

MEMORANDUM

FROM: Thomas J. Bourguignon, Maclay Law Firm

TO: [Land Trust]

DATE: May 23, 2023

RE: _____ Ranch – Review of Preliminary Title Commitment

You asked me to represent _____ (“Land Trust”) in its acceptance of a donation of a Conservation Easement interest (“CE”) on property in _____ County, Montana, commonly known as the _____ Ranch (the “Property”), which is owned by _____ (“Landowner”). The CE will be donated by Landowner.

On June 29, 2022, I received the preliminary title commitment, File No. _____, issued by [Title Company], which has an effective date of April 5, 2022. You have told me that Land Trust does not plan to purchase a title insurance policy for this transaction, and that Land Trust is being charged an upfront research fee by First American Title for its preparation of the Commitment. You indicated that the research fee will also include a “date down” update by the title officer, in which an updated Commitment will be issued at or shortly before closing on the CE to confirm that no new exceptions have arisen since the effective date of the Commitment.

On April 18, 2023, I received the “date down” title commitment from [Title Company], File No. _____, Rev. No. 2, effective April 18, 2023 (the “Commitment”).

I have completed my review of the Commitment, and this Memorandum summarizes my notes and comments. Because Land Trust does not intend to obtain a title insurance policy, there is little need to ask the title officer to correct minor errors in wording or typographical errors. The process of reviewing the Commitment for this transaction is focused instead on ensuring there are no substantial defects in title that need to be cured before closing on the CE.

Executive Summary. The Commitment does not reveal any fatal defects or “dealbreakers” in Land Trust’s acceptance of a CE on the Property. There are no encumbrances that must be cured or removed prior to the closing of the CE (for instance, there are no mortgages or rights of first refusal affecting the property, and no liens or judgments docketed against the Property).

This memorandum will proceed through the different sections of the Commitment: Schedule A; the legal description; Schedule B, Part I; and Schedule B, Part II.

Schedule A

Paragraph 3: The interest being acquired is in fact a CE interest, not fee title. Since Land Trust doesn’t intend to purchase a title policy, there is not a reason to correct this.

Paragraph 4: According to the Montana Secretary of State, the formal name of the landowner is _____. I have reviewed corporate authorization documents for Landowner, and conclude that their signature is properly authorized if in the following form: [signature block]

Legal Description

Following is the legal description of the Property, taken from the Commitment.

Note that I include my comments in bold font immediately below parcels where appropriate. Also note that, after each parcel, I include a “parcel number” in parentheses. These do not appear on the title commitment; I add them here for reference, so that in the list of exceptions below, I can refer to the parcel numbers for shorthand. Some parcel numbers are excluded because the landowner excluded some parts of the larger property from the CE.

Parcel A:

That part of Section ___, Township 4 South, Range 8 East, of the Principal Montana Meridian, ___ County, Montana, described as Tract B-1 of Certificate of Survey No. ___, on file in the office of the Clerk and Recorder of said county. (Parcel 13)

Tract 2 of Certificate of Survey No. ___, being a relocation of common boundaries between Tract B-2 of Certificate of Survey No. ___ and the remainder of Section ___, located in the N 1/2 of Section ___, Township 4 South, Range 8 East, according to the official plat thereof on file and of record in the office of the Clerk and Recorder, ___ County, Montana. (Parcel 14 and 15)

That part of Government Lot 3 of Section ___, Township 4 South, Range 9 East, of the Principal Montana Meridian, ___ County, Montana, described as Tract 10 of Certificate of Survey No. ___, on file in the office of the Clerk and Recorder of said county. (Parcel 16)

TJB: On Cadastral, this tract appears to be aggregated with lands described in the following paragraph.

Also note that within Section ___, the parcel in the NW part of section is called Tract 1 of COS ___, which is same name as the Tract 1 of COS ___ in Section ___. The title officer reviewed this question, and concluded that the legal description correctly describes the lands owned by Landowner.

That part of the N¹/₂ of Section ___, Township 4 South, Range 9 East, of the Principal Montana Meridian, ___ County, Montana, described as Tracts 5, 6, 7 and 8 of Certificate of Survey No. ___, on file in the office of the Clerk and Recorder of said county. (Parcel 21)

Township 4 South, Range 9 East, of the Principal Montana Meridian, ___ County, Montana Section ___: Government Lots 4, 5, 6, 7 (Parcel 22)

TJB: Seems to overlap with the legal description 3 paragraphs down (Section __, W1/2, W2E2). The title officer reviewed this question, and concluded that the legal description correctly describes the lands owned by Landowner.

That part of Section __, Township 4 South, Range 9 East, of the Principal Montana Meridian, ____ County, Montana, described as Tracts 2 and 3 of Certificate of Survey No. ____, on file in the office of the Clerk and Recorder of said county. (Parcel 23)

That part of Section __, Township 4 South, Range 9 East, of the Principal Montana Meridian, ____ County, Montana, described as Tract 4 of Certificate of Survey No. ____, on file in the office of the Clerk and Recorder of said county. (Parcel 24)

Township 4 South, Range 9 East, of the Principal Montana Meridian, ____ County, Montana Section __: W $\frac{1}{2}$; W $\frac{1}{2}$ E $\frac{1}{2}$; Excepting Therefrom Certificate of Survey No. ____; and Further Excepting Therefrom Government Lot 4. (Parcel 25)

TJB: See note for Government Lots 4-7 above. I suggested to the title agent that the description should exclude gov't lots 4, 5, 6, and 7, not just Lot 4. The title officer reviewed this question, and concluded that the legal description correctly describes the lands owned by Landowner.

Parcel B:

That part of the S $\frac{1}{2}$ of Section __ and the SW $\frac{1}{4}$ of Section __, Township 4 South, Range 8 East, of the Principal Montana Meridian, ____ County, Montana, described as Tract A, of Certificate of Survey No. ____ on file in the office of the Clerk and Recorder of said County. (Parcel 39)

[End of legal description.]

Schedule B Part 1 – Requirements (for issuance of title policy)

Note: Since Land Trust doesn't intend to obtain a title policy, these requirements are not of concern. Land Trust should independently obtain documents related to the landowner's LLC to ensure proper authority to sign documents.

Schedule B Part II –Exceptions

Following is the list of "general exceptions" (#1-10) and "special exceptions" (#11-49), taken from the Commitment. I include notes immediately below each exception.

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records.

TJB: This is a standard exception. Acceptable.

2. Any facts, rights, interests, or claims which are not shown by the Public Records but which could be ascertained by an inspection of said Land or by making inquiry of persons in possession thereof.

TJB: This is a standard exception. Acceptable. Land Trust should inspect the Property and also ask landowner if landowner is aware of any such claims.

3. Easements, claims of easement or encumbrances which are not shown by the Public Records.

TJB: This is a standard exception. Acceptable. Land Trust should ask landowner if landowner is aware of any such unrecorded easements.

4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the Land, and that are not shown in the Public Records.

TJB: This is a standard exception. Acceptable. Land Trust should ask landowner if landowner is aware of any such encroachments, boundary line issues, or other unrecorded encumbrances.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, ditch or ditch rights, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

TJB: This is a standard exception. Acceptable. Land Trust should obtain a mineral rights report if feasible in order to determine whether some or all of the mineral rights are severed from the surface estate.

6. Any liens, or rights to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the Public Records.

TJB: This is a standard exception. Acceptable. At/before closing, Land Trust should have landowner confirm in writing that there are no such liens, or work done that might give rise to a lien.

7. Any right, title or interest in any minerals, mineral rights or related matters, including but not limited to oil, gas, coal and other hydrocarbons, sand, gravel or other common variety materials, whether or not shown by the Public Records.

TJB: This is a standard exception. Acceptable. See #5 above—mineral rights report is recommended.

8. County road rights-of-way not recorded and indexed as a conveyance of record in the office of the Clerk and Recorder pursuant to Title 70, Chapter 21, M.C.A., including, but not limited to any right of the Public and the County of ____ to use and occupy those certain roads and trails as depicted on County Surveyor's maps on file in the office of the County Surveyor of ____ County.

TJB: This is a standard exception. Acceptable. Happy to discuss this exception in terms of Land Trust's general knowledge of county roads in ____ County. I haven't obtained surveyor's maps for ____ County in the past, and I don't have any knowledge of county roads in ____ County.

9. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I - Requirements are met.

TJB: This is a standard exception. Acceptable. This exception would normally be removed before issuing a title policy, since the title commitment gets "Dated down" to closing. I reviewed the "date down" commitment to conclude that no new exceptions were added.

10. 2023 taxes and special assessments are an accruing lien, amounts not yet determined or payable.

The first one-half becomes delinquent after November 30th of the current year, the second one-half becomes delinquent after May 31st of the following year.

General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

[chart omitted]

TJB: This is a standard exception. Acceptable.

Special Exceptions:

11. The affect of an order creating the _____ Irrigation District recorded September 29, 1920, in [Book ___ of Miscellaneous, Page ___](#).

TJB: District Court orders creation of _____ Irrigation District. Creates sub-districts each with a commissioner.

Affects: Parcels 18, 19, 20, 21.D, 28, 31, 37

Acceptable.

12. Right-of-way granted to Mountain States Telephone and Telegraph Company, recorded as in [Book ___ of Miscellaneous, Page ___](#).

TJB: Easement to construct, operate, and maintain telephone/telegraph lines incl. poles, wires, and fixtures. May attach to other companies' lines. May trim trees along lines; may erect guy and brace poles. Lines to be located along route of present county road.

Affects: Parcels 13, 14 (Sec 25); 30, 34B, 34C, 35B, 38A, 38B (Sec 19)

Acceptable.

13. Easement for Park Branch Project No. ___ granted to State Water Conservation Board, recorded May 4, 1936 in [Book ___ of Miscellaneous, Page ___](#).

TJB: Easement for construction of canal for flow of water, and right to repair and maintain canal. 50' wide. For purpose of operating an irrigation ditch or canal.

Affects: Maybe Parcel 3 but the metes and bounds description seems to be on land owned by [neighbor].

Acceptable; but likely doesn't affect the Property.

14. Easement for Park Branch Project No. ___ granted to State Water Conservation Board, recorded May 28, 1936 in [Book ___ of Miscellaneous, Page ___](#).

TJB: Easement for construction of canal for flow of water, and right to repair and maintain canal. 50' wide. For purpose of operating an irrigation ditch or canal.

Affects: Parcels 19 (Sec 4) and 20 (Sec 5).

Acceptable.

49. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of [Certificate of Survey No. _____](#), recorded March 24, 1999, as Instrument #_____, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

TJB: Survey shows 60' wide county road easement on western boundary of parcel for Trail Creek Road.

Affects: Parcels 5, 6, 39
Acceptable

50. Right-of-way granted to Park Electric Cooperative, Inc., recorded June 9, 1997, in [Book/Roll](#) ____, [Page](#) ____, under Document #_____.

TJB: Easement to construct, operate, maintain, repair an underground electric distribution line, 20' wide corridor;
Affects: Parcels 5, 39 (Sec 11)
Note: Same instrument as Exception 37.