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Rock Creek Trust at work: A case study on conservation easements in the Rock Creek drainage

Kathryn C. Goldman

The University of Montana

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The Rock Creek Trust at Work:
A Case Study on
Conservation Easements in the Rock Creek Drainage

by
Kathryn C. Goldman
B.A. The University of Vermont, 1991
presented in partial fulfillment of the requirements
for the degree of
Master of Science
The University of Montana
1997

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12-4-97
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Land trusts are private, non-profit organizations, defined by the federal tax code as "public charities." These charities are qualified to receive tax deductible donations of land, cash and conservation easements, according to the Internal Revenue Service (Land Trust Alliance, 1993).

I. Overview: Areas of Interest and General Themes in the Case Study

This paper is about boundaries, the political and physical boundaries that surround private property, and how one land trust, the Rock Creek Trust, is working with landowners to formally and legally include wildlife, open space and water quality within these boundaries in the Rock Creek drainage in western Montana. It is also about landowners who have given a great deal of thought to the land bounded by their private property rights and what makes that land special, both on a personal level and in a far larger sense, as a landscape that sustains human and non-human communities.

Two-thirds of the land in this country is privately held (Diamond and Noonan, 1996). Although the actual land ownership patterns differ across regions and states, with ownership in the east and southeast under a far greater percentage of private ownership than that in the Rocky Mountain west, the role of private property is crucial to open space and wildlife habitat conservation in every region of the country.

In the Rocky Mountain West, many of the region's river corridors, ranch lands and farmlands lie in the valleys below National
Forests or other government owned lands. These private acres often provide critical habitat for wildlife: river corridors provide breeding habitat or permanent habitat for many species, offer spring migration routes for some, and still other lands, such as lower elevation ranch lands bordering National Forests or state lands, provide winter range for elk and other wildlife (Hansen et al., 1995). The Rock Creek drainage is no exception to this rule. Although there are many federal lands in the drainage, private lands play a crucial role in maintaining wildlife populations. Land-use in this area also plays a part in determining the level of water quality for fish populations as well as people in the drainage. See Figure 1.1 for a map of ownership patterns in the Rock Creek Drainage.

Located in Granite County, the Rock Creek drainage is almost entirely unprotected by planning regulations. The county has no comprehensive plan. The Rock Creek Trust, a private land conservation organization, focuses on preventing heavy development and subdivision on private lands in the area, protecting habitat for wildlife such as elk and bighorn sheep, water quality for west slope cutthroat trout and bull trout, and preserving the rural character of the area. The organization's main tool at present, like many similar land conservation groups, is the conservation easement.

As the main tool of land trusts nationwide, the conservation easement is becoming a permanent part of land-use patterns in many U.S. cities, towns and rural areas. A conservation easement is essentially a legal agreement between a qualified agency or non-profit organization, typically a land trust, and a landowner that permanently restricts or limits uses of the land in order to protect
conservation values (Land Trust Alliance, 1991). A non-profit organization qualifies to hold a conservation easement through its mission, and it's status as a recognized public charity by the Internal Revenue Service (IRS). Public agencies, land trusts or historic preservation societies all incorporate the public's benefit in their missions and therefore may hold conservation easements. The term conservation easement is actually a generic term used to describe different agreements which may vary with the land and its owners (Diehl and Barrett, 1988).

Platt (1991) and Diamond and Noonan (1996) agree that the private landowner plays the primary role in determining land use patterns in the United States. According to Platt, when it comes to land use planning, "the public role in the United States is essentially reactive to the decisions of the property owner"...and "it is the owner's decision to change the use of land that triggers the public/reactive role." This exchange of information between the public and private sectors plays a key role in shaping our country's landscapes; the boundary between the private landowner and the public's needs and wishes cannot be drawn with a simple, linear boundary. Rather, it is a semi-permeable boundary, one that requires regular revision of the needs on both sides in order to maintain itself. The conservation easement is one tool which addresses needs on both sides of the public/private boundary when it comes to land use.

Seizing on a tool which appears to successfully encourage a public goal on private land, President Clinton amended federal tax policy this year to offer additional encouragement and financial rewards to private property owners who conserve their land through
the use of conservation easements (Lindstrom, 1997). As such, private land conservation can be thought of as a public value; the public pays for the conservation work done by the private landowner in federal taxes it never takes in. Private land conservation, then, exists in a larger social sphere than that of the individual even as it works on the individual level.

This case study attempts to identify some key aspects of the conservation easement process at the landowner's and the conservation organization's level. In covering the details of the conservation easement's recent popularity and describing how and why landowners in the Rock Creek drainage placed easements on their land, or decided against doing so, I have come across some general themes that permeate each of the four easements I studied, each one contributing to the success or failure of the Rock Creek Trust's goal of placing permanent restrictions on the land. Financial incentives, a desire to see their land remain unchanged by further development, a sense of trust built up between landowner and the land trust, and the personalized attention a landowner receives during the easement process all play a role in each of these easements, in different ways unique to each landowner.

It is difficult to separate out the motivations of individual landowners when conserving their land. With the conservation easement's eligibility for tax deductions, we are now able to place a specific dollar figure on single property rights and it is tempting to reduce the value of open space and what it means to simple economics. The foundation for the increasing success of private land conservation organizations, however, is not simply economic. Their
success rests as well on the strong personal beliefs of landowners and their visions for the land and lives that will be here long after they are gone. These landowners make a conscious choice to trade the short-term, financial benefits of development on the land they own for, in part, the long-term, social benefit of open space, habitat, and agricultural land (Banighen, 1990 in Pilarski, 1994).

The financial incentive(s) to put an easement on private property do remain; they often cement a landowner's commitment to placing a conservation easement on her land. However, they may be less than the development value of land and this lesser financial status reflects how valued land itself is to those who chose to conserve their property. The time-consuming nature of the conservation easement process can also eat into the financial rewards for the restrictions, making development the obvious choice for a larger financial gain on land.

Additionally, one of the key general themes which crosses into each easement in the case study is that of a relationship built on trust between the landowner and the Rock Creek Trust. The easement process takes time, and it is an individual-based process; Rock Creek Trust's Executive Director, Ellen Knight, works one-on-one with landowners over time periods which vary from months to years on different easements. The intensive nature of the process itself contributes to what landowners feel is a sense that they can trust the organization they are working with. The Rock Creek Trust consciously seeks to build this kind of trust in its negotiations and enjoys the benefits of such investment: land conserved in the drainage and a
favorable recommendation concerning the process from landowners it has worked with over the years.

The financial incentives in private land conservation play a special role in this case study of conservation easements, as the Rock Creek Trust has a trust fund which it uses to purchase easements. The most commonly used easement, the donated easement is a part of the Trust's program, but the purchased easement, also known as a bargain sale easement in this case study, plays a larger part in the organization's protection strategy.

A donated easement offers the landowner no cash payment, but in exchange for donating an easement that meets the requirements of the tax code, a landowner can qualify for an income tax deduction that reflects the value of the donation. A real estate appraiser uses the method called "before/after" to evaluate the value of the conservation easement; the rights the landowner gives up are quantified and subtracted out of the fair market value of the land, as the value of the easement. Easements also reduce estate taxes, which is often an even more financially rewarding benefit than an income tax deduction.

A bargain sale easement is a type of purchased easement that is essentially a percentage of a percentage. The difference between the price paid by the land trust for the easement and the fair market value of the easement is viewed as a charitable contribution by the IRS and may also be deducted off the landowner's income taxes. For the land trust, a bargain sale makes purchased easements affordable, in essence pricing the easement in reach of the non-profit sector (Land Trust Alliance, 1991; Diehl and Barrett, 1988). Figure 1.2
shows some basic details for each donated versus bargain sale easements.

Purchased easements are expensive and few land trusts can afford to pay for easements. Rock Creek Trust's trust fund makes it unique among land trusts nation-wide because it affords the group the luxury of being able to purchase easements. About half of the nation's local trusts have budgets under $10,000. For these trusts, the donated easement is the staff of life. Only 23% of land trusts have budgets over $100,000 (Wright, 1994).

To best acquaint myself with the major types of easements, the case study includes one donated easement, one failed easement, and two purchased easements, both of which were bargain sales, and one of which involved a government agency. Rock Creek Advisory Council member Kim Reineking and his wife Ruth Reineking conveyed the donated easement, held by Five Valleys Land Trust (FVLT). J. Stuart Pritchard's easement, also to be held by the FVLT, was the failed easement. Bob Neal's easement on Stony Creek was a bargain sale, held by FVLT. Finally, the Gillies family's bargain sale easement is held by Montana's Department of Fish, Wildlife and Parks.

The price of one bargain sale in the case study, the Gillies easement, prohibited Rock Creek Trust (RCT) from completing the project without financial help from the MT Department of Fish, Wildlife and Parks. Government involvement with this easement has caused it to differ greatly from the other three easements.

Private land conservation is a requisite part of maintaining or restoring the benefits of open spaces for people and animals. It is my hope that this case study will show how conservation can
successfully occur on private lands, creating a more unified landscape that joins humans and wildlife, a landscape in which property lines don't necessarily mean the separation of the human community and the natural world.

II. INTRODUCTION

A. Land Trusts— history of their growth

Although land trusts have recently sprouted up across the country, the concept started in 1891 when Charles Eliot formed the Trustees of Public Reservations (the word public was removed in 1954 to avoid confusion with public resource agencies). Eliot's idea was to form an organization with a board of trustees which would garner the "power to hold land free of taxes in any part of the Commonwealth for the use and enjoyment of the public" (Abbott in Montana Land Reliance and Land Trust Exchange, 1982). Another early use of easements occurred in the 1930's when the National Park Service acquired easements for the Blue Ridge Parkway in Virginia and North Carolina, and the Natchez Trace Parkway in Mississippi, Alabama and Tennessee. The easements, totaling almost 1,500 acres along the Blue Ridge Parkway and more than 4,500 acres along the Natchez Trace Parkway, were purchased by the states and then transferred to the federal government.

In the 1950's the state of Wisconsin also launched a scenic easement program, along the Mississippi River to protect the Great River Road. In 1959, with William H. Whyte's publication of a technical bulletin for the Urban Land Institute entitled Securing Open Space for Urban American: Conservation Easements, easements began
to capture national attention (Watson 1981). The National Park Service used purchased easements to create Idaho's Sawtooth National Recreation Area in the 1960's (Wright 1993b). Up until this point, easements were largely a tool of state and federal agencies, and they were often purchased. However, as the national desire for land conservation began to influence public policy, the technique began to cross into the private sector. In particular, non-profit organizations began to use the tool. By 1965, 132 land trusts existed in the United States, the bulk of them located in the Northeast and Middle Atlantic states (Wright 1993a).

By the close of the 1960's and into the 1970's, historic preservationists, nascent land trusts and land conservation organizations began to wield the conservation easement with purpose, saving historic structures and open spaces in communities across the country, and the technique was being formally recognized in the halls of government across the country. Concurrently, a national debate over land use regulation and planning cropped up as part of America's growing environmental consciousness. In 1972, Congress passed the Coastal Zone Management Act, providing funds for state coastal land-use plans (Wolf 1981). On the state level, this debate also prompted new legislation governing the private sector. States began to pass their own legislation governing the use of "preservation restrictions" by private organizations. Twenty-nine states had such legislation by 1975, of which Montana was one.

Montana's own law regarding the use of conservation easements has its roots in the 1969 Open-Space Land Act. Finding rapid growth and the spread of urban development serious problems
for state and local government, the legislature decided that "the acquisition or designation of interests and rights in real property by public bodies to provide or preserve permanent open-space land is essential to the solution of these problems. " Public bodies meant state, counties, cities, towns and other municipalities (Laws of Montana 1969). The legislation attempted to create a relationship between communities' comprehensive plans and their perceived open-space needs, directing that "use of the real property for permanent open space land shall conform to comprehensive planning...in the area in which the property is located." Defined as "planning for development of an urban area" comprehensive planning included coordination of any plans or activities, such as land acquisition, between state and local governments and within each of these levels of government (Laws of Montana 1969).

In 1975, conservation was an issue in every state legislature on the heels of the Coastal Zone Management Act, and the use of the scenic or conservation easement was also growing. Montana's forty-fourth legislature amended the 1969 law with the passage of the Open-Space Land and Voluntary Conservation Easement Act. The underpinnings were similar to the 1969 act, calling for planning for development and open-space to coincide, but the amendment formally recognized the specific tool of the conservation easement. Additionally, it noted "that the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest" (Laws of Montana 1975). Land trusts and other qualified conservation organizations were now recognized as actors in the
process of securing open-space. As fee title acquisitions require a large amount of capital, other methods like the conservation easement began to make sense. Additionally, it also followed that other actors aside from local, state or federal governments could be valuable in an expensive national goal like land conservation. In particular, Section 62-603 of the Open-SpaceLand Act R.C.M 1947 was amended to define the term conservation easement, noting it is "an easement or restriction running with the land," even if the specific agreement does not state as much (Laws of Montana 1975).

According to this state law, conservation easements would always be permanent, whether language which acknowledged this was present in the agreement or not. With this legislation, the Montana legislature at once solidified the conservation easement's singular strength, and provided access to the tool for non-profit organizations dedicated to land conservation. Essentially, the legislation heavily contributed to the establishment of land conservation as a state-wide goal.

Revenue rulings published in the early 1970's by the IRS, mostly in favor of the use of the conservation easements, further legitimized the tool (Watson 1981). Subsequent to these rulings by the IRS, donated easements, whose only financial benefit to the landowner comes in the form of an income tax deduction for the monetary value of the easement, started to gain power in the land conservation community.

B. Goals of the Case Study
A highly successful tool, the conservation easement has enabled land trusts to protect property owned by individuals with widely differing land-use agendas. At its heart, this paper seeks neither to challenge nor validate the notion of private property rights. At the outset, I simply recognize their key role in the proliferation of land trusts and their particular brand of land conservation. This paper seeks to understand the process of completing a conservation easement and, in doing so, to investigate the details of how the conservation easement has become such a successful conservation tool across political and geographical landscapes. Having selected projects I feel give a well-rounded perspective on the general easement process, I focus on four separate conservation easements at one land trust in Montana, the Rock Creek Trust (RCT).

Through interviewing Rock Creek Trust staff, the landowners the trust has worked with, and other important actors on each easement, I have attempted to document the critical variables in each transaction that caused four different easements to either fail or succeed. The case study easements include at least one example of both situations: one landowner decided against pursuing the easement near the final stages of the process, while the other three followed the process to the end, allowing Rock Creek Trust to successfully secure a conservation easement on the property.

Additionally, I have attempted to characterize what the process looks like from the both the landowner's and the trust's perspective on each piece of property. A discussion of both Rock Creek Trust's and the landowners' goals and how those goals manifest as
restrictions or allowed uses is part of the description for each easement. Ultimately, the paper focuses on a process that is highly personalized. Each easement possesses something unique to its process to teach students, teachers and landowners about conservation easements and private land conservation at the Rock Creek Trust.

C. *The Conservation Easement: Details of the Tool*

The central concept in private property ownership is the idea of fee simple title, wherein a landowner may deal with the land as a completely marketable commodity. When someone owns a piece of property, he or she owns a bundle of rights associated with that piece of property: the right to harvest timber, for example, or the right to build a structure on the land. These rights may be conveyed in the marketplace. These interests, in addition to such things as road easements, are positive because they allow the landowner to do something (Wright 1993b).

A conservation easement is considered a negative easement because it restricts the landowners set of rights; placing such an easement on a piece of property means that the landowner permanently forfeits some, but not all, of his or her rights. These rights then rest in the hands of the eligible organization. The written easement details the rights and restrictions on the owner's uses of the property in question, as well as the responsibilities of the landowner and the easement holder (Diehl and Barrett, 1988; Land Trust Alliance, 1993; Wright 1993b).
An organization can acquire easements one of two ways: a landowner may donate an easement or an organization may purchase an easement. As most land trusts spend most of their limited financial resources on land acquisition and stewardship, the donated easement is the most common kind of conservation easement.

At present, the IRS considers an easement donated in perpetuity to a qualified organization eligible for a tax deduction only if it is donated specifically for conservation purposes. The acceptable conservation purposes can be separated into five categories: public recreation and/or education, significant natural habitat, scenic enjoyment, pursuant to local governmental policy (farmland and forestland included), and historic preservation. Once an easement meets the qualifications for at least one category, the donation can be of potential financial benefit, depending on the landowner's tax situation (Barrett and Diehl, 1988; Knight, 1997a).

**D. The Conservation Easement: Sources of It's Popularity**

Today there is a growing reluctance to add land to public ownership, and an increase in the perception that government is infringing on individual rights (Hocker in Diamond and Noonan, 1996; Ringholz, 1996). Government regulation is not unconditionally acceptable to many people and communities. This reluctance to regulate land use complicates conservationists' goal of minimizing the effects of unchecked development. Many groups, including private property rights advocates, are calling for less regulation and smaller government. Whatever the agenda of the groups advocating smaller government, amidst this sort of opposition to big government,
private organizations like land trusts are uniquely situated to complete conservation's goals, and their numbers continue to grow.

The flexibility of the easement document is a major factor in its increasing popularity (Hocker in Diamond and Noonan, 1996; Wright, 1993b). Conservation easements may be tailored to allow for specific uses in relation to agriculture, to allow or prohibit timber harvest, or to simply keep a piece of land wild. "It's a process of give and take," says Rock Creek Trust's Executive Director Ellen Knight (1997a). Without governmental powers, land trusts are non-threatening and they have achieved marked success, conserving over four million acres of land nation-wide, using a host of voluntary methods. (Hocker in Diamond and Noonan, 1996; Land Trust Alliance, 1993).

The proliferation of land trusts and their use of the conservation easement are also due to the speed at which these organizations can work as well as their versatility. Since these organizations are not encumbered by some of the bureaucratic procedures government agencies must abide by, they can often move quickly when government cannot. Unfettered by the regulations tied to public money, land trusts can more easily experiment with funding sources and craft new solutions for unique situations (Hocker in Diamond and Noonan, 1996). Although land trusts do not operate outside government regulations, they can fundraise from private sources and use the money quickly, which is often crucial in situations where conservation values are threatened.

Additionally, disillusionment with the impact of government regulations contributes to the popularity of conservation easements. To some degree, regulations on land, especially private land, have not
met the public's needs. Local planning regulations are often rendered ineffectual due to political struggles, changes of power and selective enforcement of guidelines or rules (Diamond and Noonan, 1996; Wright, 1993a). These planning oversights vary with regions and political climates alike, but in Montana they are not encouraging. In Missoula County between 1973 and 1984, over 90% of all subdivided tracts created received no local review. Between 1987 and 1991, the situation continued to favor development. Roughly 5% of subdivided acres received formal review and approval in the regulatory planning process. (Wright, 1993a).

Development, particularly in high-amenity regions like the Rocky Mountain West, continues at a detrimentally fast pace, and with an economy that is shifting its focus from manufacturing to service and information, much of that development is free to creep onto rural lands outside city or town centers (Diamond and Noonan, 1996). Career land conservationist John Wright (1993a) notes that "land use regulations focus on how land will be developed not if it should be." Private landowners in communities across the country are deciding that they want to conserve their land, and they are using conservation easements to get the job done.

In the last decade, the flexibility of the conservation easement, the tax benefits of the donated easement, rapid growth in communities across the nation and the shortcomings of regulation combined to foster further growth in the number of land trusts, doubling their numbers in the years since 1985. Today, there are roughly 1,100 land trusts working in the U. S. in all regions of the country (Wright, 1993a; Wright, 1993b; Land Trust Alliance, 1993).
Still, meeting their goals requires that land trusts operate within a complicated nexus of private property rights, politics and natural resources. The details of the work Rock Creek Trust has done with four of its easements reveals issues that a land trust must negotiate to achieve its mission.

III. The Rock Creek Trust: History and Mission of the Trust

A. History: The Formation of the Rock Creek Advisory Committee

With the formation of the Hell Gate National Forest within the United States Forest Service (USFS) in 1905, all the lands in the Rock Creek drainage that would later become parts of the Deer Lodge and Lolo National Forests fell under USFS management. By the 1950's, timber harvest was part of government use of these lands. The post-war housing boom fostered a thirst for timber and new equipment opened up the steep ground of western Montana and the Rock Creek drainage (Montana Watercourse, 1991).

In the following two decades, with the passage of the Wilderness Act and, as logging practices of the USFS fell under increasing public scrutiny, Rock Creek became one of the battlegrounds over timber mismanagement and wilderness recognition. Conservationists, the Forest Service, and those who wanted to use the land for industry, struggled over the nation's forestlands, as the rules of the management game started to change. The national trend toward increased environmental regulation, represented by the passage, in particular, of the 1969 National Environmental Policy Act (NEPA), strengthened conservationists'
demand for changes in the way our forests were managed (Montana Watercourse, 1991).

In 1968 the Montana Fish and Game Department (now the Montana Department of Fish, Wildlife and Parks) announced its intent to oppose USFS roads in calving areas and summer and winter elk ranges of the Rock Creek drainage (Montana Fish Wildlife and Parks Department, 1984 in Montana Watercourse, 1991). The next year the Montana Sierra Club Group formed in Missoula with the specific focus of protecting Rock Creek. Not long after that Trout Unlimited's West Slope chapter formed in Missoula. At the same time, the Western Montana Fish and Game Association found its membership reaching over 7,000 as timber harvest and wilderness issues took up more time and print in the news.

These events and the increasing desire for the benefits of wilderness, brought the national debate to a peak in Rock Creek canyon (Sale, 1993; Montana Watercourse, 1991). A series of 1970 articles in the Missoula, Montana Missoulian, contributed to mounting opposition to USFS logging in the drainage. Lolo Forest Supervisor Jack Large allowed for the idea of public participation in forest planning, but insisted that timber harvest practices didn't need to be monitored with water quality studies (Montana Watercourse, 1991). Later, the Sierra Club and other environmental factions advocated not only water quality studies in the drainage, but also a partial moratorium on logging. The MT Fish and Game Department also opposed USFS practices, supporting a moratorium until citizen participation could secure a management plan to preserve the water,
Members of all these groups and other conservationists were deeply concerned about USFS plans to log 7,500 acres of timber in the Rock Creek drainage in the early 1970's. The MT Sierra Club and the West Slope Chapter of Trout Unlimited, Inc. made a pivotal move "when they filed an appeal with Forest Supervisors Jack Large on the Lolo, and Bob Lancaster on the Deerlodge" in 1971 (Montana Watercourse, 1991).

The appeal and its invocation of the nearly untested strength of NEPA, prompted a decisive change in the USFS's public stance on timber in Rock Creek. Regional Forester Steve Yurich says that although the appeal was discussed at higher levels, it basically stopped in Lancaster's and Large's offices where he and the two foresters hammered out a plan that satisfied the conservationists because it allowed public participation in forest planning.

Conservation had come to stay in Rock Creek. Yurich appointed representatives from the state Fish and Game Department, the Montana Wildlife Federation and the University of Montana to meet with the Forest Service. This core group invited representatives from eighteen organizations into what became known as the Rock Creek Advisory Committee. The organizations represented the contentious interests in the drainage: mining, timber, agriculture, recreation, conservation, and state and federal government. The proposed committee would "plan data collection and devise management alternatives" in an effort to both comply with NEPA and address the
polarization between members of the groups (Montana Watercourse, 1991).

The Rock Creek Advisory Committee helped to make water quality the top priority in the drainage. In 1973, a subcommittee of the committee had a finished draft of a detailed water quality monitoring plan for the creek. By May of that year, the Forest Supervisors on the Deerlodge and Lolo forests, signed a letter agreeing to adhere to the Rock Creek Advisory Committee's monitoring standards. The USFS also concluded that it should stop logging the drainage, recognizing the ultimate goal of the Rock Creek Advisory Committee. Having achieved its initial goals, the Rock Creek Advisory Committee held its final meeting in June of 1976 (Montana Watercourse, 1991; Knight, 1997b).

The controversies over land use in the drainage, however, were far from over. The National Forest Management Act of 1976 (NFMA) was starting to take hold and when it did, the "Forest Service regulations reviewed and approved by the Rock Creek Advisory Committee were shuffled aside for an entirely new process" (Montana Department of Fish, Wildlife and Parks, 1984 in Montana Watercourse, 1991). The NFMA planning process supplanted the Rock Creek Advisory Committee's standards and the Forest Service again failed to monitor water quality before holding timber sales. Although the timber sale moratorium was in effect until 1983, logging was permitted on tributaries of Rock Creek. The state picked up on this point and, angry because state comments on fish and game habitat hadn't been incorporated into the Lolo Forest Plan, called for the Committee to reconvene. The Rock Creek Advisory Committee
reconvened informally and the citizen participation group once again focused on water quality (Montana Watercourse, 1991). By 1986 the Lolo and Deerlodge Forests had Forest Plans that agreed to follow the Committee's guidelines on water quality but by that time another battle pitted conservationists against the USFS, and the Rock Creek Advisory Committee would see great changes in it's life as an organization (Montana Watercourse, 1991).

B. The Powerline Compromise

The clash had it's roots in the early 1970's, when Montana Power requested permission to run a transmission line from Hamilton to Anaconda across Skalkaho Pass, which entailed an eighty foot wide clearing. This request was denied. Years later, the power lines reared their heads again, this time under a consortium of five companies: Bonneville Power Administration, Montana Power Company, Puget Sound Power and Light Company, Portland General Electric and Pacific Power and Light Company. The consortium planned to run lines across the mouth of Rock Creek canyon, carrying electricity west from Garrison, Montana. The Forest Service, the Bureau of Land Management and the Bonneville Power Administration granted permission in May of 1983 for the power lines to run across the canyon (Montana Watercourse, 1991).

Protesting that the power lines would have crossed five different roadless areas eligible for designation as wilderness, the West Slope Chapter of Trout Unlimited, the Montana Wildlife Federation and the National Wildlife Federation, as well as the Montana Department of Natural Resources, appealed the Forest
Service's and Bureau of Land Management's decision. The Forest Service issued a "stay of construction and in August, 1983, the parties reached a compromise. The high-tension lines would cross Rock Creek, and in mitigation, the power companies would give $1.65 million to a trust for the conservation of Rock Creek" (Montana Watercourse, 1991). The concerned parties signed the trust fund agreement in September 1986 (Rock Creek Trust and Five Valleys Land Trust, 1997).

Echoing the legacy of the Rock Creek Advisory Committee, the State Board of Natural Resources and Conservation administered the money through another advisory group, the Rock Creek Advisory Council (RCAC). Once again, conservationists joined forces to guard the creek, working with the state and local Rock Creek citizens. The RCAC consisted of two representatives from Trout Unlimited, one each from the Montana Wildlife Federation, the National Wildlife Federation, the Montana Department of Fish, Wildlife, and Parks, the state Natural Resources and Conservation Department, as well as a Rock Creek resident property owner. However, representation was "deliberately allocated so that the citizens' groups that brought the appeal-as opposed to property owners and the state-would remain in the majority" (Montana Watercourse, 1991).

Halfway between a non-profit and a government agency, the RCAC combined the administrative powers of the Department of Natural Resources and Conservation, the policy-making authority of the Board of Natural Resources and the goals and long-term commitment of the private groups that originally contested the power lines. The conservation groups' goals were varied, but all
focused on water quality in the creek and maintaining it for the fish and wildlife populations in the drainage. These groups initiated the projects the RCAC would take on, while the Board of Natural Resources and Conservation held the money in the trust to fund the projects, as well as the power to veto projects.

The RCAC focused on preserving open lands in the drainage for wildlife, fish and people. The organization's approach included monitoring compliance with previous plans and agreements, tracking land use, ownership and stream access, securing conservation easements, funding conservation and education projects and encouraging cooperation among public and private agencies active in the area. Because it was not recognized as a non-profit and qualified to hold its own conservation easements, the RCAC hired the Montana Land Reliance (MLR), a state-wide land trust to hold the organization's easements (Montana Watercourse, 1991; Knight, 1997a). The Montana Land Reliance had up to that point only negotiated donated easements and, since the RCAC would be able to deal in purchased easements, MLR welcomed the opportunity to learn about the dynamics of purchased easements (Knight, 1997b).

The trust fund the RCAC had to administer for conservation activities was envisioned as "an expendable trust" (Knight, 1997b). The costs of private land conservation caused those who hammered out the trust fund agreement to expect a short life for the RCAC. The RCAC did live a short life, but instead of spending the money quickly and fading from the landscape of conservation in the drainage, the RCAC re-invented itself and emerged as a new organization, the Rock
Creek Trust, with a slightly different emphasis in carrying out the same mission (Knight, 1997b).

C. The Rock Creek Trust's Present Status

In 1995, the Rock Creek Advisory Council was released from government oversight and became the Rock Creek Trust (RCT) and the Rock Creek Advisory Council (the Council), yet another variation on the conservation group's overriding mission to conserve land and water in the drainage. Five Valleys Land Trust took on the Rock Creek Trust as a major project, holding RCT's easements and controlling the trust fund. The Board of Natural Resources and Conservation transferred "all trustee responsibilities and authority for the management of the Rock Creek Trust Fund...to the Five Valleys Land Trust which shall have the authority and responsibility to insure that Rock Creek Trust Fund continues to be used and managed to attain lasting conservation of the Rock Creek drainage" (Rock Creek Trust and Five Valleys Land Trust, 1997). The change also prompted the Trust to sever ties with the MLR.

Although Five Valleys Land Trust, assumed the "responsibility and authority for the management of the trust fund," the Council took on the responsibility of advising FVLT on matters "related to the Trust Fund and conservation in the Rock Creek drainage" (Rock Creek and Five Valleys Land Trust, 1997). A number of forces prompted this change. The idea of privatizing was appealing to the Board of Natural Resources and Conservation as a government "downsizing" effort. Additionally, a politically diverse entity such as the Board of
Natural Resources and Conservation didn't always agree with the agenda of the RCAC (Knight, 1997b).

Staff at the RCAC were also in favor of the change; moving to the non-profit sector would allow the Trust to pursue conservation easements with more greater speed and more fundraising options. Ellen Knight (1997b), Executive Director of RCAC and now Director of Rock Creek Trust, especially enjoyed the change because she "didn't have to travel to Helena to get decisions made."

Having FVLT as a boss is an arrangement which benefits RCT, in part, because of the Trust's potentially limited life. The specifically designated space of the Rock Creek drainage limits the work RCT can ever hope to accomplish, and its trust fund has, since it's origin, been considered expendable. Should the trust reach the end of either money or land to protect, FVLT will oversee the stewardship on RCT's easements, continuing to hold and enforce their terms. Ellen Knight (1997b) also notes that she is "glad to have other staff to work with" in a business which requires expertise in land protection and creative fundraising.

The RCAC (the Council) has evolved into an advisory board, more intimately involved with the trust than the FVLT board. The Council advises FVLT on "matters related to the (sic) Trust Fund and conservation in the Rock Creek drainage." Additionally, the Council formulates and recommends a "comprehensive strategy for the conservation of land, water, and wildlife in the Rock Creek drainage" (Rock Creek Trust and Five Valleys Land Trust, 1997). The current situation provides Ellen Knight with a few different bosses, a subject she considers both cumbersome and unavoidable (Knight, 1997b).
The original 1986 trust fund agreement creating the Rock Creek Advisory Council required representatives from Montana Wildlife Federation, National Wildlife Federation, the West Slope Chapter of Trout Unlimited, Rock Creek landowners, and representatives from the Department of Natural Resources to formulate the conservation projects paid for by the trust fund. With a different focus than RCT, Five Valleys Land Trust and its Board cannot reasonably be expected to provide fully for this representation. Despite the fact that it holds the 501(c)(3) for the Rock Creek Trust, FVLT cannot serve all of the RCT's needs as an organization. The Council fills the balance of those needs as required by the agreement which established the trust fund.¹

As a land trust, the RCT concentrates the bulk of its efforts on private land conservation projects. The more complete emphasis on easements distinguishes it from its previous life. Although RCT still may do educational projects, monitor past agreements and track land use, it spends far less time on these matters. The trust now uses the conservation easement as its main tool to carry out its mission and devotes the bulk of staff time to negotiating and securing these private land conservation agreements (Knight, 1997a). To date, the RCT has secured easements on 4,673 acres of land in the drainage.

¹ Rock Creek Trust's advisory council includes members from each of the non-profit organizations involved in the establishment of the trust fund, plus Five Valleys Land Trust Board members, and Rock Creek landowners: John McBride, Chair MT Wildlife Federation, Paul Bach, Trout Unlimited, Kim Reineking, Trout Unlimited, Rich Clough (ex officio) MT Dept. of Fish, Wildlife and Parks, Chuck Tribe, Five Valleys Land Trust, Ron Beck, Rock Creek Landowner, and Dave Hansen, Rock Creek Landowner. Advisory members include: Sady Babcock, Natural Resource Planner, Bill Demmons, Realtor, Kraig Kosena, Appraiser, Ron Marcoux, Rocky Mountain Elk Foundation, Craig Langle, Certified Public Accountant, and Tom Sanders, Rancher.
along 11.5 miles of Rock Creek (Rock Creek Trust, 1997). See Figure 1.3 for a history of the organizations that lead up to the formation of the Rock Creek Trust.

**D. Criteria for Rock Creek Trust's Easements**

Using a map of the land ownership patterns in the drainage created from the county land records, a professional land conservation company, Bruce Bugbee and Associates, identified key parcels of land on which RCT should pursue easements (Knight, 1997b; Bugbee, 1997). Bugbee, a former land use planner in Montana, created an identification system drawing on his land use planning background and modified it to focus on the conservation values the trust fund was supposed to protect. The criteria also considered the Internal Revenue Service's framework of regulations (Diehl and Barrett, 1988) regarding the deductibility of conservation easements; Bugbee used these to ensure that his criteria would guide the Rock Creek Trust to properties with significant public values. Placing the private ownership pattern against this series of criteria, Bugbee's firm analyzed the conservation values of private lands in the drainage.

The criteria included: identifying the value of the natural features on the property, categorizing these habitats, species, and/or open space as nationally, statewide or regionally rare, evaluating the degree of threat to the property's conservation values, evaluating the uniqueness or importance of historic structures or historically valuable land areas and evaluating the fragility of these structures, habitats or species. Bugbee's system was based on assigning
numerical ratings for each value, the higher and more valuable numbers residing with the more precious land areas or endangered species, for example (Bugbee, 1997). See Appendix A for greater detail.

According to Ellen Knight (1997a), the results of Bugbee's work are expectable: "there aren't a lot of landowners in Rock Creek so the key locations are the bigger pieces with a lot of stream frontage." The process of narrowing the focus to establish the single top priority involves a combination of factors: what is threatened, who is interested in doing an easement, where the people live full-time. Although these criteria are separated from the land, they have nearly equal effect in establishing where and when to pursue easements. Neighbors often influence each other when it comes to the easement process. The process is not, therefore, always linear.

A property may be high priority but the landowner may not be approachable for any number of reasons. Securing another easement, one of perhaps lower priority in terms of the conservation values, with another area landowner may influence the high priority property owner and in turn bring about a second easement. Personal or financial vulnerability for landowners is one factor that can supersede all others. Professional land conservationists have noted repeatedly that when a family is in transition, in situations where the family is making financial decisions due to deaths or financial needs, the opportunities for conservation on that property may be lost permanently if they are not negotiated successfully at that time (Kiesling, 1996; Knight, 1997a).
Establishing criteria for identifying easements is one of the most basic and important steps a land trust can take. Beneath the criteria a land trust adopts lay the basic goals of the organization, its mission fleshed out in bare-bones language to refer to during confusing or questionable transactions. Russell Brenneman, a land conservationist who has written extensively on organizational behavior in this field, notes that "a trust's decision to restrict the use of a parcel of land must be based on sound and carefully articulated reasons...the public benefit, even if long term and even if of a sort to which not all would subscribe, must be demonstrable" (Brenneman in Brenneman and Bates, 1984).

Barrett and Diehl (1988) corroborate Brenneman's warning and put it simply. "Carefully thought out written criteria that are based on providing public benefits will assure both public and private agencies that they are accepting only easements that serve the public good and that can be enforced over the long term." The authors offer additional reasons for spending time to craft solid criteria: solid criteria will lead a land trust away from easements that tax the organization's resources without protecting a truly significant resource, and they will also attract savvy financial and easement donors interested in organizations that have planned for the most strategic and efficient use of its resources (1988).

Rock Creek Trust operates with a clearly defined goal to guide its acquisitions. As a result of it's trust fund agreement with Bonneville Power Administration, RCT may use money from the trust to acquire conservation easements specifically in the Rock Creek drainage. The agreement arose out of the public acknowledgment, by
public agencies, non-profit conservation organizations and private utility companies that the Rock Creek drainage in its entirety is a place worth conserving, a watershed with great public benefits. This agreement serves as a backdrop against which all RCT's easements may be valued. Still, RCT must justify each easement over others. In doing so, Ellen Knight (1997b) describes the list of priority properties she uses as "a no-brainer. I've got a blue ribbon drainage. Almost anything is worth protecting. But to some extent its a question of the larger properties with stream frontage, and where the potential easement is in relation to other easements." Knowing that Rock Creek Trust sets out with the goal of conservation on nearly all private property in the drainage, I focused more of my time during this case study on the process of acquisition rather than the criteria. I looked for the reasons why easements fail or succeed, and how the tool is applied.

IV. Methodology and Basics of the Acquisition Process

A. Methodology

In conducting research for this paper, I used a lengthy personal interview process combined with background reading and research. Before beginning the personal interview process, I studied the easement file on each piece of property at the Rock Creek Trust. For each easement I first contacted a landowner to set up an interview. I conducted all the interviews in person and visited all but one of the easement sites. Additionally, I interviewed Ellen Knight, Rock Creek Trust's Executive Director, on two separate occasions when we
discussed each easement, the easement process in general, the specific easements I was focused on for my paper, and the mission of the trust. Further interviews followed with Montana Department of Fish, Wildlife and Parks Region Two Supervisor Rich Clough, Land Section Supervisor Debbie Dils, Ron Marcoux of the Rocky Mountain Elk Foundation, professional land conservationist Bruce Bugbee, Chad Lanes, the tri-county sanitarian (for Granite County), and state water quality officials. A detailed list of questions posed to both landowners and Ellen Knight follows in Appendix B.

B. The Acquisition Process

Like other private land conservation organizations, Rock Creek Trust follows an established protocol when entering the easement process. The twelve basic steps that are part of the general acquisition process are (Diehl and Barrett, 1988):

1. Tour the property with the owner to determine if an easement is appropriate.
2. Organization decides if it wants to pursue an easement.
3. Organization advises landowner to consult legal/tax advisors.
4. Baseline inventory of the property.
5. Obtain title information, mineral information.
6. Obtain mortgage subordination.
7. Negotiate restrictions and draft easement document.
8. Obtain a qualified appraisal.
9. Enlist a back-up grantee.
10. Obtain formal acceptance from land trust's board or agency authorities.
11. Sign and record the easement.
12. Express appreciation and publicize the results.

This process does not always run smoothly from step one through the end. It can involve repeating steps until both land trust and landowner are satisfied. RCT has steps unique to its own process by virtue of its focus on purchased easements. Many of the landowners in this case study contacted Rock Creek Trust first about putting their land in easement.

While the details of the process are dependent on the individual landowner and the piece of property, a skeleton of the acquisition process may be applied to each property, allowing for these differences. First, the trust tours the property with the landowner to verify that the easement is appropriate for both the trust and the landowner. At this time, the trust establishes what kind of easement will be done, i.e., donated or purchased. In the case of purchased easements, Rock Creek Trust's Executive Director, Ellen Knight, establishes the trust's purchase policy with the landowner; RCT does not pay the full value of the easement but rather a percentage, usually 50% of the value (Knight, 1997b).

Although the landowner is not finally committed to an easement at this step, he or she may balk at the idea and fully reject the easement, due to the costs of the transaction itself in appraisals and title and mineral insurance, that the landowner is often expected to absorb. In practice, this begins the negotiation process and the organization has to be careful to court the landowner, presenting the concepts of the conservation values the trust wants to protect, and
the donated easement or the purchase potential, as overall benefits that can offset the expenses, financially and/or philosophically (Knight, 1997a). This step can both begin and end the process if a landowner can't or doesn't want to grasp the concepts being presented. "Sometimes you lose the contact," says Knight (1997a), who also notes that the family dynamic concerning the property as inheritance often enters the negotiations. Children may counsel against an easement at the start if their goals for the property are not clear, or are pro-development.

Should the landowner respond positively to the initial contact, the trust evaluates the initial meeting and decides to pursue the easement or not. When the trust decides to pursue the easement, it then advises the landowner(s) to consult legal and tax advisors. This step can be crucial to the success of an easement. A responsible land trust always suggests consulting trained tax and legal professionals. Land trust staff do not have enough knowledge to guide landowners on these matters; just as the terms of an easement vary from landowner to landowner, so do the financial benefits. According to Knight (1997a), smaller landowners or those who are inexperienced at making business decisions need counsel with experienced professionals who can at once help them with basic business concepts they may be unfamiliar with and educate them about their options with an easement, be it donated or purchased. The trust does recommend specific attorneys and accountants who are familiar with easements.

Having secured commitment from the landowner, the land trust then either conducts or contracts for a baseline inventory of the
property's resources and characteristics. A baseline inventory establishes the condition of the property at the time the easement is granted. In order to enforce the terms of the easement, this information is crucial, as well as required by the Internal Revenue Service. In theory, this is how it works. In practice, because of the weather in Montana, baseline inventories don't always work on this timeline. If an easement closes in December, the plants the inventory is designed to protect may be under a foot or two of snow. Or some of the bird species may be on vacation in southern climes. Ellen Knight says (1997a) that although it's possible to write into the easement that the parties involved "agree it shall be done," she does "try to get the baseline done ahead of time." Many of her baselines studies are contracted out. Noting that other land trusts in the state often exercise the option to agree that the baseline will be done, Rock Creek Trust's Director says "that's not really appropriate but in Montana it's a little hard to avoid sometimes" (Knight, 1997a).

Baseline data inventories are also required by the IRS in situations where the easement is donated and the landowner reserves rights, such as timber harvest for example, that could potentially harm the conservation values on the property. Data should be specific, objective, easy to duplicate, and should cover no more than necessary to define the resources the conservation organization seeks to protect, to avoid unnecessary legal battles over enforcement (Diehl and Barrett, 1988; Kiesling, 1996; Bugbee, 1996). Documentation baseline data can include: USGS survey maps showing property lines, additional maps drawn to scale showing man-made improvements, vegetation, identification of plants and animals,
distinct or valuable natural features, land use history, aerial photos and/or on-site photos taken at a date as close to the time the easement is secured as possible (Diehl and Barrett, 1988).

After the baseline data are recorded, the land trust obtains title insurance and mortgage subordination if appropriate. Title insurance allows the land trust to ensure it is working with the legal landowner, and it identifies any encumbrances on the property. Should the property be mortgaged, a responsible land trust must ensure that the holder of the mortgage will not extinguish the easement in the case of foreclosure. Although there is no existing legal or financial incentive for a lender to agree to this, it is required in a situation where a landowner donates an easement or claims a tax deduction.

Rock Creek Trust also obtains mineral title insurance on their easements, which shows who owns the right to mine on the property. The IRS will only grant a deduction on land where the landowner owns the right to mine or, if the mineral and surface rights are in separate ownerships, where the possibility of mining is not economically feasible and therefore so remote that it is negligible. Previous to the August 5, 1997 Taxpayer Relief Act, easements on land where mineral and surface rights were separated were allowed only if separation occurred on or before June 13, 1976 (Knight, 1997a; Montana Land Reliance, 1997).

The next step in the acquisition process is to negotiate the restrictions and draft the easement document. The Rock Creek Trust has an easement draft that it tailor's for different situations. The trust uses the Missoula law firm of Knight, Maclay and Masar to fine-tune
its basic easement. If or when an easement needs to be altered, Knight contacts the firm to consult on new language (Knight, 1997a). Preparation of the easement document takes the most time in the whole process. The trust often negotiates verbally concerning specific restrictions in the easement tailored to a landowner's property and land use practices, and then verifies them in writing. Landowners may have questions or objections to the first proposal on the restrictions and the process then focuses on where each party can give a little. These negotiations are done in person, making it tough for the trust to work with absentee landowners. A landowner's lawyer always reviews and approves the document and this too can take several exchanges between land trust and landowner.

The potential for an easement to suddenly fall through at this point in the process is still a factor in negotiations. The land trust may have to negotiate on some of its goals for the property and it must then refer back to its criteria for easement selection to evaluate what restrictions it will not negotiate on; a land trust whose mission is to protect wetlands, for example, probably would not consider locating a future building site so that the septic system discharges into a marsh as point up for negotiation (Knight, 1997a; Diehl and Barrett, 1988; Brenneman in Brenneman and Bates, 1984).

After reaching a working draft of the easement, the landowner obtains an appraisal of the value of the easement. The appraiser evaluates the value of the land before the easement, then evaluates the land's value with the restrictions. The first figure subtracted from the second is the monetary value of the easement. The land trust then enlists a back-up organization to hold the easement should
it ever dissolve as an organization. It also gains formal acceptance of
the easement from the program's authorities, the members of the
Rock Creek Advisory Council and the Five Valleys Land Trust Board
of Directors. In Rock Creek Trust's case, the Five Valleys Land Trust
holds the easements and they would select any back-up grantee
(Diehl and Barrett, 1988; Knight, 1997a).

The final steps in the easement process include signing and
recording the easement, at which time the trust notifies local
government as required by Montana's 1975 Open-Space Land and
Conservation Easement Act, and formally thanking landowners with
a letter and other recognition, such as articles in the organization's
newsletter (Diehl and Barrett, 1988; Knight, 1997a).

The acquisition process is often full of negotiations, pitfalls and
other occurrences that are unique to each landowner and each piece
of property. One property may have special grazing restrictions for
ranchers with land in the flood plain in addition to restrictions on
subdivision, while another may contain only building restrictions and
prohibit subdivision completely. The case studies easements offer
both general conclusions and singular details which reveal different
things about the process and effects of private land conservation.

V. The Case Studies

A. Major Findings

Several critical variables function to cause landowners to put
their land into a conservation easement. For a landowner, the
financial benefits of conservation easements play one of the key
roles in her decision to pursue and complete and easement. Cash
income from a purchased easement, or income tax benefits from an easement are important, as are estate tax benefits. Other motivating factors, which in some instances are equally or more important than the financial benefits, include: the willingness of a property owner to accept restrictions on land uses, a landowner's personal conservation ethic and the desire to see her land remain undeveloped forever, the need to plan for future generations' use of the land as a family experiences transition, and a sense that the landowner can trust the Rock Creek Trust. One of the additional important aspects of the process each landowner emphasized was the personalized attention she or he received from the Trust. The landowners enjoyed the fact that the Trust recognized them as individuals in the easement process.

Many of these variables can intersect to cause a landowner to enter the easement process, as most of the easements in the case study show. Or, a landowner might start the process motivated by just one of these variables.

From the Rock Creek Trust's perspective, the critical variables include: having the funds available to purchase a bargain sale easement, the acceptance of restrictions the Trusts will not negotiate on, and the ability to meet landowners in person to build trust and negotiate the terms of the easement.

B. Easement #1 (See Figure 2.1 for detailed map)

*Kim and Ruth Reineking: Donated Easement*

Rock Creek Advisory Council member Kim Reineking and his wife Ruth Reineking donated an easement on the 6.68 acres they
own in the lower drainage. This easement was part of a larger project called "Rock Creek Ranchettes," which to date totals four different easements including the Reinekings'. Focusing on the smaller parcels in the lower creek area is the trust's only option according to Kim Reineking because "that's all that's left in the lower drainage." Only 45 miles from Missoula, Reineking's property is easily accessible and close to services, making it and other lower drainage parcels more vulnerable to continuing subdivision (Reineking, 1997).

Through a series of meetings with landowners in the lower drainage, RCT hoped to secure a number of similar easements on 140 acres, protecting a larger area on the lower creek than through one single easement. With the Ranchettes project, RCT hoped to achieve a series of goals. In terms of the easements themselves, the main purposes were to protect the bighorn population, prevent further subdivision and protect water quality.

As a participant in the meetings with the initial group, Reineking notes (1997) that the potential income from subdivision kept many of those initially interested from following the process to the end. "We started these meetings two years ago. We met at A.J's house (local landowner who completed an easement as part of the project) and met with all these landowners. Everybody really seemed to be for it at the time. And then once they started learning more about it, I guess their whole point was that they didn't want to tie up something that was so valuable..." Many of the landowners are long-time property owners and the value of their properties has increased so far over their purchase price that the financial incentive to subdivide is extremely attractive. Reineking still believes the project
to be a valuable one, but admits "it's not been as successful as we though it would be." Some of the targeted Ranchettes easements may yet happen, but of the initial 140 acres, to date RCT holds only 44 acres of those 140 under easement.

The restrictions in each Ranchette easement represent basic stipulations the trust writes into easements throughout the drainage. Ranchette landowners are prohibited from keeping domestic sheep in order to protect the drainage's bighorn population from disease, they must notify the trust when a septic system is put in or enlarged and in turn provide the trust with the appropriate state or county permits, and if landowners build the allowed house, garage or outbuilding, they must also notify the trust when doing so. Granite county's septic permitting process, according to RCT, is missing the crucial ingredient of consistent enforcement. Residents may hire other locals to dig unpermitted septic systems for a lower price than the permitting process will allow. To safeguard the stream, the floodplain and ground water quality, RCT always acts as a water quality watchdog in its easements, monitoring the location and capacity of septic systems (Knight, 1997a; Rock Creek Trust, 1996c).

Montana's septic regulations require state review through the Department of Environmental Quality only on parcels of land under 20 acres. Septic systems on larger parcels may go through the county process, led by the tri-county sanitarian in Granite county, who covers Granite, Powell and Deerlodge counties. Regulations currently differ from county to county within the tri-county sanitarian's jurisdiction, making enforcement tougher than it might be (Lanes, 1997). These regulations also date back to 1973, and the county
enforces only minimum requirements. According to Ellen Knight, despite the fact that some permits may come from the county, enforcement comes from the state level and "the state has no capabilities" to enforce its requirements. Septic systems on parcels of land larger than 20 acres, then, may potentially escape review altogether.

Aside from the restrictions in the Ranchette easements, the companion goals to the easements themselves were, as Ellen Knight phrases it (1997a), "to gain some different inroads in the drainage." Targeting smaller landowners, RCT hoped, would make conservation available to all socio-economic levels in the drainage. The landowners who saw the process through would also demonstrate to other lower drainage property owners that easements are fair and beneficial to landowners, setting the stage for more small parcel acquisitions.

Knight conducted the Ranchettes project in a group setting, a process she says she would never do again. From her perspective, the personal nature of the easement process makes one-on-one negotiations preferable. Dealing with out of state landowners who often couldn't conduct the process in person was another serious obstacle for the trust. (Knight, 1997a).

Reineking's own motivation for doing the easement stemmed from a personal commitment to conservation. He is one of the Trout Unlimited representatives on the RCT board and he thought (1997) "it was important that a board member put their land into easement." He says the tax incentive was part of it as well, but he was "surprised" by the economic benefits of the donation. "We bought it at $55,000, three years ago, thought it was the highest
price we'd ever pay, since which time after the conservation easement it's still worth $116,000, with no improvements. So with our conservation easement we almost paid for the land."

As a board member from Trout Unlimited, Reineking never considered donating his easement to another organization. He and his wife were also prepared to give up many of their rights as part of their donation, so they found the negotiations very easy. "We met with Ellen, said we were going to do this, she said I'll do all the paperwork,' and all we did was sign it" (Reineking, 1997).

In essence, the Reinekings brought one requirement for land use to their side of the bargain: a site for one house, a garage and an outbuilding. Each Ranchette owner has this right and Reineking feels that, as far as the potential buildings are concerned, the Ranchettes easements are far from what they could be. "There are no covenants that have anything to do with the construction techniques, what the buildings look like, no height restrictions, no nothing. We (RCT and the Council) had talked about size limitations, height limitations and all those things and decided that it was way too complicated and that everybody would just bow out. But I would have preferred things like that" (Reineking, 1997; Rock Creek Trust, 1996c).

The Reinekings have no children, unlike the other families in the case studies, so their plans are uninfluenced by the desire to pass things of value on to the next generation. Kim is considering leaving the Rock Creek property unimproved and donating the property back to the public for fishing access. As a nationally known place that Montanans love, Reineking sees Rock Creek and other places like it, as subject to a market in which Montanans have little purchase
power. "People make so much money everywhere else," says Reineking (1997) and he worries that the desire to own a piece of Montana will eventually chase Montanans off of the landscapes they love as property owners.

C. Easement #2 (See Figure 2.2 for detailed map)

*Bob Neal/Stony Creek: Bargain Sale I.*

The easement on a 160 acres of private ground on Stony Creek, a major tributary to Rock Creek, was a deal that Rock Creek Trust had tried to seal for years, as the property passed through the hands of several owners (Rock Creek Trust files on Stony Creek property). Surrounded by Forest Service Land, the area was ripe for subdivision, particularly because of a public road bisecting it. Three quarters of a mile of stream frontage and a "montane riparian woodland in excellent condition" (Rock Creek Trust n.d.) hosted bull trout habitat, spawning areas for other kinds of trout as well, and elk and deer winter habitat (Knight, 1997a). From Rock Creek Trust's perspective, an easement in this area would address three major goals in relation to the trust's mission. It would protect water quality as well as a long stretch of riparian habitat and would therefore benefit water quality downstream on Rock Creek. The trust would also prevent subdivision in an area ripe for that kind of land use.

When the trust finally secured an easement on the property, it was through Bob Neal, a rancher on upper Rock Creek, and his family, who had previously worked with Rock Creek Trust. With 920 acres of the Neal family's T Heart ranch under easement, Bob was the first working rancher in the drainage to put an easement on his land. The
money from the bargain sale easement on the T Heart enabled Bob to retire and pass the ranch on to his daughter Barbara Clark, and her husband Larry. As the Stony Creek property is close to T Heart ranch, Bob and his family were concerned about the effects of potential subdivisions on their ranch. "We are very, very against subdivision" (Clark, 1997b) says Barbara Clark, who describes its effects on ranching as an erosive process which takes off in a sort of domino effect. "There is (sic) more traffic, stresses, more problems, more people, maybe someone's dog is chasing cattle and there is just more open gates, and you know the next ranch says 'I can't put up with this and you know we're going to have to move''" (Clark, 1997a).

As part of the T Heart deal, the Trust traded two pieces of property with conservation easements on them in the lower drainage to the Neal family, in lieu of some of the cash payment. Neal and his family then held a piece of land called Spring Creek Woods, in addition to another tract, and the T Heart was under easement. The opportunity to acquire Stony Creek came along, and under the advice of John Wilson at the Montana Land Reliance (Knight, 1997a), Bob did what the IRS calls a"1031 land exchange," selling Spring Creek Woods tax-free because he used the money from the sale to immediately purchase Stony Creek.

Already familiar with the mission of the Trust and the way in which conservation easements worked, the Neal family acquired the Stony Creek parcel with the intention of putting an easement on it, and Bob contacted RCT to see what kind of easement was feasible (Knight, 1997a; Clark, 1997b). Creating some income for the property through another bargain sale easement was ideal, but Barbara Clark
describes another motivation for immediately protecting the property as well. "I don't think we would ever, ever again buy a piece of property that we wouldn't put a conservation easement on because we know that it is safe forever and if we feel this strongly about development then we had better be prepared to put our money where our mouth is" (1997b). The benefit of the process, says Barbara, is not just some financial compensation but "peace of mind" (Clark, 1997b). Indeed, the financial rewards were not clearly the primary motivation for this easement. The easement on the T Heart had already provided them with enough money for Bob to retire and it also insured that the ranch could be passed on to Barbara and Larry. The financial benefits of the Stony Creek easement were minor compared to that.

On the Stony Creek easement, the landowners' goals were to protect the land, but they also needed to be able to use the ground for agriculture. Having worked with RCT and the Montana Land Reliance on their T Heart easement, the family had experience with both organizations and chose to use RCT as the easement holder. Barbara Clark says that her dad felt comfortable working with Ellen Knight and the trust, and the choice was also a matter of convenience. "They were good to work with, easy to work with and really handy too...they are right there in Missoula" (Clark, 1997b). In retrospect, however, Barbara takes care to point out that she and her family appreciate their choice as more than mere convenience. Over time, they have renewed their respect for the importance of selecting an organization with a mission, and therefore easement requirements, that meets a landowner's own goals.
After observing their neighbors put an easement on their land with another organization involved (see Easement #4 in case study), Barbara says (Clark, 1997b), "I certainly didn't realize that there are huge, huge differences between conservation easements. I think it's very important to pick the people you are going to work with forever and do it very wisely and we really like the people we are working with." The personal nature of family goals and the permanence of the easement process demand a conservation organization or agency that can reach accord with a landowner's needs. Ultimately, it may be impossible to reach an easement agreement if an organization's mission is basically incompatible with landowner goals. Barbara Clark says (1997b) that she will "never work with Fish, Wildlife and Parks" due to the requirements she is aware of in her neighbor's easement.

One of the reasons the Clarks and Neals are happy with their easement is that they are able to use the land in ways they feel they have to and need to financially. The Stony Creek property right now is of use to the T Heart ranch as a seasonal grazing area. Under the terms of the document, they put cattle on the property in the fall. Yet, the value of the Stony Creek property according to Barbara is not really in agriculture. It is marginal agricultural land, difficult to irrigate and very valuable as real estate. "It can't pay for itself," says Barbara (1997b), but the family was so concerned about subdivision that they acquired the property and put an easement on it. As long as the 160 acres will not be subdivided, Barbara and her family feel they achieved their original goal without compromise. Recognizing that they may find it both profitable and necessary to sell the Stony Creek property, Barbara Clark says the likelihood of new owners
using it for agriculture is "not much" (Clark, 1997b). With this proactive move to acquire and conserve private land around their ranching operation, the family's use of the conservation easement tool reaches beyond the scope of the other easements in this case study. The Neal family has used conservation easements to not only plan their own land use, but to potentially plan future land use around them, in effect setting up a buffer zone for their ranching operation. Barbara Clark recognizes what the family has done with the easement tool and says it stems from a deep belief in the value of rural spaces. "There has got to be someplace where we say we are not going to develop it and I think that's what makes upper Rock Creek so special is that it's not developed...maybe there should be more zoning, you know. There is a time and a place for everything" (Clark, 1997b).

The easement document itself on the Stony Creek property does present restrictions for agricultural uses, as well as other restrictions of the current and future land uses. Restrictions on the property under the terms of the easement are both typical of RCT easements and unique to the Stony Creek property. Activities RCT commonly prohibits included in this easement are: mineral activities, commercial facilities except for agriculture and cabin rental, dumping, billboards, alteration and disturbance of the riparian area, game, fur or fish farms, new roads, commercial feed lots, construction of game-proof fences around any area except for harvested crops and residential gardens, the construction of any structure except for what is allowed in the easement document, mobile homes, any additional utilities except for those necessary for agriculture, and
subdivision. Beaver control is allowed only with a permit from FWP (Rock Creek Trust, 1996b; Rock Creek Trust, 1997).

Additional restrictions are related specifically to current and future uses of the Stony Creek property. Currently, the permitted uses include agricultural, hunting, fishing uses. Developing and maintaining water resources, and rental of a seasonal cabin on the property, are allowed as well, although the cabin is not allowed to have a septic system installed because RCT deems the cabin too close to the creek. Other uses that are conditioned include: a second residence may be built north of the road, agrichemicals limited only to reasonable use to "achieve reasonable agricultural, ranching and residential goals", and harvest of timber (dead or diseased) for firewood or other timber for post and pole no closer than 150 feet to centerline of Stony Creek (Rock Creek Trust, 1996b).

The land may be conveyed as two separate parcels, but should the property be sold, future agricultural use will require a fenced buffer zone on the riparian zone, at the expense of the new landowner. In the event the landowners wish to replace the current cabin, it must be removed from the present site, and the new site, if it is south of the road, must be approved by the trust. The cabin may be replaced with single family residence, and the location will be south of the road, outside the riparian area. Finally, the terms allow the landowners to repair and maintain any other structures existing on the property such as fences, the one barn, irrigation structures or ditches, and they may also add to these structures any improvements necessary to agriculture (Rock Creek Trust, 1996b).
The Stony Creek easement took roughly two years once Bob Neal initiated the process, an average time-span for the easements done with non-board member landowners. As Bob conducted the negotiations on the terms with Rock Creek Trust and he had worked with the organization before, it went quickly at the beginning. As with all RCT's easements, Ellen Knight met with Neal in person and negotiated the restrictions and allowed uses verbally and then verified them in writing. "I just sat down and said you know here is what we are interested in, what are you interested in" (Knight, 1997a). Neal also discussed the easement with his wife and four children, who all hold legal shares in the property.

Once the process had momentum, the draft easement went out for Neal's approval. On the trust's part, the second building site was the only undesirable land use the final easement allowed. The organization's release from government oversight and its move to non-profit status led to it's split with Montana Land Reliance (which held all previous easements for the organization, including Neal's T Heart easement) played a part in RCT's acquiescence on this restriction.

MLR was opposed to small parcel projects such as the Ranchettes easements, and RCT's belief in the project suggested that the two organizations had reached a juncture where their affiliation might end. Five Valleys Land Trust agreed to hold the Trust's easements and the agreement officially severed ties with MLR. RCT secured one of the Ranchettes easements, the Reineking's agreement, in November of 1996. In order to solidify their presence in the drainage as a separate entity from MLR, Knight felt securing the
Stony Creek project under the Rock Creek Trust moniker was critical to establishing the organization’s new role. "It was a difficult thing we were going through with MLR and...well, we just needed to get it done and not create any more confusion" (Knight, 1997a). In December 1996, roughly three weeks after the Reineking easement, the Stony Creek easement was finalized. In the end, Knight says (1997a) she would "prefer not to have that second house" but that is the only compromise. The Trust achieved its original goals of protecting water quality and the riparian area and preventing heavy subdivision.

During the approval process for RCT's Stony Creek easement, the board of Five Valleys Land Trust evaluated the easement using an established criteria checklist (See Appendix C). One of the criteria asks the board to consider if the easement can be acquired with "reasonable effort in relation to its value or purpose." The answer to the question was "yes," as it must be for the board to approve the easement. Qualifying that "yes" answer, Ellen Knight listed working with Bob Neal as a potential future benefit to the trust citing his status as "somewhat influential in the drainage." Neal's status as a long-time landowner did play a part in another easement, although it was the T Heart easement, not the Stony Creek one, that captured the interest of another upper drainage landowner, J. Stuart Pritchard.

D. Easement #3 (See Figure 2.3 for detailed map)

_Stu Pritchard/Failed Easement_

Stu Pritchard contacted Greg Tollefson, Five Valleys Land Trust's Executive Director, in early October of 1994, expressing
interest in an easement. He had talked with Bob Neal who told him about his easement on the T Heart and he had seen articles in the local Philipsburg newspaper on the T Heart project as well. Having read Greg's column in the Missoulian, Stu's first step was to write to him and indicate his interest in putting an easement on his 160 acres of land with stream frontage on the middle fork of Rock Creek. Greg forwarded the inquiry to Ellen Knight, who was at the time the Executive Director of the Rock Creek Advisory Council (Pritchard, 1997).

RCAC was interested in doing an easement on the property, and indicated as much to Pritchard. Subdivision was the overriding area of interest for the council, but protecting the half-mile of riparian area on the property, and protecting the bull trout and their habitat in the middle fork were also key issues (Knight, 1997a). In the same manner she dealt with Bob Neal, Ellen Knight sat down with Pritchard, talked about the trust's goals and his own needs. By March of 1995, the trust had a draft easement with complete restriction on activities and uses similar to Reineking's and Neal's easements. The draft easement prohibited: mineral activities, dumping, commercial facilities, year-round rental of several buildings on the property, alteration of watercourses or wetlands, construction of any buildings not listed in the easement, roads, commercial feedlots, utilities except those for agriculture or permanent residences, subdivision, billboards, mobile homes, game, fur, or fish farms, kennels, and fish stocking (Rock Creek Trust, 1995).
One new section under the restricted uses addressed "species of special concern." The easement prohibited the landowner from managing his property "in such a manner as to adversely impact or disturb any occurrence of threatened, endangered or sensitive species and their habitat." This provision also called for habitat management concerning these species to conform to the Endangered Species Act. Bull trout and cutthroat trout were listed as species of special concern recognized by both Pritchard and Rock Creek Trust (Rock Creek Trust, 1995). The trust included this provision because the middle fork is particularly good bull trout habitat, with spawning beds just upstream from Pritchard's property. Additionally, Ellen Knight knew that, as a landowner, Pritchard (Knight, 1997b) "was inclined to get in the stream and mess around," so she wanted the provision to safeguard against what she saw as a suspect management history.

According to Ellen Knight (1997a), most landowners initially consider conservation easements for a combination of reasons. A love of the land provides one impetus and potential financial profits or benefits provide another. The aesthetic ideal of unspoiled land, landscapes unbroken by houses or other development, is one that some individuals hold high. As identified earlier, our government has encouraged this kind of value of private land by providing financial incentives for private land conservation in the form of federal tax breaks for easements. State governments have also legislated this goal with their own laws recognizing this value. Private land conservation, then, is both a regional and national goal. Stu
Pritchard's easement may offer some insight as to why landowners who love their land might not complete easements.

Stu Pritchard was clear on the singular nature of his initial motivation to do an easement. Reducing the value of the property for estate tax purposes was the only reason he considered it. It was, according to Pritchard, a purely financial opportunity. This fact in itself may not have caused the easement to fail. Indeed, just like there are a number of reasons that landowners do easements, many factors can intersect to cause a landowner to reject one. However, this singular motivation, in combination with personal political beliefs, played a key role in the failure of the Pritchard easement.

Conservationist Jack Wright has pointed out that conservation easements re-configure land tenure (1993a). In permanently placing some rights in the hands of private organizations or government agencies, the conservation easement alters the concept of private property. In limiting landowner rights on conserved properties, the easement places specific values, such as open space, habitat or agricultural opportunities on the land, apart from the individual. It elevates the donated rights on the property to a social ideal that many generations will place beyond the individual.

After reading the draft easement, Pritchard (1997) felt that "this kind of encumbrance, you might call it, on the property is a major infringement on total property rights." His idea of private property ownership is tightly secured to the positive value of individual stewardship. In the end, Pritchard prefers total private land ownership to the involvement of any third party. He sees private property as the best managed property and individual
ownership is what he personally values most. "I think there may be other ways to ensure the conservation of the stream than to give up a major portion of what goes with private ownership..." (Pritchard, 1997).

Despite the present failure of the easement process with Pritchard, he says (1997) "I haven't reached an irrevocable decision." Pritchard's views on the sanctity of private property may yet acquiesce to his views on the federal government. With a low opinion of both government and taxation, escaping the estate taxes is still an attractive option for this landowner. A hunter referred him to the Rocky Mountain Elk Foundation (RMEF) when he was first considering the easement and he would not work with that organization because he had heard that RMEF commonly sold its easements to the state. "With my view of government, I don't want to be a partner with any bureaucrat," says Stu, referring to the supposed sale of easements to the state (1997). RMEF has never sold easements, but the Nature Conservancy has worked with the state, although only for fee simple acquisitions and not conservation easements (Knight, 1997a). Pritchard also found out about a federal fund from which he could obtain money to fence his section of the river and protect the riparian area. Don Peters, a fisheries biologist with FWP, had suggested the fencing and Pritchard had been planning to do it. But, he was adamantly opposed to taking federal money for the project, saying (1997) that "there is a line I will not cross. I won't take money which is a legal form of stealing." Later, Pritchard paid for and fenced the riparian area on his property himself. (Pritchard, 1997).
Because Bob Neal spoke so highly of Rock Creek Trust, as well as his suspicions about government involvement with other land organizations, Stu Pritchard never considered using another organization to do his easement. Ellen Knight feels that the easement failed despite Neal's fine recommendation for a number of reasons. The near-failure of the East Fork dam on Rock Creek prevented Knight from meeting with Pritchard at key times in the negotiations. She was unable to meet with Pritchard's children, and Pritchard's personal beliefs concerning private property rights may have finally prevented him from ever wanting a second party involved in the stewardship of his land. After two years of discussions, site visits, negotiations and the drafting of the easement, RCT was ready to offer Stu a price for a bargain sale easement on his property. The process ended there and according to Knight, the potential failure of the E. Fork dam on Rock Creek played a part in the easement's failure. "We lost some momentum," says Knight (1997a), because the threat of the dam failure physically kept her from getting into the drainage at key times in the negotiating process. She also never got to meet Stu's children who were involved in the decision from his end and says "it's always tough negotiating with people you don't meet and don't talk to."

Despite these obstacles, Knight does acknowledge Stu's political beliefs as the most important factor that caused the easement to fall through. "I'm not convinced he ever would have (done the easement), given his political beliefs" (Knight, 1997a). The Trust's executive director says (1997a) she learned that "you win some, you lose some" with the Pritchard easement. Reflecting about the process
to date, Knight notes that Pritchard feels about private property the way he does because "he believes that individuals will always do what is best for the land, because what is best for the property is best for the landowner."

E. Easement #4 (See Figure 2.5 for detailed map)

*Fish, Wildlife and Parks/Gillies easement/Bargain Sale*

Located in the upper half of the drainage, the 3,400 acre Gillies ranch has long been one of Rock Creek Trust's priority properties. Owned equally by Lorraine and Jim Gillies and Jim's brother Bob, and home to the Castle Rock ranch, the property contains a variety of conservation values. The 1,550 acres in easement have 1.5 miles of Rock Creek stream frontage and documented habitat for cutthroat and bull trout. Riparian habitat, upland native grasses, timbered hillsides, winter range for bighorn sheep, elk, moose, raptors on the property also made it a prime target for Rock Creek Trust. Ellen Knight (1997a) describes it by saying, "it's got every amenity you could think of," noting that it is also upstream from a series of the trust's easements, another benefit to the Trust which seeks to connect easements to strengthen their effects on the drainage. Next to the T Heart ranch, the Gillies' ranch abuts conservation work RCT has already done, adding to nearly six miles and 2,500 acres of private land under conservation easements (Rock Creek Trust, 1996a). The property is also one of only two remaining parcels of unprotected private land in what the Department of Fish, Wildlife and Parks recognizes as Upper Rock Creek Bighorn Winter Range. FWP shares RCT's goal of securing habitat on private land, especially
for a big game species like bighorn sheep (Montana Fish, Wildlife and Parks, 1997b).

RCT also sought to place an easement on the property to address imminent development pressures in the drainage, protecting the habitat value of the property from such growth. The Trust also saw the Gillies' property as a key acquisition at a time when Yellowstone Basin Properties, a large development corporation was seeking property in Rock Creek. Yellowstone Basin Properties' parent company, Patten Corporation, was the subject of a 60 Minutes' segment, which showed the company selling land that could never get septic approval, among other bad practices. The potential for subdivision on the Gillies property had Rock Creek Trust extremely concerned about the future and anxious to secure an easement barring subdivision. In the same manner that Bob Neal's T Heart easement subsequently generated interest from Stu Pritchard, RCT also hoped that the Gillies' easement, just downstream from several long-time landowners, might create a positive climate for easements on the neighboring properties (Knight, 1997b).

Several factors coincided to prompt the family to think about doing an easement. Lorraine Gillies had served on the Rock Creek Advisory Council and was therefore familiar with RCT's mission and the concept of conservation easements. Although she was initially suspicious of the RCAC, Lorraine's tenure on the RCAC caused her to revise her opinion (Gillies, 1997). And the family was undergoing a period of profound transition. Jim Gillies' health was failing and Lorraine and Jim were getting a divorce. Bob Gillies had never ranched but was starting to plan his estate. Legal owner of one-third
of the property, Bob didn't want to sell his portion to Lorraine and Jim. The final factor was Karen, who wished to stay on the ranch. Karen had her grandmother's power of attorney, and knew that her grandmother's wishes were that the ranch not be sold or subdivided. Within the family, Karen advocated for the ranch to stay whole. Together, these family dynamics and goals pushed Lorraine Gillies into Ellen Knight's office in 1994, where she sought some initial information on the easement process (Gillies, 1997; Knight, 1997a).

Lorraine Gillies approached Knight first, but the family knew Ron Marcoux of the Rocky Mountain Elk Foundation and had an interest in working with that organization as well. Although the property's elk population was a part of the project's appeal, the numbers weren't high enough for the RMEF to pursue the project or offer financial commitment. But, in the interest of the conservation work, Ron Marcoux stayed with the project, working with Rock Creek Trust to get the project off to a solid start. Marcoux, who previously worked for Fish, Wildlife and Parks in Missoula and Helena, has known the family since the 1970's, and helped build a working relationship with the family. Marcoux (1997) says this cooperative approach to an easement in Rock Creek is "part of the job" that is land conservation, where the values of the land come first. "We'll send people to the Montana Land Reliance or the Nature Conservancy...it helps to get the work done" (Marcoux, 1997).

Marcoux joined Rock Creek Trust at the first meetings to get an idea of what the family needed. He also played a part in bringing Fish, Wildlife and Park's interest on board financially. After the initial meetings fleshed out the family's goals, Ellen Knight saw the
project would need more than just Rock Creek Trust's financial commitment. "It was clear that this was an extremely valuable and expensive easement." Fish, Wildlife and Parks was interested and Knight said "if you want bigger dollars, then Fish, Wildlife and Parks is going to have to come in" (Knight, 1997a).

With FWP's involvement, the easement became a partnership project. Rock Creek Trust took on some of the financial responsibility for securing the bargain sale, as well as part of the negotiations concerning the easement, and FWP took on a portion of both as well. Because the easement was acquired with some public money from FWP, the agency was required to hold the easement. Rich Clough (1997), Regional Supervisor for Region 2 of FWP, notes that "anytime we put money into something...it's public trust." FWP's involvement brought money, but it also added the agency's mission to the mix.

The Montana Department of Fish, Wildlife and Parks may legally acquire conservation easements on land or waters "suitable for game, bird, fish or fur-bearing animal restoration, propagation, or protection" as part of its mission (M.C.A., 1995c). With its emphasis on protecting species important for recreation and hunting, and the charge to "implement voluntary programs that encourage hunting access on private lands" (M.C.A., 1995b), the department's goals focused primarily on protecting the habitat values for big game species (bighorn sheep, mule deer and elk), and cutthroat and bull trout, species officially recognized by the department as species of special concern (Montana Fish, Wildlife and Parks, 1997b). Rich Clough, claims winter range and riparian habitat are two typical factors that make land attractive for a FWP easement, but a
property's potential for subdivision contributes. "If the land has the potential for subdivision or some other management activity that is going to take away the habitat value then that is a candidate for us to come in and acquire it" (Clough, 1997). Money from the Fishing Access Site Program, as well as some of the proceeds from the Sheep Auction Account, generated from the sale of male bighorn licenses, ensured that FWP would also require public access to these species as part of the easement (Montana Fish, Wildlife and Parks, 1997b).

FWP took a two-pronged approach to protecting the values they considered top priority on the property. First, they would prevent subdivision on bighorn sheep winter range with the easement, retaining the property's open agricultural spaces as the preferred pattern of land use. Second, the terms of the easement would require that the Gillies' introduce a new grazing management plan on a portion of the property, protecting the property's riparian area, the upland native grasses and securing winter range for the wildlife (Montana Fish, Wildlife and Parks, 1997b; Clough, 1997).

First, however, the department had to garner the approval it needed to spend the money on the project. This process took the proposed Gillies easement to Helena. For a basic breakdown of FWP's acquisition process, refer to Figure 1.4.

Once FWP established its interest in the Gillies project, it entered into the approval process for a land acquisition using public funds. The Divisions of Wildlife, Fisheries and Parks in Helena prioritize acquisitions. Getting a project prioritized is the first and often greatest hurdle because Helena considers projects from all over the state, taking into consideration the project cost, the value of the
habitat and the public benefits involved. Land values on the western side of the divide in Montana are much higher than prices in the eastern part of the state and according to FWP Region 2 Supervisor Rich Clough (1997), since he is competing against proposals from east of the divide "that are half the value," his western region is at a disadvantage in that respect. Positioning their projects for priority, then, has FWP looking for the lowest price they can get. The Gillies easement had the benefit of being along Rock Creek, which is a prime candidate for bull trout restoration identified by the Governor's Bull Trout Restoration Team (Montana Fish, Wildlife and Parks, 1997b). This factor, combined with financial help from Rock Creek Trust, helped the proposed Gillies easement receive funding from the state.

When the project is deemed a priority, the proposal goes to the Fish Wildlife and Parks Commission, a panel of five citizens from around the state appointed by the Governor, for preliminary approval. The FWP Commission asks questions and authorizes FWP to negotiate the terms of the easement, and prepare an Environmental Assessment (EA) under the Montana Environmental Policy Act (MEPA). With the final terms and the EA completed, FWP goes back to the FWP Commission for final acquisition approval. At this stage, projects are almost always approved and they move on to the final step, approval by the State Land Board. According to state law, FWP acquisitions over 100 acres and $100,000, which include the bulk of land acquisitions, require approval by the State Land Board (M.C.A., 1995). The State Land Board reviews and approves these acquisitions to safeguard public money, ensuring that FWP is acquiring appropriate interests.
The final purchase price for the bargain sale easement on the Gillies property settled out at $900,000. The largest portion of that comes from FWP's coffers at $600,000. Rock Creek Trust's financial commitment is half that, at $300,000. FWP Region Two Supervisor, Rich Clough (1997), says the partnership helped get the project prioritized and funded, and sees cooperative efforts as a "mandatory part of the future, something you are not going to get around because there is limited funding for everyone and the more pooling of resources you can do to get things done, the better off everyone is going to be."

From both FWP's and Rock Creek Trust's perspective, the partnership on the Gillies easement was a positive experience, allowing for conservation that might not have happened otherwise. On paper, the partnership's easement has had some different effects on the Gillies family than the other easements in this case study. With differing missions, Rock Creek Trust and Fish, Wildlife and Parks undertook negotiations that, by all accounts, were tough.

The Rock Creek Trust and the Department of Fish, Wildlife and Parks went into the negotiations with some slightly different goals in mind. To accommodate those goals and to facilitate negotiations, the organizations divided the easement into two sections, the east and west unit, split by MT road 348 and the creek (See Fig 2.5 for detail). Both the grantee organizations sought goals on the entire parcel, but FWP negotiated some considerable grazing restrictions on the east unit alone, as well as some other restrictions unique to that part of the easement. Since FWP was going to hold and enforce the easement, Rock Creek Trust concentrated on the allowed housing
sites in the west unit that the family wanted, placing restrictions on those sites and focusing on limiting subdivision as well as keeping the ranch in the family. Ellen Knight says the division prompted her to seek to complement FWP's goals during negotiations (Knight, 1997a).

The negotiations themselves were a long process for all the parties involved, with most of the conflict focused on the grazing management FWP wanted to implement. There were long meetings, several offers on the price for the easement, and in the end, the family got a higher price than FWP initially offered, but more restrictions accompanied the money as part of the deal. The initial meetings with Ron Marcoux, Ellen Knight, the family and FWP, lead to a negotiating team composed of Debbie Dils, Land Section Supervisor, negotiating for FWP, range specialist Mike Fresina, and Ellen Knight. Dils presented the family with a generic FWP easement for review. The family rejected FWP's first offer for the easement, which came only from the bighorn sheep license fund. Debbie Dils (1997) says "Ellen (Knight) wouldn't take no for an answer," and over the course of the next year, got other interests involved, bringing in fisheries money in return for protection of bull trout.

The new funding brought more restrictions and the family was afraid the easement would "put them out of business" (Dils, 1997). Lorraine Gillies in particular was angry with FWP's new restrictions, but after consideration, the family decided they could live with the restrictions. The timing, says Dils, really caused the family to agree to the terms of the easement. Jim and Lorraine's divorce, Jim's poor health and Bob Gillies' estate planning activities all influenced the
Gillies' decision. "The family changes probably caused it to go" (Dils, 1997).

Dils coordinated the involvement of the fisheries and wildlife divisions of FWP and then she and Mike Fresina, a range specialist who visited the site and evaluated the grazing management goals for FWP, presented the details of FWP's grazing management plan to Jim Gillies. FWP major objectives were to "protect and, where necessary, improve the productivity of soils, water and vegetation in a manner which will mutually benefit livestock grazing and wildlife and to provide for reasonable public access for hunting and recreation" (Montana Fish, Wildlife and Parks, 1997b). Gillies and Fresina altered the details a little further and with the agreed upon changes, a final draft for the Gillies family's lawyers to review emerged from two years of verbal and written negotiations.

The restrictions in the final easement prohibit removal of sagebrush, beaver and riparian vegetation in the East unit except in the irrigation ditch, subdivision of the land or new structures except for the allowed building sites in the West unit, use of off-road vehicles in the East unit January 1-May 15 except for ranch activities, commercial hunting, no utilities without FWP approval, no mining except for the existing gravel pit, commercial feedlots or game farms, any other commercial or industrial uses except for seasonal rental of allowed residences, dumping, destruction of wetlands. (Montana Fish, Wildlife and Parks, 1997b; Montana Fish, Wildlife and Parks, 1997a).

The management guidelines FWP requires for the easement cover: the number of animals per acre on the East unit each month
(AUM's), a three year rest rotation system for grazing on the East unit, beaver control, tree cutting, use of agrichemicals, cultivation of farmland. The easement, like all RCT easements, prohibits domestic sheep to prevent disease spreading to the bighorn population (Dils, 1997; Montana Fish, Wildlife and Parks, 1997b). Additionally, FWP required a fishing access site with a new parking lot and a toilet at the Gillies bridge, ensuring public access to fishing on Rock Creek (Montana Fish, Wildlife and Parks, 1997b; Gillies, 1997).

Rights the easement permits to the landowner allow agricultural activities to continue, including grazing, timber harvest, and maintaining water resources. Along with maintaining their present residences, the Gillies' may build three single-family homes on three separate 20 acres sites in the West unit. Although these tracts may be sold, they are sites for each of Jim and Lorraine's children, part of the estate planning Jim and Lorraine are doing as part of the easement.

Far more restrictive than other conservation easements in this study, the easement tightly limits grazing in the East unit, prohibiting grazing in the riparian area at all every third year, with only four weeks allowed in the first year and six the second. The upper pasture in the East unit may be grazed in the first year for two weeks, in the second not at all, and again for two weeks in the third. Everyone involved with the easement agrees that these restrictions will affect the Gillies' ranching operation. Rich Clough (1997) says, "It means then as a ranch manager you have to look for other property to lease or purchase to continue that level of AUM's or production of beef." He attributes the family's conservation ethic to their
acceptance of the restrictions. "I'm not sure what they are going to do. They may shift their whole focus from cattle to something else. Maybe even recreation" (Clough, 1997).

Debbie Dils (1997) agrees that the easement means that "certain parts of the ranch will be managed differently than in the past" and also points out that the agreement is "pretty restrictive concerning commercial business." Ellen Knight (1997a) says the easement is tough on the ranching as well but notes that the family's diverse goals probably pushed them to agree. "...every landowner comes with his or her own goals." Despite all these comments recognizing the impacts of the easement, the FWP Environmental Assessment stated that the "purchase of a conservation easement will not adversely affect the ranching activities on the Gillies ranch" (Montana Fish, Wildlife and Parks, 1997b).

Lorraine Gillies recognizes the impacts of the easement on the ranch but thinks the trade-off is worth it. Her daughter Karen is going to remain on the ranch, but Karen won't mind if the ranching operation is smaller. "She is just going to roll with it...Karen has her horses and her husband...makes lamps and that sort of thing" (Gillies, 1997). Lorraine sees the couple diversifying their income. and says (1997) "there isn't anything outside of the outhouse that is going to bother Karen," referring to the toilet FWP plans to put in at the new parking lot.

Changing their management practices may be a big adjustment for Lorraine and Jim, but Lorraine thinks they can manage. The easement still allows them to "use the ground," the greatest land-use goal they had, but not without some changes. "This is something
we've had to give a little bit on our side (sic) because we have always pastured our cattle in that area, in the riparian area. And of course the Department wants the natural vegetation to be allowed to come back. And we have cleared a lot of the willows and what not out of there...it's just a matter of making allowances and doing things differently than we have always done" (Gillies, 1997).

The changes are made possible in part by the money from the bargain sale easement. "We will use part of the funds that we get from the conservation easement to develop water because we do have water up on the cliffs--a spring that needs developing and a tank to be put in and that sort of thing" (Gillies, 1997). Gillies says that the most important thing about the easement is that the land will remain in open space and her kids "can have a life they remembered, you know, as they were growing up...I feel good that it is going to stay that way for my grandchildren." She is careful to add, referring to her impending divorce, "..and also I would not be telling the truth if I didn't say that the money is going to mean a lot to me too since, I have run away from home. Just short of 38 years" (Gillies, 1997).

The money will also allow the Gillies' to put up some hay sheds but Lorraine says there have been other, non-monetary benefits from the process. "We kind of have been pushed by the process to get things straightened out...we are in the process of giving each of the girls 20 acres of the 120 deeded in our name by his (Jim's) folks years ago" (Gillies, 1997).

A bit more complex in its terms than the other easements in the case study, the Gillies easement is still similar to the other ranch
easement with its intersection of financial benefits and a desire to pass on the land without subdividing as motivating factors. Although Barbara Clark will continue to ranch, and her son plans to ranch on the T Heart, the Gillies' are less sure. In the transition though, they wanted to be sure the land wouldn't be subdivided. Each easement has its unique points, differences according to the land and the property owners' goals, but the easements in this case study all have similar points as well, common ground in the search for conservation on private property.

VI. Comparison of Easements

A. Commonalties and Differences

While the details of an easement differ for each landowner, some common factors determine the outcome of each process. Three of the four landowners interviewed expressed their desire to ensure that their land would never be subdivided and developed as a major reason they placed an easement on their property. The permanence of the easement, and what Jack Wright (1992; 1993a) has called "reconfiguration of land tenure patterns" are actually attracting people to conservation easements. Severing the right to develop from the property was in each case, more important than reaping the maximum financial benefits from their property. In each bargain sale, the landowners acknowledged that the monetary payments definitely influenced their decision to go with an easement. But in each case, the landowners had the option to subdivide and sell the land to create more potential cash income. The landowners chose to limit development, giving up some of their rights and potential
sources of income and altering their tenure of the land, their children's tenure and that of other future owners. The conservation easement gave these landowners the option to meet both their conservation goals without asking them to make an impossible financial sacrifice.

As Tyhson Banighen, Executive Director of Turtle Island Earth Stewards, has noted, the landowners have placed the value of the land itself over its role as an entity that can be bought and sold for speculative gain (Banighen, 1990 in Pilarski, 1994). In the case of the donated easement, the landowner was initially motivated by pure conservation and would have done the easement without any financial gain at all (Reineking, 1997), to show that the Rock Creek Advisory Council was committed to the concept. The other three landowners could have chosen to use their land for maximum financial benefit, subdividing acre after acre and selling it for the highest price the market would provide. The Gillies' and Bob Neal's family instead supported the permanent reduction of private property rights on their land and the monetary compensation for that as a means to reaching their personal financial goals (Gillies, 1997; Clark, 1997b). Stu Pritchard has yet to decide what the future land use will be on his property.

Stu Pritchard's easement provides some contrast to the three successful easements. In the final analysis, Pritchard's beliefs about property in general differ a little from the three landowners who put easements on their property. While these three landowners all spoke of the negative effects of development as a factor in their decision (Gillies, 1997; Clark, 1997b; Reineking, 1997), Pritchard spoke only of
the financial benefits of the easement in relation to estate taxes. His main objection to land management and use in the drainage is what he sees as the shortcomings of government ownership (1997). Absolute private property rights, according to Pritchard, are in every case superior to other approaches to land tenure, such as another party holding the development rights on private property. His view of the value of our system of private property caused him to see the financial rewards of an easement as less than adequate compensation for the rights he would give up (1997). As such, he differs from the other landowners in his view of where individual property rights stand in relation to the land itself.

As an organization, Rock Creek Trust shares some of Pritchard's skepticism for government; each easement in this case study contains an example of this in relation to water quality. In an effort to safeguard against government failure to enforce septic regulations, Rock Creek Trust places septic restrictions in its easements which place it in a watchdog role, enforcing regulations that the state either can't or won't. Each easement contains provisions regarding residential septic systems, requiring landowners to furnish the Trust with individual permits for approved septic systems when building, or enlarging a septic system. With these requirements, the Trust ensures that septic systems are permitted through the tri-county sanitary or the state Department of Environmental Quality, enforcing regulations that have the potential to be missed or ignored.

The Trust goes further than septic system regulations in its effort to protect water quality. In Pritchard's draft easement the
trust required the landowner, should his house ever be destroyed, to rebuild the residence out of the floodplain (Rock Creek Trust, 1995). Similar requirements existed in the Stony Creek easement in regards to the seasonal cabin, also in the floodplain, the location of allowed residences and the proximity of timber harvest to the creek (Rock Creek Trust, 1996b). The Gillies and Reineking easements each contain restrictions that also guard water quality. The Gillies' must comply with restrictions on building sites and their proximity to Rock Creek and septic permits and Reineking must also furnish RCT with septic permits (Montana Fish, Wildlife and Parks, 1997a; Rock Creek Trust, 1996c).

Ellen Knight (1997a) notes that RCT easements contain only restrictions the organization believes it can enforce. Being able to enforce the requirements is key to being a good steward, an aspect of its mission Rock Creek Trust does not want to overlook. An instance in which the Trust had to enforce requirements on one of the case study easements already took place. The situation was relatively minor and quickly fixed. Reineking forgot to furnish the Trust with the septic permits his easement required, but after Ellen Knight inquired about them, he produced the permits (Knight, 1997a). Instances like these are opportunities for the Trust, in the interest of establishing its authority, to demonstrate that their easements cannot be challenged.

As a land steward, the Trust must balance its stewardship goals with its ability to enforce its requirements with every restriction, particularly those which curtail a landowner's financial opportunities. Restrictions must be clear and allow the Trust the opportunity to
minimize potential conflicts. Timber harvest is one such area. The Trust settled on some important conditions for allowing timber harvest on conserved properties, based on an easement RCT did on Rock Creek Ranch (MLR holds that easement because the Trust was the Rock Creek Advisory Council at the time), a property just downstream from the T Heart. In order for commercial timber harvest to take place, the Trust must approve the actual logging contractor, to guard against companies with ecologically unacceptable practices. The Trust uses this principle of individual review to create a restriction it can easily enforce, without writing an easement that is too technical for any of the involved parties to understand.

Scaling the principle down for two of the easements in this case study, Rock Creek Trust further restricted timber harvest on the Stony Creek property, allowing it only for timber the T Heart needs for post and pole. With this simple requirement, and the additional stipulation that the harvest take place a specified distance from Stony Creek, the Trust simplifies its job; landowners are left with as few questions as possible when it comes to land use practices. Similar restrictions would have been a part of Stu Pritchard's easement (Knight, 1997a).

Professionals experienced with conservation easements on private land have suggested that this specific approach to allowed uses is the optimal method for avoiding unnecessary litigation over enforcement (Bugbee, 1996; Kiesling, 1996; Knight, 1997a). Land trusts should also be careful to include only requirements on land-uses they intend to enforce as inattentive organizations that don't enforce their requirements can set a dangerous precedent not only if
they can't enforce, but if they won't enforce requirements. Courts may look at legal agreements like easements and refuse to enforce provisions land trusts have not indicated important through enforcement on their part.

Legal challenges to conservation easements have come up sporadically, and Watson (1981) and Knight (1997a) note that as future generations inherit properties with easements, more challenges may come up, further developing the case law history and testing the limits of the conservation easement. At least one case in Pennsylvania proved the conservation easement a formidable legal agreement in the court's eyes. A landowner who granted an easement on a 55.9 acre farm built a second principal residence on the property. The terms of the easement allowed only structures consistent with "agricultural uses" and the land trust, the French and Pickering Creeks Conservation Trust, went to court prior to construction of the house, but the court would not stop construction while hearing the case.

Later, the trust won a ruling that the landowner had violated the terms of the easement (Sugarman, 1992). With the house already completed, the landowner appealed the decision, but the Pennsylvania Supreme Court refused to hear the case and sent it back to the county court for a final ruling. The court upheld the easement, instructing the landowner to either move the house or tear it down (Land Trust Alliance, 1996). Sugarman (1992) comments on the case, saying "the refusal by courts to undo easements to accommodate the changing agendas of owners of encumbered properties reveals a significant level of...philosophical acceptance of
the social importance of preservation." Sugarman (1992) also notes that court cases will continue to be a reality for land trusts in the future, adding that trusts shouldn't assume they "can write an easement that will prevent every possible harmful action." He also instructs trusts to not only monitor their easements, but to write them "with a view toward defending" them.

Consistency is not only part of RCT's approach to enforcement of its easements. It's also a part of each relationship the Trust builds with its landowners. The Rock Creek Trust continually builds a relationship based on trust and personalized attention with each landowner it works with as part of the process. Landowners don't feel anonymous when doing a conservation easement with the Rock Creek Trust. The Trust spends time with the landowner on the property, walking the land, meeting family members involved in the easement, and learning about the landowner's needs. This aspect of the conservation easement process is something every property owner who did an easement mentioned as a contributing factor to the easement's success (Clark, 1997b; Gillies, 1997; Reineking, 1997). Indeed, it was crucial to the Gillies easement. The easement may not have happened had Ellen Knight not moved to secure additional funding sources to meet the Gillies' financial needs (Dils, 1997).

Another aspect the case study easements share relates to different sections of the federal tax code, including income taxes and estate taxes. Presently, the donation of a conservation easement allows a donor to take an income tax write off for the value of the gift over a period of years. The first year, the landowner may write off the amount that equals 30 percent of his/her adjusted gross
income. This income tax deduction may be spread over six years, at the same 30 percent of adjusted gross income each year, until either the full value of the donation is reached or the six years is over. Income tax benefits are not the only tax benefits available when doing an easement, and in many cases they are the smaller portion of the financial benefits.

The Gillies family, along with Stu Pritchard, used their easement to deal with the requirements of estate taxes. The primary motivating force for Pritchard, estate taxes were only part of the picture for the Gillies'. At the time both parties entered into the easement process, the federal tax code exempted $600,000 of an estate's value from taxes when the beneficiary inherited the property (Kiesling, 1996). This requirement in the tax code had not been amended for some time, and many land-rich, cash-poor families, were being forced to sell land to pay the taxes. Farmers, ranchers and long-time landowners were finding that their land's value had risen so high their heirs would be faced with taxes of thousands or even millions of dollars, with "the land itself as the only asset available to pay for it" (Land Trust Alliance, 1997).

Revisions in the tax code under the Taxpayer Relief Act, signed by President Clinton in August of 1997, addressed this problem. The estate tax exclusion limit rose to $625,000 in 1998, and will now continue to rise incrementally until the new cap in 2006 at $1,000,000. New regulations as dictated by the American Farm and Ranch Protection Act, section 2031(c) of the Internal Revenue Code (IRC), were also designed to provide stronger incentives to private land conservation, helping people who wish to keep the land in their
ownership or their heirs' ownership. Under this provision, beneficiaries may "exclude from the taxable estate 40% of the value of land subject to qualifying conservation easements. (This is in addition to the reduction in the value of the land resulting from the donation of the easement)" (Land Trust Alliance, 1997).

The Taxpayer Relief Act of 1997 also included a reduction in capital gains taxes, lowering the maximum rate from 28% to 20%. For lower bracket taxpayers, the rate declined from 15% to 10%. This, too, may have effects on future use of conservation easements by landowners. The financial incentive to sell will be greater now that capital gains taxes are lower. Yet, conservation easements are attractive for their particular blend of personalized benefits, a mix of conservation and financial benefits that cannot be duplicated through a traditional real estate sale. Tax expert William Hutton (1997), writes about the changes in capital gains taxes and the potential effect on conservation easements:

"Although this change will obviously have an impact on tax benefit analyses, as they pertain to comparisons between market and charitable dispositions, recent experience with the lowering of tax rates (both ordinary rates and capital gains taxes) seems to indicate that there is no demonstrable inverse correlation between rate reduction and charitable inclination. In other words, the decrease of the capital gain rate should not be a major discouragement to the charitable solicitor (bear in mind, that the ordinary income rates remain at a max. of 39.6%)."

Capital gains decreases, then, may affect some people's impulses toward conservation easements, but for the many people who do easements for reasons above and beyond finances, the change may
not mean much next to the incentives provided for in section 2031 (c) of the IRC.

VII. Conclusions and Recommendations

Interviewing the four different landowners for this case study revealed the process of securing an easement to be an intricate one, dependent on financial and social dynamics that vary from landowner to landowner. Although time-consuming, easements can provide strong protection for private land, which plays a critical role in the conservation of wildlife habitat, open space and the protection of water quality.

The Trust has successfully negotiated 4,673 acres of easements and it continues to work toward the goal of preserving more private land in the drainage. Unique among land trusts with access to a trust fund, RCT can purchase easements more often than most land trusts, 54% of which operate with budgets under $100,000 (Land Trust Alliance, 1991 in Wright, 1993). However, this doesn't mean that the Trust should or can rely on conservation easements alone to achieve its mission of conservation in Rock Creek in the future.

Since it's inception, the trust fund that helps Rock Creek Trust to accomplish private land conservation in the Rock Creek drainage has been regarded as an expendable resource. With a finite amount of private land in the drainage, the number of potential conservation easements will continue to shrink. As the Trust acquires more easements, the remaining property owners may demand higher prices. Certainly, the Ranchettes project demonstrated to the Trust, among other things, that the financial benefits of subdivision are a
powerful disincentive for some landowners to conserve their land. Therefore, the Trust should pursue donated easements when it can in order to maximize its resources. Maximizing its financial resources now will help the Trust acquire these potentially expensive final easements.

As Stu Pritchard's failed easement showed, some landowners will simply not be amenable to easements, on the principle of retaining full private property rights. Further, issues like water quality, which the Trust focuses on as part of its mission, cannot be completely addressed by conservation easements on private land. Water, like wildlife, moves across property boundaries, bringing pollution with it. Protection for the land and the water in the drainage, therefore, requires a diversity of methods.

The Trust for Public Land recently released a study entitled *Protecting the Source*, which confirms that land conservation and water quality protection are necessary companions. The report confirms that RCT's drainage-defined approach to land conservation is a crucial part of water quality in the Clark Fork watershed, finding that a watershed-based approach to land conservation not only safeguards drinking water, but that it's cheaper than treating water. Former Commissioner of the New York City Department of Environmental Protection, Albert Appleton, says, "Preventing the problem, through watershed protection is faster, cheaper and has lots of other benefits" (Trust For Public Land, 1997).

The focus on water quality is no less important for Montana's residents and landowners. According to Vicki Watson (Devlin 1997), technical advisor to the Clark Fork Pend-Oreille Coalition, "we have to
enlist every landowner in protecting water quality." To do so, we need to "do a lot of thinking about how to bring everyone on board." In order to enlist the help of every landowner, property owners need to be educated on land use and how it affects water quality. To create effective watershed management, Montana's government and conservation organizations need to work with landowners near water sources to develop and implement watershed and land use plans (Devlin 1997). Effective in ways that regulations are not, easements still cannot realistically replace land use regulations. Rock Creek Trust can be an important ally in the move to regulate land use in the drainage.

The Rock Creek Trust, with a growing cadre of landowners satisfied with the restrictions on their land and its history of trust-building and conservation work in the Rock Creek drainage, can put its experience to use in this paired process of watershed management and land use protection. As an experienced conservation organization, RCT can take a role in developing a comprehensive plan in Granite county focused on water quality and good land use. Through partnerships with local government, the Trust could help Granite county formulate regulations, advocating for a plan that would compliment its own work.

As Land Trust Alliance President Jean Hocker (1996) notes, land trusts "can take the privately initiated system of land conservation they have fostered and expand its influence beyond their own numbers." With this in mind, the Rock Creek Trust should actively pursue the maximum number of easements it can possibly achieve, further strengthening the work it has achieved since its
easement program began. It should not, however, spend the trust entirely, focusing instead on using this special resource to further its mission and adding to its work with conservation easements.

While public officials are starting to realize the value of reaching every landowner, the land trust movement is changing as well. Private land conservationists are realizing that land trusts need to be more inclusive and work across the socio-economic classes to reach conservation goals that don't necessarily recognize property lines. Purchased easements are attracting more attention (Knight 1997b) and Rock Creek Trust can educate other professionals in the dynamics of the purchase process, helping other non-profit organizations or government agencies negotiate to meet their financial and conservation goals at a fair price. The Ranchettes project is a ground-breaking example of conservation that Rock Creek Trust can share with other groups looking to conserve large sections of land in small parcel ownership, in the process furthering the goals of the land trust movement.

Rock Creek Trust also has a future in stewardship of the drainage. When its easement program reaches its goal, RCT will focus on stewardship of its conserved lands. Responsibilities from both the RCT side of the easement and from the landowner's side will provide the next area of focus for the land trust movement as lands with easements begin to change hands in the future. Enforcement may or may not become an issue as one generation of landowners takes over private land ownership from another. Land trusts will focus on making this transition a smooth one, educating new landowners about the terms of easements and enforcing those terms if they
must. But land trusts also need to take on an active leadership role in stewardship because government regulation alone can't cover this multi-dimensional task. The rise in popularity of the personalized easement process and private land conservation organizations is, in part, a response to regulations' failings. Organizations like Rock Creek Trust should continue to lead the way in creating conservation that works for private landowners.

Ellen Knight recognizes the eventual shift in focus the Rock Creek Trust faces, and sees it as one that affects the land trust movement nation-wide. "Stewardship is going to be increasingly important...Land trusts are really active right now acquiring the land but at some point monitoring will be a bigger burden...Land trusts may get more in to education" (Knight 1997a). Rock Creek Trust is unique; it should use its trust fund to continue the work that voluntary conservation in the drainage has begun. Perhaps RCT can form an alliance with an environmental education organization or, it might develop an education program of its own. Continuing its positive presence in the drainage as the focus shifts from acquiring easements to stewardship will require RCT to reinvent itself once again, because educating landowners and creating solid stewardship values through a diversity of methods is key to long term success for Rock Creek Trust's goals.
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Appendix A
ROCK CREEK ADVISORY COUNCIL
PRELIMINARY PROPERTY ACQUISITION PROPOSAL

Project Identification

1. Site Name

2. Site Location
   Township Range Section

3. Number of Acres

4. Property Ownership
   Name Phone
   Address
   Contact Person Phone

5. Landowner's Position (summarize his/her objectives)

Qualification in Accordance with RCAC Goals and Objectives

6. Briefly describe and numerically rank the importance of site's significant values. If available, attach map and photographs of site.

   Attachments

   A. Protection of relatively natural fish habitat

   (1) Distribution of primary habitat/species value(s)
   Rare in watershed __________ 3 points
   Rare in region __________ 2 points
   Rare in area __________ 1 point
   Widespread __________ 0 points
### (2) Importance of primary habitat/species value(s)

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### (3) Fragility of primary habitat/species value(s)

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### (4) Degree of threat of destruction of primary values

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Subtotal ___

### B. Preservation of a relatively natural wildlife habitat

### (1) Distribution of primary habitat/species value(s)

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(2) Importance of primary habitat/species value(s)
- Rare in watershed: 3 points
- Rare in region: 2 points
- Rare in area: 1 point
- Widespread: 0 points

(3) Fragility of primary habitat/species value(s)
- Delicate: 4 points
- Fragile: 3 points
- Fairly resistant: 2 points
- Resistant: 1 point
- Durable: 0 points

(4) Degree of threat of destruction of primary values
- Very threatened: 4 points
- Moderately threatened: 3 points
- Slightly threatened: 2 points
- Unthreatened: 1 point
- Well protected: 0 points

Subtotal  

C. Preservation of a relatively natural plant habitat

(1) Distribution of primary habitat/species value(s)
- Rare in watershed: 3 points
- Rare in region: 2 points
- Rare in area: 1 point
- Widespread: 0 points

(2) Importance of primary habitat/species value(s)
- Rare in watershed: 3 points
- Rare in region: 2 points
- Rare in area: 1 point
- Widespread: 0 points
### (3) Fragility of primary habitat/species value(s)

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Subtotal

### D. Preservation of open space

#### (1) Uniqueness of open space

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#### (2) Importance of open space

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(3) Visual sensitivity of open space

<table>
<thead>
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<th>Sensitivity</th>
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<td>4</td>
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<tr>
<td>Not sensitive</td>
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<td>Not visible</td>
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(4) Degree of threat of destruction

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<td>3</td>
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<td>Unthreatened</td>
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</tr>
<tr>
<td>Well protected</td>
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</tr>
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</table>

Subtotal ______

E. Preservation of land for outdoor recreation by the general public or for the education of the general public

(1) Distribution of primary recreational/educational value(s)

<table>
<thead>
<tr>
<th>Location</th>
<th>Points</th>
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<tr>
<td>Rare in watershed</td>
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(2) Importance of primary recreational/educational value(s)

<table>
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<th>Importance</th>
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(3) Frangility of primary recreational/educational value(s)

<table>
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(4) Degree of threat of destruction of primary recreational/educational value(s)

<table>
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<tr>
<th>Threat Level</th>
<th>Points</th>
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<tr>
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Subtotal

7. Numerical ranking of the project

<table>
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<th>Points</th>
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<td>21 - 48</td>
<td>Highly qualified</td>
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<tr>
<td>11 - 20</td>
<td>Moderately qualified</td>
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<tr>
<td>1 - 10</td>
<td>Significant values present</td>
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Council Ranking

8. Has the property been considered for acquisition by any other public agency or conservation organization? If so, what is their current interest?

9. If proposed acquisition is ranked as "rare" or "important" in the watershed under 6A-E, is acquisition by Federal agency appropriate and desirable? If so, which agency and response?
10. If proposed acquisition is ranked as "rare" or "important" for the entire watershed under 6A-E, is acquisition by State agency appropriate and desirable? If so, which agency and response?

11. Project sponsor (if other than the Council)

12. Describe impact of the project on other Council activities and projects in the area

13. Briefly discuss any mitigating circumstances which may make this project either a higher or lower priority than indicated by the numerical ranking process.

14. Summarize areas of probable agreement and disagreement between Council and landowner. Propose solutions.

Agree:

Disagree:

Solutions:
15. What is the probability of the project succeeding? Comment about the likelihood of solving problems.

High __    Moderate __    Low __

Determinations of Interest to be Acquired

16. Is the public value compatible with historic land use? __

If answer is no, go to #23. / If answer is yes, answer #17-21.

17. Is (are) the public values on the property:

Simple __    Complex __

18. Is public access desired as a part of the acquisition?

No __    Yes __

19. Does the landowner wish to retain ownership?

No __    Yes __

20. Is there agreement between landowner and the Council as to desirable future use?

Yes __    No __

21. Is on-site public management required?

No __    Yes __

If total in left column for items 17-21 is 3 or more, go to #22.
If total in right column for items 17-21 is 3 or more, go to #23.

Left column __    Right column __

22. Less than fee acquisition indicated.

23. Fee acquisition indicated.

24. RECOMMENDED FORM OF ACQUISITION: LTF __    Fee __

Explain: ________________________________
### Management Recommendations

25. Identify management concerns:

<table>
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<tr>
<th>Use</th>
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<td>Commercial Use</td>
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<td>Mineral Development</td>
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<td>Recreational Use</td>
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<tr>
<td>Special Uses</td>
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### Project Costs

26. Long-term management and monitoring responsibilities

27. Estimate cost of management and monitoring (work days and related expenses)

Amount: _____
28. Acquisition Costs

<table>
<thead>
<tr>
<th>Service</th>
<th>Less-than-Fee</th>
<th>Fee</th>
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<tr>
<td>Documentation Report (Management Plan)</td>
<td>___</td>
<td>(____)</td>
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<tr>
<td>Easement Preparation (Deed Preparation)</td>
<td>___</td>
<td>(____)</td>
</tr>
<tr>
<td>Negotiation</td>
<td>___</td>
<td>(____)</td>
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<td>Appraisal</td>
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<td>(____)</td>
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<td>(____)</td>
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<tr>
<td>Purchase</td>
<td>___</td>
<td>(____)</td>
</tr>
<tr>
<td>Project Coordination</td>
<td>___</td>
<td>(____)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>___</td>
<td>(____)</td>
</tr>
</tbody>
</table>

29. Combined total for 27 with LTF

30. Combined total for 27 with Fee

31. Indicate the MAXIMUM FINANCIAL COMMITMENT the COUNCIL should be prepared to make to this project.

   a. Project coordination
   b. Preparation of Documentation Report
   c. Preparation of easement
   d. Assumption of management and monitoring
   e. Purchase at less-than-appraised value
   f. Purchase at appraised value
   g. Exchange

   **TOTAL $**

32. Indicate MINIMUM FINANCIAL COMMITMENT necessary by LANDOWNER.

   a. Preparation of easement or deed
   b. Preparation of documentation report
   c. Donation of property interest
   d. Contribution to management and monitoring fund?
   e. Contribution to project coordination?
   f. Pay for Council preparation of a. and b.?

   **TOTAL $**

Person responsible for application: ________________________________

(Signature)
Council's Decision
Appendix B

I. Questions for Rock Creek Trust
Interviews conducted 8/5/97 and 10/9/97

Does RCT have criteria for considering easements? If so, how is the criteria applied?
What happens if a landowner balks when the trust initiates an easement?
For each easement: Who approached who first? How? When? Did they immediately want to donate or have RCT purchase? Why did RCT pursue an easement on this piece of property? What was RCT's goal for this property at the beginning of the easement process? How did RCT evaluate the goals of the landowner within the easement process? How did RCT address these goals in the easement? How long did the process take from start to finish? Were there any obstacles to securing the easement from RCT's perspective? Did RCT have to compromise its original goals in the process of securing the easement? How were these obstacles negotiated around? What did you learn in the process of this easement?

If there were any other organizations involved, why were they involved?

Gillies: why involve FWP--money, what else if any reason?
How does RCT coordinate w/gov't? What entities aside from FWP? What role does RCT see gov't has in its mission if any? RCT notifies local gov't--what entity, why and does it ever present a problem?
Is this a "joint easement?" Are there any others?
What kinds of timber practices does RCT allow? I.e. FWP wants Best Management Practices for Gillies easement but does RCT have different or more stringent requirements? How does it establish
those guidelines without a staff "expert?" How does it establish similar guidelines for grazing without a staff expert? Is access one of the reasons FWP got involved? Obviously RCT can't guarantee access on every easement, but is this one reason that the trust pursued the easement? EA says no socioeconomic effects on Gillies yet R. Clough said there would be--what does RCT think?

Stony Creek:
Clarify land exchange on Handley/Spring Cr. Woods--land exchange? What exactly is title and mineral title insurance? Did Tom in fact sell to Raverty?

Reineking:
Minimal negotiations around lang of easement--is this typical of sm landowners who don't use the land like ranchers or simply because Rking is boardmember and knows easements, or both? Why is the baseline done after the easement? Typical time frame for that process? Why does RCT have landowner notify/obtain approval from RCT when building/enlarge septic? Is this because county regs are not enforced often enough? Why did Gran. Co try to enact legislation that would give it control of federal lands? There was a 2nd appraisal in FEB '97--after easement--is this normal? Why so much higher than the first appraisal? Was the first low because it was a "limited appraisal?" Primary purpose of Rking easement: bighorn passage/limit dev't. Is this the norm for RC Ranchette Project? Are all the Ranchettes easements dontated? How many landowners did RCT initially pursue and how many are there under easement now?

Pritchard:
Why did the draft of the easement include such specific language about species of special concern? Why don't other easements include this language?

**General easement ?:**
Reading suggests easement programs are often part of "larger land protect schemes" that include fee simple acquisition. Is this the case in the land trust mov't?
How much more restrictive is purchase?
Do easement programs allow for more room to ask for changes in landowner behavior?
Is the flexibility tough--can easements be so time-consuming that they miss the very values they want to conserve? I.E. it's too late?
How does RCT educate officials, lawyers and appraisors if it does?
How do program costs figure into RCT's easements--do landowners contribute to easement stewardship on every easement?
How much of the stewardship fund is served by fundraising?
Who will take over easements should RCT expire--FVLT?
Do bargain sales propose more potential challenges because the conservation ethic isn't there?

**Law and enforcement:**
Are there any legally challenged easements that to date have weakened or strengthened the easement tool? If so, what limits have been revealed?
How often does RCT inspect? Who does it? What are the methods?
Has RCT had to enforce yet? Gone to court? What happened?
Does RCT track ownership in the drainage?
Do/Has proposed changes in easements ever happened?

**IRS ?:**
Does RCT ever use or suggest private letter rulings from the IRS concerning a donated easement?
How often does the RCT attorney draft the easement document or rather are there ever cases where you don't?
RCAC and Relationship with Five Valleys Land Trust:
Why did Rock Creek Advisory Committee fold in 1976?
When did BPA consortium ask to put power lines across the drainage?
Why did RCAC become a non-profit? Why did Board of Natural Resources permit this to happen?
How did RCAC mission differ from RCT's?
What is the organization's view of the trust fund and how it should be used?
What are the responsibilities of the Rock Creek Advisory Council as RCT's board today?

II. Questions for Landowners
General Questions posed to each landowner:
Why did you do an easement?
Why did you choose Rock Creek Trust?
Did you consider another organization for the easement? If so, why?
Why did you reject them?
What were the most important land uses you needed the easement to allow?
Did you find that you had to compromise your original goals during the process at all?
How does the easement help you and your family?
Do you think the process what positive?
What did you learn from the process?

Additional specific questions to each landowner:
Reineking:
Describe the Ranchettes project.
How do conservation organizations make long term plans for acquisition?

Gillies:
How will the easement changes things for your daughter's ranching operation?
Where else would you develop water?
How might the easement change things aside from water development?
What is the single most important thing about the easement?

Clark (Stony Creek):
Who did you purchase the property from?
What made you decide not to go with MLR?
Financial benefits—was the easement helpful to your family like the T Heart was?
Land exchange—did Raverty take Spring Creek Woods property?
Your dad sold Spring Creek Woods and used the money to purchase Stony Creek?

III. Questions posed to other parties involved in easements or government employees:
Rich Clough, MT Department of Fish, Wildlife and Parks:
What criteria does the Dept of FWP have for considering easements?
How long ago did Ellen Knight plant the seed and then what was the time frame for Gillies coming to you?
At the beginning of the process, what were the goals for the property from the FWP perspective?
How concerned are you and how do you evaluate the landowner's goals?
So, if the landowner's have any goals i.e. Gillies' don't want duck hunting, how did you address that?
Time frame start to finish on your involvement with the Gillies easement?
Were there any obstacles to securing the easement?
Did FWP have to compromise any of its goals in the process?
Quickly, FWP goals in the drainage?
Public access—is it something FWP is concerned about in Rock Creek?
Why does FWP hold the easement?
Partnerships--how does this kind of partnership happen?
What did you learn?
Who supports the parking lot in Rock Creek and why?
Who is on the Fish, Wildlife and Parks Commission and is this an appointed body?

**Bruce Bubee, Land Conservation Professional:**
How did you establish the priority properties in the drainage?

**Ron Marcoux, Rocky Mountain Elk Foundation:**
Why were you involved with the Gillies easement?
Did RMEF ever have any financial commitment to the project?
Why is RMEF so open with its involvement?

**Debbie Dils, Fish, Wildlife and Parks:**
What are the grazing requirements in the Gillies easement?
How did the negotiations take place? What was your role? Other roles--Ellen Knight and Ron Marcoux?
How did the family respond to the initial offer on FWP's part?
What will the result of the easement be in terms of the ranching operation on the Gillies property?
Why did they agree to the restrictions?

**Chad Lanes, tri-county sanitarian, Powell, Deerlodge and Granite counties:**
When were the current septic regulations drafted?
How are they enforced? Who enforces them?
What do you think of the work the RCT is doing?
**FVLT CRITERIA CHECKLIST**

(To qualify, a property must receive a yes to at least one criteria in Category I, as well as yes to all * criteria)

<table>
<thead>
<tr>
<th>Property</th>
<th>Date</th>
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</thead>
</table>

**Category I. Quality, Importance and Uniqueness of the Resources:**

**Yes** (Y) **No** (N) **Does the property:**

- ✦ border or affect the integrity of a significant river, stream, or lake? (riparian habitat, wetland, natural shoreline)
- ✦ include critical or important wildlife habitat (winter/spring range, calving area, nesting sites) and/or known migration routes?
- ✦ buffer wildlife habitat, so that its protection from development would significantly diminish impacts on wildlife from livestock, pets and concentrations of human activities?
- ✦ have scenic values visible from major highways, from water bodies used by the public for recreation, from communities, or from other public use areas?
- ✦ have the potential to be a part of community, state or federal park or greenway system? (name)
- ✦ Would acquisition contribute significantly to public recreation opportunities: ✦ by keeping lands available to public use that would be restricted if the land was sold/developed; ✦ by linking or providing public access to existing public recreation areas?
- ✦ Would acquisition contribute significantly to the preservation of a farmland environment in an area where agriculture has been and still is the predominant land use?
- ✦ have a historically important land area or a certified historic structure that would be benefited significantly by preservation of its historic values?

**Category II. Liability: Is the property:**

- ✦ un-contaminated by hazardous or toxic substances from previous on or off-site land uses?
- ✦ free of improvements that may represent a hazard to the public (wells, mine shafts, unmaintained buildings)?

**Category III. Acquisitions**

- ✦ Is the landowner willing to convey an interest in the property that will protect the property's primary conservation values?
- ✦ If associated with a subdivision or other development land use, is that development/land use compatible with the mission of FVLT?
- ✦ Would FVLT want to be identified with the development?
- ✦ Can it be acquired with reasonable effort in relation to its value or purpose?

**Category IV. Management:**

- ✦ Is adjacent private land already permanently protected or is it likely to be protected in the foreseeable future;
- ✦ Is it of sufficient size that its conservation resources are likely to remain intact, even if adjacent properties are developed?
- ✦ Will management costs be justified by the conservation values that will be protected?
- ✦ Is the landowner willing/able to make the Stewardship Fund donation? If no, can such funds be acquired from another source?
- ✦ Is it sufficiently close to other FVLT properties or of sufficient size by itself, to make management in perpetuity practical?

**Category V. Threat:**

- ✦ Is there a significant likelihood that important conservation values will be lost in the near future if the easement is not acquired soon by FVLT? (Is the property subject to imminent sale or development?)

**Category VI. Public Support, Funding:**

- ✦ Will this project build public support for the trust and its mission; attract new or key sources of funding; and/or build good relations with government agencies?
FVLT: PRELIMINARY PROJECT APPROVAL
Proposed Easement Summary □ FVLT □ RCT

Name of proposed easement: ________________________________

Location: ________________________________

Size: __________________

Description of property: ________________________________

Conservation values to be protected: ________________________________

Unique features: ________________________________

Problems: ________________________________

What is cost: __________________ Are there funding partners: __________________

Owners: ________________________________

Comments:

Staff Recommendation: ________________________________ Date: ______

RCT Board action: ________________________________ Date: ______

FVLT action: ________________________________ Date: ______

Attachments:

1. Map
2. Relation of project to FVLT goals (criteria checklist)
3. Proposed permitted uses/ inconsistent uses if available

Additional comments on reverse
Appendix D

Figure 1.1 Map: Land ownership in Rock Creek Drainage ___ 107

Figure 1.2 Easement chart _____________________________ 108

Figure 1.3 Flow chart: History of Rock Creek Trust _____ 109

Figure 1.4 Flow chart: Fish, Wildlife and Parks
   Acquisition Process _______________________________ 110

Figure 2.1 Map: Reineking easement ___________ folded in pocket

Figure 2.2 Map: Neal easement ________________ folded in pocket

Figure 2.3 Map: Pritchard easement _____________ folded in pocket

Figure 2.4 Map: Gillies easement _________________ folded in pocket
64 miles of Rock Creek frontage are in private ownership.
Fig 1.2  **Examples of types of easements**

**Donated**

Landowner Mrs. Wants Two Conserve wishes to donate an easement on her 20 acres of land to the Rock Creek Trust.

The land's appraised value before the easement: $100,000  
The land's value with the restrictions in place: $75,000  
  Value of easement: $25,000  
Mrs. Wants Two Conserve may deduct a total of $25,000 from her income taxes over a period of six years.

**Bargain Sale**

Landowner Peter Lotsaland holds 100 acres with habitat for the last species of butterfly known to feed a warbler that is a candidate for listing under the Endangered Species Act. The Nature Conservancy approaches Lotsaland and asks him to sell an easement on his land to them for less than what the local golf course developers are offering. Lotsaland wants his kids to enjoy the land, the butterflies and the bird, so he does.

Fair maket value of Lotsaland100 acres: $500,000  
Value of Lotsaland after easement: $250,000  
Value of easement: $250,000  
Price paid by Nature Conservancy for easement: $175,000  
Value the landowner may write off on income taxes as a charitable deduction: $75,000 over a period of six years.

Source: Abstracted from Rock Creek Trust Easement files
Fig 1.3 History of the Rock Creek Trust

Rock Creek Advisory Committee
First meeting Oct 31, 1972

1973 Deerlodge and Lolo forests adopt the Committee's water quality monitoring

1976 Rock Creek Advisory Committee disbands

National Forest Management Act

1983 USFS and other agencies grant permission for power lines

Non profits and MT Dept of Natural Resources appeal decision

Sept 1986 Trust fund agreement creates Rock Creek Advisory Council

1995 Rock Creek Trust formed as a major project of Five Valleys Land Trust Focuses mainly on easement program

Rock Creek Advisory Council the Council still advises on RCT's projects and expenditures
Fig. 1.4 MT Dept Fish, Wildlife and Parks Acquisition Process

- Regional FWP office evaluates project—conservation values and cost

- Helena divisions prioritize projects from around the state

- Funding approved

- No Funding—back to start to re-evaluate

- FWP Commission reviews proposal

- Regional FWP negotiates terms of acquisition, prepares Environmental Assessment.

- FWP Commission gives final approval for expenditure of funds as outlined in terms of acquisition

- State Land Board approves all projects over 100 acres and $100,000
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