

MONTANA

# POLICY REVIEW

A Publication of the Local Government Center

Vol. 9, No.1

Winter 2002

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*Matthew McKinney and Will Harmon*

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## *Reflections on Local Governance*

In the wake of the events of September 11<sup>th</sup>, it is tempting to put aside our planned issue on land use and growth policy issues and provide instead an issue on emergency planning, response and mitigation. However, the fact is that the day to day, mundane responsibilities of local government remain even in the face of the tragic events which occurred in New York and Washington, D.C.

New York City was able to respond effectively to the terrorist attack because their local government officials had accomplished the day to day, mundane tasks of providing a public service infrastructure. They provided adequate public transportation systems, roads and bridges, fire departments, police protection, sanitation services and a medical system. They provided for dispatch services, an emergency operations plan and training for their employees. They required building codes which protected buildings and people in the vicinity of the World Trade Center. Because they had done their jobs well, the city continued to function, citizens were protected, and they have the capacity to recover and rebuild.

The lesson is clear. Future events that no one can predict with accuracy will be less difficult, and more manageable when states and cities and counties plan ahead to protect their infrastructure, to pay for development, and thoughtfully develop and implement policies and procedures which will assure that their people and property will be protected even in the face of catastrophe.

Another long-range implication of the terrorist attack is that it can only make our rural state more attractive to people who want to escape urban environments which are more likely to remain the target for future attacks. Are Montana's cities and counties really prepared for continued population growth? Are plans in place to assure that growth will be orderly, efficient, safe, and continued in a manner which will not jeopardize our culture, our environment and our way of life?

We hope that this issue of the Montana Policy Review will provide information and tools to assist local government officials in their efforts to do just that. Our sincere thanks to the many contributors to this publication who have provided thought provoking insights on the many issues related to land use in Montana. In addition, we wish to express our deepest appreciation to the hundreds of elected officials, staff and volunteers whose tireless work allows Montana to continue to be the "last, best place." The staff of the Local Government Center is ready and eager to provide whatever research, training and technical assistance Montana's local governments request to increase their capacity to deliver essential services in the future.



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# Land Use Planning and Growth Management in the American West

by Matthew McKinney and Will Harmon

Reprinted from Landlines, Jan. 2002 with permission from the Lincoln Institute on Land Policy

*"This [the West] is the native home of hope. When it fully learns that cooperation, not rugged individualism, is the quality that most characterizes and preserves it, then it will have achieved itself and outlived its origins. Then it has a chance to create a society to match its scenery."*

Wallace Stegner, *The Sound of Mountain Water* (Penguin Books 1980, 38)

During the past two years, state planners in 13 western states have met in the Western State Planning Leadership Retreat, an annual event sponsored by the Lincoln Institute of Land Policy and the Western Consensus Council. Co-sponsors include the Western Governors' Association, the Council of State Governments–WEST, and

*The West has more land and fewer people than any other region, yet is also very urbanized. More people live in urban centers than in rural communities.*

the Western Planners' Association. The retreats provide a forum for state-level planners to compare their experiences, learn from each other's successes and failures, and build a common base of experience for planning in

their states and across the region. Rather than promote a particular approach to planning and growth management, the retreats encourage planners to explore a range of strategies for responding to growth and land use issues in the West. This article summarizes what we have learned during the first two retreats in 2000 and 2001.

## Forces and Trends

The West is changing. New forces and trends are redefining the region's quality of life, communities and landscapes, directly influencing how we approach land use planning and growth management. One force that sets the West apart from other regions of the country is the overwhelming presence of the landscape. The West has more land and fewer people than any other region, yet is also very urbanized. More people live in urban centers than in rural communities.

The dominance of land in the politics and public policy of the West is due in part to the large amount of land governed by federal and tribal entities. More than 90 percent of all federal land in the U.S. lies in Alaska and the 11 westernmost contiguous states. The U.S. Forest Service, U.S. Bureau of Land Management, National Park Service, and the U.S. Fish and Wildlife Service manage most of the West's geography and significantly influence the politics of land use decisions. Indian tribes govern one-fifth of the interior

West and are key players in managing water, fish and wildlife.

The West is also the fastest growing region of the country. The five fastest-growing states of the 1990s were Nevada, Arizona, Colorado, Utah and Idaho. Between 1990 and 1998, the region's cities grew by 25 percent and its rural areas by 18 percent, both significantly higher rates than elsewhere in the U.S. As western demographics diversify, the political geography has grown remarkably homogeneous. Following the 2000 elections, Republicans held three-quarters of the congressional districts in the interior West and all governorships except the coastal states of California, Oregon, and Washington.

Within these trends, western state planners recognize a variety of common challenges - pockets of explosive population growth, sprawl, drought, out-of-date legislation, a lack of funding, and a lack of public and political support for planning and changing the way development occurs in the West. They also point out many differences in their states' approaches to planning. Oregon and Hawaii have long-standing statewide land use planning efforts, but planning in Nevada is a recent phenomenon, limited mainly to the Las Vegas and Reno areas. Vast federal holdings in Nevada, Idaho, and Utah dictate land use management more than in other states, and Arizona and New Mexico share planning responsibilities with many sovereign tribal governments. Alaska and Wyoming - with small populations and little or no growth - do very little planning.

### **Major Themes**

Based on the first two retreats, we have identified six major themes related to planning and growth in the West.

### ***Why plan? How can we build public and political support for planning?***

Historically, planning was motivated by a concern to promote orderly development of the landscape, preserve some open spaces,

***Today, the most compelling argument for planning is that it can be a vehicle to promote economic development and sustain the quality of life.***

and provide consistency among developments. These continue to be important objectives, but they are insufficient for building public and political support. Particularly during economic recession, planning takes a back seat—the public can focus on only so many problems at once. Today, the most compelling argument for planning is that it can be a vehicle to promote economic development and sustain the quality of life. People move to the West and create jobs because they like the quality of life in the region, and planners need to tap into this motivation.

In Utah, for example, quality of life is an economic imperative, so state planners tie their work to enhancing quality of life rather than to limiting or directing growth. It is used to integrate economic vitality and environmental protection. Several years ago, business leaders and others created Envision Utah, a private-public partnership. Participants use visualization techniques and aerial photos, mapping growth as it might occur without planning, and then again under planned cluster developments with greenbelts and community centers. These "alternative futures" scenarios help citizens picture the changes that are coming and the alternatives for guiding those changes in their communities. As the state planner says, "Growth will happen, and our

job is to preserve quality. That way, when growth slows, we will still have a high quality of life."

Kent Briggs, executive director for the Council of State Governments—*WEST* (a regional association for state legislators), and Jim Souby, executive director of the Western Governors' Association, acknowledge the difficulty of nurturing public and political support for growth management in the West. They agree that political power shifts quickly from one party to the other, and yet is a lagging indicator of cultural, demographic and

***Governors and legislators might be more convinced to support land use planning, they say, by using visualization techniques to help them understand the costs of existing patterns of development, and to picture the desired future of our communities and landscapes.***

economic change. Governors and legislators might be more convinced to support land use planning, they say, by using visualization techniques to help them understand the costs of existing patterns of development, and to picture the desired future of our communities and landscapes.

***How much planning is enough, and who should be in the driver's seat?***

Arizona and Colorado have smart growth programs designed to help communities plan for growth and preserve open space. In the November 2000 elections, citizen initiatives in both states introduced some of the nation's most stringent planning requirements, but both

initiatives failed by a 70 to 30 percent vote, suggesting that citizens want to maintain flexibility and freedom—and local control—when it comes to planning and growth management. The story is similar in Hawaii, where business profitability—not zoning maps—directs land use. In May 2001, Hawaii's governor vetoed a smart growth initiative because it was perceived as being too environmental and would limit developers' ability to convert agricultural lands.

This emphasis on home rule or local control is supported by a recent survey of citizens in Montana, conducted by the Montana Association of Realtors. In the survey, 67 percent of respondents said that city or county governments should have the power to make land use decisions, while 60 percent opposed increasing state involvement in managing growth-related problems.

In Oregon, citizens narrowly passed Measure 7, an initiative requiring state and local governments to pay private property owners for any regulations that restrict the use or reduce the value of real property. While the impacts and constitutionality of this initiative are still being debated, it sends a strong message to planners in a state that has had one of the most progressive land use and growth management programs for 25 years. The message, according to Oregon's state planner, is to not rest on your successes, and to keep citizens and communities engaged in an ongoing discussion about the effectiveness of land use planning. He also stressed the need to balance preservation with appropriate development, emphasizing that "good planning doesn't just place limits on growth and development."

***What is the role of state government?***

Douglas Porter, keynote speaker at the first retreat and a nationally known consultant on land use and growth policy, says that one of the most important state roles is to offset the lack of will to plan at the local level. He says

***... one of the most important state roles is to offset the lack of will to plan at the local level.***

that state programs should support local planning efforts, and should try to engage the "big players," such as transportation departments, to work with local jurisdictions. Porter also suggests that state governments can maintain their state's economic competitiveness by encouraging local communities to improve their quality of life through infill, redevelopment, and preserving the natural environment.

Oregon's state government attracted \$20 million in federal funding to help communities overhaul zoning ordinances and remove obstacles to mixed uses. Colorado created an Office of Smart Growth to provide technical assistance on comprehensive planning, document best practices for planning and development, maintain a list of qualified mediators for land use disputes, and provide grants for regional efforts in high growth areas. In Arizona, Montana, and New Mexico, state planning offices provide a range of technical services to assist communities, such as clarifying state laws, promoting public participation, and fostering intergovernmental coordination.

Jim Souby suggests that one of the most effective roles of state government is to

promote market-based strategies and tax incentives. "Tax what you don't like, subsidize what you do like," Souby says. Other incentives might include cost sharing and state investment strategies—similar to Maryland and Oregon—to drive development in a positive direction.

***How can regional approaches to land use planning complement state actions?***

Regionalism allows multiple jurisdictions to share common resources and manage joint services, such as water treatment facilities and roads. In Washington, citizens recently rejected the top-down smart growth model popularized in Florida due to concerns over home rule and private property rights. In response, the state legislature approved a system of regional planning boards that instill some statewide consistency while allowing for regional and local differences.

***"Tax what you don't like, subsidize what you do like"....***

Nevada, despite double-digit growth in the Las Vegas and Reno areas, does not have a state planning office. However, the legislature mandated Washoe County (home of Reno and Sparks) to create a regional planning commission to address growth issues jointly rather than in a piecemeal manner. Key municipal and county officials in Clark County (Las Vegas) formed their planning coalition *voluntarily*—compelled to cooperate by the highest growth rate in the nation. This coalition recently presented the state legislature with a regional plan that emphasizes resolving growth issues locally rather than at the state level.

In New Mexico, the city and county of Santa Fe each recently updated their comprehensive land use plans. The plans were fine, except that they were stand-alones prepared with no coordination. Citizens demanded better integration of planning efforts and pushed for a new regional planning authority. Within 18 months, citizens and officials developed a joint land use plan for the five-mile zone around the city, and the regional authority is now developing zoning districts and an annexation plan. In Idaho, city and county officials in the Boise area voluntarily created the Treasure Valley Partnership as a forum to discuss policies for controlling sprawl, and to coordinate the delivery of services. They are also reviewing the possibility of light rail development.

Regional approaches are gaining momentum, but they also create new challenges. For example, the city of Reno has been reluctant to join the neighboring city of Sparks and Washoe County in revising their regional plan. With no enforcement or penalty at the state level, the other jurisdictions can do little to encourage Reno's involvement. Likewise, New Mexico has no policy framework for regional planning and thus no guidelines on how to share taxing authority, land use decision making and enforcement responsibilities.

***Foster effective planning and growth management through collaboration.***

Collaboration can be defined many ways, but most planners agree with the premise that if you bring together the right people with good information they will create effective, sustainable solutions to their shared problems.

Collaborative forums allow local officials to weigh and balance competing

viewpoints, and to learn more about the issues at hand. According to Jim Souby, local efforts should incorporate federal land managers because they play such a dominant role in the region's political geography. Kent Briggs agrees that collaboration, when done correctly, allows the people most affected by land use decisions to drive the decisions. Collaborative processes, when they include *all* affected interests, can generate enormous political power, even when such efforts do not have any formal authority. While it may be appropriate in some cases to have national or state goals, it is ultimately up to the people who live in the communities and watersheds of the West to determine their future, according to Briggs.

***How do we measure success?***

In 1998, the Arizona legislature passed the Growing Smarter Act, which was amended in 2000, and created a Growing

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Smarter Commission. The act reformed land use planning and zoning policies and required more public participation in local planning. The commission recommended that the state should monitor and evaluate the effectiveness of land use planning on an ongoing basis. The governor recently appointed an oversight council to continue this work, but council members say that clear benchmarks are needed against which to evaluate the effectiveness of land use planning—a percentage of open space preserved, for

example, or a threshold on new development that triggers tighter growth restrictions. Arizona law, however, simply identifies the issues that must be addressed in comprehensive land use plans. It does not set specific standards or expectations, making meaningful evaluation impossible. This brings us full circle to our first theme—Why are we planning?

### The Three Cs of Planning

Three recommendations emerge from the western state planners' retreats that can be implemented throughout the country.

First, identify the most **compelling** reason to plan in your community. What are you trying to promote, or prevent? Be explicit about the values driving the planning process. Emphasize the link between quality of life, economic development, and land use planning as a way to sustain the economy and the environment. Remember that people must have meaningful reasons to participate constructively in the planning process.

Second, rely on **collaborative** approaches. Engage the full range of stakeholders, and do it in a meaningful way. A good collaborative process generates a broader understanding of the issues—since more people are sharing information and ideas—and also leads to more durable, widely supported decisions. Collaboration may also be the most effective way to accommodate the needs and interests of local citizens within a regional approach and when the state's role is limited.

Third, foster regional **connections**. Recognize that planning is an ongoing process, not a product to be produced and placed on a shelf. Link the present to the future using visualization and alternative futures techniques. Build monitoring and evaluation strategies into

plan implementation. Foster regional approaches that build on a common sense of place and address transboundary issues. Emphasize that regionalism can lead to greater efficiencies and economies of scale by coordinating efforts and sharing resources.

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## Making Growth Pay for Itself in Montana: An Analysis of the Authority Granted to Counties to Assess Development Impact Fees

Synopsis by Professor John Horwich of article written by Michael R. Baxter

[Introductory note: The following is a synopsis of a 55-page article prepared last spring by Michael R. Baxter while he was a third-year law student serving in the Land Use Clinic at the University of Montana School of Law. The synopsis was prepared by Professor John Horwich, Director of the Land Use Clinic. Footnotes and citations have been omitted. Copies of the complete article are available without charge by e-mailing Professor Horwich at horwich@selway.umt.edu.]

Local governments are increasingly using development exactions as a means of financing capital improvements necessitated by new development. Development exactions have taken many forms, including impact fees, land dedications, fees in lieu of dedication and connection charges. While the various forms of exactions often share common features, impact fees are distinguishable from other types of exactions as they are a charge levied to fund off-site public facilities and services necessary to serve new development in an amount which is proportionate to the need for public facilities generated by the new development.

Not surprisingly, as the use of impact fees has increased, litigation surrounding these fees has also increased. This litigation has typically focused on whether local governments have legislative authority to impose impact fees and, if so, whether the fees imposed satisfy the

constitutional limitations applicable to such fees. Although the constitutionality of an exaction is an important inquiry, that question typically does not arise unless there first is legislative authority for the exaction. Accordingly, this discussion will focus on the extent to which the Montana legislature has authorized counties with general powers to fund capital facilities through cash exactions.

***For impact fees to be legal, a local government must possess the authority to impose impact fees as a condition of development approval.***

For impact fees to be legal, a local government must possess the authority to impose impact fees as a condition of development approval. For a local government with general powers, that authority must be expressly granted in the Montana Code Annotated or necessarily implied from an express statutory provision (MCA § 7-1-2101 (2001)). Express legislative authority to impose cash exactions clearly exists under current Montana law in two sections: MCA § 76-3-510, which authorizes the collection of fees for the extension of capital facilities, and § 76-3-621, which authorizes the collection of “cash donations” in lieu of a park dedication. The in-lieu fee authorized by § 76-3-621 clearly does

not authorize local governments to assess impact fees; accordingly, that provision will not be discussed further.

### **A. Express Authority**

MCA § 76-3-510 provides local governments with express authority to collect funds for improving capital facilities in order to provide services to new development:

**“Payment for extension of capital facilities.** A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.”

To date, neither Montana’s courts nor Attorneys General have had occasion to interpret § 76-3-510. The first sentence of the statute clearly authorizes local governments, including counties, to recover certain capital expenditures from a subdivider. But to which capital facilities does the statute apply? Does the statute apply to detention facilities, courthouses, and libraries in addition to the facilities listed in the statute? Similarly, which

costs may be assessed? Can a county recover costs incurred in expanding its solid waste facility, or the costs of paving the gravel county road that would serve a proposed subdivision?

To facilitate the discussion regarding § 76-3-510, it is helpful to describe and categorize the types of capital facilities through which counties provide services to a subdivision. The capital facilities serving a subdivision can be separated into four distinct categories, which are based primarily on the

***The costs must reasonably reflect the expected impacts directly attributable to the subdivision.***

proximity of each facility to the subdivision, and secondarily on the nature of the subdivision’s impact on each facility: “Category 1” includes capital facilities lying within the “four corners” of the subdivision like roads, water lines, sewer lines, and storm water drains; “Category 2” includes capital facilities lying outside the subdivision’s boundaries that serve to connect the subdivision’s Category 1 facilities with existing public facilities (e.g., sewer lines that connect the subdivision’s network of sewer lines to sewer mains outside the subdivision); “Category 3” includes capital facilities lying outside the subdivision’s boundaries that are physically linked to a subdivision’s facilities, and require expansion or construction in order to maintain a constant level of public services provided to residents and businesses through Category 1 and 2 facilities (e.g., sewer treatment plants, water treatment plants, sewer mains, water mains and major public roads); and “Category 4” includes all public capital facilities lying outside the subdivision’s boundaries other than Category 2 and 3

facilities (e.g., courthouses, schools, police stations, fire stations, etc.).

Based on the legislative history of § 76-3-510, we conclude that the statute was intended to cover costs incurred in improving a broad range of capital facilities related to public health and safety based on a liberal interpretation of the statute's first sentence. First, with regard to the types of *costs* that may be funded with impact fees, the legislative history indicates that the word "extending" should be liberally interpreted as meaning "improving," "expanding" and/or "constructing." For example, with regard to road improvements needed to provide adequate access to a subdivision, the county can impose exactions for paving, widening and/or constructing public roads.

***... With regard to the types of facilities for which impact fees may be assessed, the legislative history indicates that the language "capital facilities related to public health and safety" should also be construed liberally.***

Second, with regard to the types of *facilities* for which impact fees may be assessed, the legislative history indicates that the language "capital facilities related to public health and safety" should also be construed liberally. Specifically, the county can assess impact fees to fund capital facilities listed in the statute *as well as* solid waste facilities, fire/police/EMS facilities and even general government facilities (e.g., courthouses). On the other hand, the third sentence expressly prohibits a local government from requiring such payments for educational facilities. To

***... While the statute authorizes exactions to fund improvements ... the express wording of the statute indicates that the legislature intended to place limitations on that authority as well.***

summarize the types of public capital facilities for which impact fees may be assessed, the statute authorizes impact fee assessments for all Category 2 and 3 facilities and most Category 4 facilities.

However, while the statute authorizes exactions to fund improvements to a broad range of facilities, the legislative history and the express wording of the statute indicates that the legislature intended to place limitations on that authority as well. First, § 76-3-510 only authorizes counties to impose impact fees against a *subdivider*, presumably upon her requesting approval of a subdivision plat. A subdivider is defined as "a person who causes land to be subdivided or who proposes a subdivision of land." Also, a subdivision is defined as a "division of land or land so divided that it creates one or more parcels containing less than 160 acres..... in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed ...." While an impact fee program would ideally target all new development, a fee program complying with Mont. Code Ann. § 76-3-510 may only generate fees from such development to the extent that subdivision of land occurs.

The second limitation in § 76-3-510 is that the subdivider may be assessed only for those costs that "reasonably reflect the expected impacts directly attributable to the subdivision." That provision obviously requires a certain level of accountability by

counties in justifying the nature and extent of any exactions imposed on development. At this point, suffice it to say that § 76-3-510 requires that the exaction be reasonably related to the needs created by the development. Finally, the last sentence of the statute provides a third limitation: a county may not require a subdivider to pay impact fees for the costs incurred in improving educational facilities.

Although the second and third limitations are not insignificant, the first limitation presents the greatest obstacle for a Montana county in implementing an economically feasible impact fee program based on express authority. MCA § 76-3-510 is restricted to the confines of the subdivision review process, and limits the assessment of impact fees to the plat approval stage.

However, in addition to the express authority granted in § 76-3-510, Montana counties have other powers to regulate the development of land. Given the limitations of § 76-3-510, it is necessary to explore the implied authority granted to counties to impose impact fees based on the general language of the planning and zoning enabling acts.

## **B. Implied Authority**

The adoption of the 1972 Montana Constitution created a more favorable environment for the exercise of land-use regulatory authority by counties with general powers. Furthermore, cases decided both before and after the adoption of the 1972 Constitution reveal that a local ordinance adopted pursuant to the police power will be held valid if it is reasonable and “substantially related to the legitimate State interest of

protecting the health, safety, morals or general welfare of the public.”

The authority of local governments to regulate the use of land is derived from the police power of the state to regulate for the public health, safety, morals and welfare, and this power is most often delegated to local governments through specific enabling legislation. Both the Montana Subdivision and Platting Act, of which § 76-3-510 is a part, and Montana’s local planning and zoning enabling act are examples of such legislation and are substantially similar in purpose. Like most delegations of the police power, both acts’ substantive provisions are purposely drafted with broad enabling language, while their procedural provisions contain specific criteria for compliance.

*The reason for using such broad language in defining the purpose of such acts is to provide a local government with the flexibility needed to tailor local ordinances to the circumstances that exist within its jurisdiction.*

Although no Montana cases directly comment on the legality of assessing impact fees pursuant to implied authority, there are cases from other states. Most notably, in *Jordan v. Village of Menomonee Falls* (137 N.W.2d 442 (1965)), the Wisconsin Supreme Court upheld an in-lieu fee for schools and parks assessed as a condition to subdivision plat approval. Of particular significance to this discussion, the fee was neither expressly authorized by the legislature nor reliant upon

self-governing powers. Also, although the ordinance was enacted based on the state's subdivision statutes, the enabling language upon which the court focused substantially emulates provisions in the 1972 Montana Constitution and Montana's zoning statutes.

As mentioned, the 1972 Montana Constitution provided a more favorable environment for the exercise of land-use regulatory authority by counties with general powers. Specifically, Article XI, Section 4(1)(b) provides that "[a] county has legislative, administrative, and other powers provided or implied by law." Article XI,

***Finally, cases construing the Montana Subdivision and Platting Act illustrate the substantial deference the Montana Supreme Court intends to give counties in developing and implementing local land use regulations.***

Section 4(2) provides that "the powers of...counties shall be *liberally construed*." Also, the criteria with which a county's zoning ordinance must comply includes much of the same language as the Wisconsin subdivision statute in *Jordan*. Furthermore, in addition to the "liberally construed" language provided in the 1972 Constitution, the Montana Supreme Court has recognized that police power actions, in particular, are to be broadly interpreted. Finally, cases construing the Montana Subdivision and Platting Act illustrate the substantial deference the Montana Supreme Court intends to give counties in developing and implementing local land use regulations.

Although the Montana Supreme Court has never considered the constitutionality of the statutes authorizing county-initiated zoning, the Court has upheld the "freeholder-initiated" zoning and municipal zoning provisions as constitutional delegations of legislative authority. Presumably, therefore, an impact fee program adopted pursuant to a local government's authority to plan and zone will be upheld as long as the following criteria are met: (1) the assessment satisfies the criteria for a "fee" (i.e., the exaction is not a tax), (2) the particular development or change in use creates a specific need for additional public facilities, (3) the fee is reasonable in light of the impacts on public facilities attributable to the development (4) the local zoning regulations are "not plainly and irreconcilably repugnant to or in conflict with" the zoning enabling act and (5) the local government has complied with the statutory guidelines for adopting zoning regulations.

In conclusion, Montana law provides both express and implied authority for a county to impose impact fees. The express authority established by MCA § 76-3-510 is subject to several important limitations, and the implied authority based on local government power to plan and zone is as yet unconfirmed in Montana, although there is strong support in other jurisdictions.



# The Role of Federal Cropland Protection and Rural Sprawl: A Montana Case Study

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## Introduction

The transition of agricultural land from production to rural housing is a functional marketplace - not only do willing buyers exist for rural lands, there is a ready supply of willing sellers of agricultural land. In addition to regulation on the demand side of the market, an essential issue for those concerned with location of homes in the rural countryside must be to consider the supply of agricultural land entering the market for rural subdivision.

*In this paper we show how the Conservation Reserve Program (CRP), a federal land use policy, can play a role in slowing the spread of rural residential development by constraining the amount of land available for development through the use of government subsidy.*

In this paper we show how the Conservation Reserve Program (CRP), a federal land use policy, can play a role in slowing the spread of rural residential development by constraining the amount of land available for development through the use of government subsidy. The issue is important because many of the fast growing small towns in western Montana are located in areas of some agricultural

productivity. In addition, CRP is shown to preserve and protect the vital ecological functions for the community by the preservation of agricultural land.

The study area is Three Forks, Montana. With CRP lands as part of the local land management strategy, the amount of land in residential land use was observed to be less than without CRP. With CRP as part of the land management mosaic, the area was projected to have an average residential land use growth rate of almost half as without CRP enrollment.

## Background

Communities throughout the western United States are experiencing a population surge that may surpass the impact of the first western migrations. Nationally, more land has been developed for housing between 1992 and 1997, at a rate of over three million acres per year, than the entire decade before 1992. In the Mountain states new housing grew at 20.6 percent between 1990 and 1998. That was double the national average of 10 percent. Seven of the ten fastest-growing states in the nation lie along the axis of the Rocky Mountains; 67% of counties in the region continue to grow at rates faster than the national average.

During the latter 1980s and into the 1990s, a great deal of rural in-migration was propelled

by buyers who are attracted by a mix of amenities including scenic beauty, recreation, the local small town environment, and personal safety (i.e. fleeing high crime urban centers). Many communities are even more attractive if local agricultural lands create the wide open views that characterize Montana and the West.

In many cases local government planners, elected officials, public interest groups and many in the agricultural community find the rate and location of growth troublesome.

***Population growth changes the community social/political structure as well as it's look and form as agricultural land and the open space it provides is lost to rural housing.***

Population growth changes the community social/political structure as well as it's look and form as agricultural land and the open space it provides is lost to rural housing. Many myths surround the consequences of growth with respect to who is moving to the rural countryside and what effect they may have on the community and environment but most agree it is an emergent issue for local jurisdictions.

As more people choose to move to rural communities, the demographics of the farm and ranch population is shifting. Faced with declining agricultural prices and children reluctant or unable to remain in agriculture, the aging owners of farms and ranches often sell the land to developers or farm and ranch brokers and retire. Many of the new buyers of rural land do not continue the agrarian tradition and either shift from intensive agricultural production to "hobby ranching" or manage the land for its recreational potential. In many cases, developers purchase agricultural land,

subdivide it and build "ranchette" properties and thereby permanently remove land from agricultural production. This form of rural development may result in unfortunate impacts for local governments and the natural ecology of the region. The cost of public service provision to remote subdivisions can be significant, the local viewshed can be compromised, and the habitat provided by agricultural land is lost to roads, homesites and increased traffic.

### **The Conservation Reserve Program**

The Conservation Reserve Program was initiated as part of the Food Security Act (FSA) of 1985. It allowed farmers to enroll some erodible or otherwise ecologically sensitive croplands into a conservation land bank in return for annual payments over 10 years. By the early 1990s, more than three quarters of the authorized 45 million acres had been enrolled in the program. Several community impacts have been noted as a result of the CRP enrollment. As more land was bid into the program, controversy grew regarding the effects of CRP on farm income, impacts on soil erosion, and the economic well-being of rural communities. Changes observed in small agricultural towns included a drop in agricultural employment and associated

***As more land was bid into the program, controversy grew regarding the effects of CRP on farm income, impacts on soil erosion, and the economic well-being of rural communities. Changes observed in small agricultural towns included a drop in agricultural employment and associated economic activity.***

economic activity. Very simply, as less land was cultivated, less labor was needed for farming, less crop was stored in local granaries, and fewer implements were replaced or maintained. In many cases small businesses that directly supported agriculture failed and as they did so other "main street" businesses suffered. At the same time, farmers were better off economically as their farm incomes stabilized due to guaranteed CRP payments and less capital was needed to keep the operation going. In Montana, CRP is popular among farmers and ranchers alike; so popular that by 1994 Montana ranked fourth in the nation in CRP enrollment. By 1999 1,643,400 acres were enrolled in CRP in the state; in 2000 Montana had enrolled 3,227,590 acres in the program. Nationally, the total CRP enrollment is 31,438,441 acres and payments total \$1.4 billion.

### **Modeling Land Use Change and the Role of CRP**

We conducted research on community change in the town of Three Forks, Montana. The town lies at the headwaters of the Missouri River in Gallatin County. The valley in which the town is sited is defined by the Madison and Gallatin Rivers to the east and to the west - the Jefferson River. Near the current town site was a major encampment for the returning Lewis and Clark expedition in 1805. It is an ideal community for the investigation of rural change as it makes a transition from an economy based primarily on natural resources to one that is increasingly regionalized to the economies of Bozeman and Helena.

Historically, the Three Forks area economy was based on railroad employment, agriculture (dry-land and irrigated wheat), mining-related manufacturing (cement, talc products, gold), a small lumber mill, and a small retail sector. A

vertically integrated bakery has been in operation for over a decade and it has provided a market for locally produced wheat and provided some value-added production in local agriculture. Additionally, a few small businesses have appeared in the community. These include a fishing lodge/motel, a small cement products plant, and a B&B/restaurant. Three Forks is acquiring some of the social and economic characteristics of the "New West" communities as it increasingly relies on tourist services and most importantly, as an emergent bedroom community for Bozeman.

The population of Three Forks and surrounding area has experienced significant growth in recent years even with few new employers. Employment in home construction increased following the city-negotiated transformation of past railroad right-of-way land into a housing subdivision. Older homes in the region are being acquired and refurbished and housing prices have steadily increased in large part

*Early in our work in Three Forks we determined that a tool that modeled land use into the near future would be particularly useful for the community. Such a tool would enhance the capacity of local residents and planners to understand the nature of growth and change in the community.*

because of relatively more expensive housing in Bozeman. Many residents commute via interstate 90 to Bozeman. The thriving economy there continuously provides diverse employment opportunities. In addition to the structural employment created by a regional population of over 50,000, several relatively large employers in the Bozeman area provide jobs in high technology, tourism, consumer

services, retail, higher education, and light manufacturing. As more Three Forks residents find employment in Bozeman, they increasingly conduct shopping and entertainment activities there. During the same time several main street businesses in Three Forks have closed.

Early in our work in Three Forks we determined that a tool that modeled land use into the near future would be particularly useful for the community. Such a tool would enhance the capacity of local residents and planners to understand the nature of growth and change in the community. As has been reported previously in the Montana Policy Review and elsewhere, our land use classification was conducted in a 30 km<sup>2</sup> study region on a 2.5 ha grid system using aerial photos at available intervals between 1964 and 1998<sup>i</sup>. The study region was divided into cells 2.6 hectares in size and each was assigned a land use designation. The observed land use information was placed in the GIS system as independent layers of information so they could be used as independent variables in the prediction system. Other data layers were constructed to be included in our eventual model of land use change and included natural geographical features, manmade infrastructure as well as socioeconomic measures.

The model is based on the effects of both past land use change as well as the additional data layers. The approach used to predict land use/cover change concentrates on identifying and incorporating independent driving variables directly into transition probabilities (multiple layers of information through time and space) in landscapes dominated by private ownership. This method assumes that future land use patterns are driven by local patterns of land use change and that future development

patterns are more likely a function of the road network, geographical amenities, the near or distant views available to potential homeowners, characteristics of the community, or isolation from others.

Computation of the transition matrix is based on the assumption that over a selected observed time period land use/cover in a selected part of the landscape can remain in the same land use/cover category or change to one of the other possible categories. The matrix represents the probability that a particular cell will change to another land use value or stay the same. The model allows the selection of one or more data layers to be used to calculate the matrix. A minimum of two years of data layers must be selected – a primary layer and a response layer; these will be used to produce the transition matrix. As the matrix is populated with data over the entire grid area, a map can be generated that shows future land use change scenarios based on the probability of change derived from past land use change and the effects of the geographical and socioeconomic factors.

The model is calibrated for accuracy by attempting to predict a known mix of land use. Various combinations of the known land use profile for the years 1965 -1979 in combination with the other driving factors were tested and yielded varying prediction accuracy. An aerial land use map from observed 1998 land cover was used as the calibration. The best prediction (93% accurate) of the observed land use in 1998 was produced by the combination of nearest neighbor, landowner attitude, and distance to stream. The model was then designed to be run forward in time to the year 2025 using the algorithm derived from the calibration.

The original modeling outcome included CRP lands in the area. These lands are predicted to not change from CRP because CRP designation existed in both years used in the original model and no change was observed in the CRP

*When the distribution of CRP lands in the rapidly growing counties in the Rocky Mountains is considered, the potential for using CRP as a constraint on sprawl is substantial.*

designated cells. Growth that was expected to occur had to take place outside of the CRP designated land. The model predicted that with CRP in the land management mix, the number of cells in residential land use was observed and predicted to have grown 14% between 1984 to 1995 and 23% from 2000 to 2025.

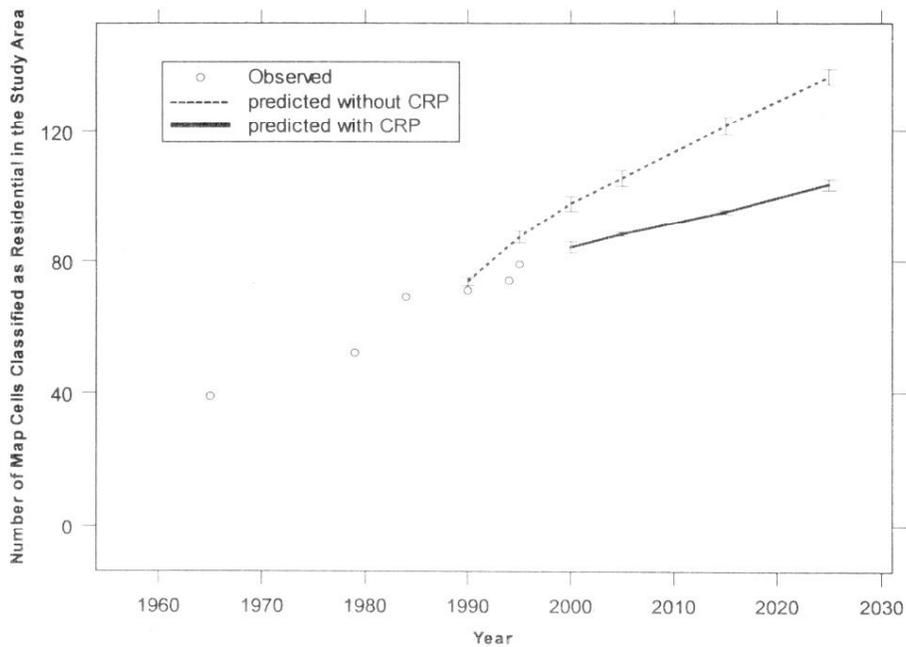
We then asked the model to make a prediction for the region as if CRP did not exist in the

land use mix. This allowed us to ask what role CRP might have played in curbing the amount of land entering the marketplace for rural residential development. The answer would help us understand how the community might have grown if the CRP enrollments had not taken place.

Without CRP in the mix, the area was projected to have a residential land use growth rate of 27% and 40% growth rates for the time periods 1984 to 1995 and from 2000 to 2025 respectively. Much of the land use change toward residential development would have occurred on land currently enrolled in CRP.

Number of cells predicted to transition to residential

Year	Without CRP	With CRP
2000	98	84
2005	105	88
2015	121	95
2025	137	104



Assuming the accuracy of the model, the conclusion is that the community of Three Forks would have been facing almost double the amount of land developed as rural residential homesites than with CRP in the land management mix. The figure above shows the divergence of residential development with and without CRP in the region.

The outcome for the community is unclear if CRP lands were made available for development. Faced with more residents, more public infrastructure would have been needed, perhaps a new school would have to be built, and the increased burden on the local transportation infrastructure might have overwhelmed the system. On the other hand, more construction jobs would have been created in the area and an increased population might have provided impetus for more business activity locally. The increased stock of housing should result in marginally lower prices thereby providing more affordable housing for residents in Gallatin County.

With respect to agriculture, aside from the obvious economic benefits of retaining agricultural employment and earnings in a rural economy, keeping agricultural lands intact can be a desirable amenity for community residents by preserving open space and preventing piecemeal residential development and sprawl. Agricultural land in CRP can benefit both the ecology and economy of the agricultural community. However, large tracts of agricultural land in the midst of rapid residential growth can bring negative consequences. While rural nonfarm residents may enjoy the open space provided by active farming operations, some farming activities may be considered bothersome. This includes negative public reaction to the application of fertilizers, pesticides and herbicides, smells

from animal production activities, slow-moving farm vehicles on commuter roads, increased incidence of air pollution from harvesting and burning, and increased demand on local water supply for irrigation. Public concern over these and other issues has triggered numerous lawsuits that test the right to farm statutes that exist in all of the 50 states.

Finally, the ecological impacts of development of the CRP enrolled lands are mixed. Central to the original CRP mandate was enhancing ecosystem quality by removing marginally productive agricultural lands from production and thereby minimizing the negative effects of wind and water erosion that can result from farming such lands. Further, CRP has shown to be effective in providing upland bird habitat. However, placing houses on dry, windswept marginal soils may not be the best alternative to CRP. These lands are typified by lack of water thereby making residential water supplies somewhat risky. They are also comprised of highly erodible soils and therefore may not be the most desirable foundation material for homes and road networks; likewise, septic systems may not function as designed in these soils.

### **Agricultural Land Use for a New Century**

When the distribution of CRP lands in the rapidly growing counties in the Rocky Mountains is considered, the potential for using CRP as a constraint on sprawl is substantial. CRP lands play a key role in agricultural communities but, other communities may be subject to other federal or state programs that can also act as land management tools (i.e. wetlands protection policy, forest stewardship programs).

The CRP program has, in recent years, undergone some reform. In 2000, USDA announced a 10 year \$300 billion Bioenergy Program aimed at utilizing CRP acreage for energy production from biomass. In return for a payment reduction farmers can harvest their CRP land and generate power from the biomass for use on the farm. Another CRP/state conservation partnership program targets water quality, soil erosion and wildlife habitat issues related to agricultural use and CRP lands.

***The ideal scenario might be a land management regime where the conservation and residential development effects of the program are left intact but the negative agricultural impacts are reduced***

In order to realize both the positive aspects of CRP as well as minimize the negative we suggest another reform in the program might be beneficial. The ideal scenario might be a land management regime where the conservation and residential development effects of the program are left intact but the negative agricultural impacts are reduced. We propose that CRP could support a “mixed” land management scenario whereby conservation of water and soil (as well as visual) qualities of farmland are preserved if farmers are allowed to focus the conservation elements attributed to CRP into “ecological islands” or refuges within agricultural fields. In effect, this would optimize the landscape diversity of a rural community in which the farm spaces would be fragmented with ecologically functional patches of native species, protected riparian zones, and even recreational trails. Some rural housing may be interspersed on the edges of

the large open spaces but the land would remain primarily in agricultural production. The ecological benefits of such a land use setting would be, in effect, concentrated to localized areas within the a larger agricultural context. The management goal for CRP would be to obtain continued ecological protection and for the landowner it would be to preserve agricultural production even as they could generate income from low density land development.

The benefits of such a land management mix might be significant. As the island is populated, for example, with native birds, we could predict less need for pesticide application. In some locations on a large agricultural field, water runoff may be slowed thereby mitigating the erosional effects of heavy rains on marginal soils. Islands would also provide scenic qualities commonly lost to rural residential development as well as large expanses of monoculture. The heretofore negative effects on the community economy resulting from CRP enrollments would be somewhat diminished as productive agriculture returned to the landscape and farm based employment rises, crops return to local mills and elevators, and new residents move into the area. In short, such a land conservation/development scheme may help renew rural communities.

The case for optimizing the landscape diversity of rural communities by reconceptualizing how rural housing and productive farmland can coexist may have significant positive benefits – even without CRP as part of the land management mix. Clearly, the open spaces produced by agricultural production provide scenic and even cultural qualities valued by rural residents. For example, research conducted in Gallatin County in 1991 found that scenic beauty was the most important

location factor for business owners who chose to live in the area. A great deal of the land that could be considered scenic in Gallatin County is, in fact, private agricultural land. A land management scheme as suggested here might prove to benefit both the agricultural landowner as well as would be residents of rural housesites.

*While the CRP lands are defined as marginally productive for agriculture, they represent the open spaces many rural residents find attractive.*

### **Conclusion**

Population growth in the rural countryside of Montana and other western states is not likely to slow – especially after the events of September 11, 2001. Concern for personal safety and security will inevitably propel the demand for land in the sparsely populated West. As a result, growth related issues will continue to be of some concern to local government officials and public interest groups.

CRP shows promise as a tool with which to decrease the incentives for agricultural landowners to sell agricultural land that could,

in many cases, be developed for residential use. This work demonstrates that CRP reduced the amount of land available for development.

While the CRP lands are defined as marginally productive for agriculture, they represent the open spaces many rural residents find attractive. A new approach to land conservation might be to adopt a mixed land use strategy where the ecological and community benefits of CRP could be bundled with a limited development pattern to achieve similar ends. Recent USDA reforms of the CRP program indicate that such flexibility might be taken into account if rural communities could demonstrate positive outcomes. Such a scheme might be beneficial for rural locations even in the absence of CRP lands.

Finally, as open space acquisition and land conservation emerges as a land use planning tool for local jurisdictions, the role of CRP can be leveraged to augment other private and public land conservation programs. Those involved in land conservation should, where feasible, look to adjacent CRP lands that will add value (and acres) to conservation easements and acquisitions. The result is an unintentional partnership between the federal and local government to work jointly to preserve agricultural open space and thereby preserve rural community charm and desirability.



# Exploring Options for Dealing with Fire in Montana's Wildland-Urban Interface

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## SETTING THE STAGE

Eight of the ten fastest-growing U.S. states are in the West. Much new residential development is occurring in fire-prone areas where human developments meet or intermingle with undeveloped federal public lands. This is known as the "wildland-urban interface."

*Much new residential development is occurring in fire-prone areas where human developments meet or intermingle with undeveloped federal public lands.*

These new residential areas are popular due to their proximity to the recreational opportunities, environmental quality, and natural amenities offered by national forests, parks, and wilderness areas. This relatively new phenomenon means that more communities and homes are threatened by fire burning on the federal lands.

Federal wildland, local volunteer, and urban firefighters now spend more time than ever protecting new construction in the wildland-urban interface. As a result, firefighting has become more complicated, expensive, and dangerous.

Unfortunately, ecological changes resulting from a century of federal forest management

practices which included fire exclusion, livestock grazing, and selective removal of tree species and recent drought conditions have compounded the problem. A century ago the region's warm, dry, low-elevation forests were less dense and had larger, more fire-resistant trees. For example, in the Bitterroot Valley of Western Montana, some lower elevation stands of ponderosa pines that once held 50 trees per acre, now contain 200 or more trees per acre.

In general, many of the region's lower elevation forests have changed from more fire-resistant to more flammable tree species. As a result, today's wildfires typically burn hotter, faster, and higher than those of the past. One key policy question is: how should we effectively and economically protect lives and property in the wildland-urban interface?

*...how should we effectively and economically protect lives and property in the wildland-urban interface?*

## EXPLORATION OF POLICY OPTIONS

Planning for an unknown future, the only kind we have, is indeed difficult. For many of us westerners, it's also vexing. The past we knew and loved is rapidly eroding and what lies ahead is ever more amorphous. Throughout the Rockies we face growing cultural and social changes.

It's possible, however, to influence our destiny and reduce potentially negative outcomes. But the solutions are neither costless nor certain. They require leadership, innovation, and courage. Local governments have a responsibility to explore the full range of policy options, including incentives, education, and regulations, to ensure that development enhances social well-being. This is particularly true when addressing development in the wildland-urban interface. Here are some options:

### **A Market or Incentive Based Approach**

Public policy arrangements for managing land development should be founded on three principles:

1. Prices that reflect real costs, including environmental costs,
2. Institutions that create incentives to act responsibly in view of these costs, and
3. Recognition that while markets coordinate wonderfully, they ignore much that is intangible and often destroy that which has no price and no owner.

Insurance companies can play a minor role by promoting policies that encourage fire-safe property maintenance. However, because fire risk is not a significant component of insurance rates, the potential effectiveness of such incentives is limited. Further, it is extremely difficult to fully account for, and contain, the full costs of individual homes in the wildland-urban interface.

### **Avoiding Political Pathologies**

What we should avoid is public policy which shelters people from the responsibility of these risks. We can learn from the Barrier Islands off the East Coast.

Hurricanes are a constant threat to these islands, just as fire is throughout much of the West. As a consequence, beach houses, condos, golf courses, and lives are at risk on

these islands. When hurricanes occur, federal disaster funds have been made available to the property owners. The result is a moral hazard; island investors anticipate these funds when making decisions. Consequently, they shift the risk to innocent victims and to the general taxpayer.

*The solution lies in making people who place themselves and their property in harm's way responsible for preventing fire losses.*

People will continue to build homes in forests and in dry years fires will burn. Surely, we don't want to replicate the "Barrier Island Pathology" of federal bailouts. The solution lies in making people who place themselves and their property in harm's way responsible for preventing fire losses.

### **Education**

While local and state authorities do have a responsibility to safeguard homeowners, local residents must assume more responsibility for the protection of their property and for making their homes more fire-resistant.

Your local fire service will develop risk management policies to ensure fire fighter safety. These may set limits on actions to defend property which is, through the choice of the owner, "non-defensible" (e.g., roads not built to county standards, driveways that will not accommodate fire engines, no safety zone for fire fighters, and bridges neither rated nor inspected.)

Educating homeowners to take simple precautions is a needed first step. Simple measures can go a long way toward preventing homes from burning down. These include:

- Installing fire-resistant roofing shingles and other building materials;
- Clearing brush, vegetation, and other

flammable materials from the immediate area surrounding houses;

- Avoiding the construction of new homes in areas that face a high risk of wildfire;
- Ensuring that access roads and driveways can accommodate firefighting vehicles.

### **Regulatory Approaches**

A central problem of social organization is resolving conflicts between individual and collective benefits. Many acts which favor individuals are socially costly.

A set of regulatory tools may be needed to require homeowners to take reasonable measures to protect their property. The National Association of State Foresters recommends local zoning initiatives: "There is

*A set of regulatory tools may be needed to require homeowners to take reasonable measures to protect their property.*

a need for local and state governments to use their regulatory authorities to strike a safe balance between the siting of structures, the use of fire-wise construction materials and methods, and the creating of defensible space."

In certain areas, it may be appropriate to actively discourage development due to the associated high-risk of wildfire. It is better not to build homes in the first place if they are likely to face destruction in the path of wildfire. Of course, regulations are often moot if not accompanied by appropriate enforcement. Thus it is essential that the responsible agency

is adequately funded.

### **SOME FINAL THOUGHTS**

In the forests of the American West, fires of varying scales and frequencies are the dominant natural disturbance process. It is fantasy to believe that fire can be completely eliminated on a planet whose atmosphere is 21 percent oxygen, where one lightning storm can spark over 300 ignitions, and where forest fuels accumulate. Thinning small trees is an especially effective fire management tool in the region's dry, low-elevation forests.

Many reformers are floating the notion that traditional logging can effectively "fire-proof" the region's forests. This is ecological fiction. Fire is a dramatic and essential ingredient in the West's ecosystems. Huge, out-of-control fires are inevitable and will continue until the fuel loads are reduced. Veteran firefighters know the only sure way to fight such fires is with an early snowfall. Fire suppression should focus on protecting valuable multiple-use resources, on human life, and private property.

Here are some resources:

-For fire fighters, contact Montana State University fire training school at [www.montana.edu/wwwfire/](http://www.montana.edu/wwwfire/)

-For communities that are dealing with fire and growth issues try: Boulder, CO; [www.ci.boulder.co.us/fire/master\\_plan.html](http://www.ci.boulder.co.us/fire/master_plan.html) and Lost Angeles County Fire Department; [www.lafd.org/](http://www.lafd.org/). Closer to home try Frenchtown Fire District. Contact Scott Waldron, Fire Chief, at 406-626-5791.

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## New Growth Management Toolbox Available

by **Dave Sharpe, Extension Service,**  
**Montana State University**

**F**ist fights at a public meeting in Ennis, a drawn knife at another in Livingston, flack vests for the planning staff in Flathead County, metal detectors at meetings, resignation of the whole Planning Department in Ravalli County, loss of the entire Extension Community Development Programs in Idaho and Colorado, \$500,000 of mostly private funds spent on a comprehensive planning project for the Flathead defeated by voters 2 - 1, 12 pending land use law suits against Montana counties, 400 angry citizens killing performance zoning at a public meeting in Lewis and Clark County, a similar group dooming Gallatin County zoning, 600 others overcrowding a presentation on land use options at a later meeting in Gallatin County - clearly feelings on land use run high. And clearly land use issues can be political minefields.

Yet, there are examples from throughout the West of citizens coming together to adopt growth management policies. Over twenty years ago ranchers in Sweet Grass County, Montana created a zoning district to protect agricultural land. More recently a similar group of ranchers in Jefferson County, concerned about the public costs associated with speculative development, formed a zoning district with a minimum lot size of 640 acres - the most restrictive in the country. Boulder, Colorado has long been known for limiting

growth to 1% annually. Santa Fe, New Mexico and Bozeman, Montana implemented impact fees to help cover the infrastructure costs associated with new building. Residents of Missoula, Montana passed a 5 million dollar bond issue to purchase Mount Jumbo and other open space. Boulder voters established a local sales tax to be used for open space purchases. Fifteen sub-county zoning districts have been created in Gallatin County. The Montana State Legislature passed Senate Bill 97 during the 1999 session clarifying contents for county growth policies. Since then there has been a 15 fold increase in the number of county land use planning efforts.

What has triggered these actions? Typically it's fear - fear of loss, or fear of costs: loss of open space, loss of viewsheds, loss of recreational access, loss of existing culture, loss of traditional ways of life, loss of "the cowboy way;" costs for infrastructure and services plus the rising costs for housing. Families who have lived in Santa Fe for centuries have been forced out by the rising housing costs as Santa Fe changes to an upscale urban community; fear in Montana that "The Last Best Place" is becoming "Just Another Place." Eventually the fears reach the point where some within the community decide action is needed.

A new toolbox, "Western By Design: Tools for

Discussing Local Growth," is now available to help them decide what, if any, actions to take. University Extension Specialists from the rapidly growing Rocky Mountain States joined with State Rural Development Partnership Directors, and local government officials to develop the toolbox.

***A group of local and state planners, elected officials, and educators identified the need for such a tool kit at a growth issue identification session in Bozeman several years ago. They listed 9 major issues related to rapid growth ranging from affordable housing to preserving agricultural land.***

A group of local and state planners, elected officials, and educators identified the need for such a tool kit at a growth issue identification session in Bozeman several years ago. They listed 9 major issues related to rapid growth ranging from affordable housing to preserving agricultural land. For each issue there were 10 to 20 concerns and an additional dozen major unanswered questions. Clearly the scope of growth management issues is large, as are the number of solutions that have been attempted to address the concerns. The group said what would be most useful would be collection of the growth management "tools" into a single tool box with a process guide for their use. The group also suggested development of tools that could lead to a civil, non-polarizing consideration of rapid growth issues.

The "Western By Design" toolbox is intended for use by citizen leaders and public officials in rapidly growing rural communities. While its resources are useful for larger communities,

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they have been developed or selected for communities of less than 50,000. Smaller communities often lack professional planners and the funds to hire consulting teams to lead growth management efforts. So the tools and techniques included are ones that can be implemented by citizens committees and part time public officials and planners.

A "4A's" process is suggested: Awareness, Assessment, Alternatives, and Action. Each step is the subject of a separate section, which suggests activities and a selection of tools relevant for that stage of the process.

### **AWARENESS**

In the "awareness phase" some folks start to notice that things are changing. It may be as the old rock song says, "somethin's happenin' here, but it still ain't exactly clear." It may be new homes on the ridge tops, increased traffic, conflicts between farmers and new residents, increased local government service costs, a sense that the way of life is changing, some of these, all of these, or others.

Probably more important than the events themselves is who notices them and becomes concerned enough to feel something ought to be done. The eventual success or failure of any growth management effort is likely to depend on which individuals are involved from the very beginning. Specifically are landowners involved participants from the start? If they aren't, efforts to bring them "on-board" later may prove futile. There are a number of examples in Montana of concerned citizens attempting to press on with growth management plans after failing to secure meaningful landowner participation. All have met with failure. On the other hand, when landowners have been involved from the beginning or initiated the efforts themselves,

successful growth management programs have been implemented. Such was the case with the Big Timber and Boulder examples mentioned above. Decades of landowner participation on the Gallatin County Open Space Task Force helped develop the Gallatin County Open Space Bond Program.

Which landowners participate may also be key. A group of 38 ranchers in the Shields River Valley decided to petition the Park County Commission to create an emergency zoning district - "prevent what's happening in the Paradise Valley from happening here." Such action is possible under Montana law. But it requires endorsement by the owners of the majority of land in the proposed district, not the majority of landowners. A single large landowner killed the Shields River proposal.

The perception that "environmentalists" or "government" are out to infringe on property rights can be the kiss of death for a growth management program from a landowner's perspective. Sponsorship by developers or a builders association may doom a program from citizens' perspectives.

***So determining whom to involve and securing their active participation early on in the awareness phase seems to be vital.***

So determining whom to involve and securing their active participation early on in the awareness phase seems to be vital. Vital too, is exploring what is happening in a safe, open, non-polarizing atmosphere.

A good example of such an approach began in

Lewistown several years ago. Led by the County Extension Agent, a cross section of community leaders, agricultural producers, business people, and local officials met monthly in an educational awareness process to gain a better understanding of community growth. They learned of other communities experiencing growth throughout the west, of its impacts in other communities and the ways other communities had succeeded or failed in dealing with these impacts. They studied property rights and conservation easements, and traffic planning. They critiqued an Aspen Institute model of stages of community growth. They used disposable cameras to record what they did and didn't like in the area.

Out of this learning process emerged a LESA document to evaluate proposed subdivision developments, a growth policy statement for the City of Lewistown, traffic flow and safety studies, and expansion of growth studies to a watershed rather than "donut area" scope. Landowners are still concerned with maintaining property rights, and they are still involved with some 200 community residents in the growth issues discussion.

The Tool Box "Workbench" contains a number of tools to help communities through the Assessment Phase:

- "A Community Action Process" outlines nine steps to successful completion of a community process,
- "Communities Responding to Change" - case studies of four Western Communities,
- "Naming, Blaming, and Claiming" - Western Wire article,
- "Property Rights in Historical Perspective by Jerry L. Anderson,

- "Property Rights, Land Stewardship and the Takings Issue – Oregon State University, EM 8689,
- "Sampler: Western States" Growth Management and Open Space Initiatives,
- Two videos featuring Western community experiences "Growing Pains" and "Managing Community Growth – Montana State University Extension,
- A series of how-to guides for community involvement.

## ASSESSMENT

This section provides tools to help understand both community *perceptions* of "what's happening" and objective data describing what's *actually* happening. The tools described provide progressively detailed steps for gathering opinions, and demographic and economic data of the factors affecting community growth. The purpose is to develop a shared understanding of the community's situation; an understanding sufficient to permit analysis of development alternatives.

Tools include:

- Community surveying, visioning, and strategic planning guides
- Measurements for growth impacts on public expenditures
- Population trend analysis techniques
- A number of community economic description and impact analysis models
- Community goal setting processes

By the end of this phase the community should have a clear understanding of current conditions and trends and what goals area

residents hold for managing future growth.

## ALTERNATIVES

Once a community has agreed on goals for the future, it is faced with the challenge of how best to reach those goals. The Alternatives section describes a variety of growth management tools communities have used to achieve their desired futures.

A "Tools Decision Matrix" lists twelve typical growth management goals and thirty-eight growth management tools. The Matrix indicates which tools are most likely to achieve each goal. The Matrix also suggests the level of difficulty for implementing each tool. The tools are divided into: non-governmental & landowner tools, local government approaches tools, local government administrative tools, local government acquisition tools, and state and federal tools. The Local Government Approaches section of the Matrix is shown on the next page.

Each tool is then defined, suggestions are provided on when to use it, how to implement it, it's advantages, and disadvantages. Illustrative examples are included.

## ACTION

Now comes the hardest part – taking action. As indicated in the introduction, feelings often run high. Land use issues can be political minefields. Some interests may win at the expense of others. Yet action can be taken and has been taken in hundreds of communities across the country.

Are we ready to take the plunge? The guidebook's last section gives 6 scenarios leading to action.

## LOCAL GOVERNMENT APPROACHES DECISION MATRIX

### GROWTH MANAGEMENT GOALS

ALTERNATIVE TOOLS	PRESERVE OPEN SPACE	PROTECT FRAGILE/HABITAT LANDS	PRESERVE QUALITY OF LIFE	PRESERVE FARMLAND	MINIMIZE SPRAWL	PROTECT PUBLIC ACCESS	EFFICIENT PROVISION OF SERVICE	STREAMLINE APPROVAL PROCESS	PROTECT PRIVATE PROPERTY RIGHTS	MINIMIZE ECONOMIC COSTS TO RESIDENTS	HOLD COST OF LIVING IMPACTS	AFFORDABLE HOUSING	LEVEL OF DIFFICULTY
	PLANNED UNIT DEVELOPMENT												
CLUSTER DEVELOPMENT													2
TAX CREDITS													2
NEW COMMUNITIES													5

MOST APPLICABLE   
 SOMEWHAT APPLICABLE   
 LEAST APPLICABLE   
 5 MOST DIFFICULT ..... 1 LEAST DIFFICULT

Each uses a number of the tools provided to reach an implementation phase. Conflict management references are listed. Finally, the reader is admonished to "Be persistent. There will inevitably be 'speed bumps' along the way. Don't get thrown off course by them."

WESTERN BY DESIGN: Tools for Discussing Local Growth, is available from the Western Rural Development Center, USU Publications, 8960 Old Main Hill, Logan, UT 8432. It includes: a plastic tool box, a 120 page guide book, a wall chart for community meetings, 37 resources including 2 videos, 27 links to other programs, and evaluations of 39 land-use management techniques. The cost is \$95.

# TRENDS IN MONTANA LOCAL GOVERNMENT

Judy Mathre, Associate Director of Local Government Center

During 2000-01 the Local Government Center gathered information from 127 municipal governments, 54 county governments and 2 city/county consolidated governments. Averages were then calculated by classification for a number of different characteristics describing local government in Montana. Trends over the five year period (fiscal years 1997-2001) were measured by averaging data according to city or county class. Classification for municipalities is measured by population, but for counties it is measured by county taxable value.

## MUNICIPAL GOVERNMENT

**Table 1**  
**Municipal Government Classification and Population**

CLASS	POPULATION	NUMBER	AVERAGE POPULATION 2000	%CHANGE POP. 1990-2000
1	more than 10,000	7	40,103	12.3
2	5,000-10,000	3	7,050	-0.7
3	1,000-5,000	39	2,589	6.1
TOWN	less than 1,000	78	490	2.2
AVERAGE			3,473	3.9

*Comment:* Average city populations increased statewide between 1990-2000 in all municipal classes except for class 2 cities. This contrasts with the previous decade (1980-90) where populations declined statewide except in class 1 cities.

**Table 2**  
**Average Municipal Taxable Valuation**

CLASS	MILL VALUE 2001	% CHANGE 1997-2001
1	51,941.01	-3.0
2	6,656.78	-10.6
3	4,576.70	-10.7
TOWN	478.91	-10.4
AVERAGE	4,719.71	-10.1

*Comment:* During the five year period 1997-2001 property tax valuations decreased in all classes of cities. Considering the fact that inflation increased an average of about 2.3% per year during this time, the decline

in taxable valuation at 2.0% per year caused municipalities to increase mill levies to keep up with the rate of inflation. The loss in taxable value resulted primarily from changes in tax laws enacted by the Montana Legislature. The 1997 Legislature passed Senate Bill 195 which mitigated the 1996 reappraisal values by phasing in those values at the rate of 2% per year and by reducing the tax rate by .022 points per year. The SB 195 phase-in values were used for tax years 1997 and 1998. The 1999 Legislature once again addressed the impacts of the 1997 reappraisal with Senate Bill 184. SB 184 phases-in the changes in assessed values of classes 3, 4 and 10 property over a four year period beginning in tax year 1999. The bill also reduced the taxable valuation rates for property classes 3, 4, and 10.

**Table 3**  
**Average Municipal Mill Levies**

CLASS	GENERAL FUND MILLS 2001	% CHANGE GENERAL FUND MILLS 1997-2001	TOTAL MILLS LEVIED 2001	% CHANGE TOTAL MILLS 1997-2001
1	89.10	15.4	125.54	15.1
2	124.82	16.8	149.18	17.2
3	100.56	23.8	122.96	21.9
TOWN	93.36	27.4	107.44	22.9
AVERAGE	96.12	25.4	114.30	22.0

*Comment:* The decline of taxable value from 1997-2001 resulted in increases in general fund mill levies of an average of 5.1% per year and increases in total mill levies averaging 4.4% per year.

**Table 4**  
**Average Municipal General Fund Appropriations and Per Capita Appropriations**

CLASS	GENERAL FUND APPROPRIATION 2001	% CHANGE 1997-2001	TOTAL * APPROPRIATION 2001	% CHANGE 1997-2001	TOTAL FUND PER CAP 2001
1	\$13,347,230	19.8	\$15,920,075	21.2	\$421.92
2	2,406,916	15.5	3,051,006	14.1	428.47
3	883,992	23.8	1,044,578	26.2	392.56
TOWN	174,410	41.3	191,147	39.4	349.28
AVERAGE	1,195,224	33.9	1,416,678	33.5	368.91

\* Does not include enterprise fund activities.

*Comment:* During the five year period 1997-2001, municipal general fund appropriations grew at about 6.8% per year on average. The average annual decline in mill value during the same period of time was

2.0%, while the average change in general fund appropriations was 6.7%. Considering that the average change in total tax fund appropriations was 6.7% per year for the five year period, and the average change in total mills levied was 4.4%, one can conclude that the increases must have come from non-tax revenues such as gambling revenues distributed by the state to jurisdictions of origin.

Per capita appropriations for all funds averaged \$368.91, and ranged from \$349.28 for towns to \$428.47 for Class 2 cities. This statewide average increased from the FY 97 average of \$291.79. Per capita calculations are derived by dividing the total tax supported funds appropriated for each municipality by the population of that city or town. Census figures from the 2000 census were used to calculate per capita appropriations for FY 2001. Estimated census figures were used to determine the per capita appropriations for FY 1997. Estimated census figures for 1997 more often than not were higher than the 2000 census figures for municipalities, perhaps causing the per capita calculations to be artificially low for FY 1997.

**Table 5  
Average Municipal Fund Balances**

CLASS	GENERAL FUND BALANCE 2001	% CHANGE 1997-2001
1	\$3,598,727	36.2
2	521,328	70.4
3	323,730	47.4
TOWN	75,742	408.0
AVERAGE	365,735	260.0

**Comment:** General fund balances increased over the five year period for all cities suggesting that municipalities are, in general, maintaining their fiscal stability. The average increase per year of 257.8% was much greater than that for the five year period 1996-2000 of 65.5%. In FY 2001, 27 municipalities had general fund balances less than 25% of their appropriation while 96 had fund balances greater than 25% of their general fund appropriation (does not include the consolidated governments or the four towns with unknown fund balances.)

**Table 6  
Average Municipal Full Time Employees**

CLASS	AVERAGE 1997 FTE	AVERAGE 2001 FTE
1	320	340
2	77	69
3	19	20
TOWN	3	4
AVERAGE	27	29

**Comment:** There was no significant change in the average number of municipal full-time employees from FY 1997 to FY 2001.

## COUNTY GOVERNMENT

**Table 7**  
**County Classification and Population**

CLASS	TAXABLE VALUATION	# OF COUNTIES	AVERAGE POPULATION 2000	% CHANGE POP. 1990-2000
1	Over \$50 million	12	50,730	12.1
2	\$30-50 million	10	11,660	8.4
3	\$20-30 million	11	9,667	4.7
4	\$15-20 million	4	5,594	3.3
5	\$10-15 million	8	3,814	5.4
6 & 7	Under 10 million	11	1,601	-4.3
<b>AVERAGE</b>			16,111	5.2

*Comment:* Population gains occurred in all classes except for the 11 counties of classes 6 & 7. The average rate of growth of 5.2% from 1990-2000 contrasts with an average county population decline of - 4.3% from 1980 - 90.

**Table 8**  
**Average County Taxable Valuation**

CLASS	MILL VALUE 2001	% CHANGE MILL VALUE 1997-2001
1	\$85,122.30	- 9.6
2	26,754.37	- 6.5
3	17,048.09	-15.2
4	12,684.04	-10.6
5	8,569.53	- 6.7
6 & 7	5,000.81	-16.5
<b>AVERAGE</b>	29,479.32	-11.2

*Comment:* Taxable value decreased in all county classes during the 1997-2001 time period. Over the five year period, the average annual decrease in mill value was -2.2%, while the rate of increase in inflation was 2.3%, so that taxable value did not keep pace with inflation. See comment under Table 2, Average Municipal Taxable Value.

**Table 9**  
**Average County Mills Levied**

<b>CLASS</b>	<b>GENERAL FUND MILLS LEVIED 2001</b>	<b>% CHANGE GEN. FUND MILLS 1997-2001</b>	<b>TOTAL MILLS LEVIED 2001</b>	<b>% CHANGE TOTAL MILLS 1997-2001</b>
<b>1</b>	27.49	15.8	100.03	20.9
<b>2</b>	22.82	24.5	86.55	17.2
<b>3</b>	32.93	16.0	117.36	19.4
<b>4</b>	28.17	6.7	101.69	10.1
<b>5</b>	47.01	30.1	131.65	21.2
<b>6 &amp; 7</b>	47.64	5.4	129.59	22.8
<b>AVERAGE</b>	34.32	16.7	111.47	19.6

*Comment:* Increases in total mills levied ranged from 10.1% in Class 4 counties to 22.8% in class 5 counties over the five year period. The average annual increase in total mills levied for all counties was 3.9 % each year.

**Table 10**  
**Average County Total Appropriation (Tax Supported Funds)**

<b>CLASS</b>	<b>TOTAL FUNDS* 2001</b>	<b>% CHANGE ALL FUNDS* 1997-2001</b>	<b>PER CAPITA EXPENDITURE ALL FUNDS* 2001</b>
<b>1</b>	\$20,532,462	21.1	\$627.10
<b>2</b>	6,043,885	28.6	592.66
<b>3</b>	7,074,183	28.5	881.34
<b>4</b>	3,475,713	26.4	667.01
<b>5</b>	2,565,216	1.4	811.54
<b>6 &amp; 7</b>	1,699,362	13.6	1,097.50
<b>AVERAGE</b>	7,817,718	20.0	793.21

*Comment:* Tax supported fund totals increased in all classes with a range of 1.4% in Class 5 counties to 28.6% in Class 3 counties. The average increase for all counties over five years was 20% or 4% per year. Counties do not have as much gambling revenue as cities and therefore rely more heavily on the

property tax to support their operating budgets.

Expenditures per capita were lowest in Class 2 counties, at \$592.66, and highest in Class 6 & 7 counties at \$1,097.50. The average for all counties was \$793.21. This increased from the FY 97 average of \$695.29.

**\*FUNDS INCLUDED IN COUNTY APPROPRIATION**

- |                        |                                  |                                       |
|------------------------|----------------------------------|---------------------------------------|
| 1. General Fund        | 13. Planning Fund                | 25. Soil Conservation                 |
| 2. Public Safety Fund  | 14. Hospital Fund                | 26. Cemetery                          |
| 3. Road Fund           | 15. Bond/Interest Fund           | 27. Emergency Disaster                |
| 4. Poor Fund           | 16. Senior Citizen Fund          | 28. Rural Fire                        |
| 5. District Court Fund | 17. Comprehensive Insurance Fund | 29. Economic Development              |
| 6. Bridge Fund         | 18. Health Insurance Fund        | 30. Developmentally Disabled          |
| 7. Weed Fund           | 19. Mental Health Fund           | 31. Port Authority                    |
| 8. Fair Fund           | 20. PERS                         | 32. Park Fund                         |
| 9. Library Fund        | 21. Workers Compensation Fund    | 33. Miscellaneous tax supported funds |
| 10. Extension Fund     | 22. Unemployment Fund            |                                       |
| 11. Airport Fund       | 23. Ambulance Fund               |                                       |
| 12. Health Fund        | 24. Museum Fund                  |                                       |

**Table 11  
County Full Time Employees**

<b>CLASS</b>	<b>FULL TIME EMPLOYEES 1997</b>	<b>FULL TIME EMPLOYEES 2001</b>
<b>1</b>	257	297
<b>2</b>	84	87
<b>3</b>	84	94
<b>4</b>	52	43
<b>5</b>	53	45
<b>6 &amp; 7</b>	27	29
<b>AVERAGE</b>	103	113

**Comment:** The average number of full-time employees increased from FY 97 to FY 2001 by 10. We note the apparent decrease of full-time employees in Class 4 & 5 counties which may be attributable to variations in calculating full-time equivalents.

## MOST SIGNIFICANT CHANGES IN COUNTY POPULATION AND TAXABLE VALUE

### Greatest population gain 1990 - 2000:

1. Ravalli County	44.2%
2. Gallatin County	34.4%
3. Broadwater County	32.2%
4. Jefferson County	26.6%
5. Lake County	26.0%
6. Flathead County	25.8%
7. Stillwater County	25.4%
8. Missoula County	21.8%
9. Carbon County	18.2%
10. Sanders County	18.0%

### Greatest loss of population:

1. Garfield County	-19.5%
2. Prairie County	-13.3%
3. Sheridan County	-13.3%
4. McCone County	-13.1%
5. Powder River County	-11.1%
6. Daniels County	-11.0%
7. Phillips County	-10.9%
8. Rosebud County	-10.7%
9. Wibaux County	-10.3%
10. Richland County	-9.8%

### Change in Taxable Value FY 1997 - 2001

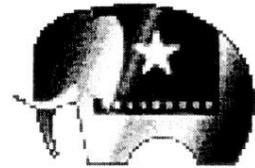
### Greatest increase in taxable value:

1. Carbon County	13.6%
2. Stillwater County	12.4%
3. Gallatin County	9.6%
4. Sweetgrass County	8.9%
5. Ravalli County	8.7%
6. Wheatland County	8.2%
7. Golden Valley County	2.1%
8. Madison County	1.9%
9. Judith Basin County	0.1%

### Greatest loss of taxable value:

1. Rosebud County	-43.3%
2. Phillips County	-30.6%
3. Wibaux County	-28.9%
4. Big Horn County	-27.6%
5. Sheridan County	-26.7%
6. Powder River County	-25.5%
7. Liberty County	-25.4%
8. Sanders County	-23.8%
9. McCone County	-22.0%
10. Prairie County	-22.0%

# CALENDAR 2002

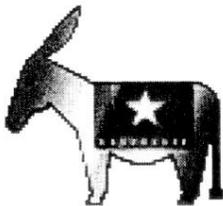


## JANUARY

- 1: New Year's Day
- 7: Newly elected municipal officials take office.
- 21: Martin Luther King, Jr's Birthday observed.
- 21: First day candidates may file for election.
- 26: First city election held, Livingston (1889).

## MARCH

- 1 - 5: NACo Legislative Conference - Washington, DC
- 7: Powder River County organized (1919)
- 8: Golden Valley County organized (1920)
- 17: St. Patrick's Day
- 21: Last day candidates may file for election.



## MAY

- 5-10: MMCT&FOA Clerk/Treasurer's Institute
- 8-10: Municipal Official's Workshop, Billings
- 9-10: MMIA City/Town Attorney's Workshop, Billings
- 20: Last day write-in candidates may file a declaration of intent to run for office.
- 22-24: NACo Western Interstate Region Conference (WIR), Billings
- 27: Memorial Day
- 31: Second half of taxes due county

## FEBRUARY

- 2: Groundhog Day
- 11-15: MACo Midwinter Meeting, Kalispell
- 12: Lincoln's Birthday
- 18: Presidents' Day (Observed)
- 22: Washington's Birthday

## APRIL

- 5: Four saloons burned as fire fighters passed jug, Junction City (1883)
- 13: State reform school opened, Miles City (1894)
- 22: Earth Day
- 26: Man arrested for expressing "rebel" sympathy, Virginia City (1865)

## JUNE

- 3: Richland County organized (1914)
- 4: Primary Election
- 14: Flag Day
- 27-29: National League of Cities Leadership Training Institute, Big Sky.