Draft

VOLUME NO. 57 OPINION NO. 3

FISH, WILDLIFE, AND PARKS, DEPARTMENT OF – Statutory requirement of Board of Land Commissioners' approval of easements involving more than 100 acres or $100,000 in value;
LAND COMMISSIONERS, BOARD OF - Authority of Board of Land Commissioners to approve or disapprove Fish, Wildlife, and Parks conservation easement acquisitions;
LAND USE – Applicability of Mont. Code Ann. § 87-1-209(1) to conservation easements purchased by Department of Fish, Wildlife, and Parks;
PROPERTY, REAL – Inclusion of conservation easements within the meaning of "land acquisition" as the term is used in Mont. Code Ann. § 87-1-209(1)
STATUTORY CONSTRUCTION – When the Legislature has not defined a statutory term, courts consider the term to have its plain and ordinary meaning;
MONTANA CODE ANNOTATED – Sections 70-17-111(2), 76-6-201(1), 76-6-208, 87-1-209, 87-1-209(1), 87-1-218(3)(c), 87-1-301(1)(e), 87-1-603.

HELD: Montana law requires that the Department of Fish, Wildlife, and Parks obtain prior approval of the Board of Land Commissioners for acquisitions of easements, including conservation easements, if they involve more than 100 acres or $100,000 in value.

August 28, 2018

President Scott Sales
P.O. Box 200500
Helena, MT 59620-0500

5200 Bostwick Road
Bozeman, MT 59715

Dear President Sales:

[P1] You have requested my opinion on a question I have restated as follows:

> Does Montana law require that the Montana Department of Fish, Wildlife, and Parks (FWP) obtain the approval of the Montana Board of Land Commissioners (Land Board) for FWP's acquisition of easements, including conservations easements, if they involve more than 100 acres or $100,000 in value?

[P2] In preparing this Opinion, I have considered the analysis you provided, as well as two memoranda supplied by FWP dated March 23 and July 31, 2018.

[P3] Section 87-1-209(1) addresses the circumstances in which FWP is required to obtain Land Board approval:

> Subject to 87-1-218 and subsection (8) of this section, the department [of fish, wildlife, and parks], with the consent of the [fish and wildlife] commission or the [the state parks and recreation] board and, ***in the case of land acquisition involving more than 100 acres or $100,000 in value***, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection.

(Emphasis added.) The statute requires Land Board approval of "land acquisition[s] involving more than 100 acres or $100,000 in value." The dispositive issue is whether FWP's acquisition of an easement is a "land acquisition" within the meaning of Mont. Code Ann. § 87-1-209(1).

1. Plain Meaning of "Land Acquisition"

a. Montana Legislative Intent Concerning the Meaning of "Land Acquisition"

[P4] Under Montana law, an easement is "a non-possessory interest in land that gives rights to a person to use another's land for a specific purpose or as a servitude imposed on the land as a burden." *Ganoung v. Stiles*, 2017 MT 176, ¶¶ 14-15, 388 Mont. 152, 398 P.3d 282 (citing *Woods v. Shannon*, 2015 MT 76, ¶ 10, 378 Mont. 365, 344 P.3d 413).

> [T]he grant of an easement, unlike a leasehold, permanently conveys a property interest to another person. The grantor retains no supervisory regulatory control over the property interest conveyed by the easement.

Williamson v. Commissioner, 974 F.2d 1525, 1535 (9th Cir. 1992) (citing R. Cunningham, W. Stoebuck, D. Whitman, The Law of Property § 8.1 (1984)).

[P5] In Montana, a public body's acquisition of "an interest in land less than fee . . . shall be by conservation easement." Mont. Code Ann. § 76-6-201(1). It necessarily follows that acquisition of a conservation easement is an "acquisition of an interest in land." Mont. Code Ann. § 76-6-201(1). The issue thus becomes whether "acquisition of an interest in land" is synonymous with "land acquisition" as the term is used in Mont. Code Ann. § 87-1-209(1).

[P6] "Land acquisition" is not defined in Title 87, or elsewhere in the Montana Code. Nor has the Montana Supreme Court defined or addressed the meaning of the term. Consequently, we turn to well established rules of statutory construction to ascertain the legislature's intent for its meaning.

[P7] In construing a statute, courts look first to the plain meaning of the words it contains. *Clarke v. Massey*, 271 Mont. 412, 416, 897 P.2d 1085, 1088 (1995). Where the language is clear and unambiguous, the statute speaks for itself and courts will not resort to other means of interpretation. *Id.* "In the search for plain meaning, 'the language used must be reasonably and logically interpreted, giving words their usual and ordinary meaning.'" *Gaub v. Milbank Ins. Co.*, 220 Mont. 424, 427, 715 P.2d 443, 445 (1986); *see also Westmoreland Res. Inc. v. Dep't of Revenue*, 2014 MT 212, ¶ 11, 376 Mont. 180, 330 P.3d 1188 ("We ascertain legislative intent from the plain meaning of the words used in a statute."). In summary, if the language is unambiguous, courts look no further than the plain language of the statute to determine legislative intent. *Bassett v. Lamantia*, 2018 MT 119, ¶ 24, 391 Mont. 309, 417 P.3d 299.

[P8] In applying the foregoing principles to determine the meaning of "land acquisition," it is significant that legally cognizable interests in land take various forms with varying degrees of associated rights, and are categorized by highly specific terms; *e.g.*, fee simple, life estate, leasehold interest, easement in gross, easement appurtenant, and numerous others. One may refer to "fee simple acquisition," or "life estate acquisition," or "acquisition of leasehold interest" and thereby indicate the specific nature of the interest acquired.

[P9] "Land acquisition," in material contrast, is quite ***non***-specific and it is logical to infer the legislature intended it to be so. Unlike those terms referenced above, "land

acquisition" is not a specialized term of art in real property law; and does not describe any particular property interest, but instead reflects a general concept: acquisition of a legally cognizable interest in land. The significance of this point cannot be overstated, as it reflects a legislative intent to encompass the spectrum of various types of real property legal interests subject to acquisition. Indeed, later in the same sentence, Mont. Code Ann. § 87-1-209(1) describes the scope of "land acquisitions;" *i.e.*, land "acquire[d] by purchase, lease, agreement, gift, or devise" and "easements upon lands or waters." The term encompasses easements generally and conservation easements specifically.

[P10] In its memoranda, FWP asserts that "land acquisition" should be read narrowly to mean only "fee title acquisition." If that were the legislature's intent, it is reasonable to assume that the legislature would have used the term "fee title acquisition," rather than "land acquisition" in Mont. Code Ann. § 87-1-209(1) and the statute would provide that Land Board approval is required "in the case of ***fee title acquisition*** involving more than 100 acres or $100,000 in value." The legislature did not do so. In short, if the legislature meant "fee title acquisition" it would have said "fee title acquisition."

[P11] Indeed, when the legislature intends to convey the concept of fee title, it uses the terms "fee title" or "fee title acquisition." *See, e.g.*, Mont Code Ann. § 70-17-111(2) ("fee title"); and Section 2, Ch. 319, L. 1991 (Study Required — Report to 1993 Legislature):

> (1) The department of fish, wildlife, and parks shall commission an independent comprehensive study of wildlife habitat acquisition, improvement, and development, to be funded in an amount up to $150,000 from money allocated under 87-1-242(3).
>
> (2) The study must analyze the department's current wildlife habitat acquisition, improvement, operations, maintenance, and development program and develop a comprehensive plan for a permanent wildlife habitat acquisition, improvement, operations, maintenance, development, and land management program, including the use of conservation easements, leases, and ***fee title acquisition***.

(Emphasis added.) The fact that the legislature uses the term "fee title" elsewhere in the code and uses a different term, land acquisition, in Mont. Code Ann. § 87-1-209(1) creates a presumption the legislature intended a meaning different from "fee title" in § 209(1). *See, e.g., Zinvest, Ltd. Liab. Co. v. Gunnersfield Enters.*, 2017 MT 284, ¶ 26, 389 Mont. 334,

405 P.3d 1270 (Where different language is used in the same connection in different parts of a statute, it is presumed the legislature intended a different meaning and effect.).

[P12] FWP also asserts that acquisition of a conservation easement and acquisition of land are different, because a conservation easement is a non-possessory interest that "does not allow the holder the use of the land" and therefore should not be considered a land acquisition. FWP Memo at 2 (July 31, 2018). As applied to the conservation easements purchased by FWP, this is simply not true. For example, a primary purpose of the recently acquired Horse Creek Conservation Easement is "to provide to the Department pursuant to its authority to acquire interests in land at § 87-1-209, MCA, on behalf of the public, the right of reasonable access to the Land for recreational uses." Horse Creek Complex 2 (FWP) Deed of Conservation Easement at 3 (Mar. 30, 2018). Such recreational uses of the Land include extensive recreational hunting, trapping, and wildlife viewing. FWP's assertion that a conservation easement does not allow the use of the land, and therefore should not be considered a land acquisition, is thus not accurate.

b. The County Commissioner Notice Provisions of Mont. Code Ann. § 87-1-218(3)(c) Do Not Support an Argument that Land Board Approval Is Unnecessary.

[P13] Additionally, in support of its contention that Mont. Code Ann. § 87-1-209 does not require Land Board approval of conservation easement acquisitions, FWP relies on Mont. Code Ann. § 87-1-218(3)(c), which requires FWP to provide notice to county commissioners in the county of the proposed land acquisition of:

> (a) a description of the proposed acquisition, including acreage and the use proposed by the department;
>
> (b) an estimate of the measures and costs the department plans to undertake in furtherance of the proposed use, including operating, staffing, and maintenance costs;
>
> (c) an estimate of the property taxes payable on the proposed acquisition and a statement that if the department acquires the land pursuant to 87-1-603, the department would pay a sum equal to the amount of taxes that would be payable on the county assessment of the property if it was taxable to a private citizen; and

> (d) a draft agenda of the meeting at which the proposed acquisition will be presented to the commission or the board and information on how the board of county commissioners may provide comment.

[P14] FWP does not pay property tax on conservation easements it holds. *See* Mont. Code Ann. § 76-6-208. For property it owns, FWP does generally pay the county a sum equal to the amount of taxes that would be payable on county assessment of the property if it was taxable to a private citizen. Mont. Code Ann. § 87-1-603. Because FWP is required to provide county commissioners with a property tax estimate for "land acquisitions," and FWP pays no property tax on conservation easement acquisitions, FWP reasons that a conservation easement is not a "land acquisition."

[P15] I respectfully disagree. A notice provision is intended to give relevant information, including that there is no impact from the proposal. If the estimate of property taxes payable is zero, that is relevant information, just like it is relevant information when agencies give notice that the fiscal impact of proposed legislation is zero. Simply because the impact on property taxes for a conservation easement is zero does not indicate that the legislature did not intend conservation easements to be within the meaning of land acquisition.

c. The Distinction Between "Land Acquisition" in Mont. Code Ann. § 87-1-209(1) and "Acquisitions . . . of Interests in Land" in Mont. Code Ann. § 87-1-301(1)(e).

[P16] In both memoranda, FWP argues a distinction between "land acquisition" in Mont. Code Ann. § 87-1-209(1) and "acquisitions . . . of interests in land" in Mont. Code Ann. § 87-1-301(1)(e). It appears that FWP is referring to the rule of statutory construction that the legislature's use of different language in different parts of a statute creates a presumption that the legislature intended a different meaning and effect. *See, e.g., Zinvest* at ¶ 26.

[P17] FWP argues that the legislature's use of different terms in these statutes requires us to construe them as having different meanings. Specifically, § 301 clearly includes easements, and uses the phrase "interests in land;" and in § 209, the legislature uses a different term, "land acquisition." FWP argues that if the legislature intended to include easement in the scope of § 209, it would have used the phrase "acquisition of interests in land."

[P18] The foregoing rule does not apply, however, because the legislature was in fact addressing ***two different concepts***. The statutes must be read in full. Section 87-1-301(1)(e) sets forth the Fish and Wildlife Commission's broad authority to "approve ***all*** acquisitions ***or transfers*** by [FWP] of interests in land ***or water***." (Emphasis added.) The significantly narrower language of § 87-1-209(1), in contrast, sets forth the authority of the Land Board to approve only a much smaller sub-set: only those "land acquisition ***involving more than 100 acres or $100,000 in value***." "[A]ll acquisitions or transfers of interests in land or water" in § 301 is a substantively different and broader concept than "land acquisitions" in § 209. So, of course, the legislature used different terms to reflect those different concepts.

[P19] Moreover, even FWP seems to acknowledge that "interests in land" encompasses land acquisitions it is entitled to make pursuant to Mont. Code Ann. § 87-1-209. *See, e.g.*, Horse Creek Complex 2 (FWP) Deed of Conservation Easement, at 3 (March 30, 2018) (recognizing that authority to purchase Horse Creek Easement was "pursuant to its authority to acquire *interests in land* at § 87-1-209, MCA").

d. Plain Meaning of "Land Acquisition" in Other Jurisdictions

[P20] As noted above, "land acquisition" is not defined by Montana statute or case law. However, numerous other jurisdictions, in a variety of legal contexts, have universally recognized the term "land acquisition" to encompass acquisition of easements. *See, e.g., United States v. Little Lake Misere Land Co.*, 412 U.S. 580, 597-98 (1973) (recognizing that "land acquisitions might include reservations, easements, and rights of way" under Migratory Bird Conservation Act); *Columbia v. Costle*, 710 F.2d 1009, 1013 (4th Cir. 1983) (acquisition of easements comes within the "the land acquisition policies" of federal Uniform Relocation and Real Property Acquisitions Policies Act); *Otay Mesa Prop., L.P. v. United States*, 110 Fed. Cl. 732, 738 (2013) (recognizing that valuation of permanent easement by government is determined under government-published Uniform Appraisal Standards for Federal ***Land Acquisition***) (emphasis added); *United States v. Am. Elec. Power Serv. Corp.*, 2007 U.S. Dist. LEXIS 104330, at *133-34 (S.D. Ohio Oct. 9, 2007) ("land acquisition means purchase of interests in land, including fee ownership, easements, or other restrictions that run with the land that provide for perpetual protection of the acquired land"); and *Hire v. Bd. of Cty. Comm'rs*, 175 N.E.2d 326 (Ohio 1960) (cost of easement constitutes "cost of land acquisition"). These authorities, though not controlling, support the conclusion that the plain meaning of "land acquisition" includes acquisition of easements. We could find no jurisdiction that reached a contrary result.

[P21] In summary, I conclude that the plain meaning of "land acquisition" includes acquisition of easements generally, and conservation easements specifically. Section 87-1-209(1) of the Montana Code requires that FWP obtain the approval of the Land Board for FWP's acquisition of easements of the requisite size and/or cost.

2. Legislative History

[P22] The Montana Supreme Court has held that reliance on legislative history is unnecessary when the language of the statute is clear and unambiguous on its face. *See, e.g., Richland Aviation, Inc. v. State*, 2017 MT 122, ¶ 12, 387 Mont. 409, 394 P.3d 1198 (quoting *State v. Goebel*, 2001 MT 73, ¶ 21, 305 Mont. 53, 31 P.3d 335. Nonetheless, the Court does, at times, find legislative history instructive in cases where the statute is unambiguous. *See, e.g., Musselshell Ranch Co. v. Seidel-Joukova*, 2011 MT 217, ¶ 13, 362 Mont. 1, 261 P.3d 570. This is such a case.

a. 1981: HB 251 and HB 766.

[P23] Two bills pertaining to oversight of FWP land acquisitions were introduced in the 1981 Legislative Session. First, Representative Aubyn Curtiss introduced HB 251, which would have required legislative approval of FWP land acquisitions of 100 acres or $10,000. HB 251 did not pass out of committee. Immediately thereafter, HB 766 was introduced. As originally drafted, HB766 would have required the governor's approval of the FWP land acquisitions. HB 766 was amended to provide, as it does today, for Land Board approval of FWP acquisitions involving more than 100 acres or $100,000 in value and was thereafter signed into law.

[P24] FWP has asserted that the legislative history of the relevant language reflects the legislature's intent to address concerns regarding erosion of the tax base which resulted from FWP's acquisition of fee title to land. Because acquisitions of conservation easements generally have no effect on the tax base, FWP reasons that the legislature could not have intended "land acquisition" to include easements. FWP overlooks additional important aspects of the relevant legislative history.

[P25] Loss of tax revenues was, indeed, one concern of the legislature. It was not, however, the only one. For example, Representative Curtiss, the primary sponsor of HB 251, testified she was "concerned with the amount of money the F.W. & P. can spend on land acquisition." *See* Minutes of the Meeting of the Fish and Game Committee, at 3 (Jan. 24, 1981).

[P26] Perhaps most significantly, then-FWP Director Jim Flynn testified in opposition and offered written testimony which included the following points describing FWP's concerns regarding the practical effect of the "land acquisition" language of HB 251:

> ***Passage of this bill will affect all acquisitions by the department regardless of the purpose for acquisition.***
>
> ***The department's acceptance of conservation easements would be curtailed also, if not shut down entirely, in the same manner as donations or other receipts of gifts.***

House Minutes of the Meeting of the Fish and Game Committee, Exh. 2 at 2, 4 (Jan. 24, 1981) (emphasis added). The Director of the agency responsible for implementing and complying with the statute thus acknowledged that the statutory language "land acquisition" encompasses "all acquisitions" by FWP. More to the point, Director Flynn thereby expressly acknowledged that the statute applies to – and potentially restricts FWP's power to acquire – conservation easements.[1]

[P27] Flynn was Director of FWP at the time the statute was enacted. Significantly, FWP would follow Director Flynn's construction of the statute and seek consent of the Land Board for conservation easement acquisitions in compliance with the statute for the next 37 years.

---

[1] Although HB 251 died in committee, HB 766 was introduced immediately thereafter, containing the same "land acquisition" language. Consequently, FWP Director Flynn testified in opposition to HB 766 and offered written testimony which incorporated by reference the above-quoted testimony, as follows:

> ***HB 251 was designed to do essentially the same thing as HB 766 . . . For purposes of this testimony, please consider the information presented on HB 251, particularly the amount of lands purchased and leased by the department.***

House Minutes of the Meeting of the Fish and Game Committee, Exh. 7 at 1 (Feb. 19, 1981) (emphasis added).

b. 1987: HB 526 (Habitat Montana)

[P28] The 1987 Montana Legislature passed HB 526, establishing the "Habitat Montana" program for FWP acquisition and maintenance of wildlife habitat. Once again, then-Director Flynn's testimony sheds considerable light on FWP's land acquisition process under Mont. Code Ann. § 87-1-209(1). Specifically, in testifying before the House Fish and Game Committee, FWP Director Flynn explained that some land acquisitions are in fee title, while others utilize conservation easements. In emphasizing the extensive independent review of all FWP acquisitions, Director Flynn describes the final step in the completed land acquisition processes as follows:

> ***The final step was review by the State Land Board consisting of the Governor, Secretary of State, Attorney General, Auditor and Superintendent of Public Instruction.***

House Minutes of the Fish and Game Committee at 4 (Feb. 17, 1987) (emphasis added). The context clearly indicates that the "acquisitions" include both fee title and conservation easement acquisitions.

3. FWP's Long and Continued Course of applying Mont. Code Ann. § 87-1-209(1).

[P29] FWP has historically sought the approval of the Land Board of its acquisitions of all conservation easements involving more than 100 acres or $100,000 in value. From the 1981 enactment of the "land acquisition" provision of Mont. Code Ann. § 87-1-209(1) to 2018, FWP recognized its obligation to submit conservation easement acquisitions to the Land Board for approval. In fact, our research has revealed no instance of FWP acquiring a conservation easement of the requisite size and cost without first seeking Land Board approval since the 1981 Legislature amended Mont. Code Ann. § 87-1-209(1), with the exception of the recently acquired Horse Creek Easement in eastern Montana.

[P30] Moreover, FWP's own internal guidance documents reflect it recognizes the necessity of Land Board approval. For example, the "FWP Process for Wildlife Land Acquisitions" (ver. 8 12 2015), places requirements for "land acquisitions" into three categories: 1) fee projects; 3) conservation easement projects; and 3) all land projects (fee and easement projects combined). While the document recognizes the distinction between fee projects and easement projects, it clearly places them both under the umbrella of "Land Acquisitions." Most significantly, this FWP policy at # 21 expressly recognizes the

necessity of Land Board approval of "***all*** acquisitions of greater than 100 acres or $100,000 in value" for "All Land Projects" – both fee and easement acquisitions.

[P31] Similarly, FWP has prepared Environmental Assessments expressly recognizing that "[a]s with other FWP property acquisition proposals, the Fish Wildlife and Parks Commission and ***the State Land Board*** (for easements greater than 100 acres or $100,000) ***must approve any easement proposal*** by the agency." Olsen Ranch Conservation Easement Draft EA at 1 (prepared by FWP) (emphasis added). Indeed, the Horse Creek Conservation Easement EA itself recognizes the necessity of submission of the Horse Creek Easement to the Land Board, including in its Timeline of Events, "Project Submitted to Montana State Board of Land Commissioners: February 2018." *Id.* at 16.

[P32] The January 2017 Draft EA for the Horse Creek Conservation Easement, at page 5, also discusses the decision whether FWP should move forward with purchase of the Horse Creek Conservation Easement, and states:

> *As with other FWP conservation projects that involve land interests, the Fish and Wildlife Commission* ***and the State Board of Land Commissioners would make the final decision.***

[P33] Similarly, the January 2018 Draft EA for the Birdtail Conservation Easement, at page 8, discusses the decision whether FWP should move forward with purchase of the Birdtail Conservation Easement, likewise states:

> *As with other FWP conservation projects that involve land interests, the Fish and Wildlife Commission* ***and the State Board of Land Commissioners would make the final decision.***

[P34] The FWP Public Scoping Notice (dated February 7, 2018) for the North Sunday Creek Conservation Easement states, at page 2, that the land project requires the "***approval from … the Montana State Board of Land Commissioners.***"

[P35] Additionally, the FWP Public Scoping Notice (dated February 16, 2018) for the Antelope Coulee Conservation Easement also states, at page 2, that the land project requires the "***approval from … the Montana State Board of Land Commissioners.***"

[P36] The above quoted public documents, and many others, constitute FWP's repeated assurances to the public that FWP's expenditures of funds for the easement acquisitions

would be subject to the independent scrutiny and approval of the governor, superintendent of public instruction, auditor, secretary of state, and attorney general.

[P37] Indeed, FWP continues to view conservation easements as "land acquisitions" up to the present. *See, e.g.*, FWP's 2017 Habitat Montana Legislative Report, p. 12 (describing the two types of "land acquisition projects": conservation easements and fee title).

[P38] When a statute's interpretation is placed in doubt, courts generally defer to an agency's "long and continued course of consistent interpretation, resulting in an identifiable reliance." *Mont. Power Co. v. Mont. PSC*, 2001 MT 102, ¶¶ 25, 305 Mont. 260, 265-66, 26 P.3d 91, 94. Here, as noted above, the language of the statute should not be in doubt. But even if it were, a court would generally defer to FWP's longstanding and consistent practice of declaring that Land Board approval of conservation easements over 100 acres or $100,000 is necessary under Mont. Code Ann. § 87-1-209(1). Governmental agencies and the public have reasonably relied on that decades-long application of § 87-1-209. Consequently, FWP's recent reversal of its long-held practice and position is entitled to no deference.

[P39] I am aware of no instance or document reflecting an intent on the part of FWP of submitting easement proposals to the Land Board "out of courtesy." Nonetheless, FWP claims that its historical submission of conservation easements to the Land Board for a vote was, in fact, a mere "courtesy." More specifically, FWP refers to its own "unsupported practice of seeking Land Board approval as a courtesy." FWP Memo at 2 (July 31, 2018). Seeking "approval" as a "courtesy" is contradictory on its face. One may give notice as a courtesy. Seeking approval in this context, in contrast, connotes a request for permission or authorization, without which the proposed action cannot be taken.

[P40] The necessity of Land Board approval is further evidenced by the Land Board's rejection of the Keogh Ranch Conservation Easement Amendment by a 3-2 vote on September 18, 2017. According to an article in the Montana Standard (Dec. 27, 2017), "[b]ecause the amendment failed at the Land Board Commission, FWP officials say they now hope to find another way to protect the Keogh Ranch from getting carved up." FWP thereby recognized that the Land Board's approval was required for amendment of the conservation easement, and the amendment was certainly not submitted to the Land Board as a mere "courtesy."

[P41] The remarkable suggestion that FWP has sought Land Board approval for every conservation easement since 1981 as a mere courtesy is simply unsupportable.

* * *

[P42] In summary, Mont. Code Ann. § 87-1-209(1) precludes FWP from acquiring interests in land – both fee ownership and conservation easements – involving more than 100 acres or $100,000 in value without Land Board approval.

THEREFORE, IT IS MY OPINION:

[P43] Montana law requires that the Department of Fish, Wildlife, and Parks obtain prior approval of the Board of Land Commissioners for acquisitions of easements, including conservation easements, if they involve more than 100 acres or $100,000 in value.

Sincerely,

TIMOTHY C. FOX
Attorney General

tcf/rc