



August 20, 2026

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### MINUTE ORDER

On July 4, 2026, the Montana Shooting Sports Association (MSSA) filed an Appeal of Decision challenging the DNRC's July 1, 2026, decision to grant with modifications the Hatters' Petition requesting a permanent recreational use closure of the following described state trust lands located along Axtell Anceney Road in Gallatin County, Montana:

Township 3 South, Range 4 East  
Section 6: Gov. Lots 3-7, SE4NW4, SE4, E2SW4

On July 7, 2026, MSSA submitted an Addendum to Appeal of Decision.

On August 7, 2026, David and Melissa Hatter filed their Petitioners' Response to Appeal of Decision

On August 9, 2026, MSSA submitted its MSSA's Reply to Petitioners' Response to Appeal, a signed version of which was resubmitted on August 11, 2026.

On August 18, 2026, David and Melissa Hatter filed their Petitioners' Written Argument. A copy of the Petitioners' Written Argument is included with this Minute Order as Attachment A.

The appeal in the matter of the Hatter Petition is deemed submitted on written argument and the DNRC director will issue a decision pursuant to 36.25.1207 (7).

August 20, 2026

By: 

Director, Amanda Kaster  
Montana Department of Natural Resources  
and Conservation  
1539 Eleventh Avenue,  
Helena, MT 59601



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**BEFORE THE MONTANA DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION**

|                                                         |                                      |
|---------------------------------------------------------|--------------------------------------|
| DAVID HATTER and<br>MELISSA HATTER,<br><br>Petitioners. | <b>Petitioners' Written Argument</b> |
|---------------------------------------------------------|--------------------------------------|

David and Melissa Hatter, (hereafter, "Petitioners") submit this Written Argument in response to the Montana Shooting Sports Association's (hereafter, "MSSA") appeal of the *Department Decision on Petition for Closure of State Lands* dated July 1, 2026 (the "Decision"). The Decision is well reasoned and based on a plethora of evidence. The Department should affirm the Decision.

**ARGUMENT**

Petitioners are not entirely clear on the distinction between the different purposes for the brief they previously filed and this argument. They presume the Department wishes this argument to address the adequacy of the factual findings upon which the Decision rests. Herein, the Petitioners provide that argument but also respond to MSSA's Reply dated August 11, 2026 (hereafter, the "Reply").

## I. THE STANDARD OF REVIEW.

This is an appeal, not an evidentiary free-for-all. Indeed, “[n]o party may submit evidence or information that was not submitted at the informal hearing.” Admin R. Mont.

36.25.1207(7)(i)(iii).

Moreover, this stage of the proceeding is not for de novo weighing of the evidence.

Under the Administrative Procedure Act, M.C.A. § 2-4-101 *et seq.*, this contested case (*see*

M.C.A. § 2-4-102(4)) was resolved via an informal hearing as authorized by M.C.A. § 2-4-604.

On this appeal, the Department:

may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence ....

M.C.A. § 2-4-621(3).<sup>1</sup> “[I]t is an abuse of discretion ... for an agency to modify the findings of a hearing examiner in violation of § 2-4-621(3), MCA.” *Fugate v. Shotgun Willies, Inc.*, 270 Mont. 47, 50, 889 P.2d 1185, 1187 (1995) (citing *Brander v. Director, Dept. of Inst.*, 247 Mont. 302, 307-08, 806 P.2d 530, 533 (1991)).<sup>2</sup>

Thus, to undermine the factual underpinnings of the Decision, MSSA may not present new evidence and must not merely argue that the evidence supports a finding in its favor.

Instead, it must establish that the actual findings lack “competent substantial evidence.” *See, supra*. The “substantial evidence” standard prohibits reversal if the relevant evidence would

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<sup>1</sup> It appears that this statute applies because either the Director of the DNRC or her designee, *see* A.R.M. § 36-25-1207(7)(i)(iv) (director or designee to render final decision on appeal), neither of whom (presumably-we do not know who might be designated) heard this case initially, “are to render the final decision....” *See* M.C.A. § 2-4-621(1).

<sup>2</sup> Similarly, if MSSA were to ultimately appeal to the district court, judicial review would be “confined to the record” and the court would be forbidden to “substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.” M.C.A. § 2-4-704(1)(2).

reasonably allow the factual finding at issue:

Substantial evidence has been defined as ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion or, stated another way, enough evidence to justify a refusal to direct a verdict on a factual issue in a jury trial.’

*Phx. Physical Therapy v. Unemployment Ins. Div.*, 284 Mont. 95, 100, 943 P.2d 523, 526 (1997) (quoting *Noone v. Reeder*, 151 Mont. 248, 252, 441 P.2d 309, 311-12 (1968)).

Because the record contains evidence from which one could reasonably make the factual findings upon which the Decision rests, the Department should, and must, affirm.

## **II. TO AFFIRM, THE DEPARTMENT NEEDS TO LOOK NO FURTHER THAN THE PETITION.**

Petitioners carefully compiled evidence, marshalled their case, gave oral testimony at the hearing, and submitted written comments. MSSA’s appeal is completely devoid of any argument that concrete evidence in the record requires reversal. MSSA ***does not point to even a singular piece of concrete evidence*** to call into question findings that the recreational shooting caused damage and diminished the income-generating potential of the State Land, posed a risk to public safety, and created an imminent threat of immediate, irreparable property damage and bodily injury.

As discussed in Petitioners’ Response to Appeal of Decision, ARM § 36.25.1207(3) authorizes closure for the following reasons:

(1) The department may close specific tracts of State Trust Land to recreational use through the process described in (7) for any of the following reasons:

(a) damage attributable to recreational use diminishes the income generating potential of the State Trust Lands;

\* \* \*

(h) protection of public safety; and

\* \* \*

(k) an imminent threat, caused by potential substantial public use, of immediate, irreparable property damage or bodily injury on the state tract or adjacent land.

MSSA fails to argue recreational shooting is not causing any of the elements listed in subsections (a), (h), or (k). It certainly does not establish that the record evidence was insufficient to support the factual findings in the Decision.

Petitioners ask the Department to focus on the above framework and the Petition. The Petition contains:

- Ten declarations sworn under the penalty of perjury from concerned citizens with connections to the subject parcel;
- Two video exhibits depicting instances of recreational shooting in a reckless manner;
- Dispatch reports from the Gateway Fire Department;
- A letter from the Gateway Fire Department Chief explaining how dangerous the conditions were on the subject parcel given the recreational shooting that occurred;
- Over 80 instances of photographic evidence of shooting litter and discarded targets, including some pictures that show angles of fire directly away from the subject parcel;
- A report prepared by a forensic engineering firm which concluded that allowing unmitigated recreational shooting on the subject parcel creates a dangerous condition for the public and property proximate to the subject parcel;
- A randomly-selected nine-day data set of recorded gunshots showing regular nighttime shooting;

- Google Earth imagery showing the detrimental footprint recreational shooting caused on the subject parcel.
- Evidence of wildfires on the subject parcel started by recreational shooters shooting at tannerite.

MSSA offers no legitimate evidence to refute any of this, much less to allow a conclusion on this appeal that the Decision’s factual findings are unsupported by competent substantial evidence. MSSA claims it has “consistently challenged the casual and evidentiary basis for the decision.” Reply, p. 2. MSSA may say it challenges to evidentiary basis, but offers no cogent argument that the evidence in the record does not support the findings.

MSSA goes on to conclude that:

Evidence that trash exists and evidence that people target shoot do not establish that the people engaged in lawful target shooting deposited the trash. The same problem exists with attributing rutted roads, damaged fences, trespass, or other misconduct to recreational shooters. There is also a second causal question: whether prohibiting lawful target shooting will remedy the misconduct.

*Id.*

MSSA’s argument is, essentially, that the Department should have drawn different conclusions from the evidence. Even were that true—and it is not, *see, infra*—that does not meet MSSA’s burden to show that the inferences and conclusion the Department did draw were unreasonable and not supported by competent evidence.

A mountain of evidence supports the Decision’s factual conclusions, including the causal link between recreational shooters and the harms it found. For instance, the exhibits attached to the Petition show:

- Ex. 53-55; These exhibits are of tannerite containers left on the subject parcel. It is hard to argue that the only reasonable inference to be drawn is that these were deposited by

hikers or some other recreationists.

- Ex. 15; This exhibit shows a metal spike pounded into the earth that is covered in bullet holes. A clear fixture on the subject parcel that is used as target.
- Ex. 18; This exhibit shows shotgun wads covering the ground. These are deposited after shooters fire a shotgun and the shot and wad exit the muzzle. The shot continues and the wad falls several yards downrange. This is clearly debris left by recreational shooters.
- Ex. 33; This exhibit shows a discarded box of white high-flyer clay pigeons, a shot-up wooden pallet, and a shot-up swinging metal gong set, and a whole clay pigeon. This is classic shooting debris.
- Ex. 37; This includes a wooden target stand left on the subject parcel, and a wooden frame that shooters have previously tied balloons to.
- Ex. 38; This is a pumpkin target, a choice of target which seems to have been used regularly on the parcel. Surely, other forms of recreationists would not bring pumpkins to the subject parcel.
- Ex. 39; This exhibit shows a foam box that is designed to hold rifle cartridges. This is the definition of debris left that would only be left by recreational shooters.
- Ex. 41; This exhibit is a round table with a circular target spray-painted on the tabletop. The table is covered in bullet holes.
- Ex. 45-46; These exhibits include multiple metal gong targets left on the subject parcel and an approximately 6-foot-long wooden target that has various paper targets stapled to it. This is debris left by recreational shooters.
- Ex. 51; This is box target with bullet holes left on the subject parcel.

The conclusion that persons who engaged in target shooting deposited the litter is not



unsupported or unreasonable. It is supported by competent substantial evidence.

The subject parcel was quite encumbered by the amount of litter left by recreational shooters. Indeed, the Department noted, “Bozeman unit staff have spent considerable time removing litter from the Subject Lands and signing the common entry points with rules and regulations which go unheeded.” Decision, p. 12.

Petitioners also point out the following evidence supporting the Department’s conclusion that shooters caused the damage to fences, trespass, and other misconduct:

- Ex. 19; This exhibit is of Petitioners’ fenceline including their “No Trespassing” sign that is covered in bullet holes. Recreational shooters caused clear damage to Petitioners’ fences.
- Ex. 25; This exhibit shows several posts on Petitioners’ fenceline that have been used as impromptu targets. This is not only damaging but highly dangerous to Petitioners.
- Ex. 26; This exhibit shows large bullet holes in Petitioners’ gate.
- Ex. 28; This exhibit is a series of photographs showing bullet holes in Mr. McReynolds fenceline that have left his fence severely damaged.
- Ex. 4; Mr. Hatter attested that recreational shooters fired at his fenceline.
- Ex. 5; Mrs. Hatter attested that her fenceline is riddled with bullet holes.
- Ex. 8; Mr. McReynolds attested that shooters routinely damaged his fenceline on the subject parcel while he was the lessee. Mr. McReynolds also attested that recreational shooters often trespass onto his property when the subject parcel is full of recreational shooters. He mentioned that it is common for shooters to just place a target on his property without fear of repercussions.

- Ex. 9; Mr. Kamps attested that recreational shooters routinely hang targets on his fenceline and because of this practice, the fence is always in need of replacement.
- Ex. 13; Mr. Van Dyke attested shooters damage fences on his lease by shooting fence posts or cutting wires.

All these exhibits support the factual findings that recreational shooters caused the damages to fences, trespass, and other misconduct. Even if MSSA had posited a credible argument that the evidence could have supported a contrary finding, e.g., that hikers/campers and not shooters caused the bullet holes in the silos and fences, that does not meet its burden. The record evidence reasonably supports the findings that the Department made and upon which the Decision rests regarding the causal connection between recreational shooters and the damage to the income generating potential, the threat to public safety, and the imminent threat of irreparable property damage and bodily injury.

The Department should affirm.

### **III. THE DEPARTMENT SHOULD RELY ON PETITIONERS' EXPERT REPORT.**

The Petition discussed the expert report authored by Mark Passamaneck, a Professional Mechanical Engineer, and Mathew Martonovich, a Professional Engineer, and a Board-Certified Diplomate in Forensic Engineering (hereafter, the "Report"). The Report includes the materials reviewed, findings, conclusions, recommendations, and 2D aerial maps depicting just how far bullets travel off the subject parcel.

A few key findings include:

- "Clear and provable hazards from recreational shooting that are occurring on the subject State Trust Land should certainly be a concern and within the State's obligation to mitigate the dangers to the public and property." Ex. 62, p. 3.

- “Based on the observed locations where concentrated foot and vehicle traffic have impacted the lands and taking those to be common shooting locations, we did not observe generally suitable backstops in the majority of the areas. Some natural rises to ridges were present; however, those generally had more vegetation and no indication of significant foot traffic to place targets.” *Id.*
- “Based on the mapping of the area and the potential fall zones, along with the reported prior occurrences of inappropriate and unsafe shooting activities adjacent to and/or on the subject State Trust Land, the risks posed to the public and property in this area pose a significant risk of injury to people and property.” *Id.*
- “Our evaluation illustrates a concentrated use of recreational shooting on the subject State Trust Land, without the development of proper backstops and controlled angles of fire, creates an unsafe condition for people, livestock, and property on or near the site of shooting activities.” *Id.*
- “The foot traffic, vegetative degradation, and parking are visibly observed from aerial images.” *Id.*
- “The State’s continued allowance of recreational shooting at this location creates a dangerous condition for people, livestock, and property.” *Id.*
- “Fixed shooting locations with appropriate backstops and berms, along with signage as to safe practices, and the collection of used cartridge cases is recommended.” *Id.*
- “Without strict enforcement of these safe practices, creation of appropriate infrastructure, and rigorous monitoring of shooting activities, it is unlikely that a safe solution exists for the subject State Trust Land.” *Id.*
- “Based on our investigation, it is our opinion that allowing the current unmitigated

recreational shooting activities to occur on, or adjacent to, the subject State Trust Land creates a dangerous condition for the public and property proximate to the subject State Trust Land.” Ex. 62, p. 4.

The Report directly concludes that recreational shooting created a dangerous condition for the public and property that is proximate to the subject parcel. In addition, the Report’s mapping shows that the dangers far exceed the bounds of the subject parcel. Mapping using the 7 PRC cartridge, and a 357 MAG, show bullet flight paths and rest locations that fly by residential homes. The rest locations of several hypothetical shots land right in the yards of Mr. Richards, who provided a declaration in support of the Petition, and Tyson and Wendy Wood, who also provided supportive declarations. Of course, several projected flight paths and rest locations occur on the property of Petitioners, and other residents.

Petitioners requested closure under ARM § 36.25.1207(3) (a), (h), and (k), which provide the department with the mechanisms to close state trust land for the very reasoning that the Report cites. In fact, the Department agreed that the recreational shooting warranted closure under subsections (a), (h), and (k). Decision, p. 16. The Report stands as direct evidence as to why the Department must affirm the Decision.

Notably, MSSA does not mention the Report, nor its findings, in its Appeal of Decision or Reply.

**IV. MSSA GLOSSES OVER THE FACT THAT RECREATIONAL SHOOTING WAS DAMAGING THE INCOME GENERATING POTENTIAL.**

One of Petitioners’ primary arguments, which the evidence supports, was that the volume of the concentrated recreational shooting was damaging the income generating potential of the subject parcel. The Department agreed, explaining that “based on public comment and the Department’s own observations, current recreational shooting has an adverse impact on the

income generating potential of the Subject Lands.” Decision, p. 13. The Department also concluded:

it is apparent that the Subject Lands have become little more than a free-for-all for target shooting of refuse.

Decision, p. 12.

And:

Current recreational use of the Subject Lands has caused physical damage to the land, as a result of littering and increased foot traffic, which has a corresponding negative impact on the suitability of the lands for grazing purposes and therefore negatively impacts the income generating potential of the Subject Lands.

*Id.*

MSSA offers no evidence to refute that the evidence does not support these findings of damage to the income-generating potential of the subject parcel.

The Department should affirm.

**V. THE DEPARTMENT SHOULD RELY ON EVIDENCE PRODUCED BY FIRST RESPONDERS.**

Petitioners argued that the clear lack of enforcement presence given the amount of recreational shooting occurring, and its reckless nature, created an imminent threat to public safety and irreparable property damage; the Department agreed. Decision, p. 15. In support of their argument Petitioners attached Ex. 61, which is a letter from the Gateway Fire Chief. The letter concerns a wildfire that on the Spur Cross Ranch, directly adjacent to the subject parcel, in the summer of 2025. The Fire Chief concluded “it is suspected to have been initiated by individuals engaged in shooting activities in the vicinity... frequently utilized by the public for such purposes.” Ex. 61, p. 1. And, “in the event of a shooting accident in this area, access would have been limited to foot travel.” *Id.*

The Fire Chief’s words necessitated a closure for recreational shooting because of the

imminent threat to public safety and irreparable property damage. Again, the Department agreed and found the recreational shooting must be closed to recreational shooting under ARM § 36.25.1207(3) subsections (h) and (k).

**VI. THE DECISION IS NOT AN INFRINGEMENT ON THE RIGHT TO KEEP AND BEAR ARMS.**

Indeed, MSSA wishes to argue that the Decision infringes on the right to keep and bear arms and Petitioners argue it does not. This conflict does not warrant much more discussion, the Department must decide. However, one further point needs to be addressed.

MSSA argues, “Petitioners cite no authority establishing that recreational firearm practice falls wholly outside the constitutional protection.” Reply, p. 4. MSSA misses the point, the facts of this Decision do not make this a second amendment issue. MSSA cites *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011) for the proposition that the Decision implicates the right to keep and bear arms because people are “practicing” and “training” on the subject parcel. *Id.* MSSA’s proposition demonstrates a misunderstanding of *Ezell*.

The *Ezell* court was faced with a Chicago City ordinance that mandated one hour of range training as a prerequisite to lawful gun ownership, but at the same time prohibits all firing ranges in the city. *Ezell*, 651 F.3d 684, at 689-90; *see* Chi. Mun. Code § 8-20-120; *see also id.* § 8-20-080. The plaintiffs contend that the Second Amendment protects the right to maintain proficiency in firearm use—including the right to practice marksmanship at a range—and the City’s total ban on firing ranges is unconstitutional. *Ezell*, 651 F.3d 684, 690. *Ezell* calls this a “obvious contradiction.” *Ezell*, 651 F.3d 684, at 705.

Deciding whether the government has transgressed the limits imposed by the Second Amendment, meaning whether it has infringed, requires the court to evaluate the regulatory means the government has chosen and the public-benefits end it seeks to achieve. *Ezell*, 651 F.3d 684, at 703.

The Second Amendment does carry with it the ability to maintain proficiency in the use of firearms. *Ezell*, 651 F.3d 684, at 704. Applying *Ezell* to the facts here, however, is a misapplication. MSSA wishes to convince the Department that the Decision “infringes” upon the right to keep and bear arms because *Ezell* states firearm practice is essential to the right to keep and bear arms. MSSA is wrong for several reasons.

Unlike the facts of *Ezell*, the Decision does not make anything a prerequisite to gun ownership; nor does the Decision restrict gun ownership. In fact, firearms can still be kept, borne, and (except for target shooting) discharged on the subject parcel. The Decision does not do away with all public ranges in the Gallatin Valley. The Decision does not restrict responsible recreational shooting on other state of Montana trust lands.

It is hard to make any of the facts here align with *Ezell*. One cannot credibly equate the instant restriction on target shooting on one state land parcel with the “broadly prohibitory” bans that have concerned the Supreme Court and the *Ezell* court. *Ezell*, 651 F.3d 684, 703. It would also be improper to not consider the “*public-benefits end it seeks to achieve*,” i.e., protecting the land’s income-generating potential, promoting public safety, and preventing irreparable property damage and bodily injury. *Id.*

The public-benefits question was a part of the *Ezell* court’s analysis; a reciprocal discussion is lacking in the Reply. That oversight is particularly egregious in this case because the public benefit to be furthered in this case is, at least in part, of a constitutional dimension and enshrined in the Enabling Act. *See generally* Petition, p. 23. The considerations against which any alleged Second Amendment infringement must be balanced are not mere niceties, but mandates of federal law and Montana constitutional and statutory requirements.

Because the Decision does not implicate the right to keep and bear arms, the Department

should affirm.

### CONCLUSION

For the foregoing reasons, the Department should affirm the Decision.

DATED August 18, 2026.

BALDWIN LAW, PLLC



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William Guy Thomas