

RECORDED to add
signature

RESOLUTION 2024 - 34

A RESOLUTION TO APPROVE FUNDING FROM THE COUNTY LAND, WATER, AND WILDLIFE BOND TO PRICKLY PEAR LAND TRUST FOR THE BIRDSEYE RANCH 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 Birdseye Ranch Acquisition Project, Prickly Pear Land Trust proposes to apply for \$1,000,000 of County Open Lands bond funds applied towards the project described here:

Legal Description:

Legal Descriptions - Geo Codes & Site Sizes						
#	Legal Description			Geo Code	Size (ac)	
1	Section 31	T-11N	R-04E LOTS 4 5 6 7	05-1994-31-4-01-01-0000	184.86	
2	Section 32	T-11N	R-04E PT LTS 3 & 4	05-1994-32-3-01-01-0001	46.85	
3	Section 06	T-10N	R-04E NE 1/4	05-1887-06-1-01-01-0000	160.29	
4	Section 05	T-10N	R-04E W2, SE, SWNE, GOVT LT 2	05-1887-05-2-01-01-0000	580.28	
5	Section 04	T-10N	R-04E W2, SW OF HIGHWAY	05-1887-04-3-01-01-0000	64.82	
6	Section 05	T-10N	R-04E SW4 S OF HIGHWAY N OF BIRDSEYE RD	05-1887-04-3-01-10-0000	4.80	
7	Section 09	T-10N	R-04E TR IN SW4SW4, W2	05-1887-09-4-01-01-0000	335.15	
8	Section 08	T-10N	R-04E SENE, NENE	05-1887-08-1-01-01-0000	80.00	
Total					1457.05	

WHEREAS, the Citizen's Advisory Committee on Open Lands (CAC) recommended approval (7-0) to the Board of County Commissioners (Board) that the PPLT Birdseye Ranch acquisition receive



funding at a special scheduled meeting on April 9, 2024; and

WHEREAS, the Board considered the recommendation of the CAC at a regularly scheduled public hearing on April 18, 2024, along with County staff report and management and disposition agreement with Prickly Pear Land Trust, and opened a 30-day public comment period; and

WHEREAS, the Board determined, May 21, 2024, that this project meets multiple purposes of the bond and substantially complies with the legal requirements.

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

1. Approve the Management & Disposition Agreement between Prickly Pear Land Trust and Lewis and Clark County.
2. Approve funding the Birdseye Ranch Acquisition Project in the amount of \$1,000,000.

PASSED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS on this 21st Day of May 2024.

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS


Andy Hunthausen, Chair

ATTEST:



Amy Reeves, Clerk of the Board

Attached:
Exhibit "A": Management & Disposition Agreement
Exhibit "B": Property Map

Exhibit A: Management & Disposition Agreement

For Prickly Pear Land Trust's
Birdseye Acquisition Project

THIS MANAGEMENT & DISPOSITION 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, 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 \$1,000,000 to complete PPLT's acquisition of the Property, 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 bond funds enabled PPLT to purchase the Property quickly, and thereby to secure important open space and other resource values, including:

- a. Scenic views of the Property, Sevenmile Creek, the Scratchgravel Hills, 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 Sevenmile Creek and Lake Helena watersheds; and
- c. Recreational opportunities for the general public, including enhanced access to public lands;

(hereafter the "Conservation Values"); and

WHEREAS, the County's Open Lands Program Guide, as adopted and amended on May 3, 2018, states that 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 acknowledges that PPLT's application for bond funds from the County to complete purchase of the Property in fee 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 this Agreement, which PPLT intends and agrees to implement and abide by under the terms and conditions hereafter set forth.

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

NOW, THEREFORE, for the purpose of providing guidance on management of the Property 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 Property hereafter shall be held and managed in accordance with the following terms and conditions.

A. LAND MANAGEMENT & DISPOSITION TERMS AND CONDITIONS:

1. PPLT's use and management of the Property will be consistent with protection of the Conservation Values defined above.
2. PPLT will manage the Property prioritizing, in this order: 1) Wildlife Habitat, 2) Open space and scenic views, 3) Agricultural uses, and 4) Public Access.
3. PPLT will manage the Property to meet goals of fish and wildlife habitat protection, wildlife security and avian nesting needs, riparian and grassland habitat preservation, and soil conservation. PPLT may at its discretion undertake stewardship activities to restore or enhance the natural features of the Property.
4. PPLT may, at its discretion, lease out the Property for agricultural use to keep the land in active agriculture. Grazing will be held to the highest environmental standards.
5. PPLT will evaluate noxious weed populations at Property every year of its ownership and develop treatment plans accordingly.
6. PPLT may, at its discretion, open a public access trail along an existing road that will allow for seasonal hiking and equestrian trail.
7. Seasonal hunting access will be open, contingent upon the properties admittance into Fish Wildlife and Park's Block Management program and FWP's management of that access. PPLT reserves the right to limit certain access if necessary to protect relatively natural habitat. PPLT also reserves the right at its discretion to expand public access, so long as uses are consistent with the Conservation Values and the terms contained herein.
8. PPLT will annually monitor the Conservation Values of the Property according to Land Trust Alliance standards and practices for fee parcel stewardship. (Land Trust Alliance standards and practices are available from PPLT on request.)
9. PPLT will pay when due all property taxes and other obligations related to the Property.
10. PPLT may at its discretion sell or transfer ownership of the Property. If PPLT transfers ownership of any portion of the 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., or a similar

instrument such as a Conservation Servitude, to ensure the perpetual protection of the Conservation Values for which the Property was acquired. This perpetual Conservation Easement will allow for a maximum of one residential building envelope and contain language that complies with the County's Open Space Program Guide Appendix G, thus securing the County's interests perpetually.

11. If PPLT transfers ownership of the Property, the transfer will include minimum public access terms (from paragraphs 6 & 7) in the Conservation Easement, or PPLT will transfer the Property or the right to manage public access to the Property to a governmental agency such as FWP that will manage the public uses of the Property in accordance with the Conservation Easement described in paragraph 10 above.

B. BREACH OF TERMS AND CONDITIONS:

If the County believes that PPLT has used, encumbered, or disposed of the Property in a way that is inconsistent with this Agreement, 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, 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 Property, 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..

- 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 bonds 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, 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 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 include transfer of the Property, as a whole or in part, to a public body or other appropriate conservation entity, and/or the encumbrance of the Property with conservation easements that ensure the perpetual adherence to the restrictions herein.

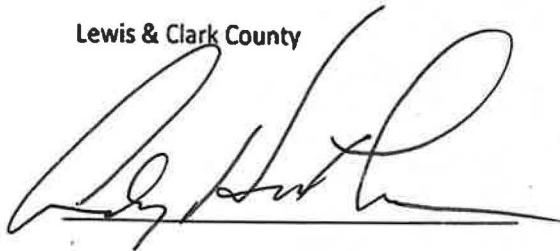
No change to this Agreement shall be binding upon PPLT or the County unless and until reduced to writing and signed by both parties.

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



Signature

Andy Hunthausen

Printed Name and Title

5-21-24
Date

Prickly Pear Land Trust,
A Montana non-profit corporation



Signature

Mary Hollow, Executive Director

Mary Hollow, Executive Director

5-16-2024
Date

Exhibit B Property Map

