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OPEN SPACE IN MISSOULA, MONTANA
A CASE STUDY

By

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B.S., Colorado State University, 1977

Presented in partial fulfillment of the requirements for the degree of
Master of Public Administration
UNIVERSITY OF MONTANA
1983

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Chairman, Board of Examiners
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Date
12-5-83
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CHAPTER I

INTRODUCTION

The Concept of Open Space Planning

In the United States the need for open space in and near cities was not generally accepted until the late nineteenth century. Recognition of this need grew out of the belief that crowded living conditions in the city adversely affected the residents' physical, mental, and spiritual health. Early arguments in favor of reserving open space in the form of urban parks were advanced by reformers such as Frederick Law Olmstead, the principal designer of Central Park in New York City. In Olmstead's day, cities in the eastern United States were growing rapidly, putting rural areas beyond the reach of city dwellers, especially beyond the reach of the immigrant population living in tenements.¹ Olmstead, the product of a small New England town, believed that a facsimile of the rural landscape would serve as a panacea for the vice, crime, and other ills that permeated the city slums.²

²Ibid, p. 16.
The benefits of open space planning were widely recognized by the end of the nineteenth century. It was argued that one need only look at the crime and mental illness that flourished in the absence of trees, gardens, and fresh air in order to be convinced that open spaces were needed. A San Francisco newspaper in the mid-nineteenth century articulated the following view: "A grand park within the reach of every citizen would do more in preventing disturbances and vice than had all the sermons preached"; parks would "keep away the poor and the young from the temptations scattered all about them."^3

Olmstead's hopes were realized with the creation of Central Park in New York City. Central Park represented the first successful attempt to create a major city park in the United States: a "Walden for the masses."^4 Central Park started a trend that swept the country. Observing New York's success, major cities across the United States immediately began plans for parks of their own.

Today, the arguments of early reformers are no longer unquestioningly embraced. Open space in urban areas is still considered to be important, but for different reasons from those offered by nineteenth century reformers.

Today recognition of the importance of acquiring open space lies in the recreational opportunities and aesthetics


^4 Ibid.
open space can provide. People do not want to feel that they must leave their city to experience the amenities of open space. The city should be a place that is fit for human habitation, not a place from which one must escape in order to find a moment of peace. Indeed, open space provides a "psychological parking place within the civic landscape."\(^5\) Community leaders have "long been aware of a link between a city's amenities and the soundness of the other aspects of its life."\(^6\) Properly situated and developed, open spaces provide a sense of unity and pleasure for the community. They enhance the quality of urban life, and provide the city with a sense of vitality and community feeling.

Since the latter part of the nineteenth century, the need for open spaces that are accessible to the inhabitants of cities has been widely accepted. But this does not apply to large cities exclusively. Small cities, including Missoula, Montana, have demonstrated interest in obtaining and maintaining open space lands. Even though it is surrounded by vast acreages of relatively undeveloped land, Missoulians have expressed their support for the acquisition of open space.


\(^6\) Heckscher, p. 1.
A municipality can acquire open space in many ways. Easements, zoning, and purchase (fee simple) are the principal methods. Each of these approaches may or may not be appropriate in a particular situation, depending upon the objectives to be reached and the circumstances surrounding the situation at hand. Of the three principal methods, zoning and certain kinds of easements can be used to acquire open space without the payment of funds to some group or individual. Funds for the purchase of lands and easements by a municipality can come from several sources: donations, state and federal loans and grants, special taxes, and the sale of municipal bonds.

Purpose of This Paper

In November of 1980, the voters of the City of Missoula approved a $500,000 conservation bond issue. The funds derived through the sale of the bonds have allowed Missoula to secure "open space land which, because of its aesthetic, scenic, recreational, historic, or ecological value, it is in the public interest to acquire." The sale of bonds for the purpose of acquiring open space lands is a unique approach in Montana, and is a unique approach for a city the size of Missoula in the states on Montana's borders. Considering its success in Missoula, this

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7 City of Missoula Ordinance No. 2183 (Open Space Ordinance); Missoula, Montana, 5 January 1981.

8 Interview with Dave Wilcox, Administrative Assistant, City of Missoula, Missoula, Montana, 2 May 1983.
approach may hold great promise for other communities exploring alternatives for acquiring open space.

This paper provides a case study of Missoula's efforts to obtain open space land through the sale of conservation bonds. The paper's purpose is to show from Missoula's experience how money obtained through the sale of bonds can be used to obtain lands and easements. It will address: 1) Missoula's needs and objectives prior to choosing the bond approach, 2) options the decision makers had and why they chose the bond approach, 3) steps taken to get the bond passed, 4) strategies followed and steps taken to acquire open space after passage of the bond, and 5) problems or obstacles that arose which may be of interest to other communities. Such information should prove useful both for decision makers in Missoula seeking to decide what further steps need to be taken and for decision makers in other communities searching for options for acquiring open space lands.
CHAPTER II

ALTERNATIVE APPROACHES FOR ACQUIRING OPEN SPACE

This chapter provides a discussion of the methods and techniques available to communities wishing to acquire open space. The methods described include zoning, purchase (fee simple), transfer of development rights, and conservation easements.

Zoning

Local government can use its police power if it wishes to promote or protect the public health, safety, morals, and general welfare. In the context of the protection of open space, this police power most often is manifest in zoning ordinances. At first glance, it may seem that zoning is a totally unreliable means by which open space objectives can be met. Richard Babcock states in The Zoning Game that:

Stripped of all its planning jargon, zoning administration is exposed as a process under which isolated and political units engage in highly emotional altercations over the use of land, most of which are settled by a crude tribal adaptations of medieval trial

9 The Supreme Court of the U.S. in 1926 gave its imprimatur to comprehensive zoning in Village of Euclid, Ohio v. Ambler Realty Co., 272 US 365 (1926), when it upheld the constitutionality of the village's zoning ordinance.
by fire, and a few of which are concluded by confused ad hoc injunctions of bewildered courts.

Zoning officers may agree in part with this description, but are likely to point out that zoning can indeed be a useful tool when the opportunity to save certain tracts of land from development arises.

One way to keep open space open is to engage in large lot zoning, i.e., require lots of five acres or more for development. This method often backfires because if the land in question is rising in value as a potential residential area, owners will seek a zoning change in order to re-subdivide the land and sell it.

The use of zoning for the preservation of open space has been most successful in respect to floodplain regulations. Because floodplains pose a hazard to buildings in the area, the courts have consistently ruled that zoning floodplains as open space contributes to the safety of the community. The courts have held that police powers can properly be used to protect the public from a substantial harm.

Even so, the courts will not automatically uphold zoning restrictions in a floodplain. The courts will often perform a balancing test to decide the validity of a regulation. The court must balance the public good (open space and protection of citizens from harm) and the rights

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of property owners (are they left with a reasonable use of the land?). Communities must be careful not to leave the land owner with no "reasonable use." To do so would constitute a "taking", and the owner would have to be compensated. As a rule of thumb, if floodplain zoning is to stand up in court, it must be shown that the intent of the zoning is to protect the public from harm.\footnote{Whyte, p. 48-49.}

Agricultural zoning has been used to secure open space, but it is generally unreliable. It may not achieve the objective of open space over a long period of time. The big problem here is that zoning can be changed, often quite easily. The following is a hypothetical example: If a group of farmers were concerned about being forced to sell out because of pressures from urban sprawl and the resulting property tax hikes and mill levies for public services, they might band together and convince the local planning commission to set up exclusive agriculture zones, protecting them from increasing taxes and levies.\footnote{Whyte, p. 48-49.} This seems like a good idea until the farmers start to receive higher offers for purchase of their land. In the end, the pressure to sell to developers and the opportunity to make a sizeable profit

\footnote{Generally speaking, if the purpose of the zoning regulation is to prevent harm, no taking is involved. This concept is taken from common law which states that property cannot be used to injure another person. On the other hand, a zoning regulation imposed for the purpose of achieving a public benefit is a taking and just compensation must be given.}
become too great. The farmers ask for and get the zoning for their land changed, and/or the city annexes them and the land is no longer protected from development.

Another problem with the zoning approach is that courts frequently overturn the use of zoning regulations for purely aesthetic purposes. Recently, however, courts have begun to include aesthetics in the definition of "general welfare." In Berman v. Parker, the U.S. Supreme Court approved a broad interpretation of "general welfare," stating that the "concept of the public welfare is broad and the values it represents [include the] aesthetic."13

The Supreme Court's language seems to support the concept of aesthetic zoning. The problem is that this was not a zoning case. It was about eminent domain, and Berman did get paid for his property. However, the Supreme Court did provide a more liberal construction of governmental land use and it did support the idea that aesthetics are a valid public concern.

The real problem with zoning for aesthetics is that one starts to go beyond simple regulation and this verges on the taking of property through eminent domain.14 Government action that results in a taking is legitimate as long as the owner is compensated. This suggests another way to secure open space -- to buy the property fee simple.


14Whyte, p. 53.
Fee Simple Purchase

If money is available, the easiest and best way to secure land for open space is to buy it. Once bought for such a purpose, the land becomes permanent open space. Until recently, it was thought that land purchased with public funds had to be put to active public use for a public purpose. But the courts have broadened the definition of public purpose, meaning it does not apply strictly to active public use, such as parks, golf courses, and schools. Montana statute lists a wide range of the kinds of lands that can be purchased for open space and the uses to which they can be put. In Montana, public use means that which will benefit the commonweal of the community generally.

The obvious problem with the fee simple approach to securing open space is the cost. In an earlier period communities could take advantage of state and federal programs that provided monies for such purposes. Communities could multiply every dollar committed to open space acquisition three or four times by matching it with state and federal dollars. In this way, modest amounts of money for open space often ballooned into significant amounts. But most of this activity took place in the 1960s

15 Montana Code Annotated (referred to in subsequent footnotes as MCA), 76-6-104(3). See footnote No. 84 for a more detailed explanation.
and 1970s. For better or for worse, the Reagan Administration significantly cut the funding for many of these programs in the early 1980s.\textsuperscript{16}

Assuming that the money is available to buy the land, other problems exist. If an area is declared a target for the acquisition of open space, the land owners may try to hold out for the highest possible price. The owner is in an enviable position. Because he must be paid fair market value for his property, all he has to do is to implement plans for development, and the value of the land will increase. If he is able to hold out, the value of his land will increase as parcels around him are bought up. A piece of property surrounded by large areas of undevelopable park land may soon become very expensive for a government wishing to purchase it.

One way to circumvent this problem of price escalation is by having a private organization purchase the land quietly and hold it until the local government is able to buy it.\textsuperscript{17} The Nature Conservancy and the Trust for Public Land, both nationwide organizations, serve this

\textsuperscript{16}The Land and Water Conservation Fund was created in 1965. Since then it has provided hundreds of millions of dollars in matching grants to the states for the acquisition of open space and park development. Since 1980 the funding for this program has been drastically reduced.

\textsuperscript{17}Whyte, p. 62.
Land can be purchased parcel by parcel without causing excitement among speculators and driving up prices.

State and local organizations can serve the same purpose as the national organizations, and are likely to be more in tune with local objectives than are the national organizations. In such a case, state and local organizations play an important role. The Montana Land Reliance is a non-profit organization primarily concerned with protecting agricultural land in Montana from development. The Five Valleys River Park Association is a non-profit local organization concerned with the preservation of open space lands along creeks and rivers in the Missoula area. Organizations such as these can help communities achieve open space objectives.

Two variations on the fee simple theme are the purchase and lease back and the purchase and sale back strategies. Purchase and lease back occurs when a community purchases a parcel and leases it back, usually to the former owner, to be used for a particular purpose such as farming. The community may at some future date decide not to reissue the lease when it expires. A big problem with this method is that the land must be purchased all at once.

In some ways, purchase and sale back is the ultimate planning tool. The government purchases the undeveloped

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land surrounding a city, and then sells it back to individuals to be used for a pre-specified purpose. This has been used since 1906 in Stockholm, Sweden. Such a method would be unapplicable in the United States today because of prohibitive costs and because such a proposal entails unacceptably high levels of government involvement in the private sector real estate market.

Transfer of Development Rights

Transfer of Development Rights (TDR) is an approach that can ensure environmental preservation while allowing urban growth. Land includes title to a variety of rights. Air and mineral rights are examples. Development rights refer to the land's development potential. The development potential is equal to the difference between the use value (raw land value) and the future or speculative value of the land. If there are actual or potential pressures for growth in an area that a municipality wishes to preserve as open space, it may attempt a TDR approach. This would involve owners in one part of the city who wish to further develop their property buying a right to do so by purchasing the development rights from owners of property in the designated

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19 Whyte, p. 67.

area of the city where the city wishes to prevent development.

This approach is not explained more fully here because it is seldom used for acquiring open space. Difficulty in establishing prices and creating a workable market for development rights and the fact that transferring one's development rights must remain voluntary rather than mandatory make this an impractical approach for purposes of preserving open space. In almost every case, municipalities have chosen a more direct approach for securing open space.

Conservation Easements

The last and potentially most beneficial way to secure open space is through the use of conservation easements. Easements can be classified as positive or negative. A positive easement is one in which the right to do something with part or all of a person's property is acquired for public or private purposes. For example, the use of right-of-way for bicycles and pedestrians may be acquired for the public. Fishing rights may be acquired so that people may use the banks of a stream. Easements may also be bought to place utilities on the land, put livestock on it, cut the timber from it, or extract the minerals from under it.

Negative easements do not ask for physical access to the property. The purpose is to prevent the owner from

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21 Whyte, p. 79.
using the property for purposes that a city agency or other group considers undesirable. This could include the prohibition of subdivisions, billboards, and the draining of marshes and swamps. Conservation or scenic easements usually prohibit the owner from developing the land or from placing anything on it that would deteriorate its visual quality. Conservation easements are negative in nature, and difficult to enforce unless their validity and enforceability are backed by statute. Such authority is provided in Montana in the Open Space Land and Voluntary Conservation Easement Act (1969). Although the use of conservation easements can provide very satisfactory results, it is important to note that they are usually used as part of an incremental approach. Because the land in question is often owned by several individuals, acquiring easements for an entire area is likely to be slow and uncertain. Owners cannot be coerced into selling easements.

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22 The purchase of development rights to secure open space and the authority to prohibit placing anything on open space that would deteriorate its visual quality is provided under Montana statute. MCA 7-6-203(1) states that "Easements or restrictions. . . may prohibit or limit any or all of the following: structures - construction or placing of buildings, camping trailers, house trailers, mobile homes, roads, signs, billboards, or other advertising, utilities, or other structures above the ground; . . . ." Regarding visual quality, MCA 7-6-203(1), (2), (6), and (7) state that "easements or restrictions... may prohibit or limit..." structures, landfills, removal of vegetation, excavation, acts detrimental to conservation, and subdivision of land.

23 MCA 7-6-101.
Not all easements are bought or sold, however. The conservation easement can be a voluntary grant for safekeeping by the landowner to a qualified private organization or a government agency. Why would a landowner feel compelled to grant a conservation easement? Many of the owners who donate easements are people who feel close to the land and would like it to remain essentially as they have known it. The owner can usually continue with the traditional use of the land, such as ranching and farming.

There may also be a financial incentive, as the owner can benefit from savings in property, income, and estate taxes. According to Montana law, lands with easement restrictions can be assessed for real property taxes based on the restricted purpose for which the property may be used.\(^{24}\) For example, if there is pressure on a parcel of land to be used for a subdivision and subdivisions on the parcel are not allowed by the terms of the easement, the property must be appraised and the property taxes determined on the basis of other uses, such as agricultural use.\(^{25}\) Tax relief, therefore, may make donating an easement attractive to an owner who wishes to keep his land undeveloped.

Donating an easement in perpetuity qualifies the owner for a charitable deduction from state and federal

\(^{24}\)MCA 76-6-208.

income taxes. The value of the gift may be deducted from income taxes. The value of the easement is equal to the difference between the value of the land before and after the donation. The owner can deduct from his federal and state income taxes up to thirty percent of his adjusted gross income in any one year. Federal estate and state inheritance taxes may also be reduced. The estate is valued only for its use as allowed by the easement.

Almost all easements "run with the land," meaning that their conditions apply to subsequent owners of the property. The idea of perpetuity may deter some people and they may voice a desire for short-term easements instead. Short-term easements are possible to obtain, but renegotiating may provide problems. As a rule of thumb, short-term easements are to be avoided.

It should be noted that some courts have upheld the notion that the use of easements to obtain aesthetic goals is a proper public purpose. The Wisconsin Supreme Court

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29 MCA 76-2-202 states that "conservation easements may be granted either in perpetuity or for a term of . . . not . . . less than 15 years."

30 Whyte, p. 83.
held that they serve a public purpose by providing "visual occupancy".\textsuperscript{31} In this case, easements were not imposed by police power but were paid for under eminent domain.

Successful Open Space Programs

Now that methods to preserve open space have been discussed, it is useful to examine some of the approaches employed by cities with open space programs. Eugene, Oregon, Boulder, Colorado, and the City and County of San Francisco, California, have successfully implemented open space programs. The efforts and methods of each will be briefly discussed.

\textbf{Eugene}. The City of Eugene has been quite successful in acquiring lands for parks and open space. The acquisition of land has occurred over many years and under very different conditions. The growth and success of the open space program is primarily due to the active involvement by Eugene's citizens in planning, buying, and building city parks.\textsuperscript{32}

The donations of lands and money has played a very significant role. Two hundred twenty-five acres of parkland have been acquired through outright gifts or citizen-sponsored funding drives.\textsuperscript{33} In the 1940's the Century

\textsuperscript{31}Kamrowski \textit{v. State}, 31 Wis. 2d. 2456; (1966).

\textsuperscript{32}City of Eugene Parks and Recreation Department "Parks and Recreation Master Plan", Eugene, Oregon, 1983, p. 191.

\textsuperscript{33}Ibid.
Progress Fund was created to solicit funds for a major city park. In the early 1960's a small group of local businessmen donated tens of thousands of dollars of their own money to buy parkland. The group, known as the Riverfront Development Corporation, was comprised of twenty-five individuals who had each pledged $25,000. Thus, many donations of land and money, both large and small, have enlarged Eugene's park and open space system.

Prior to the 1930's, Eugene's acquisition program was largely dependent on gifts and donations. Since then, the voters have taxed themselves several times to secure open space. Eugene has also had a great deal of success taking advantage of matching funds for acquisition provided by the state and the federal government, allowing the city to maximize its acquisition potential.  

Boulder. It is the goal of Boulder's Open Space Program to acquire 15,000 acres of Boulder's fifty-eight square mile valley for open space. To date, 9,576 acres of land have been acquired at a cost of $20,885,000. Of these acres, 5,000 have been acquired since the Open Space Plan was adopted by the City Council in 1974.

Obviously, Boulder has an aggressive and successful open space program. The program is funded through a one

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34 Correspondence with Walter J. Hanuick, Land Acquisition Specialist, Parks and Recreation Department, Eugene, Oregon, 21 July, 1983.

cent sales tax, approved by the voters in 1967. Forty percent of these revenues are earmarked for the acquisition of open space lands. The citizens of Boulder have been enthusiastic about the open space program and in 1971 voted on and passed a charter amendment which essentially gives the City Council a blank check to acquire open space.\textsuperscript{36} In 1973, the City Council provided for increased citizen involvement by creating an Open Space Board of Trustees, a citizens' board charged with the duty of making advisory recommendations to the City Council. The open space program in Boulder is supported by the vast majority of its citizenry. A recent newspaper article stated that seventy-one percent of those people sampled were in favor of more purchases of open space property.\textsuperscript{37}

\textbf{San Francisco.} San Francisco's Open Space Program was established in 1974 with the voter's approval of Proposition J.\textsuperscript{38} The Proposition created the Open Space

\textsuperscript{36}The Amendment reads as follows: "to allow the City Council, without approval by vote of the qualified electors of the City, to create and incur indebtedness to the City, and issue bonds to evidence the same, payable from and pledging funds and revenues earmarked and committed... to purposes of acquisition of open space real property or interests therein." "Boulder's Open Space Plan", p. 2.

\textsuperscript{37}Correspondence with Stephanie Berry, Administrative Assistant - Real Estate Open Space, City of Boulder, Boulder, Colorado, 11 July 1983.

\textsuperscript{38}The Park and Recreation Department's "General Manager's Report: Open Space Acquisition and Park Renovation Fund", City and County of San Francisco, San Francisco, California, 7 July 1981, and 2 August 1982.
Acquisition and Parks Renovation Fund. The Fund is supported by an annual ad valorem tax levy of ten cents per $100 of assessed valuation for a period of fifteen years. This tax levy generates a considerable amount of revenue. In 1981, $5,145,000 was deposited into the fund. In 1982, the figure rose to $6,597,000. At least 37.5 percent of the fund must be spent on acquisition of property each year. This source of funding is able to provide San Francisco with the money needed for an aggressive acquisition program.

The City's acquisition targets are well planned in advance, with certain areas of the city categorized as those which have the highest need for open space. These targeted areas can be found in the open space designations in the master plan. The Recreation and Park Department is responsible for the oversight of the program and is assisted in its duties by the Citizens Advisory Open Space Committee.

As demonstrated in the cases of Eugene, Boulder, and San Francisco, each community must determine for itself which methods for acquiring open space are most appropriate. Each community must take into account which methods appear to be politically and economically feasible in light of its specific goals. This is the task that confronted Missoula in the 1970s.
CHAPTER III

INITIAL EFFORTS TO ACQUIRE OPEN SPACE IN MISSOULA

Emergence of the Issue

Throughout the 1970s Missoula witnessed numerous efforts to acquire open space. Using an assortment of strategies and methods, many people and groups tried repeatedly to launch a program to acquire lands and open space along the Clark Fork River and on the west faces of Mount Jumbo and Mount Sentinel. This chapter describes these early efforts.

"A riverfront park along the south bank of the Clark Fork [River] has long been the dream of many citizens in Missoula."\(^{39}\) So wrote a Missoulian staff writer in February of 1976. For a number of years citizens in Missoula had expressed an active interest in the creation of a riverfront park system. The creation of the Five Valleys River Park Association (FVRPA) was a manifestation of this active interest and was the first group to organize formally to promote the establishment of riverfront parks.\(^{40}\)

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The FVRPA is a non-profit organization which was established in 1972. The group was formed because its members felt that the city and county of Missoula were not doing enough to secure parkland along the riverfront, thereby missing a golden opportunity for Missoula to take advantage of the natural amenities provided by the river. Local government had not provided the focus needed to solicit community response, and because of this the FVRPA instigated its own acquisition program. The association solicited the donation of lands and planned to hold them in either their natural state or to turn them over to the city or county to be used as parks or open space. The association's private efforts were frequently successful, including the acquisition of Maclay Island, Kelly Island, land in Hellgate Canyon, Tom P. Green Memorial Park, and Jacob's Island Park.

The Association was also successful in focusing the attention of Missoulians on the riverfront area, thereby aiding the city in subsequent efforts to acquire riverfront property. Missoula businessmen such as John Toole had long championed the idea of a riverfront park system. John Toole, Cass Chinske, Bill Boggs, and other City Council members

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42 Maclay.
supported the parks idea thereby bringing local government into the issue.

In February of 1973 the FVPRA and local government officials met to discuss the purchase of the old Chicago, Milwaukee, St. Paul and Pacific Railroad (Milwaukee) passenger station on the south shore of the Clark Fork River. The Milwaukee no longer needed the station as passenger service had been discontinued. It was thought the station could be renovated to be used as a civic center. The FVPRA and Missoula County Commissioners agreed that the purchase of the depot and accompanying five acres of riverfront land was a good idea, but neither group could afford the $150,000 price tag. The FVPRA asked the Commissioners about the availability of revenue sharing funds for the depot and land acquisition. The Commissioners, however, balked at the idea of raising taxes for such a purpose, and these acquisition efforts were stymied.

Hopes of a south riverfront park were raised again when the directors of the FVPRA, representatives of the University of Montana, members of the Missoula business community, and representatives of local, state and federal governments met in February of 1976. The meeting was held

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44 Don Schwennesen, "Park Planners Discuss Milwaukee Station Sale", The Missoulian, 21 February 1973, p. 3.
to "work out some arrangement" between the Burlington Northern Railroad and the Milwaukee Railroad to allow the Milwaukee trains to operate on Burlington Northern's tracks passing through Missoula on the north side of the river. This would have the result of making the right-of-way on the south shore available for acquisition as a riverfront park.

The prospects for getting the Milwaukee to move its operations to the north shore looked good. The idea continued to show progress at similar meetings in March and July of 1976. Burlington Northern's reaction to the idea was described by FVRPA and Missoula Planning Board Chairman Evan Denney as "very favorable". In August of 1976, it was reported that talks between the Milwaukee and Burlington Northern were positive and productive. Evan Denney stated that he was "very hopeful" that the project would go through. The project died, however, when the Milwaukee filed for financial reorganization under the Federal Bankruptcy Act in 1977.

Local interest in a riverfront park was exhibited once again in July of 1978 when a group of property owners, 


the Riverfront Neighborhood Association, tentatively decided to create a Special Improvement District (SID) in order to purchase a piece of property on the south riverfront east of the Orange Street Bridge. By establishing an SID, the property owners could tax themselves to generate the funds necessary to buy the land. Several city council members, including Bill Boggs and Cass Chinske, supported the neighborhood association's plans. The Association and the city had originally hoped to use Housing and Urban Development (HUD) funds from the federal government to buy the property, but were subsequently denied the grant money from HUD. In any event the petition to establish the SID failed to obtain enough signatures. Another effort to acquire riverfront property had failed.

Another drive to preserve open space was spearheaded by members of the city council, particularly Aldermen Bill Boggs and Cass Chinske. It occurred to Mr. Boggs that the mountainsides of Mount Jumbo and Mount Sentinel were privately owned, and that it would be possible to develop them if their owners saw fit. Mr. Boggs began to research the problem, looking for a way to preserve the mountainsides as open space.

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50 Interview with Bill Boggs, Ferguson and Mitchell, Attorneys at Law, Missoula, Montana. 22 February 1983.
On March 15, 1978, the Conservation Committee of the Missoula City Council discussed the idea of preserving the west side of Mount Sentinel, a prominent peak on the east boundary of Missoula, as open space. The committee received a memorandum from the City Attorney that the city could take a conservation easement extra-territorially, a necessary action, as Mount Sentinel is located outside of city limits. The Committee agreed that the City should take action to acquire open space on Mount Sentinel by easement (by purchase, gift, or forced sale) or zoning.

On April 10, 1978, the Missoula City Council passed a resolution declaring its intention to acquire conservation easements "whether by purchase, gift, or taking" on Mount Sentinel. The sentiments of the Council were expressed in the resolution: "Mount Sentinel is a crucial natural resource of the City of Missoula, possessing extreme aesthetic, scenic, recreational and spiritual worth for the inhabitants thereof. . ." (underline added). The Council directed the Conservation Committee and the City Attorney to negotiate with the owners of property on Mount Sentinel for the acquisition of conservation easements or other interests.

The owners of the property in question, Dr. Walter and Mrs. Evelyn Cox, proposed to dispose of all of their property.

51City of Missoula City Council Meeting Minutes, Missoula, Montana, 10 April 1978.

52City of Missoula City Council Resolution No. 3762, Missoula, Montana, 10 April 1978.
property on the front and back of Mount Sentinel, exclusive of several building sites near the bottom of the mountain on the west face for an amount in excess of $1,000,000.\textsuperscript{53} The negotiators for the City felt that the price was much too high. The matter was tabled in order to find another way of securing the property.

In April of 1979, the Northern Tier Pipeline Company once again raised the hopes of a riverfront park.\textsuperscript{54} The company indicated the possibility of routing a pipeline along the then-existing Milwaukee right-of-way. Because of federal law, the land above such pipelines must remain open. If the company would allow public use on the open land, it could be used as a park. This possibility was hailed by local government officials. Mayor Bill Cregg called the possibility a "pleasant surprise". The pipeline was not built and, once again, another possibility for a park did not bear fruit.

In the fall of 1977 a group of Missoula area residents created the Missoula City Spirit Program as a part of the National Endowment for the Arts City Spirit Program.\textsuperscript{55} The purpose of the program was to provide a

\textsuperscript{53}Mae Nan Ellingson, Memorandum to Members and Citizens of Open-Space Advisory Committee, City of Missoula, Missoula, Montana, 27 May 1982.

\textsuperscript{54}Gayle Shirley, "Northern Tier's Milwaukee Route May Yield Park", \textit{The Missoulian}, 14 April 1979, p. 3.

catalyst in the community to further cultural organizations and activities. The City Spirit Program received a $10,000 grant from the National Endowment for the Arts to study community needs. There was found to be a need for more and better facilities in the areas of athletics and recreation, fine arts, and conventions and tourism. The Steering Committee of the City Spirit Program applied for and received a $30,000 grant from the National Endowment for the Arts to be used for a study to determine the feasibility of developing a facility or facilities that would provide for those activities mentioned above. The American Institute of Architects, at the request of the Steering Committee, provided the city with a Regional/Urban Design Assistance Team (R/UDAT) to conduct the feasibility study.

The R/UDAT study is important to this discussion because one of the stated objectives of the R/UDAT program was "to improve the regional/urban condition in the nation. . . ." The preservation of open space in and near Missoula was addressed in response to this broad objective. R/UDAT completed its study in October of 1980.

One result of the R/UDAT study was that the importance of open space on parkland along the Clark Fork River became even more apparent. It was recognized that the undeveloped land along the river in the heart of the city provided a unique opportunity to create a linear park from

56 Ibid, p. 3.
the east end of Hellgate Canyon west to McCormick Park.\textsuperscript{57} This land on the south bank of the river had been owned by the Milwaukee Railroad, which had recently gone bankrupt and was presently preparing to put these lands on the market.

R/UDAT foresaw a special role for the linear park. An events arena was envisioned near the University of Montana on the bank of the Clark Fork River; a hotel, theater, and a musical events center would be on the north shore in the downtown area, further downstream. The linear park would be incorporated as the connecting link between them.\textsuperscript{58}

The R/UDAT study addressed the importance of preserving Mount Jumbo, Mount Sentinel, and other mountains in the Missoula area from development as well. The report made this statement regarding the visual integrity of the Missoula Valley: "No development should be allowed to mar the grassed hillsides that surround the valley in any way. If any area is endangered, a concerted effort must be made to acquire permanent easements to protect the mountains."\textsuperscript{59} This report brought further attention to the desirability of securing open space.

The actions taken by the City Council, R/UDAT, and the abandonment of the Milwaukee Railroad all contributed to

\textsuperscript{57}Ibid, p. 47.  
\textsuperscript{58}Ibid, p. 47-49.  
\textsuperscript{59}Ibid, p. 64.
an awareness of the possibility and importance of obtaining open space on Mount Jumbo, Mount Sentinel, and on the riverfront. The problem, then, remained how this open space could be obtained.

These attempts to acquire open space have been described here in order to illustrate the diverse character of strategies and methods employed by the citizenry, business, and local government officials in Missoula. Although these attempts were not ultimately successful, they did focus community attention on the problem. It was not until the November election of 1980 that the community gained a means by which a successful open space program could be realized.

The Conservation Bond

The City Council decided that if the City was to acquire open space, it was going to have to pay for it. Using police power through zoning regulations would not guarantee success of the open space program. As indicated previously in this paper, zoning regulations can be changed. Overly-restrictive zoning constitutes a taking and requires just compensation to the landowner. That left the Council with the options of conservation easements and purchase fee simple. Although lands can be obtained as gifts, as was demonstrated by the FVRPA, to rely on donations alone would be to rely on a passive piece-meal approach. To achieve the goals of the open space program would require a more aggressive approach.
The open space program would need money. The money would be used to buy land or the development rights (conservation easements) to that land. In 1978, the Council explored two ways to finance open space goals: a levy of one mill on property taxes or voter approval of a conservation bond issue.60

The first option debated by the Council would involve depositing the revenues from a one-mill levy into an open space trust fund. It was pointed out, however, that one mill in 1977 raised about $36,000, not enough to purchase significant amounts of lands or easements. Even if the mill was levied in subsequent years (and allowing for the expected increase of the value of a mill levy) such an action would not generate enough revenue to implement a full scale acquisition program. It was thought that the purchase of conservation easements on Mount Sentinel alone could possibly cost hundreds of thousands of dollars.

The Council then turned to the second option, exploring the possibility of putting a conservation bond issue on the ballot. The issue would raise "several hundred thousand dollars" through the sale of municipal bonds and would be repaid through property taxes over a period of twenty years.61 The revenues generated would be put into a conservation bond fund so that land or easements could be

60 Gordon Dillow, "City Taxpayers May be Asked to Help Purchase Property", The Missoulian, 27 July 1978, p.5.

61 Ibid.
purchased. In addition, the monies in the fund could be used as matching funds against potentially available state and federal grants. The sale of bonds would provide the City with a substantial sum of money in a very short time. For these reasons, the Council passed a resolution to put the conservation bond issue on the ballot.
CHAPTER IV

ACQUIRING OPEN SPACE IN MISSOULA

Voter Approval of the Conservation Bond

The Conservation Bond was first put to a vote in the April 1979 election. Seventy-one percent of the people casting a vote on the issue favored passage of the bond.\(^{62}\) However, state law requires that forty percent of the registered voters must participate in an election, otherwise the issue is defeated.\(^{63}\) Only about twenty-five percent of the eligible voters turned out for the election.\(^{64}\)

Previous to the April election, a group of citizens formed an organization known as The Citizens For Missoula's Heritage. This group had been formed to publicize the conservation bond issue. The members of this group decided to try to put the issue on the ballot a second time and to publicize it more aggressively. Led by Aldermen Bill Boggs and Cass Chinske, they asked the City Council to place the bond issue on the June 1980 primary election ballot. It


\(^{63}\) MCA 7-7-4235.

\(^{64}\) Gayle Shirley, "Group to Give Conservation Bond Another Try", The Missoulian, 18 January 1980, p. 12.
was hoped that this election would draw the number of voters needed for the bond's approval.

On June 3, 1980, the bond was defeated once again as a result of the forty percent requirement. Voter turnout was slightly higher than forty percent for the election, but only thirty-two percent of those turning out at the polls actually voted on the proposition. Cass Chinske, a supporter of the proposition, felt that many people did not vote on it because the issue was on the last page of the ballot. Said Chinske: "People didn't know it was there. They missed it. I think that's what happened."

Later that June, the twice-defeated conservation bond gained another devoted group of supporters. Rumors began to circulate that parts of Mount Jumbo were to be subdivided and sold for development. The rumor began when nearby residents spotted "real estate agents combing a bench" on the mountain. Alarmed, the residents called a meeting in a local school to discuss what actions could be taken to save the mountain from development. Cass Chinske, City Council representative of the lower Rattlesnake area (which is adjacent to Mount Jumbo), was invited to the meeting. He told the residents that the owner of the property had no

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66 Ibid.
intention of selling the land. The residents at the meeting were relieved at the good news but nevertheless asked Mr. Chinske to urge city officials to put the bond issue back on the ballot. They organized a Lower Rattlesnake Neighborhood Association which worked for the passage of the conservation bond issue the next time it was put on the ballot.

For the third time the City Council passed a resolution to put the bond issue on the ballot. Election day this time would be November 4, 1980 — a national election. The hope was that a national election would bring out enough voters to satisfy the forty percent requirement.

A problem surfaced a few days before the election. In a press release, the three Missoula County Commissioners announced that the conservation bond was "unnecessary and an unfair burden on taxpayers." The Commissioners endorsed the idea that the City should try to secure and preserve open space, but they argued that this could be accomplished through comprehensive planning, restrictive zoning, and floodplain regulations. Higher city taxes, they said, were not needed. In addition, they claimed that the City had not adequately researched all possible options. According to the Commissioners: "The use of zoning together with existing and adopted comprehensive plans would preclude

68 City of Missoula Resolution No. 4049, Missoula, Montana, 21 July 1980.
development of areas needing preservation and delete the necessity of additional taxation of the Missoula area's citizens." Another of the Commissioners' arguments was that the topography of Mount Sentinel and Mount Jumbo would preclude development, regardless of what was stated in the regulations. Commissioner Barbara Evans felt that public pressure not to develop the lands in question would induce the politicians to prevent any development.

City officials did not agree. City Zoning Officer John Verburg stated that neither zoning regulations nor floodplain regulations would necessarily prevent development. According to Mr. Verburg, the floodplain lines created by existing regulations were no wider than the banks of the river. Assistant City Attorney Mae Nan Ellingson pointed out that the land in question should be preserved in perpetuity: "Zoning is short lived. It can change over night. Only the purchase of conservation easement will guarantee the preservation of that land."70 City officials insisted that they had done their homework and that all alternative methods to preserve open space had been explored. The City Council, explained Alderman Bill Boggs, "has agonized over this conservation bond for years and has looked at all the possible alternatives. What we've found is that there is only one way to preserve open space and

70Ibid.
that's to buy it."\textsuperscript{71}

City officials found it hard to understand why the County Commissioners released a statement opposing the conservation bond just a few days before the election. City officials decried the County's action, calling it a "cheap political trick" and a "slap in the face."\textsuperscript{72} Tensions mounted between city hall and the county courthouse. Each accused the other of fiscal irresponsibility. When asked why the commissioners waited until the "eleventh hour" to release a statement, Commissioner Fritz Thibodeau explained that until now "no one asked us for our opinion."

On November 4, 1980, Missoula voters went to the polls to vote in the national election. Negative publicity associated with the squabble between city and county officials apparently had a negligible effect, as the conservation bond's third time on the ballot turned out to be a charm. The forty percent requirement was met, and the voters approved the bond.

The Open Space Ordinance

After the bond was passed, the City Council began to look for seven City residents to serve on an Interim Committee on Open Space. The committee's purpose was to draft an open space ordinance to set rules determining how

\textsuperscript{71}Sherry Devlin, "City, County Remain at Odds on Conservation Bond Issue", \textit{The Missoulian}, 1 November 1980, p. 5.

\textsuperscript{72}Ibid.
the conservation bond should be spent and to determine the means for establishing a permanent open space committee. In their advertisement for members for an Interim Committee, the City Council stated that they were looking for people with experience and expertise in conservation, real estate, and related matters. On the ninth of December, the City Council appointed seven members to the Interim Committee. Alderman Chinske told the Interim Committee at the initial meeting on December 18, 1980, that the task of the committee was to write an ordinance that "tells how the money can be spent and how acquisitions can be made" and to "set up the procedures" for acquisition. Alderman Boggs reminded the committee that the use of police powers could not be counted on to preserve open space; restrictive zoning and floodplain regulations could not take the place of buying open space land. Said Boggs:

During the campaign, it was suggested that the city use its police powers to restrict the use of property for open space. Police powers generally include zoning, floodplains, sanitary or engineering standards, and subdivision review. . . . We cannot reduce the value of someone's property without compensation. And we cannot expect police powers to take the place of an open space acquisition program.

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73 Kevin Miller, "City Council Looks for Committee Members to Set Conservation Bond Spending Policy", The Missoulian, 11 November 1980, p. 9.
74 Sherry Devlin, "Open Space Committee to Draft Rules to Send Conservation Bond", The Missoulian, 21 December 1980, p. 15.
75 Ibid.
76 Ibid.
Alderman Boggs, an attorney by profession, seemed to be telling the committee two things: first, the only way to preserve open space is to buy it (or the development rights to it), and second, because of this, the committee should not hesitate to write into the ordinance a process describing how funds are to be spent.

The Interim Committee wrote the Open Space Ordinance in less than three weeks, and submitted it to the City Council for approval. It was unanimously adopted by the City Council on January 5, 1981. The ordinance created a fifteen member citizen's advisory committee (Citizen's Advisory Committee on Open Space Acquisition) to be appointed by the City Council from applicants living within a 4.5 mile radius of the City. At least eight of the members were required to be City residents and the remaining seven were required to reside within the 4.5 mile radius. According to Alderman Chinske, "We're including people from outside the City limits because that's where the open space is." Such an arrangement assured City resident control and allowed for external participation. Concerning the desired expertise of the applicants for the committee, Alderman Boggs stated that the City Council was looking for "at least four or five lay people with no particular

expertise and ten people in specialty areas like finance, real estate, ecology, land management, or law.\textsuperscript{78}

Two sections of the Open Space Ordinance are of particular interest. They are Section 8, \textit{Review of Proposed Acquisition by the Committee}, and Section 11, \textit{Conversion or Diversion of Open Space Land}. Section 8 specified eight criteria that were to be considered when reviewing a proposal to acquire land or land rights. The committee was free to consider any other matters that it felt relevant.

The eight criteria were:\textsuperscript{79}

1. The extent to which the open space land is "significant" to Missoula.
2. The value of any possible competing uses of the land.
3. Whether the purchase price is fair.
4. Whether the proposed purchase will preserve the land at the least possible cost.
5. Whether all possible sources of funding (other than the conservation bond) have been explored.
6. Whether the amount of money to be taken out of the conservation bond fund "would give disproportionate emphasis to one type of land."
7. Whether the conditions of the purchase are "adequate to ensure preservation and use in the most desirable manner."
8. Any additional management policies that should be specified in the purchase agreement.

Section 11 of the ordinance purposely made it very difficult to convert or divert open space land acquired by the City to other purposes. The ordinance not only required adherence to state law (MCA 76-6-107, Conversion or


\textsuperscript{79}City of Missoula Ordinance No. 2183 (Open Space Ordinance), Missoula, Montana, 5 January 1981.
Diversion of Open Space Land), but required additional restrictions. The ordinance stated that open space designations could only be changed by a vote of the people.\textsuperscript{80} The City Council can, after a public hearing, pass a resolution calling for a referendum to be placed on the ballot; or a referendum can be placed on the ballot as called for by a petition signed by fifteen percent of the registered voters in the City. After the referendum is on the ballot, at least forty percent of the registered electors of the City must vote on it, and sixty percent of those voters must vote in favor of the conversion or diversion for the referendum to pass. Alderman Boggs said that the ordinance is:

purposely strict, because we (the Interim Committee on Open Space) just couldn't foresee what sort of situation would warrant taking land out of open space. We wanted to make it very, very difficult to change. But we also wanted to make it possible in the most necessary cases.\textsuperscript{81}

Figure One illustrates the procedures for reviewing proposals to acquire open space, as required by the ordinance. The advisory committee must consider the eight items previously discussed in Section 8 of the ordinance. The committee must then forward its written recommendation to the City Council and to the Missoula City-County Planning

\textsuperscript{80}Ibid.

\textsuperscript{81}The Missoulian, 4 January 1981, p.9.
Figure One
REVIEW PROCEDURES
(Ordinance #2183, Section Six)

Proposed acquisition of open space or expenditure of funds

Citizens Advisory Committee on Open Space Acquisition

if action is a proposed acquisition of open space

written report

Missoula City-County Planning Board

City Council Conservation Committee

City Council

Public hearing (Discretionary)

City Council - final action

82 Although it is not required by Ordinance #2183, all proposals and reports from the Citizen's Advisory Committee are routed through the City Council Conservation Committee.
Board in accordance with MCA 76-6-206. After the City Council has received recommendations from the committee and the planning board it may hold a public hearing, at its discretion, before taking action on the proposal. The committee is an advisory body only. The City Council must approve all disbursements from the conservation bond fund and all acquisitions of open space, even if these acquisitions do not require the expenditure of funds.

It should be noted that the ordinance deliberately avoided providing a definition of open space that is more detailed and specific than the state's definition. Open space is somewhat of an enigma meaning different things to different people. The state's definition allowed the committee to consider a wide variety of lands for inclusion in the City open space system on a case-by-case basis.

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83 MCA 76-6-206 reads as follows: "In order to minimize conflict with local comprehensive planning, all conservation easements shall be subject to review prior to recording by the appropriate local planning authority for the county within which the land lies. . . ."

84 MCA 76-6-104 defines open space in the following manner:

"Open-space land means any land which is provided or preserved for:
 a) park or recreational purposes;
 b) conservation of land or other natural resources;
 c) historic or scenic purposes; or
 d) assisting in the shaping of the character, direction, and timing of community development.

85 Citizen's Advisory Committee on Open Space Acquisition, Proceedings of Committee Meeting, Missoula, Montana, 26 May 1983.
Actual Acquisition Decisions

By January of 1981, the procedures for expending the open space fund had been established, but the general obligation bonds were not yet sold. The national tax-exempt interest rates were at nine percent, while the conservation bonds were limited by law to a maximum of seven percent. This lower rate would make them very difficult to sell. The Council decided, therefore, to postpone the sale of bonds until either the market conditions changed or until the Montana Legislature, by revising state usury laws in the light of record interest rates, would increase the amount of interest that could be paid on general obligation bonds.\footnote{City of Missoula Resolution No. 4093, Missoula, Montana, 1 December, 1980.}

The 1981 Montana Legislature passed Senate Bill 15, which suspended the interest rate ceiling for two years. With this obstacle removed, The City Council passed resolution number 4135 authorizing the bonds and announcing the solicitation of bids.\footnote{City of Missoula Resolution No. 4135, Missoula, Montana, 27 April 1981.} The resolution stipulated that the new interest rate was not to exceed twelve percent per annum.

The D. A. Davidson and Company, Inc. submitted the lowest bid for the open space bonds. The average annual interest rate was set at 10.68 percent for twenty year
serial bonds. Serial bonds are bonds which retire a certain proportion of the principal (1/20 in this case) every year so that payments are evenly spaced and the interest charges decrease annually.

The City was required by law to submit to the State Attorney General's Office a transcript relating to the issuance and sale of the bonds for review and approval. This approval would certify that all the proper procedures had been followed in the election when the voters approved the bonds, in the advertising and bidding for the bonds, and in the specifications of the bonds. The transcript submitted by the City was approved.

The Citizen's Advisory Committee on Open Space Acquisition could now begin to make recommendations to the City Council regarding how the money should be spent. When the conservation bond issue was being debated before the November 4 election, the voters were told that the bond would be used to purchase conservation easements, lands, and development rights for open space on Mount Jumbo, Mount Sentinel, and along the Clark Fork River. As explained in Chapter Three, the City had hoped to purchase the land along the south shore of the Clark Fork which had been abandoned

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88 City of Missoula Resolution No. 4154, Missoula, Montana, 6 July 1981.

89 MCA 7-7-4210.

90 Mike Greely, State of Montana Attorney General, Letter to the City of Missoula, 22 June 1981.
by the bankrupt Milwaukee Railroad. This land was put up for sale in 1980, at a time when the City did not yet have the money to purchase it.

Because of this problem, two local real estate brokers, William Coffee and Robert Brugh, proposed that a group of local investors form a trust to buy the land. The trust would hold the land until the City or some other non-profit interest could buy it. Stated Mr. Coffee: "We are merely buying time for the public." Mr. Coffee expressed the sentiment that it would be a great loss for the City if it did not get the chance to acquire some of these lands.

The land between the west end of the Hellgate Canyon and the Higgins Street bridge was divided into blocks designated Parcels "A", "B", and "C" (Appendix B). The City directed its immediate attention to a 9.95 acre area known as Parcel "C" on the south shore of the river between Higgins Avenue and Madison Street. In mid-January of 1981, Mr. Coffee stated that the Milwaukee Railroad's asking price for Parcel "C" was somewhere between $250,000 and $350,000.

Mr. Coffee, the organizer of the trust, made application to purchase the riverfront parcels through Mr. Brugh, the railroad's real estate agent in Missoula. Mr. Brugh forwarded that offer to Milwaukee management in

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92 Ibid.
Seattle. Mr. Coffee's offer was approved first by Milwaukee management, then by the trustee for the railroad, and finally by the U.S. District Court Judge handling the bankruptcy proceedings. Once the Court had cleared the sale of the riverfront property, the trust document was complete.

Mr. Coffee had gathered fourteen investors to form the trust. A verbal agreement was made between the trust and City officials to facilitate public purchase of riverfront land. The trustees put up their credit as loan guarantees, and they would have been responsible for paying back the loan if the City had chosen later not to purchase Parcel "C". If the City decided to buy the land, the City would pay the interest on the trust's bank loan. The City was under no obligation to pay any of the interest if no land was purchased. The trust agreement gave the City between 12 and 24 months to buy the land. If the City did not purchase the riverfront property, the loan guarantors could have either sold the land or developed it themselves. The trust hoped to sell the land to the City for the original purchase price, plus accrued costs such as interest, surveys and title insurance. The guarantors would not make a profit on the transaction. Said Mr. Coffee:

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94 Interview with Dave Wilcox, Administrative Assistant, City of Missoula, Montana, 6 October 1983.

"There's not a dime in this deal for the loan guarantors." However, Mr. Coffee did state that he would make a commission as the broker when the trust sold the land. The size of the commission would be contested at a later date.

City officials praised this scheme to hold the riverfront property, especially Parcel "C". The parcel was seen as the keystone of the envisioned linear riverfront park. It is located in the heart of Missoula, and it links the University of Montana to the downtown area. This link was important to City officials because it fit the plans for future parks along the river and other developments at the university and downtown.

The Open Space Ordinance required that the City explore all possible "alternative and supplemental sources of funding" when considering a purchase for open space. The City turned to the Federal Land and Water Conservation Fund for a $225,000 grant which the City intended to match with City conservation bond money ($150,000), Missoula Redevelopment Agency Money ($25,000), donations, and County funds. City officials hoped that a total of $451,000 could be raised in this way, enough to buy and renovate Parcel "C".

The grant would be administered by the Federal Heritage Conservation and Recreation Service, then considered a "lame duck agency" because of the Regan Administration's budget

96Ibid, p. 2.

97Sherry Devlin, "City may tap Dying Federal Agency for Grant", The Missoulian, 26 April 1981, p. 11.
The Land and Water Conservation Fund was soon to be defunct, and the City of Missoula was attempting to obtain any money the fund might have left.

By late April 1981, Mr. Coffee's trust had purchased Parcels "A" and "B" east of the Madison Street Bridge from the Milwaukee trustee for about $300,000, and had offered to purchase Parcel "C" for $250,000. Mr. Coffee expected the Milwaukee trustee to approve the purchase of Parcel "C" in May with closing by June 30, 1981 from which time the public would have eighteen months to buy the land. Much of the land the City wanted for its linear park, therefore, was protected from private development for a year and a half. This would give the City the time it needed to find grants and other monies to supplement the conservation fund. However, spending too much time finding alternative sources of money could be costly for the City. In order to obtain a short term loan from local banks, the trust was paying interest at a rate of nineteen percent. Starting June 30, the $250,000 loan would be charged $9,200 per month or $138 per day in interest. It was clear the City did not have time to waste.

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98 Ibid.
99 Ibid.
101 Ibid.
By September 1981, the trust had succeeded in purchasing Parcels "A", "B", and "C", comprising a total of nineteen acres. Because of the escalating price tag of the property as a result of the accumulation of interest charges, some City officials started getting anxious. In early September, the Citizen's Advisory Committee on Open Space Acquisitions requested that City negotiators begin investigations to purchase Parcel "C". Stated Ward 4 Alderman Cass Chinske, "They didn't say to spend anything, but they said to go ahead and get involved in it." According to a statement made by Missoula City-County Park Department Director Jim Van Fossen, the City should know by October whether the state would get any grant money to disburse. This possibility of obtaining matching funds further delayed the City from taking action on the purchase of Parcel "C".

By mid October, pressure on the City to buy Parcel "C" increased. An editorial in the Missoulian stated that it was not worth the gamble to wait for the slim possibility of a grant when the wait cost the City $130.87 a day. As a reporter put it in an article in the Missoulian: "Ronald

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102 Ibid.
103 Ibid, p. 2.
104 Ibid.
Reagan took a hatchet to the golden goose in Washington, D.C. and grants disappeared. Without the grant, Parcel "C" would cost the City over $250,000, or more than one half of the $500,000 Conservation bond fund. It was feared that the remaining $250,000 would not be sufficient for the acquisition of land or development rights on Mount Jumbo and Mount Sentinel. Alderman Boggs felt that the price of Parcel "C" was too high, and suggested that the City allow residential development there, providing the City could obtain a right-of-way easement through the property. Other City officials did not agree, and feared that development of Parcel "C" would ruin plans for a linear park. In late October, the Open Space Committee voted 8-4 to recommend that the City purchase Parcel "C". Shortly thereafter, the Council's Conservation Committee agreed by a 3-1 vote.

The City Council voted on November 9 to purchase Parcel "C" for $297,000. Although some members of the council objected to the $25,000 commission asked for by Mr. Coffee, only one member voted against the measure. Most


107 In a memo to the Citizen's Open Space Committee, the City open space staff recommended the purchase of Parcel "C". They judged that the price for Parcel "C" was a bargain when compared to the price of adjacent property. City Open Space Acquisition Staff, Memorandum to the Members of the Open Space Advisory Committee, Missoula, Montana, 20 October 1981.

members felt that they should not allow the opportunity to purchase Parcel "C" slip through their fingers. Said Alderman John Toole: "If we lose that 9.95 acres in the heart of our city and allow God knows what to go up in its place, none of us are ever going to be able to look ourselves in the face again."

A small hurdle delayed the riverfront purchase.\footnote{Jeff Cole, "New Hurdle may Delay Riverfront Purchase", \textit{The Missoulian}, 11 November 1981, p. 13.} The money the City needed was locked up in a certificate of deposit and could not be withdrawn without a penalty until December 7. This would not prevent the purchase of Parcel "C", but it would cost the City an additional $2,200 in interest payments.\footnote{This situation resulted from the conflicting mandate expressed in Ordinance No. 2183 (Open Space Ordinance), Section 5(1). It states that the conservation fund"... shall be invested so as to secure the maximum rate of return to the City and subject also to the possible need to have all or part of the fund available for immediate disbursement."}

During the time the City was debating the purchase of Parcel "C", the University of Montana Foundation had expressed interest in purchasing Parcels "A" and "B". The Foundation is a non-profit organization composed mainly of University of Montana alumni. The group wished to see the land placed in University ownership. The Foundation was eventually successful, as the 1981 state legislature appropriated funds to the University to buy the parcels from
Mr. Coffee's trust. City officials approved of the Foundation's purchase of Parcels "A" and "B". The City realized that the purchase of all three parcels by the City would most likely exhaust the conservation bond fund. The Foundation's purchase of these parcels would keep the land out of the hands of developers, and the City felt confident that a pedestrian right-of-way could be secured from the University, contributing to the realization of a linear park.

After the purchase of Parcel "C", the open space acquisition program turned its attention to the abandoned Milwaukee right-of-way in Hellgate Canyon. On December 7, 1981, the City council bought a $750, ninety day option to buy a 134 acre stretch of property in Hellgate Canyon on the south shore of the Clark Fork River. The land would cost the city $95,000, or $709 an acre. The Milwaukee said the $95,000 was firm, as they had another buyer who would be willing to pay $1,500 an acre. As City of Missoula Administrative Assistant Dave Wilcox put it, "That makes it kind of hard to negotiate."

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111 Jeff Cole, "City Takes Hellgate Option", The Missoulian, 8 December 1981, p. 11. The City originally had a 90 day option to buy the land, but an extension was granted by the Milwaukee to provide enough time to complete the transaction. The closing date on the Hellgate property was in August of 1982. The delay was due to bankruptcy proceedings, as the transaction required approval through Federal District Court.

On December 10, the open space program finally received a commitment for federal grant money. The money was to come from the federal Land and Water Conservation Fund and was to be administered by the State Parks Division. The grant would pay as much as $49,000 in 50/50 matching funds to purchase the Hellgate property. A new appraisal of the 134 acre parcel revealed that it was not as valuable as originally claimed due to limited access to the land. This allowed the City to negotiate a lower price. The City Council purchased the Hellgate property from the Milwaukee Railroad for $87,750. Many months later, in May of 1983, the City did receive $43,875 in Federal matching funds from the State of Montana.

On April 6, 1982, Missoula County voters approved a $388,000, 2.8 acre land purchase of land for a high school riverfront practice field. The 2.8 acres, previously

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115 City of Missoula General Ledger, Open Space Acquisition Purchase Account, Missoula, Montana.

owned by the Exxon Corporation, was located adjacent to Parcel "C" on the south shore. In order to build the practice field, the high school would need an additional 1.5 acres, which the City had just purchased as part of Parcel "C".

The use of the City's 1.5 acres by the school district as a practice field was approved by the Open Space Committee at a March 18 meeting.\textsuperscript{117} The committee debate centered around two questions: should the school district reimburse the City for the use of the land, and were the proposed uses for the practice field (track and football) appropriate on City open space land? Hellgate High School Principal Don Harbaugh stressed the point that an agreement was essential because the parcel of land was the only one available that was large enough for student needs. He said he did not "see any other solution to the problem for the students and the Hellgate High School Community."\textsuperscript{118} It was pointed out by the Open Space Committee members, however, that the City had spent precious funds for Parcel "C", and that the school district should reimburse the City for its use. Alderman Boggs suggested that the school district pay the City $15,000 annually for five years for the use of City


\textsuperscript{118} Ibid.
property. The school district and the City have been negotiating on the issue ever since.

In response to the second question, the Committee voiced its concern (at the March 18, 1982 meeting) that even though the practice field would preclude the existence of an open park in a natural condition, the Committee had little choice but to approve the proposal. The high school's 2.8 acre parcel is important to the linear park because it is located on the bank at the same elevation as Parcel "C". There is an embankment covered with trees on the south side of these two parcels which provides a visual and physical barrier between the river corridor and a residential section of town. Any buildings or development on this land would be particularly noticeable and would detract from the natural quality of the park. If the high school district could not use the land as a practice field, it would likely be sold to private developers. It was this prospect that induced the members to approve the school district's purchase of the land.

While the City's purchase of the Hellgate property from the Milwaukee Railroad was hamstrung by procedural delays, the City resumed its protracted negotiations with Mr. and Mrs. Cox, owners of the west face of Mount Sentinel. As mentioned previously, the City had negotiated with the

\footnote{Ibid.}
owners in 1978 and had decided that the price asked by the Coxes was entirely too expensive. The issue had been tabled until after the passage of the conservation bond.

After passage of the conservation bond, the City reopened negotiations. Numerous offers and counter-offers were made between the City and the Coxes, but the two parties were unable to come to an agreement. In late May of 1982, the Coxes made a two-option offer to the City to give up the rights to develop the mountainside for $150,000 or $200,000. Under the first option, the City would pay $150,000 for a conservation easement to preclude development on 501 acres of the mountainside that faces Missoula. In addition, the Coxes would agree that any development on the backside of their property would not be visible to City dwellers. However, the Coxes would retain the right to build up to four new residences on the ten acres of land that surrounds their home, which is located at the base of the mountain. For an additional $50,000, the City would gain everything included in the $150,000 offer, plus control over the ten acres surrounding the Cox home.

For a detailed description of these negotiations, see: Mae Nan Ellingson's Memorandum to the Members of the Open Space Advisory Committee, Missoula, Montana, 27 May 1982.

On June 15, 1982, the City Council approved the purchase of a 501 acre conservation easement on Mount Sentinel for $150,000. It was thought that the $150,000 option was the better deal, as there was $208,000 left in the conservation bond fund, and only $8,000 would remain if the City decided to take the $200,000 option. The Open Space Committee was still concerned about securing the conservation easements on Mount Jumbo. Had there been only $8,000 left in the conservation fund, such an acquisition would have been very small.

The Open Space Committee wanted to see Mount Jumbo remain undeveloped, but with $58,000 remaining in the bond fund options were limited. Two primary options were discussed by the Open Space Committee. The first was to place a second conservation bond issue before the voters, but the general feeling among the committee members was that another bond issue would not have the support necessary for passage. The second option would be to have the County offer to trade undeveloped parcels of county park land for Mount Jumbo land or the development rights to it. The County was amenable to such a suggestion, but pointed out that the matter would be delayed until an inventory of county lands was complete.

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123 Ellingson, Memo to Open Space Committee, 27 May 1982.
To date, little action has been taken by the City to secure development rights on Mount Jumbo. The County is still compiling an inventory of its lands. Mount Jumbo remains open to development, subject to subdivision restrictions and other regulations should someone wish to do so on its steep slopes. About $58,000 remains in the conservation fund at this time.
There are a number of conclusions that can be drawn from examining Missoula's open space program. These conclusions are presented below with the hope that they may prove useful to decision makers in Missoula seeking to decide what further steps need to be taken and to decision makers in other communities searching for ways to acquire open space.

1. The Importance of Citizen Involvement. The role of the Open Space Committee has been a significant factor in Missoula's success in acquiring open space. Missoula's Open Space Ordinance states that the duties of the Citizen's Advisory Committee on Open Space Acquisition are to provide the City with written recommendations regarding proposed acquisitions and to establish priorities and alternatives regarding open space acquisition policy. Its recommendations have been very influential in decisions to acquire open space.

Advisory groups such as this one play an important role in local government. From a practical standpoint, advisory groups keep administrative costs low. They provide reports, recommendations, and advice free of charge to the
City. They also legitimize the decision making process in a political system in which citizen representation is considered important. Programs with direct citizen involvement are more likely to receive broad public support. All three cities analyzed above allow significant citizen involvement in their open space programs. Eugene in particular attributes much of its success to active citizen participation.

Recently the Committee has begun to expand its role beyond that defined in the Open Space Ordinance. It has begun to act as a watchdog over the management, development, and use of open space lands. This is currently the responsibility of the Parks Department. If the Committee insists that its "new" role is valid and necessary, conflicts between it and the Parks Department will be inevitable.

The Open Space Committee has plenty to do without expanding its defined role regarding open space acquisition. The Committee can continue to focus attention on other parts of the Missoula area that might be preserved as open space. It can try to secure grants and donations for future acquisitions. It can serve as a catalyst for future bond issues if the public seems willing to support more tax levies and more expenditures. Finally, it can ensure the proper use of funds remaining in the conservation fund. Any attempts to expand its role as a watchdog body will only
lead to jurisdictional battles and reduce its effectiveness as an advisory body.

2. The Importance of Obtaining Matching Funds. Missoula's efforts to obtain federal matching grants suggests that such funds are increasingly difficult to obtain, but also, that the inability to obtain such funds need not preclude success in acquiring open space. The City made every effort to secure matching grants, and their failure to obtain significant funds in this way was a major disappointment. Nevertheless, much open space land has been acquired without state and federal dollars.

The conservation bond was approved in November of 1980, in the same election that put President Reagan in office. One of the tenets of the new administration was the reduction of the federal bureaucracy and reduction in the federal budget. Federal programs that had previously supplied money to states and municipalities for the acquisition of open space were greatly reduced. This action of the Reagan Administration dashed the bond proponents' hopes of doubling and tripling the $500,000 with matching funds. The City did, however, receive $43,875 from the State for the purchase of the Hellgate property and $25,000 from the County for the purchase of Parcel "C".

The three cities discussed above successfully obtained matching grants for their open space programs. Eugene was particularly successful, stating that it owed much of its success to grants. The ability to secure
matching funds is clearly important for a successful open space program and every effort should be made to obtain them. Nevertheless, the success of Missoula in obtaining open space lands indicates that matching funds or other grants are not absolutely essential. Much can be accomplished without them.

3. The Importance of Timing. In retrospect, it can be said that the timing of the conservation bond was very good. The issue was put before the voters at a time when public support was high. Had there been more time for opposition groups to organize, or had the approaching recession come sooner, the outcome may have been different.

Little opposition to the conservation bond was expressed by the business community. The county questioned the need of a tax to secure open space, but their opposition surfaced too late in the campaign to have any significant effect on the outcome of the elections. There was never any serious or organized opposition to the bond. No one at that time wanted to see development on the riverfront or on Mount Sentinel or Jumbo. One of the open space proponents speculated that the bond was passed not because of overwhelming public support, but because of a lack of opposition. But there is evidence to suggest that support was widespread. The majority of the people who voted on the bond were in favor of it three times in a row. This occurred in the face of a worsening local and national economy, even though the voters knew the passage of the bond
would increase taxes. Politically, the time was ripe for passage of the conservation bond.

The timing of the conservation bond was good for reasons other than political. The land on the south bank of the Clark Fork River, for example, became available for purchase just after the conservation bond had been passed. If the bond funds had not been available to purchase the land, it most likely would have been sold to a private concern for development. Such factors are largely a matter of good fortune, and often cannot be planned for as part of an overall strategy, but they may be nevertheless of great importance in determining the success or failure of efforts to finance acquisition of open space.

4. The Need for Precise Information. Precise information is important to an electoral campaign. The voters in an election depend on the information supplied to them by opposing sides to help them to make informed choices. The support of the electorate needed to implement a successful open space program may dissipate if the electorate learns later that their choice was based upon inaccurate information. The potential for such a problem arose during the period in which the conservation bond issue was being debated.

In the November 1980 election, the voters approved a conservation bond which, according to the ballot, was to be repaid at an interest rate of not more than seven percent per annum. In actuality, the City Council's resolution
stated that the bonds would be sold at an interest rate of seven percent, or at a rate as authorized by law. The bond's proponents failed to predict that rapidly rising interest rates would make it impossible to sell bonds after the election at seven percent. Because the bonds were eventually sold at an interest rate of 10.65 percent, the tax burden on homeowners was necessarily higher than if they had been sold at the rate stipulated on the ballot.

Fortunately for the proponents of the bond, they had overestimated the tax burden on homeowners initially. Someone in the proponent's organization had not done their homework well. Several times, articles and letters to the editor of The Missoulian from proponents stated that the average annual payments for a $50,000 homeowner would be $5.55. The actual cost for a $50,000 home to pay off a seven percent bond was $3.65. Thus, even though the bond ultimately sold at 10.65 percent, the tax burden on homeowners was lower than originally advertised. The precise amount of taxes to be paid by property owners did not become a major issue during the campaign. Had it been, miscalculations by the bond's proponents may well have cost them the election. This fact underscores the need for accurate information.

5. The Open Space Issue Does Not Divide Along Clear Ideological Lines. Debate among political elites over the

124 Interview with Mike Young, Finance Officer, City of Missoula, Missoula, Montana, 23 June 1983.
conservation bond issue did not follow clear ideological lines. In fact, Missoula witnessed a reversal of what might have been expected of local government officials in terms of their ideological positions for and against the bond issue.

Prior to the bond election, the City Council had been perceived as being increasingly pro-regulation. Many of the Council members were oriented toward the political left. There seemed to be feelings among City Council members that it was proper and desirable for the City to achieve its goals through the use of regulation. The proper (albeit careful) use of regulations was touted as a way to create a better, more prosperous, more livable and attractive city. Generally speaking, the County Commissioners embraced the opposite view. Regulations were generally seen as being burdensome and in most cases unnecessary. Most of the County Commissioners held a politically conservative point of view and regarded regulations as a tool of big government -- and big government was an evil to be avoided.

But when the bond issue was being debated, a strange transition transpired. The proponents to open space, realizing that they most likely would not be able to achieve open space goals through regulations alone, downplayed the potential of regulations, zoning, building codes, and floodplain restrictions as means for protecting open space. Indeed, Bill Boggs, a staunch bond proponent, called upon the workings of the free market to ensure open space. With money made available through the sale of bonds, Mr. Boggs
argued, the price for open space could be negotiated and paid for. This view was accepted by the City Council.

The County Commissioners embraced the other view. They claimed that to buy open space through the free market would be a waste of the taxpayer's money. Open space could be provided through the judicious and deliberate use of regulations and restrictions. They called upon the City to exercise their police powers and powers of eminent domain to protect vital parcels of land from development.

The electorate as well seemed not to perceive the issue in strict ideological terms. People from all across the political spectrum supported the conservation bond. Clearly, the bond did not constitute a victory for liberals over the objections of political conservatives. It was passed because of broad-based support in the community.

6. The Importance of a Working Definition of "Open Space". Any community involved in an open space program must wrestle with the definition of open space. Open space must be defined so that parcels of land can be targeted for acquisition and so that decisions can be made as to what condition the land should be kept in. Without a working definition of open space, there is no basis or standard upon which an acquisition program can proceed.

125 These sentiments were expressed by Mr. Boggs in a letter to the editor in: "Conservation Bond Can Protect Nearby Mountains", The Missoulian, 26 May 1980, p. 4.
No one can define open space to everyone else's satisfaction, but everyone has their own idea of what it is. When the Open Space Ordinance was written, the definition of open space was made very broad and was essentially the same as the state's definition. Such a broad definition allows for freedom when determining which parcels of land should be purchased for open space. Using a broad definition, any parcel that seems to fit into the overall plan for open space acquisition is eligible for purchase. The obvious drawback to such a broad definition is the problem that may arise when it comes time to decide what activities or what kinds of improvement or developments will be allowed on open space property.

This problem is at the root of the Parcel "C"/High School practice field debate. Those persons that do not wish to see the riverfront put to a "structured" or "organized" use such as a practice field argue that such use is not compatible with their view of open space. Open space to them means land that is essentially left in its natural condition. Such developments and activities, they argue, interfere with the aesthetic experience that open space should provide. Others disagree, asserting that as long as the land is not built upon, it is essentially open space. In their view open space encompasses everything from wilderness to a baseball playing field, and anyone with a more limited view is splitting hairs. The most pragmatic people feel that "natural" open space can peacefully coexist
with a "developed" practice field, especially when the alternative to such a situation would be the private development of that land which the school district currently owns.

The difficulty of defining open space and the problems it creates are not unique to Missoula. Boulder addresses this problem in its open space plan, citing the dangers of too explicit a definition:

Inherent in an explicit definition are limiting and controlling elements that would restrict the program. Definition and implementation of this Open Space Program can best be served by determining the Purpose, Function, and Use of the lands or interests to be acquired.126

Even so, Boulder's definition of open space is much more precise than Missoula's. For example, it states that open space shall be used for passive recreational purposes only, and then gives examples of what passive recreational use is.127 There is no question that any city involved in an open space program must be able to define what open space is. Too explicit of a definition, however, limits choices. Developing a precise definition of open space will always be a problem.

7. The Method Must Fit the Situation. The method used by a community to acquire open space must be tailored to fit existing circumstances and available legal and political options. Under the circumstances that prevailed


127Ibid.
in Missoula, the decision to pursue the conservation bond approach made sense politically and financially. Missoula could not use the approach of a mill levy assessed over a number of years because this would have generated money too slowly. Mount Sentinel faced the threat of development and the land on the south side of the Clark Fork River owned by the bankrupt Milwaukee Road would soon be up for bid. It was felt that the City's open space program would not be a success without these key parcels of land. For Missoula, therefore, the conservation bond approach made sense in the short run. But while it produced a significant amount of revenue after the election, it did not guarantee the generation of additional funds in subsequent years.

Boulder's method of generating revenue via a sales tax is attractive because it generates a continuous flow of revenues into an open space fund. The expected amounts of revenue can be projected over a period of time, allowing the City of Boulder to plan its acquisitions far in advance. A sales tax also spreads the burden of paying for open space among the populace, including visitors to the area. Because of state law, however, Missoula does not have a sales tax option and had to explore other possibilities.

San Francisco's Proposition J represents another means of using a property tax to generate revenue. The life of Proposition J is fifteen years. Again, the advantage to this approach is that revenues will be steadily generated. A fifteen year program allows for long-term planning
capability. San Francisco has taken advantage of this capability. Areas in the City are targeted for acquisition well in advance on a priority basis. Areas that were acquired in Missoula's open space program were also targeted well in advance, but a viable long term planning acquisition program requires the expectation that funds for acquisition will be available in the future. Unfortunately, Missoula's open space program cannot anticipate a continuous source of funds.

Missoula embraced the idea that open space should be purchased and not regulated into existence. It would seem that a combination of purchase and regulation is the best approach. Regulations can be used in those instances where the physical limitation of the land (topography, soils, floodplains) prevent development. Purchase can be used in those situations where development is not desirable for aesthetic reasons, but where the lack of physical limitations allows development.

8. **The Importance of Planning for the Future.** In retrospect, it can be concluded that Missoula's open space program has been a success. Most of the major goals of the program set forth when the conservation bond was passed have been achieved. But the open space program should not be terminated. Acquiring open space in the Missoula area should be an ongoing process. To accomplish this, Missoula must plan for and take action to meet future open space goals.
The acquisition of lands or easements on Mount Jumbo would be an important contribution to Missoula's open space program. The City has gained the support of the County in this effort. A plan has been developed to trade unneeded or unwanted ("surplus") county lands for lands or easements on Mount Jumbo. The County is cooperating in this endeavor because Mount Jumbo is outside of the City limits and the public has shown support for open space acquisitions.

An area that may be threatened in the future which is of importance to the visual quality of Missoula and its environs is the "North Hills" area. These foothills are west of the Rattlesnake area north of town (Appendix A). These treeless hills would not be able to absorb even low levels of development without destroying their visual quality. Their development would be very noticeable and should not be allowed.

Just as important as protecting the North Hills is the task of keeping a watchful eye on the urbanization and development of the Missoula Valley. The county should do all that is necessary to ensure that enough open space is left untouched between and around developed areas to retain the natural beauty of the valley and to enhance the livability and aesthetics of new developments. If existing zoning and subdivision regulations are not strong enough to insure that open spaces will exists, stronger regulations will be necessary. A funding source (bonds, tax levies, donations) should be developed for the purchase of lands and
development rights that cannot be acquired by regulation.

The City also has an important role to play in future efforts. Most of the land within City limits is already developed, which means that in most cases the City must take rehabilitative or corrective action to secure additional open space. The purchase of lands and plans for a linear park on lands along the riverfront that were once used for rail transport and industrial uses is an example of rehabilitative and corrective action. As with the County, City regulation to insure open space is needed. But most important is the need for a continuing awareness of the limitations of the land and the continuing growth of an "open space ethic" among the citizenry. The potential is certainly there, as this ethic was manifested by the populace through its support of the conservation bond and subsequent acquisition program. There is no doubt that the success of the open space program was dependent upon such widespread support.

Missoula's experience has shown that a successful open space program requires a clear idea of what the major goals of the program are. Clear, attainable goals coalesce citizen support and a program would fail without them. After clear goals have been set, a successful program requires a workable strategy to acquire open space lands. The method to be used must be politically and legally acceptable and must be tailored to fit existing
circumstances. Last, and perhaps most important, it should be noted that a successful open space program requires dedicated persons willing to work long hours. Open space programs do not emerge through spontaneous generation. Missoula's open space program is the result of the persistent efforts of many open space proponents.
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