

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
PETER GOLDMARK, Commissioner of Public Lands

INTERAGENCY AGREEMENT WITH WHATCOM COUNTY

Interagency Agreement No. IAA 10-166

This Interagency Agreement is made by and between Whatcom County (County), and the Washington State Department of Natural Resources, Northwest Region, (DNR).

DNR has authority to enter into this Agreement under RCW Chapter 43.30, and RCW Chapter 39.34, while County has authority under RCW Chapter 39.34 and RCW Chapter 36.01.

The purpose of this Interagency Agreement is to memorialize the terms in the Memorandum of Agreement (MOA) between County and DNR on September 23, 2008 (Attachment C). The MOA guides and governs all actions by County and DNR necessary to prepare an intergrant exchange and reconveyance for presentation to the Whatcom County Council and the Board of Natural Resources. The contemplated reconveyance is of property located in and near the Lake Whatcom Watershed. The preparation requires appraising and evaluating approximately 15,700 acres for intergrant and reconveyance of approximately 8,000 acres.

THEREFORE, COUNTY AND DNR MUTUALLY AGREE AS FOLLOWS:

- 1. Statement of Work.** DNR shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to performing work set forth in Attachment A.
- 2. Period of Performance.** The period of performance of this Interagency Agreement shall begin on November 16, 2009 and end when the work set forth in Attachment A is completed, unless terminated otherwise as provided in Section 8.
- 3. Payment.** Payment for the work performed by DNR is permitted under RCW 39.34.130. County and DNR estimate that the cost of accomplishing the work will not exceed TWO HUNDRED NINETY ONE THOUSAND DOLLARS (\$291,000). Payment for satisfactory performance of work shall not exceed this amount unless the County and DNR mutually agree to a higher amount before beginning any work that could cause the maximum payment to be exceeded as provided in Section 7. Payment for services shall be based on the actual costs described in Attachment B. Payment for services is not contingent on the outcome of the proposed land transactions.
- 4. Intergrant and Reconveyance Approval.** This Interagency Agreement does not alter the statutory procedure for request for a reconveyance or an intergrant exchange. To begin the reconveyance request process, the Whatcom County Council will authorize the County Executive to submit the necessary application materials for reconveyance with the Board of

Natural Resources to comply with RCW 79.22.300. An intergrant exchange must comply with RCW Chapter 79.17.

5. Billing Procedures. DNR shall submit invoices for the work performed by DNR to the County as provided in Attachment B. Payment to DNR for approved and completed work will be made by warrant or account transfer within 30 days of County's receipt of the invoice. When the Interagency Agreement expires (see Section 2), any remaining claim for payment shall be submitted to County within 30 days after the expiration date or the end of the fiscal year, whichever occurs first.

6. Records Maintenance. DNR shall maintain records to sufficiently document all costs incurred by DNR in completing the work. These records shall be available for inspection, review, or audit by personnel of the County, other personnel authorized by the County, or the Office of the State Auditor, as authorized by law. DNR shall keep all records and other material relevant to this Interagency Agreement for six years after the agreement expiration. The Office of the State Auditor and persons authorized by the County and DNR shall have full access to and the right to examine these materials during this period.

7. Amendments. This Interagency Agreement may be amended by mutual agreement of County and DNR. Amendments shall be in writing and signed by personnel authorized to bind County and DNR. County and DNR shall not be bound by any oral representations or statements.

8. Termination. Either County or DNR may terminate this Agreement by giving the other party 30 days written notice. If County or DNR fails to complete its obligations under this Interagency Agreement, or if County or DNR violates any of the terms and conditions of this Interagency Agreement, the aggrieved party will give written notice of the failure or violation. The violating party will have 15 business days to correct the violation or failure. If the failure or violation is not corrected within 15 days, the aggrieved party may terminate this Interagency Agreement by written notification.

In the event of termination, the terminating party shall be liable for payment only for those services provided or costs incurred prior to the termination date.

9. Applicable Law and Venue. This Interagency Agreement shall be interpreted and construed in accordance with and shall be subject to the laws of the State of Washington. Venue for any action arising out of or in connection with this Interagency Agreement shall be in the Superior Court for Thurston County, Washington.

10. Severability. If any provision of this Interagency Agreement or any Attachment shall prove to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of this Interagency Agreement.

11. Indemnity. County and DNR shall each be responsible for its own acts and/or omissions and those of its officers, employees, and agents. Neither County nor DNR shall be responsible for the acts and/or omissions of entities or individuals not a party to this Interagency Agreement.

12. Entire Agreement. This Interagency Agreement, including the Attachments, contains the entire agreement of County and DNR. All prior and contemporaneous agreements, promises, representations and statements relating to this transaction, if any, are merged into this Interagency Agreement.

13. Project Coordinators. Any communication or billings will be sent to the designated project coordinators unless otherwise specified:

County: Michael McFarlane

Director, Whatcom County Parks and Recreation Department
3373 Mount Baker Highway
Bellingham WA 98226-7500
Telephone Number: (360) 733-2900.

DNR: Paul McFarland

Transaction Coordinator, DNR Northwest Region
919 North Township Street
Sedro Woolley WA 98284
Telephone Number: (360) 854-2882

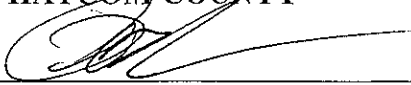
14. Assignment. The obligations of County and DNR under this Interagency Agreement shall not be assigned or transferred.

This Interagency Agreement requires the signature of County and DNR.

[Remainder of Page Intentionally Left Blank. Signature Page to Follow.]

WHATCOM COUNTY

Dated: 11/12, 2009



By: Pete Kremen
Title: Whatcom County Executive
Address: Whatcom County Courthouse
311 Grand Avenue
Bellingham, WA 98225

Approved as to form:


Randy Watts
Chief Civil Deputy Prosecuting Attorney

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES**

Dated: _____, 2009

By: _____
By: Peter Goldmark
Title: Commissioner of Public Lands
Washington State Department of
Natural Resources
Address: 1111 Washington St SE
Olympia WA 98504

Approved as to form:

Martha Wehling
Assistant Attorney General

ATTACHMENT A

STATEMENT OF WORK

Work to be completed under this agreement is outlined in the Memorandum of Agreement dated September 23, 2008, Attachment C. This Statement of Work, Attachment A, describes the major objectives of the project and clarifies responsibilities.

Objective 1: Development of Outreach Plan

County and DNR will jointly develop an outreach plan once the IAA is signed to include but not be limited to identification of key stakeholders, development and timing of public statements regarding progress, communication tools and contact persons.

Objective 2: Intergrant Exchange

Whatcom County will assist DNR with work necessary to complete intergrant transfer of trustland in Whatcom County. DNR will request assistance as necessary during the process which will involve a public hearing for the Intergrant Exchange.

1. DNR will identify State Forest Land for potential exchange parcels that have similar attributes (site class, current use, appreciation potential).
2. DNR will conduct title and property reviews in order to identify any issues or attributes that may affect value.
3. DNR and County will serve as co-clients in selecting contract timber cruiser, timber appraiser, land appraiser and review appraiser as needed, although the appraisal contract will be held and administered by DNR. All properties in the Intergrant Exchange must be appraised by a qualified appraiser, and the appraisal must meet all applicable DNR and industry standards.
4. DNR will advertise the public hearing as required by statute and jointly conduct at least one public hearing with the County.
5. DNR will prepare documents and presentation for Board of Natural Resources approval.
6. DNR will process the closing of the transaction by updating title documents and other internal records.

Objective 3: Reconveyance

1. The Whatcom County Council will authorize the County Executive to submit the necessary application materials to file an application with the Board of Natural Resources for the transfer of state forest lands.
2. Pursuant to RCW 79.22.300, DNR will review the county's letter of request for reconveyance to determine:
 - a. Documented need for the subject land as public park land,
 - b. Consistency with an approved county recreation plan, and
 - c. Consistency with the state comprehensive outdoor recreational plan, including consultation with other entities if applicable.County will provide additional documentation if required.
3. DNR will give public notice of and conduct a public meeting to seek public comment on the need for the subject land as public park land, and consistency with the applicable

recreation plans. The County will work with DNR to prepare presentations and jointly conduct the meeting.

4. DNR will identify any necessary conditions for continued management of adjacent trust lands, including:
 - a. conditions that maximize multiple use, and
 - b. reservation of rights of way to manage other public lands in the area.
5. DNR in coordination with the County will prepare for the Board of Natural Resources (BNR) a summary of public comments and a recommendation regarding acceptability with applicable recreation plans, including necessary conditions.
6. The County will present the request for re-conveyance to the BNR as an agenda item at a scheduled BNR meeting.
7. If the reconveyance request is approved by BNR, DNR and the County will coordinate to develop road maintenance agreements and/or easements to ensure necessary administrative and public access across both ownerships.
8. DNR will process the necessary transfer paperwork to document the reconveyance.

ATTACHMENT B BILLING DETAILS

Budget Breakdown: Funding under this contract is to enable DNR staff to first process an Intergrant Exchange of trustlands in Whatcom County and then facilitate a Reconveyance of certain State Forest lands within the Lake Whatcom watershed for park purposes. These activities will be done in cooperation with staff from Whatcom County and funded by the County.

- Each invoice voucher submitted to the County by DNR will clearly reference "Interagency Agreement Number 10-166". Invoice vouchers will be sent quarterly to the County.
- Any and all staff time spent by DNR for related activities to the Memorandum of Agreement including, but not limited to, those identified in Attachment A, Statement of Work, will be billed at DNR's actual costs.
- Other expenses related to the Intergrant and Reconveyance request, including but not limited to advertising, travel, printing/copying, appraisals, timber cruises, etc, will be billed at DNR's actual costs for expenses.

ATTACHMENT C

Memorandum of Agreement

See attached pdf version of the signed Memorandum of Agreement.

ORIGINAL

Lake Whatcom Watershed Land Transactions
Memorandum of Agreement
between
Whatcom County
and

WHATCOM COUNTY CONTRACT NO. 200809021

Washington State Department of Natural Resources
September 23, 2008

Purpose of the Proposed Transaction

Whatcom County (County) and the Washington State Department of Natural Resources (DNR) propose to prepare a re-conveyance to the County of certain State Forest lands within the Lake Whatcom watershed for park purposes, pursuant to RCW 79.22.300, following a re-arrangement of trust designations of state-owned trust land in the watershed (inter-grant exchange) which will consolidate some or all State Forest lands and federally-granted State Trust lands.

This Memorandum of Agreement will guide and govern all actions by the County and DNR necessary to prepare the inter-grant exchange and the subsequent re-conveyance, for approval by the Whatcom County Council and the Board of Natural Resources.

The County and DNR seek by this proposed transaction to resolve long-standing questions regarding the management of state trust lands in the watershed in a manner that serves the best interests of both local and state residents, including the beneficiaries of state trust lands. This objective builds upon unique circumstances present in the watershed, in which a large block of state-owned trust forest land is situated very near a major metropolitan area. The County and DNR intend to use this MOA to facilitate a well-coordinated and predictable process to accomplish this stated objective.

The County seeks to accommodate future park needs of County residents by securing and managing for park purposes major tracts of relatively undeveloped forest land within minutes of a major population center. The County intends to manage the re-conveyed lands primarily for passive park and recreational experiences in a relatively wild and natural setting, within walking or biking distance for many urban residents. The proposed future park lands will also provide wildlife habitat and a minimally disturbed portion of the lake's watershed. This proposal helps ensure that these opportunities are available for future generations to enjoy, and maintains a high quality of life for County residents.

DNR will recognize and act on the County's request for re-conveyance, while fulfilling its legal obligation to the beneficiaries of the state-owned trust lands which will remain in State ownership and DNR management in the watershed. DNR acknowledges the topographic diversity in the watershed and the resulting diversity of management settings for trust forest land management. DNR seeks to create an ownership pattern in the watershed which facilitates sustainable management of trust forest lands for trust purposes and for associated ecological and public benefits including clean water, timber, public revenue, wildlife habitat, and recreation.

Summary of the Agreement

This Memorandum of Agreement specifies the scope, rationale, procedural steps and understandings, subsequent management considerations, and timeline for the proposed transaction.

Background and Context

State trust lands in the Lake Whatcom Landscape Planning Area comprise approximately 15,700 acres, including small adjoining portions of contiguous parcels, and a block of lands west of Cain Road and Reed Lakes. As a whole the watershed is composed of 31 percent urban residential, 46 percent state trust forest land, and 23 percent private forest land. Of the state trust forest land, about 9,350 acres are State Forest lands managed to benefit Whatcom County and its junior taxing districts (8,470 acres of State Forest "transfer," and 880 acres of State Forest "purchased"), and about 5,660 acres are federally-granted trust lands managed to benefit various trust beneficiaries, primarily K-12 common schools statewide. In addition, 690 acres are State Forest lands located in and managed to benefit Skagit County. The watershed provides drinking water to a majority of the residents of Whatcom County.

In 1993, at the request of Whatcom County, DNR doubled its acreage of state-owned trust forest land within the watershed through a land exchange with Trillium Corporation. The watershed has a long history of damaging storm-induced landslides from its steep forested slopes. In 1999, and again in 2000, County residents urged the state legislature to pass legislation relating to DNR's planning and trust land management in the watershed, and addressing local residents' concerns over drinking water quality and public safety in relation to landslides. The 2000 legislation created a local Inter-jurisdictional Committee (IJC), which DNR worked with until 2004 to create a Lake Whatcom Landscape Plan and accompanying Environmental Impact Statement. The plan represented DNR-IJC consensus on most management issues, including streamside and unstable slope protection that goes beyond current state forestry regulations.

The Board of Natural Resources adopted the Lake Whatcom Landscape Plan in November, 2004, while expressing concern over the balance of costs and benefits of implementing the plan, in relation to the State's fiduciary responsibilities to trust beneficiaries.

As called for in the landscape plan, DNR established a new Inter-jurisdictional Committee, which had its first meeting in February, 2005. The committee conducts a site-specific review of proposed DNR activities in the watershed and makes recommendations. The IJC has met numerous times, conducted many field tours, and provided written recommendations on many planned DNR management activities including proposed timber sales, road construction, maintenance and abandonment plans, and silvicultural projects.

Also in February, 2005, Skagit County and junior taxing districts in Skagit and Whatcom Counties filed a lawsuit against the State challenging the validity of the landscape plan,

alleging that it violated the State's trust obligations to the County and taxing districts. That lawsuit is ongoing.

In the spring of 2007, representatives of Whatcom County approached DNR to introduce a County proposal regarding re-conveyance of State Forest lands in the watershed for park purposes under RCW 79.22.300. After several meetings over the course of the spring and summer of 2007, Whatcom County Executive Pete Kremen and Commissioner of Public Lands Doug Sutherland agreed on September 21, 2007 to develop and sign a Memorandum of Agreement to accomplish a re-conveyance.

Scope of the Land Transactions

The proposed inter-grant exchange and re-conveyance is most likely to result in two ownership blocks that will be transferred to Whatcom County for public park use and three ownership blocks that will remain in trust ownership and be managed by DNR as working forests. The attached map, labeled "Proposed Inter-grant Exchange and Re-conveyance," shows the location of the trust land parcels in the Lake Whatcom Landscape Planning Area that are being considered for exchange and re-conveyance, as well as an outline of the Whatcom County and DNR management blocks that would result from this proposal. The map depicts preliminary ideas only, and both size and precise boundaries for the final re-conveyance should not be inferred. DNR and the County understand that specific parcels will be brought up for discussion in the process of finalizing the inter-grant exchange and developing a final re-conveyance package.

Rationale for the Inter-grant Exchange

In the current configuration of trust land designations in the watershed, various designations are intermingled in a complex way, including State Forest lands and federally-granted State Trust lands. Therefore, re-conveying the State Forest lands to the County in their current configuration would result in a complex intermingling of future County park and future State Trust land ownership. This intermingling would greatly complicate the ongoing management of both the park and the trust lands. In addition, the intermingled character of the land designations greatly increases the costs of preparing for and carrying out the re-conveyance. Finally, in many cases the lands most appropriate for ongoing park purposes and for ongoing working forest management as trust lands don't currently reflect State Forest and other State Trust ownership, respectively.

An opportunity exists to rearrange the State Forest lands and other State Trust lands into more contiguous blocks prior to re-conveyance, to provide more manageable areas for each, to increase compatibility of future management of the respective ownerships, to reduce transaction costs, and to position the future park lands and working forests on the most appropriate landscape features. In general, future County park lands would be located on both sides of the central portion of the watershed, often on relatively more environmentally sensitive lands, while state trust lands would be located to the northeast and southeast areas of the watershed, often on less steep and more stable lands.

Inter-grant Exchange Process

Washington's Department of Natural Resources, as trust land manager, occasionally facilitates an exchange between trusts under RCW 79.22.300.

Inter-grant exchanges are subject to all the requirements for land exchanges described in Chapter 79.17 RCW. Inter-grant exchanges must also comply with the common law duties of trust management, which is to say that one trust can't benefit at the cost of another trust and that the current generation cannot benefit at the cost of future generations, or vice versa.

Inter-grant Exchange Steps

1. Identify State Forest Land and exchange parcels that have similar attributes (site class, current use, appreciation potential).
2. Conduct title and property reviews in order to identify any issues or attributes that may affect value.
3. Select contract timber cruiser, timber appraiser, land appraiser, review appraiser as needed. All properties in the exchange must be appraised by a qualified appraiser, and the appraisal must meet all applicable department and industry standards.
4. Advertise and conduct at least one public hearing, jointly with the County.
5. Balance values in the exchange once cruise and appraisal are completed. The final balance should result in either benefit for both trusts, or provide a benefit to one trust without harming the value of another.
6. Prepare documents and presentation for Board of Natural Resources approval.
7. Close transaction by updating title documents and other internal records.

Rationale for the Re-conveyance

With rapid growth and development occurring throughout Whatcom County, Lake Whatcom and its relatively undeveloped watershed currently provides a rare and unique opportunity to accommodate the park and recreational needs of County residents. Within minutes of the major population center are large tracts of wild lands comprised of parks, working forests and other lands. While invaluable for wildlife habitat and lake protection, this area can also provide a passive recreational experience seldom found in close proximity to the urban environment. The value of these lands for recreational purposes was first identified in County planning efforts in the early 1970s when the area was designated as a recreational resource management area.

The continued increase in population and proximity to the City of Bellingham and Sudden Valley Urban Growth area places increased demand upon these lands for public parks and recreation. The location of these lands within the Lake Whatcom Watershed requires additional management efforts and strategies to minimize impacts to the watershed and properly accommodate use.

Whatcom County is proposing to take a major leadership role by requesting from the DNR that two areas in the Lake Whatcom watershed be set aside through re-conveyance

as regional parks serving a multitude of park and recreational purposes and providing a wild and natural experience within walking and biking distance for many residents. These regional parks will connect with neighborhoods, communities and other area attractions and will be similar in scope and nature to the highly successful Chuckanut Mountain Recreation Area. Activities will be determined through a planning process and may provide a variety of passive recreational activities such as camping, hiking, fishing, picnicking and bicycling. Development and management will need to be sensitive to the watershed and utilize low impact design practices.

Lookout Mountain Regional Park:

If re-conveyed, Lookout Mountain Regional Park will be located on the western side of Lake Whatcom and encompass the eastern slope of Lookout Mountain. This parkway will provide a buffer between the Bellingham Urban Growth Area and Lake Whatcom. Public access will be provided to trails, day use areas and destination points within the Park. A trail system will be developed to lead visitors to spectacular views of Bellingham Bay and Lake Whatcom and will interconnect to City and County parklands and private trails to the north and west.

Lake Whatcom Regional Park:

Located on the eastern shore of Lake Whatcom, Lake Whatcom Regional Park, if re-conveyed, is envisioned to encompass portions of the Smith Creek Watershed and over three miles of lake shoreline. Active recreation and parking will be accommodated within the existing Lake Whatcom County Park with access provided to a system of trails leading to other park areas, overlooks, and connecting trails. The re-conveyance will include the southern mile of the Hertz multi-use trail, waterfalls, rock climbing areas, fishing accesses and scenic overlooks of Lake Whatcom. Also envisioned are rustic back country campsites and hiking trails linking the Y-Road trailhead, Sunnyside Landing, South Lake Whatcom and the community of Acme.

Re-conveyance Process

RCW 79.22.300 allows a county to request the transfer of certain State Forest lands back to the county for public park use when in accordance with the county and the state comprehensive outdoor recreation plans. The statute requires the Board of County Commissioners to file an application for re-conveyance with the Board of Natural Resources, and specifies that DNR is to determine whether the request is consistent with the state comprehensive outdoor recreation plan. DNR may place conditions on the re-conveyance regarding management of adjacent public lands for maximizing multiple use and reserving of necessary rights of way, and may only deny a request if the department finds that the proposed use is not in accord with the state comprehensive outdoor recreation plan.

Re-conveyance Steps

- 1) A request for re-conveyance is initiated by the County submitting a letter requesting re-conveyance to DNR's region manager.
- 2) The region reviews the County's letter to determine:
 - a. Documented need for the subject land as public park land,