

**From:** Mike Grimes [mailto:grimesm@linctel.net]

**Sent:** Friday, December 09, 2011 12:02 PM

**To:** Steve Bullock

**Cc:** FS-comments-northern-helena; RICHARD OPPER; Brian D. Schweitzer; Dave Lewis; Rick Ripley; Andy Hunthausen; Derek Brown; Eric Griffin; Mike Murray; Bill Frisbee; Brian & Janet Sholder; Damon Kegel; Linda Daugherty; Lonnie McAllister; Sue & Nyle Howsman; Zach Muse

**Subject:** Mike Horse Repository - Legal Issues

**Importance:** High

Dear Attorney General Bullock,

attached is a letter outlining certain legal issues relating to current plans of the Montana DEQ and USFS requesting you, as Attorney General and a member of the Montana Land board, to deny their attempt to purchase private property known as section 35 (Township 15, Range 7 West) and locate a major waste repository on the property. Also attached is a copy of the Reserved Restrictive Easements that were placed on subject property in December of 1999.

Both of these documents are also being filed as a public comment with the USFS regarding Technical Memorandum FS2160 posted September 19, 2011.

A hard copy will be mailed today.

Mike Grimes

[Two attachments with email]

December 9, 2011

ATTORNEY GENERAL STEVE BULLOCK  
STATE OF MONTANA  
Department of Justice  
P.O. Box 201401  
Helena, MT 59620-1401

**SUBJECT: Mike Horse Repository – Legal Issues**

Dear General Bullock:

You recently received a copy of the comments of the Lincoln Community Council regarding the current plan for the state of Montana to purchase Section 35 and use it as a repository site for the Mikehorse Mine tailings. I'm writing to you today in your capacity as a member of the State Land Board asking you to deny any request from DEQ that the state purchase Section 35 for this purpose.

The comments (dated Dec 2<sup>nd</sup>) from the Lincoln Community Council make it clear that the current plans of the agencies are not acceptable to the Community Council, the people in Lincoln or any of the residents of the Upper Blackfoot Valley. I hope my comments and those of my neighbors will be favorably considered at the meeting to be held among the agency heads on December 19, 2011.

**1. Summary of Reasons Why Section 35 Should be Eliminated:**

- a. All the reasons set forth in the comments of the Upper Blackfoot Valley Lincoln Community Council.
- b. Restrictive easements placed on Section 35 by Sieben for its benefit and the benefit of the state of Montana and the citizens and residents of the upper Blackfoot Valley prevent use for such a repository. The easements are discussed in further detail below. A copy of the easements is attached to this letter.
- c. DEQ has stated the primary criteria for a repository are: the land should be "high and dry" - Section 35 fails to meet either of those criteria, it is neither high nor is it dry. This has been proven by the ground water testing and the site elevation is less than 150 feet above the Blackfoot River.
- d. A repository on section 35 will adversely affect the adjacent property owners jeopardizing their health and wiping out their property values.
  - i. During construction it will have serious effects due to noise, dust, vibration and highway safety and will make it very difficult if not impossible to sell any of this property.
  - ii. After construction the property values and ability to sell adjacent down gradient property will be affected forever.
- e. Section 35 is downstream from the last major wetlands of the Blackfoot river and will eliminate the insurance these wet lands provide to the people of Lincoln and the Blackfoot River as stated in Dr Andrew Wilcox's October 21, 2011 comments which state in part: "The wetlands create a natural insurance policy against catastrophic downstream contamination, as was illustrated in the 1975 tailings dam failure".

- f. DEQ's position that Section 35 is the "most protective" of all of the alternatives cannot be substantiated scientifically because no ground water tests were conducted on many of the alternatives, and no site within the Blackfoot Watershed could be more protective than a site outside the watershed.
- g. Placing this repository in Section 35 will violate the Montana Constitutional rights of all of us who live in the area adjacent to or downgradient to "a clean and healthful environment" giving rise to claims for injunctive relief, inverse condemnation, breach of the covenant of good faith and fair dealing implied in all contracts, including our contract of purchase with Sieben.
- h. The devastating effect that will be visited on the lives and property of those living near Section 35 including myself and my wife Barbara.

## **2. Background**

In 1999, my wife and I bought 132 additional areas of land from Sieben Ranch – the same year Stimson lumber bought nearly 4000 acres of the Blackfoot Valley. The parcel purchased by Stimson is called the "Willow Creek" property; they purchased it under the name Geographic. We were very concerned when we found out all of the land around us and our neighbors, currently owned by Sieben, was going to be sold; however, the Realtor, Bob Kiesling, told us: "not to worry, they (Stimson) are buying it for long term timber production - the new owners will be wonderful stewards of the land". We were told by John Baucus there would be restrictive easements placed upon the property to make certain the conservation values of the property were preserved., He outlined what the restrictions entailed described in more detail below,. The restrictive easements were placed upon all of the land by Sieben as promised; they were recorded on December 22<sup>nd</sup> 1999. A copy is attached. We relied upon these easements when we purchased our property.

## **3. Restrictive Easements:**

The salient parts of the restrictive easements are as follows:

"WHEREAS, the Property constitutes a valuable element of the Blackfoot Valley (Willow Creek) and Canyon Creek Valley (Specimen Creek) and each valley's open space lands (hereinafter the "Conservation Values") which are of great importance to Sieben Ranch **and to the people of the State of Montana**, and are worthy of preservation; WHEREAS, it is the intent of this Easement to maintain the rural, agricultural and ranching, timber productivity, timber harvest and natural scenic qualities of the area by the retention of significant open space for a variety of uses, including wildlife habitat, recreation, forest management, agricultural, ranching and guest ranching purposes; WHEREAS, Sieben Ranch desires and intends that the Conservation Values of the Property be preserved and maintained by a continuation of land uses that will not substantially impair those Values;" (emphasis supplied)

### **Some of actions or uses that are prohibited:**

- Subdivision or de facto subdivision
- Any construction activities without prior consent of Sieben Ranch
- Exploration, extraction activities of any materials ... including soils, sand & gravel, peat or rock

- Dumping of hazardous wastes, contaminated material or toxic material or any noncombustible material
- Roads - except as needed for ranching, timber or agricultural uses

These easements were not placed upon this property simply to benefit Sieben Ranch but also the People of the State of Montana. We relied upon these easements being put in place. To completely eliminate the protection provided by these easements violates the implied covenant of good faith and fair dealing.

As important as the easement itself is the provision that the easements can only be extinguished if circumstances arise in the future that renders the purpose of the easement impossible to accomplish. The easements may be amended; however, to place a mine waste repository on this property will require extinguishment because nearly every prohibited use will occur. The document also states in Section (XI, G) - Conservation Intent "Any ambiguities in this easement shall be construed in a manner that best effectuates its conservation values".

#### **4. Stimson Agreement:**

When Stimson Lumber first entered into the agreement with DEQ and the USFS to allow testing in the Horse Fly Drainage and to allow the Mike Horse repository to be placed on a piece of their property in the Blackfoot Valley - they knew, or should have known, this was a violation of the restrictive easements on their property. They also did not have the approval of Sieben Ranch, which is a requirement of the easements. The agreement was enlisted at a time Stimson was being sued by DEQ and Stimson is being required to accept a credit of only \$300,000 - \$132,000 less than the property actually appraised for.

#### **5. Inverse Condemnation:**

The following is part of the formal comments submitted by the President of First Bank Lincoln on December 5th 2011:

" they (the DEQ and USFA) have little to no concern about the economic ramifications for the neighbors and community of Lincoln. Many of those who own property in Lincoln have most of their net worth tied up in real estate. Choosing Section 35 for the waste repository may make some "scientific" sense, but I believe it could be economically catastrophic to adjacent landowners, especially those downstream. While the Forest Service may think that owning property next to this site would be "no big deal" (which is basically what a representative stated during the meeting) I think this choice would have severe impact on the property valuation."

#### **6. Land Board Approval:**

Because the purchase of section 35 involves over \$500,000, is not an act of condemnation, involves a disputed purchase of private property, and the land is not included in the UBMC defined area of the 2008 Bankruptcy Settlement Agreement; and therefore, is not covered under the rules of CERCLA – the purchase must be reviewed by the Land Board.

## **7. Cost to the Taxpayers:**

So far this quest to locate a repository on Section 35 has cost the Montana Taxpayer at least a half million dollars between money spent on planning, appraising, surveying, testing and attempts to justify this totally biased decision

If the agencies had simply worked in an open and transparent process instead of trying to operate behind closed doors and keep the Stimson land trade secret – a site would have been found and work would already be underway in resolving the remediation of the Mike Horse tailings.

General Bullock, those of us who live in proximity to Section 35 are not wealthy folks, but we cannot sit idly by and let Section 35 be made into a hazardous waste site without a fight. We have no desire to get involved in litigation with such heavy hitters as Stimson Lumber, Sieben Ranch, the US Forest Service and the State of Montana, but approval of this ill conceived plan will leave us with no other choice. We may as well “bet the farm” on litigation because if the repository is sited on Section 35 our collective property values will fall so precipitously that the “farm” will be toast anyway. Please help defeat this plan. The taxpayers have already been fleeced to the tune of \$500,000 or more for the attempt to justify siting on Section 35. At least that much will be spent in litigation costs not to mention damage awards that can be expected for destroying our clean and healthful environment and our properties.

Sincerely;

Mike Grimes  
PO Box 189  
Lincoln, MT 59639  
406-362-3091  
[grimesm@linctel.net](mailto:grimesm@linctel.net)

CC: (via e-mail)  
Mr. Richard Opper  
Governor Brian Schweitzer  
Lewis & Clark County Commissioners  
Lincoln Community Council  
Interested Parties



## RESERVED RESTRICTIVE EASEMENT

THIS RESTRICTIVE EASEMENT ("Easement") is hereby reserved by Sieben Ranch Company, a Montana corporation with a mailing address of P.O. Box 1683, Helena, Montana 59624 (together with its successors, and assigns collectively referred to as "Sieben Ranch"), concurrently with the sale by Sieben Ranch to Geographic Investments Group Ltd. Co., an Idaho limited liability company (together with its heirs, personal representatives, successors and assigns referred to as "Geographic") of the Willow Creek and Specimen Creek properties as more fully described below.

### RECITALS

WHEREAS, Sieben Ranch is the seller and Geographic is the purchaser of certain real property in Lewis and Clark County, Montana, commonly referred to as the "Willow Creek" and "Specimen Creek" properties and more fully described on Exhibit "A" as amended attached hereto and incorporated by this reference (hereinafter the "Property");

WHEREAS, Geographic is purchasing the Property for timber production, timber management, timber harvest, ranching, guest ranching/outfitting and limited residential use;

WHEREAS, Sieben Ranch desires to retain the mineral and subdivision and multiple unit residential or other similar rights associated with the Property;

WHEREAS, the Property has significant open space values as recognized in the Montana Open Space Land and Voluntary Conservation Easement Act, Montana Code Annotated ("MCA") Section 76-6-101, *et seq.*;

WHEREAS, the Property constitutes a valuable element of the Blackfoot Valley (Willow Creek) and Canyon Creek Valley (Specimen Creek) and each valley's open space lands (hereinafter the "Conservation Values") which are of great importance to Sieben Ranch and to the people of the State of Montana, and are worthy of preservation;

WHEREAS, it is the intent of this Easement to maintain the rural, agricultural and ranching, timber productivity, timber harvest and natural scenic qualities of the area by the retention of significant open space for a variety of uses, including wildlife habitat, recreation, forest management, agricultural, ranching and guest ranching purposes;

WHEREAS, Sieben Ranch desires and intends that the Conservation Values of the Property be preserved and maintained by a continuation of land uses that will not substantially impair those Values;

WHEREAS, the State of Montana has recognized the importance of private efforts toward voluntary conservation of private lands in the state by the enactment of MCA Section 76-6-101, *et seq.*, and 76-6-201, *et seq.*; and

WHEREAS, Sieben Ranch desires to retain such easement rights by its contractual authority, and may subsequently terminate or relinquish such rights in whole or in part to another entity, including but not limited to a qualified organization under MCA Sections 76-6-104(5) and 76-6-204, organized to conserve land for open space purposes, which entity is described in Section 170(h)(3) of the Internal Revenue Code of 1986 (hereinafter the "Code") as qualified to receive and hold conservation easements.

NOW, THEREFORE, in consideration of the sale of the Property and the mutual covenants contained herein, Sieben Ranch does hereby reserve this Easement consisting of the rights and restrictions hereinafter enumerated on, over and across the Property.

## SECTION I

### Purpose and General Effect of Easement

A. **Purpose.** It is the purpose of this Easement to assure that the Conservation Values will be maintained by Sieben Ranch, and to prevent any use of, or activity on, the Property that will significantly impair those Values. Sieben Ranch intends that this Easement will restrict the use of the Property to such activities as are consistent with that purpose (including forest management and timber harvest; ranching, guest ranching/outfitting and other agricultural uses; and hunting, fishing and other recreational uses consistent with the terms hereof). Sieben Ranch and Geographic recognize that changes in economic conditions, in technologies, in timber harvest, agricultural, ranch and forest management practices, and in the situation of Geographic may result in an evolution of land uses and practices related to the Property, provided that such uses and practices are consistent with the other terms and purposes of this Easement.

B. **Restrictions.** This Easement shall run with and burden title to the Property in perpetuity unless otherwise terminated or extinguished as provided herein, and shall bind Geographic and all future owners and tenants.

C. **Dedication.** The Property is hereby declared to be open space and may not, except as specifically provided herein, be converted from open space.

## SECTION II

### Rights Reserved

The rights reserved by this Easement are the following:

A. **Identification and Protection.** To identify, preserve and protect in perpetuity the Conservation Values, subject, however, to Geographic's rights as herein provided and further subject to all third party rights of record in the Property existing at the time of reservation of this Easement and not subordinated to this Easement.

B. **Access.** Upon prior notice to Geographic, to enter upon the Property (i) to conduct a base line study of existing weeds and to document the condition of the Conservation Values of the Property; and (ii) to inspect the same and to monitor Geographic's compliance with

the terms of this Easement in a manner that will not unreasonably interfere with the use of the Property by Geographic. This Easement does not reserve to Sieben Ranch any other rights to enter upon the Property.

C. **Injunctions and Restoration.** To enjoy any activity on, or use of, the Property which is inconsistent with the purpose of this Easement and to enforce the reasonable restoration of such areas or features of the Property as may be damaged by such activity or use.

### **SECTION III** **Granted Rights and Prohibited Uses**

A. **Granted Rights.** As owner of the Property, Geographic shall have the right to free enjoyment of the Property for itself and for its successors, and assigns, and shall have all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the terms of this Easement. Without limiting the generality of the foregoing sentence, those uses and practices set forth in this Section III are expressly permitted.

B. **Permitted Uses.** The following uses and practices, though not an exhaustive recital of consistent uses and practices, are hereby deemed to be consistent with the purpose of this Easement and are expressly permitted:

1. **Ranching activities.** To conduct ranching and other agricultural activities, including raising and managing livestock and planting, raising and harvesting trees.

2. **Hunting and fishing.** To use the Property for hunting of game animals and fishing and outfitted hunting and fishing.

3. **Water resources.** To maintain, enhance and develop water resources on the Property in accordance with applicable state and federal regulations, for permitted agricultural uses, fish and wildlife uses, domestic needs, forestry and timber harvest and private recreation. Permitted uses include, but are not limited to, the following: the right to restore, enhance and develop water resources, including ponds; to locate, construct, repair, and maintain irrigation systems; and to develop stock watering facilities.

4. **Maintenance and Structures.** To construct, maintain and repair two (2) single-family residential structures with associated out buildings such as a garage, barn, sleeping cabins and storage building. One residence and associated out buildings shall be within one contiguous 80-acre building site identified by Geographic provided such structures shall not be within Five Hundred (500) feet from the south, east or westerly boundary line of the Willow Creek property as described on Exhibit A. Such building site shall be compact and rectangular in shape, to the extent possible, with a length-to-width ratio not to exceed 4:1. Upon selection of the building envelope, Geographic shall immediately give written notice to Sieben Ranch describing its selection. The other residence and associated out buildings shall be within one contiguous 80-acre building site located and identified by Geographic on the Specimen Creek Property. Such building site shall be compact and rectangular in shape, to the extent possible, with a length-to-

width ratio not to exceed 4:1. Upon selection of the building envelope, Geographic shall immediately give written notice to Sieben Ranch describing its selection. Further, Geographic may construct, maintain, repair, and remodel any existing or subsequently constructed structures and improvements expressly permitted by this Easement, and in the event of removal or destruction of any or all of said structures and improvements, to replace them with similar structures and improvements within the building envelopes previously identified and located by Geographic. To place upon the Property additional nonresidential structures and other improvements as may be necessary for agricultural purposes, pursuant to the terms hereof. All such structures shall be clustered within the building envelopes identified for the Property. No structures shall be placed anywhere else on the Property. For the purposes of this Easement, the term "structures" shall not apply to livestock fencing and watering facilities. Further, for purposes of this Easement, sleeping cabins used in conjunction with guest ranching/outfitting services shall be considered "out buildings". However, such sleeping cabins shall be no more than 16' by 20', shall not contain cooking facilities, shall be utilized solely for guest ranching/outfitting purposes, and shall be built in such a manner as to cause the least impact on the Property and its scenic integrity.

5. Transfer of land. To sell, exchange, devise or gift the Property as one or two parcels, consisting of Willow Creek as one parcel and Specimen Creek as one parcel, as both are described on Exhibit A. Geographic shall furnish Sieben Ranch with a copy of any document of conveyance utilized to effect the transfer of the Property within thirty (30) days of the execution of said document or conveyance.

6. Timber production and removal. To plant, raise and harvest timber and related products in accordance with all applicable state and federal forestry laws, practices, guidelines, and regulations, including Montana Forestry Best Management Practices and the Streamside Management Zone Law.

7. Guest Ranching and Outfitting. To use the Property, or enter into agreements with third parties to enable them to use the Property for commercial guest ranching and outfitting. Any agreement between Geographic and others pertaining to the use of the Property for guest ranching/outfitting activities must be made expressly subject to the terms and conditions of this Easement. Consistent with this paragraph, Geographic may use all existing or subsequently constructed structures and improvements expressly permitted by this Easement or replacements thereof. However, Geographic and third parties may not construct any facilities or structures on the Property except as provided in this Section III to accommodate the guest ranching/outfitting business. In the event that the guest ranching/outfitting business is suspended or ceases operations, none of the sleeping cabins may be occupied on as a year-round residence.

8. Residence-based business. In addition to guest ranching/outfitting, persons living on the Property may conduct businesses within their residence so long as any such business is not a sales or service business involving dealing with the general public on the Property on a regular basis.

C. Prohibited uses. Any activity on, or use of, the Property that is inconsistent with the terms of this Easement is prohibited. Without limiting the generality of the foregoing

sentence, the activities and uses described below are hereby deemed to be inconsistent with the purpose of this Easement and are expressly prohibited:

1. **Subdivision.** The division, subdivision or de facto subdivision of the Property, except as provided in Section III, paragraph B. 5. Further, the Property shall not be used as open or natural space or as park land for any subdivision or development purposes or requirements on land not covered by this Easement. However, upon thirty (30) days advance written notice to Sieben, Geographic may otherwise subdivide the Property for the sole purpose of trading with the U. S. Forest Service or other contiguous property owners for other property contiguous to the Willow Creek Unit, provided that such property acquired in the trade is placed under the same easement restrictions as contained herein or in any amendments hereto. Further provided that if the Property is to be traded to any contiguous property owner, Sieben Ranch must give its written consent to such trade which consent shall not be unreasonably withheld. Nothing in this paragraph shall be construed as a requirement that Sieben Ranch relinquish any rights under this Easement as it pertains to traded property.

2. **Exploration, excavation and extraction activities.** Exploration or extraction by Geographic of any materials (including, but not limited to, soils, sand, gravel, peat, or rock) by any surface or subsurface mining method. Notwithstanding the foregoing, Geographic retains the right to locate, identify and use of up to four (4) gravel or barrow pits on the Property for non-commercial maintenance and construction uses on the Property. At no time shall these gravel pits be expanded, developed or used for commercial purposes.

3. **Commercial facilities.** The establishment of any commercial or industrial facilities (other than those necessary in the operation or uses of the Property expressly permitted by this Easement) including, but not limited to, commercial feed lot, any retail sales or service business, restaurant, night club, campground, trailer park, motel, hotel, commercial recreation facility, gas station, retail outlet, or facility for the manufacture or distribution of any product (other than products to be grown or produced on the Property in connection with purposes expressly permitted in this Section).

4. **Dumping.** The dumping or other disposal of noncompostable refuse on the Property, except non-hazardous wastes generated by normal agricultural and ranching operations or timber management purposes.

5. **Construction.** The construction of any structures except as provided in paragraph B. 4. of this Section.

6. **Billboards.** The construction, maintenance or erection of any billboards. Roadside signs are permitted only for the purposes of posting the name of the Property, advertising any business permitted on the Property, controlling public access, providing public notification of this Easement, or advertising the Property for sale.

7. **Roads.** The construction of roads, except in connection with timber management, land management, allowable residences or ranching and other agricultural uses. In the event

either party uses or burdens a permanent common access road in such a way as to require maintenance or repair; such party shall be responsible for necessary maintenance and repair.

8. Utilities. The granting of major utility corridor right-of-way easements. However, such right-of-way easements may be granted by mutual agreement of Geographic and Sieben Ranch in cases where eminent domain statutes apply and clear public necessity has been demonstrated to Geographic and Sieben Ranch. Nothing in this paragraph is intended to preclude Geographic from installing underground utility structures, lines, conduits, cables, wires, or pipelines under, within, or beneath the Property to existing and subsequently constructed structures and improvements expressly permitted by this Easement, or from granting right-of-way easements for utility services to neighboring properties so long as any such utility services across the Property are buried.

9. Mobile homes, etc. The placing, use or maintenance of any trailer, mobile home or other movable living unit (including any such unit placed on a permanent foundation); provided, however, that (i) Geographic or Geographic's guests may park or use a recreational vehicle on the Property on a temporary basis; and (ii) Geographic or its lessees may use a shepherd's wagon or camp trailer for temporary housing of herders of permitted livestock and for livestock management purposes during the livestock grazing season (June 1st through October 15th).

10. Game, fur or fish farms. The raising or confinement for commercial purposes of (i) game farm animals as defined in MCA Section 87-4-406 or any successor statutes; (ii) native or exotic fish; (iii) game birds; (iv) furbearers, including mink and fox; or (v) other native and exotic animals as delineated in MCA Title 87 in its entirety.

#### SECTION IV

##### Prior Notice by Geographic and Approval of Sieben Ranch

Any enterprise, use or activity proposed to be done or undertaken by Geographic which requires the prior approval of Sieben Ranch pursuant to an express provision of this Easement shall be commenced only after satisfaction of the notice and approval conditions of this Section IV.

A. **Geographic's written notice.** Prior to the commencement of any enterprise, use or activity requiring Sieben Ranch's approval, or the exercise of its rights as set forth in Section III B(4) and C(7) Geographic shall send Sieben Ranch written notice of the intention to commence or undertake such enterprise, use or activity. Said notice shall inform Sieben Ranch of all aspects of such proposed enterprise, use or activity, including, but not limited to, the nature, siting, size, capacity, and number of structures, improvements, facilities, or uses.

B. **Sieben Ranch's address.** Said notice shall be sent by registered or certified mail, return receipt requested, and shall be addressed to Sieben Ranch at P.O. Box 1683, Helena, Montana 59624, or to such other address as Geographic from time to time may be informed of in writing by Sieben Ranch.

C. **Sieben Ranch's response.** Sieben Ranch shall have thirty (30) days from the mailing of such notice, as indicated by the registered or certified return receipt, to review the proposed enterprise, use or activity and to notify Geographic of any objection thereto. Such objection, if any, shall be based upon Sieben Ranch's opinion that the proposed enterprise, use or activity is inconsistent with the purpose of this Easement. If, in Sieben Ranch's judgment, conformity with the purpose of this Easement is possible, said notice shall inform Geographic of the manner in which the proposed enterprise, use or activity can be modified to be consistent with this Easement. Except as provided in paragraph E of this Section IV, only upon Sieben Ranch's express written approval may the proposed enterprise, use or activity be commenced and/or conducted, and only in the manner explicitly represented by Geographic and approved by Sieben Ranch.

D. **Geographic's address.** Sieben Ranch's response to Geographic's notice shall be sent by registered or certified mail, return receipt requested, to Geographic at P.O. Box 905, Sandpoint, Idaho 83864, or to such other address as Sieben Ranch from time to time may be informed of in writing by Geographic.

E. **Sieben Ranch's failure to respond.** Should Sieben Ranch fail to post its response to Geographic's notice within thirty (30) days of the posting of said notice, the proposed enterprise, use or activity shall automatically be deemed consistent with the purpose of this Easement, Sieben Ranch having no further right to object to the enterprise, use of activity identified by such notice.

F. **Acts beyond Geographic's control.** Geographic shall be under no liability or obligation for any failure in the giving of notice with regard to any prudent action taken by Geographic under emergency conditions to prevent, abate or mitigate significant injury to the Property or to any person resulting from causes beyond Geographic's control, including without limitation, fire, flood, storm, and earth movement, or from any other cause beyond the control of Geographic similar to those occurrences specified.

## SECTION V Breach and Restoration

A. **Sieben Ranch's remedies.** If Sieben Ranch determines that Geographic, or a third party sanctioned by Geographic, is in violation of the terms of this Easement or that a violation is threatened, Sieben Ranch shall give written notice to Geographic of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use of activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Geographic:

i) fails to cure the violation within thirty (30) days after receipt of notice thereof from Sieben Ranch;

ii) under circumstance where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within thirty (30) days of the date

mutually agreed to between Geographic and Sieben Ranch as the date when efforts to cure such violation can reasonably begin; or

iii) fails to continue diligently to cure such violation until finally cured, Sieben Ranch may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by a temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, and require the restoration of the Property to the condition that existed prior to any such injury. If Sieben Ranch, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Sieben Ranch may pursue its remedies under this paragraph without waiting for the period provided for a cure to expire. Sieben Ranch's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Geographic agrees that Sieben Ranch's remedies at law for any violation of the terms of this Easement are inadequate and that Sieben Ranch shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Sieben Ranch may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Sieben Ranch's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

**B. Costs of enforcement.** Any costs incurred by Sieben Ranch in enforcing the terms of this Easement against Geographic, including reasonable costs of suit and attorney's fees, and any costs of restoration necessitated by Geographic's violation of the terms of this Easement shall be borne by Geographic. If Geographic prevails in any action to enforce the terms of this Easement, Geographic's reasonable costs of suit, including reasonable attorney's fees shall be borne by Sieben Ranch.

**C. Sieben Ranch's discretion.** Enforcement of the terms of this Easement shall be at the discretion of Sieben Ranch, and any forbearance by Sieben Ranch to exercise its rights under this Easement in the event of any breach of any provision of this Easement by Geographic shall not be deemed or construed to be a waiver by Sieben Ranch of such provision or of any subsequent breach of the same or any other provision of this Easement or of any of Sieben Ranch's rights under this Easement. No delay or omission by Sieben Ranch in the exercise of any right or remedy upon any breach by Sieben Ranch shall impair such right or remedy or be construed as a waiver.

**D. Acts beyond Geographic's control.** Nothing contained in this Easement shall be construed to entitle Sieben Ranch to bring any action against Geographic for any injury to or change in the Property resulting from causes beyond Geographic's control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Geographic under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

**E. Dispute resolution procedure.** If any claim or controversy arising out of or relating to this Easement, or any claimed breach thereof, cannot be resolved by the parties in the

normal course of business, the dispute shall be referred for nonbinding arbitration in accordance with the commercial dispute arbitration rules of the American Arbitration Association or such other rules as may be agreed to by the parties. Such arbitration shall be subject to the provisions of the Montana Uniform Arbitration Act, Title 27, Chapter 5, MCA.

Arbitration may be initiated by either party by making a written demand for arbitration on the other party. The parties shall endeavor to agree upon the arbitrator, but if no arbitrator has been designated by mutual agreement within thirty (30) days after written demand for arbitration, each party shall designate an arbitrator within forty (40) days after the original demand for arbitration and give written notice of such designation to the other. Within ten (10) days after these notices have been received, the two arbitrators so selected will select a third arbitrator and give notice of the selection to Sieben Ranch and Geographic. The arbitrator or arbitrators will hold a hearing and decide the matter within sixty (60) days after they have been so designated.

The parties will share equally the fee of a single arbitrator or a third arbitrator, but each party shall pay the fee of the arbitrator which it chooses, as well as the costs of its own counsel and technical or consulting support in connection with the arbitration. The arbitrator(s) shall have the power to award arbitrators fees and expenses to the successful party to the arbitration.

Should arbitration not satisfactorily resolve the dispute, the parties may seek enforcement as otherwise provided in this Section V.

#### **SECTION VI** **Costs and Taxes**

Geographic shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including responsibility for the control of noxious weeds unless Sieben Ranch agrees to pay for the cost of noxious weeds control pursuant to the terms of a grazing lease, in accordance with Montana law. Geographic shall pay any and all taxes, assessments, fees, and charges levied by competent authority on the Property, except any tax or assessment on this Easement. Any lawful tax or assessment on this Easement shall be paid by Sieben Ranch.

#### **SECTION VII** **Indemnities**

Geographic shall hold harmless, indemnify and defend Sieben Ranch and its directors, shareholders, officers, employees, agents and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees arising from or in any way connected with (i) injury to or the 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; (ii) the obligations specified in Section VI; and (iii) the obligations arising from future presence of any hazardous or deleterious substance on the

Property, and any obligation associated with the cleanup of any such hazardous or deleterious substance or the containment of its impact.

For purposes of this Easement, the term "hazardous or deleterious substance" means (i) any chemical, compound, material, mixture, or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to any federal, state or local law, regulation or ordinance as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", infectious waste", "toxic substance", "toxic pollutant", "deleterious substance" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or "EP toxicity"; and (ii) any petroleum, natural gas, natural gas liquid, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), ash produced by a resource recovery facility utilizing a municipal solid waste stream, drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources.

Except to the extent of the adjudicated proportionate fault of Geographic or its agents or employees, Sieben Ranch shall hold harmless and indemnify Geographic and its agents, employees, personal representatives, successors, and assigns from and against all liabilities, claims, penalties, costs, demands, or judgments, including reasonable attorney's fees arising from or in any way connected with injury to employees, officers or directors of Sieben Ranch while on the Property in the course of carrying out the rights, duties and obligations of Sieben Ranch under the terms of this Easement.

#### **SECTION VIII** Assignment of Easement Rights

The benefits of this Easement shall be assignable. Sieben Ranch may transfer or assign its interest in the Property created by this Easement to any private party including, but not limited to, Geographic or any "qualified organization", within the meaning of Section 170(h)(3) of the Internal Revenue Code. Any such qualified organization shall agree to enforce in perpetuity the conservation purposes of this Easement. However should Sieben Ranch intend to transfer said Easement, Sieben Ranch agrees to notify Geographic thirty (30) days prior to the actual assignment.

#### **SECTION IX** Documentation

Sieben Ranch will make available to Geographic, within one year after the reservation of this Easement, information sufficient to document the condition of the Conservation Values of the Property. The parties agree that upon receipt, review, and mutual approval which approval shall not be unreasonably withheld, of documentation which accurately represents the condition of the Conservation Values of the Property as of the date of the inspection of the Property, in accordance with Treasury Regulation §1.170A-14(g)(5)(i) to execute the written acknowledgment, attached hereto as Exhibit "B"), and to execute and record an amendment to this Easement with the executed Exhibit "B" attached. The parties intend that the documentation shall be used by Sieben Ranch to monitor Geographic's compliance with the terms and conditions of this Easement. The documentation shall be on file with Sieben Ranch.

## SECTION X

### Extinguishment: Sieben Ranch's Entitlement to Proceeds

A. **Extinguishment.** If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement may only be terminated or extinguished, whether in whole or in part, by Sieben Ranch. Notwithstanding the foregoing, if this Easement is assigned by Sieben Ranch to a qualified organization as defined herein, the Easement may only be terminated or extinguished by judicial proceedings in a court of competent jurisdiction. In either case, the amount of the compensation to which Sieben Ranch or a qualified organization shall be entitled from any sale, exchange or involuntary conversion of all or any portion of the Property, subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Montana law at the time, in accordance with paragraph B of this Section X.

B. **Compensation.** This Easement constitutes a real property interest reserved by and vested in Sieben Ranch. If this Easement is terminated or extinguished pursuant to paragraph A or C of this Section X, Geographic agrees that Sieben Ranch shall be compensated for the fair market value of its property right. Neither unilateral termination by Sieben Ranch nor transfer of the Easement by Sieben Ranch to a party other than Geographic shall require compensation by Geographic to Sieben Ranch. If the easement is terminated or extinguished, in whole or part, by mutual agreement of the parties, Sieben Ranch shall be entitled to immediate compensation in an amount equal to the fair market value of the Easement or that portion which is terminated or extinguished. If the Easement is terminated or extinguished by judicial proceedings, Sieben Ranch, on the subsequent sale, exchange or condemnation of the Property, shall be entitled to a portion of the proceeds equal to the fair market value of the Easement, or any part thereof which is terminated, extinguished or condemned as of the date of the subsequent sale, exchange or condemnation of the Property. Geographic and Sieben Ranch agree that they shall endeavor in good faith to reach mutual agreement on the proceeds to which Sieben Ranch shall be entitled if the Easement is terminated or extinguished without the need for appraisal. If mutual agreement cannot be reached by the parties, an appraisal of the value of the Easement that has been terminated or extinguished shall be conducted by a licensed, certified real estate appraiser, who is acceptable to both parties. The appraiser shall apply applicable appraisal standards for conservation easements which are contained in the Internal Revenue Code, and Treasury Regulations promulgated thereunder, at the time of the Easement termination, extinguishment or condemnation, or by any other method agreed to by Geographic and Sieben Ranch. Geographic and Sieben Ranch shall share equally the cost of any appraisal pursuant to this paragraph. In no event shall Sieben Ranch and its successors and assigns be entitled to any interest accruing between the date of this Easement and the date of any subsequent termination, extinguishment, condemnation, sale or exchange of this Easement, or between the date of any termination or extinguishment and any subsequent sale, exchange, or condemnation.

C. **Eminent domain.** If all or a portion of the Property is taken in exercise of eminent domain by public, corporate or other authority, so as to abrogate the restrictions imposed by this Easement, Geographic and Sieben Ranch may join in appropriate actions to recover the full value of the Property (or portion thereof) taken and all incidental or direct damages resulting

from such taking. Any expense incurred by Geographic and Sieben Ranch in any such action shall be first reimbursed out of the recovered proceeds; the remainder of such proceeds shall be divided between Geographic and Sieben Ranch in proportion to their interest in the Property, or portion thereof, as established by paragraph B of this Section X.

**SECTION XI**  
**Miscellaneous Provisions**

A. **Partial invalidity.** If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

B. **“Geographic” and “Sieben Ranch”.** The terms “Geographic” and “Sieben Ranch” as used herein, and any pronouns used in place thereof, shall mean and include Geographic and its heirs, personal representatives, executors, successors in interest, and assigns, and Sieben Ranch and its successors and assigns, respectively.

C. **Titles.** Section and paragraph titles and subtitles are for convenience only and shall not be deemed to have legal effect.

D. **Subsequent transfers.** Geographic agrees that any subsequent transfer is subject to the terms with this Easement and reference to this Easement and reference to its dates and places of recording in the Public Records of Lewis and Clark County will be made in any subsequent deed or other legal instrument by which he conveys any interest in the Property, including any leasehold interest.

E. **Governing Law.** In the event any dispute arises over the interpretation or enforcement of the terms and conditions of this Easement, the laws of the State of Montana shall govern resolution of such dispute.

F. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Geographic and Sieben Ranch are free to jointly amend this Easement; provided, however, that for portions of the Property subject to a perpetual conservation easement conveyed by Sieben Ranch to a qualified organization, charitable receiver or unit of government, no amendment shall be allowed that will affect the qualifications of this Easement under applicable laws, including MCA Section 76-6-101, *et seq.*, and the Code. Any amendment for portions of the Property subject to a perpetual conservation easement conveyed by Sieben Ranch to a qualified organization, charitable receiver or unit of government must be consistent with the conservation purposes of this Easement, may not affect its perpetual duration, and either must enhance or have no effect on the Conservation Values which are protected by this Easement. Furthermore, for portions of the Property subject to a perpetual conservation easement conveyed by Sieben Ranch to a qualified organization, charitable receiver or unit of government, the provisions concerning valuation of this Easement, which are set forth in Section X above, may not be amended. Any Easement amendment must

be in writing, signed by both parties, and recorded in the Public Records of Lewis and Clark County.

G. **Conservation intent.** Any ambiguities in this Easement shall be construed in a manner which best effectuates its Conservation Values.

IN WITNESS WHEREOF, Geographic and Sieben Ranch have hereunto set their hands this 22 day of December, 1999.

“GEOGRAPHIC”

“SIEBEN RANCH”

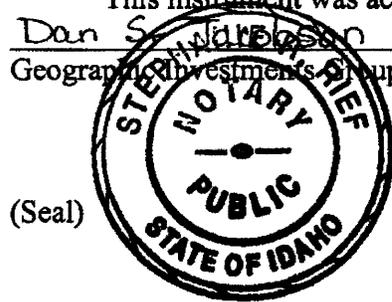
Sieben Ranch Company

By: [Signature]  
Title: Operating Manager

By: [Signature]  
Title: President

STATE OF Idaho )  
: ss.  
County of Bonner )

This instrument was acknowledged before me on December 10, 1999, by Dan S. Warblen, known to me to be the Operating Manager of Geographic Investments Group Ltd. Co., an Idaho limited liability company.



[Signature]  
Notary Public for the State of Idaho  
Residing at Sardpoint, Idaho  
My commission expires 8/31/2000

STATE OF Montana )  
: ss.  
County of Lewis & Clark )

This instrument was acknowledged before me on December 20, 1999, by John F. Baucus, known to me to be the President of SIEBEN RANCH COMPANY.



[Signature]  
Notary Public for the State of Montana  
Residing at Helena  
My commission expires 10-1-2003

EXHIBIT A, AS AMENDED

TOWNSHIP 14 NORTH, RANGE 6 WEST, P.M.M., Lewis and Clark County:

SECTION 3: NW1/4; W1/2SW1/4

SECTION 4: SE1/4SE1/4

SECTION 5: S1/2SE1/4; SE1/4SW1/4

SECTION 6: Government Lot 3; all that portion of Government Lot 4 lying North of Highway No. 279 Right-of-Way (Deed reference: Book 186 of Deeds, Page 65 and Book 193 of Deeds, Page 222); SE1/4

SECTION 7: All that portion of the N1/2 lying North of Highway No. 279 Right-of-Way (Deed reference: Book 186 of Deeds, Page 65 and Book 193 of Deeds, Page 222)

SECTION 8: All that portion of the N1/2 lying North of Highway No. 279 Right-of-Way (Deed reference: Book 186 of Deeds, Page 65 and Book 193 of Deeds, Page 222)

SECTION 9: NE1/4NE1/4; W1/2NE1/4; NW1/4; N1/2SW1/4

LESS AND EXCEPT that portion conveyed to the state Highway Commission in Bargain and Sale Deeds from Sieben Ranch Company to The State of Montana as recorded on September 7, 1955 in Book 186 of Deeds, Page 65 and on November 20, 1956 in Book 193 of Deeds, Page 222, records of Lewis and Clark County, Montana.

TOWNSHIP 14 NORTH, RANGE 7 WEST, P.M.M., Lewis and Clark County:

SECTION 1: Government Lots 1 and 2; all that portion of Government Lots 3 and 4 lying North of Highway No. 279 Right-of-Way (Deed reference Book 193 of Deeds, Page 222); S1/2NE1/4; SE1/4; S1/2SW1/4; S1/2N1/2SW1/4 LESS AND EXCEPT Tracts shown in Deeds recorded in Book 237, Page 445 and Book 252, Page 222, records of Lewis and Clark County, Montana.

SECTION 2: Government Lot 2 LESS AND EXCEPT that portion of Certificate of Survey Number 60 61293/B; Government Lots 3 and 4; S1/2NW1/4; SW1/4; SW1/4NE1/4; W1/2SE1/4; SE1/4SE1/4; S1/2NE1/4SE1/4 LESS AND EXCEPT Tracts shown in Deeds recorded in Book 138, Page 310 and Book 232, Page 583, and Book 264, Page 49, records of Lewis and Clark County, Montana.

SECTION 3: Government Lots 1, 2 and 3; S1/2N1/2; N1/2SW1/4; SE1/4

SECTION 11: NE1/4; E1/2NW1/4; NE1/4SE1/4

SECTION 12: N1/2; W1/2SW1/4

LESS AND EXCEPT that portion conveyed to the State Highway Commission in Bargain and Sale Deed from Sieben Ranch Company to The State of Montana as recorded November 20, 1956 in Book 193 of Deeds, Page 222, records of Lewis and Clark County, Montana.

TOWNSHIP 15 NORTH, RANGE 7 WEST, P.M.M., Lewis and Clark County:

SECTION 34: S1/2SE1/4; SE1/4SW1/4

SECTION 35: All that portion of the E1/2; NE1/4SW1/4; and the NW1/4 lying North of Highway No. 279 Right-of-Way (Deed Reference Book 193 of Deeds, Page 222); S1/2SW1/4, LESS AND EXCEPT all that portion of Certificate of Survey Number 60 61293/B, Lewis and Clark County, Montana.

SECTION 36: All that portion of the SW1/4 lying North of Highway No. 279 Right-of-Way. (Deed reference Book 193 of Deeds, Page 222)

LESS AND EXCEPT that portion conveyed to the State Highway Commission in Bargain and Sale Deed from Sieben Ranch Company to The State of Montana as recorded November 20, 1956 in Book 193 of Deeds, Page 222, records of Lewis and Clark County, Montana.

TOWNSHIP 14 NORTH, RANGE 6 WEST, P.M.M., Lewis and Clark County:



## **Exhibit "B"**

### **Acknowledgement of Documentation Site Visit**

KNOW ALL MEN BY THESE PRESENTS, that on December 22, 2000, Sieben Ranch Company ("Sieben Ranch"), a Montana corporation with a mailing address of P.O. Box 1683, Helena, Montana 59624, as the entity which has reserved the Easement to which this Exhibit "B" is attached and into which it is incorporated by reference, and Geographic Investment Group, Ltd., Co. ("Geographic"), as purchaser of the Property from Sieben Ranch, hereby mutually acknowledge, declare and agree as follows:

1. Sieben Ranch will make available, at Sieben Ranch's expense, to Geographic, or a representative thereof within one year from the reservation of this Easement, information sufficient to document the condition of the Conservation Values associated with the Property (the "Documentation Report").

2. A representative of Sieben Ranch will collect and compile documentation sufficient to establish the condition of the Conservation Values of the Property as of the date of the Documentation Report and will share this documentation with Geographic.

3. The documentation will be compiled by a representative of Sieben Ranch on a site visit to the Property by June 15, 2000, and will consist of mapping of physical features and resources, photographs of structures, developments and improvements, and gathering of other appropriate information to document the Conservation Values of the Property. The Documentation Report will follow the following report:

#### **DOCUMENTATION REPORT**

##### **1.0 INTRODUCTION**

###### **1.1 Methods**

###### **1.11 General Methods**

###### **1.12 Vegetation Mapping Methods**

###### **1.2 Location and Legal Description**

###### **1.3 Summary Description of property and historical use**

##### **2.0 DESCRIPTION OF CONSERVATION PURPOSES**

###### **2.1 Open Space Values**

2.11 Visually accessible to the public from Highway 279 over a distance of six miles on Willow Creek unit, one and one quarter miles on Specimen Creek unit

2.12 Buffer area to the adjacent Helena National Forest (provides an extensive buffer to recreational subdivision development over 10 miles of common

border on Willow Creek unit, three miles on Specimen Creek unit)

### 3.0 CLIMATE AND PHYSIOGRAPHY

### 4.0 VEGETATION

- 4.1 Vegetation Types
  - 4.11 General description
  - 4.12 Distribution
  - 4.13 Photographs of representative areas
- 4.2 Exotic species (noxious weeds)
  - 4.21 Species present
  - 4.22 Distribution

### 5.0 LAND USES

- 5.1 Description of historical uses
- 5.2 USGS map showing the property boundaries and contiguous public lands
- 5.3 Map locations of all existing man-made improvements (roads, buildings, fences, gravel pits, etc.)
- 5.4 Mining activities (none known)
- 5.5 Aerial photograph (recent, depending on availability)

### 6.0 REFERENCES

### 7.0 LIST OF PREPARERS

Sieben Ranch and Geographic agree the documentation of Conservation Values shall address the Open Space Values identified in Sections 2.11 and 2.12, above, and no other values.

4. Sieben Ranch and Geographic must mutually approve the accuracy and content of the Documentation Report.

