

**RESERVATION OF EASEMENT
UNITED STATES OF AMERICA DEPARTMENT OF THE
ARMY**

WHEREAS, this easement (hereinafter "Easement") is created under the authority and in furtherance of the Charles M. Russell National Wildlife Refuge Enhancement Act of 2000, Title VIII of Public Law 106-541, 114 Stat. 2699 (hereinafter, "the Act") ; and

WHEREAS, Eighty Five (85) real property parcels owned by the United States located within the boundary of the Charles M. Russell National Wildlife Refuge, Montana will be divested from Federal ownership into private ownership; and

WHEREAS, Certificate(s) of Survey (hereinafter "Certificate(s) of Survey") dated January 24, 2011, filed with the Valley County Clerk and Recorder under document No. 143506, depicting eighty five (85) real property parcels (also referred to as lots) and adjacent lands within the boundary of the Charles M. Russell National Wildlife Refuge, Montana have been filed by the United States Department of Army; and

WHEREAS, Section 804(c)(5) of the Act requires the Secretary of the Army, with the concurrence of the Secretary of the Interior, to prepare permanent easements or deed restrictions to be enforceable by the Secretary of the Interior or an acceptable third party, to be placed on the Lots before conveyance out of Federal ownership in order to; (A) comply with the Act of May 18, 1938 (16 U.S.C. 833 et seq.); (B) comply with any other laws (including regulations); (C) ensure the maintenance of existing and adequate public access to and along Fort Peck Lake Reservoir; (D) limit future use of cabin sites to non-commercial single-family use, and the type and intensity of use of the cabin sites as of the date of enactment of the Act and (E) maintain the values of the Charles M. Russell National Wildlife Refuge; and

WHEREAS, Section 804(h)(1) of the Act requires the Secretary of the Army, with the concurrence of the Secretary of the Interior, to ensure that the deeds of conveyance for the Three Hundred and Ninety-Two (392) Lots include necessary easements and deed restrictions, and that such easements and deed restrictions are made binding on all subsequent purchasers of the Three Hundred and Ninety-Two (392) Lots, before any such Lots are conveyed to private ownership;

NOW, THEREFORE, By this instrument there is reserved in the United States of America, and its assigns, a perpetual and assignable Easement on the real property described below.

Pursuant to Section 804(h)(1)(B) of the Act, the Easement reserved by this instrument is created **in perpetuity**, and is binding on all future owners of the Lot(s), and their heirs, successors and assigns, lessees, and any other person(s) claiming under them. By acquiring or claiming an interest in the Property subject to this Easement, such future owners, heirs, successors and assigns, lessees, and others claiming under them covenant and agree to do or refrain from doing, severally and collectively, such activities on the Lot(s) as are required or

BY: *Lynne Nyquist*

prohibited by this Easement. This Easement is being reserved by the Secretary of the Army for administration by the U.S. Department of the Interior, U.S. Fish and Wildlife Service. Pursuant to Section 804(c)(5) of the Act, the restrictions and provisions of this Easement are enforceable by the Secretary of the Interior and his/her assigns. This Easement does not create any rights to the general public for access to or entry upon the Lot(s) for any purpose.

Section 1. Description of Easement Area

The real property to which the terms of this Easement apply is located in Valley County, State of Montana, to wit:

SEE LEGAL DESCRIPTION IN ATTACHMENT A

The Certificate of Survey to which this Easement is attached shows the complete legal description of the Lots. Such legal descriptions are hereby incorporated into, and made a part of, this Easement.

Section 2. Definitions

2.1: "Cabin Site Area(s)" shall have the same meaning as defined in Section 803(3) of the Act.

2.2: "Fort Peck Lake Association" shall mean the homeowners' association created by the Owners and permittees, successors and assigns, of the Lots and incorporated on July 7, 1999.

2.3: "Improvement(s)" shall mean all structures and improvements located on a Lot.

2.4: "Land(s)" shall mean real property or an interest in real property.

2.5: "Lot(s)" shall mean and refer to any of the Three Hundred Ninety-Two (392) Fort Peck real property Parcels as shown on the attached Certificate(s) of Survey filed by the Corps. The term 'Lots' shall have the same meaning, and be interchangeable with, the term 'Cabin Site(s), and Parcel' as that term is defined in Section 803(2) of the Act.

2.6: "Owner(s)" shall mean and refer to any person or if more than one, all persons collectively, or entities, who hold fee simple title to the Lot, including buyers under a contract for deed and contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall include all heirs, successors, assigns, lessees, and all others claiming under them.

2.7: "Purchaser(s)" shall mean a Grantee of the United States, whether by deed or by patent, and subsequent Owner(s) regardless of how title is obtained.

2.8: "Refuge" shall mean the Charles M. Russell National Wildlife Refuge in the state of Montana.

2.9: "Reservoir" shall mean the Fort Peck Lake Reservoir.

2.10: "Dwelling(s)" shall mean and refer to one (1) building constructed on each individual Lot for the occupancy and use by one (1) family. A family for the purposes of this document is one or more persons living and cooking together as a single housekeeping unit.

Section 3. Prohibitions Provided by Public Law 106-541.

3.1: Access to Reservoir. The Secretary, the Purchaser, and each subsequent Owner of each Lot shall ensure that public access to and along the shoreline of the Reservoir is not obstructed and adequate public access to and along the shoreline of the Reservoir is maintained.

3.2: Vehicular Access. Nothing in this Easement authorizes any addition to or improvement of vehicular access to a Cabin Site.

Section 4. Other Prohibitions Authorized by Public Law 1-6-541

4.1: Land Use. All Lots contained in the Certificate(s) of Survey shall be used for non-commercial, single family use only.

- a. There shall be no more than one (1) dwelling for single family use on each Lot.
- b. No commune, co-operative, apartment type structure or similar type of living arrangements shall be permitted anywhere on the Lots, nor shall any additional dwellings, or other temporary quarters be constructed on any Lot.
- c. No trailer, mobile or other portable home, tent, shack, garage, barn, or other out building shall be used for single family use on any Lots for more than fourteen (14) days of a thirty (30) day consecutive period. However, the Lot Owner shall be allowed to reside in such temporary quarters for a period not to exceed eighteen (18) months during the construction of the primary residence on the Lot, or during a major reconstruction of the residence that renders it uninhabitable.
- d. No Lot shall be subdivided. Any improvement(s) placed thereon shall conform to the zoning and building codes of the state and county in which the Lot is located.

4.2: Commercial Use. No commercial operation, business, trade, manufacturing, industrial enterprise, mining, or any other enterprise of any kind for profit shall be carried on, upon, in front of, or in connection with the Lots, nor shall any Lot in any way be used for any other purpose than strictly residential purposes, home offices excluded. Any mineral extraction, including sand and gravel, will be considered a commercial activity. Rental of property for single family residential use is permitted.

4.3: Type of Use. Future use of each Lot is limited to non-commercial, single family use and the type and intensity of use of the cabin sites as of the date of enactment of the Act. For the purpose of this easement the word 'type' shall mean the function of a building; the word 'intensity' shall mean the reasonable needs of a single family use.

4.4: Fire Restrictions. The Owner of each Lot shall comply with all applicable state and county fire restrictions.

4.5: Fireworks. The use of, storage, or discharging of fireworks on any Lot(s) is strictly prohibited.

4.6: Sanitary Restrictions. The Owner of each Lot shall comply with all applicable state, county and federal laws and regulations relating to water supply, sanitation, sewage disposal, and air pollution.

4.7: Public Access. Public access to all public lands adjacent to the Lots will be retained by the United States and such access shall not be obstructed in any manner by the privatization of the Lots. No right of public access is granted for access to or entry on any and all Lots.

4.8: Improvement Districts. All rights to protest the creation of a road district and/or a community water or wastewater treatment system improvement district, whenever such action may occur, are hereby waived by the Owner of each Lot.

4.9: Exotic, Noxious, and Invasive Plant Species. To prevent introduction of exotic, noxious, and invasive plant species on the Refuge, Lot Owners must comply with all state and county laws, regulations, and ordinances pertaining to exotic, noxious, and invasive plant species.

4.10: Boundary Fences on S. Fork Area. With regard to twelve (12) Lots located within the South Fork Rock Creek Cabin Site Area.

- a. Public access routes to the twelve (12) Lots located within the South Fork Rock Creek Cabin Site Area will remain open and signed accordingly; and
- b. The Purchasers of twelve (12) Lots located in the South Fork Rock Creek Cabin Site Area will build and maintain a property boundary fence to delineate private and public land ownership. Examples of fences that meet this requirement would include, but not be limited to, post and pole, jack peg, split rail, and 3-4 strand wire and steel posts. In lieu of a fence, a Purchaser of one of the twelve (12) Lots within the South Fork Rock Creek Cabin Site Area may, subject to the approval of the Secretary of the Interior or his/her authorized agent, erect a wood or steel post of no less than four (4) feet in height at each survey corner of his/her Lot and maintain all vegetation between the corner posts at or below a height of one (1) foot so as to maintain a clear and unobstructed view from one corner post to the immediately adjacent corner post. If a Lot Owner fails to maintain a property boundary fence required by this subsection, or fails to maintain a clear and unobstructed view between corner posts on his/her Lot, the Secretary of the Interior or his/her authorized agents shall have the option and right to construct or order the construction of a boundary fence at the expense of the Lot Owner. Owners of Lots with common boundaries will be required to construct and maintain a fence or fences on (or maintain an unobstructed view across) the boundary between the privately-owned Lot and publicly-owned land, but not on the boundary between two privately-owned Lots. Construction of a property boundary fence, or (with the approval of the Secretary of the

Interior or his/her authorized agent) establishment of a clear and unobstructed view between corner posts, will be a condition of the sale of any of the twelve (12) Lots located within the South Fork Rock Creek Cabin Site Area and must be pre-approved by the Secretary of the Army and the Secretary of the Interior before such sale.

Section 5. General Provisions

5.1: Duration. Pursuant to Section 804(h)(1)(B) of the Act, this Easement shall run in perpetuity with and be appurtenant to the land comprising the Lots and bind the present Owner and his/her/or its successors and assigns, and shall inure to the benefit of and be enforceable by the Secretary of the Interior, successor or assigns, in perpetuity.

5.2: Recorded Documents. Separate recorded documents and declaration of covenants, conditions, and restrictions pertaining to the Three Hundred and Ninety-Two (392) Lots are permissible as long as such recorded documents do not conflict with this Easement, covenants recorded by the United States for enforcement by the Association, or any federal, state, and local regulations and so long as such documents do not adversely impact the biological integrity of the Refuge. Any such recorded documents will be subject to and subordinate to the terms of this Easement and covenants recorded by the United States for enforcement by the Association.

5.3: Enforcement. The Secretary of the Interior and his authorized agents shall have the option and right to enforce by any proceeding at law or in equity all provisions of this Easement. The method of enforcement may include proceedings to enjoin actual or threatened violations, to recover damages, or both. The Secretary of Interior shall have the right to periodically inspect, with reasonable notice to the landowner, the exterior portion of lots for compliance with terms and conditions of this easement. The right to inspect shall not include the right to inspect the interior of any structure on the lot unless owner consent or legal requirements have been met. Failure by the Secretary of the Interior to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

5.4: Notices. Any notice required to be sent under the provisions of this Easement shall be deemed to have been properly sent when mailed, postage paid to the last known address of the person or entity appearing as Owner of record at the time of such mailing

5.5: Severability. Invalidation of any of the provisions contained in this Easement by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

5.6: Repair and Replacement. Maintenance, repair, and in the event of destruction, reconstruction, of buildings, structures and improvements existing on a Lot as of December 11, 2000, the date of enactment of the Act, is permitted. If a structure on a Lot is destroyed, the Owner may replace it with a structure of similar function.

5.7: Compliance with Law. No improper or unlawful use shall be permitted or made of the Lots or any part thereof. All valid laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Lots shall be observed.

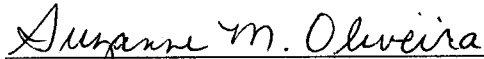
5.8: Conflict. In the case of any conflict between this Easement and any covenants, conditions, and reservation, easements or other encumbrances simultaneously or subsequently recorded against the Lots (including covenants recorded by the United States for enforcement by the Association), this Easement shall control.

IN WITNESS WHEREOF, the Secretary of the Army acting by and through the Chief of Real Estate, U.S. Army Corps of Engineers, District, Omaha, does hereunto set my hand by authority of the Secretary of the Army this 6th day of January, 2011.



Lon G. Larson
Chief, Real Estate Division
Real Estate Contracting Officer
U.S. Army Corps of Engineers, Omaha

WITH THE CONCURRENCE of the Secretary of the Interior acting by and through the Chief, Division of Realty, Region 6, U.S. Fish and Wildlife Service, this 19th day of January, 2011.



Suzanne M. Oliveira
Chief, Division of Realty, Region 6
U.S. Fish and Wildlife Service

ATTACHMENT A
LEGAL DESCRIPTION

REAL PROPERTY TO WHICH THE TERMS OF THIS RESERVATION OF
EASEMENT APPLIES:

85 Parcels of Land located in portions of Sections 24 and 25, Township 26 North, Range 40 East,
Principal Meridian, Montana, Valley County, Montana, and filed as:

Certificate of Survey No. 396

Document No. 143506