

RESOLUTION 2020 - 63

A RESOLUTION TO APPROVE FUNDING FROM THE COUNTY LAND, WATER, AND WILDLIFE BOND TO PRICKLY PEAR LAND TRUST FOR THE ACQUISITION OF THE POTTER RANCH CONSERVATION EASEMENT

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 on behalf of the property owner, Douglas and Rhonda Potter; and

WHEREAS, in this project, referred to as the Potter Ranch Conservation Easement, Prickly Pear Land Trust proposes to apply for \$1,037,000 of County Open Lands bond funds applied towards the acquisition of properties 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 N2N2SE NW 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; and S31, T10 N, R01 W, M&B TRACT IN NE4SE4 and described in Exhibit "A"; and

WHEREAS, the Citizen's Advisory Committee on Open Lands (CAC) recommended approval to the Board of County Commissioners that the Prickly Pear Land Trust Potter Ranch Conservation Easement receive funding; and

WHEREAS, the Commission reviewed the project information, accepted the recommendation of the CAC at a regularly scheduled public meeting on July 2, 2020, and opened a 30 day public comment period; and

WHEREAS, the Commission reviewed the project information and considered public comment at a regularly scheduled public meeting on August 13, 2020, and

WHEREAS, the Commission determined that this project meets multiple purposes of the bond, and substantially complies with the legal requirements.




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

1. To approve funding the Potter Ranch Conservation Easement in the amount of \$1,037,000.

PASSED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS on this 13th Day of August, 2020.

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



Susan Good Geise, Chair

Attest:


Paulette DeHart, Clerk of the Board

Attachments: Exhibit – A Boundary Map
Exhibit – B Conservation Easement

Exhibit A: Boundary Map

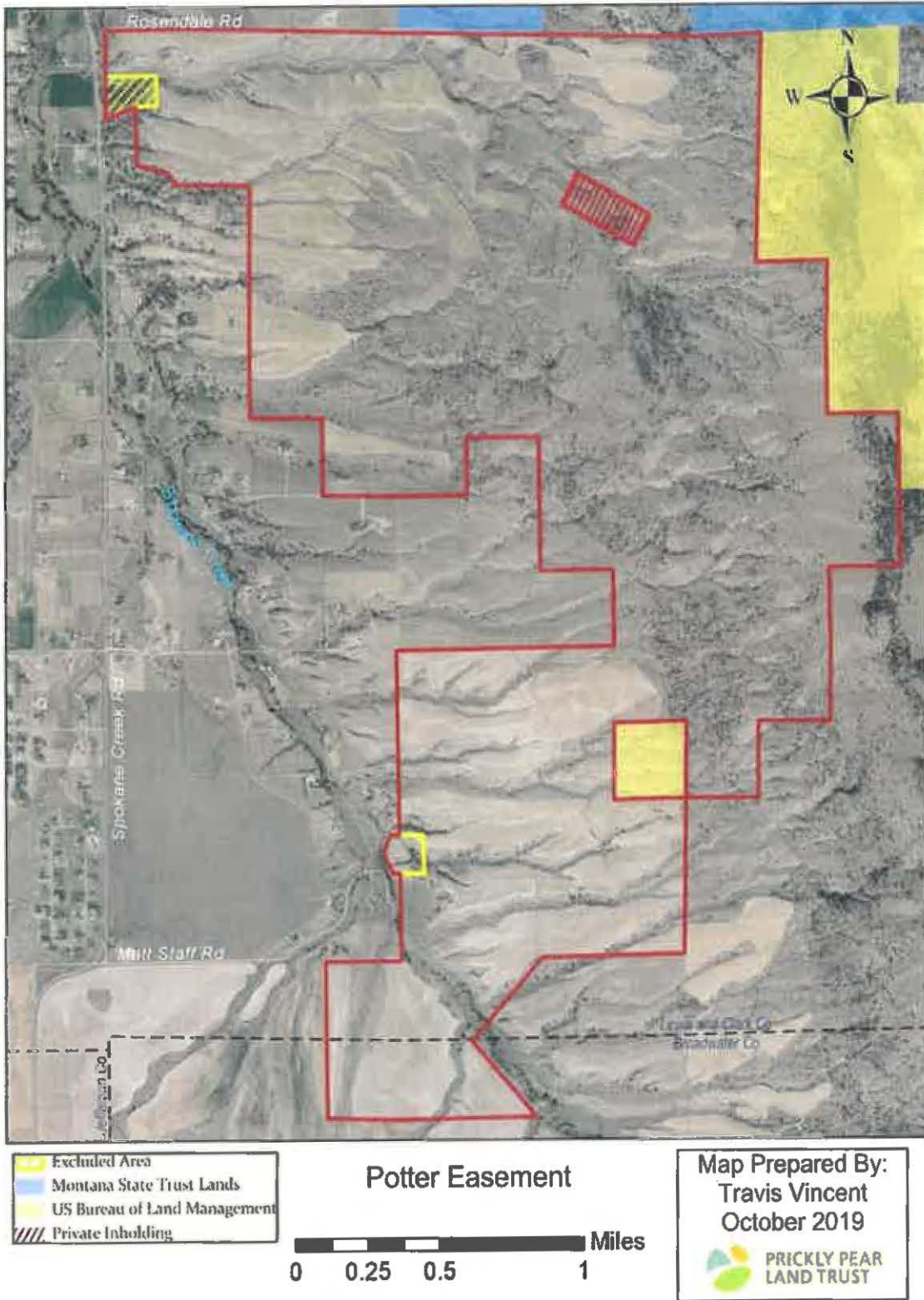


Exhibit B: Conservation Easement

**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.

(SEAL)

Print Name _____
Notary Public for the State of _____
Residing at _____
My Commission Expires _____, 20__

DRAFT

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 N2N2SE4 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

DRAFT

EXHIBIT C
Map of the Property and Building Envelope

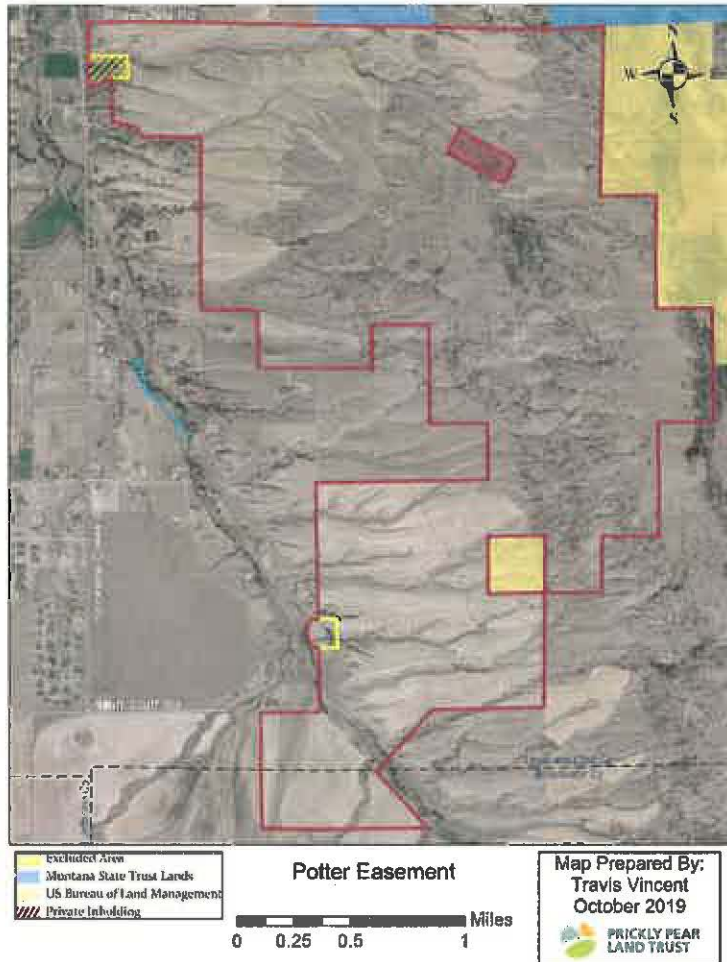


EXHIBIT D
Map of the Building Envelope



EXHIBIT E
Map of the Exclusion

