

Preserving Rural Landscapes and Rural Lifestyles in Lewis and Clark County



**Final Report of the Heritage Lands Working
Group
October 2008**

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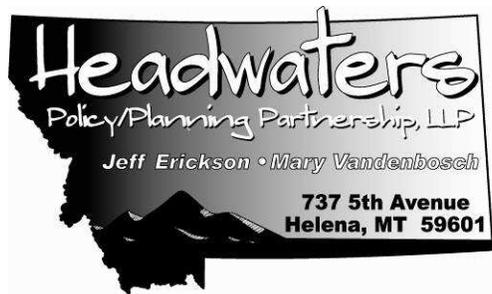


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- Final Meeting Total
- Augusta
- Lincoln
- Wolf Creek
- Helena Valley
- York
- Canyon Creek

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Appendix D -- Public Comment on Draft Report (June 2008)

Appendix E -- Executive Summary: Lewis and Clark Voters Survey

Chapter 1: Introduction

Definition of Heritage Lands

The term “Heritage Lands” includes working farms and ranches, forest lands, fish and wildlife habitat, water bodies and riparian areas, scenery and open space, historic and archaeological resources, and tourism and recreation sites.

Mission of the Heritage Lands Working Group

The Heritage Lands Working Group (Working Group) is an ad hoc grassroots group that was formed to accomplish the following:

- identify the characteristics of heritage lands that residents value;
- identify goals for the conservation of rural lands;
- learn about and evaluate tools to help conserve heritage lands for future generations;
- propose recommendations; and
- adopt a final report to be distributed to government decision makers and community members.

A volunteer member of the Heritage Lands Working Group, Mike Bay said,

We’re trying to figure out ways to keep working farmers and ranchers on their land. By doing that, we secure wildlife habitat, hunting opportunities, and the open views we all enjoy. It’s a piece of Montana we just can’t afford to lose.

Another Working Group member John Cronholm noted:

Carla and I volunteered to serve on the Heritage Lands Working Group because we have a small parcel in the Canyon Creek area that is deemed to be of sufficient historic interest to be included on the register of historic places. The recommendations of the Working Group include tools that may make it possible for landowners like us to maintain the historic value of these properties.

In a nutshell, the mission of the Working Group is to make recommendations to the Lewis and Clark County Commission regarding tools to help landowners conserve Lewis and Clark County’s heritage lands. Recommendations may be presented to other appropriate decision makers at the federal, state, and local levels as well.

Working Group Members and Technical Advisors

The Heritage Lands Working Group is comprised of citizen volunteers from each area in Lewis and Clark County. John Tietz was designated the spokesperson for the Heritage Lands Working Group. Members are identified in the table below.

Planning Area	Name
Helena Valley	Tom Thompson
	John Tietz
Marysville/Canyon Creek	Rick Grady
	Roseva Guest
	John Cronholm
Craig/Wolf Creek	Mike Bay
Augusta	Sally Shortridge
	Sarah Howe-Cobb
Lincoln	Jim Paris
	Becky Garland
Canyon Ferry/York	Mike Griffith
	David Olson

Volunteers were sought through various publicity efforts. A news release soliciting volunteers for the Working Group was widely distributed to area news media. Flyers were posted as well. An article asking for volunteers was published in the Lewis and Clark Conservation District's Autumn 2007 newsletter, *The Explorer*.

The following technical advisors serve as ex-officio members of the Working Group, regularly participating in Working Group meetings and assisting the Working Group by providing resources and advice:

- Ed Tinsley, Commissioner, Lewis and Clark County;
- Andy Baur, Executive Director, Prickly Pear Land Trust;
- Robert Rasmussen, The Trust for Public Land; and
- Rebecca Shaw, Planner, Lewis and Clark County.

Mary Vandenbosch and Jeff Erickson of Headwaters Policy/Planning Partnership, LLP were hired to facilitate the Heritage Lands Outreach Program.

Partners

The Heritage Lands Working Group is co-sponsored by Lewis and Clark County, the City of Helena, the Prickly Pear Land Trust, the Lewis and Clark Conservation District, and the Conservation District Grant Program.

Trends for Rural Lands in Lewis and Clark County

The most recent Lewis and Clark County Growth Policy, which was adopted in 2004, discusses a number of key trends affecting rural lands in the county. The majority of growth is occurring in unincorporated areas within the county, particularly the Helena Valley.

According to the most recent U.S. Census (2000), the County's population was 55,716 people in 2000, more than double the population in 1950 (24,540). At the time of the 2000 census, more than half the County residents (25,780) resided in the City of Helena, with 47,461 people living in the Helena Valley as a whole. Among unincorporated communities in the County in 2000, Lincoln had the most residents by far, at 1,100. As a whole, the County's population was estimated to have risen to 59,835 by 2007, an increase of 7.4 percent since 2000. By 2030, the County's population is expected to grow by at least another 30 percent, mainly in the Helena Valley.

The rate of population growth in the County has fluctuated significantly over the years, varying with the economy and other factors, as listed below:

- 1950s: 14 percent increase
- 1960s: 19 percent increase
- 1970s: 29 percent increase
- 1980s: 10 percent increase
- 1990s: 17 percent increase

From 1970 to 2000, the population growth rate in unincorporated portions of Lewis and Clark County (outside of Helena and East Helena) was the highest of any unincorporated area in Montana, at 218 percent.

At the time of the 2000 census, the percentage of urban versus rural residents was as follows:

- Urban (inside urban clusters): 38,544, or 69.2 percent
- Rural (farm): 803, or 1.4 percent
- Rural (non-farm): 16,369, or 29.4 percent

The number of parcels created through subdivision review has increased substantially in Lewis and Clark County since the 1980s. In 1986, for example, 94 lots were granted through subdivision review (via either preliminary or final plat approval) in the County. By 2002, that number increased to 685. Additionally, unreviewed land divisions have added to this total.

The Helena Valley is the primary population center and economic hub for Lewis and Clark County, and northern Jefferson and Broadwater Counties. The Valley continues to encompass the largest percentage of County population and growth. Agricultural operations in the Valley, in particular, are relatively small in nature, with many operators working second jobs in the Helena area.

The amount of land being utilized for agriculture in Lewis and Clark County is expected to decrease as residential development continues. According to the Montana Census of Agriculture, the amount of acreage in farms in the county decreased 7 percent between 1992 and 1997 alone, from 883,479 acres to 822,066 acres. The average farm size in the County decreased 19 percent during the same period, from 2,017 acres to 1,638.

Once rural land is developed, there is an ongoing financial responsibility for county taxpayers. Infrastructure, schools, police and fire protection, and other services all have costs that must be considered when designating land for development. Cost of community service studies in Montana and throughout the country have determined that working farms and ranches tend to produce net tax revenue for local governments. Rural residential development, on the other hand, typically results in a net loss because of the demand for services that are less efficient to provide than in a more densely populated urban area. (Among other studies, see *Fiscal Impacts of Alternative Development Patterns: Broadwater and Gallatin Counties*, Mark Haggerty, 1997, available through the Local Government Center at Montana State University.)

A majority of the residential lots located outside the City of Helena are served by individual wells and on-site wastewater treatment systems. Thousands of on-site wastewater treatment systems have been permitted and completed in the Helena Valley in recent decades. County officials have expressed concern about declines in the quality of groundwater in the Valley as a result of increasing nitrates and other contaminants.

Groundwater in the Helena area is the sole source of drinking water for more than 27,000 people, approximately 55 percent of the population. The Helena Valley alluvial aquifer provides water through approximately 5,600 domestic wells and 71 public water supplies.

Outside of the Helena Valley, rural growth in the County has tended to be much slower, and more large ranches have remained intact and in traditional operations. In some high amenity areas, sizeable ranches have been purchased by wealthy individuals from other states, helping drive up land values.

During the past 20 years, in particular, Lewis and Clark county has experienced a number of severe wildfires that have destroyed property and affected wildlife

habitat, scenic resources, and air quality. The growing number of homes in rural, forested areas has increased the threat of wildfire to property, and led to increasing fire fighting costs and risks to fire fighters.

Chapter 2: Working Group Report

Overview of Report

This report includes the following chapters:

Chapter 1 - Introduction: describes heritage lands, provides background information about the Heritage Lands Working Group, and presents trends for development of rural lands in Lewis and Clark County.

Chapter 2 - Working Group Report: includes a brief description of this report and explains the process for development of the Working Group's recommendations.

Chapter 3 - Vision Statement: presents Working Group members' vision for rural Lewis and Clark County.

Chapter 4 - Potential Tools to Conserve Heritage Lands: describes and discusses a wide range of tools that might be used to conserve heritage lands. Summarizes issues identified in public meetings that are addressed by these tools. Finally, specific options are presented for public comment.

Appendix A - Public Meeting Summaries: includes an overall summary of the issues recorded during the initial public meetings as well as summaries for each meeting.

Appendix B - Criteria/Questions for Issue and Tool Selection: provides guidelines the Working Group used to help decide which issues and tools to address.

Appendix C - Madison County Right-to-Farm Policy

Appendix D - Public Comment on Draft Report(June 2008): includes a summary of comments received on the draft report in June 2008.

Appendix E - Executive Summary: Lewis and Clark Voters Survey: is a memorandum summarizing the results of a survey conducted in May 2008.

Process for Development of the Working Group's Report

Gathering and considering ideas and opinions from the public has been a primary focus of the Working Group throughout the development of this report. Key steps in the process for developing the Working Group's report and recommendations are as follows:

Heritage Lands Working Group Final Report

1. Solicited opinions from the public on issues related to accomplishing the vision for heritage lands. Six public meetings were held to inform citizens about the project and hear their ideas. Meetings were held in Augusta, Lincoln, Wolf Creek, Canyon Creek, York and the Helena Valley to ensure citizens from each area had an opportunity to participate. Citizens were asked to prioritize the issues.
2. The facilitators summarized and organized the results of the public meetings, consolidating similar ideas. (See Appendix A.) The Working Group used the results of the public meetings to prioritize and guide their work.
3. The facilitators and Working Group members identified tools associated with the issues most commonly raised in the public meetings.
4. The Working Group tentatively identified:
 - a. characteristics of heritage lands;
 - b. a vision for the future of heritage lands;
 - c. issues related to accomplishing the vision for heritage lands;
 - d. draft criteria for selection of issues and tools for the Working Group to address; and
 - e. potential tools to address the issues.
5. Working Group members learned about and evaluated tools to conserve heritage lands.
6. The Working Group identified options and tools and produced a draft report.
7. Public comment on the draft report was solicited through the news media, notices sent to those who participated in the initial meetings and other interested persons, and public meetings held in Helena, Augusta, and Lincoln.
8. The Working Group reviewed the public comments received and made decisions on recommendations and the final report in July through September 2008.
9. This final report was completed in October 2008.

Chapter 3: Vision Statement for Lewis and Clark County

At the December 5, 2007 Working Group meeting, a question was posed to members: “In 25 years, if you could take a day and drive around rural Lewis and Clark County, how would you like it to be? What is your vision for the future of the county?” This is a compilation of the members’ responses.

We believe people who live and work in Lewis and Clark County are fortunate, as there are few places anywhere with the beauty and diverse character found here. Change is inevitable, but it needs to be appropriately managed and planned. We may have only one chance to ensure that the high quality of our rural lands is maintained.

In twenty-five years, our scenic landscapes and open skylines will have been conserved. We will have preserved both our private and public lands, and abundant recreational landscapes. The county will have maintained its historic tradition of both private ownership and public access. We will have healthy fisheries and wildlife habitat, including wildlife movement corridors. The county will continue to offer good water quality and quantity in streams, lakes, wetlands, and groundwater.

We would like to see the character of our working rural landscapes preserved and enhanced. Healthy and vibrant farms and ranches will remain a large part of the great heritage of Lewis and Clark County. We will have created new and better ways for those in agriculture to stay on the land they love and make a viable living. Rural residents will have adequate incentives and other tools to maintain the character of their land, without being burdened by excessive taxes, regulations, or conflicts with neighbors. Our forested lands will continue to support both timber harvest and other economic opportunities, with reduced wildfire risk.

Our towns and cities will be distinct, well planned urban centers, each with a kindred spirit and distinct identity. Because development has been provided for in appropriate locations, we will have avoided additional sprawl and traffic on our rural landscapes, without becoming too restrictive on how people use their land. We will have sustained a diverse range of both economic options and cultural life in Lewis and Clark County.

We were able to accomplish this vision because rural landowners, recreationists, and other interested residents were able to work together for their mutual benefit, fostered by a spirit of cooperation. We achieved a balance between economic growth and conservation, maintaining our heritage lands for future generations.

Chapter 4: Potential Tools to Conserve Heritage Lands

Right-to-Farm

Description

Montana has “right-to-farm” laws that are intended to limit nuisance actions and zoning ordinances that affect agricultural activities.

Generally speaking, a nuisance is a condition that interferes with the use or enjoyment of another person’s property. Montana law provides that if an agricultural operation was in place first, it does not become a nuisance as a result of *normal* operation when new residences or businesses move in next door. (27-30-101, MCA)

Local governments may not adopt a zoning regulation or nuisance ordinance that prohibits or forces the termination of an existing agricultural activity outside of the boundaries of an incorporated city or town. (76-2-903, MCA)

Lewis and Clark County’s subdivision regulations require that all subdivisions be designed to avoid or mitigate any significant impacts on agriculture, agricultural water users, or agricultural water facilities. The regulations have two specific requirements designed to address these impacts:

- A 200-foot buffer between prime farmland and any residential structure in a subdivision.
- Restrictive covenants addressing agriculture-related issues that accompany the final plat.

The language that is included in restrictive covenants is as follows:

Notice is hereby given of agricultural operations in the vicinity and that such operations may occur at varying times and seasons and include, but are not limited to, the noises and odors due to the operation of machinery, the pasturing and feeding of livestock, irrigation, and the application of fertilizers, herbicides, and pesticides to fields.

Some counties in Montana have elected to adopt right-to-farm policies in order to: encourage continued ranching and farming operations; inform residents and visitors about the existence and importance of agricultural operations; minimize conflicts between agricultural operators and other residents; and educate all parties about their rights and responsibilities under the law. An example from Madison County is included in Appendix C.

Issues Addressed

(Note: Numbers refer to issues listed in Appendix A – Final Public Meeting Summary.)

Right-to-farm measures address the following issues identified in public meetings:

- #2. Provide better technical assistance and information to help maintain the viability of agricultural lands (33 points).
- #9. Residents are concerned that too many unnecessary regulations and other (outside) people will determine private property rights (19 points).
- #10. Work on ways to avoid subdivisions in the “wrong” places (19 points).
- #13. Look at establishing/improving “right-to-farm” laws (to help protect against “nuisance” litigation from neighbors—12 points).

Discussion

The Working Group agreed that current right-to-farm measures in Lewis and Clark County are too narrow and should be expanded. The buffer requirement is limited to prime farmland and the definition of “prime farmland” does not cover many important agricultural operations in the County.¹

Recommendations

1. The Working Group recommends that the 200-foot buffer requirement in Lewis and Clark County’s subdivision regulations be revised to include cropland and grazing land in addition to prime farmland, as defined by the Natural Resources Conservation Service. Require a 200-foot buffer between croplands and grazing lands and any residential structure in a subdivision. Include a provision in the restrictive covenants addressing agriculture-related issues to require the subdivider to maintain the buffer in compliance with state and local weed management, dog control, and community decay ordinances.
2. The Working Group recommends that Lewis and Clark County adopt a Right-to-Farm policy modeled after Madison County’s policy. The following paragraph should be incorporated into the Right-to Farm policy: “Property situated in an agricultural area may be subject to conditions resulting from commercial

¹ The definition of “Prime farmland” in the Lewis and Clark County subdivision regulations is: “As defined by the Natural Resources Conservation Service, those lands that are best suited due to physical and chemical characteristics to produce food, feed, forage, fiber, and oilseed crops. Typically, these lands have an adequate and dependable supply from precipitation or irrigation, favorable temperature and growing season, and acceptable soil acidity and alkalinity.”

agricultural operations on adjacent land. Such operations may include: cultivation, harvesting, and storage of crops; livestock raising; application of chemicals; operation of machinery; application of irrigation water; and other accepted and customary agricultural activities conducted in accordance with federal and state law.”

Conservation Easements

Description

A conservation easement is a voluntary legal agreement that limits the use of property in order to protect its conservation values. The easement runs with the land, which means that it remains in effect when the property is sold. Most conservation easements are granted in perpetuity (forever).

A conservation easement is one tool that some Lewis and Clark County landowners have chosen to use to conserve heritage lands. A Legislative Audit Division report published in early 2007 found that 86,801 acres in Lewis and Clark County were protected under conservation easement.

Easements may be donated or purchased or both. A landowner who donates an easement may receive income tax benefits. Beginning in 2006, income tax benefits were temporarily expanded. The 2008 Farm Bill extends these expanded benefits through 2009. Expanded benefits include the following:

- Raises the deduction a donor can take for donating a conservation easement from 30% of their adjusted gross income in any year to 50%;
- Provides an additional benefit for qualifying farmers and ranchers, allowing these donors to deduct up to 100% of their income; and
- Extends the carry-forward period for a donor to take tax deductions for voluntary conservation agreements from 5 to 15 years. (Land Trust Alliance, <landtrustalliance.org>, 2008.)

Conservation easements can provide estate tax benefits as well. However, landowners must continue to pay Montana property taxes for land under conservation easements.

Easements are highly individualized, depending on the needs of the landowner and holder of the easement; however, they aren't the best option for every landowner. Public access is authorized under some easements and not others. Conservation easements must be monitored periodically by the entity holding the easement.

Upfront costs to landowners pursuing an easement can be high: \$10,000-20,000 for a land appraisal and \$1,000-5,000 for a resource inventory.

There is inadequate funding to pay for conservation easements proposed by willing landowners, land trusts, and other agencies in Lewis and Clark County. Prickly Pear Land Trust Executive Director Andy Baur estimated the shortfall for projects proposed in the county to be approximately \$5-\$7 million. Some federal funds that are available for conservation easements aren't being used due to a lack of local matching funds. (See "County Heritage Lands Bond" for more information about leveraging.)

Issues Addressed

(Note: Numbers refer to issues listed in Appendix A – Final Public Meeting Summary.)

Issues raised in public meetings that can be addressed by conservation easement programs include the following:

- #1. Develop more and better options to help rural landowners reap economic benefits from their land, while preserving heritage qualities (39 points).
- #3. Create local, state, and federal tax incentives/changes to help keep ranches intact (27 points).
- #4. Conservation easements can be a good tool for rural landowners (27 points).
- #5. Residents need to collaboratively define, locate, and develop a plan for the future of heritage lands (26 points).
- #7. Open space benefits everyone; we need to figure out ways to maintain it (20 points).
- #9. Residents are concerned that too many unnecessary regulations and other (outside) people will determine private property rights (19 points).
- #10. Work on ways to avoid subdivisions in the "wrong" places (19 points).
- #11. Conserve fish and wildlife habitat (19 points).
- #19. We need to conserve water quality. Protecting water resources (and fisheries) should be a high priority (10 points).
- #22. Keep heritage lands in private ownership (8 points).

Concerns raised in public meetings are identified below:

- Existing tax incentives are not always an adequate motivation for conservation easements. (See Issue #3)
- Funding is inadequate for conservation easements. (See Issue #4)
- How can we generate public support for conservation easements when physical access may not be allowed? (See Issue #4)
- High land values are increasing the price of conservation easements. (See Issue #20)
- #24. There need to be more conservation options for small parcels (8 points).

Discussion

Some participants in public meetings identified a concern that the conservation values of small parcels may be overlooked in favor of attention-grabbing large land parcels. The Working Group learned that the Prickly Pear Land Trust has facilitated a process whereby smaller landowners work together on conservation easements.

Findings and Recommendations

See “Technical Assistance and Information” and “County Heritage Lands Bond” for other options.

3. Conservation easements are a good tool for rural landowners to use to conserve heritage lands.
4. Recognize that conservation easements on small parcels can have a high potential to conserve important conservation values (i.e., wildlife habitat/migration corridors, water quality or quantity) and encourage owners of small parcels to work together to establish conservation easements on contiguous parcels.

County Heritage Lands Bond

Description

Local governments in Montana are authorized to appropriate funds, levy taxes and assessments, and issue and sell general obligation bonds for the purposes of the Open-Space Land and Voluntary Conservation Easement Act (Title 76, Chapter 6, MCA). The purposes of the Act are as follows:

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

Under this state law, “open space” land is defined as land that is provided or preserved for the following purposes:

- parks or recreation;
- conservation of land or other natural resources;

- historic or scenic purposes; or
- assisting in the shaping of the character, direction, and timing of community development.

Several Montana communities, including Gallatin County, Ravalli County, Missoula County, and the City of Helena, have approved ballot measures and issued bonds to pay for conservation of open space in their communities.

It is important to note that the Open-Space Land and Voluntary Conservation Easement Act (76-6-109(3), MCA) prohibits local governments from levying taxes for open space bonds against the following properties:

- (a) agricultural land eligible for valuation, assessment, and taxation as agricultural land under [15-7-202](#);
- (b) forest land as defined in [15-44-102](#);
- (c) all agricultural improvements on agricultural land referred to in subsection (3)(a);
- (d) all noncommercial improvements on forest land referred to in subsection (3)(b); and
- (e) agricultural implements and equipment described in [15-6-138](#)(1)(a).

In summary, land that is considered agricultural or forest land under state law for tax purposes and related improvements – including farmsteads – may not be taxed for an open space bond.

All three counties that have open space bond programs in Montana have advisory committees to make recommendations on which projects to fund as well as the criteria and application procedures used to determine which projects to fund.

The advisory committees in Gallatin, Missoula, and Ravalli Counties have all developed criteria for evaluation of applications for projects to be funded with their open space bond funds. The advisory committees made recommendations regarding criteria and application procedures. The County Commissions made the final decision on these matters.

All of these counties assign numeric values to various criteria. However, the points from the numeric evaluation are typically used as a guide. This method can be used to prioritize certain characteristics and identify those projects that offer the greatest overall benefits, while at the same time allowing flexibility for consideration of the project as a whole.

Typically a proposal for funding goes through the following general steps:

- A landowner and a land trust or other agency negotiate a conservation easement proposal.

- The landowner and the land trust or other agency submit an application which explains how their proposed conservation easement meets the criteria established for use of the bond funds.
- A citizen advisory committee reviews the application in light of the criteria and makes a recommendation regarding whether or not to fund the proposal.
- The County Commission makes the final decision on funding the proposal.
- If the proposal is approved, the landowner and the land trust or other agency complete and record the conservation easement.

Local governments that approve open space bonds have successfully used the local funds to leverage additional funds from federal, state, and private sources. Gallatin County reports that its conservation easements are leveraged at 20 percent, meaning local bond funds pay 20% of the cost.

If a bond were to be approved in Lewis and Clark County in 2008, the estimated annual tax based on the current assessed value of property in the County that is subject to taxation is \$16.77 for a home with an assessed value of \$100,000 and \$33.54 for a home with an assessed value of \$200,000. (Official General Election Ballot, Lewis and Clark County, Montana, November 4, 2008.)

Issues Addressed

(Note: Numbers refer to issues listed in Appendix A – Final Public Meeting Summary.)

A general obligation bond to pay for conserving heritage lands in Lewis and Clark County is a tool that could be used to positively address the following issues that were raised in public meetings:

- #1. Develop more and better options to help rural landowners reap economic benefits from their land, while preserving heritage qualities (39 points).
- #4. Conservation easements can be a good tool for rural landowners (27 points). It was noted that funding is inadequate for conservation easements.
- #7. Open space benefits everyone; we need to figure out ways to maintain it (20 points).
- #9. Residents are concerned that too many unnecessary regulations and other (outside) people will determine private property rights (19 points).
- #10. Work on ways to avoid subdivisions in the “wrong” places (19 points).
- #11. Conserve fish and wildlife habitat (19 points).
- #19. We need to conserve water quality. Protecting water resources (and fisheries) should be a high priority (10 points).
- #22. Keep heritage lands in private ownership (8 points). (Only applies if the bond is used to pay for conservation easements, not land acquisition.)
- #24. There need to be more conservation options for small parcels (8 points).

- #29. An open space bond will impact large landowners. Look at exempting large landowners from open space bonds/taxes (6 points). As noted above, land taxed as agricultural or forest land is exempt from the tax to pay for an open space bond.
- #30. Evaluate an open space bond measure—for appropriate areas of the county (5 points). Specific suggestions included the following: obtain bond funds and target them toward working landscapes; create an open space bond for purchasing conservation easements; and focus on landowners with large pieces of agricultural and forest land.

The following concerns were identified in public meetings:

- Any open space bond funds should be used to pay for conservation easements and not acquisition of land by the county. (See issues #4 and #30.)
- An open space bond may not be appropriate for all areas of the county. In particular, some citizens in the Augusta area expressed the opinion that they did not need any additional tools to preserve working farms and ranches.

The Working Group members recommended that a survey be conducted to help the Working Group and County Commissioners decide whether or not an open space bond is a tool that should be promoted in Lewis and Clark County at this time.

A representative sample of 400 registered voters in Lewis and Clark County were surveyed in May 2008. (See Appendix E for an Executive Summary of the survey results.) The results of the survey show that:

- 70% support a \$10 million bond; and
- 26% opposed a \$10 million bond.
- 65% support a \$15 million bond; and
- 31% are opposed to a \$15 million bond.

The survey asked all voters surveyed (both proponents and opponents) to indicate what types of projects should be funded with a bond. Eighteen projects were identified and a majority of voters indicated all 18 projects were important. Projects rated *extremely* important by at least half of the voters include the following:

- protecting drinking water sources;
- protecting groundwater quality;
- protecting water quality in rivers and streams;
- protecting habitat along rivers and streams;
- managing growth and development; and
- protecting working farms and ranches.

Discussion

Working Group members did not reach consensus in actually endorsing a bond, but agreed that the issue should be presented to the voters to make a decision. The Working Group appreciates the efforts of Lewis and Clark County to act expeditiously on their recommendation. Three members (specifically Sally Shortridge and Sarah Howe-Cobb from Augusta, and Tom Thompson from the Helena Valley) asked to be on record as personally opposing a bond measure. Sarah Howe-Cobb specifically stated that her personal opposition was based on the opinion that a vote should be delayed for two years.

Recommendations

5. Place a \$10 million Heritage Lands bond initiative on the ballot this fall (November 2008). The Working Group recommends that the issue be posed to voters with language similar to that used in the Lewis and Clark County bond survey conducted by The Trust for Public Land in May 2008. The question in the survey was posed as follows:

Shall the Board of County Commissioners be authorized to issue and sell general obligation bonds of Lewis and Clark County, in the amount of up to \$10 million dollars, for the following purposes: protecting drinking water sources; protecting water quality of streams and rivers; preserving open lands; conserving privately-owned farm, ranch, and forest lands; providing for recreation; protecting wildlife areas, and paying costs associated with the sale and issuance of general obligation bonds, with guidance from a citizen advisory board, and subject to an independent audit?

6. If the bond measure is approved by the voters, the Working Group strongly believes that a Citizen Advisory Committee should help to develop and manage the program. (See the following section for more information about the composition and role of the Citizen Advisory Committee.) The Citizen Advisory Committee should develop recommendations for consideration by the County Commissioners regarding the criteria and application procedures to be used in determining which projects should be funded. The Committee should review applications for funding and make recommendations to the County Commissioners with respect to approval, denial or conditions of projects proposed for funding with bond proceeds. The Working Group recommends that the Heritage Lands Citizen Advisory Committee review the policies and procedures that are in place in Ravalli, Gallatin, and Missoula Counties and seek input from the citizens of Lewis and Clark County before proposing policies and procedures to the Lewis and Clark County Commission.
7. The Working Group strongly recommends that conservation easements be the preferred method of conserving heritage lands in Lewis and Clark County under the Heritage Lands Bond Program. Other means of acquiring an interest in land

may be considered if the program's goals and objectives are not best accomplished through the use of conservation easements. Use of bond funds for fee acquisition of additional land by the county is discouraged.

8. Projects facilitated by partnerships between individuals/organizations should be encouraged.
9. The Working Group recommends that a high priority be placed on projects that protect the quality and quantity of our surface and ground water and that this priority is reflected in the criteria applied to evaluation of applications.

Technical Assistance and Information

Description

Missoula County has a Rural Initiatives Program and an Open Lands Citizen Advisory Committee. They work together to identify issues in rural areas while concurrently bringing information about various county projects back to people in those areas.

Activities of the Missoula County Rural Initiatives Program include:

- creation of, and assistance to, formal representative bodies from rural areas (e.g., Community Councils, the Open Lands Citizen Advisory Committee and other groups);
- assistance with agricultural, farming and timber land protection tools and funding mechanisms;
- watercourse and water source protection through land use planning and implementation;
- interagency coordination with state, federal and tribal agencies;
- comprehensive land use and parks planning; and
- other related activities designed to protect the cultural, historic, economic, and natural resources of Missoula County while providing for and directing growth outside the Missoula Valley.

Missoula's Open Lands Citizen Advisory Committee is charged with advising the County Commissioners regarding the protection and preservation of open space and rural landowners. In addition to advising the County Commissioners, they gather information on topics of interest in their community and share that information through workshops in their community. For example, they hosted three workshops on estate planning that were well-received and well-attended.

Ravalli and Gallatin counties also have advisory committees. It is important to note that all of these advisory committees have a broader mission that goes well beyond making recommendations on the use of bond funds. The mission for each committee is presented below.

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County	Advisory Committee Mission
Gallatin	The Mission of the Gallatin County Open Lands Board is to work with the County Commissioners and the citizens of Gallatin County to preserve natural lands and encourage the economic viability of agriculturally productive lands. This is accomplished through voluntary programs, which ensure the protection of open-space lands, either in perpetuity or for a term of years; and through the identification or establishment of funding sources, tax measures or other incentives.
Missoula	<p>The purpose of the Missoula County Open Lands Citizens Advisory Committee is to advise the Board of County Commissioners and represent the citizens of Missoula County in the protection and preservation of open space and the rural way of life for present and future generations.</p> <p>Responsibilities include:</p> <ul style="list-style-type: none"> • Reviewing open space bond project proposals and providing recommendations to the Commissioners. • Helping maintain, enhance, and assist Commissioner and staff rural outreach. • Assisting landowners facing a changing rural landscape by recommending priorities for protection and enhancement of the County’s farm, ranch, and timber lands, as well as wildlife, water and scenic resources.
Ravalli	The objective of the Ravalli County Open Lands Board is to work with the County Commissioners and the citizens of Ravalli County to preserve Open Lands throughout the County’s rural and urban areas that protect working farms and ranches, water quality, river corridors, timberlands, important wildlife habitat, scenic views and vistas, and diverse recreational opportunities.

Missoula County does not have formal requirements for the composition of the Missoula County Open Lands Citizens Advisory Committee. Commissioners try to appoint at least one member from each planning area and seek applicants who have experience with working ranches/farms/timberlands; natural resources; state, tribal and federal agencies; banking/finance; business; and communications.

Gallatin County’s Open Lands Board has up to 15 members. At least 5 members must represent farming and ranching interests. When the Open Lands Board was first created in 1999, a majority (8) were required to represent agricultural interests. This number was reduced to 5 because they found it difficult to recruit 8 agricultural representatives.

Ravalli County's Open Lands Board has 13 members, including: 3 at large; 2 who own or operate county qualified agricultural operations; 2 from the Ravalli County Right to Farm and Ranch Board; 1 at large with a background in wildlife biology, ecology, environmental sciences, or similar field; 1 from the county at large with a background in hydrology, water resource management, or a similar field; and 1 each from the Ravalli County Conservation District, Planning Board, Weed Board, and Park Board. There are two additional ex-officio members – one each from the County extension office and the Bitterroot Land Trust.

There are several existing federal, state, local, and private entities that provide information to rural landowners. These include: Lewis and Clark Conservation District, Lewis and Clark County Extension Office, Natural Resources Conservation Service, Montana State University Extension, the Montana Stockgrowers Undaunted Stewardship Program, and others.

Issues Addressed

(Note: Numbers refer to issues listed in Appendix A – Final Public Meeting Summary.)

The following issues can be addressed through technical assistance and information, particularly when provided through a program that is dedicated to the needs of rural landowners.

- #1. Develop more and better options to help rural landowners reap economic benefits from their land, while preserving heritage qualities (39 points).
- #2. Provide better technical assistance and information to help maintain the viability of agricultural lands (33 points).
- #5. Residents need to collaboratively define, locate, and develop a plan for the future of heritage lands (26 points).
- #12. Need to more effectively address noxious weeds; there are limited public resources for weed control (13 points).
- #13. Look at establishing/improving “right-to-farm” laws (to help protect against “nuisance” litigation from neighbors—12 points).
- #32. The Working Group needs to consider solutions that are appropriate to particular geographic areas in the county (5 points).

Discussion

The Working Group discussed whether to establish a Lewis and Clark County Rural Initiatives Program to: assist the Heritage Lands Citizen Advisory Committee, assist community councils and similar groups in rural areas, provide information about tools for conserving heritage lands to citizens, and carry out land use planning efforts in rural areas.

The Working Group did not reach a consensus on this option. Some members felt that the functions of a “Rural Initiatives Program” were already provided by the Lewis & Clark Conservation District, and the County’s Extension Office and Community Development Program. Other members felt that it would be important to have a staff position dedicated to rural initiatives. One member suggested that a staff person dedicated to rural initiatives could serve as a liaison between the County Commission and the Citizen Advisory Committee. Another member described his difficulties in getting information from existing entities in a timely manner and felt that if one person were assigned to work on rural issues, they would be dedicated to resolving these issues.

Recommendations

10. Establish a Heritage Lands Citizen Advisory Committee that includes at least one member from each of the six planning areas in Lewis and Clark County. Seek members with expertise in at least one of the following areas: working ranches/farms/timberlands; water and other natural resources; weed management; land use planning; recreation; state, tribal and federal agencies; banking/finance; business; and communications. The Heritage Lands Citizen Advisory Committee would identify issues in rural areas, advise the County Commission about these issues, and concurrently bring information about voluntary tools for conserving heritage lands to citizens in rural areas.
11. Continue to rely on existing sources of information, including but not limited to: Lewis and Clark Conservation District, Lewis and Clark County Extension Office, Natural Resources Conservation Service, Montana State University Extension, the Montana Stockgrowers Undaunted Stewardship Program, and others.
12. Outreach programs should emphasize topics identified in public meetings hosted by the Heritage Lands Working Group. These include: conservation easements, estate planning, weed management, right-to-farm, value-added processing and marketing of local products, protection of riparian areas, growth trends, and the importance of working farms, ranches, and forest lands.
13. Apply for grants to fund a Heritage Lands Citizen Advisory Committee.

Weed Management

Description

Noxious weeds can cause increased soil erosion, and loss of wildlife habitat, native plants, crops, forage production, and plant diversity. Water quality may be impaired as a result of loss of native riverbank vegetation due to spread of noxious weeds. All of these impacts can translate into economic losses.

Montana has a Statewide Noxious Weed Awareness and Education Program which provides information targeted to sportsmen, recreationists, tourists, small acreage landowners, agricultural producers, realtors, developers and several other groups. Information is also available through the Lewis and Clark County Extension Office and many other organizations.

Under Montana law it is illegal for a landowner to allow noxious weeds to propagate or go to seed on their land. Landowners can comply with this law through a noxious weed management agreement or by complying with the weed district's noxious weed management program.

The same law requires any person offering a property for sale to notify the owner's agent and the purchaser of the existence or potential existence of noxious weeds on the property. (7-22-2116, MCA)

Lewis and Clark County has a Weed Management Board which oversees weed management activities in the county's weed district. The Weed District notifies landowners when noxious weeds are found on their property and works with landowners to take steps to come into compliance with state law.

Weeds spread across boundary lines. As a result, public/private partnerships and interjurisdictional efforts are critical to the success of any weed management effort. An example of such an approach is the Rocky Mountain Front Weed Round Table. This effort involves more than 230 landowners, agencies, volunteers and the Montana Conservation Corps in fighting weeds in seven of the Front's main watersheds. The effort includes mapping and monitoring noxious weeds, pulling and spraying them, using biological control insects and managing desirable plant communities.

Issues Addressed

(Note: Numbers refer to issues listed in Appendix A – Final Public Meeting Summary.)

Weed management programs address the following issues that were identified in public meetings:

- #11. Conserve fish and wildlife habitat (19 points).
- #12. Need to more effectively address noxious weeds; there are limited public resources for weed control (13 points).
- #19. We need to conserve water quality. Protecting water resources (and fisheries) should be a high priority (10 points).

Discussion

The Working Group members agree that weed management efforts are a high priority and should be continued. Some members noted that community efforts seem to be the most successful and these should be encouraged.

Recommendations

14. The existing weed management programs of the Lewis and Clark County Weed Management Board/Weed District and other agencies are a high priority and should be continued.
15. Promote community efforts as a successful approach to weed management.
16. Promote improved weed management on public lands. See "Management of Land by Federal and State Land Management Agencies."
17. Encourage the Montana Association of Counties to promote consistent and successful weed management efforts between counties.

Value-added Processing and Marketing of Local Products

Description

Value-added processing of local products refers to adding value to raw products locally, so that local producers can realize the economic benefits of producing a ready-to-eat product. For example, Wheat Montana Farms near Three Forks, Montana is a family owned and operated business that not only grows grains, but operates a facility that includes grain cleaning, processing, flour milling and a full scale bakery.

Locally-grown products can be marketed to purchasers in the local area and elsewhere. Examples of marketing at the state level are the "Made in Montana" and "Grown in Montana" products.

Issues Addressed

This tool addresses the top issue identified by participants in public meetings:

#1. Develop more and better options to help rural landowners reap economic benefits from their land, while preserving heritage qualities (39 points).

Discussion

The Working Group recognized efforts occurring at the federal and state levels. For example, the 2008 Farm Bill includes a provision that requires mandatory country-

of-origin labeling by September 2008. Depending on how the rules are implemented, this tool may help to distinguish U.S. grown meat from meat originating in other countries.

The Economic Affairs Interim Committee of the Montana Legislature concurrently conducted a study of expanding value-added food production in Montana during the 2007-08 interim (SJR 13).

Recommendations

- 18. Support country of origin labeling
- 19. Promote local products locally.

County Growth Policy and Subdivision Regulations

Description

Montana law (Title 76, Chapter 1, MCA) authorizes counties, cities and towns to prepare growth policies, also often referred to as comprehensive or master plans. The growth policy is intended to be a broad, non-regulatory planning foundation for more detailed local government planning efforts. While growth policies are not required by Montana statute, they are required for a local government to adopt zoning, unless it is done by citizen petition (i.e., “part 1” zoning). Lewis and Clark County adopted its most recent growth policy in 2004, and is planning on revising it soon.

The Montana Subdivision and Platting Act (Title 76, Chapter 3, MCA) requires counties, cities, and towns to adopt and enforce local subdivision regulations. Subdivision regulations are the only general land use regulations that local governments are required to adopt under state law. Local governments must review and approve, conditionally approve or disapprove land divisions creating parcels less than 160 acres in size, mobile home and recreational vehicle parks, or condominiums. The law also provides for several exemptions. Local governments may regulate the design of subdivisions, and prohibit subdivisions in areas that are unsuitable because of health and safety hazards. The latest revisions to the County Subdivision Regulations were adopted in December 2007.

The Growth Policy and Subdivision Regulations are posted on the Lewis and Clark County website. (<www.co.lewis-clark.mt.us>)

Issues Addressed

(Note: Numbers refer to issues listed in Appendix A – Final Public Meeting Summary.)

- #5. Residents need to collaboratively define, locate, and develop a plan for the future of heritage lands (26 points).
- #6. Need to achieve a workable balance between preservation and growth (24 points).
- #10. Work on ways to avoid subdivisions in the “wrong” places (19 points).
- #17. Improve monitoring and regulation of the impacts of subdivisions on groundwater (11 points).
- #31. Work on doing a better job of incorporating wildlife habitat into subdivision regulations and other planning efforts. Develop tools to maintain wildlife corridors (5 points).

Discussion

The Working Group understands that if their recommendations are going to be effective, to a large extent they need to be recognized and adopted by Lewis and Clark County. Both the Growth Policy and Subdivision Regulations have the potential to influence issues related to heritage lands.

Recommendations

20. Encourage that the Lewis and Clark County’s Growth Policy be consistent with the Heritage Lands Working Group’s vision statement and recommendations.
21. Encourage that Lewis and Clark County’s subdivision regulations are consistent with the Heritage Lands Working Group’s vision statement and recommendations.

Local Planning and Action

Description

This tool includes a variety of ways that citizens can collectively interact with the county and other levels of government. One mechanism includes community councils, as exemplified by the one that currently exists in Lincoln, the only one in the county. Community councils provide a means for unincorporated portions of the county to express their views and concerns to the county commissioners and other officials. While positions taken by community councils are advisory, they can have an important affect on the decisions that are ultimately made. There may be

potential for community councils to be formed in other unincorporated portions of the county.

Neighborhood planning is a grassroots concept that is promoted in the Lewis and Clark County Growth Policy, and has been successfully employed elsewhere in Montana. With local government assistance, the neighborhood planning process directly enlists local residents to help plan their neighborhood's future. According to the Growth Policy:

Typically, completion of a neighborhood plan would be expected to precede the establishment of more specific zoning requirements. The (neighborhood) plan is intended to be a more general guidance document that identifies issues of concern and formulates goals and objectives to address them. Zoning, on the other hand, might be one of a number of tools used to implement the plan. The relationship between a neighborhood plan and special zoning district is similar in some respects to the relationship between a growth policy and subdivision regulations: One lays out a broad framework, while the other includes the specific details to carry it out.

In addition to the above, there are a wide range of different citizen groups that work to affect policy in Lewis and Clark County. Some of these are institutionalized, while others are formed for a short period of time to address a particular issue, disbanding once recommendations are made. Watershed councils are an example of the former, of which there are dozens operating in Montana, including Lewis and Clark County. Examples of short-term committees include the group recently convened by the City of Helena to address an overpopulation of deer in town and the Heritage Lands Working Group.

Issues Addressed

(Note: Numbers refer to issues listed in Appendix A – Final Public Meeting Summary.)

- #5. Residents need to collaboratively define, locate, and develop a plan for the future of heritage lands (26 points).
- #6. Achieve a workable balance between preservation and growth (24 points).
- #9. Residents are concerned that too many unnecessary regulations and other (outside) people will determine private property rights (19 points).
- #10. Work on ways to avoid subdivisions in the “wrong” places (19 points).
- #14. Use of public lands affects private lands—landowners need more say in public land management decisions (12 points).
- #26. Need to look at maintaining rural schools (7 points).
- #32. The Working Group needs to consider solutions that are appropriate to particular geographic areas in the county (5 points).

Discussion

Public comment from the initial six meetings demonstrated strong support for approaches that utilize local planning and action. During their discussions, the Working Group was similarly supportive of community councils, neighborhood planning, and grassroots citizens' organizations. These concepts mesh well with a theme from the public meetings: That the various parts of the county are different, and may require localized approaches to solving problems.

Recommendations

22. Utilize and provide staff support to community councils in areas that want them.
Work to help provide residents adequate information about community councils.
23. Provide support for and encourage neighborhood planning efforts.
24. Encourage landowner-based grassroots/community organizations.

Management of Land by Federal and State Land Management Agencies

Description

Public agencies like the U.S. Forest Service, the U.S. Bureau of Land Management, Montana Fish, Wildlife & Parks, and the Department of Natural Resources and Conservation (e.g., "School Trust Lands") collectively manage a significant portion of the land in Lewis and Clark County. The Forest Service is by far the largest public lands management agency in the county.

Public lands are frequently intermixed with private lands in a "checkerboard" fashion. Many issues affecting private heritage lands also affect public lands; fire, noxious weeds, fish and wildlife, and water quality are examples. While the primary focus of the Heritage Lands Outreach Program is private lands, both the public and Working Group members recognize that public lands need to be considered when addressing many challenges facing private lands.

Issues Addressed

(Note: Numbers refer to issues listed in Appendix A – Final Public Meeting Summary.)

- #11. Conserve fish and wildlife habitat (19 points).
- #12. Need to more effectively address noxious weeds; there are limited public resources for weed control (13 points).

- #14. Use of public lands affects private lands—landowners need more say in public land management decisions (12 points).
- #15. Make public lands more accessible and useable to the public (12 points).
- #16. There are serious forest health issues on national forest lands: Protect and restore forest health (11 points).
- #18. The purchase of old mining inholdings within public land boundaries is a concern (10 points).
- #22. Keep heritage lands in private ownership (8 points).
- #27. Evaluate the impact of state land sales and leases on surrounding private lands (6 points).

Discussion

Public lands issues were an important part of public comment at the initial six meetings, especially in areas with considerable national forest land. Both the public and Working Group members recognize the interconnected nature of public and private lands.

Recommendations

25. Encourage pilot projects to more effectively involve local citizens in federal land management and planning.
26. Draft and sign a memorandum of understanding (MOU) between the county and land management agencies requiring regular meetings to improve communication.
27. Promote an expedited process for land exchanges.

Setbacks and Buffer Zones

Description

Protecting water quality has been an important focus of the Heritage Lands Working Group, and was an important issue at the public meetings. Setbacks and vegetative buffer zones are tools to address the negative impacts associated with construction in riparian areas along streams, lakes, and wetlands. A setback is the distance a structure or other specified types of construction must be placed from the water, typically the ordinary high water mark. Buffer refers to natural vegetation maintained for a certain distance back from the water.

Riparian areas provide many benefits that can be undermined by building in the wrong areas. In Montana, water bodies and riparian areas encompass only 5 percent of the state's total area, yet these areas help support more than 75 percent of our native fish, wildlife, and plants. In addition, healthy riparian areas help

conserve water quality and quantity; protect people and property by mitigating flood impacts; afford privacy for landowners and help protect their property values; and provide other recreational and economic benefits such as hunting, fishing, and wildlife viewing.

To date in Montana, at least nine jurisdictions have utilized zoning/development standards that include setbacks and/or buffer zones to protect riparian areas. The same number have utilized subdivision regulations as a tool. In Lewis and Clark County, setback and buffer area requirements are included in the subdivision regulations. Setbacks range from 50 to 250 feet depending on the size or character of the water body; buffers vary between 30 and 100 feet. Including these provisions in permanent zoning regulations would extend these protections to land that has already been subdivided. For both subdivision regulations and zoning, well-crafted variance procedures offer landowners a degree of flexibility in developing their property.

Issues Addressed

(Note: Numbers refer to issues listed in Appendix A – Final Public Meeting Summary.)

- #6. Need to achieve a workable balance between preservation and growth (24 points).
- #10. Work on ways to avoid subdivision in the “wrong” places (19 points).
- #11. Conserve fish and wildlife habitat (19 points).
- #19. We need to conserve water quality. Protecting water resources (and fisheries) should be a high priority (10 points).
- #31. Work on doing a better job of incorporating wildlife habitat into subdivision regulations and other planning efforts. Develop tools to maintain wildlife corridors (5 points).

Discussion

The Working Group is aware that setbacks and vegetative buffer zones are a topic of discussion in a number of Montana communities, including Lewis and Clark County. The group recognizes that setbacks and buffers can be useful tools to protect important water-related resources.

Recommendations

28. Maintain the setback and buffer zones in the county subdivision regulations.
29. Support efforts to extend setback and buffer zones to land that has already been subdivided through adoption of development standards.

Development Standards/Zoning

Description

Local governments in Montana are authorized to adopt zoning regulations that govern several aspects of land use. One objective of traditional zoning is to separate incompatible uses of land and minimize conflicts between property owners by regulating the location of land uses. Zoning regulations adopted under Montana law may address the character or quality of development without dividing the county into zones. Such regulations are often referred to as development standards. It is important to note that state law allows counties to choose what level and type of zoning regulations are desired. A county need not adopt comprehensive regulations that address every aspect of land use.

Montana law requires public participation in the adoption of zoning regulations. Furthermore, there must be a process for appealing zoning decisions and an appellate body to preside over that decision. Zoning regulations may be initiated by citizen petition or the county. All zoning regulations must be consistent with the growth policy.

Agricultural zoning districts have been established in various parts of Montana, including Jefferson, Park, Powell, and Sweet Grass counties. Most of these districts were initiated by citizens. Typically agricultural zoning districts establish minimum parcel sizes, ranging from 160 acres to 640 acres. Land use is generally restricted to agriculture; sometimes limited additional uses that are compatible with agriculture are allowed.

According to the American Farmland Trust, agricultural zoning districts have the following benefits related to preservation of agricultural land:

- Keeps large tracts of land relatively free of non-agricultural development.
- Reduces conflicts between agricultural landowners and neighbors who do not farm or ranch.
- Can conserve a critical mass of agricultural land adequate to ensure demand for local agricultural service businesses.
- Limits land speculation and keeps land affordable for farmers and ranchers.
- Prevents sprawl into rural areas. (“The Farmland Protection Toolbox,” *Farmland Information Center Fact Sheet*, < www.farmlandinfo.org>, February 2008.)

Development standards/zoning regulations can be used to protect the quality of ground and surface water as well as wildlife habitat. (See “Setbacks and Buffer Zones” section.) Some areas in Montana have provided incentives for “cluster developments” through zoning regulations. In a cluster development, houses are grouped together on small lots with the remaining land preserved as open space.

Issues Addressed

(Note: Numbers refer to issues listed in Appendix A – Final Public Meeting Summary.)

Development standards and zoning regulations are a tool that can be used to address the following issues raised in public meetings:

- #5. Residents need to collaboratively define, locate, and develop a plan for the future of heritage lands (26 points).
- #6. Need to achieve a workable balance between preservation and growth (24 points).
- #10. Work on ways to avoid subdivisions in the “wrong” places (19 points).
- #13. Look at establishing/improving “right-to-farm” laws (to help protect against “nuisance” litigation from neighbors—12 points).
- #20. Because of more wealthy, out-of-state landowners, land values have gone way up above their agricultural value (9 points).
- #22. Keep heritage lands in private ownership (8 points).

At the same time, some participants in the public meetings raised concerns about too many unnecessary regulations. (See Issue #9.) While it should be noted that some participants were primarily concerned about regulations developed and governed by people outside of their community, others felt that no new regulations are needed.

Discussion

The Working Group felt it was important to recognize that this tool can be used to conserve heritage lands. Except as discussed in the previous section under “Setbacks and Buffer Zones,” the Working Group did not consider any specific development standards or zoning regulations.

Finding

30. Recognize that development standards/zoning regulations are a tool that can be used to preserve heritage lands.

Agricultural Districts

Description

An agricultural district is a special area where commercial agriculture is encouraged and protected. Agricultural districts are different from zoning districts.

Enrollment in an agricultural district is voluntary and a package of benefits is offered to promote continued use of the land for agriculture.

While 16 states have established agricultural district programs, Montana law does not currently provide for these programs. California's Williamson Act offers one example of an effective agricultural district program. The Williamson Act became law in 1965; since that time, nearly 17 million of California's 29 million acres of farm and ranch land have been protected. Property taxes for individual participants are reduced by 20-75 percent each year. The state compensates local governments for some of the lost revenue.

Issues Addressed

(Note: Numbers refer to issues listed in Appendix A – Final Public Meeting Summary.)

Agricultural Districts are a tool that can be used to address the following issues raised in public meetings.

- #1. Develop more and better options to help rural landowners reap economic benefits from their land, while preserving heritage qualities (39 points).
- #3. Create local, state, and federal tax incentives/changes to help keep ranches intact (27 points).
- #5. Residents need to collaboratively define, locate, and develop a plan for the future of heritage lands (26 points).
- #7. Open space benefits everyone; we need to figure out ways to maintain it (20 points).
- #8. Help keep ranches in families through establishing rural agricultural districts (19 points).
- #9. Residents are concerned that too many unnecessary regulations and other (outside) people will determine private property rights (19 points).
- #18. Look at establishing/improving “right-to-farm” laws (to help protect against “nuisance” litigation from neighbors—12 points).
- #23. More effectively quantify the economic value of natural and cultural resources (8 points). Specific suggestions under this category included: figure out ways to compensate private landowners for being good stewards of heritage lands; and provide incentives for ranchers to maintain their land and wildlife habitat.

Discussion

Key elements of an agricultural district program include local authority to create agricultural districts and a package of benefits that provide incentives to maintain working farms and ranches. The Working Group reviewed incentives that have been

used to keep land in agriculture in other states and identified the following as examples of incentives that might be effective in Montana:

- Deferred taxes. Property taxes would be reduced while the land remains in agricultural use. If land is removed from agricultural use, the rate would increase and a penalty would be assessed.
- Protection from condemnation (use of eminent domain power) by state and local governments. (States do not have the authority to limit federal condemnation.)
- Right-to-farm protection by providing notice to new landowners of existing agricultural operations.

While some Working Group members felt this was an important idea, they were unable to think of a financial incentive that would fit in Montana because agricultural land in Montana is already taxed based on its production value rather than market value. Other states use taxation based on production value as an incentive because agricultural land is not taxed on production value in those states.

Taxes

Description

Participants in the public meetings identified estate taxes and property taxes as being important to conservation of heritage lands.

Issues

Issue #3 is “Create local, state, and federal tax incentives/changes to help keep ranches intact (27 points).” Participants in public meetings identified the following ideas in this category:

- Inheritance taxes affect the ability to maintain heritage lands.
- The estate tax is the most onerous tax for rural landowners.
- Estate planning is a huge challenge for rural landowners.
- We need to look at the factors that cause landowners to subdivide (e.g., the “death tax”).
- Can we eliminate the forest lands property size limits for taxation purposes?
- Property taxes go up with increasing land values, but ability to pay doesn’t.
- Small cabins don’t pay their way in taxes; others must subsidize services.
- Tax incentives are not an adequate motivation for conservation easements.
- Establish a (graduated) tax break for full-time residents.
- Address issue of what happens to ranches when the children who might inherit them live out of state.

Discussion

Although the Working Group members recognized the importance of the tax issues identified, they did not think they could effectively delve into state and federal tax policy in the time available. All tax issues are contentious and they are being debated in other forums. (Tax incentives are also discussed under “Agricultural Districts.”)

Working Group members recognize the importance of continuing to tax agricultural and forest lands based on productivity value rather than the market value of the land.