



**Montana Fish,  
Wildlife & Parks**

MAY 14 2004

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Ref:DV072-04  
May 10, 2004

LEGISLATIVE ENVIRONMENTAL  
POLICY OFFICE

TO: Governor's Office, Attn: Todd O'Hair, PO Box 200801, Helena, 59620-0801  
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Montana Fish, Wildlife & Parks - Director's Office: Reg Peterson, Wildlife: Don Childress, & Legal Unit:  
Martha Williams, Becky Price  
FWP Commissioner Mike Murphy, 2401 Recreation Road S, Wolf Creek, 59648  
Montana Historical Society, SHPO, 225 North Roberts, Veteran's Memorial Building, Helena, 59620-1201  
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Flathead County Library, 247 First Avenue E, Kalispell, 59901

Ladies and Gentlemen:

Montana Fish, Wildlife & Parks (FWP), Region One, has written a draft Environmental Assessment (EA) for the purpose of describing the environmental effects of three alternatives related to the removal of all or a portion of the Lone Pine Game Preserve, a 4,000-acre portion of Hunting District 120. A copy of the draft is enclosed for your review.

A public meeting will be held on Wednesday, June 2, 2004, at the Lone Pine State Park Visitor's Center at 7:00 p.m. The draft EA public comment period will run from May 10 to June 11, 2004.

Please direct your questions, comments, or request for more information to Wildlife Biologist Gael Bissell at FWP headquarters in Kalispell, (406) 751-4580 or e-mail to [gbissell@state.mt.us](mailto:gbissell@state.mt.us).

Sincerely,

  
Daniel P. Vincent  
Regional Supervisor

/ni  
Enclosure

Lone Pine Game Preserve Draft EA  
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**ENVIRONMENTAL ASSESSMENT  
FOR THE  
ABANDONMENT OF THE LONE PINE GAME PRESERVE  
FLATHEAD COUNTY, MONTANA**

**I. PURPOSE and NEED:**

**Purpose:**

The purpose of this draft Environmental Assessment (EA) is to describe the environmental effects of three alternatives related to the removal of all or a portion of the Lone Pine Game Preserve, a 4,000-acre portion of **Hunting District 120** that was closed May 4, 1940, to all firearm use, hunting, and trapping for the purpose of enhancing and restoring game populations. The Lone Pine Game Preserve is located immediately southwest of Kalispell, Montana, in the northwest portion of the state (Fig. 1).

**Background:**

The statutes governing game preserves are covered in 87-5-401 through 87-5-406, MCA. The general game preserve provisions found in 87-5-401 state, in part, that:

*“...no person may, within the limits of a game preserve...hunt for, trap, capture, kill, or take game animals, fur-bearing animals, or birds of any kind. Within the limits of a preserve, a person may not carry or discharge firearms, create any unusual disturbance tending to frighten or drive away any of the same animals or birds, or chase them with dogs...”*

In December 2003, Jim Watson, one of the landowners of the Spring Brook Ranch which lies within the Lone Pine Game Preserve, met with Region One staff of Montana Fish, Wildlife & Parks (FWP) about his family's goal to have the agency abandon the Lone Pine Preserve (Fig. 1). The Spring Brook Ranch occupies approximately 1,000 acres in the center of the preserve. The landowners have placed a conservation easement on the entire property with a private land trust that precludes subdivision and development. Therefore, the character of the ranch will be maintained as it is today in perpetuity.

FWP discussed the landowners' goals, various alternatives, and FWP's environmental review and rule-making processes with the landowner. On March 11, 2004, the landowners properly petitioned the FWP Commission and requested to withdraw their lands from the Lone Pine Preserve (Attachment A). After discussion at the meeting, the FWP Commission recommended FWP staff include at least three alternatives for public review. The first alternative would be the No Action Alternative. The second alternative would be for FWP to abandon the entire preserve; and the third would allow the landowners of the Spring Brook Ranch to withdraw just their property from the preserve. On April 26, FWP filed with the Secretary of State a Notice of Hearing on the Proposed Amendment or Repeal describing the proposed alternatives for removing all or part of the Lone Pine Game Preserve (Attachment B).

Fig. 1 Location of Lone Pine Game Preserve and Spring Brook Ranch, Kalispell, Montana



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## **Lone Pine Game Preserve History:**

The Lone Pine Game Preserve was established near Kalispell to restore game populations for area residents. It appears the Commission intended to remove the preserve at some time after its establishment to allow hunting and trapping to once again occur. Two other preserves exist in the Kalispell area. The Stillwater Game Preserve is located in Evergreen and the Steel Bridge Closure is located south of Old Steel Bridge, both along the Flathead River. At the time of the preserve system, these areas were undeveloped, close to town, and were very important hunting grounds for residents. During the 1930s and early 1940s, we were in the "depression" and game animals were important for survival in Montana. Based on the Department's records, deer, grouse, and fur animals were becoming relatively rare near town. The local warden and residents felt we needed to drastically reduce hunting pressure so that populations of game animals could recover. FWP believes the preserve is no longer necessary because game populations are healthy and abundant.

Since the establishment of the Lone Pine Game Preserve and others across the state, the landscape and public understanding of the purpose of the preserves have changed. Today, most people equate the Lone Pine Game Preserve, and other such preserves, as an area that has been set aside for wildlife or an area where it is safe to recreate. Residential development in these preserves has also occurred over the last 50+ years. As time has passed, removing the preserves has become a difficult and confusing process.

## **Public Process:**

State regulations require that FWP respond to this petition within 60 days by either taking action or no action. On April 26, 2004 (46 days from the time the petition was presented to the FWP commission), FWP filed a Notice of Proposed Amendment or Repeal with the Montana Department of Administration. This notice initiated a public rule-making process that is required to address the status of the Lone Pine Preserve. In that process, FWP must complete a draft EA and hold a public hearing. This document is the draft EA. *The public hearing is scheduled for Wednesday, June 2, 2004, 7:00 p.m., at the Lone Pine State Park Visitor's Center, located at the end of Lone Pine Road off of Foys Lake Road, Kalispell, Montana.* This draft EA seeks to help clarify the background as well as give the public information about the purpose and need for preserves and provide several alternatives for review and comment.

## **Need for the Proposed Rule Changes:**

Department staff believe that deer populations probably recovered in this area within a decade of the preserve's establishment. Currently, white-tailed deer populations in Hunting District 120 are healthy and expanding into suburban, residential, and agricultural lands. Deer populations within the preserve appear to be increasing to the point that deer are becoming a nuisance in the area. A number of deer have collided with automobiles on the roads around the preserve. Current management problems include deer depredation of landscaping as well as agricultural crops. Petitioners and the department staff know that mountain lions are attracted to the deer within the preserve and pose a danger to children and domestic animals. Mountain lion predation on livestock and domestic animals has already occurred. The department has also received complaints from landowners in this area regarding impacts from ground squirrels; they would like the ability to control them. Other potential problem wildlife include skunks, raccoons, and

# public draft

coyotes. Black bears also have become habituated to orchards, residences, garbage, pets, and pet foods and have caused conflicts with area homeowners.

The petitioners state that hunting can safely take place on their land if removed from the preserve. The terrain of the ranch provides a sufficient backstop for responsible hunters, and petitioners can control the location and number of hunters in the area. Although development is occurring in much of the area outside the petitioners' land, there are some adjoining areas where safe hunting could take place, particularly with archery or shotgun.

Additionally, many of the residents within the Lone Pine Preserve own firearms, the carrying of which is prohibited within the preserve boundaries. Since the carrying of firearms is illegal within the preserve, current residents who own firearms are many times in technical violation of the law.

This petition presents the Department with an opportunity to address the petitioners' concerns as well as other wildlife management issues. It provides an opportunity for area residents and FWP to review and discuss the current need for the Lone Pine Preserve and how the community might address the petitioners' concerns.

## II. AFFECTED ENVIRONMENT:

The Lone Pine Preserve falls within the foothills of the Salish Mountains directly southwest of the city of Kalispell (Fig. 1). The area is composed of steep cliffs, hillsides, open grasslands, forest, and numerous developments. Many residents have small farms and ranches that support livestock, particularly horses. Horseback and bike riding are popular recreational activities that take place on local roads and existing trails around Lone Pine State Park and across Foys Lake Road at an equestrian center located at the county's Heron Park. The neighborhood and many Kalispell residents also use a trail system on nearby public and private lands. Local residents actively hunt on adjoining lands to the south and west for upland game birds, deer, bear, and elk.

The Lone Pine Preserve area contains suitable habitat for white-tailed deer, elk, mountain lions, black bears, upland game birds, as well as a wide variety of other birds and nongame species. In general, these wildlife species are considered a watchable wildlife resource as well as a local nuisance or threat. Numerous conflicts between residents and mountain lions and black bears have been reported to FWP over the last decade. These have often resulted in removal of animals by FWP personnel. Conflicts include direct human contact with lions or bears on trails and in yards, mountain lion predation on pets, bears or lions feeding on pet foods, and bears in garbage.

The preserve includes the 230-acre Lone Pine State Park and approximately 300 acres inside the City of Kalispell. There are at least 28 platted subdivisions within the preserve boundary. Most of the platted subdivisions have covenants that restrict use of firearms and hunting.

## III. PROPOSED ACTIONS and ALTERNATIVES:

There are three major alternatives to Lone Pine Preserve status as described below. The first, *Alternative A, is the No Action Alternative* where the preserve would remain in place. The

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second two alternatives include some degree of removal of the preserve status. **Alternative B (FWP Preferred Alternative)** would be the removal of the *entire Lone Pine Game Preserve*. **Alternative C** would be the *removal of the Spring Brook Ranch* from the Lone Pine Game Preserve. Under both of these alternatives, the partial or full removal of the preserve status, the city of Kalispell's 300 acres inside the preserve would essentially remain intact. In other words, on these lands, the city's regulations for firearms would remain in effect. Removal of the preserve from the city's 300 acres could allow archery hunting if not precluded by subdivision covenants.

For Alternatives B and C, FWP Commission would need to also adopt the appropriate hunting and trapping regulations that would underlie any area removed from the preserve. Standard statewide or regional trapping and predator/pest regulations would apply to any area removed from the preserve. However, there are at least two major possible hunting regulation packages that could be considered based on the types of firearms to be allowed. The first package (see Alternatives B1 and C1) would allow the use of *all legal firearms*; the second alternative (see Alternatives B2 and C2) would *limit firearms* to archery, shotgun, muzzleloader, and black powder per the state's existing special firearm restrictions. Under both of these alternatives, the hunting seasons, permits, species, etc., would be the same as the rest of Hunting District 120. The Commission could also consider other firearm restrictions such as archery only or a combination of various firearm restrictions. We have chosen to describe the environmental effects of two very different seasons to capture the relative range of impacts.

The two types of firearm restrictions that might apply under both Alternatives B and C are:

- 1) Hunting using all legal firearms including rifle;
- 2) Hunting restricted to archery, shotgun, muzzleloader, or traditional handgun as per the current firearm restrictions in place for that part of Hunting District 120 in the Smith Lake/Kila area.

Under all alternatives, hunting would **NOT** be allowed in Lone Pine State Park.

## IV. ALTERNATIVES:

A. **Alternative A. No Action:** Maintain the preserve as is.

B. **Alternative B (FWP Preferred Alternative). Abandon the Lone Pine Game Preserve:** Remove the entire preserve and adopt underlying hunting and trapping seasons similar to the rest of HD 120. The hunting seasons could either be:

- 1) **Alternative B1:** Hunting using all legal firearms consistent with most of the hunting regulations for Hunting District 120.
- 2) **Alternative B2:** Hunting restricted to archery, shotgun, muzzleloader, or traditional handgun as per the current firearm restrictions in place for that part of Hunting District 120 in the Smith Lake/Kila area (Attachment B).

C. **Alternative C. Abandonment of the Preserve Status for only the Spring Brook Ranch lands:** Under this alternative, only the lands currently owned by the petitioners (Fig. 1) would be removed from the Lone Pine preserve status. The underlying hunting seasons would be one of the following:

- 1) **Alternative C1:** Hunting using all legal firearms, including rifle, consistent with most of the existing hunting regulations for Hunting District 120.
- 2) **Alternative C2:** Hunting restricted to archery, shotgun, muzzleloader, or traditional handgun as per the current firearm restrictions in place for that part of Hunting District 120 in the Smith Lake/Kila area (Attachment B).

V. **POTENTIAL ADVANTAGES/DISADVANTAGES OF ALTERNATIVES:**

The potential benefit of the *No Action Alternative*, Alternative A, is the maintenance of the status quo. This would keep the preserve in place for all residents. This would not allow residents to legally use or carry firearms, address game damage, or legally hunt, trap, shoot, or discourage wildlife on their lands within the preserve. This alternative would mean that most people who own firearms in the preserve are doing so illegally. This puts FWP and other law enforcement personnel in an untenable position, as the possession of firearms is not a regulation that the agency or people want to see enforced. This alternative does not allow private landowners to legally address pest or predator issues nor game damage. This alternative does not allow the petitioner any relief from their concerns or issues.

Under *Alternatives B and C*, abandonment of all or a significant portion of the preserve will allow the individual landowners in that area management flexibility over legal trapping and hunting on their own properties, similar to most other areas in the state unless there are covenants or city limit prohibitions that already restrict these activities. Abandonment of the entire game preserve will improve the potential for the landowners and FWP to address deer, lion, bear, and other animal damage complaints within the 4,000-acre area within private landowner tolerances. This situation would be similar to that which exists in the major portion of the developed Flathead Valley, Hunting District 170, where nearly all access and permission to hunt or trap must be obtained from the private landowners. The removal of all or part of the Lone Pine Game Preserve could slightly increase local and resident hunter opportunity and access; however, access will be dependent upon landowner permission and tolerances.

Removal of only the Spring Brook Ranch (Alternative C) from the preserve would address most of the landowners' concerns for game management tools and opportunities. It would not provide more flexibility for the neighbors to hunt, trap, or possess firearms; it probably would provide an effective game management tool for much of the preserve area; but it would be difficult to enforce the preserve with an open hunting area right in the middle of the preserve.

**VI. ENVIRONMENTAL REVIEW:**

This section of the EA presents the environmental assessment review as depicted in Table 1 (Potential Impact on Physical Environment) and Table 2 (Potential Impact on Human Environment). This environmental review pertains only to all Alternatives A, B, and C. Any differences among subalternatives (B1-2 and/or C1-2) are indicated in the footnotes. Alternatives A-C are described in Section IV above.

**Table 1. Potential Impact on Physical Environment**

Will the proposed action result in potential impacts to:	Unknown	Potentially Significant	Minor	None	Can Be Mitigated	Comments Below or on Attached Pages
1. Unique, endangered, fragile, or limited environmental resources				A, B, C,		
2. Terrestrial or aquatic life and/or habitats.			A	B, C,		2a & 2b
3. Introduction of new species into an area.				A, B, C,		
4. Vegetation cover, quantity, & quality.			A	B, C		4a
5. Water quality, quantity, & distribution (surface or groundwater).				A, B, C		
6. Existing water right or reservation.				A, B, C		
7. Geology & soil quality, stability, & moisture.			A	B, C,		7a
8. Air quality or objectionable odors.				A, B, C		
9. Historical & archaeological sites.				A, B, C		
10. Demands on environmental resources of land, water, air, & energy.				A, B, C		
11. Aesthetics				A, B, C		

2a. Under Alternative A, No Action, certain nuisance or game wildlife populations could increase over existing levels, causing local property or habitat damage. Game animals that could increase to higher than desirable levels include white-tailed deer, elk, black bear, mountain lions, ground squirrels, raccoons, skunks, and coyotes.

2b. The diversity of wildlife species is not expected to change with any of the proposed alternatives. Population numbers could potentially be reduced or maintained by the proposed alternatives in B or C. However, the changes would be limited to game or problem animals and would be affected by season regulations, firearm restrictions, landowner tolerance, and allowable access.

4a. If deer or elk populations dramatically increase, they could impact residential/ornamental vegetation locally as well as impact native browse plants such as service berry or chokecherry, causing it to have the hedged effect at deer browse height and possibly reducing the available forage base.

7a. High populations of deer or ground squirrels could impact vegetative cover in small specific high-use areas such as along streams or in fields possibly causing minor erosion or soil exposure.

**Table 2. Potential Impacts on Human Environment**

Will the proposed action result in potential impacts to:	Unknown	Potentially Significant	Minor	None	Can Be Mitigated	Comments Below or on Attached Pages
1. Social structures and cultural diversity.				A, B, C		1a
2. Changes in existing public benefits provided by wildlife populations and/or habitat.			B, C	A		2a, 2b, & 2c
3. Local and state tax base and tax revenue				A, B, C		
4. Agricultural production.			A	B, C		4a
5. Human health and safety			B, C	A		5a
6. Quantity & distribution of community & personal income.				A, B, C		
7. Access to & quality of recreational activities.			A	B, C		7a
8. Locally adopted environmental plans & goals (ordinances).				A, B, C		8a & 8b
9. Distribution & density of population and housing.				A, B, C		
10. Demands for government services.				A, C		10a & 10b
11. Industrial and/or commercial activity.				A, B, C		

1a. Under any alternative, no hunting will be allowed in Lone Pine State Park. This is consistent with existing rules and regulations governing most of Montana's state parks.

2a. Under Alternative A, No Action, the public benefits of having abundant populations of certain wildlife such as deer, ground squirrels, lions, or black bears would continue to provide many wildlife viewing opportunities for residents and visitors. With limited hunting allowed, Alternatives B or C, some wildlife animals may become more nocturnal or secretive, thus reducing wildlife viewing opportunities.

2b. Under Alternatives B and C, some residents or hunters will be able to legally hunt and trap game or other wildlife within all or a portion of this district, providing recreational opportunities that currently do not exist.

2c. Under Alternatives B or C, certain nuisance or game wildlife populations could be managed to tolerable levels, keeping animals more in balance with available habitat and possibly reducing human-wildlife conflicts involving bears and lions.

4a. Alternatives B or C should improve landowners' ability to address deer and other abundant wildlife, consequently limiting game damage and improving agricultural production.

5a. Under Alternatives B or C, additional noise related to possible firearm use could occur depending on neighborhood ordinances and local landowners' desires for hunting. No changes in noise would occur under Alternative A or if the season selected were archery only. A resident's sense of safety could be reduced under alternatives B or C depending on neighborhood covenants, landowner willingness to allow hunting, type of firearm restrictions, and proximity to the Spring Brook Ranch (Alternative B).

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7a. Alternatives B or C will allow hunter access and opportunities where appropriate with approval of local landowners.

8a. The adoption of Alternatives B or C should not conflict with regulations of use of firearms within Kalispell city limits. Use of firearms within the city limits would continue to be prohibited under all alternatives.

8b. Lone Pine State Park will not be open to hunting under any of the alternatives.

10a. Alternative C will still result in a split of the Lone Pine Preserve, as it would allow the petitioners to legally hunt and trap wildlife within the boundaries of this property only (Fig. 1). Enforcement of the Lone Pine Preserve is already difficult; splitting the preserve into two areas would make it confusing for the public as well as private landowners.

10b. Alternative B would remove the prohibition of firearm possession enforcement, one rule that FWP or other law enforcement may be expected to enforce to some degree.

## **VII. PUBLIC HEARING**

A public hearing will be held Wednesday, June 2, 2004, at the Lone Pine State Park Visitor's Center at 7:00 p.m. The draft EA public comment period runs from May 10 to June 11, 2004. Copies of the draft EA are available at FWP's Region One headquarters, located at 490 N. Meridian Rd., Kalispell, Montana; on FWP's website at [fwp.state.mt.us](http://fwp.state.mt.us); and at the Kalispell Public Library. To direct public comments or request more information, contact Wildlife Biologist Gael Bissell at FWP headquarters in Kalispell, (406) 751-4580 or e-mail to [gbissell@state.mt.us](mailto:gbissell@state.mt.us).

## **VIII. SUMMARY STATEMENT**

Abandoning the preserve will give landowners and the Department improved wildlife management options and private landowners the ability to control the amount and kinds of wildlife-related recreational opportunities on their property. Additionally, abandonment will give the Department some degree of the flexibility to address wildlife management concerns while improving compliance and enforcement capabilities. Abandonment will not adversely affect the quality of wildlife habitat nor the diversity of wildlife species found there.

## **IX. PREPARER:**

Gael N. Bissell, Wildlife Biologist  
Fish, Wildlife & Parks  
490 N. Meridian Road  
Kalispell, MT 59901 (406) 751-4580  
[gbissell@state.mt.us](mailto:gbissell@state.mt.us)

List of Figures:

Fig. 1. Location of Lone Pine Preserve and Spring Brook Ranch.

**X. ATTACHMENTS:**

Attachment A: Copy of the Landowner's Petition to the FWP Commission, March 11, 2004.

Attachment B: Notice of Hearing on Proposed Amendment or Repeal for the Lone Pine Game Preserve, April 26, 2004.

BEFORE THE MONTANA DEPARTMENT OF FISH,  
WILDLIFE AND PARKS COMMISSION

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IN RE: THE PETITION OF JIM WATSON AND CAROL BIBLER, dba SPRING BROOK RANCH	PETITION TO REMOVE SPRING BROOK RANCH FROM LONE PINE STATE GAME PRESERVE
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Comes now the Petitioners, Jim Watson and Carol Bibler (a married couple), dba Spring Brook Ranch, and pursuant to Section 87-5-402(3), MCA, petitions the Commission to remove Spring Brook Ranch from the boundaries of the Lone Pine State Game Preserve for the reasons set forth in the accompanying memorandum.

Dated this

19<sup>th</sup> day of December, 2003.

Jim Watson, Petitioner  
191 Foys Canyon Road  
Kalispell, MT 59901  
(406) 257-7021

Carol Bibler, Petitioner  
191 Foys Canyon Road  
Kalispell, MT 59901  
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P.O. Box 2943  
Kalispell, MT 59903-2943  
(406) 752-5187

BEFORE THE MONTANA DEPARTMENT OF FISH,  
WILDLIFE AND PARKS COMMISSION

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IN RE: THE PETITION OF  
JIM WATSON AND  
CAROL BIBLER,  
dba SPRING BROOK RANCH

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**MEMORANDUM**

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This memorandum is offered in support of the Petition to Remove Spring Brook Ranch from Lone Pine State Game Preserve.

**A. Background**

**1. Spring Brook Ranch.**

The Petitioners, Jim Watson and Carol Bibler are husband and wife and are the owners of Spring Brook Ranch. They acquired the ranch from Carol's father, Sam Bibler in 2002. The ranch is a working ranch engaged in raising bison, yak, horses and timber. There are approximately 100 head of bison and 100 head of yak on the ranch. The ranch is comprised of approximately 1,000 acres and includes the former Blasdell and Silver Buckle ranches. It is located approximately one half mile southwest of the City of Kalispell and borders Airport Road and Foy's Canyon Road. The lowest elevation is 2926 feet asl and the highest elevation is 3826 feet asl. The ranch contains rolling grasslands, ponderosa and fir forests, wetlands, historic apple orchards and three homesteads. A copy of a map of the ranch is attached as Exhibit A.

In 1994 and 2000 the ranch was placed in conservation easements with the Montana Land Reliance to preserve the open space near Kalispell and to promote the agricultural, timber, recreational and wildlife values found on the ranch. The easement allows farming, livestock, sound timber management and hunting. The easement does not allow the subdivision of the ranch or commercial development. Copies of the easements are attached as Exhibit B. The easement is significant in that it is the largest restriction on development within a mile of the City of Kalispell.

Present game species found on the ranch include whitetail deer, black bear, mountain lion, grouse, turkey, ducks, geese and occasional elk. The ranch is enclosed by a game fence and is cross-fenced. Wild game cross under the fence and the Petitioners desire to make the ranch fences "porous" to wildlife, both in and out, and have asked FW&P biologists to assist in

identifying game trails and ways to allow for game to pass through the fences while constraining the ranch livestock. The ranch is home to a number of non-game wildlife species.

The ranch is a certified tree farm under the American Tree Farm System. The Petitioners have completed the Montana Forest Stewardship Workshop and are actively managing the ranch timber on a sustained yield, best management practices basis. There are different types of forests on the ranch depending on slope and aspect, including fir, ponderosa and western larch. A copy of the ranch timber management plan is attached as Exhibit C.

The ranch historically contained apple orchards which, while old and neglected, still produce many apples. The Petitioners are committed to rehabilitating the orchards and fencing out livestock in places to increase production. The orchards provide apples for whitetail deer and are a significant source of autumn calories for black bears.

## **2. Lone Pine State Game Preserve**

Lone Pine State Game Preserve was created by administrative rule by the Montana Department of Fish, Wildlife and Parks Commission Section 12.9.204 A.R.M. A map of the Preserve is attached as Exhibits D1 and D2. DFW&P personnel have been unable to tell Petitioners when the Preserve was created however there is some thought that it was created in the 1930's to restock whitetail deer populations near Kalispell. The Administrative Rule setting the present boundaries was effective December 31, 1972. The approximate 230 acres of Lone Pine State Park is on the north of the preserve. The Preserve is approximately 4,000 acres and includes numerous residences; there are at least 28 platted subdivisions within the Preserve boundary. Approximately 300 acres in the northeast corner of the Preserve is within the City of Kalispell. Whitetail deer populations have increased significantly since the creation of the preserve while the nature of the preserve has dramatically changed from pastures and timberland to subdivisions and urban interface.

### **B. Rationale**

- 1. There is no biological reason for the continuation of the Preserve.** While there may have been a biological need to allow an area where whitetail deer could grow in security and repopulate surrounding areas when the Preserve was first created, that need no longer exists. Whitetail deer populations are stable and increasing to the point where deer are a nuisance and possibly a danger to the residents in the Preserve. A number of deer have collided with automobiles on the roads around the Preserve causing property damage and personal injury. The deer cause depredation to what is left of the hay and croplands in the Preserve, and cause damage to expensive landscaping in the subdivisions. The most dangerous aspect of the continuation of the Preserve may be the attraction of mountain lions to deer in the urban interface and the potential for conflicts with residents, especially children. A neighbor of the Petitioners in the Preserve had their domestic cat killed in their driveway in which their children play. The Petitioners had a goat killed by a mountain lion in their barn. The continuation of the Preserve cannot be supported by a biological rationale.

2. **The removal of the ranch from the Preserve will provide wildlife management options for the Department.** State law now provides that no person may "hunt for, capture, kill, or take game animals, fur-bearing animals, or birds of any kind", Section 87-5-401, MCA. The Department has no way now to regulate the population of deer in the preserve. Arguably there is no exemption even for Department management actions taken to protect residents from problem mountain lions or marauding bears. By removing the ranch from the preserve the Commission would give the Department the same tools it has in the rest of the state to manage its wildlife and protect citizens. The Commission would still have the ability to protect its game by setting harvest limits and could even control the method of taking of game animals as it has done in other places in Montana.
  
3. **Hunting can safely take place on the ranch.** The ranch is 1,000 acres of hills, grassland and timber. The terrain is sufficient to provide a backstop for the careful hunter to discharge weapons and not trouble neighbors. The ranch can control the number and location of hunters to areas that are safe for hunting. If necessary the Commission can set rules for the method of hunting including shotgun, black powder or archery only, as it has done in other districts.
  
4. **Neighbors can restrict the use of firearms by the use of covenants.** People who are opposed to the discharge of firearms have the ability to restrict their use in their neighborhoods by covenants. Covenants are a contractual relationship, voluntarily entered between adjacent landowners, running with the land. A number of subdivisions in the Preserve already have covenants that restrict the use of firearms and/or hunting within the subdivision. Further restrictions on discharge of firearms will take place as parts of the Preserve are annexed into the City of Kalispell.
  
5. **Petitioners have a right to use their property including the use of firearms.** State law does not allow Petitioners to use firearms on their ranch because "a person may not carry or discharge firearms" within the limits of the preserve, Section 87-5-401, MCA. There is no exemption for a landowner or even a law enforcement officer responding to a call or a game warden enforcing the laws. The law prohibits the Petitioners from safely and humanely dispatching injured livestock, controlling aggressive predators or protecting their home. This law directly conflicts with constitutional provision that "The right of any person to keep or bear arms in defense of his home, person and property . . . . shall not be called into question", Article II, Section 12, Montana Constitution (1972). The Petitioners should be able to enjoy the same privileges and attendant responsibilities that go with gun ownership as all Montanans.

**C. Conclusion**

While the argument can be advanced that the Lone Pine State Game Preserve has outlived its purpose and is now a burden to the modern management of game animals and should therefore be abolished, all the Petitioners are asking the Commission to do is exclude their ranch from the

boundaries of the Preserve. In doing so, the Commission will be providing for the sound management of its game and affirming its commitment to responsible gun ownership and property rights.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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Jim Watson, Petitioner

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Carol Bibler, Petitioner

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Thomas J. Esch  
Attorney for Petitioners  
P.O. Box 2943  
Kalispell, MT 59903-2943  
(406) 752-5187

Attachment B

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION AND  
THE DEPARTMENT OF FISH, WILDLIFE AND PARKS  
OF THE STATE OF MONTANA

In the matter of the repeal ) NOTICE OF PUBLIC HEARING ON  
or amendment of ARM ) PROPOSED REPEAL OR AMENDMENT  
12.9.204 pertaining to Lone )  
Pine Game Preserve )

TO: All Concerned Persons

1. On June 2, 2004, at 7:00 p.m. the Fish, Wildlife and Parks Commission (commission) and Department of Fish, Wildlife and Parks (department) will hold a public hearing at Lone Pine State Park Visitor's Center, at the end of Lone Pine Road, off of Foy's Lake Road, Kalispell, Montana, to consider the repeal or amendment of ARM 12.9.204, pertaining to Lone Pine Game Preserve near Kalispell.

2. The commission and department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 14, 2004, to advise us of the nature of the accommodation that you need. Please contact John Fraley, Fish, Wildlife and Parks, 490 North Meridian Road, Kalispell, MT 59901; telephone (406) 751-4564; fax (406) 257-0349; email jfraley@state.mt.us.

3. The commission and department desire to receive comment on two different rule proposal options regarding Lone Pine Game Preserve. Option A provides for repeal of the rule, and option B provides for amendment of the rule.

OPTION A - RULE REPEAL

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ARM 12.9.204, the rule proposed to be repealed, is on page 12-612 of the Administrative Rules of Montana.

AUTH: 87-1-301, MCA

IMP: 87-1-305, MCA

OPTION B - AMENDMENT

The rule as it is proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

Attachment B

12.9.204 LONE PINE GAME PRESERVE (1) ~~The Lone Pine Game Preserve is reestablished with the following boundaries: Beginning at the northeast corner of section 19, township 28 north, range 21 west, following the north boundary of section 19 in a westerly direction one mile; thence continuing in a northerly and westerly direction following the Kalispell Foy's Lake highway to where it turns in a southwesterly direction following the same highway to Foy's Lake; thence in a southeasterly direction following the highway to section line between sections 25 and 26, township 28 north and range 21 west; thence in a southerly direction following the Foy's Lake Patrick Creek highway to where the said highway turns in a southeasterly direction following the said highway to a point in section 6, township 27 north and range 21 west; thence in an easterly direction following the Kalispell Patrick Creek highway to a point in section 5, township 27 north, range 21 west, to a point where said highways turn in a northerly direction following the Kalispell Patrick Creek highway to the point of beginning.~~

(1) The boundary of the Lone Pine Game Preserve is adjusted as delineated on the April 2004, Lone Pine Game Preserve Map, incorporated by reference as part of this rule. This map may be obtained by contacting the department region one headquarters at 490 North Meridian Road, Kalispell, MT 59901, (406) 752-5501.

AUTH: 87-1-301, MCA  
IMP: 87-1-305, MCA

4. On March 11, 2004, Jim Watson and Carol Bibler properly petitioned the department and commission to remove their land from the Lone Pine Game Preserve. The commission established Lone Pine Game Preserve on May 4, 1940, granting a petition from a group of landowners near Kalispell. The establishment of preserves as a technique to enhance game populations in Montana dates back to 1911 with the creation of the Snow Creek, Pryor Mountain and Gallatin Preserves. This management technique is no longer used by the department or commission as a way to increase game populations, and department biologists believe there is no longer a biological reason to maintain this preserve.

Section 87-5-402, MCA, states that the Department of Fish, Wildlife and Parks has the right, power, and authority, when properly petitioned, to alter and change the boundaries of or entirely do away with and abandon any preserve or refuge, excepting the Sun River Game Preserve, when in its opinion, it is in the best interest to do so. Additionally, the commission

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has the power to set wildlife protection policies and establish bird and game preserves under 87-1-301 and 87-1-305, MCA. Following precedent set by the adoption of ARM 12.9.211 in 1995, the changes to this rule are proposed under both department and commission authority.

The commission desires to receive comment on two different options regarding the Lone Pine Preserve. Option A is to abandon the preserve completely while Option B removes only the petitioner's land from the preserve. Option A is the preferred alternative since the Watson/Bibler ranch lies in the middle of the preserve. Removing this land while maintaining the rest of the preserve would leave the preserve on either side of a non-preserve area. This situation could make enforcement of the preserve difficult.

Department biologists estimate that deer populations recovered in this area within a decade of establishing the preserve. The deer population in hunting district 120 is healthy and expanding into suburban, residential, and agricultural land each year. Deer populations within the preserve are increasing to the point that deer are or will become a nuisance in the area. A number of deer have collided with automobiles on the roads around the preserve. Deer depredation of landscaping in residential areas within the preserve is a continuing problem. Petitioners and the department staff know that mountain lions are attracted to the preserve and pose a danger to children and domestic animals. Mountain lion predation on livestock and a domestic animal have already occurred. The department has also received complaints from landowners in this area regarding impacts from ground squirrels; they would like the ability to control them.

The petitioners also state that hunting can safely take place on their land if removed from the preserve. The terrain of the ranch provides a sufficient backstop for responsible hunters, and petitioners can control the location and number of hunters in the area. Although development is occurring in much of the area outside the petitioners' land, there are some areas where safe hunting could take place, particularly with archery or shotgun.

While petitioners believe that hunting may safely take place on their property, they point out that people who are opposed to the discharge of firearms near their homes have the ability to restrict their use in these areas of the preserve by means of covenants. They have the right to disallow hunting on their own property as well. A number of subdivisions located within the

## Attachment B

preserve already have covenants that restrict the use of firearms and/or hunting within the subdivision.

The department owns and manages Lone Pine State Park within the Lone Pine Preserve area. The department would not open the state park to hunting under either of the alternatives proposed.

The possession of firearms is another issue that petitioners raised in regard to private property being included in a game preserve. Section 87-5-401, MCA, states, "a person may not carry or discharge firearms" within the boundaries of a game preserve. This prohibition stops wildlife management authorities from using hunting to reduce game numbers or to directly address mountain lion or other predator issues. Petitioners are hindered from safely and humanely dispatching injured livestock and controlling aggressive predators, or protecting their home.

In conjunction with this rulemaking, the department is preparing an environmental assessment of the alternatives proposed in this rulemaking action. The environmental assessment will be available for public review and comment on May 10, 2004.

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Dan Vincent, 490 North Meridian Road, Kalispell, MT 59901; telephone (406) 752-5501; fax (406) 256-0341; email [dvincent@state.mt.us](mailto:dvincent@state.mt.us). Any comments must be received no later than June 4, 2004.

6. Dan Vincent or another hearing examiner appointed by the department has been designated to preside over and conduct the hearing.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by department or commission. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

By: /s/ M. Jeff Hagener  
M. Jeff Hagener,  
Secretary Fish, Wildlife and  
Parks Commission and  
Director of the Department of  
Fish, Wildlife and Parks

By: /s/ Martha C. Williams  
Martha C. Williams  
Rule Reviewer

Certified to the Secretary of State April 26, 2004