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MEMORANDUM FOR MISSOULA INVEST HEALTH TEAM

From: **Paul Weech**

Subject: **Background Research on Land Banking in Montana**

Introduction

In its housing plan, *A Place to Call Home: Meeting Missoula's Housing Needs*, the City of Missoula's Office of Housing & Community Development recommends that the City "adopt a long-term strategy for land acquisition of high-opportunity sites, particularly those with *Our Missoula Development Guide* compatibility, into a formal land banking program for future affordable housing development and City donation programs."

This document is the second one providing background information to support the Missoula Invest Health team's interest in learning more about land banking practices and to inform the City's consideration of how to "formalize" a land banking program. The first memorandum dated August 18, 2020 was prepared for the Invest Health team in the City of Spokane, Washington and provided some history on land banking and a survey of land banking practices in the U.S. This paper follows on that work and includes additional research focused on land banking specifically in the State of Montana, delineates potential funding sources for land bank activities, and provides some commentary on co-locating land banking activities in redevelopment authorities.

Land Banking In Montana

Local press in May of 2020 reports that the City of Missoula's land banking strategy is already bearing fruit.¹ The article specifically refers to a Montana Rail Link (MRL) parcel of land acquired in 2016. The City recently received a grant from the Environmental Protection Agency's brownfields program that will facilitate the cleanup of the property in advance of a mixed-use development on the site. In addition to the MRL parcel in Midtown, the City currently owns several other properties around Missoula, including a donated property with the old library block and the Sleepy Inn motel on West Broadway. In addition, Missoula County has donated 4 acres off Mullan Road for affordable housing development.

It is not clear from the research that the City is managing these properties through a formal land bank structure, nor that the City needs more a formal structure or entity to manage the redevelopment of these properties or participate in future property acquisitions. In other parts of the country, state legislatures have passed enabling legislation allowing the creation of land banks and endowing these entities with certain powers to facilitate property acquisitions and dispositions and to support the operations of the land banks. In response to the new authorities promulgated around the country,

¹ <https://www.kpax.com/news/missoula-county/city-strategy-to-bank-land-for-redevelopment-future-housing-showing-results>

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more than 200 cities and counties have created quasi-governmental land banks with separate governance (publicly appointed) and some budgetary flexibilities.

The land banking model gained prominence in the U.S. as a tool in older industrial cities for managing high levels of vacancies and blight. The typical land bank is designed for the acquisition and repositioning of distressed properties for new development. For the most part, a land bank's role is to return properties to productive use and to ensure that it receives fair market value for the properties it sells. And, at the same time, a land bank gives the public sector an opportunity to shape development activities as it makes choices around which parcels to sell, what improvements it may make to a property, and the structure of the sales process. Certainly, a land bank can choose to promote affordable housing through its sale processes (e.g. preferences for purchasers who commit to long-term affordability) and pricing strategies (e.g. concessionary pricing for affordable housing uses), partnerships with community land trusts to lock in long-term affordability in the ownership of the land, or the selection of development partners with affordable housing missions (e.g. non-profit purchasers). It is important to note, however, that these practices can often imply lessened economic returns and potentially conflict with a statutory guidance to maximize sales values or a business model that relies on sales proceeds to cover operating costs.

According to the Center for Community Progress – the leading organization in the U.S. with expertise on land banks – the State of Montana had not enacted enabling legislation for the creation of land banks in the state. (I was also unable to identify enabling legislation through additional research).

The State of Montana has enacted state land banking authorities to manage Montana trust lands administered by the Department of Natural Resources and Conservation (DNRC).² The State already had the authority to sell trust lands. Evidently, the impulse behind the creation of the Land Bank was to allow the purchase of additional trust lands with the proceeds from sales. The authorizing statute requires that newly acquired lands must generate more revenues than the sold lands (typically income from grazing, agriculture, and timber rights, but also cabin/home sites and commercial leases). The Land Bank's strategy includes selling isolated lands and buying properties contiguous to other state lands in order to consolidate its positions. A July 2020 Land Bank report shows that, over the 2006-2020 period, the DNRC sold 1,033 acres of land for \$11,722,500 in proceeds in Missoula County and acquired a parcel of 1,172 acres around Chamberlin Creek for \$1,336,000 (and another 13,411 acre parcel around Chamberlin Creek that is in both Missoula and Powell Counties).³

The research identified historical references to “land banks” in Missoula and Helena in the early decades of the 20th Century. The literature suggests that these were federally supported farm lending programs and the programs were ultimately unsuccessful (if not corrupted). Otherwise, the research did not find any examples outside of the DNRC of formal land banking activity in Montana.

The aforementioned Center for Community Progress did come to Montana as part of one its initiatives called the Technical Assistance Scholarship Program. “Community Progress worked with the City-County

² <http://dnrc.mt.gov/divisions/trust/real-estate/land-banking#:~:text=With%20the%20Land%20Banking%20Program,income%20than%20the%20lands%20sold>

³ http://dnrc.mt.gov/202007_Land_Banking_Program_Report.pdf

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of Butte-Silver Bow...to conduct a general assessment of systems and practices in order to build a more holistic approach to vacancy and abandonment.⁴ The program focused on the Uptown Neighborhood in Butte and brought in two leading community development specialists who made recommendations for changes in policy and practice to address the City of Butte's and Butte-Silver Bow County's approaches to vacancy and blight. The report's recommendations did not include a land bank to address the challenges, but it did recommend changes to state property tax foreclosure laws to provide public entities the ability to acquire properties with clearer title and to allow public entities to use receivership powers to acquire properties through public nuisance enforcement.⁵

Missoula has experience with the community land trust model (CLT) as a tool to advance its affordable housing needs. And, the State of Montana has numerous other examples of community land trusts – both for housing and for conserving land for nature, public access, and preventing development (See Appendix 2). Community land trusts differ from land banks in that they are typically organized as a nonprofit and are structured for the long-term ownership and stewardship of the land. A CLT seeks to preserve long-term affordability of the housing built on the land by charging a modest ground lease and limiting the sales price that the owner of the building on the land can get upon any transfer of title.⁶⁷

Missoula could conceivably look to create a hybrid model where the land bank is empowered to acquire, improve, and dispose of properties and, at the same time, make strategic decisions about preserving the long-term affordability of certain properties based on their location or other important attributes.

Property Sources for Land Banks

Absent a robust land banking network in Montana, the research looked at other land management and land stewardship organizations across the country and at the community land trust organizations extant in the State to inventory potential sources of donations, grants, and revenues available to finance land banking that advances City of Missoula's affordable housing goals.

Fundamental to land banking's *raison d'être* is the acquisition of land/properties/real estate that it has a reasonable expectation it can redevelop/reposition/resell to the benefit of its assigned public purposes. And, its economic sustainability model is predicated on its ability to sell lands at a value greater than its acquisition costs (and its holding costs over the time between acquisition and sale). The sources of land where the land banking models originated were principally based on acquiring properties that came to the city as a result of a tax foreclosure. In many places, most notably Detroit, the public sector has also employed public nuisance laws to force owners of vacant or under-maintained properties to either bring the property into code compliance or face foreclosure. Using these powers allowed local governments to force action on those stagnant properties that were blighting communities.

Using public funds to acquire properties for land banks is an obvious approach, yet there are challenges well beyond the budgetary constraints on local governments. In stronger markets, and in places like

⁴ <https://co.silverbow.mt.us/DocumentCenter/View/3764/Center-for-Community-Progress-Final-Report-on-Address-Vacancy-and-Abandonment-in-Uptown-Butte>

⁵ *Ibid.*, p. 39-40.

⁶ https://shelterforce.org/2014/10/02/answer_land_banks_land_trusts/

⁷ https://www.burlingtonassociates.com/files/8513/4463/0249/1-Land_Banking_vs._Land_Trusting.pdf

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Missoula with limited developable land, there are fewer opportunities for the public sector to acquire properties. In order to compete in real estate markets for developable land, the public sector will often have to compete with private capital that is advantaged by its ability to get to closing quickly. To compete the City of Missoula will need access to a fund with readily available capital and have a purchase process that can also get to closing in a reasonable amount of time. In this context, land banking that includes tax foreclosures and blighted properties may still make sense as a source of real estate for affordable housing development.

The City's housing plan calls for a community land trust acquisition program.⁸ "Once created, a formal land trust program for existing housing could also serve as a mechanism for community members to donate homes to the land trust. Another option would be to support the creation of a social investment loan pool that would leverage private philanthropic contributions to help support land trust acquisitions." Officials and community leaders will consider the policy framework and decision-making structures that will guide whether properties end up moving through a mechanism for redevelopment into affordable housing like a land bank or into a community land trust for the preservation of permanent affordability.

Other possible sources of properties for land banking and future development might include surplus City-owned properties (e.g. underutilized publicly-owned real estate like vacant schools or office space) and land donations from individuals or companies that are committed to a more expansive and inclusive vision of the City.

Funding Sources for Land Banks

The research on national models for land banking revenues – relying on previous work done by the Center for Community Progress – suggests that it is a myth that land banking is sustainable through acquiring real estate and selling real estate at a higher value. The Center argues that successful land banking strategies require some commitment of public subsidies. Sources of subsidies over time provided to land banks have included: the federal Neighborhood Stabilization Program (NSP) and Hardest Hit Funds that were appropriated during the Great Recession; real estate transfer taxes; and a form of tax increment financing where land banks share in property tax increases for the five years following a property sale. A land bank in Georgia issued a bond that was secured by this latter form of revenues.

The DNRC land bank's income relies on the contract income from timber, agriculture, and grazing on trust lands, some commercial leases, and the proceeds from the sale of land.

A survey of the financials for community land trusts in Montana indicates that other possible revenue sources might include: public and philanthropic program grants; cash contributions, fund raising, and fund-raising events; land donations; program fees; and the use of volunteers. At least one community land trust indicated that it benefits from the Montana Endowment Tax Credit as an incentive for giving.

⁸ https://www.ci.missoula.mt.us/DocumentCenter/View/50833/A-Place-to-Call-Home_Meeting-Missoula-Housing-Needs_Adopted-PDF, p. 53.

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Land Banks and Redevelopment Authorities

A member of the Missoula Invest Health team asked for examples of from across the country where a land bank had been embedded within a redevelopment authority. There are evidently numerous examples. Frank Alexander, author of the definitive report on land banking⁹, recommended looking at St. Louis and Baton Rouge. However, he cautions that it “is not an approach that I recommend in light of the different missions and visions of the different entities. I have done it that way on rare occasion, such as when first creating a land bank had it co-located with a development authority and shared staff and overhead during the start-up period.”¹⁰

Another contact, land bank consultant Winnie Branton, recommended the Westmoreland County Land Bank in Pennsylvania -- “the most successful land bank to date”— which is administered by the County Redevelopment Authority.¹¹ In an article on land banking, Branton echoes Alexander’s comments on shared services models between redevelopment authorities and land banks, albeit more favorably:

Collaboration and shared staffing between land banks and other public entities is encouraged under the [Pennsylvania] enabling legislation. The North East Pennsylvania Land Bank’s executive director serves the same role for the City of Pittston’s Redevelopment Authority. The Dauphin County Land Bank is staffed and maintained through the Dauphin County Office of Community & Economic Development. The City of Harrisburg’s ordinance provides that “the Land Bank may arrange for any such staff in conjunction with the Redevelopment Authority of the City of Harrisburg or other partnering public entities.” Shared staffing and services allows land banks to build on the capacity and expertise of other public entities, thereby minimizing costs and maximizing efficiencies.¹²

If Missoula wants to consider formalizing its land banking activities in the context of its redevelopment authority, it’s worth considering some additional commentary from the Housing Alliance of Pennsylvania and the Center for Community Progress. The Housing Alliance of Pennsylvania published some answers to frequently asked questions as part of its advocacy for state enabling legislation for land banks. In response to the question “Why not use existing entities, like redevelopment authorities (RDAs) or local governments?” They wrote:

RDAs are generally focused on specific areas or projects and do not take a comprehensive approach to bolstering real estate markets. Many local governments do land bank properties, either intentionally through strategic acquisitions or reluctantly

⁹ Frank Alexander, Center for Community Progress, *Land Banks and Land Banking – 2nd Edition – 2015* <https://www.communityprogress.net/download-land-banks-and-land-banking--2nd-edition--2015--pages-553.php>

¹⁰ Email from Frank Alexander dated September 9, 2020.

¹¹ Quote is from land banking consultant, Winnie Branton. Link to Westmoreland County Land Bank is here: <https://www.co.westmoreland.pa.us/1977/Land-Bank>

¹²

<https://static1.squarespace.com/static/5342bfabe4b076ea499631f5/t/558850f7e4b0ca6f99b87d2d/1434997034638/Pennsylvania+Land+Banks+Article+ELF+2015.pdf>

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via the tax claim bureau repositories, but few have the staff or financial resources to effectively maintain, manage, and market these properties. As a result, local governments can become exactly what they are trying to fight – large scale owners of vacant and blighted properties. Land banks, on the other hand, have the technical and financial capacity, and the focus, to systematically inventory, maintain, and sell properties in a way that strengthens local markets.

Where capacity already exists at the local level, land banks can contract with local governments or RDAs to administer land banking functions and utilize the new [legislated] tools provided....Land banking functions, though, would be a separate line of business. For example, land banks may not use eminent domain to acquire property. Therefore, any RDA-administered land banks would need to keep land banking work separate from activities involving condemnations.

On its website, the Center for Community Progress provides the public with the following answer to the question: "How is a land bank different from a redevelopment authority?"

In a few states, legislation has been passed that grants redevelopment authorities many of the same powers as land banks. In Louisiana, for example, some redevelopment authorities can also function as land banks. However, in most states, redevelopment authorities and land banks differ both in terms of their legal powers and their missions. Land banks typically implement disposition policies that allow greater flexibility than a redevelopment authority in terms of transferees and consideration. However, unlike many redevelopment authorities, land banks do not have the power of eminent domain, nor do land banks have the power to tax. As for mission, many land banks are focused on acquiring, stabilizing and returning to productive use those properties that are considered to have the most blighting influence in a community. These are properties that may not have an immediate redevelopment opportunity, but are destabilizing neighborhoods and undermining quality of life. In comparison, a redevelopment authority is typically focused on properties with near-term redevelopment potential and on large scale development projects that align with highly visible and long-term economic development goals."¹³

Concluding Comments

The memorandum provides some additional background relevant to deliberations in Missoula around the housing plan's recommendation to create a formal land banking structure. The research highlights that there is likely some overlap in the types of structures that Missoula might consider given the broader affordable housing goals it has outlined in its housing plan. A redevelopment authority might be empowered to take the lead on working with private developers to create affordable housing. A land bank might be charged with the acquisition and management of land for future redevelopment as affordable housing. The community land trust model is also relevant with respect to creating housing that remains affordable over the longer term. Certainly the bigger questions are related to which

¹³ <https://www.communityprogress.net/land-banking-faq-pages-449.php#How%20is%20a%20land%20bank%20different%20from%20a%20redevelopment%20authority?>

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structure is best for acquiring the right kinds of human resources skills and expertise and what powers and financial resources are available to the entity for the acquisition, stewardship, and redevelopment of publicly-owned real estate. And, among these considerations, are what powers granted to the entity would require state enabling legislation and to what extent the mission and activities of the entity would benefit from a IRS Section 501(c)(3) designation in order to accept donations of land and cash and allow the donor to get charitable deductions on federal taxes or credits on state taxes.

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APPENDIX 1: Land banking in Montana

Department of Natural Resources and Conservation

The State of Montana has always had the ability to sell state trust land. However, until the creation of the Land Banking Program, there was no provision to purchase replacement land. With the Land Banking Program, it is now possible for the Department of Natural Resources and Conservation to sell land to the public and put the proceeds in a Land Banking Trust Fund. The combined funds from multiple sales can then be used to purchase lands which produce a higher level of income than the lands sold. This results in a greater income to the trust beneficiaries (U of M, MSU, Common Schools, etc.).

<http://dnrc.mt.gov/divisions/trust/real-estate/land-banking#:~:text=With%20the%20Land%20Banking%20Program,income%20than%20the%20lands%20sold.>

Land Banking Report January 2020

http://dnrc.mt.gov/January_2020_Banking_Report.pdf

Land Banking Report July 2020

http://dnrc.mt.gov/202007_Land_Banking_Program_Report.pdf

DNR Land Banking and Cabin Site Sales

<http://dnrc.mt.gov/divisions/trust/docs/real-estate-management/land-banking>

Montana Government Land Bank Sales in Missoula

<https://svcalt.mt.gov/TLMSPublic/LandBanking/LandBanking.aspx>

Center for Community Progress, Technical Assistance Scholarship program

Butte-Silver Bow, Montana (2014) **Focus Area: Developing a Comprehensive Approach to Vacancy and Abandonment.** Community Progress worked with the City-County of Butte-Silver Bow, an area with a rich history of copper mining, to conduct a general assessment of systems and practices in order to build a more holistic approach to vacancy and abandonment. The report offers a detailed account of observations and findings, and provides an extensive menu of recommendations that touch on programs, strategies, operations, and policies.

<https://co.silverbow.mt.us/DocumentCenter/View/3764/Center-for-Community-Progress-Final-Report-on-Address-Vacancy-and-Abandonment-in-Uptown-Butte>

Missoula Plans for a Land Bank

<https://www.kpax.com/news/missoula-county/city-strategy-to-bank-land-for-redevelopment-future-housing-showing-results>

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APPENDIX 2: Other Land Banking Resources

HUD/LISC/Alexander: Guide for Creation and Operation of Local Land Banks

<https://files.hudexchange.info/resources/documents/LandBankAuthoritiesGuideforCreationandOperation.pdf>

Smart Growth America: State Policy Toolkit State Land Bank Enabling Legislation

https://www.smartgrowthamerica.org/app/legacy/documents/sga_statepolicy_toolkit.pdf

Center for Community Progress (Alexander): Land Banks and Land Banking – 2nd Edition – 2015

<https://www.communityprogress.net/download-land-banks-and-land-banking--2nd-edition--2015--pages-553.php>

County Health Rankings (Invest Health Tie In)

Robert Wood Johnson Foundation

There is some evidence that land banking reduces blight by demolishing deteriorated or unsafe structures, reducing property vacancies, and maintaining vacant lots (CCP-Heins 2014, NYLBA 2014, Whitaker 2014, Sadler 2017*). Land banking is also a suggested strategy to revitalize declining urban neighborhoods, improve community development (US HUD-Sage Computing 2009, CCP-Alexander 2015*), and develop economically integrated communities (Brookings-Alexander 2008, Fitzpatrick 2009). Additional evidence is needed to confirm effects and determine the characteristics, size, and scale of the most effective efforts (Negro 2012, CCP-Alexander 2015*).

<https://www.countyhealthrankings.org/take-action-to-improve-health/what-works-for-health/strategies/land-banking>

National Land Bank Network Act (HR 7103)

Representative Dan Kildee, former Executive Director of the Genesee County Land Bank Authority, has introduced legislation to create a land bank network funded with \$10 million in an appropriation from Congress. Introduced June 04, 2020.

<https://www.congress.gov/bill/116th-congress/house-bill/7103/text?r=2&s=1>

Land Bank Missoula, 1918

<https://books.google.com/books?id=v4INAQAAQAAJ&pg=PA22&lpg=PA22&dq=land+banks+in+Missoula&source=bl&ots=7GCwCJC9Y0&sig=ACfU3U3h1vYYJdQ5-Gk4m6zCIPy3gJb2xA&hl=en&sa=X&ved=2ahUKEwi196KW8NXrAhUBwVkJHYmsAw04FBDoATAcgeQIARAB#v=onepage&q=land%20banks%20in%20Missoula&f=false>

Land Bank Helena

<https://www.iol.co.za/travel/south-africa/land-banks-helena-dolny-resigns-24136>

https://books.google.com/books?id=7ChPAAAAYAAJ&pg=PA28&lpg=PA28&dq=land+banks+in+Helena&source=bl&ots=yrf2gaFsAk&sig=ACfU3U1q_t8AxCG7fCEgwnLAPPWJrVz9g&hl=en&sa=X&ved=2ahUKEwjPj7OKgdbrAhX4j3IEHSAcBLs4FBDoATAFegQIBhAB#v=onepage&q=land%20banks%20in%20Helena&f=false

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APPENDIX 3: Community Land Trusts in Montana

Big Sky Community Housing Trust (Big Sky)

The Big Sky Community Housing Trust was initiated by the Big Sky Chamber of Commerce several years ago as local employee housing issues began to escalate. These concerned volunteer citizens poured over the February 2018 survey results (funded by resort tax dollars) and spent many hours reviewing solutions from other Mountain resort towns to develop actions plans to address the employee housing issue in Big Sky. <https://thehrdc.org/big-sky-community-housing-trust/>

Gallatin Valley Land Trust (Bozeman)

Gallatin Valley Land Trust connects people, communities, and open lands through conservation of working farms and ranches, healthy rivers, and wildlife habitat, and the creation of trails in the Montana headwaters of the Missouri and Upper Yellowstone Rivers. <https://gvlt.org/>

Human Resource Development Council – HRDC (Bozeman)

Founded in 1975, the Human Resource Development Council is a non-profit community action agency. HRDC serves Gallatin, Park and Meagher Counties which each encompasses approximately 2,500 square miles. The area we serve is bordered on the west by the headwaters of the Missouri River and to the south by Yellowstone National Park. To the east and north begin the expanding valleys of the Missouri and Yellowstone Rivers. <https://thehrdc.org/about-us/history/>

Montana Association of Land Trusts

The Montana Association of Land Trusts is comprised of 12 members whose focus is voluntary incentive-based conservation. The 12 MALT members provide diverse and broad value through projects and activities that generate open land conservation, outdoor recreation, and land trust community engagement. Montana land trusts and public agencies have been working cooperatively with landowners for over 40 years, and Montana is a national leader in the quality and quantity of providing land conservation. In more recent years, Montana land trusts have expanded their focus to lead efforts to build and maintain community trails and parks, and to play a stronger leadership role in voluntarily creating recreational access and improving outdoor recreation opportunities. <https://montanalandtrusts.org/>

Montana Land Reliance

MLR made possible by the “Montana Open-Space Land and Voluntary Conservation Easement Act.”
<https://mtlandreliance.org/about-montana-land-reliance/our-history/>

North Missoula Community Development Corporation (Missoula)

The North-Missoula Community Development Corporation, more affectionately known as the NMCDC, is a community advocacy organization. Our staff and board are all Missoulians dedicated to helping make the north and westside communities healthy, vibrant, and engaged. The NMCDC’s Land Stewardship Program preserves and develops permanently affordable homeownership opportunities in Missoula’s Northside, Westside and Downtown neighborhoods using a Community Land Trust model. The North-Missoula Community Development Corporation is one of only a few Community Land Trusts (CLT) in the state of Montana that develops and maintains permanently affordable housing
<http://www.nmcdc.org/land-stewardship/>

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Northwest Montana Community Land Trust (Kalispell)

In 2009, the State of Montana was awarded \$19.6 million of Neighborhood Stabilization Program (NSP) funds under Division B, Title III of the Housing and Economic Recovery Act (HERA). The City of Kalispell applied for \$4 million of the NSP funds in a partnership with Community Action Partnership of Northwest Montana. These funds were used for the purchase and redevelopment of abandoned and foreclosed homes. The homes were then placed within the CLT, and used to house individuals or families with specific income qualifications. In 2011 the city of Kalispell was awarded an additional \$1.5 million for the same purpose. <https://www.nwmtclt.org/>

Prickly Pear Land Trust (Helena)

Prickly Pear Land Trust is committed to the belief that open space is essential to the well-being of all communities. Spacious views, abundant wildlife, and recreational opportunities renew and revitalize our spirits. Maintaining traditional agricultural lands preserves Montana's cultural heritage. At Prickly Pear Land Trust, we seek to preserve and protect the rural character of the Prickly Pear Valley and adjoining lands in Lewis and Clark, Jefferson, Broadwater and Powell counties through voluntary and cooperative means. <https://pricklypearlt.org/our-story/>

The Trust for Public Lands (Bozeman)

<https://www.tpl.org/how-we-work>

Trust Montana

Unlike most CLTs in the U.S., Trust Montana is chartered to hold land in order to facilitate and protect a multitude of different community assets other than housing: agricultural working lands, open space, historic preservation, and commercial development. We partner with local organizations and community leaders in the areas where we work to ensure our projects are community-driven.

<https://trustmontana.org/>