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Sustaining Montana's Working Landscapes

Montana Policy Report 2

Public Policy Research Institue
The University of Montana

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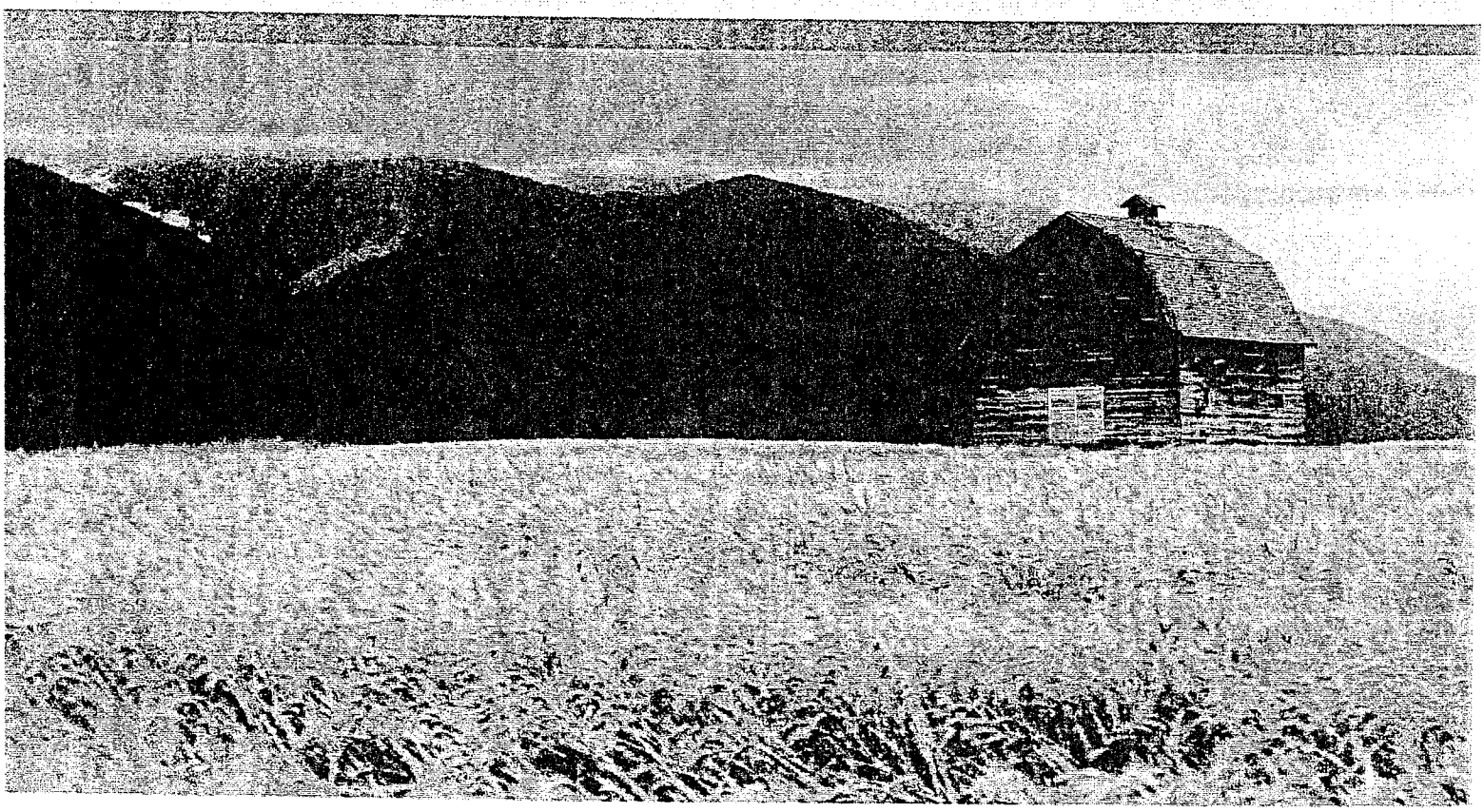

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PREFACE

The Public Policy Research Institute is an applied research and education center at The University of Montana. Its mission is to foster sustainable communities and landscapes through collaboration, consensus building, and conflict resolution. The Institute is impartial and nonpartisan; it is not an advocate for any particular interest or outcome.

One way the Institute pursues this mission is to produce Montana Policy Reports on some of the most compelling public policy issues facing the state. These reports are designed to inform and invigorate public policy in Montana by integrating scholarly research with the views and opinions of people interested in and affected by any particular policy issue. The Institute uses various means (such as interviews and surveys) to engage stakeholders in naming problems and framing options, and then supplements this understanding with the best available information and ideas in the literature.

In some cases, a Montana Policy Report may serve as a catalyst for a multi-party dialogue or negotiation. In other cases, it may simply capture the status of a particular public policy issue and provide a useful analysis of the past, present, and options for the future. The Institute carefully selects topics to address after consulting with citizens, leaders, and scholars.

This Montana Policy Report – **Sustaining Montana's Working Landscapes** – was prepared for the Montana Association of Land Trusts and other people interested in sustaining the myriad of values associated with Montana's working landscapes. The research and assessment that led to this report were completed as part of an Advanced Natural Resources Conflict Resolution seminar at The University of Montana during fall 2005.

This project and document were made possible by generous support from the La Salle Adams Fund and the Wilburforce Foundation. Thanks to Paul Sihler of the Montana Association of Land Trusts for initiating this project. And thanks to the graduate students who worked on this project, and to the various people that took the time to talk to us about Montana's working landscapes. We hope this report fosters informed dialogue and inspires action on this important public policy issue.

Executive Summary

The key findings and conclusions of this Montana Policy Report are as follows:

- There is widespread concern about the attitudes and practices of new, part-time landowners who are purchasing large blocks of agricultural lands. Any follow-up discussions should address this issue as well as pressures for subdivision and development of agricultural lands.

- Virtually everyone agreed that agricultural/timber operations benefit wildlife and other conservation values, but opinions diverged about the costs and benefits of protecting wildlife habitat on private lands. Most landowners cited difficulties in dealing with public access on their lands, and related this as a negative aspect of entering into conservation easements or participating in programs such as block management.

- Attitudes about easements varied a great deal. Although most respondents support them as an exercise of private property rights, many voiced concerns, including:

  (1) Perpetual burden on the property (and thus impacts on future generations);

  (2) Lack of understanding about tax implications;

  (3) Future enforceability of easement conditions;

  (4) Overly rigid management conditions; and

  (5) Lack of state funding to match private or federal funding opportunities.

- Some respondents wish for less-than-permanent conservation agreements with landowners as an alternative to conservation easements.

- Most interviewees support tax-based incentives for conservation. They like the idea of transferable tax credits, which would extend to "land rich, cash thin" landowners. Few were familiar with the specifics of such a program, but they liked this approach. Several landowners flatly prefer subsidy payment programs for conservation.

- Generally, respondents don't favor statewide zoning to protect agricultural lands. There was some support for local initiatives to restrict subdivision.

- Most interviewees expressed interest in a follow-up discussion to explore these issues and options for action. Several individuals said they would be more likely to join a dialogue with a diverse group of participants, including skeptics and critics of conservation easements.

After completing a draft of this report, the Institute convened two meetings in February, 2006, to discuss the findings with interviewees and other people interested in sustaining working landscapes. Although the wide-ranging discussions at these two meetings are difficult to summarize succinctly, participants identified a number of possible next steps, including:

1. Prepare and distribute educational materials for landowners and policy makers, providing practical information about resources available for private land conservation, conservation values derived from these lands, and gaps in funding and legal authorities that present obstacles to private land conservation.

2. Explore potential avenues for developing a statewide working landscape conservation policy, building upon the broad and diverse stakeholder participation initiated by this project. Look to existing programs in Texas and Georgia for ideas and lessons, but shape new policy around the specific, identified needs of Montana's landscapes and landowners.

3. Share the findings of this report to inform legislative and other discussions of private land conservation. Consider whether it would be beneficial to convene additional dialogues among landowners, conservationists, public officials, and private sector representatives to explore common interests and goals. In preparation for further discussions, it may be advisable to distribute the questions developed for this assessment to a broader group of respondents, including recreational landowners, realtors, and more clearly identified skeptics of conservation easement programs.

INTRODUCTION

Many landowners today find staying on the land difficult in the face of rising land prices, economic pressures to sell, government regulations, and conflicts over agricultural practices. Losing these working landscapes diminishes open space, wildlife habitat, and water resources that are important to all Montanans. The purpose of this Montana Policy Report is to examine a wide range of tools and policy options to sustain working landscapes, and to identify people's opinions and concerns about the desirability and effectiveness of the alternatives.

The people interviewed for this report offered detailed, thoughtful commentary on current conditions and trends facing Montana's landowners. As described in the sections that follow, they expressed hope for innovative programs that offer landowners incentives to manage and protect wildlife habitat and other conservation values while maintaining productive landscapes. Everyone cited the importance of private lands in providing conservation benefits such as habitat to Montana's public wildlife, and most remarked on the importance of providing some economic return for this public service. Respondents had varying opinions of the particular tools that would best accomplish this overall goal, but they shared a general sense that collaborative partnerships between public and private entities are most promising.

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METHODOLOGY

The Montana Association of Land Trusts (MALT) asked The University of Montana's Public Policy Research Institute (the Institute) to independently assess people's interests, concerns, and opinions about the options for maintaining Montana's working landscapes and the conservation values these lands provide, including potential statewide tools such as tax incentives and public funding initiatives.

The Institute conducted a situation assessment with the able assistance of nine graduate students in The University of Montana's Advanced Natural Resources Conflict Resolution seminar (Law 679). Throughout the process, interviewers made every effort to remain neutral and impartial; the Institute is not an advocate for any particular interest or outcome.

Cooperating with MALT, the Institute developed a list of nine open-ended questions concerning agricultural lands and wildlife habitat conservation in Montana (see Appendix A).

MALT provided the names of initial contacts, representing a cross-section of perspectives from various areas of the state. The Institute added several names in subsequent conversations, and conducted interviews with 19 people. Institute staff and associates talked to people representing agricultural, community, watershed, and conservation interests, as well as local and state government officials in Montana (see Appendix B).

Each interview lasted 30 to 60 minutes. All interviewees were encouraged to contact Institute staff after the interview with any further thoughts or questions.

Students attended most interviews and took detailed notes. This report summarizes respondents' comments, though it does not attribute particular comments to any specific individuals.

In addition to completing interviews with knowledgeable and interested people, the Institute and graduate students also conducted a comprehensive literature search on alternative policy options to sustain working landscapes.

After completing the interviews and research, the Institute prepared a draft report summarizing the diverse comments and suggestions offered by the interviewees, along with the findings and conclusions from the policy research. The staff qualitatively evaluated the responses provided by interviewees. Since the interviews were not intended to statistically represent the views of any particular social group, there was no effort to weight one idea over any other, other than noting when a response arose from a single interview or was common to multiple respondents. Rather, the emphasis was on capturing the range of attitudes and perceptions of those interviewed.

In January, 2006, the Institute circulated a draft report to all interviewees and members of the Montana Association of Land Trusts. At two subsequent meetings in February, 2006, approximately 25 participants (including a number of MALT members who were not interviewed) discussed the draft report and possible next steps (see Appendix C).

Challenges Facing Agricultural Landowners in Montana

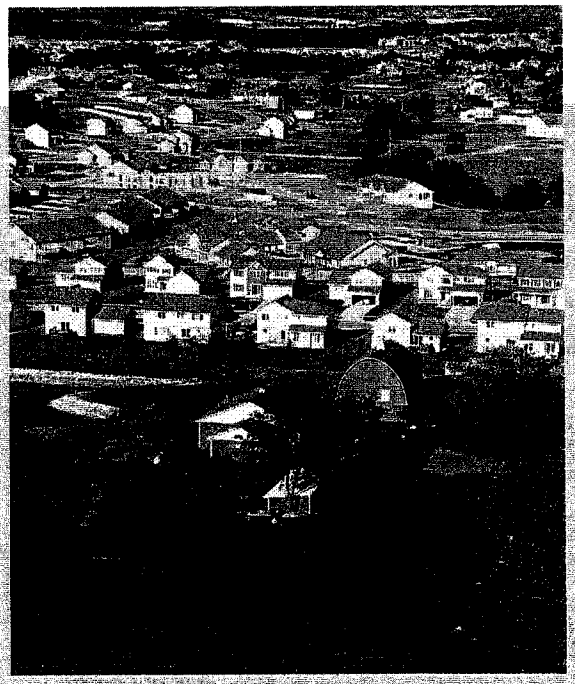
Passing one's land to the next generation is complicated.

Interviewees attributed the conversion of agricultural land in part to the difficulty in passing land from one generation to the next. They mentioned the high costs of estate planning (attorney and accountant fees, and insurance premiums), federal estate taxes, and the fact that younger generations are less interested in pursuing agricultural careers. This lack of interest is due in part to the poor economic prospects of family farming and ranching, described below. A typical comment was that younger generations aren't willing to take on the expense and risk of farming or ranching in exchange for the lifestyle benefits.

Rising property values pressure owners to sell their lands for development.

Agricultural lands increasingly are sought for alternative uses, including development and purchase as recreational ranches, often at prices far higher than the value of the lands for agricultural use. Interviewees attributed agricultural land conversion to the simple pressure to sell and capture profits that far exceed those available from agricultural production.

Although several interviewees differentiated between the faster-growing areas of the state (western and central Montana) and the areas in which population is declining (eastern Montana), several others pointed out that recreational buyers are seeking land—and thus raising property values—throughout the state. In some cases, people selling lands for large profits in the western part of the state are purchasing lands in eastern Montana, adding to land price inflation.



Making a profit is increasingly difficult.

Virtually every interviewee listed "economic viability" in one form or another as a key challenge to agricultural producers. Factors included high input costs (fuel, fertilizer, and other materials), which have not been matched by prices received for agricultural products. Several interviewees mentioned that competition in world markets favors larger, more efficient farm operations, leading in some cases to landowners selling to large agricultural conglomerates. A few respondents suggested changes in national agricultural policy that might restore the balance of trade and thus benefit Montana's agricultural producers.

Challenges Facing Wildlife Habitat And Other Conservation Values

Development and population pressures cause habitat fragmentation.

Nearly every interviewee identified fragmentation due to development as a primary threat to wildlife habitat. Several mentioned the loss of wildlife travel corridors in the face of roads associated with development. Others mentioned that subdivision and developments threaten wildlife by breaking the landscape into isolated blocks of habitat and consuming the most valuable winter-range habitat in valley bottoms. This loss of habitat and fragmentation can lead to declining and isolated wildlife populations, which may over-use the remaining habitat. Increased road mortalities and vehicle collisions are seen as a direct result of development and human expansion.

New landowners do not embrace active wildlife management practices.

Most of the interviewees commented on the influx of new "recreational" landowners in Montana, many of whom are more interested in scenic preservation than in active management of the wildlife on their land. Some described instances in which new landowners blocked hunting access, leading to overpopulations of big game and subsequent conflicts with neighboring landowners when the animals disperse after the hunting season. In other cases, new landowners are unfamiliar with the measures necessary to live harmoniously with grizzly bears and other large carnivores, or they don't take measures to prevent natural hazards (such as wildfires) on their lands.

Interviewees expressed mixed feelings about these "absentee landowners." On the one hand, they tend not to get involved in the community and don't want to deal with wildlife on their land, leading to greater burdens on surrounding landowners. On the other hand, many of these new landowners have provided large and important financial contributions to wildlife habitat restoration on their lands and on surrounding lands. There is work to be done to improve communications and understanding of management practices, but interviewees acknowledged that the newcomers generally share their basic values for the landscape.

Several people suggested that we include some of the new landowners in our interview process and in follow-up meetings to address these issues.

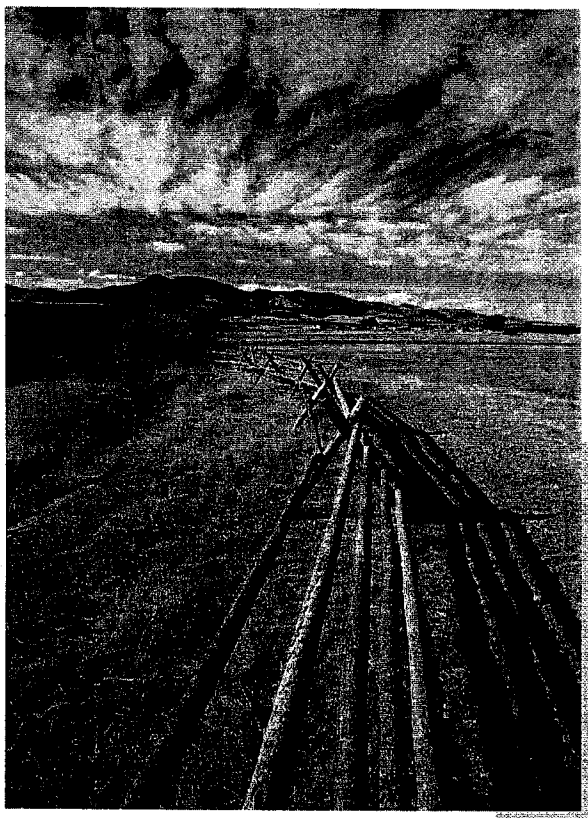
Invasive weeds reduce and compromise wildlife habitat.

Several interviewees mentioned deterioration of wildlife habitat quality due to noxious or invasive weeds such as leafy spurge and spotted knapweed. Species that occur outside their historic range are considered exotic species and usually result from accidental dispersal by human activities. New, exotic species compete with native species that have no defenses against these invaders. These invasive species may dominate the landscape and are difficult to control or eradicate. In some instances, conversion of agricultural land to smaller "ranchettes" with no weed treatment leads to the spread of invasive species to neighboring lands.

Working Landscapes Provide Many Benefits for Wildlife Habitat And Other Conservation Values

Agricultural operations maintain open spaces.

Interviewees frequently commented that virtually any agricultural practice was a benefit to wildlife as compared with development, simply because it maintains open landscapes and prevents habitat fragmentation. Several said that, "Once you've converted the land to houses, you aren't going back to open space."



Good land management practices provide food, water, and shelter for wildlife.

Most interviewees agreed that wildlife habitat is compatible with good land management practices. Several mentioned that wildlife benefit from water resources developed for livestock and that other livestock practices such as cross fencing and moving animals were also beneficial to wildlife. In a few cases, interviewees differentiated among various agricultural practices, some saying that livestock ranching is more beneficial to wildlife than single-crop farming. Interviewees also said that landowners engaged in agricultural and timber operations generally have superior relationships with the land (compared with those who purchase land for its preservation values), and that it takes time living on the land to develop the human/land relationship and ultimately good stewardship. Only one person said flat-out that agricultural operations and wildlife habitat preservation are mutually exclusive.

Private lands often provide public access to wildlife.

Several of those interviewed believe that public access to land is vital, and mentioned that landowners who gain an economic benefit from allowing access will have an incentive to create and maintain wildlife habitat on their land. Notably, several other interviewees mentioned the problems of providing public access, including uncompensated costs and inconveniences borne by the landowner. (This is discussed in more detail in the next section.)

Wildlife Habitat Protection May Benefit or Burden Agricultural Landowners

While there was near-consensus among interviewees that the protection of agricultural and timber lands provides benefits for wildlife (at least more than subdivision and development would), we heard a more complex range of answers regarding the impacts of wildlife habitat conservation on agricultural and timber operations. Indeed, most interviewees provided an example of some benefit that habitat preservation provides to agricultural and timber operations, but many qualified their answers by also offering examples of the costs and conflicts associated with habitat conservation on private lands. Interviewees clearly noted that there is no simple answer—the relationship between habitat conservation and successful, vibrant agricultural and timber operations in Montana is complex.

People's answers tended to vary according to the type of private land being considered. For example, some interviewees noted many potential wildlife habitat conservation benefits for working or recreational ranches, especially where conservation practices match regular operational practices (such as the development of water sources). Others noted that habitat conservation could actually be quite problematic for farms.

Habitat conservation measures often improve land health for agricultural operations.

People observed that landowners can reap some positive ecological services from habitat conservation on their property. One said that studies show that good stewardship is good for the land, leading to improved soil productivity. Another landowner said that he maintains untouched vegetated bottomlands, which serve as a filter to keep the polluted runoff (water carrying fertilizers) from reaching the river. Some simply noted that conservation leads to improved "ecological health," to the benefit of agricultural operations.

Landowners may enjoy observing and interacting with wildlife.

Several interviewees said that landowners who enjoy wildlife viewing would benefit from improved habitat on their lands. People observed that many farmers and ranchers seem happy to see animals on their property. One rancher acknowledged that it is difficult to discuss among his peers, but he is glad to live near wolves and grizzlies.

Good conservation practices may alleviate the burdens of Endangered Species Act regulation on private lands, but landowners remain concerned about those burdens.

One interviewee noted that conserving wildlife habitat can be a possible means for landowners to avoid the cumbersome regulations of the Endangered Species Act (ESA). A specific example given was the efforts of Wyoming ranchers to avoid listing of the sage grouse by voluntarily restricting their own activities and increasing conservation on their lands. People said that the threat of the ESA is a useful incentive for landowners to implement good conservation practices on their land and thus avoid becoming the target of an ESA enforcement action.

Several respondents expressed concern about habitat conservation and the regulatory burden of the ESA. Some said that the greatest threat to wildlife is posed by the regulations we have put in place with the intention of protecting wildlife habitat. These rules have altered traditional practices (e.g. timber cutting and crop harvesting), sometimes to the detriment of wildlife habitat and other conservation values. Others said that endangered species raise issues of fairness, as not everyone shares equally in the burden of protecting their habitat. The regulations associated with

endangered species can be frustrating for landowners, who said the lack of flexibility can be a real disincentive for conserving habitat that might be beneficial to endangered species. In some cases, interviewees said, the regulatory burden encourages landowners to conceal the presence of endangered species on their property.

Wildlife can provide income diversity and security for landowners who allow access for hunting and fishing on their land, but hunter-landowner problems raise concerns.

Most people interviewed acknowledge the potential for income diversification and security that the conservation of wildlife habitat can provide for working landscapes. Income is provided through easements, by state and federal compensation programs, and by landowners' ability to market fee hunts on their property. People said that conservation easements allow landowners to capture an economic benefit from wildlife on their lands and to put that value back into their agricultural operations.

Some interviewees were careful to distinguish between compensation programs that pay agricultural/timber operations to keep their lands in production while simultaneously providing wildlife habitat and other programs that pay for habitat conservation at the exclusion of continued production. Most people we talked with favor programs that allow lands to stay in production.

The State of Montana's Block Management Program was the compensation program mentioned most frequently in interviews. Respondents understand that this program compensates landowners for the costs of dealing with public access for hunting on their lands. People said they like the Block Management Program because it gives landowners an incentive to stay in business and provide access to wildlife on their lands. (There is a waiting list for landowners wishing to participate in the program.)

Some said that there is increasing pressure from hunters on private land, and that those hunters are often difficult for landowners to deal with. Although people reiterated the value of the compensation provided by the Block Management Program, they still consider the amount to be too small to meet all of landowners' costs. They said that private landowners are not entitled to be paid simply for the value of wildlife on their lands, but that they do deserve to be compensated for the trouble of dealing with hunters coming on their land.

People brought up a range of hunter-landowner conflicts centered on habitat conservation in Montana. One that is particularly troubling to owners of working landscapes is the mentality held by some Montana hunters that they have an inherent right to access wildlife on private lands. The problem, according to some, is that the state owns the wildlife (making it a public resource) but agricultural and timber operations provide the habitat that supports much of this wildlife on their private lands. This arrangement and the attitude of hunters have led to problems with hunter behavior on private lands (e.g. driving on wet roads, leaving gates open, not picking up spent shells, and jeopardizing human and livestock safety).

Interviewees urged greater recognition of the value of the habitat provided by private landowners and an acknowledgment that it costs those landowners to create and maintain that habitat. Some would like to see greater appreciation of and compensation for landowners who provide habitat and grant hunting access. Some also want a shift away from the belief that hunters have an inherent right to go onto private land in pursuit of wildlife.

Closely related to the issue of access is the conflict over whether landowners should allow hunters free access or should be allowed to charge fees for hunting on their private lands. Interviewees said that more and more agricultural operators are moving toward fee hunting on their lands in order to mitigate the costs of managing wildlife habitat. Others said that they still allow hunting on their lands without payment. The issue is contentious because some see the ability to offer fee hunts as an incentive for landowners to protect wildlife habitat, whereas others see it as the privatization of wildlife.

Another component to this conflict is that some people say that wildlife habitat is being managed primarily to

promote game species, rather than to support biological diversity. This concern is heightened when large ranches lock out the public in favor of outfitting and private hunts. Further, attempts to pass legislation allowing landowners a certain number of hunting licenses that they can sell is seen by some as another example of a growing trend toward the privatization of wildlife, particularly game species.

Providing wildlife habitat may impose a variety of physical and economic costs on landowners.

Although most interviewees said that incentive and compensation programs were a valuable benefit to landowners who improved wildlife habitat, many also noted that those programs were insufficient to cover the loss of production or damage caused by wildlife and hunters.

Some people expressed concern that some conservation programs lead to a loss of agricultural or timber production and consequently the operator's (and the community's) income. As an example, several noted that the federal Conservation Reserve Program (CRP) pays them not to produce, stifling local economic growth. People noted that a better program is the Grassland Reserve Program, which allows them to conserve habitat without sacrificing production, thereby stimulating the local economy. (Both these programs are described in more detail in the "Other Tools" section below.) Several people said that farm subsidy programs tend to keep production too high and prices too low.

Others expressed concern that certain habitat protection practices are intrusive and may reduce production on agricultural and timber lands. An example given of such a practice was the total fencing off of riparian areas.

People regularly brought up wildlife-caused damage as a cost to landowners. Damage by ungulates was considered particularly troubling, with interviewees saying that big game (deer, elk) impose a huge economic impact on agriculture and are more difficult to accommodate than other species, including grizzly bears. Such wildlife, according to some, present the biggest challenge to farmers—they are "natural enemies." Others said that landowners do not like deer and elk eating their vegetation.

Habitat conservation benefits all species, including some not desirable to agricultural landowners.

Another concern brought up by interviewees is that the conservation of habitat, while beneficial to many desirable species, is also beneficial to other species that are viewed as less desirable or detrimental to working landscapes. Some said that the growing population of wolves in the state and their migration to new areas is a major disincentive for landowners to conserve habitat. Several interviewees said that wolves are especially problematic for landowners who depend on guiding and outfitting on their lands as supplemental income.

During the interviews, we asked people what they thought about specific tools now in use to conserve working landscapes and associated conservation values on private lands. Each person described his or her familiarity with each tool, perceptions of its effectiveness in encouraging landscape protection, and recommendations for improvement. The questions distinguished between publicly and privately funded conservation easement programs in order to determine whether people's opinions varied based on the source of funds.

We start with some general observations that apply to both types of conservation easements.

Conservation easements provide economic incentives for private landowners to conserve wildlife habitat.

Most of those interviewed agree that conservation easements can effectively preserve habitat and provide other conservation benefits. Through easements, a method of quantifying societal value in conservation is created, and landowners can be compensated for creating and maintaining these values. Also, people said they support programs that use easements to keep land in productive use and that encourage good land stewardship.

Easements allow individual landowners to make a personal decision about the existing and future use of the property. Easements are seen as particularly effective for landowners who need money. Those who take advantage of easements are generally seeking cash reimbursement, tax write-offs, and the knowledge that a beloved landscape will not be developed. They also may be important for estate planning purposes, to ensure that the property can be inherited by the next generation.

Some worry that conservation easements will compromise landowners' property rights.

Many interviewees expressed concern about the long-term appropriateness of conservation easements. Decisions made today, they argued, will affect future generations in ways that can not be imagined now. For example, future development on lands surrounding an isolated easement may limit the effectiveness of the easement in achieving its conservation objectives. This issue may be addressed by landscape-level strategies for obtaining conservation easements, including coordinated efforts to conserve wildlife habitat across various land ownership boundaries.

Some interviewees suggested that it may be appropriate to provide greater flexibility in the long-term management of lands under conservation easements. They suggested that other measures, such as conservation leases, may provide a more flexible approach.

Easements tend to be opportunistic, not strategic.

Many of those interviewed raised concerns about the inconsistent application of easements. In some cases, enhancing wildlife habitat on one parcel of land can increase wildlife problems on a neighbor's land. Many interviewees urged wildlife conservation on a landscape or regional scale. "Landscape scale" conservation means prioritizing wildlife habitat and other conservation values over a large area, and then seeking protection (through conservation easements or other measures) in high priority areas first. This strategic approach is especially compelling when public funds are being used.

Such concerns point out the need to consider the various motivations for and socio-economic conditions of landowners who may enter into conservation easements. In cases involving wealthy new landowners, for example, the financial return for entering into a conservation easement may not provide sufficient incentive to do so. Instead, the landowner may be motivated to participate by the opportunity to be a good neighbor and participate in a broader, landscape-wide approach to land stewardship.

Some find privately held conservation easements more palatable than publicly held easements, but others do not trust private land trusts.

When asked to talk about conservation easements in Montana, many of the respondents mentioned the work of land trusts such as The Nature Conservancy (TNC), the Trust for Public Land (TPL), and the Flathead Land Trust. The interviewees' experiences with and opinions about land trusts were both positive and negative.

One person felt that TNC and TPL had been effective and creative in their work on private easements in Montana. Another saw TNC as an important catalyst for more conservation easements in the future. Many interviewees felt that privately held conservation easements are preferable to publicly held easements. A number of people talked about how some landowners resent government agencies imposing restrictions on private land.

On the other hand, at least one interviewee felt that distrust toward privately held conservation easements is associated with scandals and negative publicity about inappropriate tax breaks and property transactions by national organizations in recent years. Some landowners think land trusts have ulterior motives in their work, and some do not like the fact that land trusts profit by raising money for private easements.

One respondent talked about how some hunters are concerned about conservation easements because they sometimes limit or do not allow for recreational access once the easement is in place. One interviewee said that private conservation easements that involve partnerships among agencies and private parties are favorable because they encourage people to work together. Another supported easements transferred from private to public ownership through a transitional phase of management.

PUBLICLY FUNDED CONSERVATION EASEMENTS

• Opinions of existing programs

The relationship between public goods and private gain raises concerns.

Many of those interviewed expressed some reservation about the use of public money to finance easements on private property. The views range from a cynicism among many in the agricultural community that publicly funded easements represent an underhanded way of wresting private rights from landowners to a belief that such use of public funds is unconstitutional (as a transfer of public funds for private benefit). Moreover, publicly funded easements raised questions about the impact on property taxes when lands are withdrawn from development under easement conditions.

Those who are concerned about public access issues are particularly concerned about a "double dip"—that is, using public money to pay a private landowner to create an easement for wildlife conservation and allowing the private landowner to profit through privatized hunting and fishing. Programs such as the Block Management Program are identified as a successful use of public funds to create a public value. Others believe that in some cases public programs (e.g. conservation easements purchased by Montana Fish Wildlife & Parks)

may place too much burden on private landowners to provide public access. Whether or not a particular association or agency has a mandate to represent public interests, people generally recognize that programs that create further tension between private property rights and public access are problematic.

Enforcement of easement conditions requires consistency and vigilance.

Concern was expressed that publicly funded programs are subject to abuse. Questions may arise over the proper distribution of the available funds. Once established, conservation easements must be enforced. Ensuring proper use of the public funds requires the development of administrative programs and controls.

Sources for publicly funded easements are limited.

Some voiced concern that government funding is inadequate to address the growing demand for conservation protection measures. In some parts of Montana, they said, the funds available for leveraging other monies (from federal and private sources) are inadequate compared with the trends in property values for subdivision and other development. Moreover, several interviewees said, with issues such as school funding putting large new demands on state funds, the state is unlikely to support expanded funding for public easements.

At present, the only statewide program for publicly funded easements is Montana Fish Wildlife & Parks' (FWP) **Habitat Montana Program**, which is aimed at preserving and restoring important habitat for fish and wildlife. Through this program, initiated in 1987, FWP offers incentives to landowners to conserve habitat on private land. Funding derives entirely from hunting license fees, with approximately $3 million raised annually. In its first 15 years of operation, the Habitat Montana Program conserved 258,000 acres, with 83 percent of the habitat protected in conservation easements.

• Options to improve publicly funded conservation easements

Easement conditions should be flexible, allowing for adaptive management and including less-than-permanent agreements.

Easements that focus on outcomes rather than means may be most adaptive and palatable to Montana's landowners. At least one landowner interviewed for this assessment praised publicly funded easements that define the goals as particular landscape conditions and do not provide detailed directives about land management decisions. In contrast, some interviewees said, easements that include very restrictive language do not permit landowners to adapt to new or changing conditions on their land. Some people urged an approach in which the easement holder meets regularly with the landowner to discuss land management needs, rather than trying to prescribe those tools too definitively in the agreement itself.

In light of concerns expressed by many interviewees, easement options that are not perpetual may be more attractive to some property owners. Moreover, the doctrine of "changed conditions" may be incorporated into an easement.

Montana law provides some flexibility regarding the term of an easement, stipulating that: "Conservation easements may be granted either in perpetuity or for a term of years. If granted for a term of years, that term may not be less than 15 years. An easement granted for a term of years may be renewed for a term of 15 or more years upon the execution of a new granting instrument by the parties" (MCA § 76-6-202). Unfortunately, easements that are not in perpetuity do not qualify for federal tax relief (Montana Land Reliance, 2005). Moreover, many federal funding programs give preference only to in-perpetuity conservation easements.

Florence Williams (1998, p. 11), describes examples of different terms that may be found within conservation easements in the context of substantial urban sprawl pressures in Routt County, Colorado. A voluntary Conservation Easement-With-Homesites program enables landowners to profit from real estate sales

while protecting portions of the property. Through an Open Land Subdivision program, provisions may also be made to allow landowners to build on smaller lot sizes in exchange for conservation easements. Similarly, a Land Protection Subdivision can encourage cluster development or development that is sensitively placed on the landscape in exchange for a density increase. Alternatives not involving easements are also identified by Williams.

The success of such programs is attributed to the attainment of broad public support. In Routt County, there were intense development pressures, and unanimous support was expressed by the county commission (Williams, 1998, p. 12). The need for united leadership points, perhaps, to the role that public programs which enhance community or regional dialogue and leadership may play in the use of conservation easements in conservation development and in attracting both private and public funding for conservation easements.

The creativity and specificity that can be included within an easement is an important aspect of this mechanism of achieving conservation that should not be overlooked. A conservation easement may be designed to meet the specific needs of a specific property. Moreover, conservation easements provide a means whereby public or private entities may undertake a conservation effort without regard to whether the specific action is affirmed by regulation. Current Montana law (MCA § 76-6-203 Types of Permissible Easements) supports broad flexibility in the terms that may be included in a conservation easement.

State funding strategies could provide matching monies for federal and private programs.

Many interviewees expressed support for state funding programs that help landowners access available federal and private funds. Many federal programs require matching funds, and in some cases private monies are more readily available if they are leveraging public funds. Some interviewees explicitly supported legislation to replace the loss of the **Montana Agricultural Heritage Program**, although no quantitative information was identified that evaluates the projected demand for conservation easements by landowners against the availability of funds. Several interviewees expressed concern about the potential impacts to the market values of surrounding lands from large influxes of federal cash for conservation easements.

Several interviewees suggested new or expanded funding mechanisms to support conservation, such as a statewide open space bond, sales tax (including local option taxes), and real-estate transfer taxes aimed at second homes and recreational ranch purchases. In general, respondents appeared pessimistic about implementing new statewide taxes. Those who favored a sales tax cautioned that it should be accompanied by a reduction in property taxes, as they felt that agricultural landowners already shoulder an unfair burden of property taxes in the state.

PRIVATELY FUNDED CONSERVATION EASEMENTS

• Opinions about current practices

Many are concerned about the long-term relationship between the landowner and the private easement holder.

Many interviewees expressed concerns about how easements will be controlled and enforced in the future. One respondent said he regularly advises landowners to understand that enrollment in a conservation easement will likely affect several future generations. Another wondered about the degree to which easements held by private non-profit organizations will be enforceable in the long term, and talked about the need for public enforcement for delinquent private easement holders. One person brought up the fact that a land trust or private easement holder might change its views or policies toward land management over time—for example, if TNC changes its presently favorable attitude toward ranching. Another respondent talked about how lands surrounding a privately held easement may be developed in different ways that negatively affect the utility and value of the easement.

Confusion about easements fuels opposition.

One person felt that a certain degree of confusion exists about the tax benefits for estates including lands subject to conservation easements, and that land trusts could do a better job of explaining them. Another conveyed concerns that placing an easement on a piece of land would reduce local property taxes in the future. One respondent observed that opposition to an easement may be stirred up by only one or two residents because of the low population density of a particular area.

• Options to address issues related to conservation easements

Based on the interviews conducted for this assessment as well as information gained from other sources, a number of avenues exist to strengthen conservation easements in Montana. Although this report is not intended to provide a set of recommendations per se, the actions described below illustrate how the concerns articulated by the interviewees might be answered through various educational and legislative actions.

Engage in meaningful two-way communication with landowners and policy makers about options for and implications of conservation easements.

The first step in strengthening conservation easements in Montana might be simply clearing up some of the confusion shared by landowners, legislators, and other stakeholders. As described above, some people were unsure about the long-term stability of conservation easements. Others expressed uncertainty about the tax implications of conservation easements. Outreach activities, public meetings, and publications might offer opportunities to address these issues. The resources at the end of this report provide some examples of informational materials prepared by the Wyoming Open Spaces Initiative at the University of Wyoming.

A number of interviewees talked about how some people are skeptical of land trusts for one reason or another, possibly because they do not know about the actual work of these organizations or have made judgments based on individual cases or rumors. Our interviews revealed a strong desire among private landowners to have their concerns and needs heard and acknowledged by private land trusts and other conservation organizations, not simply to be "sold" on the financial advantages of conservation easements.

Neither answering questions about conservation easements nor clarifying the role of a land trust will be a panacea for some of the issues identified in these interviews. Some landowners have questions about easements and land trusts that can be answered with relative ease, while others have strong, values-laden attitudes that may cause them to maintain their skepticism or distrust of both, even if they possess a great deal of information. They are most likely to be reached by sustained efforts to listen to their concerns, address their needs, and acknowledge legitimate bases for opposition.

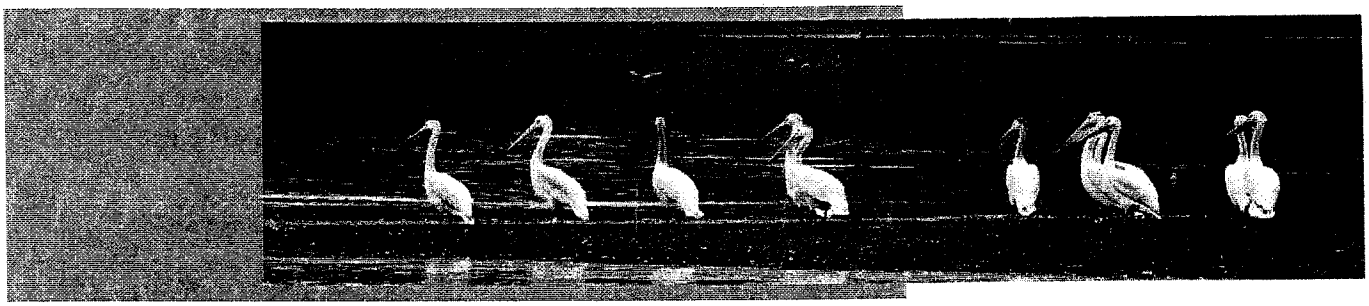
Share stories of successful easements in Montana and surrounding states, as well as resources for landowners.

In addition to clarifying landowners' questions about private easements and land trusts, MALT and its members could more prominently highlight private conservation easement successes in Montana and across the West. One approach is to create a report on these successes or a simple, publicly accessible database or website, perhaps in the style of a clearinghouse, providing articles and other information on successful private easements. By familiarizing landowners with the range of possibilities private easements afford them, they might be more willing to consider this type of easement for their property.

Numerous publications have already shared stories of successful private landowner-conservation organization partnerships. The Trust for Public Land and The Nature Conservancy, for example, have produced compelling and accessible printed materials. Additional coverage might be helpful in publications read by agricultural landowners and the new recreational landowners.

Enact legislation to improve easement options in Montana.

A third way to encourage landowners' interest in conservation easements could be through statewide



legislation that increases the benefits to landowners who enter into conservation easements.

Numerous states across the nation already have in place programs that help maximize the benefits of conservation easements for landowners, land trusts, and the public at large. Initiatives to expand the tax benefits of conservation easements are discussed in the next section of this report and are not addressed here.

While Montana has a computerized mapping system for conservation easements, it is incomplete because participation is voluntary. Allan Cox, who administers the system for the state, estimates that 75 percent of the easements are in the system, accounting for 90 to 95 percent of acreage protected by easements (Ring, 2005b).

TAX-BASED INCENTIVES FOR CONSERVATION

The use of tax incentives has become an increasingly popular policy mechanism to encourage protection of wildlife habitat on private lands. Tax incentives encourage wildlife habitat protection by providing attractive tax breaks to private landowners who agree to conserve important wildlife habitat values on their lands, often through the use of conservation easements, but sometimes through other means.

Tax incentives are considered a good conservation tool because the tax administration system is already in place and there is no need to create new infrastructure or agencies to implement the incentives (Huff, 2004). Because nearly 65 percent of Montana's land is in private ownership, and much of this land is in agricultural production and provides important fish and wildlife habitat, tax incentives can be critical to preserving both wildlife habitat and working landscapes (Montana Fish, Wildlife & Parks, 2004, 2005). See Appendix D for a summary of the variety of tax incentive programs.

• Opinions about exisiting tax-based incentives

Nearly all stakeholders interviewed were familiar with and had some opinion on tax incentives. More than half of the respondents indicated that they had a positive view of tax incentives as a tool for encouraging wildlife habitat conservation. Several respondents suggested that the creation of property tax incentives would benefit working landscape landowners. One respondent noted that reducing the capital gains tax for retiring farmers and ranchers who sold to younger owners would also provide an incentive for landowners to keep working landscapes in production. Finally, a number of respondents supported the idea of providing agricultural landowners tax credits for improving wildlife habitat on their lands.

Private landowners should be compensated for the public benefits they provide.

Many respondents, including those directly engaged in agricultural businesses and others, expressed the view that the societal benefits provided by working landscapes should be measured so that landowners could be compensated for the benefits they provide. This compensation could come in the form of tax incentives; however, many respondents believed direct cash subsidies were preferable.

Tax incentives tend to favor wealthy landowners, not the typical agricultural producer.

Many respondents noted that tax incentives tend to favor taxpayers who can afford to take advantage of them and therefore fail to provide a sufficient incentive to the average working class Montana landowner who is "land rich and cash thin." Several respondents were familiar with and quite interested in the idea of making tax credits transferable as a way of addressing the needs of "land rich, cash thin" landowners.

Some current tax policies make it difficult to keep agricultural lands intact.

Respondents expressed concern that some current tax policies make it more difficult to stay in an agricultural business, and suggested that changing these policies could provide additional incentives for landowners to remain in operation. Specifically, several respondents who work directly in farming or ranching noted that the federal "death" (or estate) tax was an obstacle to keeping working landscapes in production.

One respondent felt that the property tax break provided to some non-profit organizations gave them a competitive advantage against other large landowners. (In fact, almost all Montana land trusts voluntarily pay property taxes on land they own in fee title.)

Another respondent noted that tax policies that subsidize urban infrastructure improvements into rural areas provide a disincentive for protecting working landscapes by encouraging residential and commercial development.

• Options to improve tax-based incentives

Broaden the state income tax benefits for conservation easements by enacting transferable state tax credits.

Changing the state income tax deductions tied to conservation easements to transferable tax credits would address the concerns of respondents who felt that the current deductions benefited wealthy landowners and therefore failed to provide adequate incentives for "land rich, cash thin" taxpayers.

Specifically, taxpayers who can better enjoy a direct cash benefit rather than an income tax deduction would benefit from this proposal because they could sell all or a portion of their tax credits for cash after putting their land under a conservation easement. The purchaser of the tax credit is also benefited by the proposal because tax credit markets are such that they will likely be able to purchase the credit for less than its actual value (Hocker 2005). In addition, making the tax credits transferable would address these same concerns of the "land rich, cash thin" taxpayer by providing a mechanism to trade tax benefits for direct cash payments.

Colorado and Virginia both have programs that provide tax incentives beyond the standard federal benefits for landowners that participate in private easement programs. In Virginia, an easement donor receives an income tax credit equal to 50 percent of the easement's value and may sell this credit to another taxpayer who is in a position to benefit financially from the acquisition. This program has generated more than $200 million in tax credits since its inception in 2000 (Pidot, 29).

In Colorado, landowners receive 100 percent of the value of their easements in tax credits and, as in Virginia, can sell those credits to others who may use them to offset large tax bills. Through the program, for example, farmers Dorothy and Norman Kehmeier made more than $500,000 by enrolling about 200 acres of their land in private easement program and selling the credits. Under Colorado's program, sellers can make upwards of 80 cents on the dollar by utilizing this program (Ring, 2005a). This type of program may be of particular interest to Montana landowners who are interested in preserving

the natural value of their land, but aren't in a financial position to benefit directly from tax credits—a concern noted frequently by our interviewees.

Provide preferential property tax treatment for qualified land uses.

Providing preferential property tax treatment for qualified land uses is an incentive applied in other states that several respondents suggested would be useful in Montana. This tax incentive could provide property tax benefits to all landowners who put their land to a designated qualified use that protects wildlife habitat on working landscapes. Any effort to implement such a strategy should be preceded by an open, deliberative process to identify public priorities for conservation, rather than ad hoc application to individual properties.

Similarly, creating a property tax benefit for qualified landowners who execute a Right of First Refusal would provide conservationists an opportunity to purchase and protect working landscapes that are put up for sale.

Explore creative tax incentives for landowners practicing conservation measures while maintaining productive agricultural operations.

An income or property tax benefit could address the concerns of many respondents who noted that working landscapes currently provide numerous societal benefits that are not measured or accounted for. For example, a tax benefit compensating landowners who spend money to improve ecological conditions or employ "sustainable" practices would encourage the enhancement of wildlife habitat and benefit landowners who can afford these out of pocket expenses.

At least one interviewee suggested that compensating landowners who invest in bringing more of their land into production may provide benefits to wildlife habitat and other conservation values. So long as bringing it into production does not diminish the ecological value of the land, wildlife may benefit under the notion that enhancing the viability of working landscapes protects against commercial and residential development.

ZONING INITIATIVES TO DISCOURAGE LAND CONVERSIONS

Opinions are mixed, but more favor local initiatives over statewide zoning.

Interviewees were divided on their attitudes and opinions regarding zoning at both the state and local level. Attitudes regarding zoning initiatives landed somewhere between the idea that zoning is a necessary tool for the preservation of agricultural/timber lands to zoning takes away the value of land and thus destroys the retirement options for a landowner who might wish to develop (or sell to a developer) in the future. Those with favorable attitudes toward zoning argued that Montanans need to make conscious choices about what they want their state to look like in the future, and the only broad way to do that is through zoning. Those with unfavorable opinions expressed concerns about encroachment upon private rights, and anti-government attitudes surfaced regarding zoning.

Overall, the idea of zoning was more favored at a local level than at the state level. One interviewee remarked that he did not see any particular value in pursuing statewide zoning guidelines such as those adopted in Oregon (see Appendix E) and thought locally tailored approaches are most appropriate. Another thought that, with current focus on finding enough money for funding education in Montana, there is no need to pursue a big new statewide regulatory program. One interviewee who expressed interest in statewide zoning felt that the system must be seen as voluntary, as a mandate might seem like a heavy hand of the government. Several interviewees commented that statewide zoning initiatives are difficult to design, implement, and manage because there are significant variations in land types and populations densities across the state; a cookie-cutter approach would not work.

Several interviewees flatly said that zoning is not a politically acceptable option in the West, and particularly in Montana. One interviewee said zoning has merit but feels such a regulatory approach helps the rich get richer and the poor get poorer.

More favor approaches tailored to local conditions, community concerns.

Several interviewees emphasized the importance of a good, inclusive public process beginning at the community level for successful zoning. There is frustration among those who have participated in local land-use planning, only to learn that the state legislature limits the regulatory effect of comprehensive plans. Several respondents pointed out that the agricultural community has already embraced voluntary local zoning initiatives in Montana to prevent conversions of agricultural lands (see Appendix E for two examples), and said that these locally crafted models work well to reflect the needs and concerns of community members.

Some worry that local officials have no incentive to limit land conversions.

The few interviewees who favored statewide initiatives remarked that local officials seem unable to make difficult land use decisions and need the support and guidance that a statewide program would provide. Several who favored zoning expressed concern regarding the difficulty of implementation by local officials, noting that county commissioners fear they won't be re-elected if they limit private property rights. It was suggested that state legislators should be willing to take the heat by passing statewide legislation. A summary of statewide zoning options appears in Appendix E.

OTHER TOOLS

Landowners support voluntary, incentive-based, and collaborative programs to encourage mutually beneficial conservation on private lands.

Many interviewees urged the wider use of tools that are voluntary, market-driven, foster cooperation and partnerships between diverse groups, and create mutual gains. Interviewees involved in community-watershed initiatives remarked that their groups have achieved great conservation gains by working together. At least one interviewee commented that landowners will engage conservation practices for the sake of overall land health, not just profit.

A variety of existing programs might be strengthened or expanded to encourage conservation on private lands in Montana.

The U.S. Department of Agriculture offers tools through the National Resource Conservation Services (NRCS) to provide financial and technical assistance to aid ranchers and farmers who voluntarily tackle water management, erosion control, and threats to water, soil, and related natural resources. These programs include the Conservation of Private Grazing Land Program, Conservation Security Program, Farm and Ranch Lands Protection Program, and many others.

Included in these programs is The **National Grassland Reserve Program** (GRP), mentioned briefly above. This voluntary program offers landowners the opportunity to "protect, restore, and enhance grasslands." The GRP was authorized through section 2401 of the Farm Security and Rural Investment Act of 2002 (Farm Bill) and is implemented through NRCS, Farm Service Agency (FSA), and the U.S. Forest Service.

The program's goal is to conserve grasslands from conversion to cropland or other uses while maintaining viable ranching operations through the protection and rehabilitation of grassland, rangeland, pastureland, shrubland, and certain other lands. The program operates as an easement or rental agreement with NRCS or FSA. Landowners retain the right to conduct common grazing practices such as haying, mowing, or seed harvesting; conduct fire rehabilitation; and construct firebreaks and fences. GRP contracts prohibit the production of crops that require breaking the soil surface (such as fruit trees, vineyards, or crops other than hay) except for appropriate land management activities included in a conservation plan.

Also through the Farm Bill, NRCS offers the **Conservation Reserve Program** (CRP) and the **Wetlands Reserve Program** (WRP). The CRP has evolved into the government's single largest environmental improvement program on private lands. The WRP provides technical and financial support for landowners desiring to protect and restore wetlands and uplands. This program offers permanent easements, 30-year easements, and restoration cost-share agreements.

The funds provided by these federal programs are significant. For example, the state received $1.5 million in WRP monies in 2005, enabling NRCS to purchase easements covering 831 total acres and 350 acres of wetlands.

Another innovative tool mentioned in our interviews was the use of grassbanks. The Nature Conservancy's Matador Ranch in north-central Montana is a good example of grassbanking already in practice in the state.

A grassbank is defined as: "A partnership that leverages conservation practices across multiple land ownerships based on the exchange of forage for tangible conservation benefits" (www.grassbank.net). Claire Harper in her study *Grassbank™ Movement, 2001: The Status of Grassbank Initiatives in the West*, noted in the summer of 2001, 22 grassbank programs were planned or instituted throughout the United States.

This innovative idea was first instituted by a consortium of ranches, TNC, and the Animas Foundation in the Malpai region of southern Arizona and New Mexico in 1994 as a means to re-establish a natural fire regime and curb subdivision of ranchlands. The arrangement makes available grass on one ranch to another rancher's cattle in return for the conveyance of land-use easements prohibiting subdivision while the Malpai Borderlands Group holds the easements (Wolf, 2001).

This conservation mechanism is successful in two ways: the rancher's own grass resource is rested and the land will never be subdivided and developed. Subsequently, the three involved organizations trademarked the name and the concept to promote conservation outcomes and created Grassbank, Inc., a non-profit charitable organization to protect and promote the concept.

An additional source of financial incentives may emerge in the carbon sequestration market (carbon credits). The Consortium for Agricultural Soils Mitigation of Greenhouse Gases (CASMGS) is a consortium of nine universities (including Montana State University) and one national laboratory assembled to investigate the potential of agricultural soils to mitigate greenhouse gases (www.casmgs.montana.edu, 2005).

The consortium investigates the potential of soil carbon sequestration in reducing the buildup of greenhouse gases in the atmosphere and improving farmland and the agricultural economy. Crops and other plants remove carbon dioxide from the atmosphere and their residue and roots accumulate after harvesting. Carbon sequestration occurs with less soil disturbance and more carbon added to the soil; thus accumulation in soils can be greatly improved by various forms of conservation management and replanting with grasses. Farmers practicing these conservation management methods could sell carbon credits to carbon emitters (industrial plants and other fossil fuel burning companies) through private emission trading strategies. Benefits include an increase and stabilization of agricultural production with an overall reduction of soil erosion and pollution by agricultural chemicals.

Last, the **Montana Environmental Stewardship Program** was suggested as another resource for landowners. The Montana Stockgrowers Association (with support from the Montana Beef Council, National Cattlemen's Beef Association, NRCS, and Dow Chemical) sponsors a program that acknowledges producers who preserve and enhance the resource on their lands and provides examples and ideas to cattlemen of environmentally sustainable practices and conservation improvements.

Virtually every interviewee reacted positively to the possibility of engaging in a dialogue aimed at sharing ideas about possible tools to achieve two related goals: (1) promote conservation values on private lands; and (2) sustain working farms, ranches, and timber lands in Montana.

Several individuals commented that they would be more likely to enter into ongoing discussions if the group includes a diverse group of participants, including those who are not generally supportive of tools such as conservation easements. A typical comment was that it's not worth the time to sit around with the usual people, talking about what needs to happen; skeptics and critics need to be present to address the obstacles to achieving the dual goals expressed in this assessment.

Others expressed a great deal of enthusiasm to follow-up on these conversations, typically offering the opinion that it is time to be talking about how to bring landowners' and conservationists' interests closer together.

To this end, the Institute convened two meetings to discuss the findings and conclusions of this report, and to talk about what – if anything – people wanted to work on in the future.

The summary below organizes participants' comments under general themes and specific strategies discussed at the meetings.

ISSUES OF CONCERN

Sustaining Montana's working landscapes should be a high priority for the state.

One of the top concerns participants raised at both meetings was the maintenance of traditional uses of land in Montana and ensuring future generations would be able to farm and ranch. Participants talked about keeping people on the land and preserving the rural way of life. They also pondered about what a "working landscape" would/should look like decades into the future. Some also expressed concern about how to address the seemingly large turnover of land that may be happening in the coming years. (One participant noted it might be the largest turnover of land since the transfer of land to the railroads.) This overarching issue tied into other concerns participants discussed, including the estate tax and conservation easements.

Montana's "new" landowners are an important factor in private land conservation.

Non-resident/new/recreational landowners buying land in Montana at high prices was one of the top concerns identified in the draft report, which surprised some of the participants. One participant said that other meetings and symposiums that previously addressed this issue might have been a reason it was identified as a top concern in the draft.

Participants talked about how some of these new landowners buy land in Montana for recreational opportunities, but others buy it with the intention to maintain traditional agricultural values. This second type of landowner, participants noted, hires ranch managers to maintain the land. Participants said that land and habitat values could decline, even with a professional ranch manager, because the quality of land varies. Participants also noted that these new landowners are moving away from livestock and are managing instead for recreation, wildlife, and land preservation.

Meeting participants also discussed the need and desire to integrate new landowners into traditional Montana communities in order to preserve traditional agriculture. Participants also said that new landowners want to become "locals," and saw a need for a mechanism by which to engage these new landowners.

Landowners could benefit from additional information and education.

Participants at both meetings felt strongly that landowners needed information and education about options for private land conservation. Others felt that

new resources might be developed to aid landowners in conservation efforts.

Meeting participants discussed possible public confusion over conservation easements. Some felt the public saw easements as an "either-or" arrangement, meaning they viewed an easement as totally private or totally public, when in fact it's often a mix of both. In addition, because private land conservation often involves numerous different avenues, landowners are often confused about where to turn for resources.

Some participants suggested a type of clearinghouse service, similar to the state extension service. Participants also noted that educational resources have existed in certain parts of the state for some time, but have not necessarily been effective in reaching landowners. Some participants favored a toolbox approach that offered a variety of resources rather than a single approach to land conservation, but stressed the need to tie those initiatives together in a meaningful way. Some felt that presentation of various sets of tools might be effective.

Other participants stressed informal story-telling among neighboring landowners as an important way to share information about land conservation and especially conservation easements

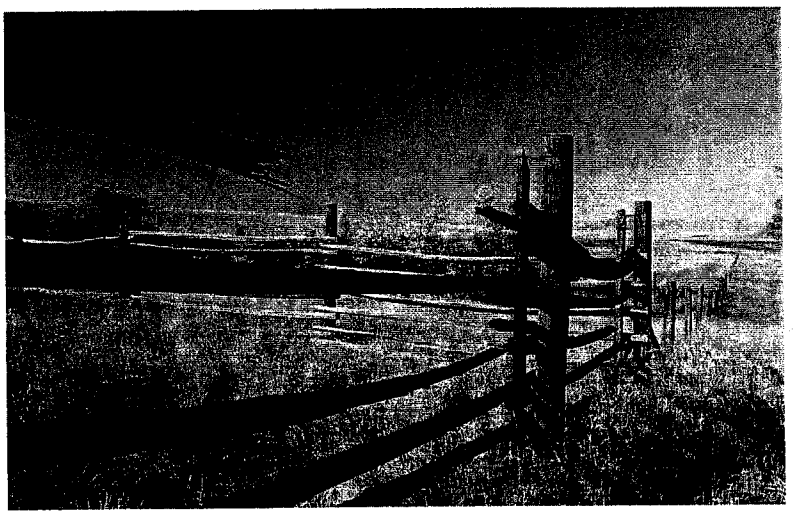
The state might benefit from developing a comprehensive working landscape policy.

Montana does not have a statewide plan for sustaining working landscapes. Some participants, especially those attending the first meeting, thought this might be an idea worth exploring in more detail. Some big-picture goals participants mentioned that this type of policy might seek to instill in landowners, communities and officials included: sustaining working farms and ranches; coordinating and building upon existing efforts, information, infrastructure and successes; empowering communities; engaging new landowners; inspiring leadership; providing funding for land conservation; setting priorities for conservation; and connecting public funding to community dialogues.

When using public funds to sustain working landscapes for wildlife habitat and other conservation values, it is important to begin with an open, inclusive public dialogue about priorities and values. Most current approaches, by contrast, are ad hoc and opportunistic.

Participants at the first meeting talked about identifying the types of landscapes in Montana that need to be conserved. They mentioned that Texas and Georgia have state landscape management tools in place.

Participants discussed whether the current way landscapes are managed in the state can be improved upon and whether there is indeed an opportunity to work together to create more options for conservation. Many participants felt there was room for improvement,



but were unsure how to begin implementing any changes. Some participants talked about the successes Georgia and Texas have enjoyed as a result of their state conservation plans.

Participants at both meetings talked about differing types of landscapes and how they are managed across Montana. Participants referenced a Montana Challenge report that identified three distinct sections of the state: the highly-populated West (west of Bozeman), the rural Central and the rural East. (The report is available at http://fwp.mt.gov/tmc/reports/landscape.html.) Because of this division, participants thought it might be politically difficult to create any statewide strategy. One participant did note research indicating statewide support about losing ranchlands and the rural way of life. Additionally, one common interest across the state

one participant noted was a sense of invasion—out-of-staters "invading" western Montana and western Montanans "invading" the central and eastern parts of the state.

Participants mentioned zoning in both meetings, but weren't always specific about how it might fit with a statewide landscape policy. Some talked about zoning on a statewide level and one participant suggested a system that would allow for one house for every 160 acres in rural areas and establish a land trading type of system similar to carbon trading.

Tax policies are of concern to landowners.

The estate tax seemed to be an issue of concern to meeting participants, especially those at the second meeting. Several groups are working to permanently repeal the federal tax. One participant wondered if the repeal of the estate tax would hurt the prosperity of numerous conservation groups and foundations that currently indirectly benefit from its existence. Participants at both meetings expressed a need for more education about the estate tax.

STRATEGIES FOR ADDRESSING ISSUES

Build a broad-based coalition of stakeholders and pursue an integrated approach to lands and livelihoods.

Throughout our discussions, participants repeatedly emphasized the need for a broad-based coalition of stakeholders concerned with working landscapes and conservation values.

Participants at the first meeting suggested identifying the largest private landowners statewide (including/especially Plum Creek) and creating a dialogue with them to evaluate/identify priority areas, resource values, and trends.

Some participants talked about how landowners could partner with groups like TNC and USFWS to help pay for things like appraisals. One participant said that his group gained knowledge by observing how TNC worked with Plum Creek on conservation issues. Several participants expressed a desire to engage realtors in land conservation efforts.

Participants, especially at the first meeting, talked about how land and water are linked ecologically, but not always in terms of management or funding. If watershed groups can become involved with land conservationists, the efforts of both could be more effective and more funding for conservation could be available.

Improve state support for private land conservation.

Participants talked about a need for increased state and local funding to fill the inevitable void of federal funding and/or to match funds as no funding programs work independently. State transferable tax credits may be easier politically, participants noted at both meetings.

New Mexico and Colorado have state land conservation tax credit programs that participants found to be effective. New Mexico's "gives a tax credit of up to $100,000 to anyone donating land or conservation easements to open space programs or environmental organizations." (See http://nature.org/wherewework/northamerica/states/newmexico/about/art13463.html.) Colorado's cap is $260,000.

Improve existing conservation easement programs and practices to address landowners' needs and concerns.

Many participants, especially at the second meeting, talked about the benefits of short-term conservation agreements as a way to maintain conservation values. One participant wondered if this type of idea could take place at the state level. Another thought it would be a major problem with the IRS. Participants thought that terms and conditions for this type of program would have to be substantially clarified.

While the idea of a limited-term lease (one participant suggested 15 years as a length) might be appealing to some participants, others noted that neighbors of lands with easements on them would expect them to continue. Some participants at the second meeting did not necessarily see the point of a temporary easement and others wondered about what would happen if the holder dies halfway through the term of the lease.

Next Steps

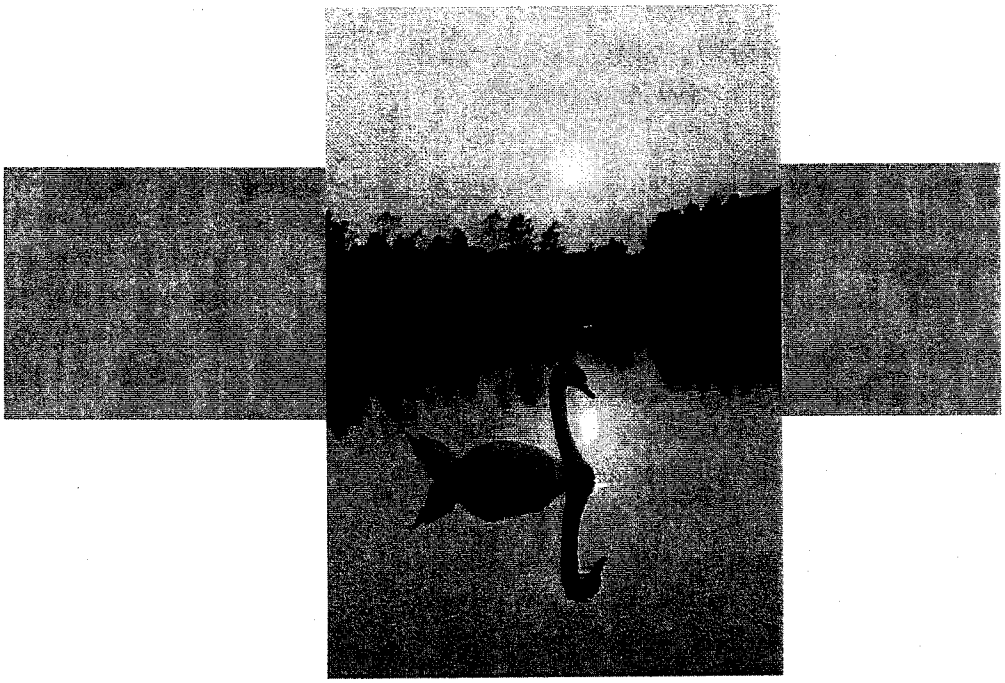
This Montana Policy Report reveals widely shared values for sustaining Montana's working landscapes, and identifies a number of landowner concerns that must be addressed in any statewide effort to encourage private land conservation.

Discussions among a small group of interviewees, members of the Montana Association of Land Trust, and others suggest several potentially fruitful follow-up steps:

1. Prepare and distribute educational materials for landowners and policy makers, providing practical information about resources available for private land conservation, conservation values derived from these lands, and gaps in funding and legal authorities that present obstacles to private land conservation.

2. Explore potential avenues for developing a statewide working landscape conservation policy, building upon the broad and diverse stakeholder participation intiated by this project. Look to existing programs in Texas and Georgia for ideas and lessons, but shape new policy around the specific, identified needs of Montana's landscapes and landowners.

3. Share the findings of this report to inform legislative and other discussions of private land conservation. Consider whether it would be beneficial to convene additional dialogues among landowners, conservationists, public officials, and private sector representatives to explore common interests and goals. In preparation for further discussions, it may be advisable to distribute the questions developed for this assessment to a broader group of respondents, including recreational landowners, realtors, and more clearly identified skeptics of conservation easement programs.



Appendix A

Interview Questions

1. What are the greatest challenges facing Montana's agricultural landowners today?
2. What is the most important policy change that would help protect Montana's working agricultural lands?
3. What are the greatest challenges facing wildlife habitat today?
4. How is wildlife habitat conservation helped or hindered by the protection of agricultural operations? How are agricultural operations helped or hindered by wildlife habitat conservation?
5. Are you familiar with any of the following approaches to keeping farmers, ranchers, and timberland owners on the land? Do you have an opinion about how these might address the issues you've identified?
   a. Publicly funded conservation easements
   b. Privately funded conservation easements
   c. Tax-based incentives for conservation
   d. Zoning initiatives to discourage agricultural land conversions
6. What other tools we should evaluate?
7. Would you be willing to take part in a meeting to discuss our findings and conclusions?
8. Who else should we interview?
9. Do you have any questions?

Appendix B

People Interviewed

Jackie Corday, *Open Space Director, City of Missoula*
Dusty Crary, *rancher, Choteau*
Bill Donald, *Montana Stock Growers, Melville*
Jeff Hagener, *Montana Fish, Wildlife & Parks, Helena*
Lyle Hodgkiss, *rancher/banker, Choteau*
The Hon. Greg Lind, *State Senator, Missoula*
Chris Marchion, *Montana Wildlife Federation, Anaconda*
The Hon. Gary McLaren, *State Representative, Victor*
Roger Muggli, *farmer, Miles City*
Melanie Parker, *Northwest Connections, Condon*
The Hon. Jim Peterson, *State Representative, Buffalo*
Craig Sharpe, *Montana Wildlife Federation, Helena*
Jim Stone, *rancher, Ovando*
Hugo Tureck, *rancher, Coffee Creek*
Constanza van der Pahlen, *Flathead Lakers, Polson*
Dale Veseth, *rancher, Malta*
Mike Volesky, *Governor's Office, Helena*
Jamie Williams, *The Nature Conservancy, Helena*
John Youngberg, *Montana Farm Bureau Federation, Bozeman*

Meeting Participants

Both meetings were held in Helena, Montana.

February 15 Participants

Matt McKinney, *Public Policy Research Institute*
Sarah Van de Wetering, *Public Policy Research Institute*
Paul Sihler, *Montana Association of Land Trusts*
State Rep. Gary McLaren
Glenn Erickson, *Montana Fish, Wildlife & Parks*
Mike Mueller, *Rocky Mountain Elk Foundation*
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Tax Incentive Programs for Conservation

Tax incentives can be implemented at the local, state, and federal level and can operate to provide taxpayers relief from income, inheritance, and property taxes. The key to an effective conservation tax break is ensuring that it targets or appeals to the intended taxpayer and that it protects ecological benefits that are commensurate with the lost tax revenue (Huff, 153-58). Below is a list of the most commonly utilized conservation tax incentives, a brief description of how they function, and where they are available:

1. **Conservation Easements –** Depending on local and state laws, when a landowner executes a conservation easement he or she may qualify for any combination of the following tax breaks:

   a. Federal income tax deduction for the value of the land rights under the easement. I.R.C. § 170. This federal tax incentive is available to all taxpayers. Montana law provides for a deduction from the gross estate for a conservation that complies with I.R.C. § 170(h), and provides for an exclusion of up t $500,000 (based on the value of the conservation easement) from the gross estate.

   b. Federal estate tax exemption for up to $1 million of value given during life or at death and an additional exemption for up to 40% of the value of the land subject to the easement. I.R.C. § 2031(c). This federal tax incentive is available all taxpayers.

   c. State income tax deduction for the value, or a percentage of the value, of the land rights under the easement. This tax incentive is available in Montana. M.C.A. §15-30-126.

   d. State income tax credit for the value, or a portion of the value, of land rights under a conservation easement. Available in North Carolina, Virginia, Delaware, Colorado, Connecticut, South Carolina, California, Maryland, New Mexico (Hocker, 2005).

   e. Transferable state income tax credits, allowing a landowner, who would prefer cash to a tax benefit, to transfer (sell) their tax credits to a taxpayer who needs income tax credits. Available in Virginia and Colorado (Hocker, 2005,124-29).

   f. Refundable state income tax credits, allowing a landowner who does not use a tax credit to submit it back to the state for direct cash refunds. This tax incentive is only available in Colorado (Hocker, 2005).

   g. State property tax exemption or reduction. Montana does not provide a specific property tax exemption for conservation. Montana law provides that a conservation

easement cannot lower the class of real property, so there can be no reduction in property tax due to a conservation easement.

h. State estate tax deduction for the value of a conservation easement. (Bowles, Downes, Clark, and Guerin-McManus, 1998, 241). There is no estate tax in Montana, so this deduction is not relevant here.

2. Right of First Refusal Property Tax Exemption – A Right of First Refusal provides the owner of the right an enforceable priority to purchase agricultural land when it is put up for sale. A landowner receives a waiver of state property taxes in exchange for granting the Right of First Refusal to a qualified land trust or government entity. The state can administer the program by compensating local governments for the lost property tax revenue. This tax incentive is not available in Montana (Hunt and Spears, 2002).

3. Preferential Property Tax Treatment – Landowners who put their lands to a qualified use, such as agricultural production, habitat conservation, or open space, receive either property tax exemptions or property tax deductions. These property tax incentives are available in Virginia, Oregon, and Minnesota (Huff at 143-151). There are three ways to structure this tax incentive:

a. Preferential Assessment – State or local government provides the landowner a reduced property tax rate or full property tax exemption so long as the landowner continues to use the property for a qualifying use, such as agricultural production (Huff at 142).

b. Deferred Taxation – Same as Preferential Assessment, except a change in use away from a qualified use requires the landowner to repay some or all of the taxes saved through the program (Huff at 142).

c. Restrictive Agreement – Agreement for a term of years whereby the landowner puts the land to qualified uses in exchange for a preferential property tax rate (Huff at 142-43; see also Bowles, Downes, Clark, and Guerin-McManus, 1998).

4. Agricultural Contribution Income Tax Deductions – Virginia used to provide an income tax deduction for a qualified agricultural contribution. Details of this particular deduction were not discovered and the statute has expired (Huff at 145, 2004). This tax incentive is not available in Montana.

5. Conservation Income Tax Credit or Deduction for Soil, Water, and Habitat Protection – Landowner is awarded an income tax deduction or credit in exchange for implementing certain qualified conservation measures. These measures can include improving degraded wildlife habitat or instituting specific conservation protocols that protect unique wildlife habitat characteristics or soil and water quality. Virginia offers a deduction for protection of open space; California offers a credit for any expenses used improving aquatic habitat, and the federal government offers income deductions for the cost incurred improving soil and water conditions (Huff at 144-150, 2004;

see also Bowles, Downes, Clark, and Guerin-McManus, 1998 at 222). This tax incentive is not available in Montana.

6. Unproductive Land Income Tax Credit – Landowner is provided a tax credit for the value of costs incurred in rehabilitating and restocking unproductive lands. This tax incentive is available in Oregon. (Huff, 148-49, 2004).

7. Sustainable Use Income Tax Credit – Landowner is provided a tax credit for some or all of the costs expended in implementing qualified sustainable agricultural practices. (Bowles, Downes, Clark, and Guerin-McManus at 241, 1998). This tax incentive is not available in Montana.

8. Estate Tax Exemptions for Priority Lands – Landowners with key wildlife habitat lands receive a state estate tax exemption for committing to continued protection of the habitat values. (Bowles, Downes, Clark, and Guerin-McManus at 225, 1998). This tax incentive is not available in Montana.

9. Elimination of Incentives that Encourage Residential or Commercial Development of Working Landscapes – Landowners seeking to residentially or commercially develop agricultural lands will not be permitted to enjoy taxpayer-subsidized infrastructure improvements. Suggested by interviewees. This tax "disincentive" is not part of Montana's tax scheme.

Zoning Initiatives to Discourage Conversion of Agricultural Land

STATEWIDE

There are currently no statewide zoning initiatives in Montana. As noted earlier, growth is in decline in eastern Montana, stagnant in central Montana, and western Montana is experiencing an explosion in growth. The state of Oregon provides an example of a statewide planning process, although the process described here is presently under review pursuant to recently enacted legislation (S.B. 82).

In terms of growth and different geographical characteristics, Oregon is similar to Montana. The state has diverse geographic features such as the coast, mountains, agricultural land, farmland, and timbered forests. The western part of the state has seen a large amount of growth in the past. Central and eastern Oregon are not experiencing nearly the level of growth like the western part of the state. Nonetheless the state has managed to maintain a strong statewide program for land use planning since 1973. The foundation of that program is a set of 19 statewide planning goals expressing the state's policies on land use and related topics (such as citizen involvement, housing, and natural resources). Most of the goals are accompanied by guidelines, which are suggestions about how a goal may be applied. Oregon's statewide goals are achieved through local comprehensive planning. State law requires each city and county to adopt a comprehensive plan and the zoning and land-division ordinances needed to put the plan into effect.

A statewide program with flexibility like that of Oregon's allows different regions, counties, and cities to implement diverse planning strategies appropriate for the individual place. It is a mandate for counties and cities to develop their own land use planning. This form of zoning allows individuals to have a voice in development that will directly affect their property values and quality of life by placing their values and the values of their neighbors and the community into the form of zoning regulations, which elected officials must use when making decisions on development proposals in their area.

LOCAL

Several local zoning options have been successfully executed in Montana and other states. We describe here two examples from Montana, based on information provided in the Montana Smart Growth Coalition resources listed in Appendix F.

1. Powell County

Powell County Development Regulations were created alongside a revision of the Comprehensive Plan in 1996 in response to concerns over the increasing pace of development in and around the county. A series of about 20 community meetings provided an opportunity for any interested citizens to get involved in the process.

The Development Regulations divided the county into four "Agricultural Districts" and a series of "Rural Centers."

Each of the districts has minimum lot sizes and allowable uses, creating what is essentially countywide zoning. The minimum lot sizes assigned to each of the districts were determined through existing development densities and citizen input in the process of developing the comprehensive plan and development regulations.

The Powell County Development Regulations have been very effective at stopping rural sprawl in the county's north end. The large lot sizes have curbed development in this area. Some conditional use permits have been issued for secondary dwellings (e.g., guest cottages) on properties with the condition that the structures are clustered. The Rural Centers allow for more dense development in areas where some infrastructure is already in place and will allow for growth in the county without compromising the productive agricultural lands. The centers also provide localized areas of services for area residents so that it is not always necessary to commute to urban centers for basic services. Land values in the north end have skyrocketed since the implementation of the development regulations.

The report by Powell County noted some issues that arose as a result of zoning: "One downside of this is that many of the blue-collar type workers (plumbers, electricians, contractors, etc.) have been priced out of the area as parcels are purchased as second homes for the wealthy." Another area the county could address is creating incentives for affordable housing and higher density development within the rural centers (with community septic and water systems). Finally, the county noted the need to address the issue of family transfers. "Family transfers are allowed by the development regulations to help agricultural families pass on the farming/ranching tradition to their children while maintaining a residence on their property. However, ranching corporations do not qualify for family transfers. The county is currently unsure how to accommodate children of ranching corporations as they take over the operations in the next few years."

2. Jefferson County

In the spring of 1992, proposals for two poorly planned subdivisions in the Milligan Canyon/Boulder Valley area raised concerns among surrounding ranchers. The subdivisions were eventually denied due to public access issues. However, this controversy got people in the area interested in planning and zoning.

All of the landowners in the area agreed that permanent zoning was necessary. These key players in the zoning proposal sat down with the county attorney to discuss issues and potential tools. They wanted zoning that would truly protect agricultural land uses and preclude subdivision. They developed the idea of using minimum lot sizes rather than density standards and created a list of permitted activities (rather

than prohibited activities). Finally, the group worked with a planning consultant to develop the final regulations, which were adopted as citizen-initiated zoning in 1995.

The Jefferson County Milligan Canyon/Boulder Valley Agricultural Zoning District divides a roughly 90,000 acre jurisdiction into two districts. Permitted uses for the districts include commercial agricultural and horticultural uses, farms, ranches, irrigation systems, feedlots, commercial timber growing, metal mining, veterinary offices, various commercial uses, and associated residential uses. In the AG-1 District, permitted uses may be conducted on parcels of at least 640 acres. In the AG-2 District, permitted uses may be conducted on parcels of at least 640 acres and one non-farm/ranch dwelling unit may be located on existing parcels of 20 acres or more as long as the parcel conforms with minimal performance requirements for health and safety and nuisance prevention. Additionally, both districts allow for limited commercial uses on parcels of three acres or more such as veterinary offices, sale of agricultural products, taxidermy, and bed and breakfasts.

Since the Zoning District was adopted there have been no non-agricultural developments. Landowners do have the option of bringing in limited commercial uses, but this has not happened yet. The report stated that many observers think the 640 acre minimum lot size is a bit extreme, but the landowners in the zoning district are happy with it. The biggest potential drawback of this type of zoning is that it can limit the market value of the land.

The Milligan Canyon/Boulder Valley landowners are willing to accept the potential for a decrease in their land values and believe in the long term it will actually increase land values as open agricultural lands become scarcer in the area. One landowner recommended that other counties/citizen groups considering zoning need to look at both density standards and minimum lot sizes and weigh the pros and cons. The density standard approach would give the opportunity for limited development. This allows landowners to maintain some of the original market value of their land, but would also allow more development than the minimum lot size approach.

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