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# **MONTANA CONSERVATION EASEMENT APPRAISER CAPACITY PROJECT REPORT**

## **Montana Association of Land Trusts**

*December 2018*

### **Introduction**

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The Montana Conservation Easement Appraiser Capacity Project is funded by the Montana Association of Land Trusts (MALT) and the Western Office of the Land Trust Alliance. The goals of the Montana Conservation Easement Appraiser Capacity Project are to identify the extent of the conservation easement appraisal capacity problem in Montana and to develop a package of options to address unmet needs.

In August 2018, Bill Long, of Solid Ground Consulting, conducted phone survey interviews and background information gathering with land trust staff and supporting professionals, agency personnel, and appraisers (Attachments 1, 2 & 3). This report summarizes themes that emerged from those conversations and identifies potential paths forward.

This kind of project – an examination of potential conservation easement appraiser capacity issues – has been discussed by the Montana Association of Land Trusts membership, staff, and others for several years. The decision to conduct this project to assess conservation easement appraiser capacity was made with the MALT membership’s full participation to ensure the project would be done in support of – and with participation by – the Montana conservation easement appraiser community. MALT has consistently demonstrated its commitment to collaborate with the Montana appraiser community in this needs assessment. To quote a member of the appraisal community, this report “...addresses an issue that has been out there in some fashion for a long time.”

The Montana Association of Land Trusts would like to recognize the significant financial and direction support of the Land Trust Alliance Western Program and support from the Heart of the Rockies Initiative and the Cinnabar Foundation. MALT staff and Bill Long would also like to thank the land trust representatives, appraisers, and everyone who participated in the interviews and helped to make this project and report possible.

### **Background**

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Conservation easements in Montana had their beginnings in the mid-1970s, with the first conservation easement in Montana created in 1976. The start was slow, as the idea of private land conservation, let alone landowners giving up the development rights to private land, was new and unsettled. Early on the refrain was “Oh, you need to talk to folks in the Bitterroot.” Which, at that time, meant that subdivision pressures were strong in that area. In the 1970s

population growth and conversion of agricultural lands was not a major issue for most areas of Montana. That has clearly changed in the last 40 years.

Since 1976 there has been a steady growth and maturing of land trusts in Montana, at times in fits and starts. The public agency journey with conservation easements in many ways mirrored the path of the land trusts. Today, Montana's land trust<sup>1</sup> community is effective, respected, and successful.

Growth in the number of Montana's private land conservation practitioners, organizations, and the volume of conservation easements has brought challenges, one of which is the genesis for this project. A critical component of the success of any conservation easement is the appraisal. Concerns about appraiser capacity have been raised consistently at MALT meetings for a while, however, MALT believes the ongoing concern of appraiser capacity cannot be ignored any longer.

In 2015, the MALT membership – joined by a conservation easement appraiser – spent a half day discussing constraints on conservation easement appraiser capacity. That conversation spawned a list of seven potential action items for MALT to explore with respect to appraiser capacity issues.

Three years later, none of the seven items identified for possible action had been undertaken, let alone accomplished. After hearing additional, recent concerns from land trusts, MALT staff brought the issue up during the MALT membership meeting on November 29, 2017. Later in 2017, in independent discussions, two land trusts expressed alarm about appraiser capacity. One MALT member said it was “looming” as the biggest threat to Montana private land conservation. That MALT member suggested the issue should be elevated to a MALT membership priority. The MALT membership agreed. This project, and this report, are consistent with the realization of the vital role appraisals and appraisers play in Montana private land conservation.

## Trends

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The history of conservation easements in Montana has been one of steady growth, interspersed with peaks and valleys of project volume. As the concept of conservation easements matured over time, as more landowners became aware of land trust and agency programs, as changes in federal conservation easement tax incentives were approved by Congress and promoted by land trusts, and as options for funding from local, state and federal sources increased, Montana private land conservation flourished.

Montana is a nationally recognized leader in both the quality and quantity of its private land conservation. The Montana Legislature passed Montana's conservation easement statute in 1975. The first conservation easement in the state was completed in 1976, and, since then, Montana land trusts and public agencies have worked with landowners to conserve 2.6 million

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<sup>1</sup> In this report land trusts refers to both land trusts and agencies.



acres of private land. Montanans have conserved more private land through the creation of conservation easements than all the states contiguous to us, and Montana has more acres conserved by accredited land trusts than any other state. Montana has a proud tradition of private land conservation and tremendous opportunity for continued conservation success in the future.

Montana land trusts surveyed for this project reported a growing interest on the part of private landowners in conservation easements and are optimistic about an upswing in conservation easement projects in the foreseeable future. They hope to complete 43, and could potentially finish 57, new conservation easements in 2018 alone.

## Survey Results

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Different survey interview questions were used for the land trusts and appraisers (Attachments 2 & 3). While all the results from those questions are not included, they were important to understand the conservation landscape. The verbatim results reported below from those interviews provide the foundation within this report for the identification of Key Issues and subsequent Potential Options to pursue.

### I. Is there a conservation easement appraiser capacity issue in Montana?

#### Land Trusts

The response from the land trusts was a strong yes. Here are some quotes in response to the question:

- ◆ “Challenging to get appraisers attention”
- ◆ “Landowner interest is at a long term high creating huge demand but appraiser capacity is not increasing to match this growth”
- ◆ “Long delays [to project completion]”
- ◆ “[Appraisers can be] fussy with projects”
- ◆ “Absolutely [an issue]. With retirements [more of an issue] ... not a lot [of appraisers] to begin with”
- ◆ “Not really now, be nice to have a couple more – however, would be a real wreck if a couple of the main appraisers left the business”
- ◆ “Bottleneck [to project completion]”

Having said that, several land trust people responded:

- ◆ “Not in our service area”
- ◆ “No”

#### Appraisers

Appraisers viewed the question of capacity with a more nuanced eye:



- ◆ “Maybe”
- ◆ “Not a short term capacity issue”
- ◆ “The issue is the lack of qualified appraisers to complete projects in a timely fashion”
- ◆ “Some projects have not a lot of conservation value (documentable for conservation easement purposes)”
- ◆ “Good appraisers are always busy”
- ◆ “Yes and no”
- ◆ “Not so sure about shortage”

On the other hand these are pretty direct:

- ◆ “Yes – and if the big two left the field, big issue”
- ◆ “Yes, need more rural appraisers”

## **2. Has appraiser capacity changed over time?**

### ***Land Trusts***

The responses from the land trusts and appraisers were much more aligned on this question. From the land trusts:

- ◆ “Yes” [six yes responses]
- ◆ “Always been a challenge”
- ◆ “Gotten better, still a huge roadblock ahead”
- ◆ “Choices are more limited”
- ◆ “Yes and price has gone up”
- ◆ “Seems more difficult for land trusts than agencies”

### ***Appraisers***

They see a change as well:

- ◆ “Not sure if the conservation easement work is profitable”
- ◆ “Lack of understanding has grown from land trusts in how to generate appraisals”
- ◆ “Should be better - there are appraisers out there”

## **3. How does the future of conservation easement appraiser capacity look?**

### ***Land Trusts***

Folks are worried. In Montana, private land conservation opportunities are growing, the future for conservation easement projects is on an upswing, and land trusts are getting more calls from interested private landowners. For increased private land conservation to occur, there need to



be enough conservation easement appraisers to handle the expanded volume of conservation projects related conservation easements. Here's a sample of land trust voices about future appraiser capacity:

- ◆ "Not good"
- ◆ "Tapering downward"
- ◆ "Looks bleak"
- ◆ "Continue to be challenging"
- ◆ "[I'm] nervous - need replacements"
- ◆ "Worrying about the MAIN guy retiring"
- ◆ "All [appraisers] getting older - difficult to get next generation"
- ◆ "Going to be a major problem"
- ◆ "Hard to enter the field"
- ◆ "Yes to aging"

### **Appraisers**

While not the depth of concern of the land trusts, the appraisers see the writing on the wall. They shared:

- ◆ "Long term issue for both general rural and conservation easements-next generation"
- ◆ "For sure future"
- ◆ "Coming shortage of qualified rural appraisers... seems no one mentoring... can't get into the business without mentoring"

### **4. Delays due to appraisal capacity**

There were a number of "yeses" and "absolutely" from the land trust community:

- ◆ "Hard to get estimated range of numbers for funders"
- ◆ "Turning away smaller landowners"
- ◆ "Missed a closing"
- ◆ "Plan on projects taking two years"
- ◆ "Yes, however not significantly"
- ◆ "Every project"
- ◆ "Yes, run into favored client status"
- ◆ "Frustrating delays"



However, several land trusts responded:

- ◆ “Not yet... but am very careful about managing landowner expectations”
- ◆ “None”

All reported adjusting project timelines to account for appraiser capacity. A number of land trusts reported that they attempt to “keep in constant contact with the appraiser... all the time, year round.”

## **5. How important is conservation easement appraisal capacity relative to other factors to complete a conservation easement?**

This is solely a land trust question. Sixty percent of the land trusts said appraisals were high on their list; twenty percent said medium; and twenty percent said low. However, many respondents noted the appraisal, like any factor, can become the most important item if it's the only remaining task.

## **6. Number of appraisers doing conservation easement appraisals?**

### ***Land trusts***

A number of land trusts stated “not specifically sure” or some degree of educated guess when asked about the universe of Montana conservation appraisers. The range of responses was between 1 and 12, with most in the 4 to 7 range, depending on geographic location of the respondent. Average: 6.

### ***Appraisers***

Appraisers had a much better sense of the number of conservation easement appraisers in Montana. Average: 6 to 7.

Attachment 8 contains a list of known Montana conservation easement appraisers.

## **7. Mentoring**

In order for a prospective appraiser to qualify to prepare conservation easement appraisals, an existing Certified General Appraiser must mentor the prospective appraiser. Six land trusts had conservation easements valued by appraisers who were being mentored. The results from five were positive: the process went well and was timely. The sixth appraisal, however, while it did finally get completed, was challenging for a variety of reasons.

Two individuals are currently being mentored for conservation easement appraisals. Most appraisers mentioned “getting calls on a regular from folks interested in mentorship,” indicating an interest in rural and conservation easement appraising. However, mentoring is difficult, expensive, and a barrier, as will be discussed in depth later in this report. Farm Credit is the only organization in Montana with a mentoring program for trainee appraisers to become rural appraisers.



## Key Issues

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### 1. Aging appraiser population

Montana's first conservation easement was created in 1976. The second conservation easement was created in 1978. The appraiser of that second conservation easement retired this summer. Another conservation easement appraiser has probably decided to stop doing easement appraisals. Several other conservation easement appraisers interviewed for this report are beginning to limit their work, or are thinking of retirement. While the survey did not attempt to quantify Montana's conservation easement appraisers median age, most have been in the business for decades.

The good news is two individuals are being mentored to become qualified to appraise conservation easements. The process can take three to five years.

### 2. Montana a non-disclosure state

There is no public disclosure of real estate sales in Montana. And, as such, appraisers need to create their own data bases or find appraisers willing to share sales data. Appraisers estimated that they spend 50 percent of their time tracking down comparable sales.

There appears to be a restricted flow of comparable sales data beyond established business connections. This is especially true between ARA-designated appraisers (Accredited Rural Appraisers-American Society of Farm Managers and Rural Appraisers) and MAI-designated appraisers (Member Appraisal Institute-Appraiser Institute).

### 3. Easement appraisal values

A common theme from the appraisal community was the problem of land trusts searching for multiple opinions of project value. It is especially acute with less than top-of-the-line projects, which can often be key pieces of the conservation strategy of land trusts.

At times, land trusts may explore options for higher value, or diminution, for a potential projects. This goes to the issue of market data supporting some level of reduction in value. Different appraisers could interpret the data differently.

Appraisers have said the land trust "second opinion" effort can get in the way of better communication between appraisers and land trusts.

### 4. Barriers to new appraisers

Conservation easement appraisers must be Certified General Appraisers. There are strict guidelines for becoming a Certified General Appraiser, and the process for becoming one is expensive and requires a significant time investment on the part of both the trainee and the mentor. Once attaining General Certification, appraisers then can become qualified to appraise conservation easements through another round of mentoring, training and instruction (Attachments 4 & 5).



Crucially, there are disincentives for mentoring conservation easement appraisers. Certified General Appraisers suggest not only that there is a “potential high level of risk having your name on the line for something you may not have done,” but also that there is a risk that you might be training your competition.

Both appraisers currently being mentored to become conservation easement appraisers are “seasoned” (experienced) Certified General Appraisers.

## **5. Competition between land trusts for appraiser limited time**

Some land trusts have developed special relationships with appraisers, which can create a hierarchy for service. As a consequence, smaller land trusts with one or two projects a year can “find a hard time to get in line.” While it’s not a secret, land trusts do not seem to go out of their way to share appraiser names and information.

## **6. Projects need to be top-of-the-line**

Land trusts often become frustrated when attempting to find an appraiser for medium quality projects. While the land trust may not be searching for specific “takedown numbers” (the reduction in value attributable to the conservation easement restrictions), land trusts often are looking to understand if there may be a reduction in value, and what may be the range of reduction.

For their part, appraisers don’t want the potential risk that goes with less than top-of-the-line projects (discussion below) or projects for which the market data is non-existent or contradictory. Either way, this is a clear case where improved, regular communication between land trusts and appraisers is warranted and would be beneficial.

## **7. Defending conservation easement appraisals in audits and potential stiff penalties from the IRS**

Conservation easement appraisal audits can be very time consuming and expensive to defend. Often, appraisers are not paid for their time and expenses involved in defending appraisal challenges through tax audits. Also, appraisers risk very real and potentially significant penalties surrounding conservation easement appraisals (Attachment 6).

## **8. Communication between land trusts and appraisal community lacking**

While they need each other, and, in many cases have excellent relations, a lack of fundamental understanding exists between land trusts and conservation easement appraisers. Basically, the two sides don’t necessarily comprehend the demands (and training/experience) that bring them together or the process for completing an appraisal. Land trusts and appraisers may also not understand the big picture view of private land conservation in each land trust area nor the project focus or an organization’s strategic vision regarding land trusts.





## Observations

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One land trust staffer shared this thought: “whatever comes out of this project needs to be something both land trusts and appraisers agree to.”

Some interviewees initially indicated that they didn’t see problems around appraiser capacity; however, there was general agreement that there could be major challenges in the event of the loss of any of several key appraisers or a significant increase in demand for their services. Simply, there is not a lot of supply elasticity in appraiser capacity that might allow for foreseeable changes that would alter the existing balance of private land conservation of supply (appraisers) or demand (land trusts).

At a minimum, “some kind of forum” for dialog between the land trust and appraiser communities seems warranted given the potential for imbalance in the conservation easement appraisal “ecosystem” since “all the players have some skin in the game.”

There were some surprises derived from the survey:

- Appraisers regularly receive calls inquiring about mentorship. The interest in becoming Certified General Appraisers to complete conservation easement appraisals is good news. The question, of course, is how to make that happen in light of disincentives for mentors.
- The mentor system is challenging for appraisers, especially the process for becoming a Certified General Appraiser. It’s really a commitment of time and money by all parties, along with a large helping of blind faith and trust (Attachments 4 & 5).
- The amount of time appraisers devote to collecting comparable sales and conservation easement-encumbered land sales data. Also, the absence of any formal mechanism for sharing information or compensating folks for sharing data with the appraisal community.
- Lack of a conservation easement registry and knowledge about appraisers doing conservation easement appraisals in Montana – by land trusts and other appraisers – seemed to be pretty universal (Attachment 7).
- Strongly negative feelings among some of the appraiser community about land trusts exploring their valuation options and seeking multiple opinions of value. Could this partially be a result of unrealistic expectations of “takedown numbers” from either the land trusts or landowners?

## Options to Capacity Challenge

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This report does not offer specific recommendations, but does offer a menu of potential options for MALT to consider. The options are framed for questions or thoughts the MALT membership may want to consider, what some action steps may look like, and broad timelines. Some options appear to have the potential for larger impact. Some have a better chance of being implemented. Some could be done tomorrow, while others could require sustained commitment.



These options address the question of conservation easement appraiser capacity. Some address increasing the efficiency of the existing system for appraisers to take on and complete conservation easement appraisals. Others address increasing the supply of qualified conservation easement appraisers.

## Feasible

These options seem to be doable within the existing land trust, appraiser, and MALT world.

### 1. MALT maintains a current list of all appraisers in Montana available for conservation easement appraisals through regular surveys of MALT members and the appraiser community.

- Thoughts/questions:
  - ◆ Would this be an added expense for MALT?
  - ◆ Criteria to be considered a conservation easement appraiser. Whose responsibility to keep list current: land trusts, appraisers, MALT?
- Steps/timeline:
  - ◆ Contact appraisers
  - ◆ Circulate list to land trusts
  - ◆ Implement in 2019

### 2. MALT sponsors annual continuing education classes on conservation easement for appraisers (and other folks).

- Thoughts/questions:
  - ◆ What is involved in setting up classes? What are the financial and time commitments? Would there be opportunities for co-sponsorship?
  - ◆ Do for both ARAs and MAIs? Separate/together? Montana continuing education? National classes?
  - ◆ Is this an added expense for MALT?
- Steps/timeline to begin process to sponsor classes in 2019:
  - ◆ Research possible course topics and certification requirements
  - ◆ Decide who would teach, preferred format/location for classes (In-person? Webinar?), and who will track certification and registration
  - ◆ Schedule courses, allowing time for certification logistics and course promotion
  - ◆ Promote classes and accept registrations
  - ◆ Hold class (who handles sign-in sheets and course evaluations?)
  - ◆ Submit sign-in sheets to certifying body and/or distribute certificates of attendance



3. **Create some mechanism for consistent and regular dialog to increase understanding between land trusts and appraisers. One appraiser, thinking about the annual Montana ASFMRA meeting in February, stated “it seems getting in front of appraisers, or networking, would be low hanging fruit.”**

**MALT could conduct an annual facilitated meeting between appraisers and land trusts. The implementation of this option begins with this report.**

- Thoughts/questions:
    - ◆ What would this look like? Who would attend? MALT set agenda? Set up a land trust/appraiser steering committee to determine agenda and topics?
    - ◆ What would it cost to have facilitated? Added costs for MALT?
  - Steps/timeline:
    - ◆ Do research and propose a framework and time
    - ◆ 2019 Land Trust/Appraiser Conservation Easement Summit (review this report and options could be focal topic)
4. **Land trusts collect and share encumbered sales data with appraisers (and each other if they so choose) when their conservation easements change ownership. “The best thing land trusts can do is collect the sale numbers when conservation easements change ownership,” stated a long time conservation easement appraiser.**
- Thoughts/questions:
    - ◆ Would land trusts be willing to collect this data?
    - ◆ Would MALT be the repository to pass on data to appraisers?
    - ◆ Who is the appraiser universe?
  - Steps/timeline:
    - ◆ Need to get agreement or commitment from land trusts to collect data. Need some sort of consistency with data and diligence is obtaining it.
    - ◆ Possible for 2019

## **Possible**

While at first blush these options may appear maybe feasible, they may not actually exist, or they need varying degrees of research and planning.

### **5. Establish a database of sales for appraisers**

- Thoughts/questions:
  - ◆ Is there a more efficient way to gather data than presently exists?
  - ◆ Who currently has databases they might be willing to share for a fee? Would appraisers pay for data?
  - ◆ Who can purchase the data? Is there some way to organize the trading of data?



- ◆ Is there a role for MALT?
- Steps/timeline:
  - ◆ Determine who has databases they are willing to share for a fee
  - ◆ Start research in 2019
- 6. Technology assistance for conservation easement appraisal compilation.**
- Thoughts/questions:
  - ◆ Something like appraisal writing software proposed by Andy Rahn. Is there an interest from appraisers? From land trusts sharing costs?
  - ◆ Potential topic for conversations between land trusts and appraisers...what technology could be of assistance?
- Steps/timeline:
  - ◆ Discussions with Andy Rahn on details
  - ◆ Topic for Summit
  - ◆ Share details with appraisers
  - ◆ Begin research in 2019
- 7. Provide some type of financial support for mentoring potential conservation easement appraisers, either for appraisers, trainees or both.**
- Thoughts/questions:
  - ◆ Land trusts and appraisers were either very hot or very cold to this idea. Land trusts liked because it was very proactive, or did not like it because of additional land trust or MALT costs. Appraisers thought it could provide some financial incentive; others felt it would be too confusing or never enough funds.
  - ◆ This could be an excellent idea for a pilot project.
  - ◆ Lots of details to determine, including cost, preferred applicant criteria, and who administers. MALT?
  - ◆ Where would funding come from? George Luther did some legwork with banks about scholarships / funding for mentoring and would be willing to assist.
- Steps/timeline:
  - ◆ Probably contract a prefeasibility study
  - ◆ Excellent topic for the Summit
  - ◆ Start research in 2019



## 8. Regulatory reform in Montana to make process more attractive to prospective Certified General Appraisers.

- Thoughts/questions:
  - ◆ Not sure what this would look like
  - ◆ Evidently this is an ongoing discussion item with Montana Board of Real Estate Appraisers. Might there be incentives of some sort for the mentoring piece?
  - ◆ No idea how this might be effected by any national guidelines
  - ◆ Possibly a land trust representative on the Montana Board of Real Estate Appraisers
- Steps/timeline:
  - ◆ Discussions with Montana Board of Real Estate Appraisers
  - ◆ Start in discussions with board in 2019

## Problematic

These options, while having the potential to significantly streamline some aspect of the capacity challenge, would involve major investments in time, finances, or political capital, with limited odds of succeeding.

## 9. Convert Montana to a disclosure state.

- Thoughts/questions:
  - ◆ Very challenging Was tried in the early 2000s with no success.
  - ◆ Needed to be mentioned.
  - ◆ Potential for tremendous investment of time, finances, and political capital with possible outcome of alienating conservation easement appraisal community.
- Steps/timeline:
  - ◆ Daunting

## 10. Appraisal degrees at the university or college level.

- Thoughts/questions:
  - ◆ Not clear if the appraisal market in Montana is large enough size to support such a program.
  - ◆ Needed to be mentioned.
  - ◆ A web search turned up a handful of programs at colleges in urban states such as New York.
- Steps/timeline:
  - ◆ Not sure. Would be years before seeing any impact.



Several other potential options to the capacity challenge were suggested – purchasing sales data from Farm Credit, and outreach to business and agricultural organizations about the need for more conservation easement appraisers, but they were deemed not necessary or not practical.

## **Are folks interested in helping?**

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### **Land Trusts**

Most survey respondents said they would participate in some ongoing project to address conservation easement appraiser capacity. Survey responses depended on the scope of their easement program, their crystal ball view of how their conservation easement program might grow in the future, and the potential to directly benefit their land trust work.

- Would your land trust donate time? *12 yes, 3 maybe/not sure/reluctant.*
- Would your land trust provide financial assistance? *10 yes, 5 maybe/not sure/reluctant.*

### **Appraisers**

While there was some reticence, appraisers voiced an interest in assisting in any future program that may deal with the issue of conservation easement appraisal capacity. Like the land trusts these responses were dependent on the impacts on their business.

- Would you donate time? *5 yes, 3 maybe/not sure.*
- Would you provide financial assistance? *5 yes, 3 maybe/not sure.*

## **Who else has some skin in the game?**

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A number of other groups might be impacted by the conservation easement appraisal capacity challenge and could be possible sources of financial or other support of conservation easement appraisal capacity improvement project(s). Some groups appear to be more impacted by capacity

Any project would need to be discussed, developed, and clearly articulated before beginning conversations with outside stakeholders. Potential sources include:

- ◆ Landowners, especially those with conservation easements, or contemplating one in the future
- ◆ Foundations
- ◆ Agencies
- ◆ Counties with open space bonds
- ◆ Private donors
- ◆ Forest Legacy Holders
- ◆ Montana Stockgrowers Association
- ◆ Sportsmen



- ◆ Montana Department of Fish, Wildlife & Parks
- ◆ United States Fish and Wildlife Service
- ◆ Estate Planners
- ◆ Accountants
- ◆ Attorneys
- ◆ NRCS
- ◆ Landowner Associations

### **Next Steps**

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1. Reviews to draft by land trusts and appraisers. Prepare final report.
2. Presentation to MALT membership at MALT annual meeting, December 3, 2018. Discussion of report and recommendations.
3. Prepare a path forward, which is another project (or several). Possibly a day long land trust/appraiser conservation easement summit could be a good place to begin in 2019.



## Attachment I

### Survey Participants-Land Trusts

1. Penelope Pierce, Gallatin Valley Land Trust
2. Gavin Ricklefs, Bitter Root Land Trust
3. Ryan Lutey, The Vital Ground Foundation
4. Kendall Van Dyk, The Montana Land Reliance
5. Regan Plumb, Kaniksu Land Trust
6. Darlene Edge, Montana Department of Fish, Wildlife and Parks, Land Program
7. Paul Travis, Flathead Land Trust
8. Gates Watson, The Conservation Fund
9. David Allen, US Fish and Wildlife Service
10. Pelah Hoyt, Five Valleys Land Trust
11. Mike Mueller, Rocky Mountain Elk Foundation
12. Mary Hollow, Prickly Pear Land Trust
13. Dick Dolan, The Trust for Public Land
14. Brian Martin, The Nature Conservancy in Montana
15. Jim Berkey, The Nature Conservancy in Montana

### Survey Participants-Appraisers

16. Clark Wheeler, Wheeler and Associates
17. Paraic Niebergs, Wheeler and Associates
18. Andy Rahn, Rahn Land
19. Dave Heine, David J. Heine & Associates LLC
20. Katie Rickett, JK Appraisals & Consulting, LLC
21. Kevin Pierce, New Frontier Ranches
22. Kim Colvin, Terra Western
23. Tom Stevens, Stevens Company

### Background Information

24. George Luther, Luther Appraisal Services
25. Kevin McCarty, McCarty Land & Water Valuations, Inc. (Colorado)
26. Chris Curtice, Appraisal trainee seeking mentorship
27. Michael McDonnell, Wheeler and Associates
28. Andy Dana, Conservation Law Associates





## **Attachment 2**

### **Land Trust-Agency Interview Questions**

#### **Background**

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What is your background with conservation easements? How many conservation easement projects does your land trust-agency complete in an average year?

#### **Trends**

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1. How would you define a conservation easement appraiser capacity issue? Do you believe there is a conservation easement appraiser capacity issue in Montana?
2. From your perspective, how has conservation easement appraiser capacity changed over time?
3. From your perspective, how does future conservation easement appraiser capacity look?

#### **Current Status**

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1. How many qualified conservation easement appraisers do you believe are currently working in Montana?
2. Have you ever had a conservation easement project delayed or impacted because of appraiser capacity issues?
3. Do you adjust your conservation easement timeframes or project duration to account for appraiser availability or other related issues?
4. Considering the range of policy, political, programmatic, legal, financial and procedural issues impacting your organization's ability to produce conservation easements, where would you rank the issue of conservation easement appraiser capacity

#### **Mentoring**

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1. Have you ever worked with an appraiser currently being mentored by a qualified conservation easement appraiser?

#### **Thoughts and recommendations**

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1. If you believe there are issues related to Montana qualified conservation easement appraisers, do you have ideas or recommendations in ways those issues could be addressed? General and specific recommendations.
2. Would your organization be willing to participate in a program to enhance conservation easement appraiser capacity in Montana? Willing to commit time? Financial support?
3. What stakeholders beyond easement holders and appraisers have financial incentives to assist in enhancing conservation easement capacity?
4. Final thoughts



## **Attachment 3**

### **Appraiser Interview Questions**

#### **Background**

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1. Please describe your professional career as an appraiser. How did you start doing conservation easement appraisals?
2. What is your professional certification?

#### **Trends**

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3. Members of the Montana Association of Land Trusts are concerned about appraiser capacity issues. How would you identify an appraiser capacity issue? Do think there is a conservation easement appraiser capacity issue in Montana?
4. From your perspective, how has conservation easement appraiser capacity changed over time? How long do you perceive it could last? 2-3 years? Longer-how long?

#### **Your experience with conservation easement appraisals**

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5. How many conservation easement appraisals do you produce in an average year?
6. How many conservation easement appraisals does your firm produce in an average year?
7. How many people in your firm are qualified conservation easement appraisers?
8. How many qualified conservation easement appraisers do you believe are currently working in Montana?

#### **Mentoring**

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9. Have you or your firm mentored easement appraisers? How many?
10. How many possible conservation easement appraisers do you believe are currently being mentored in Montana?
11. Are there barriers to you or your firm mentoring conservation easement appraisers?
12. If so, what are they?
13. How could those barriers be addressed?

#### **Thoughts and recommendations**

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14. If you believe there are issues related to Montana qualified conservation easement appraisers, do you have ideas or recommendations in ways those issues could be addressed? General and specific recommendations
15. Would you/your organization be willing to participate in a program to enhance conservation easement appraiser capacity in Montana? Willing to commit time? Financial assistance?



16. What stakeholders beyond conservation easement holders and appraisers have financial incentives to assist in enhancing conservation easement appraiser capacity?
17. Final thoughts?



## Attachment 4

### **Montana Appraiser Licensing Requirements and Process**

The Montana Board of Real Estate Appraisers have seven members; five from the appraisal community and two from the general public.

All applications for appraiser's designations must be submitted to the Board of Real Estate Appraisers office 45 days prior to the scheduled board meeting. Montana has four types of license for real estate appraisers:

- TRAINEE:**
1. Must be 18 years of age or older
  2. Must have found an approved mentor
  3. Must have completed 100% of the educational requirements for trainee. (75 hrs. of pre-approved qualifying education in the specific course work)
  4. Must have completed an approved Supervisor/Trainee course

#### **LICENSED APPRAISER**

1. Must be 18 years of age or older
2. Must have completed 150 hours of pre-approved education, 15 hours of which must cover the USPAP and 15 hours of report writing
3. Must successfully complete 30 hours of college-level education from an accredited college, junior college, community college, or university
4. Must have completed 2,000 hours of appraisal experience over a period of not less than 18 months.
5. **AFTER** education and experience has been submitted to the board, applicant will be notified that they may sign up to take the national exam.
6. Must pass the real estate appraiser examination for Licensure level with a score of 75% or better.

#### **CERTIFIED RESIDENTIAL APPRAISER**

1. Must be 18 years of age or older
2. Must have completed 200 hours of pre-approved education. 15 hours of which must cover USPAP and 15 hours of report writing
3. Must hold a Bachelor's degree, or higher, from an accredited college or university
4. Must have completed 2,500 hours of appraisal experience over a period of not less than 24 months.
5. **AFTER** education and experience has been submitted to the board, applicant will be notified that they may sign up to take the national exam.
6. Must pass the real estate appraiser examination for Certified Residential licensure with a score of 75% or better



**CERTIFIED GENERAL APPRAISER**

1. Must have 18 years of age or older
2. Must have completed 300 hours of board approved instruction, 15 of which must cover USPAP and 15 hours of report writing
3. Must hold a Bachelor's degree, or higher, from an accredited college or university
4. Must have completed 3,000 hours of appraisal experience obtained over a period of not less than 30 months.
5. **AFTER** education and experience has been submitted to the board, applicant will be notified that they may sign up to take the national exam.
6. Must pass the real estate appraiser examination for General Certified licensure with a score of 75% or higher

Montana Statute

Title 2 Chapter 15 Part 17 - Board of Real Estate Appraisers

Title 37 Chapter 54- Real Estate Appraisers



## Attachment 5

### Estimated cost to become an conservation easement appraiser

This document was created in 2014 by an ARA appraiser documenting the time and financial commitment to become a Certified General Appraiser. Note the estimated costs are only hard costs for the trainees and do not include out of pocket expenses and opportunity costs for the mentor appraisers.

### Certified General Appraiser Requirements

#### Qualifying Education

- 300 classroom hours (11 courses) State Exam
- 6 to 8 hour State of Montana certification exam

#### Qualifying Experience

- 3,000 assignment hours completed under a licensed mentor approved by the State
- Must be completed within 5 year period and within 2 years of passing licensing exam
- Assignment hours are accumulated at from 20 to 120 hours per assignment, depending on:
  - ◆ Type of property (residential, commercial, farm/ranch)
  - ◆ Size of property (over/under 1,000 acres), and
  - ◆ Type of report (summary or restricted use)

#### Total Estimated Costs

- Trainee's License – \$400 annually
- Professional Society Membership(s) – \$535 to \$785 annually
- Qualifying Education (tuition and travel expenses) – approx. \$1,500 per class
- Continuing Education (including Regulatory Updates) – \$200 to \$250 annually
- **Total Estimated Costs (over five years) – \$22,000 to \$23,750+**

### Professional Designation Requirements

#### Additional Coursework Requirements

- 100 classroom hours (4 courses)

#### Additional Experience Requirements

- Five years' experience as practicing Certified General Appraiser
- Peer-Reviewed Demonstration Report
- Comprehensive Accreditation Exam



- Membership in Good Standing
- Current on all Continuing Education Requirements

**Total Estimated Costs**

- **Estimated Additional Costs (over five more years) - \$12,500 to \$13,750+**

*Current as of March 2014; Subsequent Industry or Regulatory Changes May Not Be Reflected.*



## Attachment 6

### IRS penalties for conservation easement appraisers

Appraisers preparing conservation or façade easement appraisals are also potentially subject to a number of penalties. An appraiser who knowingly facilitates (aids and abets) an easement donor's understatement of tax liability may be subject to a penalty of \$1,000. **110**

An appraiser who prepares an appraisal that results in a substantial or gross valuation misstatement may be subject to a penalty equal to, at most, 125 percent of the gross income derived from the appraisal. **111**

This latter penalty does not apply if the appraiser can establish that it was "more likely than not" that the appraisal was correct. **112**

In addition, after notice and opportunity for a hearing, the Secretary of the Treasury may "blacklist" an appraiser (that is, provide that the appraiser's appraisals will have no probative effect in any administrative proceeding before the Treasury or the IRS and bar such appraiser from presenting evidence or testimony in any such proceeding). **113**

Furthermore, the United States may enjoin any person from engaging in "specified conduct," including knowingly aiding and abetting the understatement of tax liability. **114**

110. I.R.C. § 6701(b)(1). If the easement donor is a corporation, the penalty is \$10,000. I.R.C. § 6701(b)(2).

111. I.R.C. § 6695A(b). The penalty is equal to the greater of \$1,000 or 10 percent of the understatement of tax resulting from the substantial or gross valuation misstatement, up to a maximum of 125 percent of the gross income derived from the appraisal.

112. I.R.C. § 6695A(c).

113. *See* 31 U.S.C. § 330(c) (2015); *see also* 31 U.S.C. § 330(b) (2015)

(authorizing the Secretary to suspend or disbar from practice before the Treasury a representative who, among other things, is incompetent, disreputable, or violates regulations).

114. *See* I.R.C. § 7408.

Excerpted from, 'Conservation Easements and the Valuation Conundrum,' Florida Tax Review, Volume 19, Number 4, 2016 by Nancy McLaughlin.





## Attachment 7

### Appraisal regulations for conservation easements

There are three differing sets of appraisal standards that apply to conservation easement work. Each is appropriate to different clients, intended users, and specific property to be appraised. Each appraisal method typically may yield a different valuation of the same conservation easement property.

1. USPAP-compliant (United Standards of Professional Appraisal Practice) appraisal of only the “subject” property – typically for NRCS appraisals.
2. UASFLA (Uniform Standards for Federal Land Acquisition) “Yellow Book” for Federal programs – must consider “larger parcel.”
3. IRS-compliant appraisal – for donative & bargain sale appraisals – must consider “contiguous family owned parcels” and benefit to remainder issues.

*Thanks to Kevin Pierce, ARA*



## Attachment 8

### Current Montana Conservation Easement Appraisers

- ◆ Clark Wheeler – clark@ncwheeler.com
- ◆ Kim Colvin – kim@teerrawestern.com
- ◆ Tom Stevens – tom@stevenscompany.net
- ◆ Dave Heine – dave@daveheine.com
- ◆ Paraic Newbergs – neibergs@questoffice.net
- ◆ Andy Rahn – info@rahnland.com
- ◆ Kevin Pierce – kevin@newfrontierranches.com
- ◆ Scott Crosby – scottcrosby@crosbyanalytics.com
- ◆ Randy Biehl – rand4g@gmail.com
- ◆ Mike McConnell (mentor for conservation easement appraisals – Clark Wheeler) – mike@ncwheeler.com
- ◆ Katie Stevens (mentor for conservation easement appraisals – Tom Stevens) – katie@stevenscompany.net

### Conservation Easement Reviewers

- ◆ Nick Hogan – nickhogan@gmail.com
- ◆ Norm Lee – bluestar@blackfoot.net
- ◆ Katie Ricketts – katie@jkranchappraisers.com
- ◆ Jennifer McGinnis – jennifer@mreag.com



## Attachment 9

### Resume

William Long  
1012 Peosta  
Helena, Montana 59601  
home 406-442-1904  
cell 406-437-2938  
bill@solidgroundconsulting.com

#### EDUCATION

- BA in Business Administration, 1971  
Western Michigan University, Kalamazoo, Michigan
- MA in Economics, 1974  
University of Montana, Missoula, Montana

#### PROFESSIONAL EXPERIENCE

**Organization:** Montana Department of Fish, Wildlife and Parks

**Title:** Resource Economist

**Dates Employed:** 1974-1976

Worked on various agency routine and special projects including:

- Wrote an Economic Impact Statement for the purchase of Mt. Haggin for wildlife habitat (this property was subsequently purchased)
- Determined and wrote an economic analysis for a non-resident hunting fee court case which ultimately went to the United States Supreme Court and was decided in favor of the state of Montana
- Analyzed the Department's instream flow water reservation on the Yellowstone River and provided this information in testimony

**Organization:** Montana Department of Natural Resources and Conservation

**Title:** Resource Economist

**Dates Employed:** 1976-1978

Worked on routine and special projects, including:

- Analyzed and reported on water development projects
- Worked with landowners on proposed water development projects

**Organization:** Montana Land Reliance (MLR)

**Title:** Managing Director



**Dates Employed:** 1978-2009

(MLR was managed by three Managing Directors, each with a specific area of expertise in addition to fundraising and land project duties).

Job responsibilities included:

- Participated as a Management Team member for agency decisions and operations
- Managed MLR finances, including investing, and developing and monitoring organization budgets and projects; worked closely with a Wealth Advisor at Morgan Stanley from 1984 to 2009 to manage MLR's investment portfolio
- Presented information to and worked with the Board of Directors
- Conducted land owner outreach, conservation easement development and follow-through on the lengthy process to completing easements. This required:
  - ◆ extensive knowledge of the legal, tax and technical aspects of conservation easements,
  - ◆ the ability to successfully relate to landowners and their families with various backgrounds, situations and needs as well as competing family needs, and
  - ◆ problem solving skills to address the unique needs of each family within the requirements of conservation easements.
- Raised funds for operating expenses as well as the maintenance and expansion of MLR programs
- Facilitated the Devil's Kitchen Management Team (a Montana stakeholder group that participates in the management of hunting and wildlife issues on public and private land in west central Montana) since 1990

**Organization:** Solid Ground Consulting, Portland, Oregon

**Title:** Consultant

**Dates Employed:** 2009 to present

(Some consulting engagements have been done privately)

- Consulting has been undertaken with a variety of entities such as regional and local land trusts, state and local conservation organizations (public and private), 'friends' groups that support national parks.
- Consulting responsibilities depended on the client organization and need, and include:
  - ◆ Development of an easement decision-making tool
  - ◆ Facilitation of strategic planning sessions
  - ◆ Financial analysis and recommendations
  - ◆ Assistance in obtaining tax exempt status
  - ◆ Provision of process and managerial guidance
  - ◆ Fundraising guidance and training
  - ◆ Facilitation of focus groups



## OTHER ACCOMPLISHMENTS

- Taught classes at Land Trust Alliance National Rally, Northwest Regional Land Trust Annual Conferences and Montana venues on conservation easements, fundraising, landowner relations and finances
- Co-developed national tax legislation regarding conservation easements (passed in 2016)
- Developed and co-authored a decision making tool to guide organizations on how to handle “orphan” easements (easements that have been abandoned or are likely to be abandoned) to be used by land trusts and conservation agencies
- Assumed Interim Executive Director duties for the Yellowstone Park Foundation during a national search for a permanent Executive Director
- Participated in the Yellowstone Park Foundation as Board Treasurer and Advisory Council member
- Continues to facilitate Devil’s Kitchen Management Team
- Current Board Treasurer for Montana Project Healing Waters Fly Fishing

September 18, 2018

