

EXHIBIT A 9
DATE 1/29/13
HB 246

MONTANA ASSOCIATION OF PLANNERS
Legislative Committee
2013 Legislative Session

Summary comments regarding: HB 246, A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LOCAL GOVERNMENT REVIEW OF CONSERVATION EASEMENTS FOR COMPLIANCE WITH GROWTH POLICIES, CAPITAL IMPROVEMENT PLANS, ZONING REGULATIONS, SUBDIVISION REGULATIONS, AND OTHER REGULATIONS; AMENDING SECTIONS 7 76-1-605 AND 76-6-206, MCA; AND PROVIDING AN APPLICABILITY DATE."

House Local Government Committee; January 29, 2013

Title 76, Chapter 1, Part 6 MCA establishes the requirements for a growth policy, and 76-1-605 MCA specifically addresses how a governing body may use an adopted growth policy. The existing uses of a growth policy are non-regulatory but House Bill 246 **would make a growth policy regulatory** only for the local government review of a proposed conservation easement.

Title 76, Chapter 6, Part 2 establishes the requirements for conservation easements and 76-2-206 MCA requires that the entity acquiring the conservation easement allow the local planning authority an opportunity to comment on the proposed easement prior to the easement being recorded with the clerk and recorder. HB 246 changes this from review of the easement by the local planning authority to **approval** of easement the local planning authority.

MAP's arguments *against* this legislation:

- A growth policy is a powerful tool for local governments, but 76-1-605(2) MCA makes it clear that a growth policy is not intended to be used by local governments as a regulatory document. In essence, HB 246 adds *well accept for when reviewing conservation easements*. Considering all the potential land uses that exist, it doesn't make sense to cull out one specific use, conservation easements, and ignore the rest. Either a growth policy is regulatory or it isn't. Much to the dismay of some and to the delight of others, the legislature has consistently said a growth policy is not regulatory.
- Conservation easements are an agreement between a landowner and the entity that will hold the conservation easement, generally a land trust. These agreements are voluntary and like most other transactions are negotiated between a willing buyer and a willing seller. Conservation easements are a flexible tool in that they are custom-tailored to meet the unique needs of the landowner and the land trust, and as such, are usually a very personal decision for landowners. HB 246 unnecessarily inserts **approval** of the governing body into what is otherwise a private-party transaction. This is intrusive. Will governing body approval of other common real

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estate transactions be next (e.g. acquiring an access easement from your neighbor, selling your home, leasing agricultural property, etc.)?

- The law already acknowledges that there are instances where a conservation easement could conflict with a comprehensive plan, or other plans adopted by a local government, and therefore the law already provides a mechanism where the entity acquiring the conservation easement must consult with the local planning authority. MAP is not aware of any instances where the entity acquiring a conservation easement has not taken the concerns of a local planning authority seriously where conflict with adopted plans has been noted by the local planning authority. On the contrary, MAP is aware of situations where land trusts have chosen not to proceed with some conservation easement projects because a local planning authority has identified conflicts with adopted plans. There isn't a statewide problem with the way proposed easements are currently reviewed by local governments. HB 246 is a solution in search of problem.