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OPPOSITION AND BARRIERS TO CONSERVATION EASEMENTS: INSIGHTS FROM  
MONTANA LANDOWNERS

By

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B.A., Western Washington University, Washington, 2007

Thesis

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Opposition and Barriers to Conservation Easements: Insights from Montana Landowners  
Chairperson: Laurie Yung

A conservation easement (CE) is a voluntary agreement that perpetually limits development on private land in order to protect open space, agricultural land, and scenic amenities, as well as ecological or historic resources. Due to the fact that CEs are voluntary, an understanding of the landowner's decision about whether or not to participate in conservation easement programs is imperative if CE use is to continue and expand. Moreover, understanding how non-participating landowners view CEs, how they regard the incentives, and how CEs fit or do not fit with their ideas regarding private property and conservation is of critical importance for conservationists in this field.

This study investigated the barriers to placing conservation easements on one's property from the perspective of landowners in western Montana. This research was conducted in an effort to better understand how these landowners view conservation easements, where opposition to easements arises from, and how these perspectives might inform efforts to conserve private lands. An additional goal of this project was to investigate how landowner views and interests relative to easements differ between different types of landowners and among different geographic areas. Finally, the hope was that knowledge gained from this study would help illuminate mechanisms for addressing these barriers.

Findings indicate that there are three distinct factors that discourage western Montana landowners from CEs. The first barrier was the perpetual nature of CEs. Landowners expressed a discomfort with perpetuity and did not think that a restriction on their property could remain workable forever. The second prevalent concern was the loss of control that landowners associated with CEs. Many landowners were concerned about the excessive micro-management they believed would accompany a CE. The third barrier was a lack of trust in the organizations and agencies that work with CEs. Landowners were concerned about how conservation organizations will manage the enforcement of CE agreements and also expressed concerns regarding non-local factors and government influence. These findings indicate that there is a wide range of interrelated reasons for why landowners decide not pursue CEs. These results highlight potential avenues for addressing landowner concerns as well as areas of continued challenge to expanded CE programs.

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## **Chapter 1 - Introduction**

Over the last thirty years, efforts to conserve the ecological and community benefits provided by undeveloped privately owned land have dramatically increased (Brewer, 2004; Doremus, 2003; Draper, 2004; Fairfax et al., 2005; Gustanski & Squires, 2000; Greene, 2005). These efforts are visible in both the public (government) and private (non-governmental) sectors, and each utilizes a variety of different tools and approaches (Doremus, 2003; Nie, 2008). The government is able to employ regulatory mechanisms such as the Endangered Species Act and county-level planning and zoning that prohibit certain activities or limit how they may be carried out. Both sectors make use of educational programs, as well as incentive and acquisition approaches (Doremus, 2003). While each of these strategies fills a slightly different niche, many people now suggest that the incentive-based voluntary conservation easement has emerged as “the single most important tool to protect privately owned land across the nation” (Gustanski & Squires, 2000, p.9).

A conservation easement (CE) is a voluntary agreement that perpetually limits development on private land in order to protect open space, agricultural land, and scenic amenities, as well as ecological or historic resources (discussed in further detail on pg. 9). In 2005, the Land Trust Alliance reported that over 6 million acres of land were protected under conservation easement across the country (LTA Census Report, 2005). This number reflects a 148% increase in CE protected acreage in the five year period between 2000 and 2005. It also *only* includes CEs that are held by local and state land trusts and does *not* include CEs held by government agencies (for example, CEs held by the US Fish and Wildlife Service). In Montana, a total of 1,573,411 acres were under conservation easement in 2007 (Legislative Audit, 2007).

This land is protected by 1,250 individual easements representing 1.68% of state land area in Montana. Although CEs are not new (see pg. 9 for a brief history), the dramatic increase in their usage over the last thirty years indicates that they are maturing as a conservation tool (Gustanski & Squires, 2000). As conservation easements become more established, properties under CE may change ownership, land trusts and agencies may become more focused on monitoring rather than acquisition, and landowners around the country may be more familiar with the CE. The private, voluntary approach to conservation that is provided by conservation easements will likely continue to play a key role in the nation's efforts to protect undeveloped tracts of privately owned land.

Owing to its increased prominence as a conservation strategy and also due to its nature as a complicated and ever evolving legal tool, the conservation easement has been explored in depth through a variety of legal and political lenses (Baldwin, 1997; Blackie, 1998; Cheever & McLaughlin, 2004; Mahoney, 2002; Pidot, 2005). However, there has been limited research on landowner views of easements. Because CEs are voluntary, an understanding of the landowner's decision about whether or not to participate in a conservation easement programs is imperative if CEs are to continue and expand. While landowner decisions about CEs have been explored in terms of what motivates landowners *to* engage in a CE, there has been limited research conducted that examines the reasons landowners choose *not* to participate in CEs or even oppose such programs. Understanding how non-participating landowners view CEs, how they regard the incentives, and how CEs fit or do not fit with their ideas regarding private property and conservation is of critical importance for conservationists in this field.

To explore this topic, this research investigated the reasons landowners decide *not* to place a conservation easement on their property. I conducted in-depth interviews with

landowners in three areas of Western Montana. In Montana, as well as across the Rocky Mountain region, ranchland in particular represents a large portion of privately owned land. In a report completed by the American Farmland Trust, among seven Rocky Mountain States, Montana was identified as having the most acres of ranchland at risk, with 5,067,520 acres of ranchland recognized as vulnerable to low-density residential development (AFT Report, 2005). Private lands in western Montana provide for significant wildlife habitat and open space, and such lands are one of the top priorities for conservationists (Gosnell et al., 2006; Maestas et al., 2002; Resnik et al; 2006; also see MLR web; MALT web). In addition to their importance for ecological connectivity, habitat, and open space, conservation of private ranchland has also been promoted as a way to maintain a ranching culture and livelihood and agricultural production (Brunson & Huntsinger, 2008). This research is particularly salient in Montana because of the critical importance of these private lands and also because of the recent increase in efforts to protect them through the application of conservation easements (LTA Census Report, 2005).

### **Research Objectives/Questions**

This study investigated the barriers to placing conservation easements on one's property from the perspective of Western Montana landowners who do not have easements. To better understand how these landowners view conservation easements, where opposition to easements arises from, and how these perspectives might affect efforts to conserve private lands, as well as how landowner views and interests relative to easements differ between different types of landowners, this study explored the following questions:

- 1) What are the factors that discourage or create barriers for Montana landowners to place conservation easements on their property?
- 2) Why do some landowners actively oppose easements? (In particular, how do economic factors; ideas about private property, conservation groups and government; sources of information, neighbors, and level of knowledge interact with views on easements?)
- 3) How do landowners negotiate the trade-offs involved in conservation easements? (Trade-offs such as economic needs, the needs of future generations, and preserving future options)
- 4) Are there mechanisms for addressing barriers and/or opposition? How can easement tools and policy be adapted to meet the needs and interests of a wider range of landowners?

Overall, the purpose of this research is to build a better understanding of landowner perspectives of CEs. This understanding is critical for conservationists and agency personnel who seek to expand their CE programs and reach out to landowners who resist CEs. By sharing this research with the Montana Association of Land Trusts, Montana Fish Wildlife and Parks and the U.S. Fish and Wildlife Service, I aim to make this information available to integrate into management and policy decisions regarding CEs in Montana.

### **Thesis Organization**

This thesis is organized into chapters that elaborate on the fundamental questions and issues presented in this introduction, as well as the research results and implications. Chapter two provides detailed background information regarding CEs and the conservation organizations that work with them. Chapter two also reviews existing literature on landowner perspectives.

Because concepts of property and property rights have the potential to shape how landowner view CEs, Chapter two concludes with a brief exploration of property rights. Chapter three lays out methodology and methods. Chapters 4 contains the results of this study. This chapter begins by briefly relating this study to previous literature and by generally characterizing the respondent's opposition to CEs. It then focuses on the three main discouraging factors for CEs: perpetuity and maintaining future options, control, and a lack of trust with the organizations and agencies that work with CEs. To conclude the results section, Chapter four addresses the differences between amenity and traditional ranchers and between the study sites. Chapter five wraps up with a summary of the research findings. Finally, Chapter five offers suggestions for management and policy, as well as for future research.

## **Chapter 2 – Literature Review**

This study is grounded in three bodies of literature, which are reviewed below. First, landowner views of easements need to be couched in an understanding of the evolution and mechanics of CEs as well as concerns regarding their use as a conservation tool. Second, an understanding of previous research on how landowners make decisions about easements is critical. Finally, property theory also informs this study.

### **Private Land Conservation**

As described earlier, one of the principal concerns arising from increased growth and development is the risk they pose to the biological and ecological amenities that are currently situated in our nation's undeveloped privately owned land. In the United States, private land accounts for about 70% of U.S. land surface (Maestas et al., 2003). Two thirds of the animals listed under the Endangered Species Act have been shown to have over 60% of their habitat range on lands not owned by the federal government (Bean & Wilcove, 1997). In addition, while federal lands only cover about 5% of our nation's land, privately held lands tend to be lower in elevation, and often times include more productive environments, provide buffers around protected areas, and offer migration corridors and key habitat to critical species, such as grassland birds or ungulates seeking winter range (Fishburn et al., 2009; Maestas et al., 2002; Scott et al., 2001). Undeveloped private and agricultural landscapes also aid in water and nutrient cycling and contain important wetland features (Johnson & Maxwell, 2001). The role that these privately owned lands play in large-scale, cross-jurisdictional conservation efforts has led to the recognition that private lands conservation is "...one of the most important challenges

for conservation” (Sanford, 2006, p. 1). Or, as Morrisette (2001) succinctly states, “the future of land conservation and ecosystem preservation efforts will focus on private lands” (p.1).

The significant role that privately owned land plays for conservation efforts can be readily seen in Western Montana. Here, elk, grizzly, moose, wolves, and many other species roam freely across the boundaries of public land and onto the adjacent privately owned forests, farms, and ranches (Haggerty, 2006; Maestas et al, 2002). One of the strategies used in Western Montana is acquisition of ecologically important private lands, as seen in the Montana Legacy Project which conserves over 310,000 acres of land that was previously held in private ownership by the Plum Creek Timber Company. The Nature Conservancy and The Trust for Public Land have purchased this land and are holding and maintaining it until it can be conveyed to a combination of private and public organizations (Montana Legacy Project, 2010). Other efforts involve collaboration between private landowners, NGOs, and government agencies, as seen in the community-based organization the Blackfoot Challenge. This nationally known collaborative works with landowners to encourage the use of conservation easements and restore native habitat. The Blackfoot Challenge and The Montana Legacy project both reflect the growing awareness of the critical role that privately owned lands play in safeguarding socio-ecological values and functioning ecosystems.

In many parts of our county, and most notably in the west, rural lands and private lands in particular have experienced considerable land-use changes in the last several decades (Hansen et al., 2002; Hansen & Brown, 2005; Johnson & Maxwell, 2001; Knight, 1999; Scott et al., 2001; Theobald et al., 2005). While some of the western Montana landscape is already protected under a patchwork of conservation owners (both public and private), population growth and development patterns over the last twenty years have been a cause for alarm for conservationists.

Population growth and in-migration have occurred at higher rates in the Rocky Mountain States than in other areas of the country (Inman & McLeod, 2002; US Census Report, 2008). From 2000-2008, the state of Montana saw a 7.2% population increase (U.S Census, 2008). Prior to that, in the period from 1990-2000, seven counties in Montana witnessed a population increase of over 25% (Montana Smart Growth, 2001). Missoula County alone saw a 114% population increase in the years from 1960–2000, while also experiencing a 34% decrease in agricultural production (Hubbard, 2006 (website only)). From 2000-2008, Gallatin County witnessed the highest population increase in the state with a 32.4% population increase (US Census, 2008).

Of particular concern is the subdivision of larger properties and rural residential development that accompanies population growth (Hansen et al., 2002; Theobald et al., 2005). The terms exurban or rural residential development refer to people settling in areas outside of urban centers. This includes rural subdivisions, large property development, the creation of “ranchettes” and “farmettes,” second home development, and any other form of development that occurs outside of the urban fringe (Theobald et al., 2005, p. 1906). Oftentimes, this type of growth occurs on land that was previously used as working ranches or farms (Maestas et al., 2002). Exurban development has been linked to recreational and environmental amenities, as many migrants to rural areas seek beautiful scenery and access to nearby recreation (Gosnell & Travis, 2005; Hansen et al, 2002; Jones et al., 2003; Riebsame et al., 1996) and in places like Montana where private lands border expansive public lands and protected areas, exurban growth is likely to continue. Residential development in rural areas can lead to negative ecological impacts; urban sprawl and outdoor recreation are the second and fourth leading causes for declines in threatened and endangered species (Czech et al., 2000). Rural residential development can increase mortality for critical wildlife species (e.g. bears and songbirds),

decrease winter range for ungulates, spread weeds, and otherwise fragment previously connected habitat. For conservationists working to ensure that the ecological and social amenities provided on private lands remain intact, the current exurban growth trajectory in Montana and throughout the west poses a threat.

### ***Organizations Involved in Private Land Conservation***

Largely due to concerns about the consequences of rural residential development and in response to a broad consensus regarding the critical role that privately owned lands play in safeguarding our nation's natural capital, an emphasis on protecting these areas has emerged. During the last half of the twentieth century, many conservationists have shifted their focus from public lands and are now working to ensure that biodiversity and wildlife habitat on private lands do not become byproducts of increasing urbanization and rural residential development (Theobald et al., 2005). Noticeably, land trusts have dedicated themselves in large part to this cause and have come to play a critical role in the movement to protect privately owned lands.

In his book *Conservancy: The Land Trust Movement in America (2004)*, Brewer refers to the land trust movement as “the most successful and exciting force in U.S. land conservation today” (p.1). While there has been a rapid proliferation of land trusts within the last 30 years, the first private land trust was actually established in 1891. The Trustees of Reservations formed in Massachusetts in 1891 with the purpose of protecting parks and scenery in Boston (Gustanski & Squires, 2000). Although noted as the first identifiable private land trust, the land trusts we know today function quite differently and under vastly changed political and cultural conditions. In 1950, 53 land trusts existed in the U.S., almost all of which were clustered in New England (Fairfax et al., 2005). Fifteen years later, their numbers more than doubled to 130 nationally and

by 1981 there were 431 land trusts situated across the country (Anella & Wright, 2004). Land trusts grew exponentially in the mid 1980's and by 2005 the Land Trust Alliance estimated that there were 1,667 land trusts operating in the U.S. (LTA Report, 2005).

While many definitions and models of land trusts exist, a land trust is generally understood to be a private nonprofit organization with the sole purpose of acquiring land for protection and/or establishing conservation easements (Brewer, 2004; Cheever & McLaughlin, 2004; and Gustanski & Squires, 2000 for other definitions). There are international land trusts such as The Nature Conservancy (see [www.nature.org](http://www.nature.org)), national land trusts like The Trust for Public Land ([www.tpl.org](http://www.tpl.org)), regional land trusts like Northern California Regional Land Trust ([www.landconservation.org](http://www.landconservation.org)), statewide land trusts such as The Montana Land Reliance ([www.mtlandreliance.org](http://www.mtlandreliance.org)), and local land trusts like Five Valleys Land Trust ([www.fvlt.org](http://www.fvlt.org)).

While land trusts may come in a variety of sizes and shapes, they are often locally based organizations that work to protect land that is important in the areas in which they operate. Land trusts work to acquire fee simple land and conservation easements through either donation or sale. Land trusts work both to retain and manage these land investments themselves and also sometimes work as middlemen, ultimately transferring the land to a public agency to manage. Each land trusts has their own unique mission, but the common goal among all land trusts is the protection of the land and its resources (Gustanski and Squires, 2000).

It is important to keep in mind that while land trusts are often the first type of organization mentioned regarding conservation easements and the protection of privately held land, government agencies also work towards this goal and utilize the CE tool. Federal agencies such as the U.S. Fish and Wildlife Service U.S. Department of Agriculture and state agencies such as Montana Fish Wildlife and Parks, as well as some counties and municipalities work with

conservation easements. The U.S. Fish and Wildlife Service and their state counterparts typically offer what are referred to as cookie-cutter or standardized (“one size fits all”) conservation easements as habitat preservation programs (Fairfax et al., 2005). Because the conservation easements offered by these government agencies require landowners to adhere to specific restrictions (such as participation in the block program for hunting access, as in the case of Montana Fish, Wildlife, and Parks), these easement programs do not provide the flexibility that conservation easements with private organizations often do (see Cheever, 1995; McLaughlin, 2005; and Baldwin, 1997 for good discussions regarding the benefits of flexibility). However, in some cases, agencies may have access to funds that NGOs do not. For example, if a particular area is designated as eligible for grassland easements with the U.S. Fish and Wildlife Service and funds are provided by Congress through the Land and Water Conservation Fund, millions of dollars may be available for easements in that location. These differences are important to remember in terms of the strengths and weaknesses of governmental and non-governmental easement programs. It is also important to keep in mind that landowners may feel differently about CEs if they are negotiated through a government organization in contrast to a private land trust. While agencies have less flexibility with the types of conservation easements they offer, agency personnel will continue to work with landowners for their CE programs and have the same need to understand how these landowners view conservation easements. U.S. Fish and Wildlife Service and Montana Fish, Wildlife, and Parks are both providing some financial support for this research, indicating their interest in the views of landowners.

## Conservation Easements

While conservation easements have been around since the late 1800's, their use as we are familiar with today really began to proliferate in the 1980's (McLaughlin, 2005). A conservation easement is a voluntary agreement that perpetually limits development on private land in order to protect open space, agricultural land, scenic amenities, and other ecological and historic resources. 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, website).

More colloquially, the Montana Land Reliance defines CEs as “the legal glue that binds a property owner's good intentions to the land in perpetuity” (MLR website). Five Valleys Land Trust, located in Missoula Montana, refers to CEs as “a voluntary legal agreement by which a landowner chooses to limit certain uses of the land to conserve natural and traditional values” (FVLT website).

Conservation easements are made possible because of the bundle of rights associated with land ownership. According to the bundle of rights view of property, ownership consists of multiple rights each of which can be held, sold, leased, or bequest independently of one another and independent of landownership (see pg. 27 for a more detailed description of the bundle of rights concept of property). For example, a landowner in Western Montana might own a particular parcel, but on that parcel, the state owns the wildlife, the Bureau of Land Management

the subsurface mineral rights, a downstream rancher might own rights to the water flowing through the property, and an outfitter may lease the right to use the property for hunters.

A conservation easement is a voluntary contract between a landowner and a qualified organization in which the landowner decides to sell or donate some of their property rights to a government agency or land trust (rights sold or donated through easements typically include development rights, specifically the right to subdivide and build additional residences, but might also include other types of rights, such as the right to plow native grasslands or engage in large scale timber harvest). When a landowner sells or donates a CE, they retain ownership of the land and can continue to use the land in ways that are consistent with the CE agreement (e.g. most easements allow for continuance of agricultural practices).

The qualified organization (generally a government agency or land trust) that receives the easement becomes the easement holder which means that they have a “nonpossessory interest” in the land (Merenlender, 2004, p. 67). When a CE is sold or donated, the development rights are not transferred to the easement holder to use, rather those rights “are extinguished...they are gone for all time” (Anella & Wright, 2004, p. 15). Another important aspect of conservation easements is that they are most often perpetual, they last forever. The first line of the Montana Code Annotated definition states “an easement or restriction running with the land.” Once a CE is placed on the property, it stays on the property even if new owners purchase the land. Finally, as mentioned earlier, conservation easements cannot be used to protect just any property. As defined by the Universal Conservation Easement Act (UCEA), CEs are used for:

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 1981, website).

### ***Financial Benefits of Donating a Conservation Easement***

A landowner can either sell or donate a CE to a qualified organization. Both of these options offer benefits for the landowner and the decision to sell or donate hinges on each individual landowner's financial situation. When a landowner donates a conservation easement they are compensated through income and estate tax deductions. The fine-print relating to the tax benefits gained from a donated CE is quite complicated and differs for each state, organization, and landowner. Because real estate transactions are regulated primarily by individual states, state law is the main reference for conservation easement policy and enforcement. However, the federal government plays a large role by making provisions in the tax code as well as through several other critical federal policies (Legislative Audit, 2007). Federal laws and IRS regulations provide both income and estate tax incentives for donated conservation easements. These regulations are centered on the notion that the protection of land with specific qualities will yield a public benefit. For a landowner to qualify for tax benefits under federal tax law, specifically United States Code Title 26, Section 170, a "qualified conservation contribution" must be donated to a "qualified conservation organization" for the conservation purposes defined in the Unified Conservation Easement Act of 1981 (discussed previously). A "qualified organization" can generally be either a government agency or a recognized charitable organization (IRC Title 26, Section 170A-14(h)(3), Cornell Law website).

To determine the value of the income tax deduction, the value of the CE must be determined through an appraisal process. This value is ascertained by evaluating what the property was worth before a conservation easement separated some of the property rights from ownership (typically some form of development rights) and then deciding what the property will be worth once the CE is in place (without the rights or value of that development). The

difference in value is the worth of the easement (Cheever, 1995). For example, if your property is worth \$3,000,000 before an easement and \$2,000,000 after, the value of the easement will be \$1,000,000. In Montana, conservation easements are typically worth 30-40% of the total value of the property although this percentage tends to increase with larger parcels (Erickson, personal communication, 2010). When a landowner donates a CE, they are allowed to deduct the value of the easement from their federal income taxes. Prior to 2006, the amount of this deduction could not exceed 30% of the landowner's adjusted gross income for the year that the donation was made and for the five following years after the donation (LTA website 2009, Anella & Wright, 2004). This meant that if the deduction was significantly higher than the landowner's income, the landowner would not be able to take full advantage of the tax benefit. This stipulation presented a large impediment for ranchers and farmers who may have relatively low incomes in comparison to the value of their land. However, in 2006, new legislation was introduced that changed this and enabled landowners with lower incomes to reap more of the tax benefits from donating an easement. Introduced by Montana Senator Max Baucus, this legislation raised the deduction amount to 50% of a landowner's adjusted gross income, allowed farmers and ranchers who earn 50% or more of their gross income from a business related to their land to deduct up to 100% of their adjusted gross income, and extends the period of time for this deduction from five to fifteen years (Jones et al., 2009). While this legislation expired in December of 2009, the policy was granted a one-year extension and then another year-long extension in 2010. Supporters are working to make the change permanent as it will expire at the end of 2011.

The second and most substantial gain that can be made from donating a CE is through a reduction in the estate tax. In 2009, the estate tax was 45% of the value of the estate (including

land). This 45% is assessed after an exemption for the first \$3,500,000 in assets that an individual gives during their lifetime, or holds at the time of their death.

When estate taxes are high, children who inherit land are sometimes forced to sell that land to pay the tax, especially if they do not have other assets to use for the tax. Due to poor planning, estate taxes can make it very difficult for landowners to pass a piece of property on to their children. Another reason that estate taxes can be so burdensome is that property is valued based on its highest (development or recreation) value rather than what it might be worth as undeveloped or agricultural land. Due to this valuation process, a large ranch that is being used for production ranching and falls within the agricultural tax bracket for property taxes may still be taxed at its development value for estate tax purposes.

When a landowner donates a conservation easement, there is a reduction in the property value (the loss of future development value) and consequently a significant reduction in the estate tax. The 1997 Taxpayer Relief Act adds an additional incentive for landowners who donate CEs. Referred to in Title 26, Section 2031(c) of the Internal Revenue Code (Cornell Law website), the Taxpayer Relief Act provides for an additional deduction of 40% of the “after” value of the land under a donated easement (up to \$500,000) (Anella & Wright, 2004; LTA, 2009). The Taxpayer Relief Act serves as an *addition* to the other income and estate tax benefits. This allows landowners who donate conservation easements to save significantly on their taxes.

### ***Financial Benefits of Selling a Conservation Easement***

When a conservation easement is sold to a land trust or government agency, the price of the CE is determined by the same audit process used for a donated easement. Rather than

receive tax benefits, when a CE is purchased the landowner receives the monetary amount of the easement as a lump sum purchase price. This amount is the same as what a landowner who donates an easement will receive in tax deductions, the only difference being that the money comes all at once. A landowner who sells a CE cannot also receive the tax benefits associated with a donated easement. The challenge for landowners who would prefer to sell a CE is finding an organization that has sufficient funds to purchase the easement. Easements can also be negotiated through a bargain sale, where some portion of the easement is sold and the remainder is donated (Lindstrom, 2008).

### *Conservation Easement Criticisms*

It is important to briefly look at some of the criticisms of conservation easements. Many scholars and critics suggest that it is important to critically analyze conservation easements not in an effort to eliminate them, but rather to make certain that CEs remain effective in coming years.

### *CEs Undermine Government Regulation*

One of the most widely voiced concerns regarding conservation easements is that incentive based tools work inadvertently to undermine the government's authority to regulate land use and actually reduce the political will of governments to regulate against development pressures (Cheever & McLaughlin, 2004; Echeverria, 2005; Fairfax et al., 2005; McLaughlin, 2005; Nie, 2008; Pidot, 2005). According to Fairfax (2005):

An undue reliance on acquisition, particularly to avoid the messy and unpopular process of enforcing regulations, is a grave error. Land ownership entails both rights and responsibilities, and it includes at a minimum the duty to avoid harming one's neighbors. The more society compensates landowners for conservation, the more landowners will

sensibly conclude that in the absence of such payments, they are entitled to develop their parcels to the detriment of society (p. 257).

Fairfax et al. argue that the increasing use of conservation easements moves our property discourse in a negative direction, establishing the idea that landowners *ought* to be paid to behave responsibly with their land. Several scholars have argued for a shift in the opposite direction to acknowledge a stewardship responsibility alongside the other rights included in property ownership (McLaughlin, 2005; Freyfogle, 1996). While Fairfax (2005) makes the argument that incentives undermine any shift in this direction, Cheever and McLaughlin contend the opposite, proposing that this voluntary undertaking of an encumbrance on one's property actually reflects a "transition from a rights-oriented view of private property ownership to a more responsibilities-oriented view" (Cheever & McLaughlin, 2004, p. 10228). The authors reason that although landowners are compensated for engaging in a conservation easement, they still "bear the lion's share of the cost associated with such restrictions" (McLaughlin, 2005, p. 56). In essence, they argue that conservation easements can help illuminate the inherent stewardship responsibilities in private property "crystallize[ing] the often hidden norms of responsibility and restraint in our property system" (Cheever, 1995, p. 1085).

Other scholars have argued that future regulation will be harder to enforce if public perceptions shift toward incentive-based conservation and away from the notion that it may be appropriate to regulate certain uses of private property (Echeverria, 2005; Pidot, 2005). In other words, widespread use of voluntary, incentive based CEs could make it challenging to successfully implement regulatory programs such as zoning. This may occur if landowners oppose zoning because it eliminates the possibility of payment for development rights through conservation easements. As Echeverria (2005) notes, farm groups often oppose regulatory

initiatives as a way to increase the likelihood that they will be paid for the same restrictions that could otherwise be imposed through zoning.

However, regulatory efforts like zoning and incentive based tools like CEs can work quite effectively together and complement one another (Guthey et al., 2003). Cheever and McLaughlin (2004) state:

Financial incentives cannot replace regulatory efforts because we simply do not have sufficient public funds to purchase our way to a more socially desirable level of land protection. By the same token, regulation cannot replace financial incentives because we simply do not have the political will to regulate our way to a more socially desirable level of land protection (p. 10229).

In addition, conservation easements can also fill in gaps in regulatory measures and standards (Morrisette, 2001; Nie, 2008). In other words, conservation easements may be important tools in locations where zoning is limited or politically unlikely. At the same time, zoning is important where easement funds are not readily available. Rather than undermine regulatory efforts, conservation easements may function to both support regulatory endeavors and meet the same goals (Nie, 2008; Pidot, 2005).

### *CEs in the Future*

The question of how to conserve land under easements in perpetuity has garnered significant attention (see Mahoney, 2002 and 2004 for an in depth look into this issue). As easements become more widespread and individual easements age, issues of enforcement, termination, amendments, and monitoring must be considered. In addition to these fairly concrete items, lawyers and landowners alike often struggle with the concept of perpetuity and the idea of “dead hand” control (Cheever & McLaughlin, 2004).

Some legal scholars as well as some landowners believe that future generations should generally be free to make their own decisions regarding proper land use (Mahoney, 2004). Policies and statutes that resemble “dead hand” rule, such as the perpetual conservation easement, have engendered a negative reaction (Mahoney, 2002). An oft stated argument voiced in response is that the process of subdividing land also permanently alters its future uses and arguably limits the options of future generations even more severely than any conservation easement (Cheever & McLaughlin, 2004). In fact, The National Academy of Sciences has declared that “the conversion of land from its natural state to human use is the most permanent and often irreversible effect that humans can have on the natural landscape” (Greene, 2005, p. 902). Thus, nearly *any* decision to alter land alters the options of future landowners.

Protecting land in perpetuity can be challenging in practice. As the land under CE changes in ownership, monitoring and enforcement can become more difficult and issues regarding potential amendments and termination can arise. The initial granting of a conservation easement can in many ways be the easiest part (Baldwin, 1997). The constant monitoring of the ecological state of the land under easement, guarding against any possible violations of the easement’s terms, and then enforcing those terms in the face of a violation can be time-consuming and expensive for the easement holder (Farrier, 1995). Maintaining routine monitoring, keeping organized records, sustaining relationships with landowners, as well as educating the real estate community and second and third generation landowners may be the best way to ensure that CEs remain viable in the years to come (Baldwin, 1997; Draper, 2004; McLaughlin, 2005). The Land Trust Alliance, a national umbrella organization for land trusts has helped educate land trusts about the importance of preparing for these future challenges by providing resources to educate land trust staff, offering an accreditation program that holds land

trusts to a standardized system of required record keeping and monitoring practices, as well as by providing numerous financial and legal support mechanisms (LTA, 2009). In addition to this preemptive planning, as Draper (2004) states, “the best weapon for a conservation easement holder seeking to enforce the terms of the easement is a well-drafted easement” (p. 276). If the conservation goals and benefits of the easement are clearly delineated in the deed, any landowner hoping to terminate the easement will face a difficult challenge proving that all of the stated benefits have become obsolete (Draper, 2004). Including provisions for third-party enforcement can also help alleviate fears about future monitoring and enforcement issues due to any potential decrease in the capacity of the easement holder.

Another issue to consider as we look into the future of conservation easements is their potential termination. There is a concern that amending or terminating conservation easements in response to altered circumstances in the future will be burdensome. For example, altered circumstances can include a property that is protected under a CE that ends up surrounded by dense development, conflicting ecological science regarding the value of a particular property, or dramatic changes to the landscape and original conservation values. Finding ways to deal with changed circumstances could become legally challenging. Mahoney (2002) explains that “the imperfect functioning of the legal mechanisms designed to free lands from the burdens of servitudes that later generations have come to see as obsolete or misguided is viewed as a serious danger”( p. 580). However, contrary to this assertion, many of the laws that facilitate conservation easements are designed to accommodate potential changes in the future.

McLaughlin (2005) states:

The perpetuity issue is neither new nor unique to conservation easements. The legal doctrine of cy pres has been developed and refined over the centuries to deal precisely with the issue presented by conservation easements – how to adjust

when the charitable purpose to which property has been ‘perpetually’ devoted becomes obsolete due to changed conditions (p. 55).

As many scholars and practitioners have noted, some conservation easements *should* be terminated and some of the possible mechanisms for this termination have been addressed both in the UCEA as well as in several specific state statutes (Draper, 2004). For instance, when a conservation easement no longer fulfills the original conservation purpose, it may be modified or terminated through the accepted legal processes (Greene, 2005). It is clear that the future modification and termination of conservation easements will have a price, and that both the federal and state laws that permit these changes will require clarification (Mahoney, 2002; Cheever & McLaughlin, 2004). However, it also seems clear that both state legislators and the courts have consistently and overwhelmingly supported the fact that the conservation benefits gained from these perpetual contracts far outweigh any of the possible future costs (Greene, 2004).

While it is valuable to ground this research in some of the more academic criticisms of conservation easements that are discussed above, it is also important to realize that these critiques may be different than the criticisms voiced by landowners. While landowner views may mirror some of the academic literature, they may also draw from a different set of concerns and interests. At the same time, some of the legal challenges faced by conservation easements may be rooted in the practical concerns of landowners and may reflect some of the real political opposition that exists.

## **Previous Work on Landowner Views and Interests**

There are many reasons why landowners choose to have or not have a conservation easement on their property. Financial needs, family history, community responsibility, conservation ethics, and property rights perspectives all intermingle in the decision process. Several studies have been conducted to determine what the key decision points are when a landowner considers placing a CE on their property. I will discuss several of these studies, summarize their key findings, and explain why they are relevant for this study.

In 2004, a review titled “Land Trusts and Conservation Easements: Who is Conserving What for Whom?” (Merenlender et al., 2004) looked into the literature regarding land trusts and easements and exposed the gaps in knowledge at that time. The article concluded that the research that has been done has offered little regarding what types of organizations and conservation tools work best in different settings (p. 65). The authors also examined landowner motivations and determined that the literature was “scant” (p.71). While I concur that there has been minimal research conducted that focuses on landowner views of conservation easements, a small body of literature on the topic has emerged.

In 2008, a study was completed in Larimer County, Colorado that investigated the “motivations, characteristics, and management practices” (Ernst & Wallace, 2007, p. 109) of landowners who participated in covenants, conservation easements, and cluster development. They found that the typical participant was about 63 years of age, well-educated, married, likely retired, and making over \$75,000 annually. Five important motivations emerged, including: 1) natural resource protection; 2) family commitments; 3) community mindedness; 4) agricultural protection; and 5) financial incentives (p. 113). The authors found that participating landowners placed a strong emphasis on natural resource protection and community mindedness. They point

out, however, that while these motivations ranked higher than family commitments and financial incentives, “most respondents tended to see financial incentives as the *means* for realizing important motives” (p. 118). They also found that an increase in development pressure stimulates an interest in private land conservation. Understandably, they found that large parcel owners (who also tended to be agriculturalists) placed a higher value on agricultural protection and natural resource protection than landowners with smaller parcels who valued community mindedness (p. 119). Overall, they concluded that understanding why landowners participate in such programs can help organizations better understand “what combination of motivations and characteristics might be anticipated among the landowners they work with and to more efficiently target their potential market” (p. 119). The authors concluded that “while such findings may be generalizable to other jurisdictions to some degree, studies are likely to find site-specific nuances similar to those unveiled in this study” (p. 119).

Several other studies have also found that financial incentives are often times seen as a means to protect the broader values that the landowner associates with the property. In a study of the first 205 Pennsylvania farm owners to sell agricultural conservation easements , participating farmers tended to be much older than non-participating farmers and participants were largely motivated by a desire to preserve farmland and the farming way of life (Maynard et al, 1998). A study conducted in 2000 explored the motivations of California farmers who had placed CEs on their property (Rilla and Sokolow, 2000). They found that these farmers emphasized stewardship and natural values, and concluded that the short term reason for engaging in CEs is more financial whereas the long-term reasons tend to be “more complex and rooted in personal beliefs about land preservation” (p. 2). The study also found that personal

attachment to the easement protected land was a key motivator, and landowners with a long family history on the land were more likely to want to protect it with an easement (p. 2).

Similar to Rila and Sokolow (2000), in a study of landowner perspectives in the Midwest, Farmer (2009) found that a landowner's personal connection to the land under easement was the "dominating motivation in the adoption of a conservation easement" (p.vi). Reflecting the findings of previously mentioned work, this study also found that environmental values and witnessing increasing land development in one's community are important motivators.

A study conducted in 2004 in Virginia also found that the majority of landowners with conservation easements rank natural resource protection, preserving green space, and agricultural protection higher than financial incentives (McClafferty, 2004, p. 17). Most interestingly, from the two community meetings that were held in disparate communities, the findings were different. The community meeting held in Giles County showed people who were more interested in the natural resource protection that CEs offer. In contrast, the meeting conducted in Mecklenburg County group had attendees who were more concerned with the financial incentives. This is interesting because of the criteria that were used to select the communities. Giles County was selected because of high growth rates in addition to high conservation value in the land. Mecklenburg County was selected because unlike Giles County, it has low growth rates and low economic activity while still having land with high conservation values. These findings are consistent with Ernst and Wallace (2004) and Farmer (2009) who found a relationship between development pressures and landowner interest in CEs. The Virginia study also highlights the importance of understanding different landowners motivations saying, "either motivation can lead to the donation of conservation easements, but if landowners with financial concerns as a primary motivator do not perceive the financial gains as significant, then

conservation easements will be dismissed as an option” (p. 6). This indicates that the success of CE programs may largely depend on a particular community’s values, growth patterns, and economic conditions.

A 2008 study in Florida found six factors that would lead to engagement in CEs.

Landowners who were more likely to place a conservation easement on their land:

- 1) had a positive attitude about the outcomes associated with CEs
- 2) felt influential others, namely neighbors, other cattle ranchers, and family, would positively support CEs,
- 3) indicated higher trust in conservation organizations/agencies,
- 4) believed their land had significant conservation value,
- 5) supported the sale/donation of certain property rights, and
- 6) were positively influenced by financial incentives, primarily estate tax deductions.

(Brain, 2008, p. 13-14).

While nearly all the other studies have listed financial incentives as being of less importance, for the ranchers in this study, financial incentives were very important (pg. 158). Thus, as suggested by the previously mentioned studies, different populations of landowners may have different reasons for participating in CE programs.

Finally, two studies have investigated why landowners do *not* have or approve of conservation easements. Kabii and Horwitz (2006) developed a model to explain how landowners make decisions about conservation easements. Although this article is specific to Australia, many of the key landowner motivations it discusses apply in the U.S as well. According to Kabii and Horowitz (2006), the key motivations for landowners are: “landholder demographics and the nature of the land tenure in question, their knowledge and awareness of

the program, financial circumstances, and perceptions of financial and other risks and benefits of the program itself, including incentives and compensation”(p. 11). They suggest that the following factors make it less likely that a landowner will place an easement on their property: If a landowner:

- “perceives the possibility of financial obligation arising from entering a perpetual covenant on their land;
- perceives a loss in market value of their land because of placing a perpetual covenant on it;
- has a strong notion of property rights that is not diminished by notions of common property;
- dislikes restrictions on land use (for a variety of reasons such as disliking change, or the imposition of restrictions from external regulatory sources, urban or otherwise);
- perceives the need for compensation where any act or process they might undertake is in the public good
- perceives that equity will not be achieved or not in a timely way, by compensation or incentive packages”. (p. 17).

Kabii and Horowitz (2006) argue that landowner economic dependence on property, views on private property rights, confidence in perpetual easement mechanisms, beliefs about conservation, and conservation ethics all influence decisions about easements.

Newman (2006) investigated the use of easements as an alternative to creating a refuge in Illinois. There were four main factors that explained why landowners did not participate in conservation easement programs: “trust, time, ambiguity, and money” (p. 64). Landowners would not pursue a CE if they did not trust the agency or organization, if they disapproved of the perpetual nature of CEs, if they felt that CEs were too complicated and ambiguous to fully understand or feel confident about, and if the financial incentives were not significant enough to justify the loss in property rights. Similar to the Kabii and Horowitz (2006) findings, this indicates that there are more considerations than just natural resource protection and financial incentives involved in landowners decisions about CEs.

As described earlier, the bulk of the research on landowner perspectives and motivations has been conducted with landowners who have already placed conservation easements on their property. While understanding what motivates landowners to place CEs on their property is valuable, very little research has examined why landowners do *not* have easements, the nature of opposition to easements, and the potential barriers to negotiating easements with certain groups of landowners. Furthermore, there is very little research on how barriers and motivations might differ between different types of landowners (e.g. agricultural and non-agricultural landowners). To create a cohesive mosaic of protected private and public lands, a better understanding of landowners' perspectives regarding these easements is required.

### **Concepts of Property and Property Rights**

Because conservation easements are legal mechanisms that build on (even flow from) particular ways of understanding property and in some sense restrict property rights, and because opposition to easements may be rooted in particular understandings of property, I will briefly describe some of the main schools of thought regarding property and property rights. While property is often imagined as fixed or static and non-negotiable, many political conflicts in the U.S. revolve around conflicting ideas of property. Such conflicts and controversies over property rights can be seen in the U.S. Congress, in state capitals, and in rural communities (Geisler & Daneker, 2000; Hurley et al., 2002; Rose, 1996).

Beginning in the 1970's with the enactment of the Endangered Species Act and the Clean Water Act, the federal government began to extend their authority for governing environmental protection onto private land (Sax, 1996). These changes made clear the significant need for environmental regulation of private lands at the federal level while also establishing that private

landowners have a responsibility to safeguard the resources that occur on private property (Meltz, 1994). However, many people have disagreed with this extension of the government's regulatory power and a strong and vocal property rights movement has emerged. Drawing on Epstein's (1985) libertarian ideology and the exclusive ownership model, the property rights movement has vehemently opposed federal regulation of private lands (Freyfogle, 1997; Sax, 1996). The ideas and discourse promulgated by property rights groups have permeated political dialogue in the west. In many ways, this view draws on a classical property theory and Lockean ideas about private property as a natural and essential human right (Freyfogle, 1997). The property rights movement also draws on the Lockean labor theory of ownership (Freyfogle, 2007) in which private ownership of a thing or of property arises when a person mixes labor with the item, thus creating its value. This understanding of private property also suggests that ownership grants exclusive control to the landowner (Hurley et al., 2002). The exclusive view of property values autonomy, privacy, and the economic opportunities represented in land ownership (Singer, 2000). It assumes that property owners have full rights on their land and if those rights are compromised then compensation is required (Rose, 1996). Property in this sense does not shift over time to fit with changing public values, knowledge, or growth patterns. Rather, property rights are seen as "so fixed and secure that governments could do little to diminish them without paying compensation for any drop in value" (Freyfogle, 1997, p. 5).

Another way that people describe property is to see it as a bundle of rights, each of which can be separated from the others (Hurley et al., 2002). Sometimes referred to as a bundle of sticks (Hurley et al., 2002), this idea explains that each stick or each individual property right can be held or sold independently of one another. These separate sticks include rights such as the right to exclude, the right to subdivide, water and mining rights, and the right to sell or transfer

the property. While this bundle of rights can be viewed as being tightly bound together, it can also be viewed as more loosely bound and available to be altered depending on the desires of the landowner or the interests of the people, as expressed through regulation. This way, sticks may be added to the bundle if they arise and others sold, donated, leased, or bequeathed at any given time (Hurley et al., 2002). The notion that this is a fluid and loosely bound bundle of rights is what the idea of conservation easements draws on when it separates the right to develop from landownership. While the exclusive view of property may also envision a bundle of rights making up property ownership, in the exclusive understanding this bundle is largely fixed or static and the bulk of the rights are imagined to be held or owned by the landowner (Freyfogle, 1997).

Contrasting the Lockean ideal of property as an absolute or ‘natural right’, there is also a school of thought that conceives of property as a social institution or social process (Rose, 1996). According to this school of thought, the concept of private property is inherently social in that it was both created by people and subject to change by them (Freyfogle, 2007). This “social relations model” as Singer, (2000) calls it (p. 15) conceptualizes property as a social arrangement between people and property and also between people. Here, conflicts over property and the laws that we use to define property are seen as socially negotiated and dynamic. The acceptance and enforcement of property rights is viewed, then, more as a social compact than as a given right (Freyfogle, 2007; Sax, 1996). This represents one of the main differences between the social process view of property and the classical understanding. One view sees property rights as essential, given, and static whereas the other understands them to be fluid and negotiated through ever-changing social processes and structures.

Finally, it is important to understand the relationship between public and private ownership. While it may be easy to compartmentalize public rights and land as entirely separate and distinct from private property, the government routinely intervenes in private property matters, through polices like the Endangered Species Act, as well with planning and zoning. Across the country, the government takes measures to protect the public benefits that are associated with private property, including scenic amenities, open space, and ecosystem services (Inman & McLeod, 2002). Because public values are often times provided by private property, it can be argued that there is an inherent responsibility in private ownership to uphold this community or public interest (Freyfogle, 2007). How one's actions on their own property affect their neighbors, the community, and the country as a whole are all ways in which the public and private spheres overlap. This "fundamental balance between the rights of individuals and the rights of society" (Geisler & Danker, 2000, p. xiii) is often at the root of property disputes and conflict. As conservation easements make clear, the boundaries between private and public ownership are increasingly blurred and may challenge some of the definitions and understandings that are held regarding private property ownership, in particular the model of exclusive ownership.

Because a conservation easement aims to remove some of the sticks (typically some form of development rights) from the private property bundle, the ways in which landowners regard ownership, property rights, and the bundle of rights may be related to how they view CEs.

## **Chapter 3 – Methods**

In this chapter I will explain the methods employed in this study. Below, I will describe the study population and also the three chosen study sites. I will then go on to explain the sampling method, data collection and analysis process including ethics and information management. Details about the analysis process are followed by an explanation of the methodological limitations of this study.

### **Qualitative Research**

This research had a qualitative design, aiming to establish improved understanding and communication (Patterson & Williams, 2002). As a qualitative study, this research did not aim to conclude with findings that would be generalizable across a broad range of contexts. Rather, this type of research aims for research results that can provide insights to inform further research and be appropriately transferred to other contexts based on how similar they are to the original research context (Lincoln & Guba, 1985). This study employed semi-structured qualitative interviews in order to achieve a detailed, nuanced, and in-depth understanding of landowner views and to allow for unanticipated barriers and concerns to emerge. An interview guide (see Appendix A) was used to provide a foundation of items to discuss during the interview and to ensure consistency across the interviews (Lofland, 2006). The interview guide was created based on the research questions and included open-ended questions as well as probes and follow up questions to encourage the participants to provide detailed responses and to enable me, the interviewer, to obtain clarification or additional information on relevant topics. Pilot interviews were conducted with 3 landowners outside of this research's study sites to ensure that interview

questions capture information relevant to the research questions. The flexibility provided by semi-structured interviews gives the interviewer the ability to both ask structured questions so as to compare across interviews, while at the same time providing the opportunity to pursue relevant topics as they arise from each interview (Berg, 2009).

## **Study Area**

I interviewed landowners who do not currently have conservation easements on their property from three different geographical areas in Montana. Interviews were conducted with landowners in three different river valleys, the Blackfoot Valley, the Bitterroot Valley, and the Beaverhead Valley. I selected these three valleys because they display varying levels of growth and residential development, conservation activity, and CE use. They were also recommended as potential study sites by the Montana Land Reliance and the Montana Association of Land Trusts, indicating that understanding landowner perspectives in those areas would be beneficial for land trusts in Montana.

The Blackfoot Valley was chosen because it is an area that has high levels of conservation activity and low growth rates. Many of the landowners in the area have CEs on their property and The Nature Conservancy, Five Valley's Land Trust, Montana Land Reliance, as well as the U.S. Forest Service, U.S. Fish and Wildlife Service, and Montana Fish Wildlife and Parks hold CEs in the area. Montana's first conservation easement was established in the Blackfoot Valley in the 1970's (TNC website). Today, over 30,000 acres of land are protected under CE in the valley (TNC website) and the Montana Land Reliance alone holds 32 individual CEs in the valley (MLR, 2010). The valley has experienced limited residential subdivision and remains relatively undeveloped (Blackfoot Challenge website). Landowners without easements

in the Blackfoot Valley represent a particular type of landowner, one that is situated in an area where easement funds are oftentimes available, where most of the landowners already have easements, and there is little development.

In the Bitterroot Valley, residential development and growth is occurring at a much higher rate than in the Blackfoot and conservation efforts are not as well established. That said, the Montana Land Reliance holds 32 easements in the Bitterroot Valley (MLR, 2010) and The Bitterroot Land Trust was established in 1996 and works primarily to acquire CEs in the valley (Bitterroot Land Trust website). In 2009, Ravalli County (in which the Bitterroot Valley sits) also passed a \$5 million dollar Open Space Bond that provides funding for CE acquisition. In contrast to the Blackfoot, Ravalli County and the Bitterroot Valley have witnessed high rates of in-migration and rural residential growth in recent years. From 2000 – 2008, Ravalli County experienced a 12.7% population increase (US Census Bureau website). Overall, the Bitterroot Valley is experiencing increasing awareness of and efforts to use CEs. Landowners without easements in the Bitterroot Valley represent landowners who are situated in a location with significant rural development and a relatively new conservation easement program.

Finally, the Beaverhead Valley was chosen because it displays very little conservation easement activity and low growth rates. In March of 2009, the Montana Heritage Program had recorded only five CEs in all of Beaverhead County (MHP website) and the Montana Land Reliance has only two easements in the Beaverhead Valley (MLR, 2010). There is no local land trust that operates in Beaverhead County. Growth and development in the valley is minimal. From 2000-2008 Beaverhead county experienced a negative 3.2% population change (US Census Bureau, 2008) illustrating the low levels of in-migration and residential development for

the area. Landowners without easements in the Beaverhead Valley will represent landowners who live in an area with little to no conservation easement activity and little rural development.

### **Study Sample**

As the goal of this research was to uncover the range of landowner perspectives regarding conservation easements, purposive sampling was the most appropriate method to ensure that a diversity of landowners were included in the study. Purposive sampling ensures that individuals displaying specific attributes are included in the study (Berg, 2009). I conducted 31 interviews with 35 individuals (4 interviews were with couples) across the three specified geographic areas. Of the 31 interviews, 10 were conducted with landowners in the Blackfoot Valley, 11 with landowners in the Bitterroot Valley, and 10 with landowners in the Beaverhead Valley (see Table 1 on p. 39). I chose to conduct around 30 interviews because this number should provide significant insight into the research questions (Patterson & Williams, 2002).

In addition to interviewing evenly across the three study sites, I also attempted to distribute interviews evenly among three different categories of ownership size. These categories were: 400-1000 acres; 1000-5000 acres; and 5000 acres and greater. By selecting parcels that are 400 acres or greater, this research aims to include those properties that have a high potential for conservation value and are likely to be of interest to easement holders. The selected size categories that were used for this study corroborate the research by Gosnell et al. (2006) which included parcels of 400 acres or greater explaining that those parcels “offer the greatest conservation potential” (p.746). That said, parcel size was used as a proxy for conservation value in this study and does not include all attributes that contribute to that value. Of the 31 interviews, I interviewed 10 landowners who held 400-1000 acres (including one

couple), 8 landowners with 1000-5000 acres (including one couple), and 13 landowners with 5000 acres or more (including two couples). The near even distribution of ownership size ensured that a wide range of landowners with different sized parcels of land were included in the study (see Table 2 on p. 41).

I attempted to include both traditional and amenity landowners in this study. Drawing from Gosnell et al. (2006), the two categories can be defined as:

Traditional rancher: is typically a full-time owner operator raising livestock without the help of a ranch manager. A traditional rancher receives the majority of his or her income from the ranch.

Amenity Owner: has purchased the ranch for scenic or recreation value. Typically has an operations manager, might only live at the ranch part-time, and receives the majority of his or her income outside of the ranch.

By attempting to include both types of landowners, I hoped to cover a range of landowner interests and needs. Additionally, amenity owners and absentee ranch owners are becoming an increasingly prevalent part of ranch land ownership in the west. In order to effectively represent the landowners who hold large tracts of ranch land, it was important to try and include both types of landowners. Out of the 35 interviewees, 29 were traditional ranchers. Of those, I interviewed 19 men who classified themselves as traditional ranchers as well as 10 women who also considered themselves traditional ranchers or “ranch-wives”. Out of the 29 traditional ranchers, five also had jobs outside of ranching to help supplement their income (see Table 2).

Additionally, I interviewed six amenity landowners, one whom was a woman and five of whom were men (See Table 1). With only seven amenity ranch owners included, one limitation of this

study is the fact that the interviewees were predominately traditional ranchers (this is discussed further on p. 44).

**Table 1. Sampling Distribution**

	<b>Blackfoot Valley</b>	<b>Bitterroot Valley</b>	<b>Beaverhead Valley</b>	<b>Total</b>
<b>Traditional Rancher</b>	10	7	12	<b>29</b>
<b>Amenity Owner</b>	1	5	0	<b>6</b>
<b>Total Interviewees</b>	<b>11</b>	<b>12</b>	<b>12</b>	<b>35</b>

**\*24 men and 11 women, including 4 couples**

Out of the 35 interviewees, four had already placed an easement on a portion of their ranch. I chose to include these landowners in the study because the majority of their land (more than 400 acres) remained unprotected by a CE. These landowners still had concerns regarding easements and had reasons for only using an easement for a small portion of their land. Because

of this, these landowners were still resistant to easements on some level and their contribution to the study provided further insights.

In order to include a range of land uses, this study focused on rangeland properties. For the purpose of this research, rangeland referred to grassland areas that are suitable for grazing livestock. These parcels also included forested areas, both riparian and conifer; however, the predominant vegetation on the land was grasses, grass-like plants, forbs, or shrubs. All of the landowners included in this study considered themselves ranch owners even though they were not all traditional ranchers.

Initially, a list of possible interviewees was generated from multiple sources including land trusts (Montana Land Reliance, Montana Alliance of Land Trusts, The Nature Conservancy, and Bitterroot Land Trust), landowners, and state and county property records. I then evaluated the individuals on this initial list using state and county property records to determine if they were suitable for this study (based on location and total acreage). Once I determined that individuals did not have a CE, had 400 acres or more and were located in one of the three chosen areas, I tracked down their home telephone number using conventional phone books and online directories. After each interview, I would ask the interviewees if they could suggest anyone else that I should talk to (see Appendix A). With each new name I was given, I would follow the same evaluation process to ensure that they were suitable for the study and also to find a number to contact them if it had not been provided by a previous interviewee.

Throughout the process, I had three individuals decline to participate in the study. One individual explained that they had poor hearing and were too old to effectively participate. Another individual had agreed to an interview, but had an unfortunate death in their family and cancelled prior to our scheduled interview. The third individual was wary of the project and

explained that they had no interest in participating. Aside from these three, all of the people whom I spoke with about the research were willing to talk with me in person or over the phone. I did have some trouble tracking individuals down using telephone directories. In the age of cell phones and caller ID, so many people have unlisted numbers and a good number of individuals were impossible for me to contact for this reason. Additionally, I believe some individuals saw an unknown number on their caller ID and thus did not answer my multiple attempted phone calls. Despite these relatively minor issues, overall, people responded positively to being asked to participate in this study.

At the end of each interview, I requested that the interviewees complete a short form that accounted for their basic demographic information (see Appendix B). From these forms I was able to keep track of gender, age, the number of years the landowner lived at this property, how long the land had been in their family, acreage, and whether or not it was their primary residence. I interviewed 11 women, and 24 men, including the 4 couples. Although there were significantly more men than women in this study, differences in views based on gender appear to be negligible. I think that more men ended up in the sample because when I called to request an interview, a decision was made that the man would be the best suited to talk about CEs. Additionally, there were a handful of single men that were interviewed. The disproportionate number of men in the sample may reflect the fact that, in some families, men make more decisions about land management.

Out of the 35 interviewees, only one interviewee was younger than 40. Three were aged 40 – 49. Most of the interviewees were aged 50-70, as nine interviewees were aged 50-59 and thirteen were aged 60-70. Of the remaining, three interviewees were aged 70-80 and six were aged 80-90. It was difficult to find landowners who were much younger than 50 and met the

sampling criteria for acreage and type of parcel. I assume this is due in part to the fact that typically landowners in these categories are older (See Table 2).

I asked interviewees how long they had lived on/or owned their land and over half of the interviewees had lived on their land for over 40 years. Additionally, eight interviewees reported that the land had been in their family for over one hundred years. Only four interviewees had owned their land for less than 20 years and only four landowners were absentee landowners who did not live full time on the land in question (see Table 2).

Again, only landowners who do *not* have conservation easements on their property were included in this study. I made an effort to capture a range of landowner views by interviewing both men and women, landowners of different ages and people who have lived in these valleys different lengths of time.

**Table 2. Interviewee Demographic Information Given on Interview Short Form**

<b>Occupation</b>	<b>Gender</b>	<b>Age</b>	<b>How long lived here (years)</b>	<b>How long in family (years)</b>	<b>Primary residence</b>	<b>Property size (acres)</b>
Rancher with other job	Male	39	12	60	Yes	400-1000
Businessman	Male	45	n.a. (mom's place)	80	No	400-1000
Rancher	Female	47	23	117	Yes	1000-5000
Rancher	Male	51	51	130	Yes	5000 or more
Rancher	Female	52	32	80	Yes	1000-5000
Rancher	Male	53	15	15	Yes	1000-5000
Rancher	Male	53	34	34	Yes	400-1000
Rancher	Male	54	35	35	Yes	5000 or more
Rancher with other job	Male	54	31	39	Yes	400-1000
Rancher	Female	56	56	116	Yes	5000 or more
Businesswoman	Female	58	12	12	No	5000 or more
Rancher	Male	58	58	110	Yes	5000 or more
Rancher	Male	60	60	90	Yes	1000-5000
Rancher	Male	60	30	7	Yes	400-1000
Rancher	Female	62	46	55	Yes	5000 or more
Rancher	Male	62	62	123	Yes	5000 or more
Rancher	Male	63	63	130	Yes	5000 or more
Rancher	Male	63	46	55	Yes	5000 or more
Rancher with other job	Male	63	63	105	Yes	400-1000
Rancher with other job	Male	63	52	52	Yes	400-1000
Rancher	Male	65	35	35	Yes	5000 or more
Rancher	Male	69	64	76	Yes	1000-5000
Businessman	Male	72	45	20	Yes	400-1000
Rancher	Female	75	55	77	Yes	1000-5000
Businessman	Male	77	70	20	Yes	5000 or more
Rancher	Male	80	15	15	No	1000-5000
Rancher	Female	81	58	62	Yes	400-1000
Retired Businessman	Male	83	45	43	Yes	1000-5000
Businessman	Male	85	20	20	No	5000 or more
Rancher with other job	Female	86	40	40	Yes	400-1000
Rancher	Male	89	89	140	Yes	5000 or more

**\*There are only 31 individuals included in the table as only one member of each of the four couples filled out a form**

## **Data Collection**

The data for this research was collected via semi-structured, in-depth interviews. The typical interview lasted about 60 minutes, however the interviews ranged from 35 minutes to more than 90 minutes. I offered to conduct the interviews at each interviewee's house or at a public location so that respondents were able to choose the most convenient and comfortable location for them personally. Most of the interviews were conducted in landowners' homes. However, three interviews were conducted in places of work, three were conducted over the phone and five took place in a public location such as a park, restaurant or café. The interviewees seemed equally comfortable in either their home setting or in a public setting. However, it was more challenging to conduct interviews over the phone. Although I was able to ask the same questions and engage the landowners in lengthy discussions, I felt as if it was more difficult to create a rapport with interviewees over the phone.

I tape-recorded all the interviews with a digital recorder and a microphone. After the interviews, I had each professionally transcribed verbatim. None of the participants objected to being recorded and all of the recordings came out clear and usable for analysis.

## **Data Analysis**

I first began the analysis process by coding the interviews. Coding refers to the organization of data into themes (Strauss and Corbin, 1998). This process involved carefully reviewing each interview transcript for themes introduced by the participants, as well as themes that have been discussed in previous literature. Each theme or topic was assigned a code and a list of codes that applied across the interviews was generated. As analysis proceeded, I continued to re-work and reorganize the codes. Initial "open codes" (Berg, 2009, p. 353) merged and codes which were no

longer useful were replaced through the process referred to as “axial coding” (Strauss, 1987, as quoted in Berg, 2009, p. 357). As the coding process and analysis advanced, the codes evolved from their descriptive nature and became more theoretical and subsequently formed patterns and conceptual themes (see Appendix C for a list of codes). In this process, each interview was analyzed individually and the dataset as a whole was then examined for patterns across interviews. The computer program NVIVO was utilized to organize and manage the interview transcripts and served as a filing system for the interview data. As I analyzed each interview, I recorded my impressions and initial thoughts and ideas into memos which aided in the analysis process. Several interview transcripts were selected to be read and discussed by a working group of faculty and graduate students who were looking at qualitative data. Additionally, several interviews as well as the codes and preliminary analysis were reviewed and discussed with my advisor.

## **Ethics**

As with any study, it was important to structure the collection and management of data in a way that met the ethical requirements of research and to protect participants from harm. Achieving proper consent from research participants was of primary concern. Prior to any of the interviews, I gave the participants the opportunity to ask questions about the research and inquire about how it was going to be used. For each in-depth interview I used verbal consent (with IRB approval). After explaining the nature of the research to the interviewees at the beginning of the interview, I asked the participants if they were comfortable with proceeding. Because the information gained from the interviews had the potential to be personal in nature, guaranteeing anonymity for the participants was important. To ensure confidentiality for the participants, I

replaced any names with numbers. I plan to delete the audio files at the end of the research process so that participant's voices cannot be identified. I have also removed any identifying information that may exist within the transcripts. Finally, I have kept any participant identification keys separate from the rest of the data and plan on destroying them upon completion of the study.

### **Position as a Researcher**

In qualitative research, the relationship between the researcher and the research subjects is “frequently an ongoing and evolving one” (Berg, 2009, p. 71). It was necessary for me as a researcher to acknowledge the fact that my role plays a significant part in the “process of negotiating meaning” (Brandenburg & Carroll, 1995). It was also necessary for me to be aware of any researcher bias that may have existed throughout the research process and to be conscious of any influence that I may have had on the participants of the study. The final thing done to recognize my role as researcher and in order to achieve transparency throughout the analysis process was to record memos that tracked my impressions and ideas regarding the data.

### **Methodological Limitations**

Despite attempting to include an even number of traditional ranchers and amenity landowners in this study, I was only able to interview a small number of amenity landowners. Therefore, the research results may be more applicable to populations of traditional ranchers.

Additionally, because of the focus on Western Montana, these results may not be applicable to other regions, especially those areas that are different in terms of land

use/ownership patterns, politics, culture, and conservation efforts. Furthermore, this study employed a purposive (non-random) sample and a small sample size that, while appropriate for in-depth interviews, cannot lead to statistically generalizable results. In other words, research results cannot tell us how particular views are distributed in the population as a whole (e.g. we cannot infer that 50% of landowners in Western Montana who do not have easements are concerned about perpetuity). In a qualitative study such as this, statistical generalizability is sacrificed in order to gain an in-depth, detailed understanding of people's views. However, qualitative research may produce results that can be transferred to other similar settings and with populations that share similar characteristics. This "transferability" (Lincoln & Guba, 1985) of in-depth and context specific data is benefit of the qualitative approach.

### **Quotes and Interview Excerpt Selection**

It was difficult to decide which excerpts to include in the body of the next following results chapters as it was impossible to include all the data from the interviews. Ultimately, the quotes were chosen to best reflect the thoughts and perspectives of the interviewees and illustrate themes and patterns. Oftentimes, I selected excerpts that represented thematic ideas that many of the landowners discussed. In order to show that these excerpts were similar to other quotes in different interviews, these excerpts are introduced as representing what "lots of" or "many" of the interviewees talked about.

When I began the writing process, I went through the lists of excerpts in each code category and selected the excerpts that best represented the patterns that I had decided were important to discuss. Some excerpts more clearly stated a concept or succinctly relayed an idea than others and those excerpts were often chosen for inclusion. In order to ensure that I was

using quotes from a wide variety of the interviewees, I created lists of the landowners who I had quoted to make sure that I was not re-using excerpts from just a few of the transcripts. This way, I was sure to represent as many of the interviewees perspectives as possible. I also attempted to draw attention to concepts that landowners disagreed about by including quotes that would illustrate a divergence in perspective from either an individual landowner or a group of landowners.

### **Partnerships with NGOs and Agencies**

This project has been developed in collaboration with Montana Association of Land Trusts, U.S. Fish and Wildlife Service, and Montana Fish Wildlife and Parks, who all provided financial support for the research.

## **Chapter 4 Results**

As described in the literature review, landowners have complex perspectives on CEs and cite a range of reasons for why they do or do not pursue them. The following chapter explores what the landowners in this study said when asked what they think about CEs. To begin, this chapter examines results in the context of previous studies. Next, this chapter briefly characterizes the respondents' general perspectives regarding CEs and the overall level of opposition expressed by interviewees. The bulk of the chapter examines the three main concerns that emerged from the analysis process: perpetuity, control, and a lack of trust for CE organizations. Finally, this chapter wraps up by discussing differences between traditional and amenity ranchers and between the study sites.

### **Comparing Results with Past Research**

One of the goals of this study was to understand if the factors identified in previous studies as influencing landowner decisions about CEs were also important to those landowners without CEs. Thus, this chapter begins by comparing my research results with previous literature. Several studies have identified changes in a landowner's community (Ernst & Wallace, 2007; Farmer 2009; McClafferty, 2004), a personal attachment to the land (Farmer, 2009; Rilla & Sololow, 2000) and the level of knowledge and familiarity with easements (Brain, 2008; Kabbii & Horowitz, 2006; Newman, 2006) as important factors affecting landowner decisions about conservation easements. In order to address these topics, I asked each interviewee questions that probed their impression of changes occurring in their community (for

entire Interview Guide, see Appendix A). I also asked about interviewee's goals for the land in order to spark discussion on their attachment or personal feelings towards their land.

Additionally, I was able to ascertain what the landowners' knowledge of and familiarity with easements was throughout the interviews.

Every person interviewed for this study answered affirmatively when asked if they had seen changes occur in their community. As was expected, interviewees from the Bitterroot and the Blackfoot discussed population growth in their communities. Landowners talked about the growing number of homes, more children in the schools and new mailboxes sprouting up here and there. Many landowners remarked that the influx of people had changed the character of the area. One landowner explained: *"It's just really different. It's getting more like an urban atmosphere than a rural atmosphere."* (L4) Across the interviews, landowners discussed the decline of ranching and agriculture. One traditional rancher commented: *"Well, it's just changed in that more and more people are getting out of agriculture."* (L1) Another interviewee commented that the community is *"not such an agricultural place that it once was."* (L2) Landowners in all three valleys discussed a rise in amenity migrants and hobby ranchers. One traditional rancher remarked: *"A lot of the family ranches are gone. Now we've got rich people around us."* (L14) Another interviewee said: *"Well, when we first were here, it was mostly working ranches and a lot of those have sold to investment type people."* (L5) Comments like this indicated how many of the interviewees felt that their communities had changed during the time that they had been there.

While all the interviewees acknowledged that changes in their communities were occurring, the interviewees in this study did not connect these changes to a need for conservation

easements. There was only one person who brought up how increased housing pressure could lead to people being more inclined to want a CE. While discussing a neighboring community he said: *“Those people down there, they probably aren’t interested in conservation easements. Houses aren’t going in like weeds down there.”* (L6) This interviewee is implying that housing pressure can motivate people to pursue CEs. However, for him, the housing pressure in the immediate vicinity of his ranch was not enough to cause him to want a CE. In summary, while change and growth was widely acknowledged by landowners, the recognition of increasing rural residential subdivision and community change did not lead to support for conservation easements.

Many landowners described feeling connected to their land and to the life they had created on their ranch. Throughout the interviews, interviewees expressed a deep and important attachment to their land. One older rancher who had been ranching on her land for sixty years commented: *“But nobody knows how long you’re going to be here. And, I don’t feel like I’m ready to step out yet. I just want to keep going, because I love it so. And all the animals, I got to keep going.”* (L7) For this interviewee, beyond reaping the economic benefits of ranching, she expressed feeling an intrinsic responsibility to her land and to her animals and she had tears in her eyes when she discussed how important her ranch was to her.

Many of the interviewees had grown up in their community and some had inherited a family ranch. During the interviews, I asked landowners about why they had chosen to stay or why they had chosen this particular location for their ranch. When asked this question, one interviewee explained that not only was the ranch her *“family investment”* but that because of her long history there, it had also become *“a part of her.”* (L8) Similarly, a different landowner

explained that because of the enhancements he had made to his land and ranch, he felt like it had also become a “*part of him.*” He explained by saying: “*We’ve done all the improvements, put up new buildings, sprinkler system. And it’s become part of me. That reflects me.*” (L14) Another landowner expressed this same sentiment when asked why she had decided to stay and live in the same place she grew up. She responded: “*Well, because it’s part of me. It’s our family investment. It’s, it’s where we’re planted.*” (L20) For these landowners, the ranch represents the hard work that was required to put it together and ultimately the land has come to also represent the landowners themselves.

Several landowners also expressed strong feelings and attachment to their broader community and for the area in which they lived. Expressing her love for her locale, a newcomer said: “*We just think that this valley is one of the most wonderful places on the face of the earth. I’ve been to 150 countries, I’ve seen a lot of places, and I think this is about as good as it gets.*” (L9) Similarly, when asked if he had intentions of keeping his ranch together in one large parcel, another amenity owner responded:

*Yeah, I do. I got a lot of feelings for this land. It’s the only big open spot left up there. You get up there at night and there’s no lights all over and this and that. The open space in Montana anyway, I think it is really great.*” (L15)

This absentee landowner clearly valued the open nature of his land, but remained unconvinced of the benefits of a CE. Although interviewees who were multi-generational ranchers and those who were absentee landowners both expressed feeling a close connection to their land, this connection did not translate into a desire for an easement.

All of the interviewees had a basic understanding of CEs. Most of the interviewees in this study described a neighbor, friend, or family member with a conservation easement. Several

of the interviewees explained that they had a close family member with a CE. One interviewee described his father's experience with a CE saying:

*I guess I haven't really heard him complain, but it hasn't changed his operation at all. I mean, he set it up to do what he wanted to do. He wanted to keep it from being developed, and that's what he set out to accomplish. (L10)*

Despite having such a close family member with a positive experience, this interviewee was still uninterested in pursuing a CE. This situation was surprisingly common among respondents.

Even though family members and friends encouraged the use of CEs, the landowners in this study remained unconvinced. Another interviewee had a sister with an easement on her ranch.

The interviewee spoke very positively about her sister's experience saying:

*And there's a really a nice guy that comes and supposedly inspects it every year. And he comes in and visits and has coffee and cookies, and says "everything is fine as far as I'm concerned", and away he goes. He's a really nice guy. So, that's not anything that's bad. (L7)*

In addition to knowing people who had CEs, most of the landowners had also been approached by a conservation organization to discuss the possibility of a CE and several interviewees had been approached multiple times. I asked interviewees how they had learned about easements.

One respondent said: *"We get hit, oh I don't know, two, three times a year, by various groups, different ones."*(L16) Another interviewee explained:

*They call ahead of time and want to come out and visit and some will take you out to dinner and wine and dine you a little bit. Buy you a couple beers and buy you a pizza or something. (L17)*

Some landowners explained that it had been some time since someone had come to discuss CEs with them. One interviewee initially said that no one had talked to him and then after a minute he remembered and remarked *"there was a guy working for them, and I did talk to him one time, come to think of it."* (L12) Other interviewees discussed how they had several neighbors who

had come to talk with them about CEs. A few respondents remarked that their neighbors had come to chat with them about the prospect of a CE in the past, but no longer come since the interviewees have made it clear that a CE is not something they are interested in. One interviewee explained, “*Oh yeah, but they don’t come anymore. They already know where I stand.*” (L13) All of the interviewees for this study knew what easements were although there was a wide range of knowledge about easements. Some people had been approached by organizations, some had carefully considered easements, a handful of interviewees knew very little about easements, and some were familiar only through neighbors or relatives.

Although previous studies have suggested that development in one’s community, a close attachment to one’s land, and familiarity with easements motivate landowners to pursue easements, in this study, this was not the case. The interviewees described development pressure, expressed meaningful attachments to their property, and were knowledgeable about easements, yet did not feel inclined to pursue CEs for their property.

### **The Nature of Landowner Opposition**

As noted earlier, this is a study of landowners who do not have conservation easements. Although a handful of the landowners in this study claimed that they would “*never*” consider a CE, much of the opposition to CEs that the landowner’s expressed was more tempered. Before examining the main factors that landowners described as barriers to CEs, I will first briefly characterize the nature of the interviewees’ opposition to CEs. All of the interviewees in this study were uninterested in a CE for their property at the time of the interview. However, there was a diversity of views, ranging from landowners who were fairly certain they would eventually

pursue a CE to others who stated that they would never consider one. Within this range, the majority of the interviewees fell somewhere in the middle, not altogether convinced that they would never pursue a CE, but also not certain that they would.

Many landowners did not think it was the right time to negotiate a CE for their land. One interviewee explained: *“My summary is that there’s probably a time and a place for everything, for these conservation easements, and ours wasn’t the right time.” (L6)* Another interviewee explained that he simply did not have enough information at the time of the interview to know if a CE was the right choice by saying: *“I think conservation easements are a really good idea, certainly for some people. I don’t know quite enough about them to know if they’re really right for everybody or right for us.” (L4)* While some landowners did not want an easement on their own property and other landowners opposed easements, in concept and practice, almost all of the interviewees explicitly stated that other landowners should be free to make their own decision about CEs. This landowner explained:

*And so, I sure don’t begrudge people for doing it (a CE) if that’s what they’ve got to do to . . . If they feel that’s what’s best, it’s their private property. They can do whatever they damn hell they want to do with it as far as I’m concerned. (L1)*

This comment reflects a common sentiment among the respondents that private property meant that the owner should be able to decide for their own land. This landowner expressed a similar belief, saying:

*It has been a salvation for lots of ranchers, that they’re just barely making it and they’ve got the money to... so that they’re kind of on top again and doing well. Well, we’re all independent, all ranch people are independent, and I think nobody else should try to influence anybody else. It’s whatever they reason out and what they want to do, and how they do it. (L2)*

This landowner described both a culture of independence and an understanding of difficult financial situations in explaining her respect for other's decisions. Many of the interviewees argued that CEs can be really helpful for landowners who are in financial trouble. One landowner explained that CEs could be "*especially helpful for people that are under financial stress*", and also said that he believed that was a "*good thing.*" (L4) Another interviewee explained: "*We're land rich and cash poor. So people have looked for ways to stay in the business. And this [CEs], I'm sure, has helped a lot of people stay in.*" (L5) A different landowner said:

*I think it might be a bailout for us at this time to get a big cash sum and be able to get out of debt and everything. And I can understand people doing it for that reason. I know of places that that's all that's kept them going was conservation easements, because they were on the verge of losing their place. (L1)*

An understanding of the diverse and challenging financial context within which property owners, especially ranchers, operate contributed to a willingness to imagine how another landowner would reach a different decision regarding CEs.

In keeping with landowners' support for private property rights (described later), landowners generally respected each other's decisions about easements. Surprisingly, there were no landowners who actively opposed CEs in their communities or through political venues. While there have been repeated attempts by the Montana state legislators to undermine easement law (personal communication with Glenn Marx, Executive Director of MALT, 2011), it did not appear that the landowners in this study were involved with or aware of such efforts.

## **Barriers to Landowners Engaging in CEs**

One of the primary goals of this study was to understand the reasoning behind a landowner's decision *not* to place a conservation easement on their property. In this section, the interviewees' responses explaining why they have chosen not to place a CE on their property are organized into three main factors. Three main themes emerged from the analysis: concerns about the perpetual nature of CEs, issues of control and management, and a lack of trust in the organizations that work with conservation easements. These results show that while there are a broad range of considerations that landowners must take into account when thinking about conservation easements, there are several main factors that impact both their perspective of CEs as well as their ultimate decision whether or not to pursue a CE on their land. The excerpts are drawn from a variety of places within each interview as landowners discussed these factors in response to different questions during the interview process.

### ***Perpetuity and Maintaining Future Options***

In this section I examine the interviewees' thoughts on perpetuity and their concern that a conservation easement will limit their options in the future. The landowners in this study were very hesitant to accept a restriction that would last in perpetuity and were uncertain that this would even be possible. Based on interviewee responses, perpetuity is a substantial obstacle for many landowners considering a CE. Additionally, landowners talked about how such a long lasting restriction has the potential to cause problems because of the unpredictable nature of the future and interviewees voiced concerns that CE agreements will not be flexible enough to accommodate changes over time. Some legal scholars, academics, and practitioners have voiced

a similar disquiet about the concept of perpetuity, however, the previous research that has investigated landowner perspectives of CEs has largely overlooked this topic.

### Issues with Perpetuity

For many interviewees, one of the main concerns about CEs is the fact that they are perpetual. One interviewee stated: *“I think the big issue is perpetuity. I mean, the fact that life changes and it (the conservation easement) doesn’t, that’s not right.”* (L2) Another interviewee mirrored this sentiment by saying: *“They’re supposed to be for perpetuity, isn’t it? That’s the big issue with me.”* (L7) Many landowners said that the notion of perpetuity was “scary” for them. One interviewee said: *“The part that always comes back and scares me is the perpetuity.”* (L7) Another landowner commented: *“That’s the scary part. This isn’t something that ends in 10 years. It’s there forever and ever.”* (L4) Landowners explained their concerns with the perpetuity of easements, in part, by arguing that the future was inherently uncertain. This landowner explains: *“How do you know what things are going to be like in 50 years? Maybe they need that land for something else?”* (L1) This interviewee argued that that the future is unknowable and that people may need the land for some other purpose in the future. His comment notes the possibility for changes in land use and implies that a permanent restriction like a CE would not be able to accommodate such changes. This sentiment was shared by another interviewee who explained:

*We started thinking about the forever end of it, and things changed so much in the last, 50 years, 100 years, even in the last 10 or 15 years. And to say that a certain parcel of land should be preserved a certain way forever, I mean it’s almost ridiculous to think that that can even happen. (L21)*

Looking back in time, this landowner pointed out how much change has occurred over the short and long-term, implying that conditions might continue to change in the future. He suggests that the probability of future changes makes perpetuity unreasonable, even “*ridiculous.*” As landowners discussed what they thought about CEs, a large portion of the interviewees commented that conceptualizing how a CE could preserve the land in “*a certain way*” in perpetuity was really difficult. A few landowners mentioned that because they did not “*have a crystal ball*” (L20) to see the future, they did not feel comfortable signing a CE in perpetuity that would preserve things without taking into account the unpredictability of the future. This landowner explained that this uncertainty made him pause when considering a CE: “*I think the fact that conservation easements are in perpetuity is a real drawback, because life changes.*” (L2) Many of the landowners in this study had a difficult time envisioning how a CE would fit future conditions, considering both the changes they anticipated and the unpredictability of the future. One landowner explained by saying:

*Here's my thinking on the subject, we don't know what's coming down the tube. We don't know what's 20 years or 50 years from now. We could have big bug kills and these easements are long term. I don't have a crystal ball and I don't think anybody else does. (L22)*

This interviewee believed that the future is too unpredictable and neither he nor others can predict what will happen. This landowner was also concerned about specific changes that may occur in the future, such as beetle kill on forested land, and how a CE will or will not be able to accommodate these changes. The inability to predict potential future changes deters landowners like this one from perpetual CEs.

A few of the interviewees had questions about whether or not there could be a CE that would last for a lesser amount of time. Although term easements are not common, they do exist

under certain circumstances and with certain organizations (Merenlender et al., 2004).

Highlighting their concern regarding perpetual CEs, several landowners indicated that if a CE with a shorter term was possible that their opinion of them might change. As one landowner stated: *“Would I be more comfortable doing an easement with a hundred year term than I would (an easement in) perpetuity? Yeah, I would.” (L8)* Interestingly, while this landowner preferred a term easement, he was comfortable with something that lasts a full 100 years.

### *Perpetual CEs Limit Future Adaptability*

For many of the landowners, the “scary” part of perpetual CEs was the possibility that a permanent restriction on the land will negatively impact them as the future unfolds. There was a common perception among the interviewees that CE restrictions could potentially hurt the landowner’s ability to sell the land if the need arose or to make necessary changes if an unforeseen circumstance came up. One of the main fears that landowners discussed was that the sort of permanent restriction that a CE entails would financially “hamstring” them in the future.

*Our concern is that we don’t hamstring ourselves so much that we end up going broke 20 or 30 years down the road because we restricted ourselves too much. And so I think about that a lot as where do we draw the line, and what do I do? You can’t see in the future you know. (L3)*

This interviewee explained later that if cattle prices changed, or if something else occurred in the future, his only option would be to sell a piece of his land to stay afloat. His fear is that with a CE, he would not be able to do that. Many interviewees were concerned that CE restrictions might impact their finances in a negative way because they would not be able to adapt to changing conditions. Another interviewee explained his concerns about financial impacts saying:

*Because, man, when you start talking about anything forever, like I said, you just don't know what lies in the future. Heck, we might, one of us might get cancer or sick or something and have astronomic medical bills and, you know. And then you get real sick, and you need to liquidate your interest or your shares, you know. Well, the only way that would happen is if you sold a piece of ground.*  
(L7)

This landowner worried about the possibility of having an unforeseen circumstance arise where he would need the flexibility to sell his ranch or a part of his ranch in order to stay afloat. For most of the interviewees, this fear that a CE will limit their options in the future was one of the major reasons why they did not pursue a conservation easement.

Many landowners were specifically worried about being able to sell their land for retirement. This concern was brought up primarily by interviewees who relied on their land for their livelihood. For landowners who are “*land rich and cash poor*” (L6), the ranch oftentimes is their retirement savings. Landowners who have most of their financial assets tied to the land may view CEs as especially risky. As this landowner described:

*I see some of these that get the conservation easement and pretty soon you see a new tractor out there, and pretty soon you see just a whole bunch of new stuff, rebuilding their house and all that type of stuff. And then you don't have the money. And then what are you going to retire on? You can't sell it anymore.*  
(L23)

This interviewee suggested that landowners oftentimes use money earned from selling a CE for immediate expenditures such as a new tractor or truck. He was concerned that if he pursued a CE that he too would spend the money immediately and no longer have it to put towards his retirement. Additionally, he suggested that he would not be able to sell his land to contribute towards his retirement once he had put in under a CE. Another interviewee explained that he did not have any children who were interested in taking over his ranch and in order for his wife and him to retire comfortably they would need to sell a portion of their ranch by saying: “*If we*

*weren't depending on it for retirement, for our retirement...I mean if, all of a sudden we won the lottery, we might, we might change our view about what we would do.*" (L2) This landowner assumes that CEs make more sense for people with more financial resources. This landowner went on to explain how for another person with a job outside of ranching, a CE would be a fine option by saying:

*And so some people, for instance I'll just use our friends as an example, his main business in life is an oral surgeon. So he made his money doing something else, not ranching. For him to put it into a conservation easement is a great idea because he doesn't have to depend on that ranch making a lot of money for him, or that it even be retirement money for him. (L2)*

This landowner felt like he was unable to place a CE on his land because he was depending on that land for his livelihood. More specifically, this landowner planned to sell some of his land in order to have money for his retirement. He explained his situation saying: *"But if you were trying to make your living on the land and it's been very difficult, then you look to selling some of the ground and making some money so you have retirement money."*(L2) As a traditional rancher, this interviewee had considered a CE because he does not want his ranch to be turned into houses. After talking *"very seriously"* to several organizations, he ultimately decided that the risk of devaluing the land with a CE was too great. His need for the land to pay for his retirement outweighed the desire to see it remain undeveloped. This landowner's belief that a CE would be a better option for someone who had more money in some senses conflicts with earlier statements that CEs work well for those who need money (as was discussed previously on p. 52). While some landowners view CEs as a means to financial gains, others view them as requiring financial stability.

For landowners who rely on their land for livelihood, the land provides a sort of insurance in the case of unforeseen circumstances. Landowners discussed the need to be able to adapt as prices in the cattle market fluctuate, as weather changes, and as unplanned tragedies occur. Landowners brought up the potential for problems if these unplanned events were not accounted for in a CE agreement. One rancher reasoned:

*I always say you never know what, a cow gets you down and stomps you, horse falls on you...wood tick bites you and you get Rocky Mountain tick fever. Then let's say you couldn't work for the rest of your life. You know what I mean? So, then you have to hire someone to work for you and, and so you have money going out and no money coming in. Maybe... this would be something that wouldn't be projected when you wrote your conservation easement. (L6)*

This landowner described the possibility for unplanned events such as an injury or illness that would prevent him from continuing to work. He went on to say that if that sort of event occurred, he would want to be able to be as adaptable as possible and be able to sell his land free of restrictions if he needed to. He explained: “See, we're different than a lot of people. We don't have much money. You know what I mean? Cash money. And if things don't go right, well so you decide to sell the ranch.” (L6) This desire to keep the land free of restrictions in order to possibly sell it in the future was very common among the traditional ranchers who were interviewed. Many working ranchers explicitly linked their fear that they would not be able to sell their land in the face of change with the unpredictable nature of the future and their concerns with the perpetuity of CEs, as described earlier. This rancher brought this up by saying:

*But the part that always comes back that scares me is the perpetuity, because you don't know what these younger kids are going to face. I don't even know what we might face. There might be a time when we have to sell part of it, you know. You just don't know what lies down the road. (L7)*

This landowner specifically links the unpredictability of the future and his concerns with perpetuity with the needs of the next generation. For many landowners like this one, placing a

CE restriction on his land “*scares*” him not only because of how it can affect him, but because of how it can also affect his children and his grandchildren. In sum, for many landowners, the “scary” part of a perpetual agreement is the possibility that a permanent restriction on the land will negatively impact them as the future unfolds.

### *Flexibility within CE Agreements*

In the interviews, as landowners discussed the variable nature of the future many of them spoke about the need for a certain amount of flexibility within an easement agreement. As these respondents discussed their fears about perpetuity, they would then go one step further and explain that if CEs could be flexible and if there could be assurances that necessary changes would be allowed, they might feel less fearful and more inclined to consider a CE as an option. One interviewee stated: “*Perpetuity scares me. And so, again, we need a lot of flexibility to live within that.*” (L8) In response to a question about what the interviewee would change to make easements more appealing, another interviewee responded: “*Well, maybe some of the basics. Like have a little more flexibility. Look at every situation different.*” (L24) This interviewee suggested that having flexible easements and providing a more individual approach for interpreting and administering the easement restrictions would make a CE more appealing for him. Many of the landowners brought up the desire to have more “*flexible*” or more “*versatile*” CE agreements and suggested that this would make them more attractive.

Many of the interviewees expressed a belief that once you enter into a CE agreement, there would be no room within that agreement to adapt to future needs and that the organizations holding the CE would be unwilling to make necessary amendments. In response, landowners expressed the desire for good working relationships with the CE-holding organization in order to

be able to effectively negotiate ways to adapt easements as time passes. This landowner explained:

*I think the whole thing is just keeping it extremely flexible. To me, it's [the CE] only about the development of the land, and . . . I just think being real, real flexible, and being able to sit down and negotiate little things, and . . . I don't know, it's got to be kind of a give and take thing. I think they can't be too set in stone. We have got to build into them the flexibility for what the future holds, because we have no idea what the future holds. (L4)*

This respondent explained that for him a CE was about restricting development and the rest should be able to be determined through a dialogue between the landowner and the organization. He expressed that it was important for him to have the ability to negotiate the terms of an easement so that they can best fit his needs and the needs of the holding organization. For him, the important part of keeping CE agreements flexible is the ability to sit down and negotiate with the CE holding organizations.

The fear that CE agreements with very specific restrictions make accommodating necessary changes more difficult was prevalent in the conversations with respondents. This landowner commented that the CE agreements he knew of had been too specific. He explained:

*And part of what gets challenging...not so much what exists today, because that's very finite; you can see it, you can quantify it, you can kick those tires—what gets challenging is, we don't know what's going to happen in the future. So, can something be written in a fashion that it has enough flexibility so that it allows for change? That's where there have been some difficulties, certainly in the past with agreements where they tend to be, to have too much specificity. And to the extent they're too specific, it makes it difficult to accommodate change. (L5)*

This landowner stated that CE agreements are overly “specific” and he would like to see more flexible agreements that can allow for landowners to better accommodate changes over time.

Another rancher brought up climate change in order to point out the importance of creating flexible CE agreements. This traditional rancher explained:

*And we realize in this day and age we can't foresee all the climate change and all, whether it's noxious weeds or whether it's whatever. So management has to be flexible. And I think the current easements are trying to recognize that. But it's a bit of a struggle. (L8)*

To this landowner, specific predicted future changes, like climate change and noxious weeds, present potential problems for fixed CE agreements. This excerpt illustrates this landowner's awareness that there are certain things that will alter the land and how he manages the land and also his desire for CE agreements that "recognize that." This interviewee's comment also shows how he believes CEs are becoming more flexible and more able to adapt in the face of changes to climate and vegetation but that this evolution is "*a bit of a struggle*." Many landowners recounted stories of neighbors who "*were stuck*" with restrictions that they had not expected when they signed the CE agreement. Others explained that they had been "*spooked*" after learning about the restrictions in CEs. The ability to negotiate the terms of a CE agreement as changes occur in the future is something that many of the landowners in this study discussed.

Many of the landowners interviewed in this study felt very uncomfortable with the perpetual nature of conservation easements. For a large portion of the interviewees, especially for those who depend on the land for their livelihood, a permanent restriction was viewed as something that could potentially harm them financially in the future. The perpetual nature of CEs was described as "*scary*" by many of the landowners. Additionally, the landowners in this study did not feel as if CE agreements should remain invariable in perpetuity, but rather that they should be flexible enough to accommodate changes over time.

## ***Control***

In this section, I explore the perceived loss of control that the landowners in this study associated with CEs. Interviewees expressed their concerns about loss of control in three ways. One, they expressed concerns about potential micromanaging and interference with landowner decision-making. Two, interviewees discussed their view that government agencies and other conservation organizations are pursuing a broader agenda to gain complete control of the land. Three, interviewees connected to a perceived loss of control to the loss in private property rights associated with CEs.

### *Adversity to a Perceived Loss in Land Management Authority*

Many landowners believed that the organizations that hold CEs will continually send personnel out to the property to tell the landowner what they can and cannot do. Landowners objected to what they believed would be over involvement with the day-to-day management of the property. One interviewee likened it to “*somebody coming into your home and saying what you can and can’t do, what furniture you can put in that room and where it can be for perpetuity.*” (L3) She objected not only to the micro-management that she believed a CE would entail, but also the invasive nature of having someone come out to her property and tell her what to do. She went on to say: “*I just don’t like the loss of control of your own property.*” (L5) Another landowner stated: “*I guess the way I feel about it, I don’t want anybody else to have any control.*” (L25) Another interviewee voiced the same concern by also likening it to having someone come into your house to tell you what to do. She explained:

*It’s like if you have a house and you have somebody coming in to make sure you’re cooking the right food. That’s the same thing. Or if you vacuum at a regular rate and if you’re keeping your books right and that kind of thing. I don’t*

*want to be involved with something like that. I want to be able to go where I want to go, do what I want to do. (L20)*

This landowner did not want a CE because she believed that it would mean someone could dictate what she would be able to do with her land and summarized saying: *“I don’t want to have a minder.” (L20)* Traditional ranchers in particular voiced the concern that their ability to manage their livestock operation would be hampered by a CE. This respondent was concerned that having a CE would be costly in both time and efficiency for his cattle operation. He said:

*Or you got this old building that you want to do something with. You know, instead of just going well, we’ll fire up the excavator and tear it down and pitch a match on it, you have to call somebody. They have to come out. You all stand there looking at it. And they’re reading the contract. And you’re going well, I’m going to make things better by doing this. And they’re going well, you know, your contract says that this is a historic shack. (L6)*

This landowner explained that he did not want to have to go through the lengthy process of having to call a CE holding organization and listen to their input on changes he might want to make on his ranch. Many landowners in this study valued their autonomy as landowners and believed that a CE would severely limit their ability to make decisions regarding land management. They argued that CEs give CE holding organizations power over a landowner’s decisions and viewed that as highly undesirable.

Several of the traditional ranchers who were interviewed described ranchers in general as *“very independent”* people. Interviewees explained that one of the draws to ranching as a career is the ability to be your own boss and not to have anyone *“telling you what you can and cannot do.” (L9)* Because of this perceived independence, some landowners thought traditional ranchers in particular would be opposed to CEs due to the loss of control that they were believed to entail. One traditional rancher that was interviewed illustrated this by explaining: *“It’s*

*because Mr. Independent Rancher isn't ready to give up his throne. And the only retired ranchers I know are in the cemetery.*" (L15) She believed that it would be especially difficult to convince traditional ranchers, such as herself, to engage in CE programs. Another interviewee expressed this same belief when talking about his wariness of CEs and also describing how he thought his father would have felt about them. He said:

*It's like I said before, you don't like to have to ask permission to do something with your land. I mean, I know my father would not like that at all. He was a second-generation rancher and had ranched all his life and pretty much did what he wanted to do with his land. And if he were in a position where he had to ask permission to build a house or build a new thing on it or do anything to the land, well it was his land, and he wouldn't like that at all. And I'm little inclined to be like him. (L26).*

This landowner connected his need for autonomy and decision-making power to his family history and more specifically his father. He believed that as traditional ranchers, having to request permission to do things with their land would be especially objectionable.

In addition to the practical concern regarding a loss of managerial control resulting from a CE, landowners also discussed an emotional or philosophical aversion to this loss of control over their land. As described earlier, many landowners described a close connection or attachment to their land. In some cases, landowners put their aversion to CEs in the context of this attachment. One landowner described how an emotional chord had been struck for her when she was considering a CE. She explained:

*And to me it was like giving up part of you, part of what your lifestyle stood for, part of all the work you've done to build this up. I mean, there's ownership pride in ranchers. You know that. Their attitudes. They're proud of what they've got. (L9)*

This interviewee expressed how she thought that giving up part of your land or rights through a CE was "*like giving up part of you.*"

Several interviewees argued that because they were already good caretakers of their land they did not need anyone to tell them how maintain a healthy landscape. This interviewee associated his connection to the land with his aversion to having someone tell him what to do with it. He explained:

*I got a lot of feelings for this land. You know, I have a beef about other people trying to run your land. I take care of my land. I take care of it. I don't want nobody throwing no cans around. I plow it up when it needs it. I take care of the weeds. I don't need nobody to tell me. I know what it needs. (L27)*

This landowners found the notion of someone else having authority of his land management offensive because he believed that as a caring landowner, he was best suited to steward the land. He described having an emotional connection to his land, one that motivates good stewardship. For many interviewees like this one, to the extent that CEs alter that connection with the land, they may be perceived as undesirable.

### *Perceived Agenda of Control*

Some landowners also expressed concerns that CEs were a way for land trusts and government agencies to gain control of privately owned land. Several landowners believed that government agencies and non-governmental conservation organizations are deliberately using CEs as part of a larger agenda to remove private landowners from the land. This landowner expressed this view, saying:

*I think there's another agenda, getting people off the land...If anybody comes over and says you 'can't do this or you can't do that', and that's the purpose of them [CE], it is to get control. You can't tell me it's not. Whether it's a big scheme or whether it's just on a little ranch by ranch or property by property, I mean, they have control... because that's the purpose of them. (L11)*

Like many of the interviewees, this landowner believed that CEs were intended to get privately held land into public or government ownership and part of a larger strategy to achieve control over land.

Several landowners referred to this as “*locking up the land*” and compared CE land to parks, preserves and Bureau of Land Management land. One landowner summarized this thought with the quip: “*Why don’t we just start calling it Montana National Park?*” (L18) Some landowners believed that “*locking up the land*” through CEs meant that people would no longer be able to live and work there. These landowners believed that CE holding organizations want to preserve land in order to reduce productive use and private ownership. This landowner discussed this perspective saying:

*Because really we’ve already got enough open space in my view. I mean, we’ve got state land, BLM land, wilderness areas. Well, as we go into more state land or conservation land, they’re locking it up. (L14)*

Several landowners expressed similar concerns that CEs are tied into a more overarching agenda that land trusts and government agencies are pushing to “*get people off of the land.*” (L12)

Landowners argued that there is already plenty of conservation land and believed these conservation areas to be part of the plan to keep land away from private individuals. They seem to see conservation easements as incompatible with private ownership and productive or economic use of land. Instead they equate easements with protected areas, such as parks and public open space.

Some of the interviewees also believed that CEs are the first step down the slippery slope towards government control of privately held land. Several landowners believed that even if a CE is held by a land trust or some other non-governmental organization, the government is still

involved in some way. This interviewee explained that the government is can influence land trusts through grants and other funding mechanisms. He explained:

*You're getting paid by the federal government to put it into an easement, and then the federal government is funding the trusts, so it ends up being all taxpayers money doing this. And sometimes you just wonder who's really benefiting from it. More of it's under government control. (L21)*

This landowner suggests that government funding of easements raises questions about who benefits from such programs. Several respondents similarly mentioned the belief that when CE organizations receive money from the government that the government gains control of that CE land. One interviewee remarked: *"If the government puts the money up, they're going to want more control. The more money they put up, the bigger bite they want."* (L28) Many of the interviewees characterized "the government" as a homogenous entity with the goal of gaining control of private lands, in part through CEs.

Other interviewees discussed the possibility of smaller land trusts getting into trouble and transferring the control of CEs to the government at some point. This landowner was concerned that land trusts that cannot pay for the maintenance of their CE properties may turn them over to the government. He said:

*And, the trust themselves sometimes either sell those, the land or the conservation easement, to the federal government for more money. Because then they have to have somebody to look at, to oversee it, to be the stewards of the property, check on it, and then there's maintenance of the property. (L19)*

Taking this one step further, several landowners were concerned that once the government does gain control of that CE land that it would then also control the landowner as well. One landowner expressed this apprehension saying:

*Well, all I can say is I would never do it, because it's the government takeover of your property and whoever holds that paper (CE agreement) has got you by the neck. (L13)*

The respondent quoted above was knowledgeable about the local land trust in her community and talked at length about a community meeting held by that organization but still believed that there was a significant connection between CEs and the government. Another interviewee expressed the belief that conservation organizations were similar enough to the government to be referred to as “*quasi government organizations.*” He explained:

*I mean they (CE holding organizations) are quasi government organizations, so basically they're the government as far as I'm concerned. So you don't know what's going on. And they've already got control of most of the land in the country, or an awful lot of it. And they're just getting control of more and more. And they'll use control of the land to control the people. (L24)*

This interviewee expressed his concern that conservation organizations and government agencies have control of so much land that they will be able to use that to control landowners as well. He expressed the underlying belief that the organizations that hold CEs will be able to wield some form of power over the landowner and that the relationship will be one of control and subservience. Another interviewee expressed this concern explaining that the organization holding a CE would essentially “*own you.*” (L2)

Despite the fact that a number of the interviewees were concerned that CEs were part of a larger conspiracy to get people off of the land, many who felt this way still advocated that other landowners be able to make their own choices about CEs. Early on in an interview with this landowner, she commented: “*People ought to have a right to, to what they want to with their land.*”(L11) Later on, she expressed the concern that CEs were part of a government effort to gain control of private property. This landowner was quoted in an excerpt just above saying:

*It's the government takeover of your property or whoever holds that paper has got you by the neck. And when somebody gets a hold of your property, whether it's your house or your land or your livestock or anything, they own you."(L11)*

In conjunction with her comment regarding property rights, it is clear that despite her rather vehement view of CEs, she still advocates for the right of individual landowners to make their own decisions.

### Property Rights

Some landowners framed the loss of control they perceived accompanying easements as infringements on their private ownership and private property rights. As was discussed earlier ( p. 29), an exclusive view of private property suggests that ownership grants exclusive control to the landowner as well as autonomy, privacy, and economic opportunity. For landowners who understand property in this way, CEs may be viewed as conflicting with appropriate property concepts and practices. One landowner connected his dislike for CEs with his view of property rights by saying: *"I think it [CEs] is also a way of gaining control of the ground and having the ground not be what or where people can do with it as they want. It's property rights." (L2)*

Another interviewee explained:

*And that's part of, whether it be government regulations or one of these easements or anything. I think when it's your private property, you should be able to make those decisions. And that kind of takes that out of your control when you get into one of these easements. (L7)*

This interviewee explained his belief that the ability to make decisions is an important tenant of private property ownership. One landowner echoed this concern when I asked her what she would tell her neighbor if they came to her and asked her what she thought about CEs. She responded:

*If they came to me and wanted to know, I would tell them just the concerns I've told you, about the loss of control, and private property rights. That's basically what you're doing, signing away your private property rights. (L1)*

Like those quoted above, this landowner believed that a CE would diminish her private property rights in a way that she found highly problematic. Another interviewee argued that landowners should retain their property rights, saying:

*And so one owner is dividing the right and giving an outside party or non-owner party the right to decide about the use of the land in perpetuity. But you don't know who those folks are going to be. And I just think that there is a very good reason for at least some property to have a unity of ownership, have the ownership be in the hands of, of one person for both the use as well as the activity" (L12).*

Landowners such as this one seem to be suggesting that all of the rights that accompany ownership should remain with the landowner, and not be parsed out through conservation easements and other mechanisms.

Many of the landowners in this study expressed an overarching aversion to the loss of control that a CE entails. For many landowners the belief that a CE will involve excessive micro-management of the land is one of their main concerns. Several landowners mentioned the belief that this was a particular concern for traditional ranchers who describe themselves as independent. Additionally, for several interviewees, close connections to their land meant that a CE might impact their identity as a rancher or landowner in negative ways. Many interviewees suggested that CEs were part of a broader strategy for government control of land and removal of private landowners. Finally, for many landowners, their objection to a loss of control associated with CEs was related to their belief that it is important for landowners to retain all of their property rights.

### *Lack of Trust with Organizations*

Across all of the interviews, landowners discussed their reluctance to trust the organizations and agencies that work with conservation easements. The lack of trust that landowners felt towards conservation organizations and government agencies came across in two ways. One, landowners had concerns about the level of consistency of easement enforcement as personnel and management changes occur over time. Two, many landowners expressed the belief that conservation organizations are staffed by people who are unfamiliar with local land issues and that they are largely influenced by non-local people.

### *Concerns about the Consistency of CE Enforcement*

A large number of landowners brought up concerns about how conservation organizations would manage the enforcement of CE agreements. Lots of interviewees spoke about the possibility that changes in the enforcement of CE agreements would occur as the organization's personnel changes over time. This interviewee described this concern by comparing easement enforcement to speed limit enforcement. He explained:

*The enforcement of the easement is only really as good as the people involved. You know...downtown Missoula the speed limit was 35 miles an hour. One place they might pull you over because you're doing 37. And the other guy is going to say, well, she's only going 37. That's above the speed limit, but I'm not going to pull her over. Well, the parameters haven't changed, but the enforcement has.*  
(L16)

This landowner explained that a CE agreement can be written one way and interpreted differently by different people over time. Several landowners said that while a landowner may have a good working relationship with the initial employees at the organization holding a CE,

their children and grand children may have a very different relationship with future personnel.

One respondent expressed this concern by describing a friend with a CE's perspective, saying:

*They have to have this guy come in once a year, he can come in and inspect it. One of their worries is that the inspector now that's there, he is a really nice guy, and a real level guy, real fair guy. They're worried, and in my friend's, back in his mind, he is a little worried about when this guy retires and he gets that new guy that comes in and says, something different. (L17)*

Many landowners like this one do not trust that organizations will remain easy to work with over time. When I asked one landowner what his concerns were about CEs he mentioned that he is concerned that an organization would change the restrictions in a CE as time passed. He said:

*And, of course, they'd say they wouldn't do it, but that's the main worry. Right now there's no real worry...But they are changing the game plan or the rules as the years go by, I guess. But anyway, yeah, it's just mainly changing the rules as we go. (L19)*

He explained that his concern was not about the present, but rather he worries that over time, an organization would change the terms of the easement or their management. This landowner also implied that he does not trust CE organizations to follow through with what they say as time passes. When asked the same question regarding her concerns about easements another landowner immediately responded that this is one of her primary apprehensions. She described a hypothetical situation in which a landowner with a CE needed to negotiate an aspect of an easement. She explained:

*First of all, you're never going to be dealing with the same person. And then the next time you want to do something on your property, you probably look at that little document and find out that oh, this doesn't look possible. So you try and, and negotiate. And you go to the people... and you talk to them. And guess what. It's somebody new and different than you made the original little trade with. (L15)*

Many landowners like this one worried that since the easement would outlast the current personnel, they would have to contend with new people administering the easement and new people may also have a new approach. This landowner's comment also reflects an implicit lack of trust that she feels towards CE holding organizations. Like many interviewees, this landowner did not feel as if an organization would contact her and inform her of personnel changes but rather that they will come as a surprise.

### *Outside Influences and Malevolent Intentions*

Many landowners communicated the view that conservation organizations and government agencies working with CEs would be staffed by people who were unfamiliar with local concerns and ranching or land management practices. As described earlier, landowners oftentimes would lump land trusts and government agencies together when they talked about their perception of how the organizations functioned in relation to CEs. Several interviewees spoke about these organizations being run by people who have a limited understanding or knowledge of what is occurring on the ground. This rancher from a multi-generational ranching family articulated the perspective that CE organizations are staffed and supported by people who do not have any knowledge about the land that they are hoping to put into conservation easements. He explained:

*A lot of people that are on boards or involved with like the Rocky Mountain Elk Foundation or the Five Valleys or the Bitterroot or something some of the people that are on those boards are people who really have not been raised on ground, on property, on large property. They just like how it looks. But they have no concept of what it takes to maintain it and make it remain a beautiful piece of ground. And yet they feel that they have the authority to come on and tell you what to do. (L2)*

This landowner thought that it was important for CE organizations to have a background and history in large parcel land management as he feels many multi-generational ranch owners do. Similar to this interviewee, many of the landowners expressed the belief that the people who work for land trusts and other conservation organizations will not understand what is important about the land because they do not have the appropriate experience or background. Referring to the people who work for CE organizations, another interviewee asserted:

*They don't know how to work. They don't know what they do. They know damn little. They know nothing about custom, culture, heritage, history, practice. They don't know. (L18)*

This respondent was particularly frustrated with what he felt were inexperienced CE organization employees. This sentiment illustrates a common perspective across the interviews and reflects the value that landowners place on knowledge that is gained from living and working on the land.

As described earlier, several interviewees expressed the belief that conservation organizations are influenced by non-local factors. Many landowners believe that the government and other non-local interests have the ability to pull strings that could potentially affect the management of CEs. One interviewee expressed this sentiment by saying:

*And I truly believe that there will be a day when the people in Helena that are the head of The Nature Conservancy, they're going to be overrun by people back east. They have a lot of . . . they have a lot of input. I mean, the people back east are running more of Montana's conservancy because that's where the money comes from. That's where their donors come from. (L19)*

This landowner emphasized his belief that CE organizations are heavily influenced by where they receive their funding. While this landowner believed that this influence came from “back east,” several other interviewees expressed this same thought in relation to money and influence from specific individuals. Another interviewee expressed this concern in regards to TNC. He

explained that he had originally thought that the money used to pay for CEs was raised by numerous small monetary donations. He was surprised to find out that sometimes funding instead comes from a large gift from one individual. He explained:

*Because, for example, we think everybody that gives their \$25 or \$50 and this is what's funding these easements. Well, like in the valley, it was actually just a couple individuals that were. And I think that's important to know. I mean, your deal is with The Nature Conservancy. That's the philosophy that you're going to buy into or that you're agreeing to, but to me, it would have been, and I think the other people, they would like to know who else is involved. (L29)*

This landowner's comment reflects his belief that CE organizations are not acting transparently with regard to where they receive their financial support for CEs. Rather, this interviewee believed that organizations purposefully conceal the source of funding in some cases. This belief depicts another way in which some landowners do not trust CE organizations.

Similarly, several landowners were concerned that conservation organizations were overly influenced by the government. A handful of interviewees mentioned how they thought land trusts received too much financial support from the government. One interviewee said that land trusts were receiving *"lots of grants, lots of money from the government."* He went on to explain that one thing that would help him feel more comfortable with CEs would be the *"elimination of government support of easement holders."* (L24) Another interviewee stated that he felt CEs would be *"great if you get the government out of it."* (L27) These comments echo concerns described earlier about the government gaining control of lands through CEs. However, in this case, the concern is specifically in regard to the influence that funding might buy.

Some landowners also suggested that because money is involved in CE transactions, that this financial aspect could potentially give CE holders undue influence over landowners. Several

landowners used the phrase “*dealing with the devil*” when they discussed the financial incentives that are offered to landowners for CEs. A few of the interviewees expressed concerns that financial incentives lure in landowners who are in financially difficult situations without fully understanding what CEs entail. One landowner explained: “*That’s the deal with the devil I was talking about earlier. You’re either in a bind, or you’re uninformed.*” (L14) This landowner believes that people who are interested in CEs are either desperate for money or they do not have enough information. He characterizes this as a “*deal with the devil*” because people who need money might end up selling their rights in a time of financial need and come to regret it later. Additionally, using the phrase “*the devil*” to describe the CE holding organizations implies that these landowners view CE organizations as having intentions to trick or harm landowners. Another landowner expressed a similar sentiment by saying: “*But most of them have had to do to generate cash. And it’s all to keep the ranch in the family I don’t know...it’s absolutely playing with the devil.*” (L15) Rather than seeing the financial incentives as something positive, several landowners instead viewed the incentives as another mechanism through which organizations can control or swindle landowners. One landowner expressed this same view by saying:

*So people think, maybe I’ll get some money out of it by selling an easement. Green spaces and open spaces, any time you hear any of that it’s government control of your private property. I think that’s how they force a lot of people, kind of basically force them into that. (L24)*

This landowner believed that CE holding organizations use financial incentives to “*force*” people into CEs. By describing CEs as a coercive mechanism used by the government and conservation organizations, he implies that these organizations have malevolent intentions. As described in an

earlier section, this landowner also believes that the purpose of CEs is ultimately “*government control of your private property.*”

Many landowners shared a concern regarding how conservation organizations will manage the enforcement of CE agreements. Lots of the interviewees discussed the possibility that changes in the enforcement of CE agreements would occur as the organization’s personnel changes over time. Interviewees also placed a lot of importance on organizations that were local and familiar with land management, and the belief that CEs were not either of those things was widespread. Additionally, landowners tended to place an emphasis on the importance of CEs being separate from government control. A portion of the interviewees believed that CEs were influenced by non-local organizations and funding and this made CEs far less appealing. For a large number of landowners, the personnel who will administer the CE is an important consideration when evaluating whether or not to pursue a conservation easement.

### **Differences Among Study Sites and Between Different Types of Landowners**

Interestingly, landowner concerns about CEs were very similar across the three study sites. Interviewees in all three valleys discussed perpetuity, control, and lack of trust as major barriers to pursuing an easement. There were some differences in the interviewees’ awareness of CEs that seemed to stem from the specific context of some easement programs. For example, landowners in the Beaverhead area were more familiar with easements held by FWP for habitat protection and were more familiar with CEs that are purchased by a government organization rather than a land trust. In the Blackfoot area, landowners were clearly aware of the conservation agenda being promoted by the Blackfoot Challenge and the organizations and individuals who

were involved in that collaborative. However, these different contexts seemed to have a minimal (if any) influence on what the interviewees discussed as their concerns regarding CEs. In all three valleys, the landowners spoke of the same concerns about CEs.

Similarly, there were minimal differences among the concerns expressed by traditional ranchers and those expressed by the amenity owners. However, as was noted previously, landowners who used the land for their livelihood expressed more financial concerns than did the amenity owners interviewed. Traditional ranchers and interviewees whose primary financial asset was their land, identified financial considerations as key. In contrast, amenity owners did not talk as much about financial considerations and instead focused more on control, property rights, and concerns about CE holding organizations. Aside from this difference, concerns about CEs were generally the same between the amenity landowners and traditional ranchers in this study.

## **Conclusion**

All of the landowners in this study expressed complex concerns about conservation easements and the organizations that administer easement agreements. Many of the landowners described development pressure, expressed meaningful attachments to their property, and were knowledgeable about easements, yet, remained uninterested in a CE for their property. Despite the fact that all the respondents in this study had chosen not to pursue a CE, overall, they supported other landowners' ability to make this decision for themselves and did not oppose CE programs for everyone.

The landowners interviewed in this study were very uncomfortable with the perpetual nature of conservation easements. For many interviewees, especially those who depend on the

land for their livelihood, a permanent restriction on the land was viewed as potentially harmful. The perpetual nature of CEs was described as “scary” by many of the landowners because of the possibility that a perpetual CE will negatively impact them financially over time. Furthermore, the landowners in this study did not feel as if CE agreements should remain static in perpetuity, but rather that they should be flexible enough to accommodate changes over time. These responses indicate that for many landowners, the requirement of perpetuity is one of the main deterrents for conservation easements.

In addition to concerns about the perpetual nature of CEs, many of the landowners in this study expressed an overarching aversion to the perceived loss of control that they associated with CEs. Throughout the interviews, landowners suggested that a CE will result in excessive micro-management. Several landowners also mentioned that losing land management authority with CE restriction is an especially salient concern for traditional ranchers who described themselves as independent. Additionally, several interviewees argued that their strong connection to the land led to a heightened aversion to a loss of control of one’s private property. A few of the interviewees were concerned that a CE can lead to government control of land and believed that even if a CE is with a non-governmental organization, the government is still involved in one form or another. Some landowners suggested that CEs are part of a broader agenda to remove people from the land, eliminate private ownership, and reduce productive uses. Lastly, for many landowners, concerns about losing control of their property through a CE was connected their belief that it is important for landowners to retain all of their property rights.

Throughout the interviews, landowners expressed concerns about how conservation organizations would manage and enforce CE agreements. Interviewees expressed having trepidations that changes in the enforcement of CE agreements would occur as the organization’s

personnel changes over time. Interviewees placed a lot of importance on organizations that were local and familiar with land management, and many landowners felt as though CE organizations were oftentimes neither. Moreover, landowners tended to emphasize the importance of CEs not being influenced by the government. For a large number of the landowners in this study, the organizations and specific individuals who will manage a CE is an important consideration when evaluating whether or not to pursue a conservation easement.

## **Chapter 5 –Implications and Conclusion**

### ***Summary of Findings***

The landowners in this study described a wide range of reasons why they were uninterested in CEs. Several interviewees believed it was not the “*right time*” for them to pursue a CE on their property while others had made up their mind that a CE was something that they would never be interested in. Despite the decision that the interviewees had made regarding a CE on their own land, nearly all of the interviewees expressed the belief that if other landowners were interested in a CE, they should be able to pursue them. Additionally, none of the interviewees were active in political efforts to oppose CEs either locally or at a broader scale.

Three distinct factors that discourage western Montana ranch owners from conservation easements emerged from the interviews in this study. The first barrier was the perpetual nature of CEs. Landowners expressed a discomfort with and resistance to the concept of perpetuity and did not think that a restriction on their property could remain workable forever. For a large portion of the interviewees, especially for those who depend on the land for their livelihood, a permanent restriction was viewed as something that could potentially cause financial problems in the future and the perpetual nature of CEs was described as “*scary*.” While landowners talked a lot about perpetuity, they seemed less concerned about the timeframe and much more concerned about the lack of flexibility. This was illustrated by the widespread belief that CE agreements should not remain invariable in perpetuity, but rather that they should be flexible enough to accommodate changes over time.

The second prevalent concern that was described by many of the landowners was the loss of control that they associated with CEs. Many landowners were concerned about the excessive micro-management they believed would accompany a CE. Traditional ranchers who saw

themselves as “very independent” were especially concerned about micro-management, as they wanted to retain full control of the management of their land. Additionally, some interviewees explained their aversion to loss of control, in part, as related to their strong connection to the land. Many of the interviewees were concerned that CEs would lead to government control of their land and the broader landscape, and some suggested that CEs were part of a larger agenda to decrease private ownership and agricultural use. Finally, many landowners framed their objection to a loss of control as an undesirable loss of property rights, and argued for the importance of retaining all such rights.

The third and final barrier was a lack of trust in the organizations and agencies that work with CEs. Many landowners were concerned about how conservation organizations will manage the enforcement of CE agreements. Interviewees discussed the possibility that changes in the enforcement of CE agreements will occur as the organization’s personnel changes over time. Interviewees also placed a lot of importance on organizations that were local, familiar, and separate from government control. A large portion of the interviewees believed that CE organizations were influenced by non-local money and politics, and this belief was a large disincentive to pursuing a CE.

In this study, the barriers that interviewees expressed were largely the same for amenity landowners and traditional ranchers across the three study sites in western Montana. These barriers or discouraging factors were interconnected for many landowners. For example, landowners who have an underlying dislike of the government and interference with their property may be more inclined to be wary of the organizations who are working with CEs. They might also be wary of the restrictions that come with a CE, as they might view these as an assertion of government control. In addition to these more emotional and political barriers, this same

landowner may be entirely dependent on their ranch for their livelihood and also their retirement. Without an heir to take over, he or she may need to ensure that they can sell the ranch for what they feel it is worth and may want to avoid potentially diminishing any of its value with a conservation restriction.

Although previous studies have suggested that development in one's community, a close attachment to one's land, and familiarity with easements motivate landowners to pursue easements, in this study, this was not the case. The interviewees described development pressure, expressed meaningful attachments to their property, and were knowledgeable about easements, yet did not feel inclined to pursue CEs for their property. This indicates that for certain landowners, growth pressure and a strong emotional connection to one's land do not outweigh concerns regarding perpetuity, control, and trust.

These findings have implications for adapting easement tools and policy to more effectively meet the needs of landowners while also serving conservation goals. I now turn to the implications of this research for theory and practice.

### **Addressing Perpetuity**

This research indicates a need to reexamine the perpetual nature of conservation easements and how this aspect of CEs can be perceived by landowners. Landowner concerns about perpetuity in this study corroborate the findings of both Kabbii and Horowitz (2006) and also Newman (2006), who found landowner views on perpetuity were a key factor influencing their decisions regarding CEs. In contrast, most of the research on why landowners have chosen to participate in CE programs largely overlooks perpetuity. Despite the lack of attention to perpetuity in most empirical research, some scholars have devoted attention to this topic. For

example, some CE critics have advocated abandoning perpetual CEs altogether (Mahoney, 2004), while others have suggested adapting policies to allow land trusts and government agencies to terminate CEs in the future as needed (Engle, 2007; Lindstrom, 2008; McLaughlin & Weeks, 2009). Additionally, as was mentioned previously, term easements that last for a specified number of years are also a possibility. However, abandoning perpetual easements or shifting to term easements has the potential to fundamentally alter the conservation bargain that land trusts and government agencies are aiming to negotiate with CEs. For many CE organizations, and also for many landowners, perpetuity is important to ensure long lasting conservation (Land Trust Alliance website, 2011). Thus, conservation organizations and government agencies may decide that CEs are no longer worth the financial investment if they are not perpetual. Moreover, because it seems unlikely CE organizations will want to invest in term easements, it is essential that practitioners find other ways to address landowner concerns regarding perpetuity.

This study is important because it illuminates some of the specific reasons why landowners are uncomfortable with perpetual CEs. Going deeper than a general dislike of perpetuity, landowners have concerns about how CEs will adapt over time and accommodate changes in the future. Landowners, especially those who depend on their ranch for their livelihood, are also concerned about the effect that a fixed CE agreement can have on land management. Since landowners' unease with perpetuity is largely based on a perceived need for flexible and adaptable CE agreements, land trusts and government agencies can take steps to assure landowners that flexible CEs are possible. It is especially important that land trusts and government agencies address the importance of CEs being flexible while also being perpetually restrictive in the light of climate change (Owley, 2011). As Duncan A. Greene (2004) explains,

conservation easements leave unanswered the “fundamental paradox of land conservation: how to truly preserve land in perpetuity in the face of perpetual change” (Greene, 2004, p. 901). In an effort to tackle this issue, The Land Trust Alliance published an “Amendment Report” in 2007 that delineated the role and responsibility of land trusts in accommodating changes in CE agreements through amendment and termination policy (Amendment Report, 2007).

Unfortunately, despite the rapid proliferation of CEs and the efforts of the land trust community to clarify how CEs will adapt to change, there are still a lot of unknowns about how CEs will function as time passes and what legal mechanisms exist to allow for flexibility (Lindstrom, 2008; McLaughlin & Weeks, 2009). To date, there is no consensus regarding how to adapt CEs to future conditions. Moreover, there is limited information about how CEs will affect property values in the long term and the information that does exist is very context-specific (Platinga & Miller, 2001; Wu & Lin, 2010). Because the information about how CEs will progress in perpetuity is limited and vague, the land trust community and the government agencies that work with CEs need to make a concerted effort to convey what information that does exist in an easily accessible way to landowners. Reassuring landowners that CEs are “working agreements” (Amendment Report, 2007) and finding ways to incorporate an “adaptive management” (McLain & Lee, 1996; Owley, 2011) approach is critical to the future success of CE programs.

Furthermore, if CE holding organizations can clearly delineate how CE amendments and terminations will be handled, there will be less confusion on the part of the landowner and more transparency throughout the transaction. One of the best ways to allow for flexibility within CEs is to account for that flexibility within the conservation easement agreements themselves as well as within the written policies of the organizations that hold them (Amendment Report, 2007). For example, organizations can make sure that easement agreements include amendment clauses

and clear guidelines explaining the circumstances under which a termination would be appropriate. Government agencies have typically used one-size-fits-all CE templates that are not as accommodating to individual circumstances and adaptive management practices as compared with CEs that are negotiated with land trusts. Government organizations may need to reevaluate their CE templates to provide for amendments and terminations. Both land trusts and government organizations will need to create internal plans and rules that outline how these changes will be handled. Organizations can then make this information easily accessible to landowners via websites, handouts, brochures, and community outreach programs.

That said, building in too much flexibility and allowing for easy termination may compromise the goal of long-term conservation, and thus land trusts and government agencies may not be supportive of such changes. The challenge is to determine how to build in flexibility without compromising the core goals of easements.

### **Addressing Control**

Concern about the loss of control resulting from conservation easements was a prevalent theme amongst landowners in this study. Traditional ranchers, who are seen as characteristically independent and believed to be self-reliant and anti-government (Inman & McLeod, 2002; Sheridan, 2007), often view CEs with skepticism and connect them with a loss in autonomy. More generally, many landowners view CEs as entailing excessive oversight and red tape. In many cases, this perception can be caused by a lack of understanding of how CEs function and a misunderstanding of the level of involvement of CE organizations. Some of landowners' fears concerning the transfer of a disproportionate level of authority can be dispelled through increased education and much of the fear about micromanagement should be allayed through

efforts to better inform landowners about CE management. CEs most often involve one or two annual visits from the CE holding organization and, in most cases, the interaction between the landowner and the CE holder does not exceed this level. CE organizations frequently endeavor to address management concerns during the negotiation of a CE agreement and aim to keep annual monitoring and enforcement to a minimum. Because many value their autonomy, land trusts and government agencies may need to better inform landowners about their planned level of involvement in CE management. Ensuring that landowners are aware that CEs are working agreements that can be negotiated in a way that satisfies the landowner can also help alleviate concerns that the landowner will forfeit their decision making authority when they sign a CE agreement.

Although education and outreach will be important components of the effort to address concerns about control, ideas about control appear to be deep-seated and embedded in a larger and often powerful anti-government sentiment (Walker & Fortmann, 2003; Yung et al., 2010). Additionally, concerns regarding the role of non-local entities influence landowner's views of CE organizations and fuel concerns about control. The fact that the fear of outside control was so pervasive in this study points to a continuing need for land trust and agency personnel to build strong, positive relationships with local communities in the areas that they work. For larger national NGOs (such as TNC, Ducks Unlimited, and TPL) and also for government agencies, a renewed focus on local offices, personnel and programs may help dispel fears of outside agendas and conspiracies. Although engaging landowners with anti-government sentiments will be difficult for government agencies and national organizations, establishing local branches and building relationships may help.

Additionally, because concerns about government control and management were such a major barrier for landowners to participate in CEs, it is important for the land trust community to rethink its efforts to represent land trusts as local and non-governmental. Land trusts began as private, grass roots organizations who promoted themselves as community-driven. As the movement has grown, and land trusts have matured, to some, land trusts have begun to more closely resemble their government agency counterparts. Now, with government grants and wider ranging conservation goals, in the eyes of landowners, land trusts have lost a little bit of what one author has called their “private magic” (Echeverria, 2005). This study illustrates the important distinctions that landowners make between private and public, and how important it is to be able to both frame and market land trusts and CEs in a way that clarifies the separation between non-governmental land trusts and the federal government. Some landowners may respond positively if they see land trusts as a non-governmental alternative. In order to achieve this, land trusts need to strive for greater transparency in order to build trust and promote open communication regarding funding sources and overall strategic plans. Increasing promotion of the local, grassroots nature, and non-governmental character of land trusts might also help.

As with other landowner concerns, land trusts and government agencies can strive to address concerns about control, but need to keep in mind that CEs do require the sale or donation of property rights, and thus some land management options are being forgone by landowners. Perhaps another way to address concerns about control is to frame CEs as a way to control the future of a parcel of land that landowners may care deeply about. To the extent that landowners see CEs as a way to retain control as opposed to a loss of control, they may be more receptive.

## **Addressing a Lack of Trust in Organizations**

A lack of trust can hinder communication and cause “confrontational and insular behavior” (Lijebblad et al., 2009, pg. 1). In this study, a lack of trust in CE organizations emerged as one of the main barriers to landowner engagement with CE programs. A study conducted with ranchers in Florida similarly identified trust in conservation organizations and agencies as one of the top six most important components of CE engagement (Brain, 2008). Newman (2006) also identified a lack of trust as the number one reason preventing landowners from pursuing CEs. As discussed above, some mistrust felt by landowners in this study is rooted in anti-government sentiment and resistance to non-local influence. However, much of the lack of trust that the landowners expressed related to concerns about CE enforcement and CE organization personnel. Anecdotal evidence and individual stories conveying negative experiences can lead landowners to feel wary of CE holding organizations and the people that work there. Without a personal relationship or experience to change this perspective, many landowners have concerns about whether or not the enforcement of an easement will remain constant and fair as time passes. Landowners are aware that CEs entail a long-term working relationship with an organization because CEs are perpetual, but some landowners feel that they have no guarantee that the working relationship will remain positive. Finding ways to reassure landowners that agreements will be enforced with consistency and reliability needs to be an important component of CE outreach programs.

Increasing the level of trust in CE organizations will be a challenging and lengthy process. Building trust will most likely take years as CE organizations improve communication with landowners and establish themselves as consistently reliable and honorable (Lijebblad et al., 2007). Perhaps because CEs are a relatively new tool, and because landowners have yet to see if

they remain positive in the long term, the process of establishing deep trust may be just beginning. Because building trust takes time, land trusts and government agencies may need to be patient and envision such efforts as long-term endeavors.

Looking back to the two previous sections in this chapter, both concerns regarding perpetuity and also concerns regarding control are related to feelings of distrust towards CE organizations. Furthermore, CEs require an enduring working relationship between a landowner and a CE holding organization. If landowners do not trust the organizations to be a fair, reasonable and reliable partner, they will likely be unwilling to pursue a CE. Much of what CE organizations can do to address these barriers involves building trust with landowners. In this effort, it will be important for CE organizations to maintain transparency and integrity throughout their dealings with landowners and the public at large. In addition, assuring the public that organizational personnel are competent and committed to serving landowners while conserving the land will also help. Making certain that CE organizations operate in a consistent and clear manner may help landowners feel as though they can rely on CE organizations over time.

### **Adapting CE Policy to a Broader Range of Landowners**

This research also points to the need to make the financial incentives for CEs more attractive to a broader range of landowners. In this case, traditional ranchers expressed concerns about the negative financial impacts of CEs. Similar concerns were identified as a major barrier for ranchers in Florida (Brain, 2008). Kabii and Horowitz (2006) also identified “financial circumstances” (p. 11) as one of the main factors influencing landowner decisions regarding CEs. Whether or not landowners have the means to pursue a CE is a real concern for CE

organizations working in rural areas. Although tax incentives have made CEs financially feasible for many landowners, others still do not have the means to cover the expense of donating a CE. Because many landowners express concerns about federal involvement in CEs, increases in federal funding may not be an effective way to solve the problem of limited funds. Thus, CE organizations will need to reexamine how they can reach out in the absence of federal funding.

The use of financial incentives to encourage landowners to donate or sell CEs has worked remarkably well with landowners who have the desire to implement CEs and also the means to “shoulder a significant percentage of the economic cost” (McLaughlin, 2004, p. 1). Conservation easements have been touted as a mechanism to not only conserve the ecological values situated within ranchland properties, but also as a way to preserve the ranching culture and way of life (Anella and Wright, 2004; Sheridan, 2007). However, ranchers may feel as though they are not financially situated to participate in these programs. Federal legislation was enacted in 2006 to fit CE incentives to the needs of working ranchers and farmers. This legislation allows ranchers and farmers who make 50% or more of their annual income from a business related to their land to deduct 100% of their adjusted gross income (as previously discussed on p. 14). Unfortunately, because this legislation has been set at one year intervals, landowners considering CEs may not feel confident that this incentive structure will remain permanent. It is evident that a one-size-fits-all incentive structure for CEs is not appropriate if CE organizations are to reach a wide range of landowners. The 2006 legislation is a huge step forward in the effort to adjust easement incentives to meet the needs of a diversity of landowners. Ultimately, making this legislation permanent will be necessary to make certain that these efforts continue.

Additionally, because transaction costs can be high for CE donations, CE organizations will need to direct more financial resources to covering the transaction costs of landowners who are willing to donate a CE but cannot afford to do so. Efforts to reduce the cost of CE donation for “land rich cash poor” landowners can help CE organizations and agencies reach out to traditional ranchers and other similar landowners.

Additional funding for CE acquisition is another way to improve the financial climate for CE donations and sales. Because anti-government sentiment is prevalent among many rural landowners, land trusts can advocate for increased state and county level funding rather than larger federal grants to support CE purchases. Additionally, efforts can be made to funnel federal dollars to state and county levels before they are distributed to local land trusts. Measures like this may help calm fears that with federal funding, the federal government will also retain some control of CE properties. Finally, within recent years, several counties in Montana have been successful at passing open space bonds which provide money for CE acquisition. Because open space bonds are a local, public decision to allocate funds for conservation projects, increasing efforts to secure funds in this way may increase landowner’s feelings of involvement, bolster the local image of CE programs, and address concerns regarding federal influence.

Finally, improving the federal and state regulations that govern easement transactions could help assuage fears that CE transactions are too costly both in time and resources. Creating more uniform state statutes and clarifying federal IRS regulations in order to simplify the transaction process for landowners could entice some landowners who are hesitant to engage in the lengthy and complicated process of CE donations and sales. Enacted in 1981, the Uniform Conservation Easement Act (UCEA) was created as a resource for states to use when drafting

individual conservation easement enabling statutes. However, only twenty-two states have adopted the UCEA while the remaining states have crafted individual enabling legislation, which vary significantly (Fairfax et al., 2005). As an example, Montana is one of the states that have not adopted the UCEA because it had already passed conservation easement enabling legislation when the UCEA was drafted. Disparities in state easement legislation make it difficult to uniformly address issues that arise with CE management and policy. As an example, while one state may allow for CE terminations under a certain set of principles or legal processes, another state may have an entirely different way of handling such a circumstance. To this effect, it has been difficult to establish precedents for handling challenges to CEs and there has instead been confusion regarding what laws and regulations will apply in the future. Furthermore, the lack of standardized rules to govern CEs makes it difficult for landowners to understand how their CE will be handled. Complicating things further, the IRS tax policies that direct the charitable donations of land are complex and difficult to navigate for most landowners. Audits and appraisals can come at the landowner's expense and landowners may feel unsure if appraisals will be fair. Land trusts and government agencies that work with CEs need to push for legal clarifications of state enabling statutes in an effort to reduce the complexity of CE transactions. Establishing standards and guidelines for CE appraisals could also go a long way toward easing fears regarding the financial equity of CEs. Lastly, land trusts and government agencies can work with local appraisers to create standards that landowners can rely on to be consistent.

### ***Future Research Needs***

Further research investigating the perspective of landowners who have chosen not to have a CE on their land is important. Because this study resulted in a detailed understanding of why

landowners have chosen not to pursue CEs, work that was missing in the research to date, it is evident that studies conducted with resistant landowners will be necessary to generate fresh insights. While the results of this study may be transferable to similar study areas and populations, additional research will help conservation organizations build a deeper understanding of the barriers that prevent different landowners from engaging in CE programs in other locations. Moreover, further research in this area may help illuminate the wide range of combinations of considerations that can be anticipated for different populations of landowners. Research looking into the barriers for CE participation from the landowner perspective will continue help organizations and agencies tailor their message to reach a broader range of landowners and enable them to better understand the needs and motivations of the landowners with whom they work.

Because previous research on landowner perspectives on CEs has tended to focus on landowners who already have CEs, more research could be directed towards comparing the motivations of landowners who have CEs with the barriers for landowners who do not have CEs. Previous investigations have identified the need for site specific studies in order to unveil nuanced perspectives among different populations of landowners (Ernst & Wallace, 2007) and investigating both landowners who do and do not have CEs within a specific study area could provide further insight.

Finally, because CE programs are still fairly novel, tracking how landowners feel over time will likely turn up new concepts and ideas. Because CE organizations will continue to evolve, landowner views and perspectives will likely shift to accommodate these changes over time. Tracking changes in landowner perspectives could help CE organizations stay connected

to the landowners and the communities where they work and assist in customizing their messages and practices to meet landowner needs.

One of the primary limitations of this study was the limited number of amenity and absentee owners. Future research should strive to incorporate a broader sample of landowners to account for potential differences in their perspectives. Amenity and absentee landowners are becoming an increasingly important part of rural areas of the west. This study illuminates the potential for different perspectives among landowners with differing economic situations and points to a need further research on the topic.

### ***Conclusion***

This research helps illuminate some of the specific reasons why landowners in Western Montana decide not to participate in conservation easement programs. An improved understanding of landowner concerns and barriers helps both government agencies and land trusts to understand resistance and reluctance among certain landowners. This knowledge will hopefully help them to address these concerns and barriers wherever possible, and to build on existing efforts to improve easement policy and practices, outreach and messaging, and relationships with landowners and local communities. Innovative efforts to build trust, create mechanisms that ensure flexibility within CE agreements, tailor incentives to different types of landowners, and allocate funds to off-set the costs of easements are necessary for expanded CE program participation.

## Appendix A: Interview Guide

### Getting to know the landowner:

- 1) Can you tell me a little bit about your history on this place?
- 2) Why did you choose this place or this area?
- 3) Can you tell me a little bit about the Blackfoot area in general?
- 4) How has this area changed in the last 10-20 years/since you have been here?

Probe: What sort of land use or land ownership changes have you seen?

- 5) I can see you have cattle on the land here, can you tell me a bit about your operation here? Can you tell me a little about your land here and what you do?
- 6) What are your sort of overall goals for your land?

### Conservation Easements:

Now I would like to ask you about few questions about conservation easements.

- 1) First, have you ever considered placing a conservation easement on this land?

Probe: *If yes* – Can you tell me what you considered?

If No - Or how you made the decision not to do so?

- 2) Generally speaking, what do you think about easements?

Follow-up/probe: What do you find appealing about CEs?

Follow-up/probe: What concerns do you have about CEs?

- 3) (*If they have not considered placing an easement on their land*)
  - a. Can you tell me why a conservation easement hasn't come up or why it doesn't seem relevant for your family?

4) What would make an easement more appealing to you or make you more inclined to have one, if anything?

5) What kinds of benefits would you want if you were going to put an easement on your property?

Probe/clarification: Like do you think the current financial benefits or tax benefits are enough?

6) Where would you go if you wanted to find more information about easements?

7) If you were considering an easement, would you want to talk with a non-profit like (the Bitterroot Land Trust, Five Valleys Land Trust, Montana Land Reliance) or a government agency like U.S. Fish and Wildlife Service or Montana Fish Wildlife and Parks?

Probe: Why would you choose that organization?

Are you more familiar with it?

Do you know other people who have worked with that organization?

Have you heard positive or negative things about those organizations?

8) Do you think if you were really in a tough place financially would you be more likely to consider an easement?

9) In your mind, how do conservation easements affect landowners' property rights?

10) What do you think about conservation easements being forever?

Probe: How do you think a conservation easement might affect future generations?

- 11) Earlier when I asked about your goals for your land, you mentioned..... Do you think a conservation easement would help you realize those goals or would it detract from them?

**Wrap up.**

- 1) Is there anything else you would like to say about any of the topics that we've covered?
- 2) Do you think there is anything I should be asking about these topics that I'm not already asking?
- 3) Is there anyone else you would recommend that I talk to?
- 4) Would it be okay if I let them know that you recommended that I talk with them?

## Appendix B: Demographic Questionnaire

**General Information about You:** (for participant to fill out at the end of the interview)

*This information, like your responses to interview questions, will be strictly confidential and your answers will never be connected to your name or your property.*

Are you male or female? \_\_\_Male \_\_\_Female

What is your age: \_\_\_\_\_ years

What do you do for a living? \_\_\_\_\_

How long have you lived here? \_\_\_\_\_years

How long has the land been in your family? \_\_\_\_\_years

Is your property here in the Bitterroot/Blackfoot/Beaverhead your primary residence?

\_\_\_Yes \_\_\_No

If not, for how many months per year do you live on your property here? \_\_\_\_\_months.

Approximately how many acres do you own?

\_\_\_400 – 1000      \_\_\_1000 – 5000      \_\_\_5000 or more

## **Appendix C: List of Codes**

Against Development  
CE Considerations  
CEs and Amenity Owners  
CEs and future generations  
Community Changes  
Control  
Financial Considerations  
Financial Incentives  
Forever Factor  
Future Goals for the Land  
Importance of home/importance of place  
Improvements for CEs  
Lack of Trust with Organizations and CEs  
Landowner History/Info  
Need for Flexibility  
Need to Keep Future Options Open  
Past Experience with CEs  
Positive thoughts about easements  
Preferences for Organizations  
Property Rights  
Rural Community  
Stewardship  
Trust in the Following generations  
Wildlife

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