

**ROCKY MOUNTAIN
ELK FOUNDATION**

September 20, 2021

TO: Linda Bouck, Granite County Planner
Granite County Commissioners

RE: Review of Wood Creek Conservation Easement

Dear Ms. Bouck and Granite County Commissioners:

The Rocky Mountain Elk Foundation is pleased to present to you this Wood Creek Conservation Easement for your review and information. These conservation minded landowners, William and Phyllis Bouchee, desire to donate a conservation easement on their approximately 1,120 acres. The owners purchased the property in 2004 and have a small cabin and outbuildings on the land. The property is located approximately 8 miles southwest of Drummond, Montana in the Clark Fork River Valley, Granite County. The properties northwest corner touches the Lolo National Forest boundary and the eastern boundary borders public land administered by Montana DNRC. The north, south and western boundaries border land owned by private ranches.

According to Montana Fish, Wildlife and Parks, resident elk utilize this land on a year-round basis for its winter, spring, summer, and fall forage and possibly calving areas. It also provides habitat for deer, black bear, moose, grouse, mountain lion, turkey, and many other species. Wood Creek, a perennial stream crosses the property for over a mile in length and there are several springs on the property. Wood Creek is part of a very healthy riparian area and is a tributary into the Clark Fork River. Wood Creek supports brook and Westslope cutthroat trout species and other stream and riparian wildlife. The property elevation is approximately 4,500 feet above sea level. This conservation easement will conserve valuable wildlife and fish habitat, open space and working private agricultural and forest lands.

Please let me know when I can attend a county meeting to present this project and answer any questions you may have. Thanks for your assistance and I look forward to visiting with you.

Sincerely
Yours in Conservation,

Mike Mueller
Senior Lands Program Manager
Rocky Mountain Elk Foundation

CC: Laura Verhaughe, RMEF

Mike Mueller, Senior Lands Program Manager
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office • mmueller@rmef.org

After Recording, Return to:
Rocky Mountain Elk Foundation
Attn: Lands Program
5705 Grant Creek Road
Missoula, MT 59808

Deed of Conservation Easement Wood Creek, Montana

THIS DEED OF CONSERVATION EASEMENT ("Easement"), dated this _____ day of _____, 20__, is made by **William L. Bouchee, Jr. and Phyllis L. Bouchee, Trustees of the Bill and Phyllis Bouchee Revocable Trust, U/A/DTD July 9, 2020** ("Owner") and the **Rocky Mountain Elk Foundation, Inc.** ("RMEF"). The Owner and RMEF may be jointly referred to as the "Parties".

Background

A. Owner. The Owners are trustees of a revocable trust. Owner is the sole owner in fee simple of real property in Granite, Montana, consisting of approximately 1,120 acres, described in the attached Exhibit A ("Property") and approximately located as depicted on the maps attached as Exhibits B-1 and B-2. The Owner owns the rights to identify, conserve, and protect in perpetuity the Conservation Values of the Property, as described below.

B. Grantee. RMEF is a Montana nonprofit corporation which is organized and operated for charitable, scientific, ecological, and educational purposes, including the conservation and protection of land in its natural, scenic, or open space condition. RMEF is a public charity as defined in § 501(c)(3) and § 509(a)(2) of the Internal Revenue Code, and is a qualified organization that is authorized to hold perpetual conservation easements under Mont. Code Ann. §§ 76-6-101 through 76-6-212 ("Montana Open-Space Land and Voluntary Conservation Easement Act") and § 170(h)(3) of the Internal Revenue Code.

C. Conservation Values. The Conservation Values of the Property provide a significant benefit to the people of the County of Granite, State of Montana, and the United States of America, and are worthy of perpetual conservation. The protection of the Property's Conservation Values is authorized by and recognized by the Montana Open-Space Land and Voluntary Conservation Easement Act. In particular, the Conservation Values include, but are not limited to, the following:

1. Relatively Natural Habitat.

The Property constitutes a valuable element of the relatively natural habitat of the Clark Fork River and associated ecosystem. The Property provides important habitat for elk, deer, black bear, moose, grouse, mountain lion, turkey, and other Montana wildlife, and the maintenance of such habitat helps support wildlife populations. Wood Creek, a perennial stream crosses the Property and provides fish and riparian habitat and supports populations of brook and westslope cutthroat trout. The Property is in the vicinity of Lolo National Forest and the Montana Department of Natural Resources and Conservation public lands and the protection of the Property contributes to the ecological viability of these public lands by conserving contiguous habitat and providing connectivity among many different habitats on public and private lands allowing for the movement and distribution of many species of wildlife.

D. Baseline Documentation. The Conservation Values and the current improvements and uses on the Property as of the date of this Easement are further documented in a Baseline Documentation Report, as defined in Section 9, dated Date, and prepared by Hydrosolutions, Chris Carparelli, 303 Clarke Street, Helena, MT 59601. The Baseline Documentation Report has been acknowledged as accurate by both the Owner and RMEF.

E. Landowner's Intent. The Owner intends to protect and conserve the Conservation Values of the Property in perpetuity by continuing only those uses of the Property that do not adversely impact the Conservation Values, including the expressly permitted uses below.

F. General Purpose. The Owner and RMEF have the common purpose of protecting in perpetuity the Conservation Values of the Property by restricting the uses of the Property. The Owner and RMEF intend that this Easement constitutes a "qualified real property interest" as described in § 170(h)(2)(C) of the Internal Revenue Code and intend that the grant of such restrictions and rights qualify as a "qualified conservation contribution" under § 170(h)(1) of the Internal Revenue Code. It is not the intent of the Parties to create a charitable trust or any other form of trust through the conveyance of this Easement.

G. Mutual Consideration. The Owner irrevocably and unconditionally conveys to RMEF a real property interest in the Property. In exchange, RMEF undertakes the perpetual obligation to monitor and protect the Conservation Values and to enforce the provisions of this Easement.

H. Definitions. Any capitalized terms not defined in the text are defined in Section 13.

The Granting of Perpetual Easement: NOW, THEREFORE, in consideration of the mutual covenants contained herein, and pursuant to Montana Open-Space Land and Voluntary Conservation Easement Act, and other applicable provisions of Montana statutory and common law, the Owner hereby grants, conveys, and warrants to RMEF this perpetual Easement over the Property. The scope of this Easement is set forth in this Deed of Conservation Easement.

Section 1. Purpose and General Effect

1.1 Conservation Purposes. The Conservation Purposes of this Easement are: (1) to protect in perpetuity the Conservation Values and other significant conservation interests; and (2) to restrict the use of the Property to those uses that are consistent with and do not adversely impact the Conservation Values and other significant conservation interests.

1.2 Perpetual Duration. This Easement shall run with the land and encumber the title to the Property in perpetuity. This Easement shall bind the Owner and all future owners, tenants, lessees, licensees, occupants, and users of the Property.

1.3 Permitted Uses in General. This Easement shall restrict the use of the Property to the permitted uses, discussed in Section 3, which shall be conducted in a manner consistent with the Conservation Purposes of this Easement.

1.4 Dedication of Property. Pursuant to the terms of Montana Open-Space Land and Voluntary Conservation Easement Act, the Property conserved by this Easement is declared to be relatively natural habitat and may not be converted or directed to any uses other than those provided in this Easement.

Section 2. Rights Conveyed

In order to protect the Conservation Values of the Property and uphold the Conservation Purposes of this Easement, the Owner conveys to RMEF in perpetuity, the following rights:

2.1 Identification and Protection. RMEF has the right to identify, conserve, and protect in perpetuity the Conservation Values, and to advance the Conservation Purposes, subject to the Owner's reserved rights in this Easement.

2.2 Entry and Access. RMEF has the right to enter the Property upon reasonable notice and at reasonable times to inspect, monitor, and enforce compliance with this Easement. While the Owner may grant public access to the Property for any permitted use under this Easement, nothing in this Easement shall be construed to grant general public access to the Property.

2.3 Immediate Entry. RMEF has the right to immediately enter the Property after making a reasonable attempt to provide notice to Owner, if, in RMEF's sole discretion, such entry is necessary to prevent or mitigate any adverse impact on the Conservation Values.

2.4 Conservation, Enforcement, Injunction, and Restoration. RMEF has the right to prevent any use of the Property, which violates, potentially violates, or is inconsistent with the Conservation Purposes of this Easement. RMEF has the right to enforce the restoration of the Property to the condition that existed prior to any violation.

Section 3. Reserved Rights

The following uses, subject to the provisions of this Easement, are consistent with the Conservation Purposes and are reserved by the Owner. Some of these uses and practices below are subject to the approval of RMEF pursuant to Section 5 and may not be conducted without RMEF's approval. The remainder of these uses may not be prevented or limited by this Easement, as long as they are conducted in a manner that is consistent with the Conservation Purposes and do not adversely impact the Conservation Values.

3.1 Improvements. The Owner may maintain, repair, replace, and make additions to structures and improvements on the Property pursuant to the following provisions:

3.1.1 Residential Structures. The Owner may construct, maintain, repair, replace, and make additions to no more than two (2) Residential Structures on the Property. Residential Structures must be contained entirely within a two (2)-acre Building Envelope, which is located approximately as shown in Exhibits B-1 and B-2.

3.1.2 Non-Residential Structures. The Owner may construct a reasonable number of Non-Residential Structures within the Building Envelope. The Owner may also maintain, repair, replace, and make additions to existing and future Non-Residential Structures within the Building Envelope. Non-Residential Structures may not include a dwelling space or be used for human habitation.

3.1.3 Temporary Structures. The Owner may construct or place Temporary Structures on the Property from time-to-time and on a temporary basis. Except for tents and travel trailers, all Temporary Structures that include a dwelling space or that may be used for human habitation require the prior approval of RMEF.

3.1.4 Minor Agricultural Structures. The Owner may construct, maintain, repair, replace, or make additions to Minor Agricultural Structures on the Property. Minor Agricultural Structures may not include a dwelling space or be used for human habitation.

3.1.5 Major Agricultural Structures. The Owner may maintain, repair, or replace existing Major Agricultural Structures that are located on the Property and are documented in the Baseline Documentation Report. Major Agricultural Structures may not include a dwelling space or be used for human habitation.

The Owner may construct new or make additions to existing Major Agricultural Structures within the Building Envelope, which is located approximately as shown in Exhibits B-1 and B-2.

3.1.6 Fences. The Owner may construct, maintain, repair, or replace fences on the Property subject to the following provisions: (1) any new or replacement fence must be constructed in accordance with the wildlife friendly fencing guidelines described in Exhibit C or as otherwise agreed between the Owner and RMEF; (2) Big Game Fences

may be placed within the Building Envelope, and on a temporary basis, may be placed immediately around harvested crops or to allow establishment of vegetation; and (3) with the prior approval of RMEF, the Owner may construct Big Game Fences elsewhere on the property.

3.1.7 Roads. The Owner may maintain, repair, or replace existing roads on the Property. The Owner may construct, maintain, repair, or replace new roads within the Building Envelope. With the prior approval of RMEF, the Owner may construct other additional temporary and permanent roads that are necessary for the permitted uses of the Property under the provisions of this Easement. Any new roads must be located, constructed, and maintained to minimize any adverse impact on the Conservation Values. Temporary roads must be stabilized and protected from erosion within 6 months after discontinued use.

3.1.8 Trails. The Owner may maintain, repair, or replace existing Trails on the Property. With the prior approval of RMEF, the Owner may construct new Trails on the Property. Trails must be located, constructed, and maintained to minimize any adverse impact on the Conservation Values.

3.1.9 Utility and Energy Structures. The Owner may repair or replace existing Utility Structures. The Owner may construct new Utility Structures within the Building Envelope and outside the Building Envelope if the Utility Structures are necessary for the permitted activities and uses of the Property. With the prior approval of RMEF, the Owner may construct new Utility Structures for other uses on or off the Property. All new Utility Structures must be located, constructed, and installed in a manner that minimizes any adverse impact on the Conservation Values.

The Owner may construct structures that are necessary for generating energy for the permitted activities and uses of the Property. Any incidental sale of energy shall not be deemed a violation of this Easement, provided that the energy system is primarily designed and scaled to provide energy for the Property and its permitted uses.

3.1.10 Easements and Rights-of-Way. With the prior approval of RMEF, the Owner may grant road or utility easements or rights-of-way across the Property.

3.2 Uses and Activities. The Owner may use the Property for agriculture, forestry, recreation, and limited commercial activities pursuant to the following provisions:

3.2.1 Agriculture. The Owner may produce, process, and sell agricultural crops and livestock on the Property. The Owner may lease the Property or portions of the Property for grazing and agricultural crop production, subject to the terms of this Easement. Seasonally, the Owner may confine livestock into a fenced area, corral, or other facility for feeding, lambing, calving, or similar activities.

3.2.2 Plowing and Sod Busting. The Owner may plow or cultivate within the Building Envelope and on those lands identified as previously plowed or cultivated fields in the Baseline Documentation Report. With the prior approval of RMEF, the Owner may plow or cultivate additional land on the Property for the permitted agricultural uses or for wildlife forage.

3.2.3 Grazing and Range Management. The Owner may graze livestock on the Property, provided that the grazing is consistent with the Conservation Purposes. Livestock grazing and rangeland management shall not deteriorate the range, wildlife, and riparian habitats. Unless otherwise agreed to in writing, up to full grazing use is acceptable, meaning all fully accessible areas are grazed, and key forage species are utilized leaving no less than approximately half of above-ground forage standing. The Owner and RMEF acknowledge that, due to the nature of feeding and watering livestock there may be localized areas of high impact on the Property. These high impact areas should comprise less than 10 percent of pasture area.

If RMEF determines that rangeland health is deteriorating beyond the localized areas of high impact described above, the Owner will prepare, or have prepared, a Rangeland Management Plan (RMP). The RMP will describe appropriate use levels, seasons of use, type of livestock, noxious species management, and other necessary practices. RMEF will review and approve the RMP prior to its implementation. With the prior approval of RMEF, the Owner may make modifications to the RMP. Grazing and rangeland management activities on the Property will follow the RMP.

3.2.4 Forestry. Maintenance of a healthy forest is integral to wildlife, wildlife habitat, and water quality. As such, all activities affecting the forest and tree cover will be conducted in a manner that promotes healthy forest and riparian conditions over time using accepted silvicultural and best management practices.

The Owner may: (1) cut trees for use on the Property; (2) cut dead, dying, and down trees; (3) cut trees which constitute a hazard to persons or property; (4) cut trees to abate disease and infestation; (5) cut trees within the Building Envelope; and (6) cut trees to maintain and restore meadows and hay fields. The commercial sale of timber that is incidental to the activities listed above is permitted. With the prior approval of RMEF, the Owner may conduct additional tree cutting and commercial timber harvest in accordance with a Harvest Plan (HP) or Forest Management Plan (FMP).

The FMP will address forest health, habitat for elk and other wildlife, and treatment of fuels and erosion. If required by RMEF, the HP will address forest health, habitat for elk and other wildlife, and treatment of fuels and erosion. Timber harvest will be undertaken at times and by methods that will minimize any adverse impact on the Conservation Values. The HP/FMP may incorporate requirements from Forest Practices

Acts of other states or jurisdictions as enforceable contractual provisions between the Parties.

3.2.5 Agrichemicals and Biological Controls. The Owner may use agricultural chemicals for the permitted agricultural and forestry uses to abate disease and to control noxious weeds. The Owner shall follow the manufacturer's label instructions in the application of agricultural chemicals. The Owner may use biological controls in accordance with local or state guidelines.

3.2.6 Recreation. The Owner may use the Property for non-commercial recreational use. Commercial and recreational hunting, fishing, trapping, and predator control, in a manner consistent with state and federal laws and regulations, are expressly permitted.

3.2.7 Off-Road Vehicles. The Owner may use off-road vehicles for the following purposes: (1) for normal maintenance on the Property and expressly reserved improvements; (2) for emergency or severe weather access; (3) for fire suppression; and (4) for the permitted residential, agricultural, forestry, and recreational uses, provided that all reasonable efforts are made to minimize any adverse impact on the Conservation Values.

3.2.8 Home-Based Business. The Owner may operate a home-based commercial or professional business, so long as the business is contained entirely within the Building Envelope.

3.2.9 Commercial Guest Lodging. The Owner may operate a bed and breakfast, guest lodge, short-term rental, or other similar commercial lodging business as long as guests are housed entirely within a permitted Residential Structure.

3.3 Resources. The Owner may use the Property for agriculture, forestry, recreation, and limited commercial activities pursuant to the following provisions:

3.3.1 Water Rights. The Property subject to this Easement includes any and all decreed and undeclared water rights, which are specifically described in Exhibit D ("Water Rights"). The Owner may maintain and enhance the Water Rights and may develop new water rights for the permitted residential, agricultural, forestry, and recreational uses of the Property. The Owner may not transfer, encumber, sell, lease, or otherwise sever the Water Rights from the Property except to legally designate those water use rights for in-stream flows.

3.3.2 Water Resources. The Owner may repair, maintain, replace, and expand new or existing water resources on the Property for permitted agricultural and ranching activities, residential needs, and fish and wildlife uses. The Owner may maintain, repair, and replace existing stream crossings and bridges, and with the prior approval of RMEF, may construct new stream crossings and bridges.

3.3.3 Oil and Gas. With the prior approval of RMEF, the Owner may extract oil and gas from the Property. Any surface disturbance resulting from permitted extraction activities must be limited, localized, and not irretrievably destructive of any Conservation Values, within the meaning of Treasury Regulation § 1.170A-14(g)(4)(i) or its successor provisions. The surface alteration must be restored upon completion of such activities to a condition similar to its state prior to the disturbance by reclaiming land, restoring soils, replanting vegetation, and husbanding replanted vegetation until the vegetation is established and self-perpetuating. The Owner may not enter into oil and gas leases unless the lease is subordinated to this Easement.

3.3.4 Surface Owner. By granting this Easement, the Owner has granted to RMEF an interest in Owner's rights as the surface owner of the Property from which the Minerals may be severed and owned by a third party. RMEF shall have the rights of a surface owner to receive notices of proposed Mineral activities and to take appropriate action to protect the Conservation Purposes. Accordingly, the Owner agrees (1) to provide RMEF with any notices the Owner receives related to the exploration, development, operations, and reclamation of any Minerals; and (2) that RMEF must approve in advance in writing any lease or agreement pertaining to use of the surface or subsurface of the Property for the exploration, development, operations, and reclamation of any Minerals, including any agreement required of a surface owner under Montana statutes and regulations. RMEF may, in its sole discretion, withhold approval of any lease if RMEF determines that the proposed surface use is inconsistent with the Conservation Purposes and would adversely impact the Conservation Values.

3.3.5 Habitat Improvement. The Owner may improve wildlife habitat in a manner that is consistent with the Conservation Purposes. The Owner may reseed disturbed areas with seed that is acceptable to the natural resource agencies in Montana.

3.4 Division of the Property. The Owner may only convey the Property as a single tract.

3.5 Residual Rights. Except as limited by this Easement, the Owner may enjoy all rights as owner of the Property, including the right to use the Property for any purpose consistent with this Easement and that does not adversely impact the Conservation Values. The rights reserved pursuant to this Section shall not be deemed "expressly reserved" for any other purpose of this Easement.

Section 4. Prohibited Uses

The Owner relinquishes, in perpetuity the right to use the Property in any way that is inconsistent with the Conservation Purposes. Any use of the Property that causes any adverse impact on the Conservation Values is prohibited. The following uses, though not an exhaustive list, are inconsistent with the Conservation Purposes, and are prohibited, except for uses expressly reserved in Section 3.

4.1 Improvements.

4.1.1 Construction. Except as expressly permitted in Section 3, the Owner shall not construct any structures or improvements of any kind on the Property.

4.1.2 Game Proof Fences. Except as expressly permitted in Section 3, the Owner shall not construct any Big Game Fences on the Property.

4.1.3 Roads and Trails. Except as expressly permitted in Section 3, the Owner shall not construct any roads or Trails on the Property.

4.1.4 Utilities. Except as expressly permitted in Section 3, the Owner shall not construct or install any Utility Structures or systems on the Property. The Owner may not grant a major utility corridor right-of-way across the Property.

4.1.5 Billboards. The Owner shall not construct, maintain, or erect any billboards on the Property.

4.2 Uses and Activities.

4.2.1 Industrial Activities. The Owner shall not allow industrial facilities or activities on the Property.

4.2.2 Commercial Activities. Except as expressly permitted in Section 3, the Owner shall not allow commercial facilities or activities on the Property.

4.2.3 Commercial Recreational Activities. The Owner shall not allow any commercial recreational activities that exceed the *de minimis* standard set forth in § 2031(c) of the Internal Revenue Code.

4.2.4 Game Farming. The Owner shall not keep or raise any Game Farm animals.

4.2.5 Commercial Feed Lot. The Owner shall not establish or maintain any Commercial Feed Lot on the Property.

4.2.6 Timber Harvest. Except as expressly permitted in Section 3, the Owner shall not harvest timber on the Property.

4.2.7 Conversion of Native Vegetation. Except as expressly permitted in Section 3, the Owner shall not convert native vegetation to non-native species.

4.2.8 Dumping and Deposit of Waste. No hazardous, dangerous, or toxic waste may be dumped or disposed of on the Property pursuant to the Montana Hazardous Waste

Act, M.C.A. § 75-10-401, *et seq.*, and § 75-10-601 *et seq.*, or similar federal or state statutes. Other waste generated on the Property by the uses permitted in this Easement, and permitted by applicable laws, may be disposed of on the Property. If the Owner becomes aware of any accidental, illegal, or other placement or spilling of any hazardous waste or toxic materials on the Property, the Owner shall promptly notify RMEF.

4.3 Resources.

4.3.1 Alteration of Land. Except as necessary to the expressly reserved uses in Section 3, the Owner shall not cut, fill, grade, or otherwise alter the surface of the Property.

4.3.2 Alteration of Water Resources. Except as necessary to the expressly reserved uses in Section 3, the Owner shall not alter or impair any watercourse or wetland on the Property.

4.3.3 Noxious and Invasive Species. The Owner shall not knowingly introduce on the Property any species designated as noxious or invasive by any local, state, or federal agency.

4.3.4 Mining. Except for the limited, localized Oil and Gas extraction that is expressly allowed in Section 3, the Owner shall not allow the extraction or removal of Minerals by any method. If the Mineral rights are currently severed from the surface estate, and the severed Mineral rights and the fee title are merged in the future, the Owner shall not allow the extraction or removal of Minerals by any method.

4.3.5 Mineral Remoteness. The Mineral rights in the Property have been severed in whole or in part from the fee title and not under the current control or ownership of the Owner. The Owner believes that, as of the time of conveyance of this Easement, the probability of surface mining on the Property is so remote as to be negligible as documented by the title of remoteness determination prepared by Geolex Inc. Geology & Geophysics, Joe Michaletz, P.G. and dated date. If the Mineral rights are currently severed from the surface estate, and the severed Mineral rights and the fee title are merged in the future, such Mineral rights shall be subject to this Easement and the Owner shall not allow the extraction or removal of Minerals by any method.

4.4 Subdivision. Notwithstanding that the Property may have been subdivided prior to the grant of this Easement, the Owner shall not divide, subdivide, or take any action which creates an actual or *de facto* subdivision of the Property.

4.5 Development Rights. Except as expressly permitted in Section 3, the Owner and RMEF acknowledge the extinguishment of all Development Rights on the Property. The Owner unconditionally and irrevocably relinquishes the right to transfer any such Development Rights.

Section 5. Notice and Approval

Several provisions of this Easement require the Owner to provide notice or to provide notice and obtain the prior approval of RMEF before undertaking certain activities on the Property. Additionally, if the Owner proposes to undertake any use on the Property that is not expressly addressed in this Easement, then the Owner shall not undertake that proposed use until the Owner has provided notice and obtained the prior approval of RMEF. The purpose of requiring notice and prior approval is to afford RMEF the opportunity to ensure that the proposed use is carried out in a manner that is consistent with the Conservation Purposes.

5.1 Form of Owner's Notice. Prior to undertaking any use which requires RMEF's prior approval, the Owner will notify RMEF of the proposed use. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use in sufficient detail to permit RMEF to make an informed decision as to whether the proposed use is consistent with the Conservation Purposes and the provisions of this Easement. The notice must be in writing.

5.2 RMEF's Response. RMEF may withhold approval of the proposed use if RMEF determines, in its sole discretion, that the proposed use is inconsistent with the Conservation Purposes and the provisions of this Easement. RMEF may also withhold approval if RMEF determines, in its sole discretion, that the notice lacks sufficient information to allow RMEF to make an informed decision. RMEF may condition approval of the proposed use on the Owner's acceptance of modifications which, in RMEF's sole discretion, make the proposed use consistent with the Conservation Purposes, cause no adverse impact on the Conservation Values, or otherwise address any concerns that RMEF may have.

5.3 Timing and Manner of RMEF's Response. RMEF shall make its best efforts to, within 45 calendar days from the date it receives the notice, review the proposed use and to approve the proposed use or to notify the Owner of any objections that RMEF may have. RMEF may approve or conditionally approve a proposed use by email, with electronic delivery confirmation.

5.4 Notice Form. Unless otherwise provided, any notice or response required by this Section shall be in writing and shall be delivered: (1) by registered or certified mail, with delivery confirmation; or (2) by commercial courier, with delivery confirmation. The notice or response shall be considered delivered on the date shown on the delivery confirmation.

5.5 Addresses. The Parties will send any notice or response to the following addresses or other address as the Parties may designate in writing:

If to RMEF:

Rocky Mountain Elk Foundation, Inc.
Attn: Lands Program
5705 Grant Creek Road

If to Owner:

William L. Jr., and Phyllis L. Bouchee
1075 Anglers Bend Way
Missoula, MT 59802

5.6 Force Majeure. The Owner will not be obligated to send any prior notice to RMEF with respect to any prudent, good faith use undertaken by the Owner to prevent, abate, or mitigate injury to the Property immediately before, during, or immediately following fire, flood, storm, earth movement, acts of war, and similar causes beyond the control of the Owner. The Owner will promptly inform RMEF of injury to the Property caused by such events or actions.

Section 6. Breach, Restoration, and Remedies

6.1 Right to Injunction. The Owner and RMEF recognize that money damages, or other non-injunctive relief, may not adequately remedy a violation of this Easement. Therefore, the Owner and RMEF agree that any violation of this Easement is deemed to result in irreparable harm and may be subject to injunctive proceedings, including the imposition of temporary restraining orders, preliminary injunctions, specific performance, or any other legal or equitable remedy. The Owner and RMEF also agree that no proof of damages, or the inadequacy of other remedies, shall be required of either Party, in seeking any such injunctive relief.

6.2 Right to Restoration. RMEF shall have the right to enforce the restoration of the Conservation Values that are adversely impacted by activities that are inconsistent with the Conservation Purposes. Such restoration shall be as near as possible to the condition of the Property that existed prior to such injury.

6.3 Right to Recover Damages. In the event of a violation of this Easement, in addition to the other remedies provided for in this Section and any other remedies available in law or equity, RMEF shall also be entitled to recover all damages necessary to place RMEF in the same position that it would have been before the violation, including, but not limited to, the costs of restoration of the Property.

6.4 Costs and Attorney's Fees. In addition to any other damages, RMEF shall be entitled to recover the costs of enforcement or interpretation of any of the terms of this Easement, including, but not limited to, actual attorney's fees, expenses and court costs, provided that RMEF is, at least in substantial part, the prevailing Party in any such action.

6.5 Cumulative Remedies. The remedies of RMEF set forth in this Easement are cumulative. RMEF may invoke any or all of the remedies if there is an actual or threatened violation of this Easement.

6.6 Third Parties. RMEF shall have the right, but not the obligation, to pursue all legal and equitable remedies provided under this Section against any third party responsible for any violation of this Easement. The Owner shall, at RMEF's option, assign the Owner's right of action against a third party to RMEF, join RMEF in any action against a third party, or appoint RMEF as attorney-in-fact for the purpose of pursuing an enforcement action against a third party.

6.7 Remedies. These remedies may be sought by any other party authorized by state law to enforce the terms of conservation easements.

Section 7. Upkeep, Maintenance, Costs, and Taxes

7.1 Upkeep. The Owner retains all responsibilities and shall bear all costs and liabilities related to the ownership, operation, upkeep, and maintenance of the Property. RMEF shall have no duty or responsibility for the operation or maintenance of the Property, the monitoring of hazardous conditions, or the protection of the Owner, the public, or any third parties from risks relating to conditions on the Property. The Owner shall be solely responsible for any costs related to the maintenance of general liability insurance covering acts on the Property.

7.2 Taxes. The Owner shall pay all lawful taxes and assessments levied on the Property. RMEF is authorized, but not obligated, to pay taxes, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate. The Owner shall be obligated to repay RMEF for all costs it incurs in making such payment, together with interest at the maximum rate allowed by law, until all sums are paid by the Owner.

7.3 Liens and Encumbrances. The Owner shall keep RMEF's interest in the Property free of any liens or encumbrances.

7.4 Environmental Liability. Nothing in this Easement shall be construed as giving rise to any right or ability in RMEF to exercise physical or managerial control over activities on the Property so as 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. §§ 9601 et seq. or the Montana Hazardous Waste Act, M.C.A. §§ 75-10-401, et seq., and 75-10-601 et seq., or similar state and federal statutes.

Section 8. Indemnification

The Owner shall hold harmless, indemnify, and defend the Indemnified Parties from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including reasonable attorneys' fees, arising from and in any way connected with the injury or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent of the adjudicated proportionate fault of any of the Indemnified Parties.

The Owner shall hold harmless, indemnify, and defend the Indemnified Parties from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, actual attorneys' fees, arising from or in any way connected with the presence or release of any hazardous material or substance of any

kind on the Owner's Property, except to the extent of the adjudicated proportionate fault of any of the Indemnified Parties.

Section 9. Baseline Documentation

The Parties agree that the Conservation Values and other natural resources and development on the Property are documented in a report furnished by the Owner to RMEF to be kept on file at the offices of RMEF ("Baseline Documentation Report"). The Baseline Documentation Report provides an accurate representation of the Property as of the effective date of this Easement in accordance with Treasury Regulation § 1.170A-14(g)(5)(i). The Baseline Documentation Report is intended to serve as an objective baseline for monitoring compliance with the terms of this Easement. Notwithstanding the foregoing, if a controversy arises with respect to the condition of the Property, the Parties shall not be foreclosed from using any and all other relevant information to assist in the resolution of that controversy.

The Parties may agree, from time to time, to prepare an updated Baseline Documentation Report. The updated inventory of baseline data must be approved in writing by the Parties. Upon approval by the Parties, the updated Baseline Documentation Report will be used as the baseline for future monitoring and compliance with the terms of this Easement.

Section 10. Extinguishment or Termination

10.1 Intent. It is the intent of the Owner and RMEF that the Conservation Purposes of this Easement are carried out in perpetuity. If this Easement is extinguished as to all or a portion of the Property, RMEF shall be entitled to a share of proceeds resulting from the extinguishment on the terms contained in this Section, as required by Treasury Regulation § 1.170A-14(g)(6)(ii).

10.2 RMEF's Property Right and Valuation. The grant of this Easement gives rise to a property right, immediately vested in RMEF. RMEF's property right shall be based on the condition and improvements on the Property at the time that the Easement is established, which is documented in the Baseline Documentation Report. RMEF's property right shall be deemed to have a fair market value at least equal to the proportionate value this Easement bears to the value of the Property as a whole as of the Effective Date of this Easement (the "Easement Value Ratio"). If the Owner obtains an appraisal in association with the grant of this Easement, the values established in that appraisal shall be used to determine the Easement Value Ratio. The Owner shall provide RMEF with a copy of the appraisal. Easement Value Ratio shall remain constant.

10.3 Extinguishment. As provided in Treasury Regulation § 1.170A-14(g)(6)(i), if a subsequent unexpected change in conditions surrounding the Property arise which make the Conservation Purposes impossible or impractical, this Easement may only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction. If this Easement is terminated or extinguished, RMEF shall be entitled to a portion of the proceeds at least equal to the Easement Value Ratio multiplied by the fair market value of the

Property unrestricted by this Easement. The Owner shall not voluntarily accept less than the full value of the affected Property unrestricted by this Easement without RMEF's approval.

10.4 Eminent Domain. If all or part of the Property is taken for a public purpose by eminent domain, the Owner shall, and RMEF may, join in appropriate actions to recover the full value of each party's proportional interest in the Property taken and all incidental or direct damages resulting from such taking. RMEF shall be entitled to a portion of the proceeds at least equal to the Easement Value Ratio multiplied by the fair market value of the Property unrestricted by this Easement. The Owner shall not voluntarily accept less than the full value of the affected Property unrestricted by this Easement without RMEF's approval.

10.5 Use of Proceeds. All of RMEF's proceeds from a sale, exchange, or involuntary conversion of all or any portion of the Property, shall be used by RMEF in a manner consistent with the Conservation Purposes of this Easement.

10.6 Economic Value. The fact that any use of the Property that is prohibited by this Easement or is inconsistent with the Conservation Purposes of this Easement or may become more economically valuable than the permitted uses, has been considered by the Owner in granting this Easement. Such circumstances shall not justify the termination or extinguishment of this Easement pursuant to this Section. 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 Section.

Section 11. Subsequent Sale

The Owner shall reference this Easement in any subsequent deed, or other legal instrument that conveys any interest in the Property (including any leasehold interest), and shall state that any use of this Property shall be subject to the terms of this Easement. The Owner shall notify RMEF of any conveyance by sending written notice to RMEF within 30 calendar days of the execution of such conveyance. Any failure to comply with the terms of this Section shall not render this Easement or any terms of this Easement unenforceable. Failure to comply with the requirements of this Section shall not impact the perpetual nature or enforceability of this Easement.

Section 12. Miscellaneous

12.1 Assignment of Easement. RMEF may not transfer or assign its interest in the Property created by this Easement except to a "qualified organization" within the meaning of § 170(h)(3) of the Internal Revenue Code. Any such qualified organization shall agree to enforce the terms of this Easement and to protect the Conservation Values.

12.2 Severability. If any term of this Easement is to any extent illegal, otherwise invalid, or incapable of being enforced, that term shall be excluded to the extent of such invalidity or unenforceability. All other terms shall remain in full force and effect. To the extent possible,

the invalid or unenforceable term shall be replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

12.3 No Waiver. The enforcement of the terms of this Easement shall be at the discretion of RMEF, and RMEF's delay, forbearance, or failure to exercise its rights under this Easement shall not be deemed a waiver of RMEF's rights for any subsequent breach.

12.4 "Owner" and "RMEF". The term "Owner" and associated pronouns means the above-named Owner, and their heirs, personal representatives, executors, successors, and assigns. If the Property has been transferred by the original Owner, then the term "Owner" means the successors or assigns of the original Owner. The term "RMEF" and associated pronouns means the Rocky Mountain Elk Foundation, Inc., and its successors and assigns.

12.4.1 Joint and Several Liability. If more than one person or entity constitutes the Owner, the obligations of each and all of them under this Easement shall be joint and several.

12.5 Titles. Section and Subsection titles and subtitles are for convenience only and shall not have legal effect.

12.6 Construction and Governing Law. This Easement shall be construed according to the laws of the State of Montana and the United States of America.

12.6.1 Conservation Purposes. This Easement shall be liberally construed in favor of the Conservation Purposes and in accordance with the Montana Open-Space Land and Voluntary Conservation Easement Act.

12.6.2 Federal Tax Purposes. The Parties intend that the conveyance of this Easement qualify under § 170(h) of the Internal Revenue Code as a "qualified conservation contribution" of a "perpetual conservation restriction." If any provision of this Easement is found to be ambiguous, an interpretation consistent with the Conservation Purposes and with qualification under § 170(h) of the Internal Revenue Code shall be favored over any other interpretation.

12.6.3 No Warranty. RMEF does not warrant, guarantee, or otherwise offer any assurance as to the deductibility of the qualified conservation contribution, and the grant of this Easement is not conditioned upon such deductibility.

12.6.4 Drafter. Neither of the Parties shall be deemed the drafter of this Easement, each having had the benefit of counsel of their own choosing in negotiating its terms.

12.7 Perpetuity of Easement. This Easement shall run with and burden the title to the Property in perpetuity and is binding upon, and will inure to the benefit of, the Owner's and

RMEF's successors and assigns. All subsequent owners of the Property are bound by all provisions of this Easement to the same extent as the Owner.

12.8 Merger and Integration of Entire Agreement. This Easement sets forth the entire agreement of the Parties, and is the merged and integrated result of the Parties' negotiations. This Easement supersedes all prior discussions or understandings pertaining to the Property.

12.9 Attachments. All Exhibits and attachments are incorporated by reference and made part of this Easement.

12.10 Compliance with Law. All uses permitted by this Easement, including the permitted uses, shall be in full compliance with all applicable local, state, and federal laws. The Owner remains solely responsible for obtaining any government permits and approval for any use permitted by this Easement, and any use shall be undertaken in accordance with all applicable federal, state, and local laws and regulations.

12.11 Amendment. The Parties may agree to amend this Easement. Any amendment is subject to the sole discretion of RMEF and subject to the following conditions:

- (1) The amendment must either strengthen the Conservation Purposes and the Conservation Values of this Easement or be for clarification or ministerial purposes and have no adverse impact on the Conservation Purposes and the Conservation Values;
- (2) The amendment must be consistent with the terms and the Conservation Purposes of this Easement;
- (3) The amendment may not affect the perpetual duration of this Easement;
- (4) The amendment must conform to the Montana Open-Space Land and Voluntary Conservation Easement Act; and
- (5) The amendment may not result in an impermissible private benefit or private inurement as prohibited by § 501(c)(3) of the Internal Revenue Code.

Any amendment must be in writing, signed by both Parties, and recorded in the same manner as this Easement.

12.12 Current Encumbrances. The Owner represents and warrants that any and all liens or encumbrances on the Property have been subordinated prior to the granting of this Easement.

12.13 Future Encumbrances. The Owner may use the Property as collateral to secure the repayment of debt, provided that any such encumbrance shall be bound by and subject to this Easement.

12.14 No Extinguishment through Merger. Should RMEF in the future own all or a portion of the fee interest in the Property: (1) RMEF as successor in title to the Owner, shall be bound by the obligations of the Owner and the restrictions imposed upon the Property by this Easement; (2) this Easement shall not be extinguished, in whole or in part, through the doctrine of merger

in view of the public interest in its enforcement; and (3) RMEF, as promptly as practicable, shall assign RMEF's interests in this Easement according to Section 12.1.

12.15 Recording. This Easement will be recorded in the official records for the county in which the Property is located. RMEF may re-record this Easement or any other documents necessary to protect RMEF's rights under this Easement or to assure the perpetual enforceability of this Easement.

12.16 Additional Documents. The Owner will, upon request, execute or provide any additional documents reasonably needed by RMEF to carry out the perpetual enforcement of this Easement, including but not limited to, any documents needed to correct any error or mutual mistake, legal description, or title issue, or to comply with any federal, state, or local law.

12.17 Counterparts. The Parties may execute this Easement in two or more counterparts, each of which constitutes an original.

12.18 Effective Date. This Easement shall be effective when signed by all Parties, and it is the intent of the Parties that this Easement shall be effective in the year 2021.

Section 13. Definitions

13.1 "Big Game Fence" means any fence which cannot be crossed by elk, deer, or other big game wildlife.

13.2 "Commercial Feed Lot" means a confined and penned or fenced area or facility where livestock is fed and fattened for commercial slaughter, as opposed to the grazing of livestock on growing vegetation in open range, fields, or pastures. Except for the foregoing, nothing in this definition shall prevent the seasonal confinement of livestock.

13.3 "Development Rights" means all rights that are now or in the future allocated to or inherent in the division of the Property or density for industrial, commercial, or residential units on the Property including but not limited to, all subdivision and density rights as well as the right to use any of the acreage of the Property in any acreage calculation having the effect of creating or contributing to additional development on or off the Property.

13.4 "Forest Management Plan" means a document that describes forest management activities over a term of years and over a large area to achieve desired forest stand structure and species composition.

13.5 "Game Farm" animals include, but are not limited to, penned, enclosed, or privately-owned caribou, black bear, grizzly bear, mountain lion, white-tailed deer, mule deer, black-tailed deer, coues deer, elk, moose, antelope, mountain sheep, mountain goat, red deer, and any other cloven-hoofed ungulate which is indigenous to Montana and any non-indigenous or

exotic cloven-hoofed ungulate which could interbreed with or spread disease to any cloven-hoofed ungulate indigenous to Montana.

13.6 “Harvest Plan” means a document that describes a forest management activity, which is limited in area and time to accomplish a specific objective.

13.7 “Indemnified Parties” means RMEF and its directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them.

13.8 “Livestock” means livestock that are considered “traditional” at the time of the execution of this Easement and within the local area surrounding the Property, provided that traditional livestock shall not include any of the Game Farm animals.

13.9 “Major Agricultural Structures” means structures or other improvements that are necessary for the ranching, agricultural, and other permitted uses of the Property that exceed a footprint of 600 square feet.

13.10 “Minerals” means all surface and subsurface minerals of any kind, including without limitation oil, gas and other hydrocarbons, geothermal and hydrothermal, hardrock, gravel, aggregate, and other minerals.

13.11 “Minor Agricultural Structures” means structures or other improvements that are necessary for the ranching, agricultural, and other permitted uses of the Property, such as pump houses, barns, sheds, and irrigation structures, so long as the footprint of the structure does not exceed 600 square feet.

13.12 “Non-Residential Structures” means structures or other improvements that are located entirely within the Building Envelope, and that are not Residential Structures.

13.13 “Oil and Gas” means oil and natural gas and all other associated liquid and gaseous hydrocarbons.

13.14 “Rangeland Management Plan” means a document that describes appropriate use levels, seasons of use, type of livestock, noxious species management, and other necessary practices to manage rangeland on the Property.

13.15 “Residential Structure” means a structure, or a portion of a structure, that provides habitation for one or more persons.

13.16 “Temporary Structures” means a structure that does not include utilities or a concrete or other permanent foundation, and which can be easily removed from the Property.

13.17 “Trail” means a dirt, gravel, wood-chip, or unpaved pathway not to exceed 4 feet in width.

13.18 “Use” means physical use of the Property or any part thereof, or an activity on the Property or any part thereof.

13.19 “Utility Structure” means any structure used to provide electricity, natural gas, water, sewer services, or telecommunications to the Property or across the Property.

Rocky Mountain Elk Foundation, Inc.:

By: _____
R. Kyle Weaver, President & Chief Executive Officer

Date

STATE OF MONTANA)
 : ss.
County of Missoula)

This instrument was acknowledged before me on _____, 20__, by R. Kyle Weaver, who is known to me to be the President & Chief Executive Officer of the Rocky Mountain Elk Foundation, Inc. for which the instrument was executed.

Notary's Signature

Notary's Printed Name
Notary Public for the State of Montana
Residing at _____
My commission expires _____

Exhibit A
Legal Description

ALL OF SECTION 35, TOWNSHIP 11 NORTH, RANGE 14 WEST, P.M.M., GRANITE COUNTY, MONTANA.

RECORDING REFERENCE: ROLL 54, PAGE 491

AND

THE S $\frac{1}{2}$ NW $\frac{1}{4}$ OF SECTION 34, TOWNSHIP 11 NORTH, RANGE 14 WEST, P.M.M., GRANITE COUNTY, MONTANA.

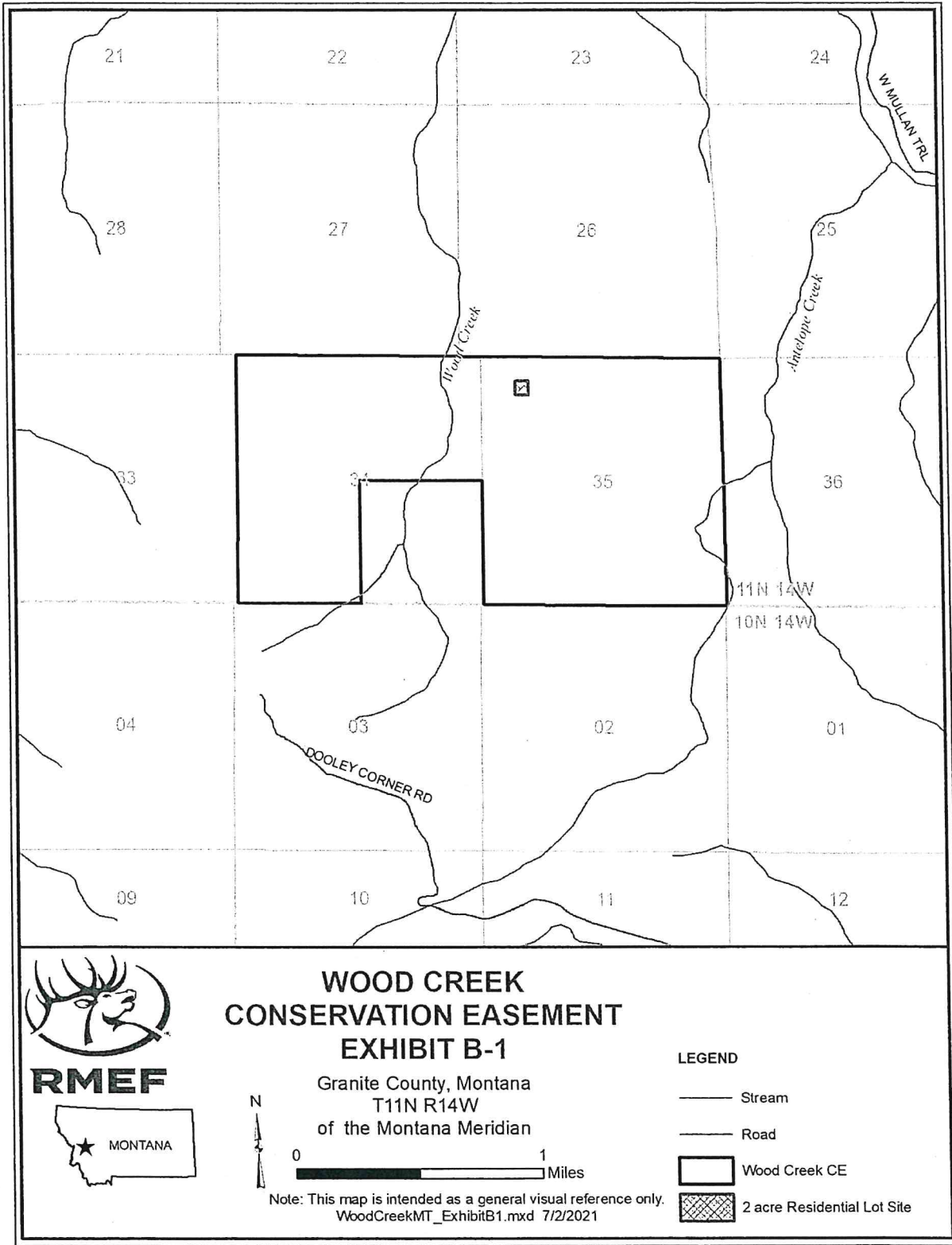
RECORDING REFERENCE: ROLL 58, PAGE 506

AND

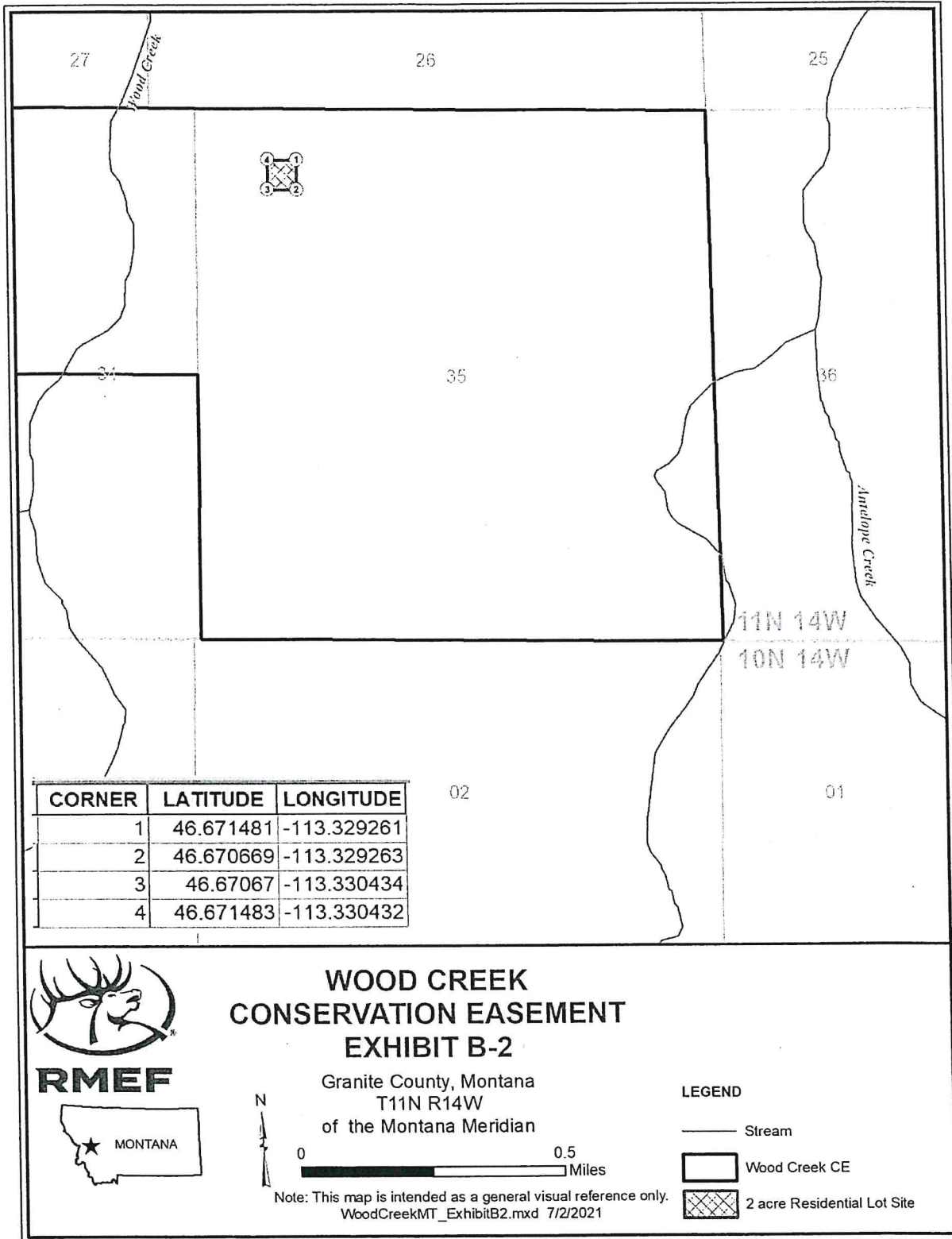
THE N $\frac{1}{2}$ NW $\frac{1}{4}$, THE SW $\frac{1}{4}$, AND THE NE $\frac{1}{4}$ OF SECTION 34, TOWNSHIP 11 NORTH, RANGE 14 WEST, P.M.M., GRANITE COUNTY, MONTANA.

RECORDING REFERENCE: ROLL 58, PAGE 507

**Exhibit B-1
Property Map**



**Exhibit B-2
Map of Building Envelope**



RMEF



**WOOD CREEK
CONSERVATION EASEMENT
EXHIBIT B-2**

Granite County, Montana
T11N R14W
of the Montana Meridian



0 0.5
Miles

Note: This map is intended as a general visual reference only.
WoodCreekMT_ExhibitB2.mxd 7/2/2021

LEGEND

- Stream
- Wood Creek CE
- 2 acre Residential Lot Site

Exhibit C
Wildlife Friendly Fencing Guidelines

Wildlife friendly fences should be low enough for adult animals to jump, high enough for animals to crawl under, and should minimize the chance of tangling. Unless otherwise agreed to in writing, new, and reconstructed fences must meet the following:

- A top wire or rail preferably no more than 42" above the ground.
- At least 12" between the top two wires.
- At least 18" between the bottom wire or rail and the ground.
- Barbed wire, smooth wire, or rail for the top, smooth wire on bottom.
- Posts at about 16-foot intervals; stays acceptable.
- Gates, drop-downs, elk jumps, or other passages located where wildlife concentrate and cross.

Exhibit D
Water Rights

Water Right Number: 76G 108695-00 (E1/2SE1/4 Section 35, T11N R14W)
Water Right Number: 76G 133191-00 (SE14/NE1/4 Section 34, T11N R14W)
Water Right Number: 76G 30135134 (Section 34, T11N R14W)