Constraints and Opportunities of Conservation Easements as a Tool for Agricultural Preservation in the Blackfoot Valley, Montana

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Recommended Citation
THE CONSTRAINTS AND OPPORTUNITIES TO CONSERVATION EASEMENTS AS A TOOL FOR AGRICULTURAL PRESERVATION IN THE BLACKFOOT VALLEY, MONTANA

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Professional Paper

presented in partial fulfillment of the requirements for the degree of

Master of Science
in Resource Conservation

The University of Montana
Missoula, MT

Spring 2007

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Conservation easements have historically been used by land trusts and government agencies to preserve private land from development and subdivision, to preserve unique geological features, and protect fish and wildlife habitat. The national and Montana state conservation easement legislation does not explicitly state agricultural land as a conservation value that they aim to preserve. As such, land trusts and government agencies that are the holders of conservation easements do not typically identify working farms and ranches as key conservation areas.

In light of agricultural land taking a backseat to scenic views, historical buildings, and wildlife habitat, the purpose of this paper has been to examine conservation easements as an effective tool to preserve agricultural land in western Montana, specifically the Blackfoot Valley. To that end, this paper: 1. Reviews the background of conservation easements in the United States and Montana, including the benefits and challenges involved, 2. Examines the demographic and agricultural changes to the Blackfoot Valley, and 3. Discusses the constraints and opportunities of conservation easements as a tool for the preservation of agricultural land, including the importance of flexibility in an easement agreement. This paper then puts forth the implications for preserving agricultural lands using conservation easements in the Blackfoot Valley, Montana and elsewhere.

This paper argues that conservation easements are an important tool for limiting development and subdivision on agricultural lands but they cannot ensure that these lands will be productive or economically viable. The flexibility to modify easement agreements in response to economic, environmental, cultural, and scientific changes and discoveries, now and in the future, could have a large impact on easement effectiveness. Conservation easements provide financial benefits, such as payment for the purchase of an easement or income and estate tax deductions for donated easements, that are not only an incentive to farmers and ranchers to put an easement on their property, but a means to maintain a viable business. Easements, through the land trusts and government agencies holding them, can also be a source of technical advice to farmers and ranchers.
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CHAPTER 1: INTRODUCTION

Farmland conservation has received increased attention from U.S. land trusts in recent years (Brewer 2003). While land trusts have been in existence for over a century they have surged in popularity over the last half-century as a mechanism to conserve open space and more recently, agricultural land. Some land trusts believe that by protecting agricultural lands they can preserve the heritage of farming and ranching. By protecting farm and ranchlands through open space measures land trusts are keeping that land from development; however, they often do not address the issues involved with maintaining an economically viable farm or ranch. In order to preserve working farms and ranches, more attention is required to the challenges faced by landowners in keeping their land productive. Land conservation tools such as conservation easements are a good first step to protect the land, but not to maintain farm and ranch livelihoods.

The land conservation approach employs many tools such as conservation easements, fee-simple land acquisition, and purchase and transfer of development rights (PDR and TDR). Many private landowners today, especially in the Western United States where nearly half of all land is ranch and farmland (Kapela et al 2006), are increasingly feeling pressure to sell their lands. This pressure emanates from an increase in property values and therefore taxes, a changing culture, and a waning appreciation for the farming and ranching lifestyle.

While landowners are interested in working with land trusts to find methods to protect their land from development and to preserve the integrity of their land, they
would like to see a wider assortment of tools to fit their needs (Paster 2004, White 1998). Conservation easements, as one of the strongest tools to preserve farmland, (Alexander and Probst 2002) have proven successful in many cases; however, their ability to keep the land productive has recently been questioned (White 1998). Preserving farmland in this context means to protect land from subdivision or development so as to keep open the continued and/or future use for agriculture. For the purposes of this paper, productive land is any land that is used for agricultural purposes, such as the growing of crops, grazing of cattle, or dairy farming.

Land trusts, local and state governments, and landowners need to take a hard look at what methods of conservation are working before important agricultural land is lost forever. Easements can protect farmland from subdivision or the building of additional structures, however, as mentioned above, they do not guarantee that land will be used for agriculture. Easements can provide tools to farmers and ranchers in the forms of financial gains, tax breaks, and technical assistance; however, it is up to the individual farmer or rancher to manage his or her land.

**Research Objective**

My research objectives are to examine the effectiveness of easements as a method to conserve agricultural land, especially in western Montana. Specifically this paper will examine how effective conservation easements have been as a tool for the preservation of agricultural land in the Blackfoot Valley in Western Montana. This paper attempts to identify the constraints and opportunities of conservation easements
to preserve not only agricultural lands but also, to a smaller degree, productive farms. I am particularly interested in examining how the level of flexibility written into an easement serves as a constraint or opportunity to the landowner to remain in productive agriculture. The level of flexibility refers to the amount of modifications that a landowner and easement holder can apply to land management techniques in response to changing economic, environmental, and cultural conditions, as well as scientific thought. As conservation easements enter a second generation, landowners, land trusts, and government agencies are taking a look at how easement agreements can be flexible when confronted with these changed conditions. Flexibility may be an important ingredient to helping a rancher with an easement to keep his or her land in agricultural production. The paper seeks to provide concrete recommendations for how conservation easements can be a more effective tool for preserving agricultural/working lands in the Blackfoot Valley.

Research Methods

The methods for answering the above questions include review of the secondary literatures on the preservation of agricultural land in the U.S., the role of conservation easements in the preservation of land, and the need for easements to be dynamic documents, and primary data collection involving interviews with representatives from land trusts and government agencies holding conservation easements, landowners with easements, members of county government involved in planning, and organizations involved with conservation and planning issues. A total
of thirteen people were interviewed for this project. I have selected to work with trusts, agencies, and landowners in the Blackfoot Valley due to their past success in preserving land through conservation easements in the area. As most agricultural land in the Blackfoot Valley is used for grazing and hay production for ranches, research was limited to these types of agriculture.

The people interviewed were identified from a literature review as well as through speaking with people working in the agricultural land preservation field. They represented landowners in Powell and Missoula counties (4 landowners in Powell County and 2 landowners in Missoula County), a national non-profit conservation organization (The Nature Conservancy), a local land trust (Five Valleys Land Trust), two government agencies (US Fish and Wildlife Service and Montana Fish, Wildlife and Parks), a local watershed conservation organization (Blackfoot Challenge), a Powell County planner, and a Missoula County planner. The aim was to conduct interviews with participants of different variations on flexibility in their conservation easements as well as those working with different land trusts. I spoke with four different organizations that hold easements in the Blackfoot Valley that have different levels of flexibility in their easement agreements. The landowners with easements that I interviewed worked with four different organizations to put easements on their property, three of which I interviewed.

All but one of the interviews were conducted face-to-face and took between and hour to two hours each to complete (I interviewed one landowner over the telephone as he was leaving town shortly thereafter). The landowners with easements were asked a set of open questions pertaining to what they felt were the constraints
and opportunities of their easements and easements in general (see Appendix A for the landowner interview guide). They were also asked about their experience with the easement process, and any changes that they would like to see to the process and the agreements. Although one of the interview questions was focused on the flexibility of their easement agreements, all but one of the ranchers interviewed arrived at the topic of flexibility on their own. As flexibility had emerged as a topic in the literature review, I wanted to see if it was equally important to the Blackfoot Valley ranchers with conservation easements. The county planners and representatives from the different organizations were asked similar questions as the landowners. The land trusts and government agencies were asked about their specific organizations and personal viewpoints about conservation easements. They were also asked about the level of flexibility of their easement agreements and if they thought that flexibility played an important role in the success of easements. The county planners and Blackfoot Challenge representative were asked about the effectiveness of conservation easements in preserving agricultural land, and other tools that may be more effective or work in conjunction with easements.

After completing the interviews, I analyzed the information from both the literature review and interviews by looking for emerging themes. I compared the key themes from the literature review with the themes that stood out from talking with people involved with conservation easements in the Blackfoot Valley. Some of the themes that emerged from the interviews (i.e. the importance of flexibility in an easement agreement) reflected what the articles were suggesting. Other themes, such
as the problems some land trusts are undergoing in terms of appraisals and managing easements, did not appear in my discussions.

Roadmap to the Paper

The paper is organized in the following way. I begin with a description of conservation easements, and who works with them in Montana, specifically in the Blackfoot Valley. I detail the policies involved with easements, including the tax benefits. The next chapter provides a description of the Blackfoot Valley, detailing the ecology, socio-economics, importance of agriculture, and changes to the valley. It highlights what in particular Blackfoot Valley farmers and ranchers need to stay in agriculture, and hence the challenges facing conservation tools. As such, this information anchors the ensuing and most important chapter in the paper, a discussion of the opportunities and limitations of conservation easements as a method for agricultural preservation in the Blackfoot Valley of Montana. My major findings are that conservation easements of and by themselves cannot keep land in agricultural production. Easements can provide the framework by protecting lands from development and subdivision and therefore open for farming and ranching, as well as by providing financial and tax benefits. Conservation easement legislation is not explicit in including agriculture as a conservation value; therefore, it is incumbent on land trusts and government agencies to encompass the preservation of agricultural lands as a conservation goal. I conclude the paper with specific recommendations for
how conservation easements can be a more effective tool for conservation of agricultural lands.
CHAPTER 2: POLITICAL, LEGAL, AND ADMINISTRATIVE CONTEXT FOR
CONSERVATION EASEMENTS

Conservation easements are historically used to protect land from subdivision
or further development including additional buildings and roads. Landowners may
choose to put an easement on their land to protect their land for the use of agriculture,
wildlife, and scenic purposes, or for the financial benefits that an easement provides.
A rancher may have multiple personal reasons for putting an easement on his or her
property including, monetary benefits needed for the continuation of the ranch,
preserving the land for future heirs, or keeping the ranchland from future
development. The land trusts or government agencies working with the rancher may
have different reasons for accepting or purchasing the easement such as the
conservation of wildlife and fish habitat or specific land features like wetlands and
streams. Landowners voluntarily enter into an agreement with a qualified government
agency or land trust with ideally shared conservation goals, either selling or donating
development rights to their property. With a conservation easement, the landowner
retains the deed to the property and can continue to use the land in any way consistent
with the easement agreement. The government agency or land trust receiving the
development rights is the easement holder for the duration of the easement (in the
majority of cases this means in perpetuity).

Montana state statutes, the Montana Code Annotated (MCA), defines a
conservation easement as “an easement or restriction, running with the land and
assignable, whereby an owner of land voluntarily relinquishes to the holder of such
easement or restriction any or all rights to construct improvements upon the land or to
substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction” (MCA 76 – 6 - 104). Other definitions offered by the Land Trust Alliance (LTA), an umbrella organization for land trusts across the United States, and the Uniform Conservation Easement Act (UCEA), a model state statute, are similar in meaning to the above definition (www.lta.org, UCEA 1982). UCEA does reference purposes for a conservation easement, including “retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property” (UCEA 1982).

As the MCA definition states, easements “run with the land”, meaning that the easement is perpetual in nature and will be passed from one landowner to the next. The actual easement agreement is worked out between the landowner and the land trust or government agency purchasing or accepting the easement donation. This agreement is highly dependent on the organization’s template but can be modified to reflect the conservation values to be protected. The laws and regulations governing conservation easements are few, and those that exist revolve mainly around tax law. Easement regulations are particularly dependent on the Internal Revenue Code (IRC) which dictates who is a “qualified organization” to hold easements and how conservation easements qualify for tax benefits.
Conservation easements protect agricultural and farmlands only as dictated in the agreement. Not all land trusts and government agencies that purchase or accept donated easements recognize agriculture as an important conservation value. The trusts and agencies that target agricultural lands can write an easement agreement with agricultural conservation values in mind, laying out the particular agricultural practices such as grazing or growing hay that may be maintained. Depending on the easement agreement, the land trust or government agency that holds the easement may allow the landowner to apply pesticides or plant particular species on an as needed basis to manage the ranch or farmland.

**Conservation Easement Models**

**Purchased Conservation Easements**

Conservation easements can be purchased from a landowner by a land trust or government agency that has the funding and supports the values that the agreement tries to protect. The purchase price is based on the difference between the market value of the property before and after the purchase of the easement (IRC Section 170A-14(h)(3)(i)). An appraiser takes into consideration how the restriction would alter the market value of the property both before and after the easement. For example, if given the current county regulations the landowner could sell the property for development, that potential monetary value is used. Looking at similar properties in the area and assessing the potential resale value, an appraiser will decide the market value of the property with an easement. When an easement is purchased the
landowner receives a monetary amount equal to the amount that a landowner who
 donated an easement would receive in tax benefits. The landowner with a purchased
easement cannot receive tax benefits, as this would be double dipping – receiving the
difference in market value before and after the easement in two ways. Many ranchers
who are interested in conservation easements in the Blackfoot Valley will wait to
work with a land trust or government agency who can purchase their easement, as
they feel that the monetary return is more beneficial than any tax benefits that they
could receive through donating an easement. Four of the six landowners I spoke with
had their easements purchased. The two landowners that donated their easements do
not rely on agriculture as a major source of their income. One of the Blackfoot Valley
ranchers who had their easement purchased felt that the importance of the money
from the purchase of their easement was the ability to “generate cash to purchase the
land without compromising the resources of the land.”

Donated Conservation Easements

Conservation easements can also be donated to a land trust or government
agency. In this case landowners are eligible to receive a tax benefit in the amount
equal to the difference between the market value of the property being donated before
the easement and the market value of the property with the easement. The difference
is the monetary amount that the landowner can apply towards federal income tax
benefits. Farmers and ranchers in the US historically do not earn a high enough
income to reap the full benefits of the income tax deductions received from their
donations (Christensen and Anderson 2005). They benefit more from the reduced
estate taxes that enable them to pass on the property to their heirs (Wright 1994). Changes to the tax law have helped ameliorate this discrepancy. These changes and additional details of the tax benefits will be discussed below.

**Bargain Sales**

The third and final option for conservation easements is a bargain sale. This option is best for landowners who would like to receive cash for the sale of their property but would like a land trust without the financial means to be the purchaser. By selling the easement at a reduced price, landowners ensure that the land trust that they have chosen to work with can afford it, while receiving cash and an income tax deduction that totals the amount of the difference between the market value of the property and the purchase price (www.ita.org).

**Conservation Easement Agreements**

The easement agreements themselves, while having a few key components in common, can differ in structure, intent, and levels of flexibility. All agreements will list the conservation values being protected under the easement, what is essentially the purpose of the easement. The IRS allows for four different conservation purposes to be protected in order to qualify for tax benefits. These can be found in Section 170(h) of the IRC and include “(a) the preservation of land areas for outdoor recreation by, or the education of, the general public, (b) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, (c) the preservation of
an historically important land area or a certified historic structure, or (d) the preservation of open space (including farmland and forest land) where such preservation is: (I) for the scenic enjoyment of the general public and will yield a significant public benefit or (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy and will yield a significant public benefit” (McLaughlin 2004).

The inclusion of farmland as a secondary reference under open lands in the federal tax code implies that agricultural land preservation is not an explicit conservation purpose. Montana’s state statute does not explicitly acknowledge agriculture as a conservation purpose, and refers to the preservation of open space lands in order to, “secure park, recreational, historic, and scenic areas and to conserve the land, its biotic communities, its natural resources, and its geological and geographical elements in their natural state” (MCA 76-6-102 2005). MCA defines open space as, “any land which is provided or preserved for: (a) park or recreational purposes; (b) conservation of land or other natural resources; (c) historic or scenic purposes; or (d) assisting in the shaping of the character, direction, and timing of community development” (MCA 76-6-104(3) 2005). Missoula County however was purposeful in its intentions to include working farms and ranches as a focus for the open space bond funding (Missoula Urban Area Open Space Plan 2006 Update). While they may target working farms and ranches in an effort to preserve this land and culture, an easement will not be able to ensure that these lands remain productive. Were in not for ardent supporters of preserving farm and ranchlands on a state and local level, land trusts and open lands committees could ignore the issue altogether.
The literature on easements highlights the use of flexibility (Greene 2005, McLaughlin 2005). Easement agreements are flexible when an agreement can be written to protect the conservation value of the landowner’s and easement holder’s choosing (assuming it is in agreement with IRC Section 170(h)). Agreements may allow continued agricultural uses and even new structures as long as the conservation values are not endangered. The conservation values or purposes assigned from the approved list in IRC Section 170(h)(4)(A), including the protection of natural habitat of fish, wildlife, or plants, the preservation of open space, and the preservation of an historically important land area, are the responsibility of the landowner to maintain. The easement holder has the responsibility to monitor the easement to ensure that these conservation values are intact. If the conservation goals are not being met, the land trust or government agency holding the easement will work with the landowner to work out an action plan to achieve these goals.

Once an agreement is signed, flexibility takes on another meaning. Some easement agreements are highly prescriptive, meaning that they provide a definitive list of specific restrictions of what the landowner can do on his or her property now and into the future. They may even bind a landowner to a particular management technique, such as methods of grazing or weed control. Other agreements do not include restrictions other than limitations to building new structures or roads and subdivision. As long as the conservation values are upheld the easement holder will not restrict uses. Land trusts and government agencies holding the easement are required to check that landowners are upholding the conservation values through their annual monitoring. There are different views on whether working farms and ranches
can be considered conservation. It may be difficult therefore for a land trust or government agency to judge when a working farm or ranch is contributing to conservation goals or impeding them.

Flexibility involves the ability to modify easement agreements. It can vary as much as the level or type of restrictions required in agreements. The prescriptive agreements may not allow changes to management techniques that are in line with changing habitats, scientific knowledge, and culture (Thompson 2004, Greene 2005). What may be an acceptable agricultural practice to one rancher may be considered reckless or scientifically unproven, and therefore unallowable in the agreement, to the easement holder. A rancher may employ a grazing or plowing technique that he or she has to stop once an easement is placed on the ranch. These subjective views of what is best for conservation can create disagreements between the rancher and easement holder, as well as impact the land. Table 1 below highlights some of the permitted uses in Montana’s diverse easement agreements.

Table 1: Selected Attributes from Montana Conservation Easement Agreements

<table>
<thead>
<tr>
<th>Attribute / Activity</th>
<th>Proportion of Sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Construction Permitted</td>
<td>71%</td>
</tr>
<tr>
<td>Transfer/Division of Land Permitted</td>
<td>22%</td>
</tr>
<tr>
<td>Minerals Exploration/Exploitation Permitted</td>
<td>16%</td>
</tr>
<tr>
<td>Timber Harvest/Management Permitted</td>
<td>26%</td>
</tr>
<tr>
<td>Easement Agreements with Amendments</td>
<td>7.5%</td>
</tr>
<tr>
<td>Easement Amendments Permitting Public Access</td>
<td>3%</td>
</tr>
</tbody>
</table>

Source: Conservation Easement Legislative Audit 2007, compiled from county land records
The inflexibility to modify easement agreements may negatively affect the capability of a rancher to manage his or her land in what he or she feels is the most productive fashion. If a rancher is obligated to use a particular grazing method (i.e. rest-rotational grazing - what some people today consider a “best management practice”) that does not best suit his or her land, the land may not yield the highest quality grass conditions. By limiting the use of particular methods of eradicating noxious weeds a rancher may be subject to an infestation of species that negatively affects the quality of his or her grazing and growing land. It can be a struggle for land trusts and government agencies to balance the views of conservation in terms of prevailing science, the best ecological use of land (as defined by conservation organizations or government agencies), or the best use for agricultural production (as defined by organizations or individual farmers and ranchers). The constitution of productive agriculture as it contributes to the maintenance of ecological function (i.e. the essence of sustainable agriculture) is a complex and dynamic topic requiring expertise that is perhaps beyond who is normally involved in creating conservation easements.

Most agreements, as mentioned above, are perpetual, but a few land trusts and government agencies accept term easements. Term easements exist for a limited time period, as stipulated in the easement agreement, and do not qualify for federal income tax and estate tax benefits (Silberstein and Keuter 2000). Montana statute ensures a term of at least fifteen years for an easement (MCA 76-6-202 2005). An easement can be modified or terminated as per the agreement by a court of law if the property or neighboring land changes and the conservation purposes of the easement become
impossible to achieve. Easements may also be terminated by eminent domain proceedings (Farmland Information Center Fact Sheet 2004, McLaughlin 2005, Draper 2004).

**Conservation Easement Programs**

Federal, state and county governments and their agencies serve as sources for conservation easement funding and program oversight. To-date private land trusts and government agencies have put more than 1.6 million of privately held land under easement in Montana (TNC 2005). Some government agencies, depending on the funding source, purchase conservation easements and accept donated easements. Land trusts also purchase and accept donations of conservation easements. These land trust organizations are non-profit, tax-exempt organizations that meet the qualifications found under Sections 501(c)(3) and 170(b)(1)(A)(vi) of the IRC (Anella and Wright 2004). In order to receive tax benefits for their donated easement the IRS stipulates that a landowner must donate their land to a “qualified organization” as defined by Section 170(h)(3) of the IRC. A qualified organization is most basically defined as a 501(c)(3) or charitable organization or a government unit. Table 2 below lists the fifteen organizations in Montana that hold easements and the amount of acreage each reported.
Table 2: Montana Grantee Conservation Easement Acreage

<table>
<thead>
<tr>
<th>Easement Grantee Agency or Organization</th>
<th>Total Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Montana Land Reliance</td>
<td>626,463</td>
</tr>
<tr>
<td>Montana Department of Fish, Wildlife and Parks</td>
<td>377,747</td>
</tr>
<tr>
<td>The Nature Conservancy</td>
<td>241,320</td>
</tr>
<tr>
<td>US Fish and Wildlife Service</td>
<td>193,701</td>
</tr>
<tr>
<td>US Natural Resource Conservation Service</td>
<td>72,516</td>
</tr>
<tr>
<td>Rocky Mountain Elk Foundation</td>
<td>31,553</td>
</tr>
<tr>
<td>Gallatin Valley Land Trust</td>
<td>24,464</td>
</tr>
<tr>
<td>Five Valleys Land Trust</td>
<td>22,467</td>
</tr>
<tr>
<td>Ducks Unlimited</td>
<td>17,209</td>
</tr>
<tr>
<td>US Forest Service</td>
<td>7,905</td>
</tr>
<tr>
<td>Flathead Land Trust</td>
<td>7,393</td>
</tr>
<tr>
<td>Prickly Pear Land Trust</td>
<td>1,160</td>
</tr>
<tr>
<td>Bitterroot Land Trust</td>
<td>895</td>
</tr>
<tr>
<td>Save Open Space</td>
<td>193</td>
</tr>
<tr>
<td>The Vital Ground Foundation</td>
<td>80</td>
</tr>
</tbody>
</table>

Source: Conservation Easement Legislative Audit 2007

The public and private organizations have different conservation goals dependent partly on their source of funding and their board of directors. Depending on the mission statements of the organizations, as well as where in Montana they work, farm and ranchland can play a primary or secondary role in identifying land to protect. Most of the private and public organizations, such as the Montana Land Reliance, The Nature Conservancy, Five Valleys Land Trust, Gallatin Valley Land Trust, Flathead Land Trust, Prickly Pear Land Trust, Bitterroot Land Trust, US Natural Resource Conservation Service, and Montana Department of Fish, Wildlife and Parks, explicitly state agricultural lands as an important piece of nature to protect, even if balanced with other conservation goals. Other organizations such as the Rocky Mountain Elk Foundation, Ducks Unlimited, Save Open Space, The Vital Ground Foundation, and the US Fish and Wildlife Service do not mention the preservation of agricultural land as part of their mission. The protection of working
lands is secondary to the preservation of wetlands, open space in urban areas, and fish and wildlife habitat. The degree to which private and public organizations recognize the protection of working farms and ranches as an important step to their conservation goals reflects a broader view of conservation.

Public Programs for Conservation Easements

The federal government funds programs such as the National Grasslands Reserve Program under the farm bill that authorizes up to $250 million a year for the purchase of easements in prairie ecosystems (Christensen 2004). The Farm and Ranch Lands Protection Program (FRPP), authorized through the Farm Bill and managed by the U.S. Department of Agriculture’s (USDA) Natural Resources Conservation Service (NRCS), provides up to 50 percent of the market easement value to purchase development rights of productive farm and ranchland in agricultural uses. Working through existing programs, USDA partners with state, tribal, or local governments and non-governmental organizations to acquire conservation easements from landowners (FRPP Fact Sheet 2004).

The Land and Water Conservation Fund (LWCF) provides matching grants to states and local governments for the purchase of public recreation areas in perpetuity. The FY06 Department of the Interior appropriations bill appropriated just under $28 million for LWCF state grants. Through the provision of recreational areas the conservation of natural resources and open spaces is encouraged (www.nps.gov/lwcf).

LWCF is one funding source to the U.S. Fish and Wildlife Service (FWS),
which in turn purchases conservation easements on private lands throughout Montana
and specifically in the Blackfoot Valley. In addition to LWCF, FWS is funded
through the Migratory Bird Conservation Fund, also known as the Federal Duck
Stamp. At least 10% of the easement acreage needs to be considered as wetland
habitat in order to qualify for Duck Stamp funding. The properties must have
glaciated “pothole” type wetlands, ponds, lakes or open water areas that provide
suitable habitat for waterfowl and other migratory birds (FWS website). The North
American Wetlands Conservation Fund as well as cooperative agreements between
the USDA, Ducks Unlimited, and The Nature Conservancy provides additional
funding. In the past five years the Wildlife Habitat Protection program has purchased
approximately 60,000 acres of important fish and wildlife habitat in Western
Montana. FWS has purchased almost 100,000 acres in Western Montana. FWS works
in a 165,000 acres project area in and around Ovando (A Guide to Land Conservation

The Montana Department of Fish, Wildlife, and Parks (FWP) receives
approximately $4 million annually from different funding sources to purchase
conservation easements throughout the state. Since its inception in 1987, the Habitat
Montana program has helped thirty ranch families conserve more than 200,000 acres
of wildlife habitat across Montana. The program is funded by hunting license revenue
and aims to preserve and restore important habitat for fish and wildlife through the
purchase of conservation easements. Landowners who enter into conservation
agreements agree to use rest-rotational grazing, protect sagebrush grasslands from
burning and herbicides, conduct timber harvest in ways that sustain forest health, and
usually provide public access for hunting (Dickson 2004). In the Blackfoot Valley, FWP has protected approximately 10,000 acres through conservation easements (A Guide to Land Conservation in the Blackfoot Using Conservation Easements 2005).

Local and state governments may fund the purchase of conservation easements with annual appropriations, lottery revenues, and bonds authorized by the legislature or a voter referendum (TNC website). Bond measures to support the acquisition of fee simple land and conservation easements are also being introduced at a higher frequency. Between 2000 and 2004, 730 states, counties, and communities generated $18 billion in conservation bonds. “Typically, in any year, 75 percent of the conservation funding measures that come before voters do pass-among the highest rates of passage for any type of local tax or bond” (Woodside and Wilkinson 2005). In hundreds of communities across the country, citizens are taxing themselves to pay for private-land conservation. In 2002, voters nationwide approved 92 of 107 conservation finance measures, generating more than $6.9 billion, according to the Trust for Public Lands (Christensen 2004). Another issue that could potentially be a controversial topic with public programs supporting conservation easements for the protection of agriculture concerns public grazing permits. To what extent the participants are willing to accept continuation of grazing permits needs to be resolved. For example, a rancher may see them as necessary to remain productive whereas a conservation organization may see them as a contributor to overgrazing and degradation of the range.
Private Programs for Conservation Easements

Private non-profit land trusts have grown in exponential proportions, doubling in number in the last fifteen years to over 1,600 local, state and national land trusts in the United States. These land trusts have protected more than 37 million acres of land, including over 6 million acres in conservation easements. The West in particular is the fastest growing region in the number of land trusts and acres protected (Aldrich and Wyerman 2006). Montana, along with other states in the West, Colorado, California and New Mexico, is one of the top ten states with the highest number of acres protected by land trusts. According to LTA’s 2005 National Land Trust Census Report, there are fifteen public and private land trusts working in Montana, up from nine in 2000 (Aldrich and Wyerman 2006). Unlike federal and state agencies that receive funds allocated to them through federal programs, the majority of private state and local land trusts do not have the resources to purchase conservation easements. As a result, these land trusts typically work with donated easements. Several land trusts with a presence in Western Montana, specifically the Blackfoot Valley, working at different scales (national, regional, state, and local levels) are highlighted below.

The Nature Conservancy (TNC) is an international conservation non-governmental organization with a focus on preserving biodiversity. TNC works to protect water and lands that serve as the habitat for diverse plants and animals across the globe (TNC website). One method that TNC uses for protecting habitat is land acquisition and conservation easements on working farms and ranches. TNC funds its land conservation work through private donations, selling land with conservation
restrictions to private buyers, and collaboration with government agencies. TNC accepted Montana’s first conservation easement on 1,800 acres in the Blackfoot Valley in the mid-1970s. They currently have over 2 million acres under easement in the United States, with approximately 240,000 acres in Montana, and 12,763 acres in the Blackfoot Valley, including working ranches such as the 4,000 acre E Bar L Ranch and the 1,100 acre Mannix cattle ranch (TNC 2003, Maciver, Wallace, and Wingard 2007, A Guide to Land Conservation in the Blackfoot Using Conservation Easements 2005). TNC is currently working with the Blackfoot Challenge to purchase 88,000 acres of Plum Creek Timber Company lands. They plan to sell this land to public and private buyers. “About half of the lands will be sold with conservation easements to local ranchers to help them expand their operations and make their ranches more economically viable” (TNC Blackfoot Valley Conservation Easement Fact Sheet).

The Montana Land Reliance (MLR) is a statewide land trust working to preserve agricultural lands, important fish and wildlife habitat, and scenic open space. They have preserved more than 626,000 acres with 622 landowners across Montana including 14,000 acres and 37 miles of river and stream frontage in the Blackfoot Valley (A Guide to Land Conservation in the Blackfoot Using Conservation Easements 2005). MLR receives funds from private donations, money from grants from various foundations and businesses, and income from MLR endowment funds (MLR website).

The Rocky Mountain Elk Foundation has protected more than 4.8 million acres of elk and other wildlife habitat in North America (Rocky Mountain Elk Foundation
website). The Elk Foundation holds 14 conservation easements in Montana and while none of them are in the Blackfoot Valley, they are involved in land protection efforts in the region including the expansion of the Blackfoot Clearwater Wildlife Management Area (Blackfoot Challenge Conservation Easement Brochure 2005).

Five Valleys Land Trust (FVLT) endeavors to protect river corridors, wildlife habitat, agricultural lands, and scenic open spaces in eight counties in Western Montana. FVLT works primarily with landowners who donate easements, but can also facilitate the purchase of bargain sale easements when properties qualify for capital assistance. FVLT collaborates with landowners on riparian and wetland restoration, weed control and mapping, and fire hazard mitigation and forest management. Since 1990, they have helped protect over almost 30,000 acres in seven counties across western Montana, with 18,360 acres of conservation easements, including 1,800 acres in the Blackfoot Valley (A Guide to Land Conservation in the Blackfoot Using Conservation Easements 2005, FVLT website).

Together these public and private organizations hold over 90,000 acres in easements in the Blackfoot Valley. As mentioned earlier most of these organizations recognize the importance of open lands and agriculture, however their protection of agricultural lands is dependent on the conservation values or unique features that such land offers, such as wildlife and fish habitat protection, or the existence of wetlands or potholes. In many cases agricultural land is not protected solely because it is agricultural, but because of the benefits such land provides for other conservation values (i.e. open space, wildlife protection, etc.).
Conservation Easement Policy

Conservation easements are governed by state regulations and the federal tax code. Most states did not adopt conservation easement statutes until the 1980’s when the National Conference of Commissioners on Uniform State Laws drafted UCEA (Mahoney 2002). Montana’s conservation easement policy dates back to 1969 when the Legislature passed the Open Space Land Act. The Open Space Land Act was the first piece of legislation to reference the protection of open space lands in Montana. In 1975 the Open Space Land and Voluntary Conservation Easement Act amended the Open Space Land Act to include non-urban areas, allowed private organizations to participate in land conservation, and referenced the creation of conservation easements (Maciver, Wallace, and Wingard 2007).

In Montana, the Montana Code Annotated (MCA) Title 76, Land Resources and Use, Chapter 6, Open Spaces, sets out the policies for easements (a copy of the 2005 Montana statute can be found in Appendix B). Public involvement is encouraged in many states through the local or county approval process. Private conservation easements do not require the approval of planning boards, however states such as Montana ask that agreements be given to the planning board for comment (MCA 76-6-206 2005). Montana also requires that the deed of the easement by duly recorded in the county office for the review of future owners (MCA 76-6-206 2005). Land trusts do not encounter legal problems such as takings because the process of selling rights to develop or subdivide or fee simple acquisition is a
voluntary action. As with all privately held property, there is the potential for land with easements to be taken via eminent domain practices (Draper 2004).

**Tax Benefits for Conservation Easements**

Without the benefits of federal tax incentives many landowners would not be able to donate their land or an easement. Many ranchers are “land rich and cash poor” and therefore use the resource that they do have, their land, to acquire monetary benefits that will often be reinvested in the ranch operation or other income generation sources such as income properties or investments. Ranchers may choose to put an easement on their land to preserve the agricultural lands for future generations or so that they can pass the land and/or business to their heirs, but it is the monetary benefits that often facilitates the deal.

Congress first approved tax benefits for the donation of easements with the Tax Reform Act of 1976 and the Tax Reduction and Simplification Act of 1977. In 1980 Congress passed the Tax Treatment Extension Act that made the income tax deduction a permanent benefit to easement donors. This Act created IRC section 170(h). In 1997 Congress passed the Taxpayer Relief Act creating the estate tax benefit for easement donors (IRC section 2031(c)) (TNC website). The Economic Growth and Tax Relief Reconciliation Act of 2001 furthered the estate tax benefit. Together the legislation allows a deduction in estate taxes of up to 40 percent of the value of land with an easement (to a maximum of $500,000). The full benefit is available for easements that reduce the market value of a property by at least 30
percent. Smaller deductions are available for easements that reduce property value by less than 30 percent. The easement must have been donated and it has to have met the requirements for charitable income tax deductions sound in IRC Section 170(h) (Red Lodge Clearinghouse).

The most significant benefits to landowners are the federal income and estate tax breaks under IRC section 170(h) and 2031(c) which requires that the easement “1) comply with state law requirements for easements in land; 2) be conveyed to a qualifying organization to hold the easement; and 3) be conveyed "exclusively for conservation purposes" and in perpetuity” (TNC website). The conservation purposes for which easements can receive a deduction were discussed above. Landowners with easements may also benefit from a lower real estate tax assessment resulting in lower property tax liability (McLaughlin 2002). In Montana, property cannot be classified into a class with a lesser-assessed valuation just because of the creation of the easement (MCA 76-6-208 2005). As nearly 85% of conservation easement acreage in Montana is classified as agricultural (the lowest tax class), this does not often pose a problem (Maciver, Wallace, and Wingard 2007).

The amount of income tax benefit received by a landowner who has donated an easement is the difference between the market value of the parcel before the sale of the easement and the market value of the parcel encumbered with the easement. Twelve states also give landowners who sell or donate conservation easements state tax benefits. The provision of estate tax benefits often is the only way that landowners are able to pass their land on to one generation to the next. As mentioned above, landowners are eligible to exclude up to 40% of the value of the parcel subject to the
easement from their estate for estate tax purposes (French 2004). As income tax
deductions have traditionally been 30% of the landowner’s adjusted gross income in
one year for a period of up to six years, they are most beneficial to landowners who
have a high enough income to utilize the deduction over such a short time period.

The Pension Protection Act passed in 2006 raised the percentage of adjusted
gross income tax deduction from 30% to 50%. For example, if a landowner has an
adjusted gross income of $100,000, he or she is eligible for as much as a $50,000 tax
deduction a year, instead of the $30,000 previously allowed. If the landowner’s
income is too low to take full advantage of the tax deduction in one year, he or she
can carry forward the deduction for fifteen years, up from five years previously
(Silverman 2007). The bill allows farmers and ranchers who receive at least 50% of
their income from agriculture to deduct 100% of their income with a carry forward
period of fifteen years. Depending on their adjusted gross income, a farmer or rancher
could pay no federal income taxes for sixteen years. The bill also placed higher
restrictions on land appraisers, hoping to address one of the challenges faced by land
trusts. This bill could potentially cost the government $69 million in lost tax revenue
(Kapela et al 2006). The Pension Protection Act is set to expire on December 31,
2007. A bill was introduced in 2007 in the Senate that would make these tax changes
permanent (Silverman 2007).

Senator Crapo, from Idaho, and Senator Baucus, from Montana, have
introduced the Endangered Species Recovery Act of 2007 which would provide
additional tax incentives to farmers, ranchers and private landowners who voluntarily
agree to put perpetual or thirty-year term easements on their property, or agree to
restore, enhance, or manage endangered species habitat on their land. In order to participate in the recovery program, landowners would be required to develop a management plan with a schedule and monitoring details (Baucus Press Release 2007). This legislation has not yet been introduced to Congress. If passed, the tax credits offered through this act could encourage additional landowners to put conservation easements on their land, resulting in additional lands protected from development.

The above regulations provide great benefits for those who put an easement on their property; however, they do not address agricultural land protection directly. Recent legislation does allow for a 100% income tax deduction for farmers and ranchers with an easement (up to the economic value of their donation) over a period of sixteen years. This may still not be a large enough return to encourage farmers and ranchers to put an easement on their land. Nor will they necessarily be targeted by a land trust or government agency for an easement if their land does not coincide with important wildlife habitat or geological features. The next section examines the increase of conservation easements and the problems that have ensued.

The Growth of Conservation Easements as a Tool for Preservation

To summarize, much of the published literature on land trusts starts with the acknowledgement of the increased popularity of easements and similar conservation tools. The proliferation of non-profit organizations dedicated to the preservation of open space (including agricultural lands) and wildlife is directly related to the speed
of land conversion for development in the West, mistrust of the government’s ability to plan properly and protect essential areas (McLaughlin 2002), and the improving tax incentives for landowners to donate their land (McLaughlin 2004). Below I offer a discussion on the impressive number of acres that easements have protected, additional options for the preservation of agricultural land, and the challenges that easements face in preserving agricultural land.

Conservation Easements Today

The Land Trust Alliance’s (LTA) 2005 National Land Trust Census Report provides impressive statistics on land conservation at the national level (Aldrich and Wyerman 2006):

- 37 million acres were conserved through private means by 2005, a 54% increase from 24 million acres in 2000.
- Local and state land trusts increased the acres protected by conservation easements by 148% (6,245,969 acres as of 2005, versus 2,514,566 in 2000).
- There were over 1,667 land trusts in the US (an increase from 1,263 in 2000).
- The pace of private land conservation has tripled by local and state land trusts. From 1995-2000, land trusts conserved an average of 337,937 acres per year. By 2000-2005, that pace soared to an average of 1,166,697 million acres conserved per year.
- Local and state land trusts conserved 11.9 million acres through 2005, more than double the acres conserved in 2000.

The amount of land in the United States converted from open space and
agricultural to commercial and residential more than doubled between 1970 and 2000, from 20 million acres to 42 million acres (Christensen 2004). It is estimated that we are losing 1.2 million acres of farmland annually in the U.S., much of it the best and most productive farmland near where most Americans live (AFT website, Issues and Programs). This fast pace of farmland conversion is part of the impetus for many new land trusts. American Farmland Trust (AFT) estimates that approximately 1,100,000 acres of farmland in the United States “have been put under easements at an approximate cost of $2.3 billion” (AFT website, A National View of Agricultural Easement Programs 2006). Agricultural land trusts exist throughout the U.S. with the aim to focus on preserving ranch and farmlands. In addition to working with conservation easements, they typically work towards public policies that support agriculture. While no land trust in Montana works solely for the preservation of agricultural land, it is usually incorporated as a conservation value.

In Montana LTA land trusts account for 470,142 conservation easement acres and TNC accounts for an additional 239,548 conservation easement acres for a total of 1.4% of all privately owned acres in the state (Kapela et al 2006). The recent Montana legislative audit on conservation easements puts the figure closer to 1.5 million acres total of conservation easements in Montana, translating to 1.6% of state land area (see Table 3 below) (Maciver, Wallace, and Wingard 2007).
Table 3: Summary Data for Conservation Easements in Montana

<table>
<thead>
<tr>
<th>Conservation Easement Attribute</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Acreage</td>
<td>1,573,411</td>
</tr>
<tr>
<td>Percentage of State Land Area</td>
<td>1.68%</td>
</tr>
<tr>
<td>Number of Easements</td>
<td>1,250</td>
</tr>
<tr>
<td>Average Acreage Per Easement</td>
<td>1,271</td>
</tr>
<tr>
<td>Largest Contiguous Easement Acreage</td>
<td>107,123</td>
</tr>
</tbody>
</table>

Source: Conservation Easement Legislative Audit 2007

In the Rockies region approximately one percent of all private lands are protected by conservation easements, putting Montana slightly ahead of the region (Kapela et al 2006). According to an AFT study, Montana possesses some of the most strategic ranchland at risk (see Table 4 below). Strategic ranchland is defined as “high quality agricultural land and desirable wildlife characteristics, including: rural development densities; proximity to publicly owned lands; year-round water availability; mixed grass and tree cover; and high variety of vegetation classes” (AFT 2006). This land is considered at risk because it is vulnerable to residential development before the year 2020 (AFT 2006).
**Table 4: Strategic Ranchland at Risk in 10 Rocky Mountain Counties: 2000 – 2020**

<table>
<thead>
<tr>
<th>Rank</th>
<th>County, State</th>
<th>Acres in County</th>
<th>As % of County Land Area</th>
<th>As % of State’s Strategic Ranchland</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Gallatin, MT</td>
<td>544,640</td>
<td>32</td>
<td>11</td>
</tr>
<tr>
<td>2</td>
<td>Beaverhead, MT</td>
<td>512,000</td>
<td>14</td>
<td>10</td>
</tr>
<tr>
<td>3</td>
<td>Madison, MT</td>
<td>481,920</td>
<td>21</td>
<td>10</td>
</tr>
<tr>
<td>4</td>
<td>Colfax, NM</td>
<td>420,480</td>
<td>17</td>
<td>16</td>
</tr>
<tr>
<td>5</td>
<td>Lewis &amp; Clark, MT</td>
<td>387,840</td>
<td>17</td>
<td>8</td>
</tr>
<tr>
<td>6</td>
<td>Park, MT</td>
<td>386,560</td>
<td>22</td>
<td>8</td>
</tr>
<tr>
<td>7</td>
<td>Sanpete, UT</td>
<td>376,320</td>
<td>37</td>
<td>11</td>
</tr>
<tr>
<td>8</td>
<td>Pinal, AZ</td>
<td>355,200</td>
<td>10</td>
<td>25</td>
</tr>
<tr>
<td>9</td>
<td>Missoula, MT</td>
<td>341,760</td>
<td>21</td>
<td>7</td>
</tr>
<tr>
<td>10</td>
<td>Millard, UT</td>
<td>341,760</td>
<td>8</td>
<td>10</td>
</tr>
</tbody>
</table>

Source: AFT Strategic Ranchlands Report 2006

**Options to Conserve Agricultural Land**

As explained above, property tax breaks are by themselves not sufficient measures to ensure that landowners can maintain their land as agricultural. Purchase of development rights (PDRs) and transfer of development rights (TDRs) help preserve this land use by prohibiting future development and provide benefit to the farmers who are under increasing pressure to sell their property (Daniels 1991). A drawback of PDRs and TDRs is that they require a market (more buyers than sellers) for the sale of the development rights in order to be used; therefore, only areas that have restrictions on their land would benefit from their use. Land trusts and government agencies have also found success in using education or outreach campaigns, incentives to private landowners in the form of payments, tax breaks, debt forgiveness, or even technical assistance, and the creation or improvement of the market for biodiversity (Doremus 2003).
Legally it is easiest for land trusts to purchase fee-simple land and lease it out for agricultural, recreational or educational purposes. The trust can adapt the land practices to reflect changes in the ecology, economy, or the trust itself. However, more ecological benefits may be obtained by entering into easements instead of fee simple as land trusts can get more for their money (French 2004).

If a land trust is interested in maintaining the integrity of the farm or ranch and keeping the land in production (a goal that to-date, as I have shown above, is rarely the case), conservation easements alone may not be enough. In addition to conservation easements, efforts such as agricultural districts, exclusive agricultural zoning, taxation methods, and TDR programs have proven successful as a means to preserve agricultural lands (White 1998). Agricultural zoning is the method most often used to preserve agricultural land in part because it restricts the subdivision of land as well as urban expansion (Paster 2004). Agricultural districts can provide a bevy of tools to preserve farm and ranchland including, tax breaks, education and training, and protection from nuisance and eminent domain lawsuits (White 1998, Paster 2004). In an effort to encourage agricultural production, some agricultural districts tax landowners within that district at a reduced amount if the land is in agricultural production. If the land is converted to a purpose outside of agriculture, the landowner will be taxed at a higher rate and be required to pay the amount of taxes saved at the lower agricultural rate (up to a pre-determined amount or within a certain timeframe) (White 1998). The long-term success of agricultural districts and zoning are dependent on the continued acceptance of the citizens and politics currently in power. Regardless of the regulation or tool utilized, the local
governments must support the measures through implementation and enforcement.

Outside of the regulatory actions, creative measures can be applied to help preserve agricultural land. White (1998) discusses a “farmbudsman” position that would advise farmers and ranchers on tax incentive programs, regulations, grants, loans, and other options available to them. White (1998) also considers the use of “farm marketing associations” to bring local or regional farmers and ranchers together to increase public awareness and develop plans for the sale of local products.

Montana land trusts have many success stories including the Blackfoot Community Project in which the Blackfoot Challenge entered into an agreement with TNC and Plum Creek Timber to purchase 89,000 acres of timberland that may have otherwise been developed as subdivisions (Christensen 2004). For the second time in four years Gallatin County passed a $10 million open space bond to purchase development rights from rural landowners whose property has highly valued views, wildlife habitat, cultural history, and water properties for the community. In 2006 Missoula County voters approved a $10 million open space bond that focuses on conservation lands, community parks, agricultural lands, scenic views and vistas, and trails (Missoula Urban Area Open Space Plan 2006 Update). Proposals are already under way to use the bond money to purchase conservation easements on at least two ranches in the Blackfoot Valley (Missoula County Open Lands Citizens Advisory Committee Draft Minutes, March 15, 2007).

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**Challenges of Using Conservation Easements for Agricultural Preservation**

Despite the many successes of conservation easements for limiting
development, there remain problems and challenges associated with them, which are likely to be problematic, should easements be applied more to the protection of agricultural lands and systems. Pidot (2005) highlights the following issues with the use of conservation easements: the lack of uniformity in agreements among easement holders; the difficulties in recording and monitoring easements; questionable accountability and transparency to the public; institutional capacity of land trusts; inconsistent methods for easement modification and termination; and issues with over and under-appraising properties. Although Congress and land trusts are working together to enact legislation that would increase the restrictions on easement appraisers the potential for fraud remains. While I cannot address each of these issues in this paper, they all remain important discussion points for the public and easement holders. I highlight the issues most relevant to agricultural lands below.

A particularly important constraint that relates to agriculture is that depending on the mission of the land trust, easements may preserve land but it is very unclear as to how they contribute to preserving biodiversity or keeping land in agricultural production. Land trusts and government agencies have different conservation goals and measures of their success with conservation. Each organization ranks the importance of which private lands to target in a different way, often dependent on the funding source and organization’s mission (Christensen 2004). For example, FWS, the Rocky Mountain Elk Foundation, and Vital Ground aim to protect important fish and wildlife areas; Ducks Unlimited targets property with wetlands; and MLR and FVLT look to incorporate working farms and ranches with important animal and plant habitat. These conflicting priorities can make it confusing to private landowners
as well as make it difficult to coordinate easements into a broader biodiversity conservation plan (McLaughlin 2002, Christensen 2004).

Doremus (2002) points out that the traditional approach of land trusts and government agencies targeting land for biodiversity conservation may be flawed. By not accounting for land obviously manipulated by humans such as urban green areas or agricultural land, land trusts can bypass the preservation of nature that are co-evolved. As such Doremus argues for finding ways to “focus the law, and the public, on protecting ordinary nature” (Doremus 2002). As mentioned earlier, agricultural lands are protected by land trusts and conservation easements as an afterthought, often couched in the category of open space. The goal of preserving important agricultural lands is often secondary to conserving wildlife and fish habitat or open spaces for public access for recreation and aesthetic values. It may be the primary intention of a land trust to preserve agricultural lands, however, the language of the easement is bound by IRC and Montana statutes and does not always reflect that or provide monetary benefits for doing so.

Land trusts and easements often face the thorny issue of accountability. Trusts often tap into federal funds in the form of tax breaks and yet because they are viewed as private they are not regulated. Despite the fact that at some point one-third of land acquired under trusts comes under the ownership of the government, the government and the public have no say in deciding what parcels of land to purchase (Fairfax 1999). An exception to this can be found in the meetings of the Missoula County Open Lands Committee, which are open to the public. The public is free to attend and
comment on the use of the bond money for any purpose, including conservation easements.

Perpetual easements, whether agricultural easements or not, come under fire for many reasons. Some opponents believe that the current generation should not decide what is best for future generations (Mahoney 2002, Thompson 2004). Why bind future decision-making power if other methods for land conservation, such as zoning regulations or state and county policies, exist, or new methods could be generated at a later date? Mahoney (2002) argues that easements are creating ecological, legal, and institutional problems for future generations. The rebuttal is that current generations entering into easement agreements are ensuring that the options remain open. Future generations can always modify the agreement to allow development. Once development occurs, there is not the option to return to agriculture (Greene 2005).

Another question pertaining to perpetual easements is how easement agreements can be modified or terminated to respond to changed conditions (McLaughlin 2005). If an easement is found to have no public benefit as defined by the conservation values of the agreement, or if due to changed conditions the conservation values in an easement agreement become “impossible or impracticable” to enforce, the easement should also be terminated and a better property found to uphold the public benefits (McLaughlin 2005).

The pressure to sell land either for development or protection by land trusts intensifies the competition allowing landowners to hold out for the highest price, especially if there are contiguous parcels. The trusts often seek these parcels because
without the acquisition of adjoining parcels, inconsistent land uses may develop (Daniels 1991). Too often land trusts identify land because of escalating pressure to develop or because it matches their budget. It is not always strategic planning and conservation that drives the organizations’ pursuit of particular parcels (Christensen 2004).

Many models have been put forth for easement structures. In deciding how to go forward with agricultural preservation, land trusts should consider their feasibility, effectiveness, fairness, and any implications for the future. Mixing the conservation strategies may provide the best overall option allowing for context specific decisions to be applied (Doremus 2003). Agriculture is a contextual land use, dependent on neighboring land uses, the property’s soil conditions, water availability, etc. When dealing with conservation easements land trusts and government agencies need to examine whether the document is static or dynamic in nature. When an agency or trust is addressing the needs of a working landscape with an easement, it may be best to use a dynamic agreement that allows for modifications with changing economic, environmental, scientific, and cultural understanding (Greene 2005).

Newburn (2005) asks that trusts consider the price of the land, environmental benefits, and the potential land has for conversion to other uses in determining priority land to purchase. With the addition of agricultural values, this tool can be applied to find the most vulnerable land - defined as ecologically vulnerable, vulnerable to the market, or an agency’s ability to purchase the property (Newburn et al 2005, 2006). French (2004) recommends that easement agreements provide: payment to landowners in installments over the life of the project; a clause in the
agreement stating that the trust can include additional activities if found to be ecologically significant; a requirement to compensate the landowner for any additional restrictions that may be included in the easement; and, a dispute resolution procedure should it be necessary in the future. To this list I would add the ability of a landowner with an easement, and the land trust or government agency holding the easement, to adapt the easement agreement to reflect changing conditions.

A land trust may have difficulties in enforcing the easement agreement due to lack of technical capacity or lack of funds (Pidot 2005). Monitoring can be difficult for landowners with large acreage or who are more remote. Ranchers with easements may require technical knowledge that exceeds that contained in an annual monitoring visit. In order to ensure that easements keep in line with their conservation values, land trusts and government agencies are obliged to stick to their agreements and invest the necessary resources to properly examine the property (preferably on an annual basis). In some cases easement holders set aside money for easement stewardship and monitoring (Pidot 2005).

There remain outstanding questions on the conservation value and long-term viability of easements as a tool for agricultural preservation. Little is known of the differing management schemes of the many land trust organizations and what has proven the most beneficial. Further studies also need to be done on the reasons that landowners enter into agreements with land trusts and the benefits that easements provide to communities and the general public once landowners have sold certain rights (Mereleendar et al 2004). Other questions regarding easements include: What are these mosaics of easements actually protecting? How effective is this as a
conservation method (regardless if the intent is to preserve wildlife habitat, agricultural land, or scenic beauty)? Are there additional incentives that can attract more landowners to work with land trusts? What other tools can be used to keep land in production?

The preceding background on conservation easements outlines the evolution of easements. Despite the increased popularity of land trusts and number of acres protected from development, agricultural land remains a secondary conservation value. Easements provide financial incentives to farmers and ranchers but many of these landowners still do not have a high enough income to fully take advantage of the tax benefits. These lower income farmers and ranchers who are interested in conservation easements must then wait for a land trust or government agency that has matching conservation goals and the funds to purchase their easement. The following chapter examines the success of ranchers with easements on their property in the Blackfoot Valley in western Montana.
CHAPTER 3: THE BLACKFOOT VALLEY

The Blackfoot Valley in west central Montana is so named for the watershed that encompasses the Blackfoot River. The valley is located in four counties, Missoula, Powell, Lewis and Clark, and a small portion in Granite County. The 1.5 million acre watershed is surrounded by the Bob Marshall/Scapegoat Wilderness Area, the Garnet Mountains, and the mountain ranges of the Continental Divide (see the map below outlining the Blackfoot Valley) (The Blackfoot Challenge website).

Map 1. The Blackfoot Watershed (provided by the Blackfoot Challenge)

As noted in the methods section of Chapter 1, this region was chosen as the study area because of the agricultural landscape and rural nature, as well as the
Blackfoot Challenge’s reputation for effective conservation work. The valley has remained an area where agriculture, especially ranching, remains a central land use. This paper examines the role that the high number of conservation easements plays in preserving agriculture in this valley and what lessons can be drawn for the application of easements to support conservation of agriculture elsewhere.

Ecology of the Blackfoot Valley

The Blackfoot Valley is home to diverse fish and wildlife as well as unique geological features. The wetland features are a particular source of diversity, including prairie potholes and glacial lakes and ponds. These features provide a home for 250 species of birds including the bald eagle, sandhill cranes, and black terns. The blue ribbon trout streams provide habitat for twelve native and thirteen non-native fish species including the rare native bull trout and westslope cutthroat trout. The Blackfoot Valley is on the southern edge of the Northern Continental Divide Ecosystem that supports Montana’s largest grizzly bear recovery areas. Other mammals in the valley include elk, Canada lynx, and grey wolves. The vegetation in the valley includes grasslands, sagebrush steppe, aspen groves, and pine forests (The Blackfoot Challenge website).
Socio-economics of the Valley

The Blackfoot Valley remains a predominately rural region with approximately 3,000 households with around 8,100 residents living in and around seven communities over 1.5 million acres: Bonner, Potomac, Greenough, Seeley Lake, Ovando, Helmville, and Lincoln. About 14.5% (approximately 217,500 acres) of the total acreage in the valley is used for agriculture (State of the Basin Report 2005). The valley experienced a population growth rate of around 21% between 1990 and 2000 and is expected to grow between one and two percent a year (State of the Basin Report 2005). Public lands and private lands owned by Plum Creek Timber Company tend to be situated in the forested mountain areas, while the communities reside in the foothills and valley floor. Land ownership in the watershed is 49% Federal, 5% State of Montana, 20% Plum Creek Timber Company, and 24% private (Blackfoot Challenge website). See the map below showing land ownership in the Blackfoot Valley.
Historically, the Blackfoot Valley economy has been dependent on mining, logging, and ranching. Mining and logging have since lost their economic significance. Cattle ranching, on the other hand, remains a primary agricultural mainstay (State of the Basin Report 2005). The service and retail industries support the ranching economy although many commute to the larger cities in the region such as Missoula, Helena, and Butte, for shopping, medical needs, and employment. Services, construction, retail trade, and agriculture make up the top four employment sectors in the Blackfoot Valley (State of the Basin Report 2005).
The Blackfoot Challenge

The Blackfoot Challenge is a non-profit landowner-based group dating back to 1993 that coordinates management of the Blackfoot River, its tributaries, and adjacent lands (State of the Basin Report 2005). Their mission is to “coordinate efforts that will enhance, conserve and protect the natural resources and rural lifestyles of the Blackfoot River Valley for present and future generations” (Blackfoot Challenge website). The Challenge currently has seven committees working towards the goals of resource conservation and the preservation of rural lifestyles, including: the Executive Committee; the wildlife committee which collaborates to reduce human-wildlife conflicts; the habitat and water quality restoration committee working to restore streams and habitat; the education and outreach committee which aims to engage communities in conservation; the drought and water conservation committee working to conserve water and balance water needs during low flows; the conservation strategies committee which tries to keep working landscapes intact; and the weeds steering committee which tries to manage weeds throughout the valley.

The results of the Challenge’s efforts are impressive. There are approximately 113 conservation easements and 93,383 acres under easement (about 17% of all private lands in the valley and more than a quarter of the private acreage excluding Plum Creek lands) in the Blackfoot Valley (Blackfoot Challenge Annual Report 2006). While all of these easements were not created with the assistance of the Challenge, many are the result of Challenge partner’s hard work (i.e. TNC, MLR, FVLT, FWP, and FWS worked with landowners to develop easement agreements on
their own, before the incorporation or without the assistance of the Blackfoot Challenge). Table 5 below lists the number of acres in easements for the major three counties in the valley.

**Table 5: Blackfoot Valley County Conservation Easement Data**

<table>
<thead>
<tr>
<th>County</th>
<th>Conservation</th>
<th>% State</th>
<th>Total County</th>
<th>% of</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lewis and Clark</td>
<td>86,801</td>
<td>5.52%</td>
<td>1,491,190</td>
<td>5.86%</td>
<td>1,258</td>
</tr>
<tr>
<td>Missoula</td>
<td>29,556</td>
<td>1.88%</td>
<td>1,673,698</td>
<td>1.77%</td>
<td>253</td>
</tr>
<tr>
<td>Powell</td>
<td>87,415</td>
<td>5.56%</td>
<td>1,491,190</td>
<td>5.86%</td>
<td>901</td>
</tr>
</tbody>
</table>

Source: Conservation Easement Legislative Audit 2007

**Demographic Change in the Blackfoot Valley**

The Blackfoot Valley has maintained its agricultural landscape despite changes in land ownership. The majority of private lands, excluding Plum Creek Timber Company lands, consist of large ranches that average 2,000 to 3,000 acres in size (State of the Basin Report 2005). Differences in the 1997 and the 2002 US Federal Census of Agriculture for Powell County demonstrate only small changes in the number of farms, the amount of land in farms, and the average size of farms. In the census farms are defined as any agricultural production establishments (farms, ranches, nurseries, greenhouses, etc.). Powell County is the geographic center of the Blackfoot Valley and contains the majority of agricultural lands. The number of farms increased five percent from 261 farms to 274 farms; however, the amount of land in farms decreased from 633,641 acres in 1997 to 618,687 acres in 2002, a two percent change. The average size of farms decreased seven percent, from 2,428 acres to 2,258 (NASS 2002 Census of Agriculture, Powell County Profile). These changes are not large in number but the change in land ownership brings a different cultural
dynamic to the valley.

The Blackfoot Valley has not experienced the same level of development as other valleys in Western Montana, notably the Bitterroot Valley. The communities in the Blackfoot Valley have seen only small amounts of residential subdivision, in part due to northern Powell County’s zoning with 160 acre minimum lot size. The regulations allow for more dense housing within a mile radius from the towns. The regulations do not restrict or zone any areas as agricultural. The number of multi-generational landowners with ties to the homesteaders has decreased in the last few decades. Families have sold their land to newer ranchers and more recently to wealthy out-of-state residents. Between eight and eighteen percent of the valley’s current residents lived out of state in 1995 (State of the Basin Report 2005). Missoula County is on the higher end of that percentage and Powell and Lewis and Clark Counties are on the lower end.

The demographics of the valley are changing with land ownership. The median age is increasing due to an aging baby boomer generation and the in-migration of retirees (State of the Basin Report 2005). Outside of the schools closest to Missoula, school enrollment is decreasing (State of the Basin Report 2005). There are few employment opportunities for the younger generations; therefore, the children of ranchers often move away for additional job and education options. As younger people choose, or are forced due to the economic realities of practicing agriculture, to find livelihoods and lifestyles outside of ranching, and the population gets older, more ranchers will sell their property.
The price of housing doubled between 1990 and 2000 and the median home value for owner occupied housing is expected to reach more than $200,000 by 2010 (State of the Basin Report 2005). Twenty-five percent of the homes in the Blackfoot Valley were built between 1990 and 2000 (2000 is the latest date found for this data) (State of the Basin Report 2005). This indicates a growing market for homeowners with larger incomes.

The first conservation easement in Montana was signed in the Blackfoot Valley in 1976. Since that time more than twenty-five percent of private land (not including land owned by Plum Creek Timber Company) has a conservation easement on it. The easement agreements restrict the amount of development and subdivision; therefore, the lots remain intact. Paired with northern Powell County’s 160 acre minimum lot size, the availability of affordable land and housing is scarce for families without a lot of means or new ranchers starting out. The large lots have the potential to limit housing for craftsmen, ranch hands, and non-ranch workers working in the Blackfoot Valley. The future will show whether the valley is becoming an area that is too expensive to maintain a living by ranching alone.

Despite the changes in the economy and land ownership, the Blackfoot Valley will keep its landscape intact for generations to come. Regardless of what the private landowners choose to do on their land, a good portion will be protected by county regulations and conservation easements. Combined with the large amount of public lands available for leasing, agriculture will have a place to be productive. The map below shows the amount of land in conservation easements in the Blackfoot Valley.
Map 3: Conservation Easements of the Blackfoot Watershed

Agriculture in the Blackfoot Valley

There are many challenges to staying in agriculture in the Blackfoot Valley. The Blackfoot Valley is unique in that large parcels of land exist, maintaining the agricultural landscape. Because the parcels are large, land is becoming too expensive for new ranchers to purchase to continue to grow hay or raise cattle. Non-ranchers are increasingly buying land in the Blackfoot Valley, which in turn affects the rural lifestyle (State of the Basin Report 2005). The ideas and practices of the new landowners brought into the valley are changing the social and biological communities; especially how the two were intricately tied together under resource-based livelihoods and economics (Yung and Belsky forthcoming).
If ranchers are not able to purchase land for beginning new ranches or to remain economically viable with multigenerational ranches, the nature of community and ranching culture will change (White 1998). While the scenic values may remain intact due to the perpetual agreements that limit development, these types of agreements will lead to fewer ranchers, and those that remain may possibly be leasing the land from non-ranchers. This change in property relations will take some time, but as land prices increase, future generations migrate to more urban areas, and ranching requires more inputs (for example, head of cattle or grazing land) to maintain a viable lifestyle, families will have a harder time making a living from ranching. The Blackfoot Challenge values the maintenance of the community and rural lifestyle. One Ovando resident discussed how the community, in its rush to nurture the beautiful landscapes, had overlooked setting aside a place for the people who shaped the community.

Wealthy landowners, who do not rely on the ranch for a living, are increasingly buying large parcels of land in the inter-mountain West (Yung and Belsky forthcoming). A recent study by researchers at the University of Colorado, Oregon State University and New Zealand's University of Otago analyzed ranch sales around Yellowstone in 10 Montana and Wyoming counties from 1990 to 2001. Approximately 40% of the people who purchased parcels larger than 400 acres were wealthy out-of-towners, and just a quarter (26%) of the sales were to traditional ranchers. The other buyers were investors, part-time ranchers, developers and others (O’Driscoll 2006).
The changing dynamic in the Blackfoot Valley alters historical uses of the land as well as the social and cultural lifestyle. Landowners looking for what one valley community member called “expensive isolation” can restrict public access on their lands. Where community members once had access to streams and hunting they now encounter fences and no trespassing signs. This is obviously not true for all new landowners. Where it does occur however, it restricts not only public access, but also traditional cattle grazing paths and wildlife migration (Yung and Belsky forthcoming). These conflicting concepts of land-use affect the economic realities of ranchers as well as the rural social lifestyle prevalent in the Blackfoot Valley.

In addition to increasing housing and land prices, my research found that ranchers are required to expand their operations in order to make a living as cattle ranchers. Due to commodity price changes and the increased cost of living, cattle ranchers in the Blackfoot Valley are buying or leasing more grazing and hay land for their cows. Ranchers are also increasing their herd size in order to increase their profit margin. One Helmville rancher commented that it “takes more acres to make a living” and used the money received from selling the easement on his property to purchase additional cattle and neighboring land to expand his ranch operation. Production values are not keeping pace with the price of the land in western Montana (Robbins 2006). The low economic returns in Missoula County are making it difficult for farmers and ranchers to keep their land in production (Backus 2006, Hubbard 2006). As elsewhere, ranchers in the Blackfoot Valley rely on secondary incomes to support the ranch (Hubbard 2006). A farm viability study conducted in 2004 found that over seventy percent of farmers and ranchers in Missoula County thought that agriculture
is struggling (Hassanein et al 2004). Another twenty percent felt that agriculture is doing just okay. The farmers and ranchers pinpointed several factors negatively affecting agriculture including: problems related to development, population growth, and increasing price of land (Hassanein et al 2004).
CHAPTER 4: CONSTRAINTS AND OPPORTUNITIES OF CONSERVATION EASEMENTS AS A TOOL FOR AGRICULTURAL PRESERVATION IN THE BLACKFOOT VALLEY

As shown above, conservation easements have been an often-used tool in the Blackfoot Valley to avoid land fragmentation and development. However, it is unclear how effective they are at keeping land in agricultural production. Historically, easements are a tool to keep land from development and subdivision. As was demonstrated in the literature review and discussion above concerning conservation easements, there is virtually nothing in an easement agreement, or benefits received from putting an easement on the land, that offers incentives to landowners to keep land in agricultural production (outside of general maintenance as agreed to in the agreement). Under most easement agreements in the valley, the easement holder does not stipulate a difference between fields that lay fallow or are farmed for hay.

I turn now to the lessons from research in the Blackfoot Valley with ranchers and others involved in the use of conservation easements. The research finds that the major constraints and opportunities provided by conservation easements as a tool for the preservation of agriculture highlight the importance of flexibility written into an easement agreement as a factor that could strongly affect the use of easements for the preservation of agriculture. My research shows that easements provide no guarantee that once a parcel has an easement that it will remain in agricultural production, let alone what type of agricultural practices will or will not occur and whether they contribute to “biodiversity” or “conservation”. Other constraints include the difficulty in modifying agreements to meet changing conditions and the increasing costs and therefore difficulty for average ranchers to purchase land in the Blackfoot Valley,
with or without an easement. Even with the difficulties of easements, at the base level they ensure that the land is not developed and land-use options remain for future generations. Conservation easements could provide financial and technical benefits to ranchers trying to keep their land in agricultural production. The support from government agencies, land trusts, and the Blackfoot Challenge enable valley residents to make informed choices.

**Constraints of Conservation Easements as a Tool for Agricultural Preservation**

There are many uncertainties when working with conservation easements. The easement agreement as written assumes that the conservation values outlined will remain significant to that parcel of land for generations to come. The perpetual nature of the agreement may hinder the ability to change land use practices as conservation values and priorities change, or knowledge about good stewardship changes. Thus, if the easement does not allow for changing conditions it can actually impede effective land stewardship. Moreover, easements, while protecting the land from development, may be causing additional impacts in enabling large intact parcels to be purchased by non-ranching ex-urbanite landowners.

There is no question that conservation easements are a great tool for arresting development. The major restriction in all easement agreements is to stop development from occurring on the land. With the possible exception of an additional home for the family or necessary buildings for the farm or ranch, there will be no further building sites. This ensures that the land itself is open for agricultural production. It does not
however, ensure that whoever owns the land will farm or ranch. Nor does an agreement speak to the economic viability of an existing farm or ranch. The necessary economic incentives are outside of the control of an easement. The landowner retains some control through the business and stewardship decisions that they apply to their ranch; however, changing commodity prices and markets are often the determinant of the success of a ranch. One Blackfoot Valley rancher tried to insert language in his easement that required future owners of the property to keep the land in agricultural production. The land trust working with him would not allow that language to stand as it argued that it would be unfair to force a potentially uneconomic practice on future landowners. This may appear to be a double standard as easements take away a landowner’s right to build new structures or subdivide; however, the landowner is compensated for this potential loss in revenue. An easement is used as a negative enforcement in that it removes certain rights from the landowner (and subsequent owners of that property). My research did not uncover an easement agreement that required a landowner to partake in a particular land-use. An easement holder may require a landowner to practice a certain type of land management practice, but only if that landowner chooses to engage in that particular land-use (cattle ranching or crop production).

The majority of easement agreements accept development rights in perpetuity. The landowner agrees to uphold certain conservation values that the land trust or government agency and the landowner agree are important to that land; for example, the preservation of wildlife habitat, scenic landscapes, and/or agricultural lands. Depending on the level of flexibility of the easement agreement, the landowner or
easement holder may or may not be able to modify that agreement to fit changing needs. A limitation of easements is that a rancher may find that his or her hands are tied when it comes to decision-making capabilities that could affect the management of a ranch or farm. One Blackfoot Valley resident remarked “prescriptive agreements may keep landowners from working their land as it may be too much trouble.” When asked if he would like to see any changes to his conservation easement agreement, another Blackfoot Valley rancher stated that he would like “more flexibility in the evolution of the management of the habitat cycles.” This same rancher spoke about how his easement agreement made it a “struggle to change” weed management techniques, restricting him from applying his chosen management practice. If an easement agreement states that grazing or weed management must occur in a certain way, regardless of changing habitat needs or debates over agricultural techniques, the landowner will not be able to adapt. Over time, the land surrounding an easement may be developed or the wildlife corridor may take a different path. These changes may challenge or negate the conservation values in an easement agreement and the public may receive diminished value from the easement. Regardless of the perpetual agreement, perhaps it would be more beneficial to terminate that conservation easement and apply the easement funds and supervision to another parcel of land.

Another constraint to conservation easements is that properties with easements placed on them are often large intact parcels. The typical ranch size in the Blackfoot Valley is 2,000 to 3,000 acres (State of the Basin Report 2005) and the average size of an easement in Powell County is 901 acres (Maciver, Wallace and Wingard 2007). If a landowner decides to sell his or her land protected with an
easement it may be unaffordable to the average farmer or rancher. A rancher earning his or her primary income from cattle production would most likely not be able to afford the ranches that exist in the Blackfoot Valley today. Communities with a lot of easements on the land have the potential to become a society of landowners who can afford to purchase large properties in the future. That is not to say that the agricultural landscape will change. Easements and county regulations may keep the land intact; however, the culture that accompanies traditional ranchers may be lost. The land may be leased out to farmers and ranchers but the traditional community can no longer afford to live there. In a way to address this discrepancy, Vermont has proposed that conservation groups set aside five percent of the land, or its equivalent in dollars, for any open space project funded with public money. This land or money would be applied to low-income housing needs in the state (Red Lodge Clearinghouse, retrieved 3/13/07).

In communities such as those found in the Blackfoot Valley, regulations and the location of easements may restrict craftsmen, ranch workers, and non-farm employees from finding a home or even building additional outbuildings or shops. The minimum lot requirement of 160 acres in northern Powell County, as well as the properties with easements bordering town centers, do not provide many options for building additional structures for these non-ranch employees with limited incomes and needs. While easements and regulations have allowed for open landscapes, they have also restricted the ability to provide affordable housing for workers that support the rural lifestyle (State of the Basin Report 2005). Once the land is sold and no longer in family hands, there is a danger of only the affluent being able to afford the
properties with conservation easements, as they are large parcels in locations with high resale value. Farmers and ranchers from the Blackfoot Valley typically cannot afford to purchase large tracts of land in the valley, as they do not make enough income in agriculture. An American Farmland Trust report found that even though lands with easements on them are often less expensive than unrestricted lands in the same community, the cost of the land is often still too high-priced for commercial agriculture (Sokolow 2006). The report goes on to discuss however, that even when non-farmers and ranchers purchase agricultural properties, the land is kept in production. Many new owners choose to lease the land to neighboring farmers and ranchers in order to receive a secondary income or as a way to maintain the agricultural landscape. Some newer landowners may have no interest in working on the land themselves; however, they recognize the demand from their rancher neighbors for additional land for grazing or hay production.

The constraints discussed above limit the ability of conservation easements to be an effective tool for agricultural preservation. Easements cannot by themselves ensure the economic viability of the ranch. The easement agreements, if not flexible enough to allow modifications to changing conditions, may limit ranchers to make land-use decisions not inline with current land-use conditions or scientific thought. Easements may also indirectly cause a constraint on the ability of ranchers to purchase affordable homes and land to perpetuate the ranching economy and culture.

Despite these possible restrictions to providing additional and affordable housing, most landowners view easements as a way to keep options open for the future. Restricting residential subdivisions and development may contribute to
protecting and providing open space and a beautiful landscape. To reemphasize, one Blackfoot Valley rancher with an easement stated, easements “buy us some time to think.” As Missoula County Open Lands committee member, Jim Cusker, said, “once that soil is compacted under asphalt and concrete, it somehow loses its productivity” (Backus 2006).

**Opportunities Provided by Conservation Easements as a Tool for Agricultural Preservation**

Conservation easements do not keep land in agricultural production; however, they offer many tools to help farmers and ranchers. Easements restrict the building of most new structures and subdivision that secures the land for future agricultural use. Entering into an easement can also provide ranchers with funds or tax benefits to invest in additional land, cattle, and capital improvements to the ranch. Easements can provide the opportunity for landowners to come in contact with government agencies or land trusts who may be able to provide technical advice and support. A flexible easement agreement can provide ranchers with reasonable control of the stewardship of their land. It is up to the individual rancher to make the best use of these opportunities.

Conservation easements can support agriculture through the protection of the land from development and subdivision. Important lands with good soil for agriculture can be preserved for future generations. Even if the current landowner is not utilizing the land for agricultural production, the option will remain open for
future owners. As one valley resident stated, the use of conservation easements in the Blackfoot Valley can “preserve the land in the area from development” because they “don’t want to look like the Bitterroot.” A Potomac rancher talked about his response to the question about the importance of saving a small (50 to 100) cow operation. He replied that protecting these operations is worth it for the options they provide and “because the alternative is houses.” While easements alone cannot preserve agriculture in practice, they can ensure that land is available to farm and ranch. A Blackfoot Valley resident described using conservation easements to preserve agriculture as “slowing down the bleeding.”

Conservation easements could provide the monetary, and at times technical, support that ranchers need to maintain their business. The money for the purchase of easements and the tax benefits received through a donated easement or bargain sale can provide a rancher with financial support at that moment. Without the financial savvy and business sense on how to apply these funds, however, the rancher can find him or herself in as difficult a financial predicament as before the easement. Only through proper business and estate planning can a rancher make certain that his or her property will be viable for the next generation. A FWS representative observed that landowners that are “smart about it can keep their land in agriculture.” He mentioned using the financial benefits from easements to pull interest from escrow accounts, provide capital for estate planning, and investing the money in expanding operations. The tax and monetary benefits of an easement can only be obtained once for a parcel of land.
Many ranchers in the Blackfoot Valley opted to have a government agency (FWP or FWS) or land trust purchase their easement as that meant a cash payout to them. The ranchers that I spoke with were not interested in donating an easement when the possibility of a purchased easement existed, as the immediate return of money was more valuable to them than the tax benefits. This money often goes to purchase the land itself from family members, buying out parents or siblings for example, or the purchase of additional land to expand production. Money can be reinvested into the property or operation to fund capital improvements. Another alternative is to invest the money for retirement or future property needs. One Potomac rancher that I spoke with is in the process of working with a land trust that will purchase an easement on his property. The family, in turn, can use those funds to invest in an income property. The income provided by this purchase will allow the family to invest additional time and money into their ranch while at the same time protect the “good productive ranch land” that is under development pressure.

Additional monetary opportunities are provided through tax benefits to landowners who have donated an easement. These benefits, as described in Chapter 2, allow landowners to pay highly reduced estate taxes when passing the land to the next generation. The Pension Protection Act of 2006, by increasing the tax benefit from 30% to 50% of an adjusted gross income and extending the length of time a landowner can apply this benefit from five to fifteen additional years, gives a landowner who is willing to donate an easement benefits that are worthwhile and applicable to average farmers and ranchers (Silverman 2007). Should the Act be extended beyond the current end-date of December 31, 2007, I believe that many
more landowners will take advantage of these tax benefits by agreeing to put an easement on their property. This incentive, while perhaps not guaranteeing that land will be used for agricultural production, does ensure that land is available for that use.

With the realization that land management, especially under a conservation easement, is complex, it is important for landowners to work closely with the land trust or government agency that holds the easement once the connection is made between landowner and government agency or land trust, and the easement is on the property. Trusts and agencies can provide stewardship advice on habitat management and restoration, including issues such as grazing, noxious weeds, fencing, wildlife interactions, river and streambed restoration, etc. However, not every land trust or government agency is in the position to provide advice or other funding sources. Those that can be an additional resource can get to know the land outside of the annual monitoring of the easement. Outside of monitoring, these issues and relationships may not arise between the two parties unless sought out. The potential drawback is that if this relationship is pursued, it may result in disagreement over how best to manage the land. Outside of prescriptive easement agreements therefore, it is left to the landowner to decide whether to seek technical input from the trust or agency holding the easement.

Blackfoot Valley residents demonstrate great concern about the future of their communities through their commitments to the stewardship of their land and to the many working groups of the Blackfoot Challenge (Blackfoot Challenge Annual Report 2006). This is evident in part through the amount of private land that has been protected from development under conservation easements. The Blackfoot Challenge
and some valley community members have formed constructive relationships with federal and state land management agencies and private non-profit conservation organizations working in the area. For example, FWS and FWP work with community members to restore wildlife and fish habitat on private property. These relationships or partnerships will facilitate additional purchases and donations of conservation easements in the future but cannot guarantee that ranching will continue to play a primary role in the economy.

Working with fellow ranchers, neighbors, NGOs, government agencies, and other interested actors, the Blackfoot Valley has fostered an expectation of cooperation among all involved. The Challenge has helped lay a foundation of collaboration in the valley and because of these efforts it may be easier to pass on conservation easements from one landowner to the next. The rural character and values of the communities, the commitment to the proper stewardship of the land, and the hard work put into the social and political infrastructure of the Blackfoot Challenge ensures a bright future for the valley despite changing demographics.

Perhaps the greatest benefit of conservation easements is the limitation to development and thus the preservation of agricultural land for future generations. A major incentive to individual landowners is the financial support received from the purchase of an easement or the tax benefits received from the donation of an easement. Once an easement is on a farm or ranch the landowners can take advantage of technical support from the land trust or government agency holding their easement. As discussed in the next section, flexible easement agreements can provide ranchers with the ability to react to the changing needs of their land and their business.
When compared with regulatory actions conservation easements are more flexible and permanent. Depending on the land trust or government agency, a landowner may or may not be able to change the conditions of the easement. There has been no direct evidence that the level of flexibility in an easement agreement reflects the chances of a working ranch to survive. It would appear to give a landowner with an easement more options than a landowner with a strict or prescriptive easement agreement. If a land trust or government agency wants to enact additional or modify existing restrictions they must ensure that the change results in a positive or neutral effect on conservation. A Blackfoot Valley resident argued for flexibility in easements stating that it was important “for the environment and the rancher – what’s bad for one is bad for the other.”

Of great concern to the Blackfoot Challenge’s conservation strategies working group is allowing farmers and ranchers to manage their lands in the best possible way according to their goals and based on their knowledge and traditions. The working group concluded that easement agreements should be amenable to modifications with ever-changing resource conditions and the evolution of science. This enables landowners to make informed decisions on good land management and stewardship practices. For many in the Blackfoot Valley this includes managing for grasslands and ranching as well as for habitat and wildlife protection. As a Helmville rancher pointed out, an easement “has to be a moving breathing thing.” A Blackfoot Valley community member echoed this stating that easements are part of a “dynamic system
and we have to allow for change and adapting for the best science available.”

Flexibility in an easement agreement can also have its drawbacks. Giving free reign to a landowner may have unintended consequences if the easement holder is not monitoring the easement closely. There is always potential for abuse if a landowner is given too much freedom in easement stewardship. If a property is to be managed with the most up-to-date science and conservation techniques, the landowner may feel that he or she is unduly saddled with unnecessary management responsibilities and costs. A rancher may encourage adaptability when change is in his or her favor and then disapprove when changing conditions result in a financial or management burden.

It is necessary to state that flexibility is an important tool with the caveat that landowners are accountable for their land management actions. The farming and ranching practices employed on the land, while responsive to changing environmental and scientific conditions, must also continue to support the conservation goals of the conservation easement. Landowners can be allowed to choose the practices that are best suited for their land as long as they do not negatively impact the conservation value or purpose. Land trusts and government agencies that allow flexibility in land management practices need to oversee the agreements to monitor the conditions of the land. These organizations may not have the technical or financial ability to properly monitor the easements and may therefore choose to limit the amount of flexibility in their easement agreements.

Each land trust and government agency structures their easement agreement template with differing levels of flexibility, depending on the grantee organization goals, as well as when the agreement was signed. Some prefer to lay out restrictions
on land-use or restoration techniques even if they have no bearing on a specific property at a given time. Others allow almost any action as long as the conservation values outlined in the easement agreement are not compromised. For example, FWP has fairly prescriptive easement agreements, dictating the use of rest-rotational grazing techniques, placing limits to livestock carrying capacity, and limiting the types of weed control methods that are used on sagebrush. FWP generally requires landowners to provide public access for hunting as well since a good portion of their funding stems from hunting licenses. FWS on the other hand has a short easement agreement that outlines the conservation purposes of the easement and contains fewer restrictions on the landowner’s actions. Livestock grazing and haying are permitted activities as long as they do not contradict these purposes (i.e. the protection of wetlands and/or other fish and wildlife habitat). According to ranchers, land trusts, and government agency representatives that I spoke with, most of the agreement templates lay somewhere between the ultra restrictive and the very flexible. The easement agreements allow for some discretionary decisions about land-use practices; however, major deviations need to be discussed with the easement holder.

Flexible easement agreements can empower ranchers to make the most economically viable and environmentally sound stewardship choices. An agreement that is open to change permits a rancher to adjust grazing procedures, weed management techniques, and growing conditions to best suit the environment on his or her land. The ability to make improvements and respond to changing habitats and economies enables ranchers to be more responsive to the market and run a more economically viable business. “I believe conservation easements should be thought of
as a land planning tool,” says David Mannix of Mannix Brothers Ranch. “Land planning allows for adaptive management as we slowly learn to take care of the land we’ve been entrusted with. Our management must adjust and evolve with the land. The wisest two parties in the world won’t be able to structure a conservation easement that foresees all future challenges, thus the need to design a flexible easement tool” (Blackfoot Challenge Press Release, March 4, 2005).

A flexible easement agreement will not allow any action on or to the property. There are boundaries that must be maintained in both a prescriptive easement agreement and a more open agreement, such as a restriction on subdividing, disposing of toxic refuse, and maintaining a commercial feedlot or game farm. These restrictions are intended to protect the integrity of the land and are common in most easement agreements.

As conservation easements have evolved, the importance of flexibility has been given increased attention. Of the thirteen people I interviewed, eleven of them discussed the importance of flexibility, including five out of the six landowners. The one landowner who did not see a need for more adaptability in easement agreements does not depend on agriculture as a major source of income and felt that the main purpose of easements was to limit development. He felt that the agreements should therefore be restrictive. Whether flexibility is central to the preservation of agricultural lands, the amount of flexibility allowed by agreements has not been observed, and the boundaries of a flexible agreement have not been tested. An increase in flexibility can make the day-to-day life of a rancher with an easement on his or her property easier, but time will tell if more flexible easement agreements will
play a factor in keeping agricultural land in production. Thus, my research concludes that the level of flexibility may improve the stewardship of the land but it will have only incidental effects on the economic viability of agriculture in the valley. The forces that determine whether or not agriculture is viable may be well beyond the grazing or restoration practices of a rancher. In the final chapter we examine the implications that my research has demonstrated for the protection of agricultural lands in the Blackfoot Valley and elsewhere.
CHAPTER 5: IMPLICATIONS FOR THE PROTECTION OF AGRICULTURAL LAND IN THE BLACKFOOT VALLEY

The research reported here suggests that conservation easements in the Blackfoot Valley help to hold back the push towards land sale, parcelization, and development, but by themselves cannot ensure the preservation of agricultural lands. In order for easements to be a working tool, the research suggests that they must be adaptable to changing conditions that are likely to continually confront them. Changing conditions include the dissolution of easement agreements when they can no longer achieve the conservation goals. As such, other tools are necessary to support the long-term continuation of agriculture, in the Blackfoot Valley and elsewhere. These will include government regulations, community and agricultural support groups, and government and non-profit conservation organizations. By working together these organizations can target particular farms and ranches as critical for conservation purposes (i.e. linkage between public lands and wildlife corridors). A willing landowner is often the impetus for conservation easements (as opposed to being initiated by a land trust or government agency). While this is good, it does always follow an integrated conservation strategy.

Conservation easements in the Blackfoot Valley have escaped some of the high profile problems that have befallen other land trusts in the U.S., such as insufficient monitoring and exaggerated appraisals. This is not to say that there is not room for improvement to the agreements, just that the landowners and land trusts or agencies working with them have demonstrated great ability to listen to one another
and develop a solid working relationship. Discussions with the different easement actors in the Blackfoot Valley led me to the following recommendations on how to improve conservation easements as a tool for agricultural preservation.

The current language used to describe the conservation values and the purposes of conservation easements in national and state regulations needs to be modified to include the protection of agricultural land. Agricultural land is often subsumed under “open space”, signifying that these lands are not worthy of their own designation as a conservation value. The inclusion of language addressing agriculture will not necessarily result in additional funds and attention to the preservation of working farm and ranch land, nor does it address the real complexities and challenges of landowners to maintain a viable farm or ranch; however, it does signify the importance of agriculture as a conservation value. The change may be subtle but the acknowledgement is important. New legislation, including the 2007 Farm Bill and the recently introduced Farm, Nutrition and Community Investment Act, include additional reforms focused on farm and ranch protection, local food systems, and market and economic development (AFT 2007). These reforms address the heart of issues pertaining to farm and ranch viability.

The conservation strategies working group of the Blackfoot Challenge has worked hard over the last seven years to find solutions to problems with conservation easements. The group overwhelmingly supports the notion that easement agreements should not be prescriptive about agricultural practices. Instead they suggest that agreements should maximize flexibility by limiting the restrictions on particular practices related to grazing, forestry management, weed management, and protecting
conservation values in general placed in the easement agreement. The agreement would instead refer to management goals and include agreed upon plans located in the appendices. These management plans would ultimately be tied to the purpose or conservation values stated in the agreement but methods to reach them remain flexible, and even the purposes themselves could be changed on an as-needed basis with the consent of the land trust or agency. This allows for the greatest amount of adaptability to changing biological, environmental, economic, scientific, and cultural conditions while maintaining conservation goals.

My research suggests that most ranchers in the Blackfoot Valley have realized that a good landowner needs to be an active steward on his or her land. Conservation easements are thought of as negative arrangements as they remove certain rights from the landowner such as the ability to make and implement management decisions. However, proper stewardship may require active land management to maintain the conservation values stated in the easement agreement. This could include active weed control, thinning of trees, or altering grazing techniques, in order to increase conservation on the property. By focusing the conservation goal in easement agreements and leaving the methods of achieving this more open with a plan in the appendices, both the landowner and the land trust or agency can or may be in a better position to achieve the greatest amount of flexibility and hence success.

If conservation easement agreements are allowed to be dynamic documents there should be little question of their perpetual nature. If however, the easement is not able to let landowners adapt changing conditions involving wildlife or vegetation habitat, new technologies, or scientific views for example, it may over time fail to
reach conservation goals. Unfortunately, and despite their best efforts, landowners, land trusts and government agencies cannot predict how the land and the species living on it will change, nor how land management and conservation ideas themselves will change over time with new information and scientific discoveries. In theory, perpetual agreements will achieve the long-term conservation goals set out under the easement; however, if that easement fails to meet these requirements and the public can achieve a greater conservation value on a different piece of property, the possibility of swapping land should be examined. With limited funds and changing environments, the public, easement holders, and landowners should therefore consider swapping one piece of land under an easement for a different one that may better meet the conservation goals.

Hence, a major conclusion of my research is that conservation easements are best used in conjunction with local, regional, and state policies and regulations. Easements alone cannot stop the conversion of farm and ranchlands to non-agricultural uses, as there are too many economic and social factors outside of their control. Zoning regulations in Powell County have brought together pockets of communities to decide how they would like to see growth occur in the county. In northern Powell County, where the Blackfoot Valley overlaps with the county, the planning board and county commissioners, along with community members, decided that 160 acres would be the minimum amount of acreage per lot. While this cannot guarantee that a parcel will remain working land, it does assure the county that the area will remain rural. Zoning land as agricultural also prevents land from subdivision and encourages working farms and ranches to continue. Maintaining this community
feedback with local planners is essential for smart growth. Ranchers can also organize themselves, or with the assistance of the state or county governments, to create support systems to discuss management techniques, marketing, or conservation efforts.

Land conservation organizations play a large role in bridging the concerns of specific landowners and larger entities involved in conservation easements. In the Blackfoot Valley, the Blackfoot Challenge has been a great resource, but not every community or watershed has such an organization to bring them together to share information on conservation issues and be the bridge to extra-local resources. Developing watershed groups and collaborative efforts in general are difficult and are highly dependent on the availability of local leaders and other resources. If communities concerned about their growth have institutions such as a local watershed group, or even a proactive local government agency that can help them to work together, they could provide guidance to planners and others with decision-making authority on what is important to them. As demonstrated in Powell County, through leadership, trust, and respect for one another, a group of committed government and community members can build working relationships to address stewardship and growth issues that are important to their future.

In conjunction with easements, the federal and state government, as well as the private sector, offer conservation programs that can provide additional funding for land stewardship. Landowners can strengthen their stewardship practices through the resources and knowledge of non-traditional partners. These non-traditional partners, such as NRCS or a wildlife group such as Vital Ground, often have the same goals as
landowners, although they may be articulated differently. One Blackfoot Valley landowner advises other landowners to “use every tool in the toolbox” in their quest to maintain a working ranch.

In addition to funding sources, national groups such as the Land Trust Alliance (LTA), Trust for Public Lands (TPL), and the American Farmland Trust (AFT) can provide guidance to conservation easement standards and practices. Even though every easement is different, lessons can be learned from other organizations and landowners with similar issues. Email listservs (for example, the LANDTRUST listserv sponsored by LTA and maintained by Indiana University) are an interactive resource that taps directly into people and organizations working with easements. Landowners, land trusts, and agencies can share experiences or suggest solutions to particular situations.

In an effort to keep land in agricultural production, some land trusts and agencies have elected to work with landowners with easements when their property is on the market. Emulating programs in Vermont and Massachusetts, the State of Montana (in the case of the Blackfoot, FWP, or perhaps the private land trusts) could include options in their easement agreements that give the state (or land trust) the first option to purchase agricultural land with a conservation easement if that land was to be resold for non-agricultural purposes (Sokolow 2006). The state agency or trust would be offered the land at a resale value of agricultural land. A second option would be for the easement holder to provide new owners with a list of potential farmers and ranchers in the area who may be interested in leasing the land for production purposes.
Conclusion

Only time will tell if the changes made today to conservation easement agreements will help landowners to remain in agriculture. This paper has highlighted the importance of flexibility in enabling landowners to be able to respond to changing conditions. The level of flexibility written into easement agreements with regard to specific agricultural practices will be a good indicator of trust by the authorizing organization in the landowner’s stewardship capabilities and the land trust or agency’s monitoring skills. In order to ensure conservation and the protection of agriculture, it is necessary for all involved to recognize the inevitability of changing environmental, social, cultural, and scientific conditions and hence goals relating to land management and the uncertainty involved in determining appropriate adaptive responses. Easements are only as strong as the people who design and enforce them and the relationships they form. As one manager put it, “the key to successful long-term management is long-term relationships.”

The Blackfoot Valley has been uniquely successful in preserving an agricultural landscape. This is due in part to the large number of easements and the acreage they cover, the regulations and policies enacted, and the support system developed. Together they have contributed to the continuity of communities that remain respectful of ranching lifestyles. Even as multi-generational ranchers sell their property, the landscape is tended by newer generations owning or leasing land in agriculture. Members of the community are working hard to ensure that the spirit of the ranching culture survives along with the landscape.
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APPENDIX A: LANDOWNER INTERVIEW GUIDE

1. Sex  ____Male  ____Female

2. Age  ____18-29  ____30-39  ____40-49  ____50-59  ____60-65
   ____66+

3. Are you the landowner?  ____Yes  ____No
   If no, who owns the land? ________________________________________________

4. How long have you owned this property?
   ____0-5 yrs  ____6-10 yrs  ____11-20 yrs  ____21+ yrs

5. How long has this property been in your family? ____________________________

6. How long has your land been under a conservation easement? ________________

7. Is your land currently under agricultural production?  ____Yes  ____No
   If yes, what sort of agricultural activities are conducted on your property?
   ____Ranching (cattle)
   ____Sheep
   ____Hay production
   ____Dairy
   ____Commodity production__________________________________________________
   ____Other _______________________________________________________________

8. How important is agriculture to your livelihood?
   ____Primary source of income
   ____Secondary source of income
   ____Lifestyle
   ____Hobby
   ____Other ________________________________________________________________

9. How much of your land is under a conservation easement (acreage & %)?
   ______________________________________________________________

10. What were the reasons you decided to enter into a conservation easement
    agreement?
    ________________________________________________________________

11. Who did you work with to put the agreement together (government agency or
    land trust)? __________________________________________________________

12. Were you happy with the process?  ____Yes  ____No
13. What would you change about the process? _____________________________________

14. What do you see as the key constraint to using conservation easements as a tool to
preserve agricultural land in your area?
   ____ Too expensive to cover cost of conservation easements
   ____ Not enough incentive from tax benefits
   ____ Lack of access to future options
   ____ Not enough support from land trusts/government agencies
   ____ Don’t know
   ____ Other _________________________________________________________

15. What is the greatest opportunity to having a conservation easement on your
property?
   ____ Knowing that the land is protected from development for the foreseeable future
   ____ Maintaining the open space
   ____ Keep the land in agricultural production
   ____ Being able to keep the land in the family
   ____ Tax benefits
   ____ Don’t know
   ____ Other _________________________________________________________

16. Do you feel that your conservation easement agreement provides enough
adaptability or flexibility? ____ Yes ____ No
Explain: ___________________________________________________________________

17. What would you like to see changed in your conservation easement agreement?
   ____ Limited timeframe
   ____ Ability to subdivide additional land
   ____ Ability to build additional buildings
   ____ Ability to conduct additional agricultural practices
   ____ Don’t know
   ____ Other _________________________________________________________

18. Have you seen conservation easements change in the area over your lifetime? If
so, how? __________________________________________________________________

19. What changes would you recommend for conservation easement agreements in
the future? __________________________________________________________________

20. Do you have any other suggestions, remarks or ideas for other tools to help
preserve agricultural land in your area? ___________________________________________________________________
APPENDIX B: MONTANA CODE ANNOTATED (MCA) 2005, TITLE 76 LAND RESOURCES AND USE, CHAPTER 6 OPEN SPACES

76-6-101. Short title. This chapter may be cited as the "Open-Space Land and Voluntary Conservation Easement Act".

76-6-102. Intent, findings, and policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Open-Space Land and Voluntary Conservation Easement Act. It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources. (2) The legislature finds that: (a) the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments; (b) the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living; (c) this population spread and its attendant development are disrupting and altering the remaining natural areas, biotic communities, and geological and geographical formations and thereby providing the potential for the destruction of scientific, educational, aesthetic, and ecological values; (d) the present and future rapid population spread throughout the state of Montana into its open spaces is creating serious problems of lack of open space and overcrowding of the land; (e) to lessen congestion and to preserve natural, ecological, geographical, and geological elements, the provision and preservation of open-space lands are necessary to secure park, recreational, historic, and scenic areas and to conserve the land, its biotic communities, its natural resources, and its geological and geographical elements in their natural state; (f) the acquisition or designation of interests and rights in real property by certain qualifying private organizations and by public bodies to provide or preserve open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state; (g) the exercise of authority to acquire or designate interests and rights in real property to provide or preserve open-space land and the expenditure of public funds for these purposes would be for a public purpose; and (h) the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest.

76-6-103. Purposes. In accordance with the findings in 76-6-102, the legislature states that the purposes of this chapter are to: (1) authorize and enable public bodies and certain qualifying private organizations voluntarily to provide for the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest; (2) provide for the preservation of other significant open-space land anywhere in the state either in perpetuity or for a term of years; and (3) encourage private participation in such a program by establishing the policy to be utilized in determining the property tax to be levied upon the real property which is subject to the provisions of this chapter.

76-6-104. Definitions. The following terms whenever used or referred to in this chapter shall have the following meanings unless a different meaning is clearly indicated by the context: (1) "Comprehensive planning" means planning for
development and shall include: (a) preparation of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together with long-range fiscal plans for such development as a guide for long-range development; (b) programming and financing plans for capital improvements; (c) coordination of all related plans and planned activities at both the intragovernmental and intergovernmental levels; and (d) preparation of regulatory and administrative measures in support of the foregoing. (2) "Conservation easement" means an easement or restriction, running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of such easement or restriction any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction. (3) "Open-space land" means any land which is provided or preserved for: (a) park or recreational purposes; (b) conservation of land or other natural resources; (c) historic or scenic purposes; or (d) assisting in the shaping of the character, direction, and timing of community development. (4) "Public body" means the state, counties, cities, towns, and other municipalities. (5) "Qualified private organization" means a private organization: (a) competent to own interests in real property; (b) which qualifies and holds a general tax exemption under the federal Internal Revenue Code, section 501(c); and (c) whose organizational purposes are designed to further the purposes of this chapter. (6) "Urban area" means any area which is urban in character, including surrounding areas which form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

76-6-105. Construction of chapter. (1) To the extent that the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter are controlling. The powers conferred by this chapter are in addition and supplemental to the powers conferred by any other law. (2) This chapter may not be construed to imply that any easement, covenant, condition, or restriction that does not have the benefit of this chapter is not enforceable based on any provisions of this chapter. This chapter does not diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain pursuant to Title 70, chapter 30, or otherwise and to use land for public purposes.

76-6-106. Acquisition and designation of real property by public body. To carry out the purposes of this chapter, any public body may: (1) acquire by purchase, gift, devise, bequest, or grant title to or any interests or rights in real property, including land and water, that will provide a means for the preservation or provision of significant open-space land or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest, or both; (2) designate any real property, including land and water, in which it has an interest to be retained and used for the preservation and provision of significant open-space land or the preservation of native plants or
animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interests, or both.

76-6-107. Conversion or diversion of open-space land. (1) Open-space land, the title to or interest or right in which has been acquired under this chapter, may not be converted or diverted from open-space land use unless the conversion or diversion is: (a) necessary to the public interest; (b) not in conflict with the program of comprehensive planning for the area; and (c) permitted by the conditions imposed at the time of the creation of the conservation easement, in the terms of the acquisition agreement, or by the governing body resolution. (2) Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as open-space land must be substituted within a reasonable period not exceeding 3 years for any real property converted or diverted from open-space land use. Property substituted is subject to the provisions of this chapter.

76-6-108. Conveyance or lease of open-space lands. A grantee may convey or lease any real property it has acquired or which has been designated for the purposes of this chapter. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land and which are consistent with the express terms and conditions of the grant unless the property is to be converted or diverted from open-space land use in accordance with the provisions of 76-6-107.

76-6-109. Powers of public bodies -- county real property acquisition procedure maintained. (1) A public body has the power to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter: (a) to borrow funds and make expenditures necessary to carry out the purposes of this chapter; (b) to advance or accept advances of public funds; (c) to apply for and accept and use grants and any other assistance from the federal government and any other public or private sources, to give security as may be required, to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government conditions imposed pursuant to federal laws as the public body may consider reasonable and appropriate and that are not inconsistent with the purposes of this chapter; (d) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter; (e) in connection with the real property acquired or designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land; (f) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance; (g) to demolish or dispose of any structures or facilities that may be detrimental to or inconsistent with the use of real property as open-space land; and (h) to exercise any of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are authorized by state law, and with one or more public bodies of this state and to enter into agreements for joint or cooperative action. (2) For the purposes of this chapter, the state, a city, town, or other municipality, or a county may: (a) appropriate funds; (b) subject to 15-10-
420, levy taxes and assessments according to existing codes and statutes; (c) issue and
sell its general obligation bonds in the manner and within the limitations prescribed
by the applicable laws of the state, subject to subsection (3); and (d) exercise its
powers under this chapter through a board or commission or through the office or
officers that its governing body by resolution determines or as the governor
determines in the case of the state. (3) Property taxes levied to pay the principal
and
interest on general obligation bonds issued by a city, town, other municipality, or
county pursuant to this chapter may not be levied against the following property: (a)
aricultural land eligible for valuation, assessment, and taxation as agricultural land
under 15-7-202; (b) forest land as defined in 15-44-102; (c) all agricultural
improvements on agricultural land referred to in subsection (3)(a); d) all
noncommercial improvements on forest land referred to in subsection (3)(b); and (e)
aricultural implements and equipment described in 15-6-138(1)(a). (4) This chapter
does not supersede the provisions of 7-8-2202.
76-6-110. Authorization and funding for planning commission. (1) The state,
counties, cities, towns, or other municipalities in an urban area, acting jointly or in
cooperation, are authorized to perform comprehensive planning for the urban area and
to establish and maintain a planning commission for this purpose and related planning
activities. (2) Funds may be appropriated and made available for the comprehensive
planning. Financial or other assistance from the federal government and any other
public or private sources may be accepted and utilized for the planning.
76-6-201. Conservation easements in general. (1) Where a public body acquires
under this chapter an interest in land less than fee, this acquisition shall be by
conservation easement. (2) A conservation easement may be applied to urban or
nonurban land.
76-6-202. Duration of conservation easements. 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.
76-6-203. Types of permissible easements. Easements or restrictions under this
chapter may prohibit or limit any or all of the following: (1) structures--construction
or placing of buildings, camping trailers, housetrailers, mobile homes, roads, signs,
billboards or other advertising, utilities, or other structures on or above the
ground; (2) landfill--dumping or placing of soil or other substance or material as
landfill or dumping or placing of trash, waste, or unsightly or offensive materials; (3)
vegetation--removal or destruction of trees, shrubs, or other vegetation; (4) loam,
gravel, etc.--excavation, dredging, or removal of loam, peat, gravel, soil, rock, or
other material substance; (5) surface use--surface use except for such purposes
permitting the land or water area to remain predominantly in its existing condition;
(6) acts detrimental to conservation--activities detrimental to drainage, flood control,
water conservation, erosion control, soil conservation, or fish and wildlife habitat and
preservation; (7) subdivision of land--subdivision of land as defined in 76-3-103, 76-
3-104, and 76-3-202; (8) other acts--other acts or uses detrimental to such retention of
land or water areas in their existing conditions.
76-6-204. Acquisition of conservation easements by qualified private organizations. Any qualified private organization may acquire by a conservation easement, by purchase, or by gift, devise, bequest, or grant title to any interest or interests in rights in real property, including land and water, that will provide a means for the preservation or provision of permanent significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest.

76-6-205. Assignability of easements. For the purposes of this chapter, all conservation easements shall be assignable unless the instrument of conveyance or ownership expressly stipulates otherwise. No conservation easement shall be unenforceable on account of the benefit being assignable or being assigned to any other government body or private organization unless such assignment has violated the express terms of the instrument of conveyance or ownership. The assignees must be qualified under the terms of this chapter to hold a conservation easement.

76-6-206. Review by local planning authority. In order to minimize conflict with local comprehensive planning, all conservation easements shall be subject to review prior to recording by the appropriate local planning authority for the county within which the land lies. It shall be the responsibility of the entity acquiring the conservation easement to present the proposed conveyance of the conservation easement to the appropriate local planning authority. The local planning authority shall have 90 days from receipt of the proposed conveyance within which to review and to comment upon the relationship of the proposed conveyance to comprehensive planning for the area. Such comments will not be binding on the proposed grantor or grantee but shall be merely advisory in nature. The proposed conveyance may be recorded after comments have been received from the local planning authority or the local planning authority has indicated in writing it will have no comments or 90 days have elapsed, whichever occurs first.

76-6-207. Recording and description of easement. (1) All conservation easements shall be duly recorded in the county where the land lies so as to effect their titles in the manner of other conveyances of interest in land and shall describe the land subject to said conservation easement by adequate legal description or by reference to a recorded plat showing its boundaries. (2) The county clerk and recorder shall upon recording cause a copy of the conservation easement to be placed in a separate file within the office of the county clerk and recorder and shall cause a copy of the conservation easement to be mailed to the department of revenue.

76-6-208. Taxation of property subject to conservation easement. (1) Assessments made for taxation on property subject to a conservation easement either in perpetuity or for a term of years, where a public body or a qualifying private organization holds the conservation easement, shall be determined on the basis of the restricted purposes for which the property may be used. The minimum assessed value for land subject to an easement conveyed under this chapter may not be less than the actual assessed value of such land in calendar year 1973. Any land subject to such easement may not be classified into a class affording a lesser assessed valuation solely by reason of the creation of the easement. The value of the interest held by a public body or qualifying private organization shall be exempt from property taxation. (2) Expiration of an easement granted for a term of years shall not result in a reassessment of the land for
property tax purposes if the easement is renewed and the granting instrument reflecting the renewed easement is executed and properly filed not later than 15 days after the date of expiration.

76-6-209. Easements to run with the land. The provisions of 70-17-202 and 70-17-203(1) and (2) notwithstanding, for the purposes of this chapter, all conservation easements, whether held by public bodies or qualifying private organizations, shall be considered to run with the land, whether or not such fact is stipulated in the instrument of conveyance or ownership.

76-6-210. Enforcement. (1) Conservation easements may be enforced by injunction or proceedings in equity. Representatives of the grantee of the conservation easement shall be entitled to enter the land in a reasonable manner and at reasonable times to assure compliance. (2) No conservation easement shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of such conservation easement not being an appurtenant easement or because such easement is an easement in gross.

76-6-211. Who may enforce easement. (1) The owner of any estate in a dominant tenement or the occupant of such tenement may maintain an action for the enforcement of an easement attached thereto. (2) Public bodies holding conservation easements shall enforce the provisions of these easements.