Montana Fish, Wildlife & Parks

Ladies and Gentlemen:

Recently you received documents regarding the Montana Fish, Wildlife & Parks (FWP) proposal to purchase a conservation easement from Larry and Donna Dugas, owners of Dugas Farms. This conservation easement constitutes 800 acres in Cascade County, Montana. The land is located approximately 2 miles south of Ulm along the Missouri River.

Comments received regarding the Dugas Farms Conservation Easement Proposal are summarized in the enclosed Decision Notice. No modifications were made to the documents you received as a result of the public review period. Please consider your previous copies of the Environmental Assessment and Management Plan as final.

It is my recommendation to purchase a conservation easement from Dugas Farms utilizing FWP Habitat Montana and Upland Game Bird Program dollars, along with additional partner dollars, subject to approval by the FWP Commission. The FWP Commission will be asked to approve the purchase of this easement at their meeting on October 7, 2010. The Montana Board of Land Commissioners will ultimately have final vote at their regularly scheduled meetings in October or November, should the FWP Commission approve the conservation easement purchase.

Thank you for your interest and involvement.

Sincerely,

Gary Bertellotti

Gary Bertellotti
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Decision Notice
Dugas Farms Conservation Easement
Environmental Assessment

Prepared By:
Montana Fish, Wildlife & Parks
Region 4 Wildlife Division
4600 Giant Springs Rd.
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September 15, 2010

INTRODUCTION

Montana Fish, Wildlife & Parks (FWP) has the authority under law (MCA 87-1-201) to protect, enhance and regulate the use of Montana's fish and wildlife resources for public benefit now and in the future. In 1987, the Montana Legislature passed House Bill (HB) 526, which earmarked hunting license revenues to secure wildlife habitat through lease, conservation easement or fee title acquisition (MCA 87-1-241 and 242). This is now referred to as FWP's Habitat Montana Program. Habitat Montana recognizes that certain native plant communities constituting wildlife habitat are worthy of perpetual conservation. Those communities include intermountain grasslands, sagebrush grasslands and riparian corridors. Dugas Farms includes such habitats and warrants conservation considerations. A conservation easement was offered to FWP by Larry and Donna Dugas, owners of Dugas Farms. This offer reflects the landowner's desire to maintain and protect the family's agricultural and ranching lifestyle, while maintaining and/or enhancing wildlife habitats. This easement would ensure the property remains in private ownership and operation, while preserving important agricultural lands, wildlife habitats, open space and historic sites. The easement would also guarantee reasonable public access for hunting and wildlife viewing on the project area. As with other FWP property interest proposals, the Montana Fish, Wildlife & Parks Commission must approve any easement acquisition proposed by the agency. In addition, the Montana Board of Land Commissioners is also required to review and approve the Department's proposal for this conservation easement acquisition as this action has a value greater than $100,000 and is larger than 100 acres. This Decision Notice is part of that evaluation process.

Since Dugas Farms meets and/or exceeds all qualifications of the Habitat Montana program, the FWP Region 4 Supervisor recommends that the Fish, Wildlife & Parks Commission approve the purchase of the proposed conservation easement from Larry and Donna Dugas.

MONTANA ENVIRONMENTAL POLICY ACT PROCESS

FWP is required to assess impacts to the human and physical environment under the Montana Environmental Policy Act (MEPA). The Dugas Farms Conservation Easement proposal and its effects were documented by FWP in an Environmental Assessment.

PUBLIC COMMENT

A public comment period for the EA was established from August 10 through September 10, 2010. Public notice of the proposed action were offered to about 50 newspapers and news outlets in the state, and was also placed on the FWP website. A public meeting was held at the Ulm School on August 25, 2010. Approximately 75 copies of the Environmental Assessment were distributed to adjacent landowners, sportsmen groups, MT Stockgrowers, County Commissioners and other interested parties. Copies were available at the FWP Region 4 Headquarters during indicated comment period.

All public comments received remain on file at the Great Falls FWP office and are available for public review. Consideration and evaluation of public comment is distilled in the attached Public Comment and Issues Addendum to the EA.

Public Meeting: A public meeting was held at the Ulm School on August 25, 2010 having 19 individuals attending. Additional FWP representation included: Gary Bertellotti - Region 4 Supervisor, Graham Taylor - Region 4 Wildlife Manager and Cory Loecker - Region 4 Great Falls Area Biologist. Landowners were also present. Meeting officer Graham Taylor explained the format and purpose of the meeting. Copies of the EA and Management Plan were made available to all attendees, as was a comment sheet. Following the information presentation of the draft EA and Management Plan by wildlife biologist Cory Loecker, an informative question and answer session ensued. Summary of comments and questions from the public meeting are detailed in the Public Comment and Issues Addendum attached to this Decision Notice.

Written Comments: Written comment totaled 27 responses. Twenty-five (25) responses endorsed the "Proposed Action" alternative of the draft EA, with two (2) respondents opposing the "Proposed Action" of FWP purchasing a Conservation Easement from Riverdale Ranch, choosing Alternative A "No Action". Further analysis of comment follows:

Comment supporting FWP purchase of conservation easement (support "Proposed Action")	**25**
Comment opposed to FWP purchasing conservation easement (support "No Action")	**2**
Total comments received (all MT residents)	**27**

The comments/responses are included in a Public Comment and Issues Addendum attached to this Decision Notice.

FINDING OF NO SIGNIFICANT IMPACT

Based on the analysis in the EA and in consideration of public comment addressed in the Addendum, FWP has selected the preferred "Proposed Action" alternative. This decision is in the best interest of the public, wildlife and wildlife habitat resources and is consistent with current Habitat Montana program guidelines, goals and objectives. FWP has reviewed the EA and applicable laws, regulations and policies and has determined that this action will not have a significant effect on the human environment. Therefore, an Environmental Impact Statement is not necessary.

MODIFICATIONS TO ENVIRONMENTAL ANALYSIS AND MANAGEMENT PLAN
No modifications to the Environmental Analysis, Management Plan or Socio Economic Analysis were made as a result of the public review period.

DECISION
Utilizing the Environmental Analysis, Management Plan, Socio Economic Analysis and public comment, a decision must be rendered by FWP that addresses the interests and issues identified for this proposed project. Given results of FWP's analysis coupled with public comment, FWP's purchase of this conservation easement from Dugas Farms utilizing FWP Habitat Montana and Upland Game Bird Program funds, and Partner dollars, is warranted. After review of this proposal and the corresponding public support and comment, it is my recommendation that FWP purchase a conservation easement from Dugas Farms subject to approval by the FWP Commission.

CONCLUSION
By notification of this Decision Notice, the draft EA is hereby made the final EA. The finding of selection for the preferred "Proposed Action" alternative is the product of this Decision Notice.

Gary Bertellotti

9/15/2010
Date

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MONTANA FISH, WILDLIFE & PARKS
Dugas Farms Conservation Easement
Environmental Assessment

Public Comment and Issues Addendum

Public comment was solicited on the draft Environmental Assessment "Dugas Farms Conservation Easement" from August 10 through September 10, 2010. Written comment totaled 27 responses. Twenty-five (25) responses endorsed the "Proposed Action" alternative of the draft EA, with two (2) respondents opposing the "Proposed Action" of FWP purchasing a Conservation Easement from Dugas Farms. Further analysis of comment follows:

Comment supporting FWP purchase of conservation easement (support "Proposed Action")	**25**
Comment opposed to FWP purchasing conservation easement (support "No Action")	**2**
Total comments received (all MT residents)	**27**

Issues and Comments:

Twenty-five (25) individuals and/or organizations commented in favor of the "Proposed Action" for FWP to purchase a conservation easement from Dugas Farms. All parties supported maintaining wildlife, wildlife habitats, open spaces and access for recreational purposes into perpetuity. Two (2) commented opposing the "Proposed Action".

Comment: Non-hunting access for recreation users - how will that be controlled and handled?
Non-hunters (wildlife viewers, hikers, etc) will be able to access the property with Landowner permission. They will be required to park and walk from designated parking areas as described in the hunting rules and map.

Comment: What is the liability for land owners and neighbors?
Since the landowner is partnering with FWP and not charging fees for hunting and recreational access through this easement, the landowner inherits the minimum liability in the court of law. The state of MT MCA 70-16- 3 details recreational access and landowner liability as follows:

MCA 70-16-301. Recreational purposes defined. *"Recreational purposes", as used in this part, includes hunting, fishing, swimming, boating, waterskiing, camping, picnicking, pleasure driving, biking, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions. The term includes the private, noncommercial flying of aircraft in relation to private land.*

MCA 70-16-302. Restriction on liability of landowner. *(1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802.*

Comment: Whitetail road is a private road with an RID on it. Will FWP pay their fair share for access to Dugas Farms in road maintenance?
"Whitetail Lane" is a private road. Landowners living on "Whitetail Lane", including Dugas Farms, can permit/invite any guest to access their property. Current landowners of Dugas Farms are proposing to allow up to 800 hunter days during open hunting seasons to access their property through this easement, which is currently less than has been allowed in the past. Current proposed allowed hunter days is derived from a maximum of 3 hunters/party and 2 parties/day during open hunting seasons, which is unlikely to be met. It is expected that about ½ of the available slots will go unfilled in a given season. It is also expected that traffic on "Whitetail Lane" to Dugas Farms will be less that it has been in the past through this easement.

Comment: Can landowner Dugas allow more hunters than in the easement?
The easement requires the landowner allow public access for hunting and wildlife viewing. This easement requires up to 800 hunter days to the general public as detailed in the Management Plan hunting rules. The landowner can allow hunting and recreational opportunities in addition to these 800 hunter days at their discretion.

Comment: Campfires on the property and at Dunes FAS could be a problem what are you going to do about this?
There is no camping or campfires allowed on the Dugas Farms property through this easement as described in the hunting rules of the Management Plan. The neighboring Dunes FAS (Fishing Access Site,) is owned and managed by FWP, which is not part of this easement or process.

Comment: Who controls noxious weeds on the property?
As mentioned in the EA, noxious weed control and management will continue to be the responsibility of the Landowner. The landowner(s) will be responsible for complying with standards set by the Cascade County Weed Board.

Comment: How are you paying for this, what was the appraised price? It is too much money for the easement.
FWP hired an independent appraiser to appraise the ranch and the easement value (Terra Western Associates, Big Timber, Montana). The appraised value attributable to the property was $2,562,000. The appraised value of this conservation easement is the market value of the rights surrendered by the landowner. The appraisal concluded that the property has suffered a diminution in overall value of approximately 60.0% to the land asset, thus the reported value difference for the easement rights is $1,537,200. FWP has offered a bargain sale value of 40% of the appraised value of the property or ~ $1,025,000 for the conservation easement. Therefore, the price to be paid for the conservation easement encumbrance is much below the appraised fair market value.