Survey filed under Doc. No. 3273842.

EXCEPTING THEREFROM the right-of-way of the Burlington Northern, Inc. (formerly Northern Pacific Railway Company), and the right-of-way for County roads in said Sections 4, 9, and 10. (Ref: Book 2 Deeds page 523; M Book 38, page 4238)

ALSO EXCEPTING THEREFROM that portion of a strip of land twenty feet in width, ten feet on each side of a centerline lying northeasterly and southwesterly of the right-of-way lines of the Northern Pacific Railway Company in Section 10, more particularly described as follows: Beginning at a point 25 feet westerly of the one quarter section corner common to Section 10 &

15; running thence along said centerline for sewer line N 44° 49' E, 105.8 feet; thence N 32° 23' E, 926.7 feet; thence N 51° 07' E, 1030.0 feet to an intersection with the west line of the said northeast quarter (NE1/4) of the southeast quarter (SE1/4) of said Section 10 and the terminus of said centerline. (Ref: M Book 38, page 4238)

AND ALSO EXCEPTING THEREFROM all that part of the NE1/4 of Section 9, lying south and west of the 400-foot railroad right-of-way. (Ref: 2 Deeds, page 523)

AND ALSO EXCEPTING THEREFROM a parcel of land located in the southeast quarter of the southeast quarter (SE1/4SE1/4) of said Section 10 as shown on the Certificate of Survey filed under Doc. No. 553300-E.

AND ALSO EXCEPTING THEREFROM Tracts A, B, C, D, E, F, and G as shown on the Certificate of Survey filed under Doc. No. 3273842; and

WHEREAS, the Citizen's Advisory Committee on Open Lands (CAC) recommended approval to the Board of County Commissioners that the Peaks to Creeks Acquisition Project receive funding, conditioned upon County legal staff's review of the Level 2 Application's compliance with the due diligence requirements of the Open Lands Program. The motion also included that the recommendation is based on a determination that the Level 2 application meets project evaluation criteria for: (1) Protecting habitat for fish and wildlife, (2) providing opportunities for outdoor recreation; (3) protecting water resources and water quality, (4) preserving open lands and natural areas, and (5) managing growth and development; and

WHEREAS, the Commission considered the recommendation of the CAC at a regularly scheduled public hearing on November 29, 2018, along with County Legal staff's due diligence report and management agreement with Prickly Pear Land Trust; and

WHEREAS, the Commission determined that this project meets multiple purposes of the bond, substantially complies with the legal requirements, and may not be achieved without the involvement of the County; and


NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners:

1. Accept the recommendation of the Citizens Advisory Committee on Open Lands; and
2. Approve funding the Peaks to Creeks Acquisition Project in the amount of \$340,000.
3. Approve the Management Agreement between Prickly Pear Land Trust and Lewis and Clark County

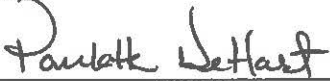
INTRODUCED at a Regular meeting of the Board of County Commissioners on January 8, 2019 by Commission Member Jim McCormick.

PASSED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS on this 8<sup>th</sup> Day of January 2019.

LEWIS AND CLARK COUNTY  
BOARD OF COMMISSIONERS

  
Jim McCormick, Chair

ATTEST:



Paulette DeHart, Clerk of the Board

Attached:  
Exhibit "A": Management Agreement

**Exhibit A: Management Agreement**  
For Prickly Pear Land Trust's  
Peaks to Creeks Project

THIS MANAGEMENT AGREEMENT ("Agreement") is made by and between Prickly Pear Land Trust ("PPLT"), a Montana nonprofit corporation, whose principal address is 40 W. Lawrence Street, Suite A, Helena, Montana 59601 and Lewis and Clark County (the "County"), a political subdivision of the state of Montana, whose address is 316 N. Park Avenue, Helena, Montana 59601.

**WITNESSETH**

WHEREAS, in 2016, PPLT acquired in fee simple, certain real property situated in Lewis and Clark County, Montana, hereinafter referred to as the "Properties," as described in the legal descriptions attached as Exhibit A and depicted on the Property Maps attached as Exhibit B, subject to a purchase money mortgage in favor of The Conservation Fund, a Maryland non-profit corporation, having a mailing address of 1655 N. Fort Myer Drive, Suite 1300, Arlington, Virginia 22209, which mortgage is dated February 17, 2016 and was recorded on February 17, 2016 in M Book 51 of Records, page 303, records of Lewis and Clark County, Montana (the "Mortgage"); and

WHEREAS, the Mortgage was granted to PPLT by The Conservation Fund as bridge loan financing to enable PPLT to purchase the Properties quickly, and thereby to secure important open space and other resource values, including:

- a. Scenic views of the Properties, Tenmile Creek and Sevenmile Creek, and the Helena Valley for members of the public; and
- b. Significant relatively natural habitats for native plants, fish and wildlife, which are important to the ecological integrity and functions of the Tenmile Creek and Lake Helena watersheds; and
- c. Educational and research opportunities for the general public; and
- d. Recreational opportunities for the general public, including enhanced access to public lands and waterways;

(hereafter the "Conservation Values") ; and

WHEREAS, PPLT submitted an application to the County pursuant to its Open Lands Program, made possible by the County's 2008 Land, Water and Wildlife bond measure, for funds in the amount of \$340,000 to retire the Mortgage debt due and owed to The Conservation Fund and thereby to complete PPLT's acquisition of the Properties, free and clear of all financial encumbrances, for the lasting and perpetual benefit of the residents of Lewis and Clark County and the people of Montana; and

WHEREAS, the County's Open Lands Program Guide, as adopted and amended on May 3, 2018, states that "in exceptional circumstances, the Program may consider purchasing land or

providing funding for land purchases by other entities, if this type of transaction best addresses the public's interests and a landowner's needs"; and

WHEREAS, the County has determined that PPLT's expeditious purchase of the Properties in 2016 preserved the Conservation Values from imminent loss to development and subdivision, and therefore PPLT's actions in this exceptional circumstance served the goals and purposes of the 2008 Land, Water and Wildlife bond measure; and

WHEREAS, the County acknowledges that PPLT's application for bond funds from the County to complete purchase of the Properties in fee, free from financial encumbrance, is consistent with the goals and purposes for which the voters of Lewis and Clark County approved the Land, Water and Wildlife bond measure in 2008; and

WHEREAS, as a condition of approving PPLT's application for bond funds, the County requires assurances that PPLT's management of the Property will be consistent with the protection of the Conservation Values; and

WHEREAS, to provide the County with the assurances it requires, PPLT has presented the County with an "Open Space Management Plan," a true and correct copy of which is attached hereto as Exhibit C and which is incorporated herein by this reference, and PPLT intends and agrees to implement and abide by the Open Space Management Plan under the terms and conditions hereafter set forth.

WHEREAS, the purpose, intent and language of this Agreement and the Open Space Management Plan is consistent with and cumulative to PPLT's Special Military Cooperative Agreement with the National Guard that restricts development of the Properties.

NOW, THEREFORE, for the purpose of providing guidance on management of the Properties in such a manner as is consistent with protection of the Conservation Values, and consistent with the conditions under which the County has approved expenditure of the County's 2008 Land, Water and Wildlife bond funds, PPLT and the County mutually agree and declare, on behalf of themselves and their successors and permitted assigns, that the Properties hereafter shall be held and managed in accordance with the following terms and conditions.

**A. TERMS AND CONDITIONS:**

PPLT may not encumber, dispose of in any manner, or use the Properties in a way that is inconsistent with this Agreement or the Open Space Management Plan. PPLT will, without exception, abide by the specific guidelines set forth in said Open Space Management Plan, attached as Exhibit C, for the Properties, which have been approved by PPLT's Board of Directors and the County. Furthermore, PPLT will secure the approval of the County prior to transferring ownership of any portion of the Properties to any entity other than a "public body," as defined by Section 76-6-104(4), M.C.A.

**B. BREACH OF TERMS AND CONDITIONS:**

If the County believes that PPLT has used, encumbered, or disposed of the Properties in a way that is inconsistent with this Agreement and the Open Space Management Plan, the County and PPLT shall first seek to resolve the County's concerns through mediation as provided immediately below.

- 1) If a dispute arises between the County and PPLT concerning the consistency of PPLT's compliance with the terms of this Agreement or the Open Space Management Plan, either party may request in writing to the other that the matter be mediated. Within fifteen (15) days of the receipt of such a request, the two parties may jointly appoint a single independent third-party mediator to hear the matter. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Agreement to mediation, PPLT and the County agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available to protect their interests or the interests of the public.
- 2) If mediation is unsuccessful, the County may negotiate with PPLT to take fee title to the Properties, or to require transfer of fee title to a third party, subject to:
  - (i) reservation by PPLT of a conservation easement, or
  - (ii) conveyance of a conservation easement to a public body or to a "qualified private organization," as defined by Section 76-6-104(5), M.C.A.,

and thereby to protect the Conservation Values in perpetuity. All the foregoing remedies involving transfers of fee title and/or conveyance and reservation of a conservation easement shall be subject to approval from the U.S. Department of Defense, as required by that certain Warranty Deed recorded on February 3, 2016, as Doc. No. 3285357, records of Lewis and Clark County, Montana, and that certain Warranty Deed recorded on February 17, 2016, as Doc. No. 3285874, records of Lewis and Clark County, Montana.

- 3) Alternatively, if mediation is unsuccessful, the County may demand from PPLT repayment in part or in full of the bond funds to the County or its assigns for reallocation to other land protection projects that are consistent with the purposes of the 2008 Land, Water and Wildlife bond measure, and, if PPLT voluntarily agrees, or if a court of competent jurisdiction so adjudicates, PPLT must repay the bond funds to the County, in whole or in part, to satisfy the County's demand and thereby to protect the public interest.

#### **MODIFICATION AND TERMINATION:**

Amendments or modifications to this Agreement, or the Open Space Management Plan (attached as Exhibit C), must be approved in writing by both the County and PPLT. Once approved, such modifications shall become effective upon signing by both parties.

PPLT and the County may terminate this Agreement and the Open Space Management Plan if, by mutual consent of both parties, this Agreement is no longer necessary to protect and preserve the interests of the County and the purposes and goals of the 2008 Land, Water and Wildlife bond measure. Anticipated circumstances which would result in termination of this Agreement and the Open Space Management Plan include transfer of the Properties, as a whole or in part, to a public body or other appropriate conservation entity, and/or the encumbrance of the Properties with conservation easements that ensure the perpetual adherence to the restrictions herein.

No change to this Agreement shall be binding upon PPLT or the County unless and until reduced to writing and signed by both parties.

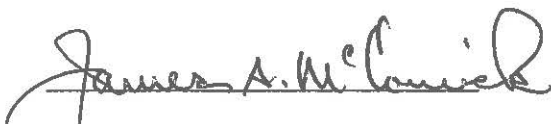
In the event any dispute arises over the interpretation or enforcement of the terms and conditions of this Agreement, the laws of the State of Montana shall govern resolution of such dispute.

This Agreement, including all Exhibits attached hereto, constitutes the entire understanding between the parties hereto, and all prior or contemporaneous negotiations, communications, conversations, understanding and agreements had between the parties hereto, oral or written, are merged in this Agreement.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed as of the date of last signature below.

Lewis & Clark County

Prickly Pear Land Trust,  
A Montana non-profit corporation

  
(Signature)

  
(Signature)

James A. McCormick, Chairman  
(Printed Name and Title)

Mary Hollow, Executive Director  
(Printed Name and Title)

1-8-19  
(Date)

1-22-19  
(Date)

**ATTEST:**

  
Paulette DeHart, Clerk of the Board

**Exhibit A**  
Legal Descriptions

Tenmile Creek  
Park

Parcel I: Tract "C", being located in the NE1/4 of Section 22, Township 10 North, Range 4 West, M.P.M., Lewis and Clark County, Montana, as shown on the Certificate of Survey filed under Doc. No. 3038131.

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Parcel IV. Tract "F", being located in the SE1/4 of Section 15, Township 10 North, Range 4 West, M.P.M., Lewis and Clark County, Montana, as shown on the Certificate of Survey filed under Doc. No. 3038131.

Sevenmile Creek Property

Tract H, being located in Sections 4, 9, and 10, Township 10 North, Range 4 West, Principal Meridian Montana, Lewis and Clark County, Montana, described as follows:

The west half of the southwest quarter of the southeast quarter (W1/2SW1/4SE1/4) and the southeast quarter of the southwest quarter of the southeast quarter (SE1/4SW1/4SE1/4) of said Section 4; the northeast quarter (NE1/4) of said Section 9; the west half of the northwest quarter (W1/2NW1/4), the southeast quarter of the northwest quarter (SE1/4NW1/4), the east half of the northeast quarter (E1/2NE1/4), the southwest quarter of the northeast quarter (SW1/4NE1/4), the northwest quarter of the southeast quarter (NW1/4SE1/4), and the south half of the southeast quarter (S1/2SE1/4) of said Section 10, as shown on the Certificate of Survey filed under Doc. No. 3273842.

EXCEPTING THEREFROM the right-of-way of the Burlington Northern, Inc. (formerly Northern Pacific Railway Company), and the right-of-way for County roads in said Sections 4, 9, and 10. (Ref: Book 2 Deeds page 523; M Book 38, page 4238)

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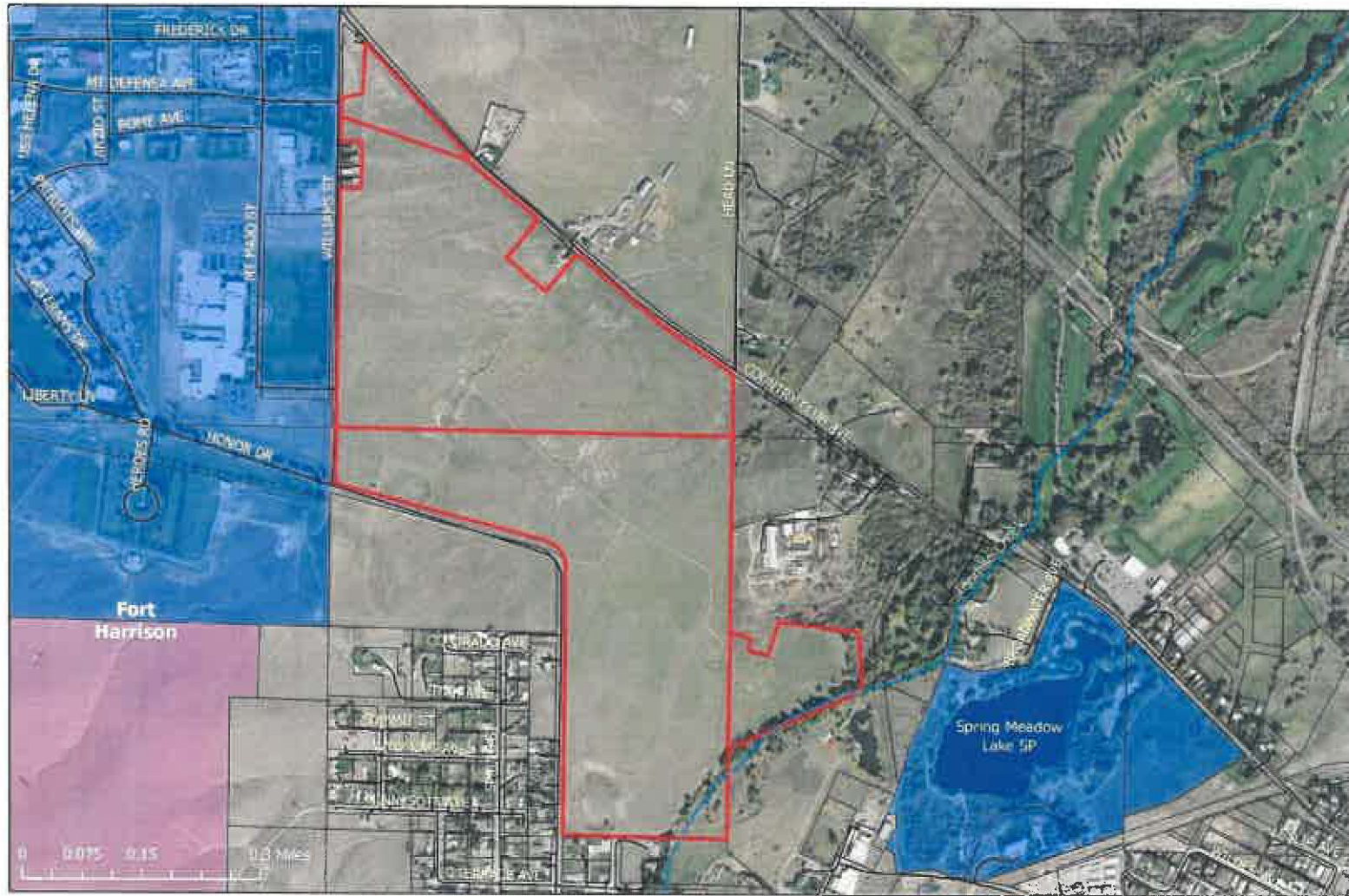


15; running thence along said centerline for sewer line N 44° 49' E, 105.8 feet; thence N 32° 23' E, 926.7 feet; thence N 51° 07' E, 1030.0 feet to an intersection with the west line of the said northeast quarter (NE1/4) of the southeast quarter (SE1/4) of said Section 10 and the terminus of said centerline. (Ref: M Book 38, page 4238)

AND ALSO EXCEPTING THEREFROM all that part of the NE1/4 of Section 9, lying south and west of the 400-foot railroad right-of-way. (Ref: 2 Deeds, page 523)

AND ALSO EXCEPTING THEREFROM a parcel of land located in the southeast quarter of the southeast quarter (SE1/4SE1/4) of said Section 10 as shown on the Certificate of Survey filed under Doc. No. 553300-E.

AND ALSO EXCEPTING THEREFROM Tracts A, B, C, D, E, F, and G as shown on the Certificate of Survey filed under Doc. No. 3273842.



Peaks to Creeks Initiative Tenmile Creek Property Helena, MT

Map Prepared By:  
Andrea Siverman  
January 2018

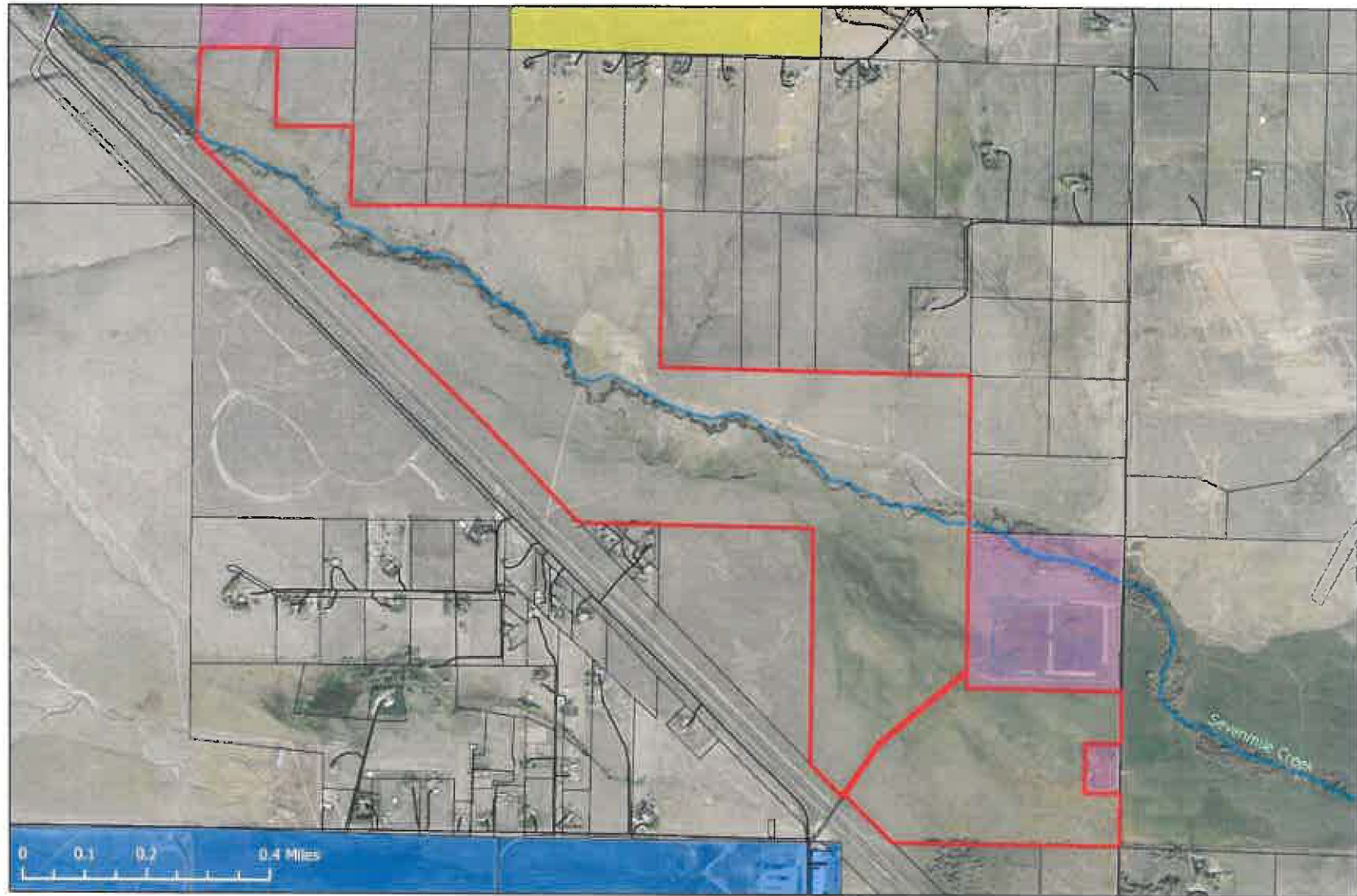


PRICKLY PEAR  
LAND TRUST

connect. activate. inspire.

# Exhibit B Property

## Maps (2 of 2)



**ciJ** Sevenmile Creek Property **State of Montana**  
**D** Bureau of Land Mgmt **US Dept of Army**

Peaks to Creeks Initiative  
Sevenmile Creek Property  
Helena, MT

Map Prepared By:  
Andrea Silverman  
January 2018



**PRICKLY PEAR  
LAND TRUST**  
connecting land and people

Exhibit C

Open Space Management Plan  
for the  
Tenmile and Sevenmile Creek Properties  
Prickly Pear Land Trust

Approved by full Board of Directors, July, 2018

Reviewed and Approved by:

Mary Hollow  
Mary Hollow, Executive Director

1-10-19  
Date

Accepted by:

Lewis & Clark County

By: James A. McConica  
Title: Chairman

Date: 1.8.19

**ATTEST:**

Paulette DeHart  
Paulette DeHart, Clerk of the Board



## **Fee Ownership and Management Intent**

Prickly Pear Land Trust owns the Tenmile and Sevenmile Creek Properties, part of the Peaks to Creeks Initiative, for the purpose of protecting the Properties' Conservation Values described below. While it is not typically Prickly Pear Land Trust practice to acquire conservation lands to be held long-term, the circumstances of this project make this an exceptional case. PPLT intends to own the Properties at least as long as is necessary to ensure permanent protection of the Conservation Values identified in this plan (below). Further, PPLT's Board will conduct an ongoing assessment of the risks and opportunities to further its mission through the perpetual ownership of these properties and may elect to permanently own the properties in fee.

Beginning five years from the date of the Agreement between Lewis and Clark County and PPLT, and in five-year increments thereafter, PPLT's Board will formally reevaluate its interest and willingness to hold these Properties long-term. If PPLT decides that PPLT's continued fee ownership of the Properties will not best serve the public's long-term interest in protecting the Conservation Values in perpetuity, PPLT may only convey or transfer fee title to either or both properties (a) to a "public body" as defined by Section 76-6-104(4), M.C.A., including but not limited to Lewis and Clark County, or to the U.S. Department of Defense, or (b) with the County's and the Department of Defense's prior written approval to a private party but subject to a perpetual deed of conservation easement granted or reserved to a "qualified private organization" as defined by Section 76-6-104(5), M.C.A., that will preserve and protect the Conservation Values in perpetuity.

PPLT also acknowledges that the full potential of these Properties to serve its organizational mission and goals will only be realized by engaging with its partners and the local community in the execution of this management plan. Current partners include the U.S. Department of Defense (Army), Montana Aquatic Resources Services, NorthWestern Energy, the Lewis and Clark County Water Quality Protection District, and the Natural Resources Conservation Service.

These partners may create additional plans for management of the property, as suited to restoration, revegetation, and other unique areas of expertise, provided such plans are fully compatible with this management plan. PPLT has, and will continue to, seek the guidance of Montana Fish, Wildlife & Parks in appropriate management of habitat and public recreation. Other partners will undoubtedly add value to this project as this management plan continues to move forward in the coming years.

PPLT recognizes that property and resource management is necessarily adaptive. Nonetheless it is also appropriate to set these management guidelines to ensure consistency with protection of the Conservation Values. PPLT's Board of Directors has therefore resolved to set and abide by the guidelines set forth in this document in PPLT's management of the Peaks to Creeks Initiative properties.

## **Conservation Values**

- a. Scenic views of the Properties, Tenmile Creek and Sevenmile Creek, and the Helena Valley for members of the public; and

- b. Significant relatively natural habitats for native plants, fish and wildlife, which are important to the ecological integrity and functions of the Tenmile Creek and Lake Helena watersheds; and
- c. Educational and research opportunities for the general public; and
- d. Recreational opportunities for the general public, including enhanced access to public lands and waterways.

### **General Management Guidelines**

1. Use of the Properties will be consistent with protection of the Conservation Values defined above.
2. If PPLT transfers ownership of any portion of either Property to any entity other than a public agency, PPLT will encumber the transferred portion of the property with a perpetual Conservation Easement, in accordance with the requirements of the Montana Open Space Land and Voluntary Conservation Easement Act, Section 76-6-101 *et seq.*, M.C.A., that ensures the perpetual protection of the Conservation Values for which the property was acquired. This perpetual Conservation Easement will contain language that complies with the County's Open Space Program Guide Appendix G, thus securing the County's interests perpetually.
3. PPLT will annually monitor the Properties' conservation values according to Land Trust Alliance standards and practices for fee parcel stewardship. (Land Trust Alliance standards and practices are available from PPLT on request.)
4. PPLT will pay when due all property taxes and other obligations related to the Properties and will not further encumber the Properties through contract, covenant, deed, restriction, right-of-way, easement, mortgage, deed of trust or other agreement encumbering, transferring or otherwise affecting the Properties without consent of the County.

### **Management Guidelines Specifically for Tenmile Creek Park**

1. PPLT will manage the Tenmile Creek Park property (see attached map) for public access, including hiking, biking, and fishing, as may be appropriate to meet goals of public safety and shared public uses by different elements of the recreating public. PPLT reserves the right to limit access if necessary to protect relatively natural habitat.
2. If PPLT transfers ownership of the Tenmile Creek Park property (see attached map), transfer will be to an entity that will manage this property for public use in accordance with Paragraph 1 above.
3. PPLT will evaluate noxious weed populations at Tenmile Creek Park every year and develop treatment plans accordingly.
4. PPLT will utilize partnerships with local agencies (Montana Fish, Wildlife & Parks, Montana National Guard, the VA, etc.) to meet educational and community needs.
5. PPLT is committed to involving the local community in future decisions at Tenmile Creek Park through public input (PPLT's Annual Meeting, surveys, etc.).

### **Management Guidelines for Sevenmile Creek Property**

1. PPLT will manage the Sevenmile Creek property to meet goals of fish and wildlife habitat protection, wildlife security and avian nesting needs, riparian habitat preservation, and soil conservation.
2. At this time, public access to the Sevenmile Creek property is limited to events held by PPLT or its partners (including the Audubon Society) for public education and research, and is by permission only. PPLT is withholding general public access due to the extensive stream restoration work that is ongoing.
3. PPLT will evaluate noxious weed populations at the Sevenmile Creek property every year and develop treatment plans accordingly.