The Ag Land Network Toolkit

A Montanan’s Guide to Grassroots Conservation of Farms and Ranchlands

2013

Community Food Agriculture Coalition of Missoula County

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Diverse farms and ranches provide the backbone for our economy, our food system, and our heritage across Montana. For much of the 20th century though, agriculture in Montana has followed the 1960s adage to “get big or get out,” with farms being conglomerated into larger and larger acreages in some areas or being purchased for residential or commercial development in other areas. These changes created added efficiencies in agriculture, but removed the diversity that gave our economy much of its stability. In the last ten years there have been signs of a rebirth in small- to mid-sized agriculture throughout the state, with farms finding new markets close to home and thousands of miles away. Communities have seen renewed interest in farmland, from farmers wanting to find land or just keep the land they have, as well as from restaurants, institutions, and citizens looking to support their local economy, their health, and their love for the countryside by buying local foods.

Through this revival of interest in Montana products, significant challenges have emerged, the greatest of which are directly related to the skyrocketing population growth and residential development that some areas of the state have seen. As homes and Home Depots spread out across the valleys and prairies, they aren’t just sitting on dirt. They’re sitting on soil that we depend on, oftentimes some of the best agricultural soil we have. It’s flat. It drains well. It’s oftentimes scenic. It’s pretty good for building, but it’s irreplaceable for growing our food.

In response, groups across the state have begun to consider the loss of agricultural soils on par with the loss of clean water, clean air, endangered species, and other important natural resources. In Missoula County, we at the Community Food & Agriculture Coalition (CFAC) have taken steps to inventory the loss of farmland and to determine what productive land remains. This has given us the ability to make a powerful argument for the conservation of what little agricultural land we have left. This toolkit aims to introduce new and long-time advocates to the legal backing for farmland conservation in Montana and potential avenues for increasing advocacy in communities across the state. We hope that by seeing the work being done in Missoula and in counties across the country, other Montanans may see opportunities for beginning campaigns for agriculture in their communities.

**Inventoruing Loss**

As an introduction to the problem of the loss of farmland, Missoula County is, unfortunately, an excellent example. In April 2010, CFAC wrote a report titled *Losing Ground: The Future of Farms and Food in Missoula County*. As part of the research for that report, we utilized data from a variety of sources to define the type and extent of farmland loss we were experiencing. Below is a summary of the data sources and types we found and the arguments they allowed us to make.

**Acres**

One of the most useful data sources was the Montana Department of Revenue (MDOR), which classifies all land in the state by its use. Within agricultural types, they classify land as irrigated crop land, non-irrigated crop land, grazing, and wild hay. Using MDOR’s data, we were able to see that between 1986 and 2008, almost 29,000 acres of farm and ranchlands were converted out of agricultural uses. That averages out to three football fields per day, every day for thirty years! We also looked to Missoula County’s planning office for data and found that just between 1990 and 2009, almost 22,000 acres were subdivided. Additionally, data from the USDA’s National Agricultural Statistics Service indicates that between 1993 and 2008, the number of acres where crops were harvested fell by over 40%. Mapping done by the Sonoran Institute of the last 100 years of development in Missoula County does an excellent job of portraying these changes from a different angle.

**Soils**

The Natural Resources Conservation Service (NRCS) has evaluated and mapped soil types across the country. One of the ways soils are assessed is their ability to support agriculture. The three classifications
given to agricultural soils are as follows: prime farmland tends to be flat with few rocks and good permeability and does not erode easily; farmland of statewide importance has many of the criteria for prime farmland and is slightly less important but oftentimes just as productive; and farmland of local importance meets at least half of the criteria used in assessing ag soils and meets other minimal requirements for slope, drainage, and crop production.

Utilizing these soil classifications, we were able to determine how much of Missoula County actually had good agricultural soils. As it turned out, less than 8% of the total land area is good for agriculture. Not surprisingly, our best soils are located on the valley floors and are level and well-drained, making them particularly attractive for development. One of our local soil scientists was able to assess development on those great agricultural soils and found that roughly 80% of the lands containing the best agricultural soils have been subdivided into parcels smaller than 40 acres.

**Farms**

The US Census of Agriculture offers another perspective. The Census of Ag tells us, for example, that the number of farms in Missoula County more than doubled between 1974 and 2007, from 310 farms to 699. It also tells us though that between 1992 and 2007, the number of farms grossing at least $20,000 per year dropped 15 percent and that those grossing at least $5,000 per year fell 13 percent. As of 2007, farms that gross less than $1,000 per year accounted for 46% of all farms in Missoula County (up from 22% in 1992). Another interesting piece provided by the Census of Agriculture is the amount of farms doing direct sales to consumers. Between 1997 and 2007, the number of farmers growing for direct markets increased 84% and dollars in direct sales increased 199%. This paints a picture of farming that is different from what we might have expected.

We see that farms are growing in number and decreasing in size. We see that the amount of land available for farming is shrinking and we know from experience that the price of that land is increasing. Having this base of knowledge has been critical for advocates in Missoula in making the case that agricultural conservation is an issue we need to address – and soon.

**Agriculture, Planning, and the Law**

One great benefit that we have, working on farmland conservation in the state of Montana, is the law. Particularly at the point of subdivision, the Montana Code Annotated (MCA) provides clear support for agriculture. Section 76-3-608 (3) defines the criteria that must be reviewed during the subdivision process. The section states that subdivisions must be reviewed for their impacts on, among other things, agriculture and agricultural water user facilities such as ditches (full text below). If the planning office finds that a subdivision has a “potentially significant adverse impact” on any of the criteria, the city council or county commissioners may require mitigation or, if impacts can’t be reasonably minimized, the subdivision may be denied.

This means that the MCA expressly authorizes cities and counties to deny subdivisions based on their impacts to agriculture. However, many jurisdictions in Montana have not fully utilized this authorization. During the review of impacts to agriculture, many simply require that developers put statements on the final plat notifying residents to expect smells, dust, and noise, and to fence their lots so that pets don’t interfere with livestock. The idea in those jurisdictions is that the only impact that subdivision might have on agriculture is the impact that cantankerous neighbors and nipping dogs provide.
In Missoula County, we have taken a very different look at the impacts of the subdivision of agricultural land. We argue that each and every loss of prime agricultural soils has a significant impact on agriculture. Also, every time that good agricultural land is removed from production through subdivision, the viability of agriculture throughout Missoula County is negatively impacted. Therefore, all subdivisions on good agricultural land (with good soils, water availability, etc.) should be required to mitigate those impacts.

Opponents of farmland conservation such as Rep. John Esp (R - Big Timber) and Sen. Ed Buttrey (R – Great Falls) disagree. In 2011, Esp sponsored a bill in the state legislature that would have drastically limited the scope of the subdivision review criteria on agriculture, essentially limiting it to that focus on cantankerous neighbors and nipping dogs. Governor Schweitzer vetoed the bill, but in 2013, Buttrey sponsored the same bill (it was also vetoed).

The Missoula Organization of Realtors and the Missoula Building Industry Association stated in their report, *A Place to Grow*, that the existing criteria “in no way suggest that taking agricultural land out of production is considered an impact.” Fortunately for ag land conservationists, that was indeed the intent of the law when it was written. Research conducted by one of CFAC’s members, Stephanie LaPorte, found that Rep. John Vincent, the original sponsor of the bill that added the subdivision review criteria to the MCA in 1975, stated that he was a proponent “primarily because of the tragic intrusion on the agriculture land base of Montana.” The minutes from the meeting in which the bill was introduced state, “He said this was especially brought home to him in his home county, Gallatin, (where) one has to drive but a short distance to see some of the best agricultural land covered by houses and subdivisions” (MT House Natural Resources Committee, 2/22/1975).

It is unlikely that the debate about farmland conservation and agriculture’s inclusion in the subdivision review criteria will end soon. However, it is encouraging to know that it enjoys a strong history of support.

The subdivision regulations are not the only area of the law that offers support to farmland conservation. The *Growth Policy Act* allows governments to consider how development will “adversely impact… agricultural lands and agriculture protection,” and develop “measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate… adverse impacts.” While growth policies are optional in our state, they are an important and useful part of the planning process as they define the community’s long-term goals. They can also include statements that provide clear support for agriculture.

A third supporting document is the *Montana Constitution*. Article 7, section 1(1) states that “the legislature shall… enact laws and provide appropriations to protect, enhance, and develop all agriculture.” This can help farmland advocates because it provides an understanding of the state’s intent related to agriculture. The intent is not only to slightly minimize impacts by, for example, giving farmers and ranchers better-informed neighbors, but to *protect, enhance, and develop* agriculture. This is a ship that’s moving forward, not steeling itself against a storm.

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**MCA 76-3-608**

“(3) A subdivision proposal must undergo review for the following primary criteria:

(a) [with some exemptions]… the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety…

(4) The governing body may require the subdivider to design the proposed subdivision to *reasonably minimize* potentially significant adverse impacts…

(5)… in some instances the unmitigated impacts of a proposed development may be unacceptable and will *preclude approval* of the subdivision.

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“*One has to drive but a short distance to see some of the best agricultural land covered by houses and subdivisions*”

Policy Approaches and Conservation Tools

Whether you work for government or are a citizen hoping to influence government, there are a variety of approaches and tools that can be used to conserve farmland. These range from policies, which are intended to provide a guiding vision, to ordinances and regulations, which are rules created to implement policy visions. This section goes through a few of the many options being used in Montana and around the country.

The Growth Policy

The Great Falls City-County Comprehensive Plan states that “Planning allows the community to envision its future and proactively work to achieve it, instead of just reacting and moving from one short-range, quick-fix solution to another, as events occur.” The same is true of efforts to conserve farmland. In most communities, a growth policy provides the broader vision for the city or county’s future. Montana’s cities have been allowed to create growth policies since 1957 and counties since 1971, and in 1999 the Growth Policy Act was enacted, providing added guidance. Communities can go beyond the requirements of the Growth Policy Act and the act provides broad support for reviewing impacts on ag. It states that local governments can use their growth policies to identify how development adversely impacts agriculture and can develop measures to “avoid, significantly reduce, or mitigate” those impacts.

The American Planning Association’s Smart Growth Legislative Guidebook provides additional recommendations on how communities can provide for agriculture and other natural resources through their growth policies. They recommend the following steps:

1. Inventory agricultural… lands
2. Assess the relative importance of these lands in terms of size, quality, and/or resource significance as well as contribution to the economy of the local government and/or the surrounding region
3. Recognize that, in addition to their primary value as contributing to the economy of the local government and/or the surrounding region, agricultural… lands also have environmental value and may also have historic, cultural, open space, and scenic values
4. Prioritize such areas… in order to take subsequent action to preserve them

Because growth policies offer the guiding vision behind any future regulations, they can take many different forms, but they can also be problematic. In 2008, citizens in Ravalli County voted to repeal the county’s growth policy, primarily due to concerns that the growth policy provided a vision that would require zoning and other tools that some citizens felt impinged upon their private property rights.

However, other counties have been able to effectively defend agriculture in their growth policies and have used strong vision statements to encourage future planning efforts. For example, Beaverhead County’s growth policy includes the following language:

Rural residential development has resulted in the following problems: The conversion of quality agricultural land to residential home sites, land wastage, and the interference with adjacent traditional agricultural activities; loss of income to agriculture-related businesses and negative impacts on the economic aspects of agriculture in Beaverhead County.

They follow that impact analysis with the objectives to “preserve and maintain agricultural land specifically for continued agricultural uses,” and “discourage future residential development in areas that are incompatible with existing production agricultural activities.”
These kinds of statements can also be made in neighborhood plans, which are like growth policies for specific areas of the county. Neighborhood plans are oftentimes initiated by citizens and can provide a great mechanism for allowing small areas to plan for their own future.

In Missoula County, CFAC has advocated for an inventory and assessment of agricultural lands that we’ve termed “Agricultural Cornerstone Areas.” Working with soil scientists at NRCS and other data from the county, we created a map that identified those areas of the county with the highest quality soils and the largest lot sizes. That map allowed us to assess where large, contiguous areas of agricultural soils remain. Our hope is that the Cornerstone Areas will become part of the county’s growth policy as a policy designation of the county’s best ag lands. However, there has been a strong negative response to anything involving a map, and other areas of the state have experienced this response as well. Some citizens who are highly concerned about regulation see mapping as a way to identify resources on their land, their perception being that if those resources are identified, they will be subjected to added regulation in order to protect those resources. Our perception is that if resources that are of great importance to the community do exist on their land then the community does deserve to know that those resources are present so that they can be handled correctly. At the time of writing this document, we are not sure what will happen with Ag Cornerstone Areas in Missoula County, but we know that the maps have provided us with very helpful knowledge about the ag resource that exists today.

**Subdivision Regulations**

As previously mentioned, the MCA requires that local jurisdictions review the potential impacts of proposed subdivision projects before giving final approval. Despite the authority given to local jurisdictions to develop specific regulations, some counties do not have subdivision regulations. A common misconception is that regulation will limit decision-making freedom. However, if done well, subdivision regulations can actually provide flexibility in planning and more efficiently guide the process. Regulations can gear subdivision design and development towards options that are agreeable for all interested stakeholders and ultimately better outcomes. They also serve as a helpful baseline so that decision makers can lead a consistent and fair review process. There are a few examples of subdivision regulations that have been successfully passed in Montana counties that have clear support for agland conservation.

**Beaverhead County Subdivision Regulations**

The Beaverhead County Subdivision Regulations include design and improvement standards to specifically “protect the economic viability of agriculture within Beaverhead County.” One of these standards gives the planning board and/or governing body the authority to require mitigation as necessary when land that is primarily used for agricultural purposes is being proposed for development. These mitigation measures are determined after considering various characteristics of the land such as its size, location, potential for future agricultural use and the size of the proposed development.

The planning board may also require the owner to develop an Agriculture Management Plan for the property that includes a description of the property and current operation, soils survey, history of operation, a proposed plan for future operations, a mitigation plan for interactions between residential development and agricultural operations, current easements, possibilities to expand agricultural operations and other information relevant to agricultural viability. The goal of these Ag Management Plans is to ensure that land conserved during the subdivision review process doesn’t simply become open space, but that it continue to serve the ag economy.

Finally, in an effort to support agriculture and “ensure that sufficient land is available to use for agricultural purposes” the planning board can also require that a percentage of land proposed for development is made available specifically for agricultural use through covenants or deed restrictions. As a condition of plat
approval, the landowner may be required to actively use the land for agriculture or make the land available to lease for agricultural uses.

**CFAC’s Subdivision Regulation Work in Missoula County**

In Missoula County, CFAC has been working to protect the county’s remaining farm and ranch lands through the development of proactive and comprehensive land use policy. The proposed policy includes three components that would create a mechanism for considering agricultural resources when reviewing proposals for development. The first component would consist of the designation of “agricultural cornerstone areas.” These areas would include the most important agricultural resources in the county and would be prioritized and supported with specific fiscal and land use policies. The second component would include the adoption of “agricultural resource standards.” These standards would require permanent conservation of farm or ranchland of equal or greater agricultural value as the land considered for development or conversion to another use. This would create a more predictable subdivision review process and assist the planning board/governing body in more efficient and consistent decision-making. The third component of the proposed policy would be to implement incentives for farmland conservation, especially within agricultural cornerstone areas, in order to encourage and reward conservation efforts.

Of these three pieces, the first two have proven to be the trickiest. We approached “agricultural cornerstone areas” as a resource that would be mapped, overlaying a map of NRCS soil types with a map identifying large contiguous agricultural parcels to identify several areas of the county that should be targeted for incentives and mitigation. However, as noted above, maps make many people very uncomfortable. While we haven’t gotten very far with mapping resources, it’s very possible that putting those same map attributes into a text format identifying specific regions or attributes would be more amenable.

The second piece, a mitigation standard, is the regulatory piece of the puzzle and therefore, has been received with a fair amount of resistance. The key to this is utilizing the language in 76-3-608 requiring that communities review a subdivision’s “impact on agriculture” to encourage the county to take the following steps:

1. Define agriculture
2. Outline potential impacts to agriculture
3. Create criteria for evaluating the significance of those impacts
4. Develop standards to mitigate those impacts

Missoula County is in the midst of this process as of the writing of this report. Further details on their process will hopefully be available in the near future. However, we can outline some of the concepts they are evaluating. The table below shows some of the impacts and mitigation standards being considered. Incentives are discussed more fully on pages 11 and 12.

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<thead>
<tr>
<th>Potential Impacts on Agriculture</th>
<th>Potential Mitigation Options</th>
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<td>- Loss of agricultural soils</td>
<td>- Subdivision designs that include ag</td>
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<td>- Changes in use</td>
<td>- On-site land protection</td>
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<td>- Changes in irrigation</td>
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<td>- Impacts on neighboring ag operators</td>
<td>- Fees in lieu of land protection</td>
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<td>- Loss of contiguity in ag lands and operations</td>
<td>- Buffering developments from ag operations</td>
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<td>- Ag management plans</td>
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Intervening in the Subdivision Process

If your community lacks a proactive vision for agriculture (typically found in the Growth Policy or Comprehensive Plan), the subdivision process is oftentimes the most accessible opportunity for advocacy. What follows is a brief overview of the standard planning process, offered to illustrate points in the process when there may be opportunities for public participation. Note that in your community, the process may work differently, so it is recommended that you meet with a planner to understand the local process.

There are two phases of subdivision review: preliminary plat and final plat. At the preliminary plat stage, the subdivision receives its full review, evaluation, and approval or denial. If it is approved, the subdividers have a certain amount of time (often around 3 years) to build roads, put in water systems, or meet other criteria identified that need to be in place before lots can be sold. Unless you can prove that a subdivider has not met the requirements of their preliminary plat approval, it is challenging to have a subdivision stopped at the final plat stage. Opportunities for public participation at the final plat stage are minimal, so most of the focus here is on the preliminary plat stage.

**Initial Review**
After first receiving a subdivision application, planning staff typically review the application to make sure that all of the required elements have been included and that those elements provide sufficient information for reviewing the project. For example, if a subdivision provides a groundwater analysis that shows that some of the proposed lots have shallower groundwater than that allowed by the law, but the subdivider doesn’t provide any information stating how they will avoid impacting the groundwater, staff may ask for more information. Similarly, if a subdivision is on prime agricultural soils, but the application doesn’t state how impacts to agriculture will be mitigated, staff may ask for additional info.

**Agency Review**
Once the subdivision application is complete, it is submitted to area agencies for comments. For example, Montana Fish, Wildlife, and Parks might comment on impacts to wildlife and Montana Department of Transportation might comment on impacts to roads. Oftentimes, no agencies are available to comment specifically on impacts to agriculture and agricultural water user facilities. In Missoula, CFAC was asked to fill this role. It is useful to contact your local planning office to identify whether or not they are currently receiving agency review for impacts to agriculture and this might be an opportunity for your organization to play a role. The benefit is that your comments are received much earlier in the subdivision review process. Additionally, if you identify that a subdivision will have significant impacts to agriculture, it offers you extra time to reach out to community members to ask them to get involved in the process.

**Public Notice**
At some point between sufficiency review and the writing of the staff report, notice is given to the public, via local newspapers, a letter to adjacent landowners, a sign on the property, or a neighborhood meeting. Although these efforts to notify the public are helpful for those who live adjacent to the subdivision (and for those who routinely read their newspaper’s fine print), they are not as helpful for people living elsewhere in

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**Key Places to Intervene in the Process**
- Build a good relationship with the Planning Office and/or keep a close eye on all of the public notices in the local newspaper so you’ll know when subdivisions on ag land are being proposed.
- If possible, get on the agency list so that you are notified and asked for comments on subdivisions on ag land.
- Go to the Planning Board and Commission/Council anytime to let them know about their responsibility to consider impacts to ag.
- Attend public hearings to voice your concerns about specific subdivisions, zoning changes, growth policy amendments, etc.!
the community who are concerned about potential impacts of subdivisions. It is useful to develop a close relationship with your planning office and stay in contact with them about subdivisions that might affect agriculture in your community.

- **Staff Report**
  Planning staff will compile all of the information gathered and write their recommendation. The report should be available for public review well in advance of the hearing and is your first glimpse into which issues staff has deemed to be the most important.

- **Planning Board Public Hearing**
  Most communities in Montana have a Planning Board that reviews subdivisions before they are sent to the County Commission or City Council. Composed of volunteers, the Planning Board is expected to have some expertise in the area of land use planning. However, Planning Board members may be new or may not fully understand the state’s support for agriculture. For this reason, Planning Boards provide excellent opportunities for education and outreach. Let your Planning Board know (ideally before a public hearing) about their responsibility to protect, enhance, and develop agriculture!

  At the time of a subdivision’s public hearing, Planning Boards provide excellent opportunities for education and outreach with members. Hearings can be exciting for those who have never before made a public comment and who are prepared to speak on a topic that they care about. Rally the troops and get plenty of people to the meeting to let the Planning Board know why they should mitigate impacts on agriculture. Note: it should be noted that in commenting on projects, we have not always argued for their denial. Arguing, when appropriate, that a subdivision’s impacts to agriculture are minimal has enhanced our reputation for fairness and honesty.

- **Commission/Council Public Hearing**
  Once Planning Board has made a recommendation for approval or denial of a subdivision, the final step is for the subdivision to go to the County Commissioners or City Council for the ultimate decision. Just as with the Planning Board, these public servants provide another great opportunity for education about a jurisdiction’s responsibility to protect agricultural land and for providing public comments about specific subdivisions.

**Most importantly: show up! Our elected officials are hearing all kinds of opinions and they should hear yours! Our ag lands are too important to lose!**
Zoning Regulations

Like most regulations, the topic of zoning often inspires mixed feelings and responses. Some folks fear that zoning regulations limit the ability to make individual land use decisions on private property. Zoning actually allows for individuals to make decisions regarding their land so that when future changes are proposed, there is an agreed upon plan to reference for guidance. It is the best method we have for maintaining property values, because it lets us know what will happen in our neighborhoods. Zoning also enables citizens to officially recognize the most important resources in their community and more effectively protect those resources. These regulations can also include incentive opportunities for the conservation of certain land use types, such as the Transfer of Development Rights (TDR), explained in greater detail in the incentives section.

Zoning can be citizen initiated and in Montana, it is often most successful when initiated by citizens on a small scale. There is no blanket approach to the development of zoning regulations and the end result is completely unique to the area in focus. Essentially when zoning is established, future land uses and development densities are defined. Very few counties in Montana have countywide zoning, but several have zoning tools that help them protect ag land.

Jefferson County has various area classifications, one of which is called “basic resources.” Basic resources include permitted uses ranging from various forms of agricultural operations, dairy and livestock management to forest management and recreation and the zone has a minimum lot size of 160 acres. This means that in areas zoned as a “basic resource,” no lots can be created that are less than 160 acres, ensuring contiguity in farming areas.

If you’ve seen the Blackfoot Valley, you know anyone who drives through here has a pipe dream that they’d like to move here. We could populate that valley just like we did the Bitterroot Valley... [Our residents] just like it the way it is. They drive... to Missoula and up to the Flathead and over to Gallatin County and they do not like what they see. - Roy Hanson, Powell County Planner

The purpose of the “Basic Resource” zoning classification in Jefferson County is to:

1. Recognize that agricultural products, timber, minerals, and mined materials are valuable resources within Jefferson County and that the production, extraction and processing of these basic resources is beneficial to the economy of the county and the welfare of the people;

2. Protect and preserve relatively undeveloped lands for the performance of a wide range of agricultural, timber, mineral, and recreational functions;

3. Encourage the utilization of basic resources in an environmentally responsible and safe manner, and in a manner compatible with other land use in the area;

4. Plan and provide for community health and safety; and

5. Protect basic resource zones from encroachment by incompatible uses including but not limited to residential development.

In 2005, Powell County zoned approximately 70% of their county at a 160-acre minimum lot size. As county planner Roy Hanson said in an interview with the Missoulian, “If you’ve seen the Blackfoot Valley, you know anyone who drives through there has a pipe dream that they’d like to move here. We could populate that valley just like we did the Bitterroot Valley... [Our residents] just like it the way it is. They drive... to Missoula and up to the Flathead and over to Gallatin County and they do not like what they see.” That community vision led to zoning that will protect the Blackfoot Valley’s agricultural interests for many years to come.

Because of concerns about the political undesirability of zoning, Lake County instead chose to develop a density map, with lot sizes across the county ranging from 1.5 acres to 40 acres with most of the county given 20-acre lot sizes. In each zone, the county did not define permitted and prohibited uses, which can oftentimes seem arbitrary, but instead developed densities based on a reasonable and clear set of criteria. Densities were derived based on each area’s distance to a variety of services and infrastructure including fire, school, and police, among others. In this way they were able to sidestep critics who want to “use their land however they see fit” while adding predictability and opportunity to the development process.
**Right to Farm & Ranch Ordinances**

Some counties in Montana have ordinances that emphasize the right within that county to farm and ranch. Although these ordinances do not necessarily include any specific regulations regarding land use, they officially recognize the importance of ranching and farming to the community. This serves to educate new residents on the role of agriculture and what to expect when living in a predominantly agricultural community. This ideally helps minimize conflict between agricultural and non-agricultural land users. Official recognition can instill an appreciation within the citizens of a given community, ultimately conserving and enhancing ranching, farming and other agricultural activities. In places such as Beaverhead County, the Right to Farm and Ranch ordinance is integrated into all county planning efforts which provides for the retention of traditional and important agricultural lands in current production.

In addition to the right to farm, Madison, Gallatin and Beaverhead Counties utilize the “Code of the New West.” This is similar to the Right to Farm and Ranch Ordinance in that it serves as an educational tool for new residents or those interested in relocating to a predominantly rural community. Agriculture and the role it plays within the community are emphasized in this code as well as a series of warnings and precautions.

**Incentives**

There are several different kinds of incentives that can be used to conserve farmland. Some are created by nonprofit or private organizations and some incentives are developed by local government. The sections below go through some of the opportunities and challenges presented by several of the most common incentives seen in Montana and across the country.

*Conservation Easements*

Conservation easements are common across Montana. Easements can be used in a wide variety of ways. You can buy an access easement to drive to your house across a neighbor’s land or a utility easement to place a septic system on a neighbor’s land. With a conservation easement, the landowner (or lessor) gives the easement holder (or lessee) certain rights over the land. Example rights include development rights, meaning that the lessor sells their right to subdivide the land in the future, or open space rights, which may delineate the location and type of any and all future buildings on the property. The process of developing a conservation easement is a conversation between the lessor and lessee and they mutually agree to any and all rights exchanged. As the holder of the conservation easement, the lessee typically agrees to ensure that activity on the land is continuing as agreed upon over time. Lessees are generally land trusts and the National Land Trust Alliance provides certification for land trusts so that lessors and communities can ensure that the land trust follows generally accepted practices. Conservation easements are held in perpetuity (i.e. forever).

*Deed Restrictions*

With a deed restriction, the landowner places restrictions on their land themselves, usually via the county clerk and recorder. They could, for example, place a restriction on the deed that outlaws any future subdivision. The challenge with these is that, without a lessor who agrees to monitor the agreement and ensure that the agreement is held in perpetuity, deed restrictions are potentially subject to future change and poor landowner management. This is particularly concerning because as land changes hands over time, and as things like deed restrictions fall farther and farther down the list within the land title, future landowners may not be aware of deed restrictions. Additionally, many people have concerns over the possibility that deed restrictions could be removed over time, meaning that those restrictions are not necessarily made in perpetuity, like with conservation easements.

However, deed restrictions do offer a unique opportunity. One of the concerns that we have heard from landowners about entering into a conservation easement is its perpetuity. Deed restrictions offer an opportunity for shorter-term property restrictions, such as a 30-year agreement not to subdivide in exchange for a tax benefit.
Transfer of Development Rights

Transfer of Development Rights (TDR) offers an exciting, albeit challenging opportunity. TDRs create “sending areas,” regions with important resources (such as good agricultural soils and large, contiguous tracts of ag uses) and “receiving areas,” regions targeted for higher densities. Landowners in sending areas can transfer their land’s development rights to a developer who can then use those development rights to increase the allowable density in a receiving area. This allows landowners to receive compensation for protecting their land while offering an incentive to the developer to direct their attention towards cities.

However, for this to work, the landowner in the sending area has to have a set “development right” that he or she can transfer. In much of Montana, unzoned areas lack that set density or development right, hence why the development process can be so unpredictable in unzoned areas. If the land is zoned, the landowner has a density available to sell, but without zoning they do not have a calculable value to market. Also, it is of critical importance that sending and receiving areas are clearly identified and the community understands the intent of each. In sending areas already burdened with significant sprawl, TDRs may not be very effective and in receiving areas where residents do not welcome added density, the results can create considerable conflict. Finally, the program must create a forum for the exchange of these development rights and must assist with the first few exchanges to ensure that landowners are fairly compensated and developers are able to effectively put those densities to use. Nonetheless, in zoned areas, they present a unique opportunity to create a private market for conservation.

Developer Perks

Several appealing incentives involve “developer perks.” These are opportunities to work with the developer to design the subdivision to meet mutually beneficial goals. One tool for accomplishing these perks is a “Planned Unit Development” (PUD), a type of land designation where development occurs under a comprehensive and integrated approach. Within PUDs, rather than lot-by-lot development, large and contiguous tracts of land are developed according to a larger, master plan. This gives developers a more predictable approval process, reducing time and cost, but also enables local officials to adopt zoning that is unique to that area.

Whether using a PUD or not, conservation subdivision design (CSD) can be an excellent tool for allowing development while conserving important resources. In the CSD process, important resources are identified and lots are designed to minimize impacts on those resources and maximize contiguity. Generally, CSDs can maintain or increase densities by clustering smaller lots together in less important areas. Additionally, while the lots are smaller, they oftentimes sell for as much or more than a larger lot because property owners are guaranteed that the adjacent land will remain open, guaranteeing property values over time. This can be challenging again, without zoning, because there is not a set density to increase. However, if that obstacle can be surmounted, they offer a great chance for collaboration. The Sonoran Institute’s Building from the Best of the Northern Rockies highlights some examples of CSD in our region.
The Merits of Public Engagement
With any of these tools, engaging the broader public early and often is critical. Most folks would agree that if a decision is being made that will directly impact their lives or livelihoods, they have a stake in that decision and a right to voice their concerns. Public input improves the quality of decisions, bringing in a wider range of action ideas, possible impacts, and uncertainties. Gathering a variety of minds into a room usually results in the best available knowledge and more legitimate decisions. It’s also more likely that decision-makers will approve a plan knowing that the process was inclusive to all parties impacted.

Engaging the public in policy processes also builds capacity of those involved. Through the process, many people will be exposed to new information, scientific, legal, etc. This experience will result in a more informed citizenry and build the skills to engage in complicated topics with a variety of values, interests and concerns. Developing a more widely shared understanding of the issues and challenges within the decision-making process builds trust between those involved. Ultimately if there is mutual understanding of an issue and the available solutions, there is a greater chance of public support for final decisions.

Principles of Public Participation
The basic principles of conducting a public participation or engagement process may seem intuitive but attention to and communication of these principles is critical.

1. Develop a clear set of objectives for the process. Whenever an agency, organization, or group of citizens clearly states the objectives for engaging the public in a decision-making process, there is a greater likelihood that the public will accept the final decisions. Engaging the public in defining these objectives can take that acceptance one step further.

2. Commit to using the process to inform final decisions. Successful public processes require a commitment on the part of decision-makers to take the results seriously. If they are committed to acting on the results of the process, then those engaged in the process are also more likely to take it seriously. This requires clear communication about how input will be considered and ultimately used. Clear communication from the outset will build transparency and buy-in.

3. Devote adequate resources to the process. A classic barrier to conducting a successful public participation process is the availability of resources. Time and money are often limiting factors, however if a commitment of resources is made to the process this signals its importance. Capacity in the form of knowledgeable and enthusiastic process leaders is also critical to its success.

4. Timing is everything. Any public participation process hinges on the relevance of the situation at hand and whether closure is achievable in a timely manner. If the process starts too soon certain information may not be available, yet if it starts too late there may not be enough time to develop understanding of issues and public trust. Depending on decision-making schedules (planning board meetings, commissioners meetings, legislative session) if the outputs from the participatory process come too late, it might not be possible for governing bodies to really utilize the public process results.

5. Focus on implementation of goals. Public participation processes tend to be more successful when they clearly relate to some sort of policy decision or implementation plan. That said, convening organizations are not always in a position to implement decisions. These groups should be very clear from the beginning about their authority and capability in final implementation, but if the process is intended to inform a decision, implementation should be part of the picture.

6. Commitment to further learning. Continuous self-reflection and adjustment should occur during any process. It shows that process managers are flexible and can alter methods in order to better serve the process. Evaluations often generate lessons for future public participation efforts.
**Designing the Process**

No public participation is exactly the same but should be guided by and consider the following factors:

1. **Inclusiveness.** The process should include representatives of all parties that have in interest in or would be affected by the decision, or those needed to implement the decision. There are challenges with having too many participants, but it is always better to err on the side of too much inclusiveness than leave someone out of the process.

2. **Collaborative problem formation and process design.** Early public engagement for this piece is crucial. Even though the convening group may have an established perception of the issue or problem at hand (hence why the process was initiated), the public must be involved with the initial identification and framing of the issue at the beginning of the process. The design of the process itself may also be open to the public.

3. **Transparency.** This piece was addressed in the principles of public participation section but must be maintained every step of the way. Process leaders should continuously communicate the goals and objectives of the process, why the public’s engagement is being requested, and how the information gathered will be analyzed and used in moving forward.

4. **Intensity.** The intensity of the process refers to the amount of time required and the structure of the interactions and depends on the issue at hand. For example, if the issue involves a potential for conflict, higher intensity processes may be necessary. This could mean having more meetings and a format that leads to more direct, one-on-one discussions.

5. **Paying attention to both facts and values.** An effective process will consider both facts and values, and how decisions may impact the things that people care about. “Facts” are often contested and may be interpreted differently. Also, people will likely have different interpretations of the level of impact on the things they value most.

6. **Good-faith communication.** At the start of any public engagement process, there should be a mechanism in place for decision-makers, organizations, agencies, and members of the general public to communicate with one another. All participants should be informed of any progress made with the process, especially any action items or decisions in moving forward. This is also achieved through a transparent process and helps to ensure continued participation.

**Participation Formats**

The format of the public participation process will depend entirely on the desired outcome. Before a process is designed, it’s important to have a firm understanding of the issue, key stakeholders, and at least a preliminary understanding of community concerns and interests around the issue. A well-designed process meets the needs of the stakeholders while recognizing technical, legal and political constraints. Once the “lay of the land” has been established, the participation format can be decided. The table below outlines the various participation formats and describes the types of people targeted as well as what is to be achieved with that format. The International Association for Public Participation offers a “toolbox” of dozens of such tools and techniques, classified by the purposes for which they are commonly used.

<table>
<thead>
<tr>
<th>Format Type</th>
<th>Breadth of Public Participation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Information exchange</strong></td>
<td>Scoping meetings, focus groups, workshops, open houses</td>
</tr>
<tr>
<td></td>
<td>Open Access</td>
</tr>
<tr>
<td></td>
<td>Individual and representatives of interest groups</td>
</tr>
<tr>
<td><strong>Involvement</strong></td>
<td>Citizen panels, deliberative polling, advisory committees, study groups, town meetings</td>
</tr>
<tr>
<td></td>
<td>Predefined Group</td>
</tr>
<tr>
<td></td>
<td>Individual citizens or interest group representatives based on diverse perspectives</td>
</tr>
<tr>
<td><strong>Engagement</strong></td>
<td>Joint fact-finding, policy dialogues, negotiated rulemaking, community partnerships</td>
</tr>
<tr>
<td></td>
<td>Predefined Group</td>
</tr>
<tr>
<td></td>
<td>Predefined interest group to include stakeholders with a regional interest or specific local knowledge</td>
</tr>
</tbody>
</table>

Communication and Facilitation Strategies
Based on “Ideas for Positive Conversations at Community Meetings,” a report by the Montana Smart Growth Coalition

The issue situation has been assessed, the process format has been designed, and now it’s time to hold the meeting. First and foremost, ensure that there is participation from all involved. In almost every meeting setting there are at least a few people that cause problems and dealing with these folks is challenging. A balance must be maintained between protecting the rest of the group from being dominated or attacked and not belittling the concerns of the objectors. Maintaining control over the meeting is essential. Keeping that in mind, here are some tips for communicating with participants and facilitating a successful outcome.

The number one priority is to be clear about your goals and objectives and reflect that in your messaging. Those who are against the process will attempt to unravel your objectives or cast them in a negative light. When this happens, reinforce the positive reasons the process has been convened and use pivot phrases such as “I’m glad you asked that. People may have that misconception, but the truth is…” or “Let me put this into perspective…” In addition, emphasize the need for a public process and why all opinions should be heard.

Four steps for dealing with “problem people” and planning for conflict:

1. **Prepare.** You can never be too prepared! Structure a concise agenda with clear goals, allowing for input beforehand. Assess possible conflict so you have responses prepared or techniques to address potential problems. Finally, select a strong facilitator to ensure the meeting meets its objectives.

2. **Learn.** If possible, speak with meeting attendees beforehand so you are aware of potential conflicts. Be sure to always clarify expectations and any agreements that occur in the meeting or throughout the overall process. Acknowledge areas of disagreement but don’t let that be the focus.

3. **Align.** A strategy should be planned that keeps focus on the agenda as well as an approach for addressing and redirecting conflicts. This should be done collaboratively between convening partners.

4. **Negotiate.** When people raise their concerns or expose conflicts there are a few approaches to allow discussion and offer an opportunity for sharing ideas one at a time. Small groups or discussion in pairs can be effective, along with taking time to individually write down concerns. Ultimately the entire group should legitimize concerns and participants should find consensus on next steps.

Outreach in between meetings is another way of building successful coalitions and diffusing conflict. Individual meetings or calls with specific members to find out their thoughts and concerns can build buy-in. Establishing smaller working groups can also get people more involved via issues that they care most about. Identify and encourage leadership from “champions” within each group of partners – respected and trusted individuals who not only support the process but also can influence others in the group to engage and agree on a certain position. These individuals should be identified and encouraged to take the lead on certain tasks. In addition, there should be a clear point of contact within the convening organization and other groups so individuals can easily reach out with questions or concerns.

**Bringing it Back to Farmland**

A final piece to consider is that, while most people understand the benefit of having clean water or clean air, the direct benefit of maintaining agriculture is probably not something that all residents already understand. So how we can engage them in this issue? Luckily, farmland work presents us with plenty of opportunities. People love to visit farms and learn where their food comes from. Farm tours, FEASTivals, local food events at restaurants, schools, and other institutions can all help people develop a bond with their community’s agricultural producers and agricultural heritage. And they’re fun!

Farmland conservation is about preserving a piece of our heritage, a stable and secure source of jobs on farms and in ag-related businesses, and a sustainable food source on which we can rely through thick and thin. Agriculture has so many benefits for our communities and the more diverse messaging we can use and more diverse community members we can bring into the fold, the more successful our efforts will be.

Montana is a farming state. Let’s keep it that way!