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Public Funding Mechanisms for Open Space Protection: An Introduction for Wyoming

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As the population of Wyoming and the West continues to grow, the preservation of open space becomes increasingly important. Open space on public and private land provides landscapes, lifestyles, and wildlife habitat that are highly valued in Wyoming. There are several recent indications of the public's view on open space:

- A survey reported that 73% of those questioned favor financial incentives to encourage farmers and ranchers to maintain agricultural land, open space, and wildlife habitat;¹
- Wyoming Senator Craig Thomas traveled the state in 2001 asking people about their vision for Wyoming in the next 20 years and found that high priority land management issues include protecting valuable open space and wildlife habitat; and
- The College of Agriculture at the University of Wyoming conducted an exercise on visualizing Wyoming's rural landscapes in the next 10 years and concluded that people want agriculture to be sustainable (economically and environmentally) with the maintenance of open space.

Meanwhile, a study released in 2002 by the American Farmland Trust identifies 2.6 million acres of high-quality ranchland in Wyoming that are at risk for low-density residential development in the next 20 years.²

There are many options for preserving open space such as the purchase of development rights or conservation easements where landowners donate or sell their development rights to land trusts or other entities, as well as programs that enhance the sustainability of agriculture, thereby preserving open space. Many approaches require private or public funding or a combination of the two. Private funds from land trusts, other nonprofit organizations, and individuals play a critical role in preserving open space, often in combination with public funding efforts. This bulletin focuses on mechanisms that have been used in Wyoming and elsewhere to generate public funds for protecting open space. Some of these funding mechanisms are not currently available in Wyoming but are presented here as examples of the diverse approaches used in other states.

¹ Wyoming Department of Agriculture Public Opinion Survey 2002. Survey Research Center, University of Wyoming, Laramie.

²Strategic Ranchland in the Rocky Mountain West. 2002. Rocky Mountain Regional Office, American Farmland Trust, Fort Collins, CO.

Public Funding for Open Space at the State and Local Levels

American voters have shown great support for land conservation initiatives, and successful ballot measures generate billions of dollars each year for open space programs. Funding for open space programs at both state and local levels has been accomplished through a variety of mechanisms, and state legislatures are increasingly granting municipalities and counties the authority to implement new and creative funding programs. As shown by the examples below, the most common methods at the state level are general allocations, sales taxes, and bonds, while local governments commonly use bonds, sales taxes, and property taxes. Government agencies may directly use these funds for open space programs or may distribute grants to local and national land trusts and similar organizations.

General Allocations

General allocations from government funds provide important contributions to open space protection. For example, the Montana legislature created the Montana Agricultural Heritage Program in 1999 with a \$1 million general allocation. The program received funding in 1999 and 2000 and worked with Montana land trusts, the Department of Fish, Wildlife, and Parks, and the U.S. Fish and Wildlife Service to finance conservation easements on ranches.

Lotteries

States are also beginning to use proceeds from lotteries to help fund open space protection. Great Outdoors Colorado (GOCO), a constitutionally chartered agency created by Colorado voters in 1992, invests state lottery funds in open space protection and outdoor recreation. GOCO receives \$35 to 40 million annually from the Colorado lottery and has spent or distributed hundreds of millions of dollars in grants for open space protection in Colorado. Other lottery funds are awarded to state parks, recreation organizations, and wildlife agencies as well as to local governments for open space preservation and acquisition.

Taxes and Bonding Initiatives

Many localities use various forms of taxes to target funds for open space protection programs. For example, Teton County in Wyoming has used a portion of a 1% *specific-purpose tax* increase for open space and parks, and voters in both Helena and Missoula, Montana, approved *property tax* increases for open space programs. Voters in Santa Fe, New Mexico, approved a *retail tax* increase that will provide up to \$1.2 million annually for open space acquisition and trail improvements.

Real-estate transfer taxes levied on real-estate transactions are typically a small percentage of the real-estate purchase price and are usually paid by the buyer. These funds can be designated for specific programs. In Vermont, for example, funds from a real-estate transfer tax authorized by the state legislature have been used to protect natural areas and agricultural lands through the purchase of development rights on more than 60,000 acres so far. A real-estate transfer tax has been proposed in Wyoming but has not been approved by the legislature.

States and communities are also increasingly using *bonds* to borrow funds for open space programs and spreading repayment over an extended period of time. Helena and Missoula, Montana, for example, have raised \$5 million each in bond issues for open space programs, and a constitutional amendment in New Mexico now permits counties to issue bonds for open space acquisition.

Like many states, Wyoming has a *differential assessment law*, also known as agricultural use valuation. Under this law, local governments assess property taxes for agricultural land at its agricultural production value rather than its full market value, thus helping to keep the land in agriculture. *Sale leasebacks* may also be a viable option for landowners under Wyoming's differential tax structure. When the owner of an operating ranch wishes to sell the land yet retain operating rights, buyers may purchase the land at its appreciated value and then lease the operating rights to the original landowner at the ranch's agricultural value. Although the ranch retains its agricultural status for Wyoming property tax purposes, the original landowner should be aware of capital gains tax consequences.

States may offer *state income or property tax* benefits for landowners who donate conservation easements. For example, Colorado offers a state income tax credit of up to \$260,000 for landowners who donate easements, and because the tax credit has little value to owners of ranches or farms that generate little or no taxable income, the landowner has the option of selling the credit to any interested taxpayer.

Access and Recreational Rights

The access and recreational rights to private lands can be purchased or leased by another party. The Lands Administration Branch of the Wyoming Game and Fish Commission administers the Game and Fish Easement Program primarily to ensure public access but also to use hunting and fishing license fees to purchase conservation easements to protect habitat. The Montana Department of Fish, Wildlife, and Parks' Habitat Montana Program generates about \$3 million annually from several sources, including a portion of hunting license fees and auctions of licenses for hunting moose, bighorn sheep, and birds, and uses these funds to purchase conservation easements from private landowners on a large scale.

Federal Programs

Land and Water Conservation Fund (LWCF)

This fund is used to acquire land for public recreation through programs administered by both state and federal entities. Over the years, the fund has provided more than \$9 billion for federal land acquisition and grants to state and local governments.

The federal side of the fund provides for land purchases and associated management costs for conservation, recreation, and wildlife protection through the Forest Service, National Park Service, Fish and Wildlife Service, and Bureau of Land Management. The many federal projects under the LWCF in Wyoming include the Bighorn Canyon National Recreation Area and the Wasatch National Forest.

The state side of the fund provides matching grants for developing, planning, and acquiring land and water for recreation opportunities. Each state sets its

own priorities and selection criteria. Wyoming has a number of projects partially financed by LWCF matching funds including Washington Park in Buffalo, Optimist Park in Laramie, and the Pine Creek Ski Area in Lincoln County.

Farmland Protection Program

One of the most important aspects of the 2002 Farm Bill is the reauthorization of the Farmland Protection Program through 2007 with a \$985 million increase in funding and provisions for removing acreage limitations and expanding eligible land. It offers easement payments to help prevent farmland conversion, and recent changes make nonprofit organizations like land trusts as well as government agencies eligible to participate in the program and hold easements. The program supplies 50 percent of the appraised value of an easement. Easements are to be granted for not less than 30 years, with perpetual easements having the highest priority.

The U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) offers financial and technical assistance to help farmers and ranchers voluntarily address water management, erosion control, and threats to water, soil, and related natural resources including grazing, wildlife, and wetland areas. The following describes just a few of the programs most relevant to Wyoming.

- The Conservation Reserve Program (CRP) has been very popular in Wyoming and is expanded and reauthorized through 2007 by the 2002 Farm Bill. Originally designed to conserve erodible cropland, it has evolved into the government's single largest environmental improvement program on private lands.
- The Wetlands Reserve Program (WRP) is also reauthorized through 2007 and provides technical and financial support for landowners desiring to protect and restore wetlands and associated uplands on their property. The WRP offers permanent and short-term easements with varying financial and technical incentives. Approximately 4,500 acres have been protected under the WRP in Wyoming.

- The Grasslands Reserve Program, another program beginning in 2003, is a small project aimed at retiring grassland. It permits limited haying and grazing and offers several different contract options for landowners, including permanent easements.

Intermodal Surface Transportation Efficiency Act of 1991 and the Transportation Equity Act of 1998

These acts provide funding for transit and highway programs including “transportation enhancements” that improve the environmental and aesthetic quality of transportation routes. The acts also fund easement acquisitions along transportation routes that improve and protect historical, aesthetic, or environmentally important areas. The program covers up to 80 percent of costs, and private conservation organizations and public entities may apply for funding.

Federal taxes

A variety of federal tax mechanisms are available that encourage landowners to protect open space.

Because taxation and estate planning are complex, evolving, and sensitive issues, landowners should consult their tax advisers and/or attorneys for more information.

Please note that the information in this report is subject to interpretation as rules governing new laws are put into effect and that public funding mechanisms for open space are constantly changing. This report is not intended as legal advice; please consult your tax and/or estate attorney for specific legal assistance.

Additional publications in this series include:

- B-1121 *Population Change in Wyoming, 1990-2000*
- B-1120 *Second Home Growth in Wyoming 1990-2000*
- B-1132 *Conservation Easements: An Introductory Review for Wyoming.*
- B-1133 *Cost of Community Services for Rural Residential Development in Wyoming.*

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