

**Sample BLM Reserve Interest Conservation Easement  
(Generic National Conservation Area)**

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Recommended by WO 350 Land and Realty Group (2005)

(revised 04/2005)

**43.23 - Exhibit 02 – Restrictive Easement Deed**

**EXAMPLE OF NATIONAL RECREATION AREA EASEMENT DEED**

(OGC comment – don't use Sawtooth because of it's unique private land regulations)

**THIS DEED OF CONSERVATION EASEMENT** is made this \_\_\_\_\_ day of September, 2001, by **ALAN D. McCOMBS, aka ALAN McCOMBS, and JEANNE M. McCOMBS, aka JEANNE McCOMBS**, husband and wife, of the County of Gooding, State of Idaho; hereinafter called "**GRANTORS**," in favor of the **UNITED STATES OF AMERICA**, acting by and through the Forest Service, Department of Agriculture, hereinafter called "**GRANTEE**."

**WITNESSETH:**

**WHEREAS**, Grantors are the sole owners in fee simple of certain real property in Custer County, Idaho, more particularly described in Exhibit A, attached hereto and incorporated by this reference (the "Property"); and

**WHEREAS**, the Property possesses significant scenic, natural, historic, pastoral, and fish and wildlife values (collectively called "Conservation Values"), which are documented in an inventory of relevant features of the Property, dated September 27, 2001, on file at the offices of Grantee ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree collectively provide an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

**WHEREAS**, Grantors intend that the Conservation Values of the Property be preserved and maintained by the continuation of land use patterns, including those relating to residential use, existing at the time of this grant that do not significantly impair or interfere with those values; and

**WHEREAS**, Grantors further intend, as owners of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity, consistent with the purposes and objectives of the Sawtooth National Recreation Area (SNRA) enabling legislation (Public Law 92-400), and the Regulations Covering Land Acquisition and Standards For Use, Subdivision, and Development of Private Lands Within the Sawtooth National Recreation Area, Sawtooth National Forest, Idaho, (Private Land Regulations) attached hereto and made a part hereof as Exhibit B (36 CFR 292.14-292.16);

**NOW THEREFORE:** That the said Grantors, for in consideration of the sum of **FIFTY THOUSAND and No/100 Dollars (\$50,000.00)** to the Grantors in hand paid by the United States, the receipt of which is hereby acknowledged, pursuant to the Act of August 3, 1956 (7 U.S.C. Sec. 428a); the Act of August 22, 1972 (86 Stat. 612); and the Department of the Interior and Related Agencies Appropriation Act of 2001, does by these presents, grant, bargain, sell,

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convey, and confirm unto the United States, its successors and assigns in interest, this Conservation Easement, in perpetuity, over the Property described in Exhibit A of this Instrument, and subject to those items of record contained therein. This Conservation Easement shall be enforceable by the United States and its successors and assigns in interest. For purposes of this conveyance, the term "Conservation Easement" is interchangeable with the term "Scenic Easement," as referenced under Section 3(a) of the Act of August 22, 1972 (86 Stat. 612). This Conservation Easement is referred to hereinafter as the "**EASEMENT.**"

**1. PURPOSE.** It is the purpose of this Easement to assure that the Property's scenic, natural, historic, pastoral, and fish and wildlife values will be maintained forever and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. Grantors intend that this Easement will confine the use of the Property to such activities, including those involving residential uses, as are consistent with the purposes of this Easement.

**2. RIGHTS OF GRANTEE.** To accomplish the purposes of this Easement, the following rights are conveyed to Grantee by this Easement:

**A.** To preserve and protect the Conservation Values of the Property;

**B.** To enter upon the Property at reasonable times in order to monitor Grantors' compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantors, and Grantee shall not unreasonably interfere with Grantors' use and quiet enjoyment of the Property; and

**C.** To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement, and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to paragraph 6.

**3. PROHIBITED USES.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

**A.** Division, subdivision, or defacto subdivision of the Property through sales, long-term leases, or otherwise.

**B.** Except for the access road, buried utilities, and fences, construction, relocation, or placement of structures or improvements other than permitted in Part 4 - Reserved Rights.

**C.** Commercial business, or professional enterprises, including, but not limited to posting of billboards or other signs for the purposes of advertising, campgrounds or trailer parks, restaurants, stores, dude ranches, resorts, motels, hotels, inns, or other overnight accommodation services, outfitting, apartment, timeshare, or condominium sales or uses, medical, legal or professional offices, schools or conference centers. Use of the Property as the subject of still or moving photographs which do not require the construction of additional

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structures or facilities are allowed. Certain home businesses may be conducted from within the Property, provided there is no exterior signing located on the Property or any exterior improvements needed to operate such businesses.

**D.** Manufacturing or industrial operations.

**E.** Exploration, development, or extraction of minerals.

**F.** Allowing the dumping or accumulation of trash, debris, junk cars, unserviceable equipment, or other unsightly materials.

**G.** The placement of residential trailers, mobile homes, modular buildings, or other such semi-permanent structures on any part of the Property.

**H.** The installation and operation of mechanical irrigation systems that suspend water carrying devices above the ground including, but not limited to, center pivot or wheel-line systems.

**I.** Except as expressly authorized herein, the placement of towers, antennae, or satellite dishes. This provision shall not be construed to prohibit antennas that are wholly concealed within authorized structures.

**J.** Disposal or unlawful storage of hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC. 9601 et. seq.

**4. RESERVED RIGHTS.** Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their 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 purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

**A. Rebuilding, Repair, and Remodeling.** It is acknowledged that there is an existing family house and one outbuilding on the Property. Except as provided in this paragraph, the Grantors may rebuild, repair, or remodel structures insofar as the numbers and sizes of the structures do not exceed those authorized herein, insofar as they are used for the uses indicated and insofar as structures are constructed according to the restrictions set forth by this Easement. If Grantors choose to replace the existing house with a new family house, the existing house may remain for one year after construction on the new house has commenced. After one year, the house must be removed completely from the property and the site rehabilitated. Any replacement of existing structures or any new construction must be located a minimum of 100 feet from the wetland boundary. Prior to any new construction or remodel / addition of existing structures, the location, size, design, and colors must be approved by the Area Ranger or such other authorized officer of the Forest Service as may be designated.

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**B. Improvements.** Subject to the restrictions in Part 3 above, the following structures and improvements are permitted.

(1) **Family House** - One (1) single family house, for residential use only.

**a. Size.** The Family House shall not exceed a 2,000 square foot gross floor space (excluding basements, decks, and porches), nor 26 feet in height above the natural ground level.

**b. Windows.** All windows will be rectangular or square, divided light, and no more than 24 square feet in size.

**c. Design.** The Family House may only be comprised of rectangular or square sections with no more than two ridgelines, excluding dormers. Styles such as geodesic domes, prowalls, and round exterior rooms are not allowed. Any proposed style must have a history of traditional and common use prior to 1940 within the Sawtooth Valley/Stanley Basin, and it will be the responsibility of the Grantors to provide evidence of such, if necessary.

**d. Structure Siding.** The structure will be log, log-sided, rough-sawn lumber, or board and batten.

**e. Roofs.** Roofs may be wood, composite, or non-reflective metal.

**f. Additional Structures.** Carports, second-story decks, porte-cocheres, greenhouses, solarium-type additions, or similar improvements are not allowed.

**g. Final Approval.** Prior to construction, actual building siting, design, and colors listed in Items 4. B. (1) a. through 4. B. (1) f. above must be approved by the Area Ranger or such other authorized officer of the Forest Service as may be designated.

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**(2) Other Buildings** - Two (2) outbuildings are allowed.

**a. Size.** Total aggregate square foot area of both outbuildings shall not exceed 400 square feet in gross floor area and not exceed 18 feet in height.

**b. Use.** The structures shall not have kitchens, sleeping facilities, or be otherwise equipped for residential purposes.

**c. Style.** The structures shall be rectangular or square in shape, with a single pitch roof.

**d. Structure Siding.** The structures will be log, log-sided, rough-sawn lumber, or board and batten.

**e. Windows.** All windows will be rectangular or square.

**f. Roofs.** Roofs may be wood, composite, or non-reflective metal.

**g. Final Approval.** Prior to construction, actual building siting, design, and colors under Item 4. B. (2) a. through Item 4. B. (2) f. above must be approved in advance by the Area Ranger or such other authorized officer of the Forest Service as may be designated.

**(3) Improvements Accessory to the Structures** - Fences, gates, driveways, walkways, or other similar improvements accessory to the structures authorized herein. All fences will be constructed of wood.

**(4) Satellite Dish** - One (1) satellite dish.

**a. Size.** Satellite dish may be up to 24 inch diameter or less.

**b. Screening.** The satellite dish must be out of public view, or located with an adequate screening plan approved by the Forest Service.

**(5) Lights** - Two (2) night-time exterior lighting sources not to exceed 150 watts each.

**(6) Landscaping** - Landscaping compatible with the open setting, which incorporates materials which are indigenous to the surroundings. Landscaping will incorporate native species. Urban landscaping features such as decorative berms and ponds, are prohibited. Other than minor modifications, no landscaping will occur unless approved by the Area Ranger or such other authorized officer of the Forest Service as may be designated.

**C. Roads.** Only the access road off of FR 315 is allowed.

**(1) Width** - The maximum running surface width will be 12 feet.

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**(2) Off-Road Travel** - Vehicles may be used to travel across the Property for property management purposes; provided that such travel shall be infrequent enough that vegetation along the travel route retains its essential character, soil is not bared, and erosion is not accelerated beyond natural-state levels.

**D. Signs.** The right to place signs on the Property sufficient to state the name of the Landowner and/or manager and address of the Property, to advertise the sale or rental of the Property, or to control unauthorized entry or use as may be permitted here. Signs shall be submitted for approval by the Area Ranger or such other authorized officer of the Forest Service as may be designated, and shall comply with SNRA sign standards and guidelines in effect at the time of placement.

## **5. NOTICE OF INTENTION TO UNDERTAKE CERTAIN PERMITTED ACTIONS.**

Where required in this Easement, the Grantee has the right to require the Grantors to submit plans for improvements for certification by the Area Ranger, or such other authorized officer of the Forest Service as may be designated. This is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purposes of the Easement and the Private Land Regulations (Exhibit B). Whenever notice is required, Grantors shall notify Grantee in writing not less than 45 days prior to the date Grantors intend to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of the Easement.

**5.1 GRANTEE'S APPROVAL.** Where Grantee's approval is required, as set forth in Part 4, Grantee shall grant or withhold its approval in writing within 45 days of receipt of Grantors' written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement or if additional information is necessary to evaluate the proposed action.

**6. GRANTEE'S REMEDIES.** If Grantee determines that Grantors are in violation of the terms of this easement or that a violation is threatened, Grantee shall give written notice to Grantors 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 or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantors fail to cure the violation within the timeframe specified by the Grantee, after receipt of notice thereof from Grantee, or fails to continue diligently to cure such violation until finally cured, Grantee 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, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantors' liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines

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that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantors or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantors agree that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee 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. Grantee'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.

**6.1 COSTS OF ENFORCEMENT.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in any action to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee as provided by applicable Federal law.

**6.2 GRANTEE'S DISCRETION.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

**6.3 WAIVER OF CERTAIN DEFENSES.** Grantors hereby waive any defense of laches, estoppel, or prescription.

**6.4 ACTS BEYOND GRANTORS' CONTROL.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

**7. ACCESS.** No right of access by the general public to any portion of the Property is conveyed by this Easement.

**8. COSTS AND LIABILITIES.** Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors.

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**8.1 TAXES.** Grantors shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

**8.2 HOLD HARMLESS.** Grantors shall hold harmless, indemnify, and defend Grantee, 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 attorneys' fees, arising from or in any way connected with: (1) 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, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in paragraphs 8 and 8.1; and (3) the existence or administration of this Easement.

**9. ASSIGNMENT.** This Easement is transferable. As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.

**10. SUBSEQUENT TRANSFERS.** Grantors agree to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least 30 days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

**11. ESTOPPEL CERTIFICATES.** Upon request by Grantors, Grantee shall within 30 days execute and deliver to Grantors any document, including an estoppel certificate, which certifies Grantors' compliance with any obligation of Grantors contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantors.

**12. NOTICES.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantors: Mr. & Mrs. Alan D. McCombs  
2052 East 1850 South  
Gooding, ID 83330

To Grantee: Area Ranger  
Sawtooth National Recreation Area  
Sawtooth National Forest  
HC 64 Box 8291  
Ketchum, ID 83340

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or to such other address as either party from time to time shall designate by written notice to the other.

**13. RECORDATION.** Grantee shall record this instrument in timely fashion in the official records of Custer County, Idaho, and may re-record it at any time as may be required to preserve its rights in this Easement.

### **14. GENERAL PROVISIONS.**

**A. Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Idaho and the laws of the United States.

**B. Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purpose of the SNRA Act and Regulations (Exhibit B). If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

**C. Severability.** 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, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

**D. Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

**E. No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.

**F. Joint Obligation.** The obligations imposed by this Easement upon Grantors shall be joint and several.

**G. Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

**H. Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.



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**EXHIBIT A**

**Legal Description of Property Subject to Easement**

Custer County, Idaho

Boise Meridian

T. 8 N., R. 14 E.,

Sec. 17, a portion within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , more particularly described as follows:

Beginning at the northwest corner of said NE $\frac{1}{4}$ SW $\frac{1}{4}$ ; thence south 450 feet; thence east 186 feet; thence north 450 feet; thence west 186 feet to the Point of Beginning.

Containing 1.92 acres, more or less.

**SUBJECT TO:** Public Law 92-400, creating the Sawtooth National Recreation Area; regulation promulgated thereunder, published March 29, 1974, in Volume 39 of the Federal Register, pages 11544-11547.

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**EXHIBIT B**

**REGULATIONS COVERING LAND ACQUISITION, AND STANDARDS FOR USE,  
SUBDIVISION, AND DEVELOPMENT OF PRIVATE LANDS WITHIN THE  
SAWTOOTH  
NATIONAL RECREATION AREA, SAWTOOTH NATIONAL FOREST, IDAHO  
(36 CFR 292.14 - 292.16).**

**DEPARTMENT OF AGRICULTURE  
Forest Service**

**(36 CFR Part 292)  
(39 FR 11544, March 29, 1974, as amended at 41 FR 29379,  
July 16, 1976; 54 FR 3368, January 23, 1989.)**

**NATIONAL RECREATION AREAS**

**Subpart C - Sawtooth National Recreation Area - Private lands**

**Land Acquisition and Standards for Use of Private Lands**

**PART 292 - NATIONAL RECREATION AREAS**

**Subpart C - Sawtooth National Recreation Area - Private Lands**

**Sections:**

**292.14 Introduction**

**292.15 General provisions - procedures**

**292.16 Standards**

**Authority: Provisions of Section 4(a), Act of August 22, 1972 (86 Stat. 613)**

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## 292.14 Introduction

(a) Purpose. In accordance with the provisions of the Act establishing the Sawtooth National Recreation Area (86 Stat. 612), the regulations of this subpart establish standards for the use, subdivision, and development of privately owned property within the boundaries of the Sawtooth National Recreation Area. The standards are in furtherance of the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values and to provide for the enhancement of the recreational values of the Recreation Area. Unless, in the judgment of the Secretary, such property is being used, or is in imminent danger of being used, in a manner incompatible with such standards, the property or any interest therein, may not be acquired by condemnation. However, private land or an interest therein, determined to be necessary for access to and utilization of public property, and for recreation and other facilities, may be condemned without regard to this restriction, subject, however, to the limitation in 36 CFR 292.15(j).

(b) Amendment of regulations. Amendments to these regulations shall be made in accordance with the Administrative Procedures Act (60 Stat. 238, 5 U.S.C. 553), including the publishing of the amendments as a notice of proposed rulemaking with final adoption after interested persons have been given an opportunity to participate in the rulemaking through submission of comments.

(c) Definitions.

(1) Cluster-type development. Planned unit development which allows flexibility in neighborhood and subdivision lot design by dedicating or reserving the land so saved to open space.

(2) Community Development Plan. A narrative plan, with maps, which sets forth specific standards for desirable development of a community.

(3) Designated community. A populated area divided into lots, blocks, and streets, as platted and recorded in the official records of the county, containing residences and commercial establishments, providing goods and services, and retaining the atmosphere of a western frontier ranch-type town and so classified in 36 CFR Sec. 292.15(a).

(4) Dude ranching. Development oriented to furnish an outdoor recreational or educational experience related to ranching. Facility development is compatible with the pastoral environment, rustic in nature, and harmoniously colored.

(5) Mineral operations. All functions, work, and activities in connection with exploration, development, mining, or processing of mineral resources, except prospecting which will not cause significant surface disturbance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study.

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(6) Private property. Lands or interests in lands not owned by Federal, State, or local governments, but not including unpatented mining claims.

(7) Ranch-type character. A low profile, rambling, well-proportioned, rustic-appearing, rough-sawn wood or wood and stone structure or group of structures harmoniously situated within a natural environment.

(8) Residential outbuilding. Nonhabitable building detached from the residence, such as a garage, woodshed or storage building.

(9) Secretary. Secretary of Agriculture.

(10) Area Ranger. The Forest officer having administrative authority for the Sawtooth National Recreation Area.

### **292.15 General Provisions - Procedures.**

(a) Classification of private property. For the purpose of establishing specific standards applicable to the several parcels of private land within the boundaries, such properties are classified and assigned to land use categories, as shown on the Land Use Category Map dated December 15, 1973, on file and available for public inspection in the office of the Area Ranger, Sawtooth National Recreation Area, Ketchum, Idaho. The classification of private properties is based on evaluation of scenic, natural, historic, pastoral, wildlife, and other values.

(b) Land use categories. Land use categories shown on the map referred to in paragraph (a) of this section are:

(1) Designated community. All properties inside a designated community.

(2) Residential. Areas for residential development outside designated communities.

(3) Commercial. Areas for commercial development outside designated communities.

(4) Agriculture. All properties outside designated communities not placed in a residential or commercial land use category.

(5) Mineral. Any areas in the land use category, (1) through (4) above, used for mineral operations.

(c) Changes in classification. The Secretary may make changes in the classification of private lands set forth in paragraph (a) of this section by incorporating such changes in an amendment of these regulations.

(d) Certification of compliance with standards.

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(1) Present use. Any owner of property may request in writing the Area Ranger to examine the present use of the property and issue a certification that such present use conforms to the applicable standards established in 36 CFR Sec. 292.16 for the land use category in which the property is placed. If after examination the Area Ranger determines that the present use of the property does so conform, he will issue a certification to this effect.

(2) Planned development or change in use. Any owner of property who proposes to change the use or develop his property for other than agricultural use, may submit to the Area Ranger a use or development plan setting forth the manner in which and the time by which the property is to be developed and the use to which the property is to be put. If the Area Ranger determines that the development and use plan conforms to the applicable standards established in 36 CFR Sec. 292.16 for the land use category in which the property is placed, he will issue a certification to this effect.

(3) Notification of action. Within 45 days after receipt of request for certification, the Area Ranger shall:

(i) Issue the certification.

(ii) Notify applicant that additional information is needed before action can be taken on the application.

(iii) Notify applicant that certification is denied, and reasons for denial.

(iv) Notify applicant that action on the request is deferred for a specified period of time for stated reasons.

(e) Qualified certifications.

(1) Any owner of a property classified residential or commercial under paragraph (a) of this section which had been improved and was being used for residential or commercial purposes on the effective date of these regulations, but which does not conform to the standards established for properties in the land use category in which the property is placed may nevertheless be issued a certification for period not to exceed 10 years so that the improvements may be made to conform to the standards. Such certification shall specify that it is only effective so long as the property is not subdivided, and is not further improved and the improvements existing on the effective date of these regulations, are not reconstructed, altered, or relocated, except to meet standards. The certification shall specify the date on which it shall terminate.

(2) If the Area Ranger determines, prior to certification, that a part or all of a property, for which a request for certification is made, is needed for access to and utilization of public property or for recreation and other facilities, he may except from the certification that part of the property needed for these purposes.

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(f) Revocation of certification. The Area Ranger will revoke a certification when he finds that the property is being used or developed not in conformance with the terms of the certification or the applicable standards established in 36 CFR Sec. 292.16 or is in imminent danger of being so used or developed. Notice of such revocation will be in writing and delivered to the owner in person or by certified mail. A partial revocation may be made when a portion of a property covered by a certification is determined to be needed for access to and utilization of public property or for recreation and other facilities.

(g) Effect of certification. Property for which a certification is held by the owner shall not be acquired by the Secretary by condemnation.

(h) Effect of noncompliance with standards. Property for which a determination has been made that it is being used or developed not in conformance with the applicable standards established in 36 CFR Sec. 292.16 for the land use category in which the property is placed may be acquired by the Secretary by condemnation.

(i) Acquisition by negotiated purchase.

(1) Any privately owned land or interest in land determined by the Secretary to be needed in furtherance of the objectives and purposes for which the Sawtooth National Recreation Area was established may be acquired by negotiated purchase, subject only to the limitation in paragraph (j) of this Section.

(2) Property which has been developed for use prior to the effective date of these regulations, but which is not in conformance with applicable standards may be acquired by the Secretary through negotiated purchase and the Secretary may permit the owner or owners, their successors, or assigns to retain a right of use and occupancy of the improved property for a definite term not beyond December 31, 1988.

(j) Limitation on acquisitions. Acquisitions of lands or interests therein for access to and utilization of public property and for recreation and other facilities shall not exceed 5 percent of the total acreage of all private property within the Sawtooth National Recreation Area on August 22, 1972. A land acquisition plan shall be prepared by the Area Ranger and approved by the Regional Forester showing those properties needed for access to and utilization of public property or for recreation and other facilities. Said plan may be revised from time to time upon approval by the Regional Forester. Said plan shall be available for inspection by the public in the office of the Area Ranger.

(k) Land exchanges. Some parcels of Federal lands within the Sawtooth National Recreation Area are classified or may be subsequently classified in the overall general plan for the Recreation Area as suitable for selection through land exchange. Using existing land exchange authorities, these Federal lands may be made available for selection by parties owning land within the boundaries of the National Recreation Area to resolve some existing or potential land use conflicts. The values of the properties so exchanged shall be approximately equal, or, if they are not approximately equal, they shall be equalized by the payment of cash. Federal lands

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which may be located within the boundaries of designated communities will be considered for exchange only after acceptable community development plans and ordinances have been implemented.

### (l) Appeals.

Any landowner who is adversely affected by a decision of the Area Ranger under these regulations may file an appeal under the provisions of 36 CFR Part 251, Subpart C.

(m) Judicial review. The United States District Court for the District of Idaho shall have jurisdiction to review these regulations upon a complaint filed within 6 months after the effective date of these regulations by any affected landowner in an action for a declaratory judgment, as provided in the Act of August 22, 1972 (86 Stat. 612), Section 4(a).

### **292.16 Standards.**

The standards established in these regulations are in furtherance of the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values and to provide for the enhancement of the recreation values of the Recreation Area.

(a) Applicability. The standards set forth in this section for each land use category shall apply to the private land in each such land use category as classified by the Secretary in accordance with Sec. 292.15 of these regulations.

(b) Changes in standards. Changes in and addition to the standards may be made from time to time through amendment of these regulations.

(c) General standards. The following standards apply to properties in all land use categories:

(1) Use and development of the property will be in conformance with applicable Federal, State, and local laws, regulations, and ordinances.

(2) Development, improvement, and use of the property will not materially detract from the scenic, natural, historic, pastoral, and fish and wildlife values of the area.

(3) There will be adequate provision for disposal of solid and liquid waste originating on or resulting from use of the property.

(4) All new utilities will be underground.

(5) No structures or other improvements will be constructed in or encroaching upon streambeds, banks, and flood plains of live or intermittent streams. Streambeds, banks, and flood plains will not be disturbed, except as may be necessary to construct, operate, and maintain irrigation, fisheries,

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utilities, roads, and similar facilities or improvements. Any such necessary encroachment will avoid impeding water flow, sedimentation of streams, or entrance of deleterious material into streams.

### **(d) Designated communities.**

(1) The following standards are established until replaced as provided for in subparagraph (2) of this section.

(i) No buildings or structures, or part thereof, erected, constructed, reconstructed, altered, moved, or used for any purpose, except in conformance with the standards established herein.

(ii) No excavation or topographic change, except that required for foundations, utilities, or roads, that would modify or change the scenic beauty of natural hillsides or mountain slope lands.

(iii) Minimum 100-foot frontage on new building sites.

(iv) All new buildings set in 10 feet from each side of property line.

(v) All new buildings set back 20 feet from front property line.

(vi) Only one single-family dwelling for each building site or lot.

(vii) No new building to exceed two stories in height as determined from ground level.

(viii) No building or structure erected with foundation pillars or stilts that exceed 36 inches above ground level. Pillars or stilts if used, must be enclosed.

(ix) Minimum of 750 square feet for new residences.

(x) All new buildings constructed of logs, shakes, rough lumber, rough wood, and native stone.

(xi) Mobile or semi-mobile homes permitted only in existing mobile home parks. No new mobile home parks.

(xii) Nonreflective roofs on new buildings.

(xiii) All new steps and walks constructed of wood.

(xiv) Paints or stains to be of earth tone common to the area.

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(xv) All buildings and structures, including fences, to be maintained in a usable and serviceable condition or removed. Properties to be maintained in a clean and orderly condition.

(xvi) Existing plus new buildings or structures cannot occupy more than 30 percent of the land surface on a lot less than 20,000 square feet in area. On any lot larger than 20,000 square feet, existing plus new buildings cannot occupy more than 6,500 square feet. Existing properties exceeding this amount as of the effective date of these regulations may not be further developed.

(xvii) The standards in this subparagraph designated v, vi, ix, and xvi shall not apply to properties developed for commercial purposes.

(2) The Area Ranger shall cooperate with each designated community in the preparation of a community development plan and implementing ordinances which will assure that use and development of the private properties within the community will be consistent with the purposes for which the Sawtooth National Recreation Area was established. The Secretary may then, by amendment of these regulations, replace the standards adopted pursuant to subparagraph (1) with the standards set forth in such community development plan and implementing ordinances as the standards applicable to that designated community.

### **(e) Residential**

(1) Vegetative cover and screening requirements. Any combination of vegetative screening topography and structure design that renders the residence inconspicuous and not obtrusive as seen from main travel routes.

#### **(2) Buildings.**

(i) Not more than one residence on each separately owned contiguous property as recorded in the records of the appropriate county on date of publication of these regulations.

(ii) Not more than two outbuildings with each residence. Aggregate square foot area of outbuildings not to exceed 400 square feet.

(iii) Dwelling size not less than 750 square feet of floor space.

(iv) Building architecture compatible with location and the pastoral environment, rustic in nature, harmoniously colored or natural wood finish or suitable wood substitutes, and nonreflective roofs and sidings.

(v) Height of buildings to be in keeping with site characteristics and normally not exceeding on-site tree height or 30 feet.

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(vi) Sufficient setback of buildings from centerline of public roads for safety and unhampered traffic flow.

(vii) Minimum building setback from property line - 10 feet.

(3) No excavation or topographic change, except that required for buildings, roads, and utilities.

(4) Removal of live trees and other vegetation limited to that necessary to accommodate buildings and roads and to allow installation of utilities.

(5) Roads designed, located, and constructed to minimize adverse esthetic impact and soil erosion.

(6) Owner identification and sale or rental signs not to exceed 2 square feet in size.

(7) Buildings and structures, including fences, to be maintained in a usable and serviceable condition or removed.

(8) No further reduction in size of residential ownerships except that which will not impair the objectives for which the Sawtooth National Recreation Area was established. A certification will be issued pursuant to CFR Sec. 292.15 (d) upon application in such cases.

### **(f) Commercial.**

(1) General.

Service provided must serve a need which cannot readily or adequately be provided in a designated community and must be compatible with the purposes for which the Sawtooth National Recreation Area was established.

(2) Buildings.

(i) Building architecture to be compatible with the pastoral environment, rustic in nature, harmoniously colored or natural wood finish or suitable wood substitutes, and non-reflective roofs and sidings.

(ii) Building height to be in keeping with building size, scale, setback from roads and property boundaries, site size, setting, building design, and type of use.

(iii) Sufficient setback of buildings from centerline of public roads for safety and unhampered traffic flow.

(3) Only signs identifying the commercial enterprise being conducted on the property. Signs not to exceed 20 square feet in area, 6 feet in length, and 15 feet maximum height. Signs

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to be subdued in appearance and harmonizing in design and color with the surroundings. Signs not complying with this standard may be approved by certifications issued pursuant to CFR Sec. 292.15(d) in special cases.

(4) No flashing lights.

(5) No new mobile or semi-mobile homes and mobile home parks, except where they may be located without substantially impairing or detracting from the scenic, natural, historic, pastoral, and fish and wildlife values of the area.

### **(g) Agriculture.**

(1) Only structures which do not substantially impair or detract from the scenic, natural, historic, pastoral, and fish and wildlife values of the area and which are necessary for ranching or dude ranching, such as dwellings, barns, storage buildings, fences, corrals, irrigation facilities, roads, and utilities.

(2) Buildings to be of a ranch-type character with log or other rustic exterior with harmoniously colored or natural wood finish and non-reflective surfaces.

(3) Fences and other improvements to be in harmony with the western ranching atmosphere.

(4) Minimum setback of new buildings to be 150 feet from public roads where determined feasible by the Area Ranger.

(5) No further reduction in size of agricultural ownerships, except that which will not impair the objectives for which the Sawtooth National Recreation Area was established. A certification will be issued pursuant to CFR 292.15(d) upon application in such cases.

(6) No signs, billboards, or advertising devices, except a property identification sign and one sale or rental sign not to exceed 2 square feet in area and harmonious in design and color with the surroundings. Signs not complying with this standard may be approved by certifications issued pursuant to CFR 292.15(d) in special cases.

(7) Any tree removal and related slash disposal and soil erosion prevention measures to be conducted in a manner that will minimize detrimental effects to the site and adjoining lands.

(8) The general topography of the landscape to be unaltered, except for incidental excavation or topographic change required by ranching activities.

(9) Structures and improvements, including fences, to be maintained in usable condition or removed. Those recognized as having historic or esthetic value may remain.

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(10) Roads to be designed, located, and constructed to minimize esthetic impact and soil movement.

(11) Agricultural practices to be limited to hay production and pasture and range grazing in a manner which does not degrade water quality or result in accelerated soil erosion.

**(h) Mineral operations.** The standards set forth in this paragraph shall apply to a private property or portion thereof in any land use category which is used for mineral operations. To aid in determining whether a planned mineral operation will conform to these standards, the owner of the property shall submit to the Area Ranger a proposed plan of operations. If the Area Ranger determines that the proposed operation conforms to the standards established herein, he will approve the plan and such approval shall constitute the certification provided for in CFR 292.15(d).

(1) Operations will be confined to those locations where they may be conducted without substantially impairing or detracting from the scenic, natural, historic, pastoral, and fish and wildlife values of the area.

(2) The general standards set forth in paragraph (c) of this section shall apply to any mineral operations.

(3) The operations as described in the plan of operation and as they are carried out in accordance with the plan shall:

(i) Comply with Federal and State air and water quality and waste disposal standards.

(ii) Minimize adverse impacts on scenic values.

(iii) Provide for prompt stabilization and restoration of areas disturbed by the operations.

Filed in unit 40WO/lands/DK documents (k drive)