

Collaborative Planning on State Trust Lands:

A University of Michigan Study

*for the State Trust Lands Partnership Project
of the Sonoran Institute and the Lincoln Institute of Land Policy*



About the Study:

Collaborative planning on state trust lands was identified for further research at the 2004 State Trust Lands Research and Policy Analysis Roundtable convened by the State Trust Lands partnership project of the Sonoran Institute and the Lincoln Institute of Land Policy. In March 2005, under the guidance of Dr. Steven L. Yaffee, a team of eight graduate students from the University of Michigan School of Natural Resources and Environment began conducting a region-wide survey and analysis of eight case studies in which state trust land agencies collaborated with stakeholders in trust land planning and management. The research team conducted 117 on-site and telephone interviews, each lasting roughly one to three hours. Through these interviews, the team answered a set of research questions concerning the benefits, challenges, costs and outcomes of collaborative planning on state trust lands. The goals of this research were to:

- Capture on-the-ground experiences of collaborative planning on state trust lands
- Analyze the advantages and disadvantages of this trust land management approach
- Distill a set of best management practices
- Provide broader recommendations for overcoming barriers to collaborative planning on state trust lands

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**LAKE WHATCOM LANDSCAPE PLANNING PROCESS:
State Forest Planning for a Municipal Watershed**



Lake Whatcom, Bellingham, Washington

Photograph by Matt Stout

**Case Study by Matt Stout
Researched and Edited by Matt Stout and Alden Boetsch**

INTRODUCTION

Lake Whatcom is the primary source of drinking water for approximately 87,000 residents in Whatcom County, Washington, including most of the residents of the city of Bellingham. More than half of the lake's watershed is state trust land managed primarily for timber revenue by the Washington Department of Natural Resources (DNR). State trust land revenue supplements state taxes for the funding of schools and other public institutions in Washington.

Because it offers scenic views, outdoor recreation and a short commute to downtown Bellingham, Lake Whatcom has experienced significant residential development along its shore in the last few decades. However, urban development and to a lesser degree timber harvesting in the lake's watershed have contributed to the deterioration of water quality, and public safety remains a key concern of residents in the watershed. In 1983, a major landslide washed homes, cars and 65 acres of timber into the lake. While considered a naturally occurring event, the slide, precipitated by a major rain storm, was exacerbated by decades-old logging practices.

In 1998, road building by the DNR in preparation for a timber sale above a residential area heightened public concerns over another landslide. In response to public safety and water quality concerns expressed by local residents, the Washington State Legislature passed a bill in 2000 that put a moratorium on logging on state trust lands in the watershed until a Landscape Plan could be developed with higher standards for water quality and public safety. The bill directed the DNR to establish an Interjurisdictional Committee to help develop the Landscape Plan.

The Committee consisted of representatives from several state agencies, local government and tribes and two members of the public. During the three and half years it took to develop the plan, the DNR met with the Committee several times and went through an extensive process to meet and exchange information with the community and other interested parties. The Committee concluded its work by making consensus recommendations to the DNR that identified management strategies for the watershed. In November 2004, the Washington State Board of Natural Resources approved the Lake Whatcom Landscape Plan. The DNR is currently in the process of implementing the plan. While approval of the plan heralded a call from the local community to once again support commercial logging in the watershed, Skagit County, a neighboring county, and Mount Baker School District in Lake Whatcom County have filed a lawsuit challenging the plan. As of the April 2006, the lawsuit is still pending.

The Lake Whatcom Landscape Planning Process demonstrates how an interjurisdictional, collaborative planning effort with strong state and local representation can help achieve watershed management standards that are more protective and enjoy greater community support. At the same time, the case exemplifies why it is critical to make decision-making authority clear from the beginning and to let stakeholders participate in defining how the process will be conducted. This case also shows the importance of including the full range of stakeholders and of hiring a facilitator early in the process if one appears needed. Finally, the planning process reveals the need for setting realistic timelines and having procedures in process ground rules for overcoming disagreements.

CONTEXT FOR COLLABORATION

The following descriptions of state trust lands in Washington, Lake Whatcom and its watershed are provided to give insight into the environment in which the multi-party landscape planning process for Lake Whatcom took place.

PHYSICAL ASPECTS OF STATE TRUST LAND IN WASHINGTON

The state of Washington contains approximately 2.9 million acres of state trust land. These lands are dispersed across the state (Figure 8-1) and are of varied terrain.¹ The Cascade Range, a series of mountains that run north-south and whose highest peak, Mt. Rainier, climbs to 14,410 feet, divides the state geographically.² To the east, Washington's interior is a vast semiarid expanse. In this part of the state, much of state trust land is grasslands and is used for grazing and agriculture.

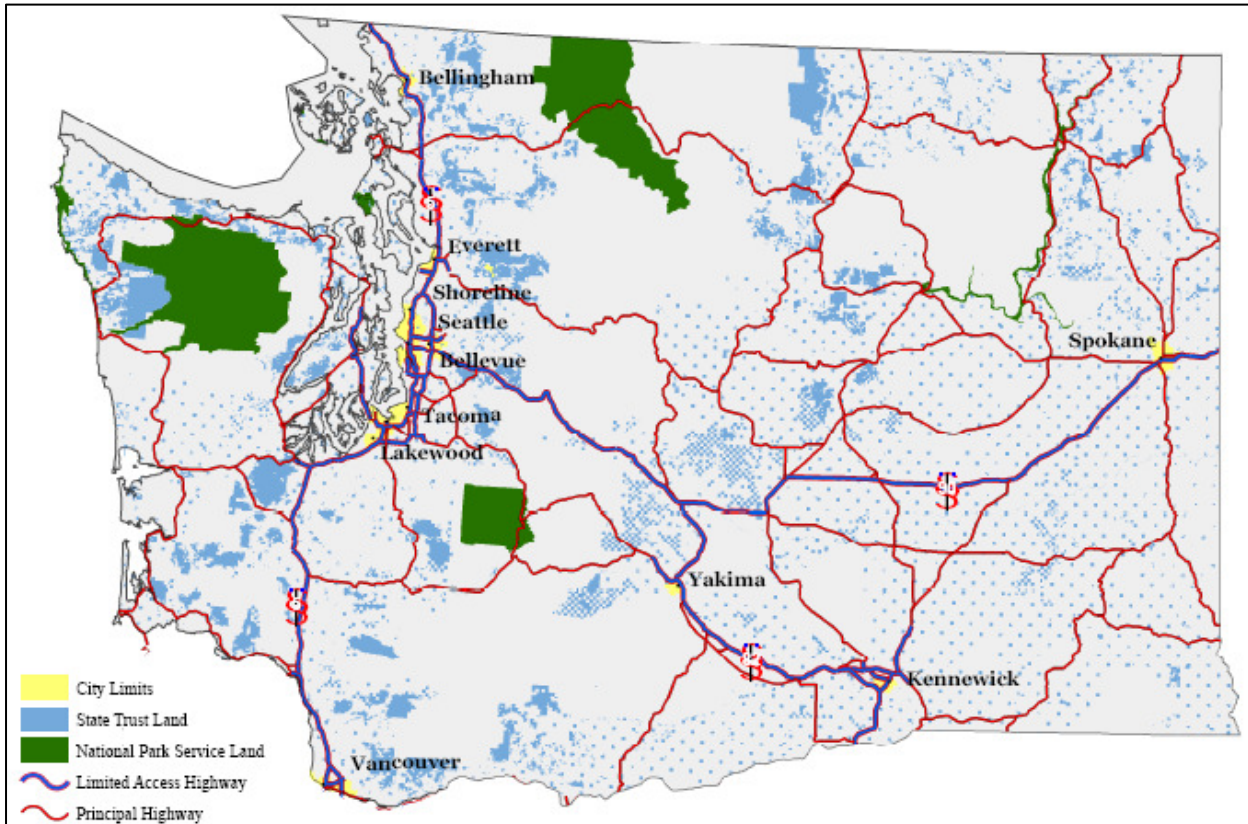
In the Pacific coast region, west of the Cascades, where Lake Whatcom is found, heavy rains support dense forests of spruce, fir, cedar and hemlock. State trust lands in this region are used primarily for logging. The timber industry is one of the Washington's largest industries and has been an important part of the state's history.³ However, because of heavy logging, Washington has witnessed some of the most notorious environmental conflicts in the United States, including those over endangered species such as the spotted owl and the marbled murrelet.

LEGAL BACKGROUND

The laws that govern state trust lands in Washington, including those found near Lake Whatcom, are set forth in the state's Enabling Act and Constitution. With the Omnibus Enabling Act of 1889, Congress admitted Washington as the 42nd state of the United States and granted the state sections 16 and 36 in every township, a total of 2.4 million acres, to underwrite "Common Schools."⁴ With additional grants for other public institutions, Washington's land grant at the time of statehood totaled approximately three million acres.⁵

The state's Enabling Act allowed Washington's state trust lands to be sold, leased and exchanged under certain conditions. Congress amended Washington's Enabling Act several times to "allow for the grant of easements, longer-term leases for mineral lands and hydroelectric purposes, public sales of agricultural and grazing lands, land exchanges and to create a Common School Construction Fund for support of the construction of school facilities."⁶ Washington's Constitution requires that sales of state trust land be conducted at public auction with the sale going to the highest bidder for no less than market value.⁷

Figure 8-1: Map of State Trust Lands in Washington



Source: "Washington Trust Lands," Trust Land: A Land Legacy for the American West, The Sonoran Institute & Lincoln Institute of Land Policy, available at <http://www.trustland.org>.

Judicial rulings over the years have upheld that the state's Enabling Act and article 16 of the state Constitution "operate to create a binding trust responsibility" and that the state has the same fiduciary duties as a private trustee.⁸ In *County of Skamania v. State*, the court found a decision by the legislature to nullify timber sale contracts unlawful because doing so benefited the local economy and the timber industry at the expense of trust beneficiaries.⁹ This ruling established that the "state must act with undivided loyalty to the interests of the beneficiaries."¹⁰ Other rulings have prohibited the granting of state trust land to the federal government for public projects and have allowed for the use of a sustained yield plan for timber harvesting on Common School land.¹¹

In addition to the laws and court rulings described above, federal and state laws pertaining to natural resources, the environment, public safety and affairs with Native American tribes apply to the management of state trust lands. These laws include the federal Endangered Species Act (ESA), the State Forest Practices Act, the State Environmental Policy Act (SEPA), the State Multiple Use Act and several federal and state treaties with Washington State Indian tribes. In 1996, in compliance with the ESA, a Habitat Conservation Plan (HCP) for state trust lands was created by the DNR and the U.S. Fish and Wildlife Service. The HCP laid out habitat protection measures for the next 70 years on 1.6 million acres of state trust land in western Washington.

MANAGEMENT

The State Legislature acts as trustee of Washington’s state trust lands by enacting laws that protect trust assets. The Department of Natural Resources serves as trust manager and implements laws created by the legislature. DNR management activities are controlled by the Board of Natural Resources (Board), an administrator and a supervisor.¹² The Board is a six member body, consisting of the Commissioner of Public Lands (Commissioner), the Governor or the Governor’s designee, the Superintendent of Public Instruction, the Dean of the University of Washington College of Forest Resources, the Dean of the Washington State University College of Agriculture and Home Economics and a County Commissioner from a county that contains Forest Board Transfer Lands (described below). The administrator is the Commissioner of Public Lands, an elected official who serves four year terms with no term limits. The Commissioner appoints the Supervisor. The Commissioner and Supervisor run day-to-day management of the trust. The Board sets policies and adopts rules for trust management as it sees necessary.¹³

State trust land is managed to generate revenue for public schools, universities, community colleges, prisons, mental hospitals and other public institutions. Several trust types have been established to support different beneficiary groups (Table 8-1). The Common School trust is the largest trust with over 1.7 million acres and benefits public schools (K-12) in the state. The second largest trust by acreage is the Forest Board Transfer Lands trust with over 600,000 acres. Forest Board Transfer Lands were acquired by the state through tax foreclosures and are "held in trust" for the benefit of the taxing districts in which the lands are located.¹⁴ The Lake Whatcom watershed contains both federally granted Common School lands and state acquired Forest Board Transfer Lands.

Table 8-1: Trust Beneficiaries

<u>Trust</u>	<u>Beneficiaries</u>	<u>Acres</u>	<u>% Total</u>
Agricultural & Scientific School	Washington State University	151,148	5%
Capitol Building	State Capitol Campus	108,234	4%
Charitable, Penal and Reformatory	Various state institutions	70,247	2%
Common School	Public schools (K-12)	1,774,460	62%
Forest Board Transfer Lands	County governments	623,558	22%
New Trust Lands	Community & Technical College Reserve	3,312	0%
Normal School	Western, Central and Eastern Universities	64,304	2%
University Original & Transferred	University of Washington	86,721	3%
Total		2,881,984	100%

Source: Washington State Department of Natural Resources, <http://www.dnr.wa.gov>.

Distribution of trust revenue is determined by state laws and varies by trust. Typically, 75 percent of trust revenue is distributed to the trust beneficiaries and 25 percent is distributed to the Resource Management Cost Account, which finances DNR management activities related to federally granted state trust lands. The state budget process determines how funds in the accounts are appropriated. Distributions to trust beneficiaries pay for capital expenditures and operating

expenses or are deposited in trust permanent funds, which are managed by the Washington State Investment Board.

While state trust land provides wildlife habitat, watershed protection, open space and recreation opportunities, the DNR primarily manages it to generate revenue for trust beneficiaries.¹⁵ According to DNR officials, trust lands yield about \$200 million per year for trust beneficiaries.¹⁶ Timber harvesting provides the greatest source of revenue. In 2004, timber sales accounted for 66 percent of the revenue generated on State Grant Lands (Table 8-2).¹⁷ Land sales and transfers accounted for 16 percent of 2004 State Grant Lands revenues, followed by agriculture and grazing at seven percent and real estate at six percent. Mining, oil and gas and other commercial activities made up the remaining four percent of 2004 revenues.

The DNR generates revenue from state trust lands through sales transactions, commercial leases and land exchanges and manages the land to meet environmental, natural resource and recreation-oriented objectives. The DNR sells timber as well as agricultural and grazing leases at public auction. All timber sales are reviewed by the Board and must first go through the SEPA process. SEPA ensures that the DNR considers the environmental consequences of its proposed actions. The DNR is allowed to exchange state trust land for land owned by private or government entities as long as the exchange does not result in a decrease of the value of the trust. The DNR has consolidated many of its holdings in western Washington to form large contiguous tracts of land to make management easier and more effective.¹⁸ Recreation is allowed on nearly all DNR managed land, although funding for recreation management has recently been reduced by the legislature.¹⁹ In 2004, the DNR adopted a “sustained yield plan” for the management of its timber resources. The plan calls for “harvesting on a continuing basis without a major prolonged curtailment or cessation of harvest.”²⁰ The plan will increase harvesting by 23 percent from previous levels.²¹ A coalition of environmental groups in Washington filed a lawsuit against the plan shortly after it was released claiming the plan would harm salmon, wildlife habitat and clean water.²²

Table 8-2: Department of Natural Resources 2004 Revenue

(\$ in thousands)	State Grant	%	Forest Board	%	Non "Trust"	%	Department	%
	<u>Lands</u>	<u>Total</u>	<u>Transfer Lands</u>	<u>Total</u>	<u>Revenue</u>	<u>Total</u>	<u>Total</u>	<u>Total</u>
Natural Resource Activity								
Agriculture and grazing	\$8,576	7%	\$241	0%	(\$209)	0%	\$8,608	3%
Mineral and hydrocarbon	660	1%	91	0%	218	0%	969	0%
Timber	77,005	66%	98,506	99%	14,834	17%	190,345	62%
Commercial Activity								
Real estate	7,417	6%	59	0%	(58)	0%	7,418	2%
Communication sites	1,815	2%	956	1%	1	0%	2,772	1%
Rights-of-way	729	1%	135	0%	1,553	2%	2,418	1%
Miscellaneous leases	891	1%	0	0%	312	0%	1,203	0%
Aquatic lands	0	0%	0	0%	15,781	18%	15,781	5%
Land sales and transfers	18,704	16%	0	0%	15,096	17%	33,800	11%
Interest and other	232	0%	(149)	0%	42,264	47%	42,347	14%
Total	\$116,030		\$99,839		\$89,792		\$305,661	
% Total	38%		33%		29%		100%	

Source: Washington Department of Natural Resources 2004 Annual Report, available at <http://www.dnr.wa.gov>.

THE LAKE WHATCOM WATERSHED

Lake Whatcom supplies drinking water to the residents of the city of Bellingham. The lake is fed by two separate watersheds: the Lake Whatcom Watershed, which surrounds the lake itself, and the Middle Fork Nooksack Watershed, supplied partially by glacier melt from Mt. Baker, which drains into a river, a portion of which is seasonally diverted into Lake Whatcom. Before being delivered to city residents for use, water is treated at a plant at Whatcom Falls Park.

Forest land is the primary land use in the Lake Whatcom watershed, representing 91 percent of all land uses. Developed areas represent four percent of land uses in the watershed.²³ However, current zoning would allow for a much higher percentage of urban development (Figure 8-2).

The DNR manages approximately 15,700 acres of state trust land in the watershed mostly for timber revenue. The majority of the state trust land in the watershed is in Whatcom County. A small portion is in Skagit County, which borders Whatcom County to the South.

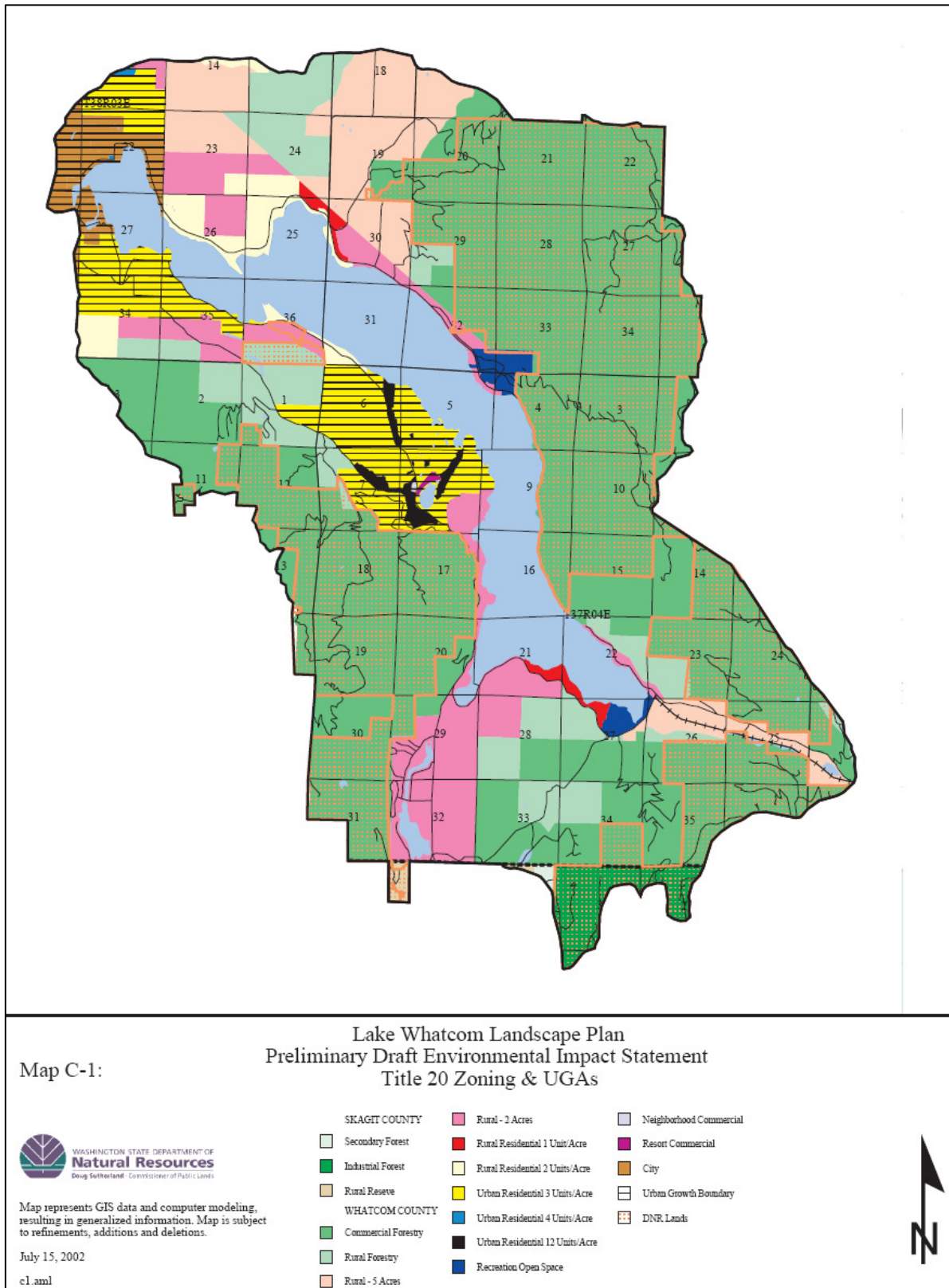
Table 8-3: Trust Types in the Lake Whatcom Watershed

<u>Trusts</u>	<u>Acres</u>	<u>% Total</u>
Forest Board Transfer Lands (Whatcom County)	8,473	54%
Forest Board Transfer Lands (Skagit County)	690	4%
Forest Board Purchase Lands (Skagit County)	881	6%
Common School (K-12 schools)	4,627	29%
Agricultural School (WSU)	193	1%
Capitol Buildings	286	2%
Scientific School (WSU)	557	4%
Total	15,707	100%

Source: "Report to Legislature: Lake Whatcom Landscape Pilot Project," Washington State Department of Natural Resources, 2004.

There are seven different trust types in the Lake Whatcom watershed (Table 8-3). Forest Board Transfer Lands make up a majority of the state forest land in the watershed.²⁴ The second largest category of trust lands in the watershed is Common School trust lands.

Figure 8-2: Zoning Map of the Lake Whatcom Watershed



Source: *Lake Whatcom Landscape Plan Preliminary Draft Environmental Impact Statement*, Washington State Department of Natural Resources, <http://www.dnr.wa.gov/htdocs/agency/whatcom/index.html>.

THE STORY: THE LAKE WHATCOM LANDSCAPE PLANNING PROCESS

EVENTS LEADING UP TO THE PLAN

In 1983, heavy rains triggered landslides above Lake Whatcom causing several houses, cars, part of a golf course and about 65 acres of timber to wash into the lake. Damage was estimated at about \$12 million (in 1983 dollars).²⁵ Mass wasting, as it is called by geologists, is a natural process in the Lake Whatcom watershed, but logging and road building in decades past exacerbated the landslides. While the degree to which logging activity caused the landslides is debated, the DNR settled a lawsuit with a group that sued for damages incurred by the slide. According to the DNR, the logging activities that contributed to the landslide were carried out in the 1920s and 1930s by private foresters who were operating under more lenient standards than those currently mandated by the DNR.²⁶ Regardless of fault, the slide was a traumatic experience for lake residents. Since 1983, the number of people living in the area has grown significantly, increasing the potential for loss of life and injuries from another landslide.

While there has not been a major mass wasting event since 1983, the lake has experienced its fair share of problems related to water quality. Most notably, pollution levels in the lake have increased significantly as a result of residential development. The main issues of concern are low dissolved oxygen, total phosphorous, dieldrin, total PCBs and mercury pollution in the lake and high levels of bacteria (such as fecal coliform) in tributaries to the lake.²⁷ There are several sources of pollution impacting the lake including forest practices, mining, recreation, hazardous waste and solid waste spills, storm water runoff, transportation, urbanization/development and wastewater systems.²⁸

The city of Bellingham has undertaken several initiatives to combat pollution in Lake Whatcom, including a ban on the use of carbureted two stroke boat motors and outreach to residents about the harms of runoff. While several formal plans and initiatives to protect water quality in the watershed have been implemented over the years, residents of Bellingham have witnessed a rise in mercury pollution, E. coli warnings and sewage overflows into Lake Whatcom, the source of their drinking water. In 1998, the EPA listed Lake Whatcom as a 303(d) impaired water body, which required the Department of Ecology to conduct a Total Maximum Daily Load (TMDL) study that would set standards for acceptable levels of pollution from point and non-point sources.²⁹

In response to deteriorating water quality in Lake Whatcom in the late 1980s, city and county officials began looking for ways to slow residential growth and protect their municipal water supply. Local officials decided that public management of forest lands offered the best solution for protection of the watershed, knowing that private timber companies could readily sell off land for development.³⁰ Accordingly, the city and county approached the DNR with an idea of a land exchange, in which the DNR would acquire lands in the watershed owned by the Trillium Corporation in exchange for land owned by DNR elsewhere. Despite that the lands proposed in the exchange were in a public watershed and near an urban area, the DNR decided that acquiring more land in the Lake Whatcom watershed would be in the best interests of trust beneficiaries, presumably because of the timber revenue potential.³¹ The exchange was completed in 1993, doubling the DNR's land ownership in the watershed to about 15,000 acres.³²

As part of the land exchange, the DNR agreed to conduct a joint planning process with Whatcom County to develop a forest management plan for state trust land it owned in the watershed. Efforts to meet this obligation began in 1994 with approval from Commissioner Jennifer Belcher to draft the Lake Whatcom Landscape Plan. At the time, according to Bill Wallace, DNR's Northwest Regional Manager, the DNR determined that drafting the plan would likely not require a full environmental impact statement, but that public input into the process would be desirable.³³

Development of the Landscape Plan faced several delays. First, the planning process was put on hold so that a watershed analysis could be conducted by the DNR, to satisfy requirements of Washington's Forest Practices Act. The DNR decided that the analysis would be necessary to create a baseline of information about unstable slopes and forestry impacts on water quality. The watershed analysis, which affects management of both private and public lands in the watershed, was not completed until 1997, at which time work on the Landscape Plan resumed. Work stalled again when Commissioner Belcher decided to develop a new, statewide template for Landscape Plans.³⁴ According to Wallace, the Lake Whatcom Landscape Plan was put on hold so that the new template could be developed.³⁵ However, the new statewide template was never completed, for reasons not fully explained. As a result, the Landscape Plan for Lake Whatcom was further delayed. Meanwhile, timber sales and forest management continued in the watershed.

THE COMMUNITY GETS INVOLVED

In 1998, faced with new timber sale activity on the south side of Lake Whatcom, the community mobilized to stop logging. The DNR had begun building access roads in preparation for a timber sale in Austin Flats, a timber stand above the residential, lake-side community of Sudden Valley (Figure 8-3).

According to Wallace, the Austin Flats timber sale had been pending for some time.³⁶ However, there had been no commercial forestry activity in the area in recent years. Sudden Valley resident Linda Marrom described the events that ensued as follows:

My neighbor, Jamie Berg, and I one day were outside and we heard what sounded like blasting sounds coming off the mountain. We thought we heard guns but you're not supposed to hunt in the area. We came down to the Valley Market. Other people had gathered. We got word that the Department of Natural Resources was blasting with dynamite to widen a logging road. We were surprised to hear that because in 1983 this area flooded due to clear-cutting on unstable slopes.

We thought if they knew about what happened before, why are they doing it now. We started asking questions. We both must have been crazy to think we could take on the state. We were not geologists. It just seemed like common sense to do something about it. We wrote up a petition to see if we could generate interest, to see if people would support us. We left about 15 pages with space for signatures on each side [at the Valley Market]. We came back after three days and it was full front and back. I think we had about 350 people. We were shocked. We are both working moms. We thought we were crazy to continue but we got possessed with

it. The floodgates were open whether we wanted it or not. People started coming to us once they knew we were involved.³⁷

Berg and Marrom continued to step up their efforts to stop logging above their homes. They began meeting with local public officials and scientists and found that several people were willing to lend their expertise to the cause. According to Marrom, “people were coming out of the woodwork to help us.”³⁸ Their efforts gained traction when they began meeting with state legislators representing Whatcom County. Senator Harriet Spanel, a Democrat whose district includes Lake Whatcom, was especially responsive, and she continued to stay heavily involved with the issue. With her help and the involvement of additional city officials, Berg and Marrom were able to arrange a public meeting with Commissioner Belcher.

Figure 8-3: Sudden Valley Marina Beach Park



Source: Photograph by Matt Stout

The meeting, which drew over 300 people and was reportedly the biggest meeting ever at the County Courthouse, provided an opportunity for Berg and Marrom to present their petition to the Commissioner.³⁹ The petition, which had around 5,000 signatures, called for an end to clear-cutting in the Lake Whatcom watershed, to protect public safety and water quality. Despite the raucous crowd, Commissioner Belcher explained that the law required the DNR to manage state trust land to generate revenue for trust beneficiaries. To stop logging the area would violate this responsibility. She challenged the community to raise the money to buy the land if they wanted to stop timber harvesting in the watershed. According to those in attendance, her message did not make Belcher a friend of many residents of Bellingham, but it did serve as a call to action for those who wanted land use change in the watershed.⁴⁰

LEGISLATIVE ACTION TAKEN

After learning more about the relationship between the DNR as managers of the trust and the State Legislature as trustees, Berg and Marrom decided to target their efforts on state legislators, in order to change the laws that dictated forestry policy in their watershed. Senator Spanel, who had previously helped the “moms in tennis shoes” as they had come to be known after frequent trips to the state capitol, agreed to sponsor their bill.⁴¹ In addition to her long tenure in both the House and Senate, Senator Spanel had been a member of several natural resource and environment related committees. She had also become increasingly interested in the effects of forest practices on water quality statewide.⁴²

The original version of the bill Spanel sponsored, Senate Bill 5536, required a review of and report on the adequacy of DNR management plans for state forest lands within municipal watersheds across the state. The bill included a moratorium on logging while the study occurred. The bill was referred to the Natural Resources, Parks & Recreation Committee, where it passed. However, the bill met strong resistance from the timber lobby and the DNR in the Senate Ways and Means Committee. These groups were concerned the bill would result in a loss of revenue to trust beneficiaries.⁴³ As a compromise, the bill was scaled back to apply only to the Lake Whatcom watershed. The bill passed unanimously in the House and Senate and became law on July 25, 1999.⁴⁴

The new law required that a study be undertaken by the DNR in the Lake Whatcom municipal hydrographic area to determine state trust land forest management strategies that would achieve water quality standards above those required by existing law (see Appendix, Exhibit 5). The bill also directed the DNR to establish a committee (herein called the Study Committee) consisting of “a representative each of the city of Bellingham, Whatcom County, the Whatcom County Water District 10, the Department of Ecology, the Department of Fish and Wildlife, and the Department of Health and three general citizen members” to assist the DNR in this effort.⁴⁵ The bill did not specify that the DNR be a member of the Study Committee, only that the Study Committee and the DNR reconcile any differences. A deadline for completing the study was set for June 30, 2000; all timber sales in the study area were banned until the project was complete.

After several months of deliberations, the Study Committee made a number of recommendations to the DNR. The Study Committee’s recommendations included riparian management zones on all stream types, no new road building on unstable slopes, a sustained yield model of harvesting and a road management plan.

However, Senator Spanel and the bill’s supporters realized that the legislation did not require implementation of the Study Committee’s recommendations and, according to Senator Spanel, it had become apparent that the DNR did not plan to implement the recommendations once the moratorium on logging ended.⁴⁶ Combined with growing frustrations over the languishing Lake Whatcom Landscape Plan, Senator Spanel, Berg, Marrom and other supporters of the bill began drafting a second bill to require implementation of the Study Committee’s recommendations and completion of the Landscape Plan.

Despite a very tight timeframe, Senator Spanel again succeeded in passing the legislation with unanimous support. Senator Spanel recalls that she could not have pushed the bill through without the help of Marrom and Berg who spent a lot of time in the state capitol talking to legislators. While the timber lobby did not oppose the bill, because it affected only one region, Senator Spanel noted that in retrospect, “they said they would not have supported it if they knew what it was going to be about.”⁴⁷ Similarly, the DNR did not speak out against the bill: “I don’t think they [the DNR] supported the second one, but they didn’t strongly oppose it either – after all we did put money in it,” the Senator recalled.⁴⁸

The second bill became law on March 29, 2000, and required the DNR to complete the Lake Whatcom Landscape Plan by June 30, 2001, a 15 month timeframe (see Appendix, Exhibit 6).⁴⁹ The law stated that “the department shall establish an interjurisdictional committee for the development of the Landscape Plan, to review the site-specific activities and make recommendations.”⁵⁰

Membership of the new interjurisdictional committee was not specified in the bill but it required the committee to include two members of the public. Committee membership and its authority relative to the DNR would later become two highly contentious issues.

Lake Whatcom Interjurisdictional Committee	
Steve Hood	Department of Ecology
Joe Rutan	city of Bellingham
Bill McCourt ¹	
Clare Fogelson ²	
Richard Rodriguez	Department of Health
Vincent D’Onofrio	Water District 10
Alan Looff	Department of Fish and Wildlife
Rich Costello ³	
Dan McShane	Whatcom County
Tom Edwards, Jr.	Lummi Nation
Harlan James ⁴	
Linda Marrom	Citizen
Alan Soicher	Citizen

1. Replaced Joe Rutan
2. Replaced Bill McCourt
3. Replaced Alan Looff
4. Replaced Tom Edwards, Jr.

In addition to consultation with the interjurisdictional committee, the bill required the DNR to consult with other major forest landowners in the watershed, watershed residents and the Lake Whatcom Management Committee (a standing committee consisting of the Mayor of the city of Bellingham, a Whatcom County executive and a representative of Water District 10) during the creation of the plan. The bill also required that the Lake Whatcom Landscape Plan include the Study Committee’s recommendations (described above). Finally, the bill extended the moratorium on logging and road construction in the watershed until the Landscape Plan was approved.

THE LAKE WHATCOM INTERJURISDICTIONAL COMMITTEE IS CREATED

The Lake Whatcom interjurisdictional committee (herein called the Committee) commenced its work on August 1, 2000, four months after the legislation had passed, leaving just eleven months to complete the plan.⁵¹ The initial Committee consisted of representatives from the same groups that participated in the 1999 Study Committee: Whatcom County; Water District 10; the city of Bellingham; Washington State Departments of Health, Ecology and Fish and Wildlife; the Lummi Tribe and two private citizens. The only difference in the make-up of the Committee

compared to the make-up of the Study Committee, other than the actual people who represented each group, was that the second Committee only required two members of the public as opposed to the three that were required under the first bill. Commissioner Belcher had the discretion to appoint additional members and choose which representatives from the public would sit on the Committee. The state agencies and local authorities had discretion over who they would appoint to the Committee. Committee membership is shown above.

While the legislation only applied to state trust lands in the Lake Whatcom Watershed, representatives of private industry had an interest in sitting on the Committee, because the plan would affect regulations governing their activities. Commissioner Belcher decided, however, not to include industry, because their concerns would be voiced in the Lake Whatcom Forestry Forum, a recurring meeting between DNR, local government and commercial forest interests, and their interests and concerns would be represented by the DNR in Committee meetings. The Committee's membership is shown below.

The Committee's Charter summarized the mandates contained in the legislation passed in 2000 and broadly defined interaction between the Committee and the DNR (see Appendix, Exhibit 7). The Charter, for which Jennifer Belcher was the primary author, stated that the DNR would "consult with the Lake Whatcom Inter-Jurisdictional Committee" during the Landscape Plan development and that the committee would "review draft materials as they are developed and provide input to the department." Some members of the Committee questioned the Charter's alignment with the intent of the legislation, but they let the issue go because they felt that it would not hinder development of management strategies they could all support.⁵²

In the beginning, the Committee elected a Chair and established ground rules for conducting meetings and making decisions. The Committee elected Steve Hood, the Department of Ecology (DOE) representative, Chair of the Committee. Although not explicitly asked to facilitate the meeting, Hood recalls during the second meeting that the Committee elected him Chair because it needed "a benevolent dictator of the agenda."⁵³ The DNR also assigned one of its employees, Michael Perez-Gibson, to help Hood facilitate meetings. Decision making by the Committee was to be by consensus. Aside from customary rules about treating each other with respect, the Committee developed a process to handle issues for which consensus could not be found. First, a "cooling off" period of at least one week followed any failure to reach consensus. If after a week, the group felt that consensus could still not be achieved, a vote would be taken. If consensus was not achieved by vote, a majority report and minority report documenting the points of disagreement were required to show that consensus had not been reached on the issue.

To ensure transparency, the Committee's meetings were open to the public, and local reporters and legislators regularly attended. In addition, meeting minutes and materials were distributed to all interested parties. The Committee also instituted a "No Surprises Rule" which ensured internal transparency by prohibiting members from leaking information to the press before coming to the group with that information. On several occasions, the group took walks together through some of the planning sites to raise awareness of why they were at the table. Finally, Tom Edwards, Jr., the Lummi Nation representative, started off each meeting with a traditional Lummi song and prayer, an event remembered fondly by Committee members.

DIVERSE OBJECTIVES COME TO THE SURFACE

The public members of the Committee and representatives from city and state agencies brought a diverse set of objectives to the process. Linda Marrom, who had been selected as one of the public representatives because of her involvement in passing the legislation, felt she had a great deal at stake because her family home was located in Sudden Valley, where landslides had occurred in the past. Her primary objectives were to end clear-cutting in the watershed and to see that the recommendations made by the Study Committee were included in the final Landscape Plan.⁵⁴

Alan Soicher, the other public representative and a geologist with forest management experience, felt an obligation to the community to find a solution that the DNR would accept and that would protect public safety and water quality. He described his objective this way: “We wanted a plan that would meet conservation goals and allow for cutting trees in the watershed. It had to be good enough that we could stand behind it and support DNR logging in the watershed.”⁵⁵

Bill McCourt, the city of Bellingham’s representative and an experienced local water quality specialist, hoped that his involvement would help align DNR forest practices on state trust lands with the Lake Whatcom water quality initiatives that he had helped develop in the past.⁵⁶ Tom Edwards stated that his goal in joining the Committee was to protect “natural and cultural resources that are significant to the Lummi Nation.”⁵⁷ He was concerned that logging was contributing to sedimentation of sacred bathing pools and that logging and road building were destroying petroglyph sites.

Bill Wallace, manager of the DNR’s Northwest Region and a professional forester by training, was an active participant in nearly all of the meetings. He was supported by several staff members, including Jeff May, the project’s coordinator. According to Wallace, the DNR’s objective was to complete the Landscape Plan and to implement policy directives of the legislature and the Board of Natural Resources. However, Wallace also noted that the DNR was concerned that the legislature’s requirements to end road building and harvesting on all unstable slopes and to end logging in stream buffer zones on the smallest stream types would unnecessarily reduce revenue for trust beneficiaries.⁵⁸

Despite the group’s diverse objectives, Wallace said the group agreed that a mutually acceptable solution could be found if it were to balance fiduciary, social and environmental objectives.⁵⁹ According to Wallace, the primary fiduciary objective was to generate income for trust beneficiaries, the primary social objective was to ensure public safety and the primary environmental objective was to protect water quality.⁶⁰

THE PLANNING PROCESS IS SLOWER THAN EXPECTED

Despite establishing fairly robust ground rules, the Committee got off to a slow start. First, questions had been raised about the Committee’s role in relation to the DNR. The issue played out in debate over whether DNR representatives were intended by the legislation to be members of the Committee or whether the Committee was to be strictly advisory to the DNR. Some Committee members argued that if DNR representatives were members of the Committee, then

consensus reached by the group would carry more weight, because additional rounds of agency approval would be unnecessary. However, DNR officials felt they would be ceding some of their decision-making authority by becoming a full fledged member of the Committee and viewed it as inconsistent with the legislation.

Considerable debate also occurred over the weighting of importance among the group's fiduciary, social and environmental objectives. Wallace maintained that strategies that failed to provide enough income for the trust were unacceptable.⁶¹ However, some members of the Committee felt that all options should be kept on the table to allow for the most creative solutions to be found.⁶² The DNR insisted that not only did the Landscape Plan have to make money for the trust but that it also had to be consistent with DNR's Forest Resource Plan, DNR's Habitat Conservation Plan, Forest Practices Rules and the law passed in 2000.⁶³

According to Wallace, it became apparent early on that working with the Committee was going to make it difficult to meet the June 2001 deadline, presumably because of the diverse objectives and interests represented at the table.⁶⁴ Some of the delay was also caused by uncertainty over how the Department of Ecology's TMDL study for the watershed would affect the Committee's recommendations.

A NEW COMMISSIONER IS ELECTED AND AN IMPASSE ENSUES

In November 2000, Doug Sutherland was elected Commissioner of Public Lands. By the end of his first year in office, the planning process had come to an impasse. Many of the Committee participants acknowledged that with Commissioner Sutherland's arrival, the DNR as a whole returned to its more traditional, timber production focused policies.⁶⁵ Comparing Commissioner Sutherland to Jennifer Belcher, the previous Commissioner, Senator Spanel observed: "there was a whole philosophical difference between the two commissioners."⁶⁶ Commissioner Belcher was known for her strong environmental values and her vision for sustainable forestry. Commissioner Sutherland, on the other hand, while recognized as a leader on environmental issues, was more accomplished as a fiscal manager and steward of economic development.⁶⁷ He had previously served as County Executive of Pierce County, City Manager of SeaTac and Mayor of Tacoma.⁶⁸

As to the Lake Whatcom Landscape Planning Process, Commissioner Sutherland was concerned about the precedent a watershed plan specific to Lake Whatcom could set for the rest of the state.⁶⁹ A plan that restricted logging activities would reduce income for trust beneficiaries, and other counties in Washington could seek similar plans for their watersheds, further reducing trust income. Committee members argued that municipal watersheds, whether in Bellingham or elsewhere, should receive special consideration because of the importance of safe drinking water. Under Commissioner Sutherland, the DNR made several decisions that impacted the planning process. One of Commissioner Sutherland's first decisions was to send Jack Hulsey, the DNR's Regions Operations Manager from Olympia, to Committee meetings. Hulsey reflected the new Commissioner's style in the way he conducted himself at meetings with the group. According to Richard Rodriguez, the Department of Health representative, "He was hard-nosed. He was predisposed to the [DNR] mindset."⁷⁰

Shortly thereafter, the DNR announced that it would conduct an Environmental Impact Statement (EIS) in conjunction with the planning process. Sutherland described the decision this way: “If we were going to do this we wanted to do it right. That’s why we did the EIS.”⁷¹ According to Wallace, the DNR decided that an EIS was necessary because the public safety and water quality issues surrounding forest management in the watershed justified a “declaration of significance.”⁷² Under the State Environmental Policy Act, a “declaration of significance” requires that an EIS be conducted. Although he acknowledged that the EIS would further delay the process, because it would require additional assessments and a public commenting period, Wallace argued it was necessary because it would allow the DNR to gather additional input from the full breadth of stakeholders affected by the Landscape Plan.⁷³ The EIS process was formally initiated with a scoping notice released on August 31, 2001.

Some members of the Committee felt that the DNR’s decision to conduct an EIS reflected the DNR’s concerns with the direction the Committee was heading. The public members of the Committee accused the DNR of using stall tactics and trying to further shift power away from the Committee. Marrom recalls it this way: “They decided to do an EIS. That threw everything off. They were running the whole process. It was so political.”⁷⁴ Realizing the process was going to happen whether they wanted it or not, members of the Committee discussed whether it was more appropriate to have a third party conduct the EIS, rather than the DNR. Soicher recalled, “There was some back and forth about who would do it. We wanted it to be rigorous and independent.”⁷⁵

Ultimately, the group yielded to the DNR’s wishes. The EIS would be conducted and paid for by the DNR. However, Committee members felt that they should have a say as to which scientists and experts would provide assessments in the EIS. In addition, they wanted assessments in the EIS to be eligible for peer review. Wallace worried that with peer review, people would fight over whose “folks [peer reviewers] were the best.”⁷⁶ It appeared that mistrust between the Committee and the DNR was growing. According to several Committee members interviewed, the planning process had reached its lowest point. To resolve the issue of peer review and concern over potential bias from having mainly DNR scientists conduct the EIS, Wallace decided to conduct a Preliminary Draft Environmental Impact Statement (PDEIS) that would allow the public to comment on the assessments used in the Draft Environmental Impact Statement (DEIS).⁷⁷

Meanwhile, in an effort to head off further criticism of existing forest practices and additional restrictions on logging in the Lake Whatcom watershed, Commissioner Sutherland requested formal opinions from the heads of the Departments of Health and Ecology about the degree to which the DNR’s forestry practices contributed to pollution in Lake Whatcom. His letter also asked these agencies whether additional water protection measures on state forest lands were necessary, beyond those provided in existing state forest land rules and regulations. Both Departments responded that state forest land activity contributed to only a small percentage of the pollution in Lake Whatcom compared to amount attributed to residential development. Both Departments also concurred that existing state forest land rules and practices including the provisions of the 2000 Lake Whatcom bill were sufficient to protect water quality.⁷⁸ These responses by the DOH and DOE focused the Committee’s energy on the issue of public safety

and other issues contained in the legislation, such as creating a sustained yield harvest plan for the area and incorporating new scientific information into the planning process.

OUTSIDE HELP IS SOUGHT

With the Committee feeling like it was losing control over the process and mistrust growing on both sides, the question of the Committee's role in terms of its influence over decision making resurfaced with new vigor. Some members of the Committee argued the DNR should be a member of the Committee and that the Committee's recommendations should be implemented without further authorization. They believed that this was what the legislation had intended. On the other hand, Bill Wallace described the role of the DNR in the process this way: "We are here to get feedback from the Committee and from the entire community, including forest landowners and tribes, and it is up to us to make the determination, given the legislation, what we would propose the plan should be."⁷⁹

With the debate going in circles, a request was made by the Committee for an opinion from the state Attorney General about whether the role of the Committee was advisory or authoritative. The January 2002 opinion rendered by the Attorney General confirmed the DNR's view:

The Department of Natural Resources has the primary responsibility for developing the Lake Whatcom Management Plan with the advice of the Interjurisdictional Committee. The Committee was created to assist the DNR in developing the Landscape Plan. Because the Committee is advisory to the DNR, the DNR need not be a member of the Committee.⁸⁰

More than a year and half after the Committee convened, the debate over who had decision-making authority came to a close.

On the heels of these disagreements over decision-making authority and whether to initiate an EIS, the group collectively decided to explore professional third party facilitation to assist in negotiating preferred management strategies for the watershed. The group also realized that growing tension made it more difficult for Steve Hood to serve as the facilitator in his role as Chair of the Committee and to represent the interests of the Department of Ecology. In addition, the DNR's tight control of the process, with Hulseley's participation, was viewed by some with increased concern.⁸¹ Some felt that with the DNR controlling the preparation of reports (especially on the financial impacts of the alternative management strategies), the dissemination of information and the preparation of the agenda, decision-making power had been shifted further away from the Committee.

The DNR agreed to bring on and pay for a facilitator. A subcommittee was formed consisting of Wallace, Senator Spanel and Soicher to draw up a Request For Proposal and began reviewing applications from professional facilitators. The decision came down to two proposals, one that the Committee favored and one that the DNR favored. The DNR agreed to go with the Committee's preference and chose Mary Dumas and Rob Kelly, a two-person team from Resolution Services, Inc. The facilitators took over running meetings and collecting input during

public hearings. Several Committee members remarked that relationships and the group's efficiency improved as a result of bringing on the facilitators.

ALTERNATIVES NEGOTIATED

Negotiating a preferred management alternative for the watershed involved identifying a set of agreed upon management objectives, along with the best strategies for meeting those objectives. In doing so, several technical issues came to the surface. Management scenarios focused primarily on where and how to harvest timber in the watershed to ensure income for trust beneficiaries while protecting water quality and ensuring public safety. In addressing these management scenarios, the group considered technical issues such as water quality, chemical treatments, stream buffers, slope stability, wetlands protection, soil retention, mass wasting activities, sustained yield, rotation duration, harvest methods and protection of archeological and cultural resources.⁸² As part of the planning process, DNR commissioned several assessment reports, most of which were conducted by DNR staff. These reports brought new scientific information and professional knowledge into the planning process. According to Wallace, the selection of experts was contentious, because different people wanted to bring in their preferred experts.⁸³

Guided by the assessment reports, the DNR developed five alternative management strategies (Figure 8-4). The alternatives ranged from a "no action" scenario, Alternative 1, to establish a baseline for comparison, to a "restoration" scenario, Alternative 5, that eliminated commercial logging in the watershed. Alternative 2 implemented the recommendations contained in the 2000 legislation. Alternative 3 added additional non-logging areas and the protection of cultural resources. Alternative 4 further reduced logging areas and increased harvest rotation age. Alternatives 3 and 4 were plans proposed by the Committee. The alternatives were analyzed by scientists, foresters, geologists and engineers, who were primarily employees of DNR. The alternatives were also included in the DNR's Preliminary Draft Environmental Impact Statement for public review and comment.

After receiving public comment on the Preliminary Draft Environmental Impact Statement, the DNR and the Committee met five times in 2003 between January and April to negotiate a so-called "Preferred Alternative" for the Draft Environmental Impact Statement.⁸⁴ The Preferred Alternative put forth in the DEIS was a compromise between Alternative 2 and Alternative 3. It contained all of the provisions outlined in the 2000 legislation, which included "adding buffers to Type 5 streams, prohibiting road construction on unstable slopes, carefully regulating harvest and road construction on potentially unstable slopes, and providing interjurisdictional review of site-specific activities."⁸⁵ To accomplish the last objective, a new Interjurisdictional Committee would be formed to monitor on-going site specific activities (herein referred to as the Implementation Committee). This Implementation Committee would ensure that future management activities in the watershed were consistent with the plan.

Figure 8-4: Alternative Management Strategies

Alternative 1 (No Action): This alternative incorporates the Department’s existing policies, legal requirements and management commitments, including but not limited to the Forest Resource Plan, Forest Practice Rules and Habitat Conservation Plan. This alternative is consistent with the Tier 3 alternative identified in DNR’s statewide sustainable harvest calculation.

Alternative 2: Legislative Requirements. This alternative adds the legislative requirements of E2SSB 6731 [2000 Washington Laws Chapter 205] to the No Action alternative. It reduces the geographic area available for active forest management.

Alternative 3: First Alternative to #2. This alternative, developed by the Committee, further reduces the geographic area available for active forest management, increases the number of trees retained after harvest and lengthens the harvest rotation age. It also increases the coordination with tribes to protect cultural resources.

Alternative 4: Second Alternative to #2. This is the second alternative developed by the Committee. It further reduces the geographic area available for active forest management and further increases the trees retained and harvest rotation age.

Alternative 5: Restoration Alternative. This alternative was developed by the Committee in response to comments received earlier during the public scoping process. This alternative pursues a restoration approach that focuses on restoring older-forest conditions, with limited, short-term silvicultural activities, and that relies on non-traditional means of securing alternative revenue to meet the trust revenue objectives.

Source: *Lake Whatcom Landscape Plan Preliminary Draft Environmental Impact Statement*, Washington State Department of Natural Resources, <http://www.dnr.wa.gov/htdocs/agency/whatcom/index.html>.

In addition to the legislative requirements, the Preferred Alternative included a commitment by the DNR to establish agreements with the local tribes to protect cultural resources and to provide tribes access to the watershed. In the plan the DNR also committed to completing road abandonment and maintenance within four years of the effective date of the plan and to eliminating aerial application of pesticides and fertilizers.⁸⁶ The Preferred Alternative enjoyed consensus support from the Committee and the DNR. Tom Edwards of the Lummi Nation remembers that the Preferred Alternative “was the one they could live with and we could live with.”⁸⁷

On January 30, 2004, the Final Environmental Impact Statement (FEIS), which included the Lake Whatcom Landscape Plan, was approved and released to the public. With the release of the FEIS, the Committee’s work came to an official conclusion.

Two areas of contention remained after the release of the FEIS. The first issue was about whether the Implementation Committee should have veto power over the DNR concerning future

management activities in the watershed, such as a timber sale. The DNR argued that the Implementation Committee should be advisory. While the issue caused the Committee to fail to reach consensus for the first time, a majority of the Committee disagreed with the DNR, arguing in favor of veto power. The issue of veto power represented the only item for which the Committee did not reach a consensus. The second issue related to diagonal oil and gas drilling, a process that drilling underneath the watershed by starting from outside its boundaries. The Committee's consensus recommendation was that diagonal drilling should be prohibited in the watershed. However, the DNR did not consent to this recommendation. In the FEIS, the Preferred Alternative allowed for slant drilling and left the question of veto power of the Implementation Committee over the DNR unclear.

For a long period of time, there was no indication from the Board of Natural Resources whether the Landscape Plan contained in the FEIS would be approved. According to one Committee member, the Committee believed that the process was stalled because the Commissioner did not want to approve the plan.⁸⁸ The Committee met and discussed its options. Committee members decided if the Board did not approve the plan, legal action should be taken. Shortly thereafter, the city sent a letter to Commissioner Sutherland stating that they would file a lawsuit if the plan was not adopted.⁸⁹ On October 21, 2004, the city, county and water district filed a lawsuit to force the Commissioner to adopt the plan.⁹⁰ An editorial by the *Bellingham Herald* reported that "there were suspicions that Doug Sutherland, the state's Public Lands Commissioner, was going to try and sink the plan and possibly sell or trade the state's property around the lake."⁹¹

On November 2, 2004, the day of statewide elections, including a vote for Public Lands Commissioner, the Board of Natural Resources passed Resolution No. 1141, authorizing the DNR to implement the plan. Several members of the Committee and the Mayor of Bellingham accused the Commissioner of playing politics by waiting until election day to sign the plan.⁹² Those making this accusation believed that approving the plan prior to the election would have cost Commissioner Sutherland support from timber interests. Nevertheless, the city dropped its lawsuit against to force implementation of the plan. The Board addressed the two remaining unresolved issues between the DNR and the Committee by deciding that the Implementation Committee would not have veto power and by putting off a decision about slant drilling for up to two years to allow for additional information to be provided to the DNR for its reconsideration of the issue.

Several aspects of the Board approval process and the resolution left Committee members upset. First, several of the Committee members were angry with how the DNR presented the Landscape Plan to the Board of Natural Resources. According to one Committee member, not all members of the Committee were asked to participate, and the DNR was said to have talked mostly about the loss of revenue to the trust that would occur from implementing the plan.⁹³ Second, some Committee members were upset about how the Board resolved the issue surrounding the Implementation Committee. A majority of the Committee had wanted the Implementation Committee to have veto power, but the Board did not grant the Implementation Committee this authority.

In addition, according to a Committee member, the DNR made a change to the plan concerning how members of the Implementation Committee would be chosen without the Committee's

input. The Committee believed when it delivered its consensus recommendation that the county, city and water district would each be allowed to appoint a member of the Implementation Committee and that the DNR would be allowed to appoint two members. Referring back to the original language of the bill, the DNR insisted that it would be able to pick who from the county, city and water district would be put on the Committee. The Commissioner asked each group to nominate two individuals. Once submitted, he would pick one from each set of nominations. The DNR emphasized that it wanted technical experts on the Committee. Commissioner Sutherland commented: “If we were going to take advice, we wanted it from experts.”⁹⁴ In the end, the Committee felt that the process for determining membership was fair, but that it was not the process to which they had agreed.

Committee members were not the only ones raising issues with the outcome; the Board had its misgivings with the plan as well. In the Resolution, the Board raised concerns over the “the balance of costs and benefits of implementing the plan, in relation to the state’s fiduciary responsibilities to manage for the trust beneficiaries.”⁹⁵ The Board also expressed concerns about the “equity of locally enjoyed benefits at the expense of statewide trusts that must pay for the increased management costs.”⁹⁶

RECENT DEVELOPMENTS

Despite these concerns expressed by the Board, the DNR began implementing the plan. In its first implementation report, the DNR reported completing a Road Maintenance and Abandonment Implementation Plan, well before the 2016 deadline required by state forest practice law. In addition, the DNR is currently planning its first timber sale since the moratorium on logging began in 1998. The sale was approved by the Implementation Committee. In January 2005, a lawsuit was filed by neighboring Skagit County and the Mount Baker School District in Lake Whatcom County challenging the legality of the plan. The lawsuit alleges that the legislation and the DNR’s Landscape Plan resulted in benefits for the local community at the expense of trust beneficiaries. In the previously decided case, *County of Skamania v. State*, the court found that the legislature could not enact laws that benefited the local economy and the timber industry at the expense of trust beneficiaries.⁹⁷ As of April 2006, the lawsuit is still pending.

THE ANALYSIS: THE LAKE WHATCOM LANDSCAPE PLANNING PROCESS

This section identifies and discusses the benefits, costs, challenges, facilitating factors and lessons learned associated with the Lake Whatcom Landscape Planning Process. This analysis is based on stakeholder observations and reflections, as well as the researchers’ external evaluation. The analysis begins with an in-depth look at whether the Lake Whatcom Landscape Planning Process was collaborative based on the breadth of stakeholders represented, the transparency of the process and the level of influence participants had over the outcome.

Next, the benefits and costs of the process are examined. The main benefits of the process included more protective watershed management standards, greater trust and respect, shared

expertise and better informed decisions, improved relationships, local support for the landscape plan and an unintended benefit: cultural resources protection. The costs involved planning costs, a reduction in trust revenue compared to the “no action” alternative, a drain on peoples’ time and personal and emotional costs.

Next, challenges and responses to those challenges are identified. The primary challenges identified included the dispute over decision-making authority, mistrust between the Committee and the DNR, time delays/impasses and the influence of contentious state and local politics.

Challenges and response is followed by a discussion of facilitating factors. The facilitating factors included legal and financial incentives to proceed, a clear sense of purpose aligned with organizational goals, a commitment by local participants and professional facilitation.

Finally, the analysis concludes with a look at the key lessons learned. The most important lessons from the Lake Whatcom Landscape Planning Process are to include the full range of stakeholders, to hire a facilitator when one appears needed, to set realistic timelines, to implement ground rule for overcoming disagreements, to let stakeholders help define the process, to make decision making authority clear and to share ownership of expert-based analyses.

WAS THE LAKE WHATCOM LANDSCAPE PLANNING PROCESS COLLABORATIVE?

In assessing the degree of collaboration in this case, one should consider whether the appropriate breadth of stakeholders were included, whether the process was transparent to the public and among participants and whether the participants had influence over the outcome. It is also helpful to consider the participants’ own views about whether the process was collaborative and to put the process in context by considering more broadly the DNR’s attitude towards collaboration and the unique legal mandate that brought about the planning process.

Despite occasions of conflict and disagreements over certain issues, especially over decision-making authority, the process was collaborative in terms of breadth of stakeholders, transparency and the level of influence participants had over the outcome. After consideration of these factors and participants’ own view about the process, it is evident that the process was collaborative.

Attitude of the DNR towards Collaboration

DNR publications and conversations with officials at the DNR at the highest level indicate that the agency looks upon collaborative planning favorably. According to the DNR’s website, one of the agency’s core principles is “inclusive decision making.”⁹⁸ To this end, the DNR endeavors to consider local input in its management decisions, and it must do so by law in situations requiring an Environmental Impact Statement. When asked about collaboration, Commissioner Doug Sutherland stated that collaborative planning with multiple stakeholders is “money spent up front so that you don’t have to spend it on the back end. A lot of times you get much greater acceptance by the local community.”⁹⁹ According to Bruce Mackey, the DNR’s Lands Steward, collaboration is a necessity in natural resource management:

In land management in this day and age, if you don't have an open process, if you don't have a public process, if you don't get people involved ... if you cram a solution down the public's throat, then your ability to operate in the future is compromised. We use the Cooperative Resource Management Plan, it's a formulized manual for how to do collaborative planning.¹⁰⁰

A Legal Mandate to Collaborate

The law passed in 2000 required the DNR, in its development of the Lake Whatcom Landscape Plan, to consult with an Interjurisdictional Committee that included members of the public. Because of this legislative mandate, the degree of collaboration was questioned by some of the participants. Richard Rodriguez of the Department of Health noted that "it would not have happened in my mind if there was not a legislative mandate to do it."¹⁰¹ Bill McCourt, the city's representative, put it more bluntly, "It wasn't a group getting together because they all had a common interest. DNR had a gun to their head."¹⁰² But despite their motives for being there, the DNR participated in the process, one that was deliberately set up to be collaborative, and they did so according to several Committee members in good faith and with professionalism. In the same train of thought, McCourt continued by saying, "But to their credit they have done a really good job with it. Bill Wallace was terrific. Their facilitators did a good job. Overall, I am impressed with the DNR people."¹⁰³

Participant Views on the Degree of Collaboration

Responses were mixed as to the degree to which the process was collaborative, but most participants believed that it was. Despite tension over roles, Wallace noted that the work was collaborative: "There was always some tension about what they [the Committee] wanted to have done and what role they wanted to play, but taken in its whole, in terms of the work done, it was very collaborative."¹⁰⁴ However, Alan Soicher did not feel it was as collaborative as it could have been. He noted: "We were hoping that it would have been more collaborative where everyone would come up with something together, rather than reacting to proposals."¹⁰⁵ Despite these concerns, most of those involved in the case felt it was collaborative. Mary Dumas, one of the facilitators, noted:

They informed one another about why they felt strongly about certain approaches in order to find a common way to represent their interests in a Landscape Plan. In that sense, it was a true example of collaboration. It was really about drawing together what is common and what is possible, in comparison to what we call, in the old school, "deal making." The spirit and sense all along was collaborative.¹⁰⁶

Tom Edwards viewed the process as collaborative and appreciated that the tribes were included, stating that "we had a voice in the process. Usually, the tribes don't even get notified until the 11th hour when something like this occurs."¹⁰⁷

Breadth of Stakeholders: Several Committee members and the DNR acknowledged that industry representation was missing from the Committee. Today, the DNR feels strongly that the Committee was not fully representational.¹⁰⁸ In hindsight, current DNR officials felt that the

group should have had representation from forest industry, local economic interests and local school districts; however, most of the debate focuses on whether commercial forestry interests should have had a seat at the table.¹⁰⁹ Wallace noted: “From a definition standpoint, it did not meet the collaborative test for representation, not as a self-contained committee. Industry was missing, as well as more community members, homeowner groups and recreational groups, such as hikers and horseback riders. Nobody on the Committee was representing their interests.”¹¹⁰

However, it should be noted that at the time of the Committee’s creation, it was Commissioner Belcher’s decision not to include commercial foresters on the Committee and that nothing in the legislation prevented her from including them. In addition, according to Wallace, “When Commissioner Sutherland came on board, industry again asked for a seat at the table. The DNR’s decision was again no, since the Committee’s work was well down the road at that point; instead, the DNR would continue to gather industry input from other processes. We meet offline from the Committee meetings with the community quite regularly.”¹¹¹ On this topic, Alan Soicher commented that “potentially, industry was missing, but DNR was bringing that perspective to the table. It was missing physically on the Committee but DNR was pursuing forest management in as wise as a way as they could. I don’t think it would have changed the resulting Landscape Plan.”¹¹²

Degree of Transparency: According to those interviewed, the process was sufficiently transparent to the public. The meetings were open to the public and Committee documents were distributed to interested parties. Reporters from the press often attended Committee meetings and several stories about the process were run in the local newspaper. In addition, because an EIS was conducted, several meetings were held specifically to gain public input. In addition to transparency to the public, the group strived to keep decision making transparent to one another. The “no surprises” ground rule ensured that Committee members shared their concerns or new information with each other before going to the press; although, one member remarked when asked about the rule that “people were surprised by the DNR at times.”¹¹³

Degree of Influence on Decision Making: DNR officials felt strongly that they and the Board of Natural Resources were the ultimate decision makers in the process; nonetheless, many participants in the planning process felt like they had a good deal of influence over the Landscape Plan. Wallace noted: “We can’t abandon our responsibilities to be trust managers ... we are the ones statutorily responsible. We cannot give that away to others.”¹¹⁴ Despite the DNR’s insistence on making the final decisions, the Committee still felt that they had a significant impact on the outcome. Had the Committee not felt they could affect the outcome, it is unlikely that they would have stuck with it after the Attorney General released his opinion that the Committee would be advisory only. Richard Rodriguez, the Department of Health official, noted that “because it was a consensus based process they [the Committee] very much had an influence on what was put forward. In that regard, they had a great deal of influence.”¹¹⁵ Because the consensus represented the opinions not only of local community members but also representatives from state and local government, one could imagine that the DNR likely felt a certain sense of agency peer pressure to accept the Committee’s recommendations. However, the influence of the public should not be discounted. On this subject, Bill McCourt commented:

I worked for 31 years for the city of Bellingham, and I have watched how things work within the agencies. For the most part, we seem to work to protect the status quo. We do not do a very good job with leadership. We really owe most of what happens in situations like this to people like Linda Marrom and Jamie Berg, people that are on the outside of the organization who somehow get this idea burning in their mind that they are willing to do what it takes and stick it out and challenge the professionals and the status quo. It's amazing how much impact they can have. They are the ones that effect change. The rest of us are just protecting our turf.¹¹⁶

BENEFITS

While the planning process was an emotional rollercoaster and while it is too early to say whether the plan will be fully implemented and stand up to legal challenges, the Committee members and local DNR staff identified several positive outcomes. The main benefits included more protective watershed management standards, greater trust and respect between the DNR and the community, shared expertise and better informed decisions, improved relationships, local support for the Landscape Plan and cultural resources protection.

More Protective Watershed Management Standards

From a technical standpoint, the Landscape Plan included protective measures that would not have occurred under existing laws and regulations, or not have occurred as rapidly. These measures included:

- An accelerated road abandonment and management plan
- Elimination of road building on unstable slopes
- Carefully regulated logging and road construction on potentially unstable slopes
- Stream buffers on all types of streams including Type Five, the smallest classification of streams
- The elimination of aerially applied fertilizers or herbicides
- A sustained yield harvest model consistent with the statewide sustainable harvest plan
- Identification of cultural resources and strategies to protect them

While the DNR acknowledged that these measures would further reduce risk of impairments to water quality and slope instability, they also emphasized that following existing laws and practices would have had “no probable significant impacts to either water quality or slope stability.”¹¹⁷ Some also pointed out that many of these measures listed above were required by the 2000 legislation.¹¹⁸ However, others felt it was a success to have been able to sustain the consensus support necessary to include these provisions in the plan.

Some questioned to what extent the sustained yield harvest plan achieved an improvement in forestry practices. Soicher commented: “There are two levels of it: 1) where to log and where not to log and 2) how to log. We answered the first question pretty well, but the plan still calls for sixty-year rotations and even-age harvest management [clear-cutting] ... I wouldn't consider it

long-term sustainable forestry.”¹¹⁹ Despite some remaining disagreement by Committee members over the success of the plan, the city of Bellingham welcomed the plan with enthusiasm.¹²⁰

Greater Trust and Respect

Overall, it appeared that the process helped restore trust between the DNR and the community, though trust was eroded when it appeared that the Board would not approve the plan. When the DNR began building roads above Sudden Valley, mistrust between the community and the DNR was at its peak, primarily because the DNR had failed to develop a Landscape Plan for the watershed six years after agreeing to do so. Wallace recalls: “Our reputation frankly had been damaged.”¹²¹ By engaging in the planning process with the Committee and inviting public input throughout the process, the DNR felt that they had begun to reestablish trust with the community and to build mutual respect. Wallace recounts “there was more mutual understanding, respect and to some degree trust” after the planning process.¹²²

One factor that contributed to the rebuilding of trust was that the local community and the Committee developed a better understanding of the DNR’s trust obligations and existing forestry policies. This new awareness may have dispelled any feelings that the DNR’s actions were intentionally harmful. Senator Spanel remarked, “Some people saw the DNR in a light they hadn’t before ... as very reasonable people and realized [the DNR] had to follow the law.”¹²³

However, the DNR recognized that restoring trust was not something that would happen overnight or without consistent behavior in the future. Wallace stated: “There is still a lot of mistrust and skepticism by some of the members about what the department will do now, what our motives are.”¹²⁴ Other Committee members expressed similar feelings. Rodriguez commented: “There was mistrust about DNR following through with the recommendation in the final document.”¹²⁵

Shared Expertise and More Informed Decisions

The Committee and the various experts called upon during the process provided the DNR with a wealth of outside scientific information and practical knowledge that ultimately led to more informed decision making. In a report to the legislature, the DNR stated that the process brought forth “the best available information to make forest management decisions.”¹²⁶ Wallace put it this way: “There was a lot of information shared. We learned from each other ... as we got input, ultimately, the recommendations from the Committee were as informed as they could be over this period of time.”¹²⁷

Representatives from the Departments of Health, Ecology and Fish and Wildlife each brought their specific knowledge and expertise to the planning process, while the local authorities and citizens, including the tribes, brought local knowledge and an understanding of the needs of the local community. One Committee member later stated that there was “a good team of experts on the Committee.”¹²⁸ Alan Soicher, the public representative, was a geologist with forest management experience and an education in geological engineering and water quality. Soicher quickly earned respect among group members because of his technical knowledge of forestry issues.¹²⁹ Richard Rodriguez, the Department of Health’s representative, said that Soicher

“provided the counter points to the DNR forestry specialists. Without him the Committee would have been at a loss in terms of getting another interpretation of forestry practices.”¹³⁰

Others brought important expertise as well. Steve Hood added water quality knowledge as the official responsible for the TMDL process for Lake Whatcom. In addition, he was trained as a forest engineer and had seven years of experience with a private timber company. The Whatcom County representative, Dan McShane, brought his experience as a geologist to the table. As the grandson of the tribe’s spiritual healer and a member of the tribe’s “Way of Life” Committee that shaped policy to protect traditional tribal ways of life, Tom Edwards Jr., the Lummi Nation representative, had deep knowledge of cultural and archeological resources in the watershed.¹³¹ He took a holistic view to protecting the watershed, stating that “everything is connected: the plants, land, the water and the animals ... if you disrupt one, everything becomes unbalanced.”¹³²

Improved Relationships

Most Committee members agreed that relationships among the participants in the process developed for the better, despite very different viewpoints about appropriate management of the watershed. Rodriguez commented that during a collaborative process, “you develop personal relationships whether you like each other or not.”¹³³ Similarly, Clare Fogelsong, who represented the city of Bellingham, remarked that the process “builds this odd sense of camaraderie with people you would never do anything else with. If you come in and you speak to the issues and you are trustworthy, there is a certain amount of cache that gets built up.”¹³⁴ The DNR believed its relations with other state agencies and local governments improved, especially with the Department of Ecology and the Lummi Nation. Edwards agreed, noting that in the past there had been miscommunications between the DNR and the Lummi Nation, but that now the relationship is stronger.¹³⁵ He credited the Lake Whatcom Landscape Plan planning process for the improved relationship.¹³⁶

Local DNR staff and other Committee members also acknowledged that the relationships built during the planning process would make working together with the local community and other state agencies more productive in the future. According to Rodriguez, the Department of Health’s water quality department relies heavily on cooperation with local stakeholders in its everyday work.¹³⁷ Therefore, he noted, “there were intangible benefits from participating at that level with other agencies, the local community and the local utilities.”¹³⁸ The group’s facilitator recognized this benefit as well: “It creates another whole environment for them to work together in the future because they have a relationship built on real information ... These folks are going to have an ongoing relationship for years to come. They’ll be able to have a conversation in the future when there is a timber sale in the watershed.”¹³⁹ Edwards believes that because of his participation in the planning process, the city of Bellingham will be better able to address concerns of the Lummi Nation. He noted: “Now we [the Lummi Nation] are working with the city of Bellingham and the Port of Bellingham on the Bellingham Waterway Project ... we are going to go through the same process to show them cultural and archeological resources in the areas where they are going to be doing a lot of the clean up.”¹⁴⁰

Local Support for The Landscape Plan

The process resulted in greater local acceptance of DNR activities in the community. The DNR does not think it would have been able to move forward with its most recent timber sale in the watershed without the ability to stand behind a plan that included community involvement.¹⁴¹ Soicher agreed, noting that “had they done that without having this plan, without the local endorsement, DNR would have a really hard time logging [in the watershed]. That is a benefit.”¹⁴² The DNR was able to educate the community about their trust mandate and the important role state trust land in the Lake Whatcom watershed played in generating revenue for trust beneficiaries. As a result, the community more clearly understood that timber harvesting could go hand in hand with watershed protection. This understanding represented a return to the opinion, expressed at the time of DNR’s land exchange with Trillium Corporation, that logging was a preferable land use in the watershed.

This sense that the community would support the DNR’s timber activity because of community involvement in the Landscape Plan was articulated shortly after the plan’s release in an article in the *Bellingham Herald*:

Citizens have to step up too and accept that logging around the lake is not only a reality, but also a preferred land use. Despite the years of work and public discussion about this plan, when the chainsaws start and the logging trucks begin rolling, one can almost predict there will be members of this community up in arms about it. Our wonderful county is far from immune from "not-in-my-backyardism." But everyone in this county should back the careful logging plans that were ironed out over four hard years for the Lake Whatcom Watershed. It's frankly quite nice to see so much public hard work finally pay off in a way that should be beneficial to the community.¹⁴³

An Unintended Benefit: Cultural Resources Protection

Several group members agreed that one of the Committee’s most significant achievements was the plan’s identification of cultural and archeological resources in the watershed and the development of strategies to achieve protection of those resources (primarily those of the Lummi Nation, the Nooksack Tribe and the Samish Indian Tribe). As a result of the planning process, the DNR will develop agreements with local tribes that establish a consultation process, cultural resource protection measures and tribal access to those resources.

The Committee believed that this element of the plan was significant because it resulted entirely from the planning process. The protection of cultural resources was an unexpected benefit of the group’s work because it was not identified in the 1999 or the 2000 legislation. The Committee expressed a real sense of pride for these new measures to protect an otherwise overlooked resource in the watershed. Rodriguez commented:

For me the most significant element that came out was the tribal involvement as a government entity. There was a totally new element introduced: the cultural resources. Spots for ceremonies and purity bathing were identified. They did not

have to tell us exactly where they were. Instead the entire area would come out of the mix. The tribal participation was very unique. The status quo is that tribes review timber sales. This made a recognition of tribal resources more prominent than usual.¹⁴⁴

Soicher expressed similar praise: “Cultural resources are identified in the plan. There is a matrix for what kind of protection you provide for different types of resources. It is somewhat unique ... That is progress.” The DNR agreed that its relationship and reputation with tribes improved and that “strategies and resource information in the plan will be very helpful in identifying and protecting important Native American cultural resources.”¹⁴⁵

Other Benefits

The most common success discussed was that the group was able to bring the Landscape Plan to completion without anyone leaving the table. Edwards commented, “We came up with good recommendations and we stuck together.”¹⁴⁶ Not only was the plan completed but the group reached consensus on all but one issue in its recommendations to the DNR. Dumas noted: “The recommendation that they delivered had consensus on all major points. That was one of their big accomplishments.”¹⁴⁷ The Committee believed that success came not only from reaching consensus but also from how it was reached. Success included understanding one another’s viewpoints. Senator Spanel, who attended several of the meetings, observed: “Successes came in their discussions when they would understand each others viewpoints.”¹⁴⁸ Others felt that the group’s dedication and willingness to compromise made it a success. According to Rodriguez, “the group was willing to learn new information and they were committed enough to make the effort to be prepared for every meeting. I’d say that is a prerequisite of an effective group. They have to be willing to compromise. They cannot be intransigent in their positions. A major victory was getting a plan with consensus.”¹⁴⁹

COSTS

The process included a number of costs both monetary and non-monetary, including approximately \$1.2 million in planning costs, reduced future revenue from timber production for trust beneficiaries, a severe drain on people’s time and a toll emotionally and personally.

Planning Costs

The DNR reported that preparing the EIS and the Lake Whatcom Management Plan cost the agency approximately \$800,000.¹⁵⁰ This figure does not include costs incurred by Committee members, such as salaries for members from other state agencies and local authorities and wages given up by voluntary members. While an estimate has not been calculated to account for costs incurred by the Committee, one could calculate a rough estimate of the costs of the time spent by Committee members as follows. The Committee met 37 times, not including the public hearings they attended. Assuming an average of ten hours per meeting (five hours of preparation and five hours of actual meeting time - some meetings lasted all day and were convened during work hours) and that all nine members of the Committee were in attendance at every meeting, the process required 3,330 hours of the Committee’s time. Assuming a billing rate of \$120 per hour

for state and city employees (an estimate provided by a state agency employee for the state agency staff level represented at Committee meetings) and \$50 per hour for public citizens (case writer estimate), the planning process costs approximately \$350,000 in salary opportunity costs. Combined with the DNR's planning costs of \$800,000, total expenditures for the planning process were approximately \$1.2 million.

According to DNR officials, the costs incurred by the DNR will be borne by all state trust land beneficiaries. The \$800,000 was deducted from the DNR's general state lands management account, which means that beneficiaries, not just those whose trust land is contained in the planning area, incur the plan's development costs.¹⁵¹ In addition, the DNR estimates that it will incur costs of an additional \$800,000 from implementation of the plan over the next two decades.¹⁵² According to a DNR official, these costs will also be deducted from the general state lands management account which will again impact all of the state trust beneficiaries. The 1999 legislation required trust beneficiaries to be compensated for additional management costs related solely to protecting drinking water quality.¹⁵³ These management costs, however, may help avoid much larger costs in the future that could arise out of another landslide in the area or legal action taken against the DNR for deterioration of water quality.

Reduced Timber Revenue

Most significantly, the DNR estimates that because of logging restrictions in the Landscape Plan, the area will generate about half the revenue that would have been generated without the plan. The plan's requirements beyond current rules and regulations resulted in an increase in land taken out of commercial forest management, causing a reduction of 35 percent in the planning area's asset value based on future earnings from logging.¹⁵⁴ The Final Environmental Impact Statement reported lost revenue to trust beneficiaries as follows:

The projected revenues generated through implementation of the FEIS Preferred Alternative would be significantly lower than those estimated for the No Action Alternative. For the entire 200-year modeled planning period it is estimated that revenues under the Preferred Alternative would total \$177,210,000, a reduction of \$160,182,000 from the anticipated revenues of \$337,392,000 under the No Action Alternative.¹⁵⁵

In addition, the trust lost revenue during the planning process when a moratorium existed on logging.

Time

In addition to monetary costs, the process required a significant commitment of time by all of those involved. Excluding the work of the Study Committee after the 1999 legislation, the Committee met 37 times usually for a full day over three and a half years. Bill Wallace, the DNR regional manager, added that the process caused his team to spend a lot of its personal time on the project with much of the work on weekends, and it caused the DNR to ignore others important issues.¹⁵⁶ However, Senator Spanel noted that "it took a long time, but it was a very fair process. Everybody got their say."¹⁵⁷

Personal and Emotional Costs

The process was emotionally and personally draining for several participants. Wallace commented, “You’ve got folks that are yelling at you from all directions. It’s tough on staff.”¹⁵⁸ He added that the process took an “enormous personal toll on staff, me included.”¹⁵⁹ Edwards also felt the process was difficult emotionally. On one occasion, he noted that an upper-level DNR staff member did not believe him when he said that a road under construction in the area was going to destroy tribal petroglyphs. According to Edwards:

There was a time when I had to walk out of a meeting. The DNR staff, an upper staff member, treated me with disrespect. That is a slap in the face not only to me but to Lummi Nation. I said [the petroglyphs] were there. [The DNR staff member] said they were not there. The DNR laws are that we don’t have to show them exactly where cultural resources are located, but this time we did. They said, “Okay, we saw it.” We said, “Don’t let anyone else know.” Everyone agreed we should put the road through the corner of a wetland to save a petroglyph that was about 4,000 years old. There were only two people at Lummi and two people at DNR who knew about those petroglyphs. By the time we got back, those petroglyphs were chiseled out. There was a historical mask in a cave too that we showed them. It was also stolen. Our relationship was pretty shaken with them.¹⁶⁰

BENEFITS VERSUS COSTS

The issue of benefits and costs remains a very contentious subject. Wallace observed, “Frankly, based on the analysis, [the plan] is characterized as high costs to the trust beneficiaries and relatively low benefits in terms of water quality and slope stability based on our analysis.”¹⁶¹ Some of the Committee members remarked that the DNR’s estimates for lost revenue to the trust increased with each meeting and were unreliable. Linda Marrom remarked, “The loss to the trust got bigger with every meeting. Any time we had a public meeting, the number would just skyrocket. It got to the point where you’d expect them the next time to say, ‘It’s going to cost another 250 gazillion billion dollars.’ Their statistical information was hysterical.”¹⁶² Another critique of the calculations for the loss of trust value concerns the baseline for comparison. The loss is based on a comparison to the “No Action” alternative, which assumes management according to existing policies, legal requirements and management commitments. Considering the moratorium on logging that was in place prior to the planning process, one could argue that a no logging scenario better represented the baseline. If this were the case, then the Landscape Plan would represent a gain of \$177 million in trust value.

It is also important to note that several methods from the field of economics exist to value benefits of non-market goods that a protected watershed might provide; however, there is no record of attempts by the DNR or the Committee to quantify in dollars the benefits resulting from the plan.¹⁶³ Therefore, there is not enough information to compare benefits versus costs in a fashion that would allow one to arrive at the net benefits to society of the plan as a whole.

CHALLENGES AND RESPONSES

The Committee faced several challenges during the planning process that slowed progress and increased tensions. The key challenges included a long dispute over the decision-making authority of the Committee, mistrust between the Committee and the DNR, the influence of contentious politics and time delays.

Decision-making Authority of the Committee Disputed

A dispute over the decision-making authority of the Committee lingered during the early years of the process, slowing its progress. There was disagreement from the beginning over whether DNR was a member of the Committee or whether the Committee was advisory to the DNR. The issue pertained to who had the authority to develop the Landscape Plan. While the Committee initially conducted its work without resolving this question, the issue reached a boiling point when the DNR decided to conduct an Environmental Impact Statement to obtain additional scientific information and broader public input. Some members of the group felt that the DNR's decision to conduct an EIS was an attempt to weaken the influence of the Committee. In response to this challenge, the group decided to seek an opinion from the Attorney General, as to what the Committee's role was. The Attorney General responded that the Committee was advisory and that the DNR had decision-making authority.

Mistrust between the Committee and the DNR

Mistrust between the Committee and the DNR led to problematic attitudes of parties towards each other. The mistrust stemmed from the DNR's history in the watershed. Local citizens felt some hostility towards the DNR for not fulfilling its original promise to complete a Landscape Plan for the watershed after taking over ownership from the Trillium Corporation. Hostilities culminated in 1998 when the DNR began road construction above Sudden Valley.

Because the DNR was required by law to participate in the collaborative planning process, the historic mistrust carried over to the negotiating table. While the lead DNR official, Bill Wallace, was respected by the group members and known for his high degree of professionalism, some viewed him as representing the old line of professional DNR foresters "who think they are the only ones who ought to be making decisions about forest practices."¹⁶⁴ At the same time, the DNR may have viewed the Committee with some degree of suspicion or resentment, considering that the Committee was formed without the DNR's input to serve as a quasi watch-dog group over DNR planning activities. The DNR had also been put on the defensive by the moratorium on logging activities and the threat of further legislation.

Although the early proceedings seemed headed in the right direction, the lack of trust became apparent again following the DNR's decision to conduct an Environmental Impact Statement. Some members of the Committee felt the EIS was the DNR's way of exerting its control over the process and diluting the influence of the Committee by putting its recommendations on equal footing with public comments. Also, the Committee and DNR appeared even more suspicious of one another when the debate over peer review of assessment reports broke out. Looking back, Alan Soicher, one of the public members on the Committee, commented, "Had it happened [peer review], maybe some of the provisions for stream buffers may have been questioned for

inconsistency with best available science. The standards for stream buffers would have been higher. Peer review likely would have caught that.”¹⁶⁵

Mistrust also sharply reentered the picture after the DNR made changes to the FEIS and Board Resolution that were not consistent with the consensus agreement reached by the Committee. Senator Spanel said: “[The process] was fair until I found out that the Board could do whatever they wanted ... those persons weren’t involved in the whole process they didn’t know the compromises that had been reached by that point.”¹⁶⁶

The Influence of Contentious State and Local Politics

A challenge noted by Wallace and several others was the political nature of the whole process. Those involved with the process at the time of the 1999 legislation accused the DNR of delaying its report to the legislature in order to prevent a second bill from being passed before the end of the 2000 legislative session.¹⁶⁷ Also, when the legislation was being passed, timber interests in the House inserted an amendment at the last minute that almost killed the 2000 legislation and resulted in some of the disagreement over the role of the Committee.¹⁶⁸

Perhaps, the biggest effect of politics on the process was the change in Commissioner of Public Lands. Senator Spanel noted that “several of his [Doug Sutherland’s] staff started coming to all the meetings. There was a pressure of a whole new style present at the meetings.”¹⁶⁹ The two Commissioners had contrasting political views and leadership styles. Commissioner Sutherland is a Republican with a strong record of fiscal management. Commissioner Belcher, a Democrat, was remembered as a strong environmentalist.

At the time, the state seemed divided along similar political lines. Commissioner Doug Sutherland defeated Mike Lowry, the Democratic nominee, by a margin of just 3.3 percent in the 2000 election.¹⁷⁰ While the State of Washington has voted for Democratic in each of the five presidential elections since Ronald Reagan, Governor Christine O. Gregoire, a Democrat, won in the 2004 election by the narrowest margin in state history with just 133 votes after two recounts over her Republican opponent Dino Ross.¹⁷¹

With a politically divided populous, interests compete on the management policies of the DNR in several ways. The Governor appoints a member of the Board of Natural Resources. In addition, the State Legislature controls the DNR budget and has legal authority over the agency. As of the 2004 election, the State Legislature has a majority of Democrats in both the Senate and the House. Bill Wallace noted that “There were some hands tied behind both of our backs from a political standpoint and expectations, which made it very difficult.”¹⁷²

Local politics also had a detrimental affect on the process. Part of the dispute over appointments to the Implementation Committee involved Dan McShane, a member of the Committee and a County Council member for Lake Whatcom County. When he was not chosen by the Commissioner to be a part of the Implementation Committee, some accused the DNR of political bias, because McShane’s wife, Lisa McShane, is a staff member of Conservation Northwest. Conservation Northwest, formerly known as the Northwest Ecosystem Alliance, is a local environmental group that had taken an interest in the Lake Whatcom process and had been active

in supporting Commissioner Sutherland's opponent in the past election.¹⁷³ Conservation Northwest also provided financial support to Linda Marrom, one of the public members of the Committee. All of these interrelationships and political ties may have had made political divisions more distinct in Committee negotiations with the DNR. Finally, Ted W. Anderson, a member of the Board of Natural Resources, is one of the three County Commissioners from Skagit County responsible for the lawsuit against the Lake Whatcom Landscape Plan, although by the time he began his term on the Board the plan had already been approved.

Time Delay and Impasses

The Landscape Plan development process took longer than anticipated for a number of reasons. The EIS slowed the process because of public commenting periods and the sequential nature of the "preliminary," "draft" and "final" EIS reports. The time delay contributed to the lack of trust among group members. Soicher commented:

The unfortunate thing in my mind is that it took forever to get to this point. It got to the point where people were asking what was going on. There was anxiety about the time it was taking. There was a lot of posturing. It could have been a lot easier had their not been so much of a tug-o-war going on.¹⁷⁴

Another reason the process was delayed was that there were points at which the Committee reached an impasse. For instance, the dispute over the relationship of the Committee and the DNR ultimately required an Attorney General opinion, which took several months. However, the Committee did find ways to get past deadlocks. Developing ground rules about how to reach consensus was one solution. These ground rules allowed for a cooling off period and required a minority and majority report if consensus was not reached. The minority report requirement meant that if someone disagreed with a decision, those in the minority would have to put their position in writing. On some occasions this caused people to change their vote and live with the decision. Steve Hood, the Department of Ecology representative, described the effects of this rule as follows:

When it came down to a vote where we knew we wouldn't have consensus, we knew someone would have to write the minority report opinion. If no one was willing to represent the minority, then why bother taking the vote if you are not going to put your minority opinion in there. If you don't care enough to state why you are against it, why can't you just say you can live with it. People would often say "I guess I could."¹⁷⁵

Another approach for getting past impasses was to defer the issue to the Implementation Committee, the group that would oversee ongoing management in the watershed. Clare Fogelson, a member of the Committee who represented the city of Bellingham, described it this way:

I think for a lot of the impasses, like slope stability or buffers and what kind of limitations you put on future logging, the solution was to defer the issue to the [Implementation Committee] with the understanding that they would have the

final voice about whether the cut went ahead. I think this is noteworthy. I think it actually worked out during this first round of implementation this year.¹⁷⁶

The hiring of facilitators also reduced the time spent at loggerheads. Wallace, the DNR regional manager, recalled that hiring facilitators “helped and there was more acceptance and ownership of the facilitators by the group.”¹⁷⁷ Senator Spanel noted that hiring facilitators was “one of the best things that happened.”¹⁷⁸ The facilitators helped the group come up with a unified voice so that DNR could respond to it.

Finally, as relationships evolved, the group was able to help each other find ways to move past emotional disagreements. Rodriguez noted that: “When things got really heated and we’d have breaks ... because of the personal involvement you could have a direct conversation with someone about how they were behaving. People would reflect and you could see a change of behavior when we reconvened.”¹⁷⁹ Edwards also noted that because of relationships he had built, he returned to negotiations after leaving the table. He recalled: “There were times when I walked out. Friends on the Committee would come out and tell me to come back.”¹⁸⁰

FACILITATING FACTORS

Several factors contributed to group’s decision to persevere despite moments of feeling like no end was in site. The primary factors that facilitated collaboration included legal and financial incentives to proceed, a clear sense of purpose aligned with organizational goals, commitment by local participants and professional facilitation.

Legal Incentives to Proceed

The 2000 legislation clearly stated that the DNR should develop a Landscape Plan in consultation with an Interjurisdictional Committee. In addition to this legal requirement to proceed with the planning process, the DNR felt that the plan had very high stakes. The plan had the potential to set a precedent for other communities. There was the threat of additional legislation requiring the DNR to complete the plan. And, there were threats of lawsuits from all sides. According to some, these legal considerations were a reason the DNR chose to continue its work.

Financial Incentives to Proceed

The moratorium on logging, which was imposed until the Landscape Plan was approved, provided a financial incentive for the DNR to participate. Similarly, the city and county wanted to see a completed management plan because without DNR management activity the forest in the watershed could become a liability to them in the form of public safety, risks to water quality and maintenance of public roads. That is, the city and county would have to bear the management costs. Wallace explained: “Once you lose the revenue that comes from it, then it becomes strictly a cost and liability for the DNR and the county. Even left in its natural state, these stream systems flush out and there are county roads and housing developments down below them. It’s not lost on [the county] that there is a cost of owning that land.”¹⁸¹

Clear Sense of Purpose Aligned with Organizational Goals

A key reason the group chose to proceed is that they felt there was a clear sense of purpose for participating that aligned with their organizations' goals. Dumas described it this way:

A clear sense of purpose helps make collaboration successful. People have to understand why they are there because it is going to take time. The level of investment it takes to understand someone else's viewpoint is high. People have to see value in what they are doing. That will motivate them. This group had a lot of drive to keep going.¹⁸²

In the Lake Whatcom Landscape Planning Process, there was a clear sense of purpose to protect water quality and public safety and these objectives were shared by all of the state agencies, local governments and community members involved. For example, the Department of Ecology's participation aligned with its mission "to protect, preserve and enhance Washington's environment," something, it can do more effectively by collaborating with the DNR, an agency that makes decisions over forest practices that can directly affect the air, land and water.¹⁸³ Similarly, the Department of Health seeks to protect drinking water for the citizens of Washington, which can only be achieved if the management activities of the DNR seek to do the same.

Commitment by Local Participants

The group continued its efforts despite moments of frustration because of the high level of emotional commitment by local participants. Rodriguez noted: "The outcome of the effort would not have happened without the strong commitment of Linda Marrom. She was the soul of the group. She would have tirades. She'd go to the press. That level of emotion and commitment provided the continuity and emotional commitment to follow through."¹⁸⁴ Many others agreed that unless you have a dedicated local contingent that is willing to follow through, you are unlikely to be successful. Soicher also noted that the presence of public officials and the press elevated the group's emotional commitment: "There were also elected officials there. It helped elevate the stature of the Committee. People felt the process was being taken seriously."¹⁸⁵

Professional Facilitation

Several Committee members commented that the facilitators did an excellent job keeping the group on task and committed to following through. Fogelsong talked about how the facilitators' work included "setting up the agenda, setting up the room, taking agenda comments, taking minutes and being in charge of the minutes."¹⁸⁶ He continued, saying that the facilitators were always "making sure there was a flow of communication, making sure no one could hide and not participate and, conversely, that no one dominated discussion, preventing other people from talking" and about how the facilitators had a way of "fading into the background but always being present."¹⁸⁷ Dumas reflected on the issues facing the Committee when she joined the process as facilitator: "When they realized that the DNR would not be a member of the Committee, it was important for them to ask themselves what they could achieve if they did

come to a consensus.”¹⁸⁸ Conversely, the facilitators pressed the group about “what it would mean if they did not come to an agreement.”¹⁸⁹

LESSONS LEARNED

While several lessons can be learned from this case, the key lessons are described below.

1. Include the full range of stakeholders to help create lasting decisions.

Although an agreement had been reached on how forest industry concerns would be incorporated into the Committee’s planning efforts, in retrospect the Committee’s recommendations would have been stronger in the long run had industry been represented on the Committee. On this point Senator Spanel commented:

The timber industry was left out and maybe they should have been there, but what I do support, and I’ve seen it work well, is that everyone has to be at the table. If they are not a part of the whole process to come to a decision, it’s much easier for them to oppose it in the end. DNR has done a good job of representing industry, but [industry] would not have the ability to do a lot of complaining at the end if they would have had someone at the table.¹⁹⁰

2. If facilitation appears needed, bring it in early to avoid getting off track.

If facilitation is necessary, bring it in early so that the group can continue work in a productive way. In this case, Soicher noted: “we should have had them [the facilitators] right from the start.”¹⁹¹ Another reason to seek outside facilitation is that in some cases it is difficult for a participant to serve both as the facilitator and a representative of a group that has a stake in the process. In this case Steve Hood, who was filling both positions, did not find it a productive way of interacting with the group. Senator Spanel noted: “At the time, Steve Hood was chairing the Committee. As the chair, he did not have the ability to participate as much [on behalf of the Department of Ecology].”¹⁹² At times, the DNR also found itself in an uncomfortable, dual role. Soicher noted, “It was always kind of awkward to have the DNR engaged in policy discussion and to have them running the meetings.”¹⁹³

3. Set realistic timelines to manage expectations and to avoid disappointment with the process.

The process’ ill-conceived initial deadline and the subsequent missing of that deadline hurt Committee members’ expectations about the process and contributed to process fatigue. According the 2000 legislation, the Lake Whatcom Landscape Plan was supposed to be completed by June 2001. This gave the Committee only 15 months to form and develop their recommendations. As it turned out, this deadline did not allow adequate time for the Committee to complete their work. When either developing or deciding whether or not to participate in a collaborative planning process it is important to take a realistic look at how long it might take and anticipate room for delays along the way. By addressing the issue of time commitment up front you not only set a timeframe for when things will happen, but also give participants an

accurate perception of what they are agreeing to do. Soicher noted: “If I knew it would drag on this long I would not have been able to agree to participate. The legislation intentionally set a tight time frame, which is what we expected it would take.”¹⁹⁴

4. Implement mechanisms in process ground rules for overcoming disagreements.

Another important lesson from this case is that it is important to figure out ways to keep the collaborative process moving when conflicts arise. The Committee set several ground rules to help get passed roadblocks, which have been described above. These rules included a cooling off period, a minority report and deferring issues to an Implementation Committee. While the process stalled at times, participants believed that these ground rules helped keep the process moving forward by overcoming disagreements.

5. Let stakeholders participate in defining the process to build commitment to follow-through.

The DNR found it difficult to remain committed to the process because it did not play a hand in defining it. The legislation mandated that the DNR work with the advisory Committee. It also included management measures that were to be included in the Landscape Plan. The DNR felt that the legislature was too heavy-handed in defining the process.¹⁹⁵ Wallace described one way to approach this:

Get some of the key stakeholders together to decide what the process should be. So that there is some ownership of what the process will be. What kind of outcome do we want? What kind of a timeframe do we want? Who should be represented on the Committee? What are some processes that we have some experience with? Whatever you pick it will have ownership from the folks that are going to be involved in this to determine what we are going to do, recognizing there may be some adjustments along the way. If you start that early with the collaboration, you are going to ownership of not only the product you come out with but also with the process by which you do it. I would say the most important part is to start with collaboration, to create ownership of the process to help achieve a more durable outcome.

6. If collaboration is mandated, make sure membership and decision-making authority are clear.

If a collaborative process is required by a legal mandate, make sure roles and decision-making authority are clear. The membership of the Committee was not clearly defined in the 2000 legislation. It was assumed that it would be the same as for the Study Committee, resulting from the 1999 legislation. The process for setting up the Implementation Committee was also not clearly defined, nor was the decision-making authority. Senator Spanel commented when looking back at the legislation, it could have had “better clarification, no loose ends like the IJC [Implementation Committee] and better definitions in there.”¹⁹⁶ Alan Soicher commented, “[you need] clarity in the relationship, going further than that, be really clear about whether it is going

to be collaborative or whether you are going to have one group making recommendations and another group making decisions.”¹⁹⁷

7. Share ownership of expert-based analyses and decisions to avoid mistrust.

Collaborative processes, such as the Lake Whatcom Landscape Planning Process, bring together people with different areas of expertise. There is a tendency for groups to defer decision making related to a particular skill or knowledge set to the group member with expertise in that area. While it is efficient to make use of an expert’s skill and knowledge, providing that member with too much control or discretion over the decision or the preparation of data for that decision could lead to suspicion by other members of the group about the objectiveness of the expert’s analysis. To avoid the perception of bias, the group and the expert at hand should share ownership of expert-based decision making throughout the process. This procedure will build buy-in for the group’s decision related to this area of expertise. For example, in the this case, some members of the group felt that the DNR was controlling the financial analysis of the impact of the plan alternative’s on the generation of future revenue in the watershed.¹⁹⁸ While the DNR possessed expertise in preparing the financial models necessary to conduct this analysis, some members of the group considered it biased because of their lack of participation in conducting the analysis.

ACKNOWLEDGEMENTS

We would like to thank the following people for taking the time to reflect on their experience in the Lake Whatcom Landscape Planning Process. These participants were invaluable resources during the interview and writing processes:

Mary Dumas
Tom Edwards, Jr.
Clare Fogelsong
Steve Hood
Bruce Mackey

Linda Marrom
Bill McCourt
Dan McShane
Richard Rodriguez

Alan Soicher
Harriet Spanel
Doug Sutherland
Bill Wallace

APPENDIX

Exhibit 5: Full Text of Senate Bill 5536

Exhibit 6: Full Text of Engrosed Second Senate Bill 6731

Exhibit 7: The Lake Whatcom Landscape Plan Charter

Exhibit 5

Full Text of Senate Bill 5536

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE SENATE BILL 5536
Chapter 257, Laws of 1999
56th Legislature
1999 Regular Session

LAKE WHATCOM MUNICIPAL WATERSHED--PILOT PROJECT ON WATER QUALITY

EFFECTIVE DATE: 7/25/99

Passed by the Senate April 22, 1999
YEAS 45 NAYS 0

BRAD OWEN
President of the Senate
Passed by the House April 16, 1999
YEAS 95 NAYS 0 CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SECOND SUBSTITUTE SENATE BILL 5536 as passed by the Senate and the House of Representatives on the dates hereon set forth.

CLYDE BALLARD
Speaker of the
House of Representatives TONY M. COOK
Secretary

FRANK CHOPP
Speaker of the
House of Representatives
Approved May 10, 1999 FILED

May 10, 1999 - 4:47 p.m.

GARY LOCKE
Governor of the State of Washington Secretary of State
State of Washington

Exhibit 5 (cont.)
Full Text of Senate Bill 5536

SECOND SUBSTITUTE SENATE BILL 5536

AS AMENDED BY THE HOUSE

Passed Legislature - 1999 Regular Session

State of Washington 56th Legislature 1999 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators
Spanel and Gardner)

Read first time 03/08/1999.

AN ACT Relating to State forest lands and municipal drinking water
protection; and amending RCW 79.01.128.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 79.01.128 and 1971 ex.s. c 234 s 11 are each amended to read as follows:

{+ (1) +} In the management of public lands lying within the limits of any watershed over and through which is derived the water supply of any city or town, the department may alter its land management practices to provide water with qualities exceeding standards established for intrastate and interstate waters by the department of ecology: PROVIDED, That if such alterations of management by the department reduce revenues from, increase costs of management of, or reduce the market value of public lands the city or town requesting such alterations shall fully compensate the department.

{+ (2) The department shall initiate a pilot project for the municipal watershed delineated by the Lake Whatcom hydrographic boundaries to determine what factors need to be considered to achieve water quality standards beyond those required under chapter 90.48 RCW and what additional management actions can be taken on state trust lands that can contribute to such higher water quality standards. The department shall establish an advisory committee consisting of a representative each of the city of Bellingham, Whatcom County, the Whatcom County Water District 10, the Department of Ecology, the Department of Fish and Wildlife, and the Department of Health, and three general citizen members to assist in this pilot project. In the event of differences of opinion among the members of the advisory committee, the committee shall attempt to resolve these differences through various means, including the retention of facilitation or mediation services. +}

{+ (3) The pilot project in subsection (2) of this section shall be completed by June 30, 2000. The department shall defer all timber sales in the Lake Whatcom hydrographic boundaries until the pilot project is complete.

Exhibit 5 (cont.)

Full Text of Senate Bill 5536

(4) Upon completion of the study, the department shall provide a report to the natural resources committee of the house of representatives and to the natural resources, parks, and recreation committee of the senate summarizing the results of the study.

(5) +} The exclusive manner, notwithstanding any provisions of the law to the contrary, for any city or town to acquire by condemnation ownership or rights in public lands for watershed purposes within the limits of any watershed over or through which is derived the water supply of any city or town shall be to petition the legislature for such authority. Nothing in this section, RCW 79.44.003 and chapter 79.68 RCW shall be construed to affect any existing rights held by third parties in the lands applied for.

Passed the Senate April 22, 1999.

Passed the House April 16, 1999.

Approved by the Governor May 10, 1999.

Filed in Office of Secretary of State May 10, 1999.

Exhibit 6

Full Text of Engrossed Second Substitute Senate Bill 6731

FRANK CHOPP
Speaker of the
House of Representatives
Approved March 29, 2000 FILED

March 29, 2000 - 2:59 p.m.

GARY LOCKE
Governor of the State of Washington Secretary of State
State of Washington

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6731

AS AMENDED BY THE HOUSE
Passed Legislature - 2000 Regular Session
State of Washington 56th Legislature 2000 Regular Session
By Senate Committee on Ways & Means (originally sponsored by Senators Spanel and Gardner)
Read first time 02/08/2000.

AN ACT Relating to Lake Whatcom; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

{+ NEW SECTION. +} Sec. The Lake Whatcom landscape management pilot project is created. The department of natural resources shall develop a Landscape Plan regarding state-owned forest lands in the Lake Whatcom watershed area. Where appropriate, the department will consult with other major forest landowners in the watershed and shall involve watershed residents in management activities. The department shall consult with the Lake Whatcom management committee on proposed timber harvest and road management activities. The department shall establish an interjurisdictional committee for the development of the Landscape Plan, to review the site-specific activities and make recommendations. The interjurisdictional committee shall include two members of the public who have an interest in these activities. The Landscape Plan shall address at least the following topics:

- (1) Establishing riparian management zones along all streams, as classified under chapter 4, Laws of 1999 sp. sess. The department shall manage lands within such zones to protect water quality and riparian habitat. The interjurisdictional committee may recommend to the department restrictions upon timber harvest and yarding activities on a case-by-case basis;
- (2) Harvest and road construction upon potentially unstable slopes shall be carefully regulated;

Exhibit 6 (cont.)

Full Text of Engrosed Second Senate Bill 6731

(3) On unstable slopes, new road construction shall be prohibited and old road reconstruction shall be limited;

(4) A sustained yield model specific to the Lake Whatcom watershed that encompasses the revised management standards and that is consistent with the sustained yield established by the board of natural resources shall be created and implemented;

(5) The department should build on the existing draft Lake Whatcom Landscape Plan and incorporate both new information from the community and new scientific information when available; and

(6) The development of a road management plan for the watershed. The Landscape Plan shall be completed and implementation initiated by June 30, 2001. Timber harvest and all road construction in the watershed on state land shall be delayed until the plan is completed.

Passed the Senate March 7, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 29, 2000.

Filed in Office of Secretary of State March 29, 2000.

Exhibit 7

The Lake Whatcom Landscape Plan Charter

Lake Whatcom Landscape Plan

The Department of Natural Resources will develop a Landscape Plan for department-managed uplands in the Lake Whatcom watershed. During development of the Landscape Plan, the department will address a number of topics, including:

- the various issues and concerns to be discussed in the plan (including those topics found in Engrossed Second Substitute Senate Bill 6731),
- a community interaction plan for use during the development of the Landscape Plan and for review of site-specific activities,
- ecological, revenue, and community value assessments,
- landscape objectives and management strategies,
- action plans for road management, timber harvesting/trust revenue generation, and other potential land uses, and .
- approaches to monitoring and evaluation.
- The Landscape Plan shall be completed and implementation initiated by June 30, 2001.

Lake Whatcom Inter-jurisdictional Committee Charter

The Department of Natural Resources will consult with the Lake Whatcom Inter-Jurisdictional Committee as the department develops a Landscape Plan for the Lake' Whatcom watershed area. The committee will review draft materials as they are developed and provide input to the department.

JENNIFER M. BELCHER
Commissioner of Public Lands

August 1, 2000

Endnotes

¹ “State lands managed by the Department of Natural Resources,” Washington State Department of Natural Resources, <http://www.dnr.wa.gov/base/statelands.html>.

² “Washington,” Encyclopedia.com, <http://www.encyclopedia.com/html/W/WshngtnSt.asp>.

³ Ibid.

⁴ Peter W. Culp, Diane B. Conradi and Cynthia C. Tuell *Trust Lands in the American West: A Legal Overview and Policy Assessment*. A Policy Assessment Report of the Lincoln Institute of Land Policy / Sonoran Institute Joint Venture on State Trust Lands, 2005.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

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⁹ *County of Skamania v. State*, 685 P.2d 576 (Wash. 1984).

¹⁰ “Report to Legislature: Lake Whatcom Landscape Pilot Project,” Washington State Department of Natural Resources, 2004.

¹¹ Culp, Conradi and Tuell.

¹² Ibid.

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¹⁴ Wash. Rev. Code § 76.12.030 (2006).

¹⁵ “Washington State Commissioner of Public Lands, Doug Sutherland, Biography,” Washington State Department of Natural Resources, <http://www.dnr.wa.gov/base/bio.html>.

¹⁶ “State lands managed by the Department of Natural Resources,” Washington State Department of Natural Resources, <http://www.dnr.wa.gov/base/statelands.html#howtrusts>.

¹⁷ State Grant Lands exclude Forest Board Land.

¹⁸ “State lands managed by the Department of Natural Resources,” Washington State Department of Natural Resources, <http://www.dnr.wa.gov/base/statelands.html#howtrusts>.

¹⁹ Culp, Conradi and Tuell.

²⁰ Ibid.

²¹ Ibid.

²² “Conservation Groups Challenge State Plan to Sharply Boost Logging,” October 5, 2004 Press release, Conservation Northwest, <http://www.conservationnw.org/>.

²³ Steve Hood, Robert F. Cusimano, Jing Liu, “Lake Whatcom TMDL Study,” Washington State Department of Ecology, Environmental Assessment Program, Olympia, WA, July 2002, <http://news.bellinghamherald.com/special-pub/lakewhatcom/lakewhatcom02.pdf>.

²⁴ In the 1920s and 1930s, the state foreclosed on several hundreds of thousands of acres of privately owned logged and abandoned forest lands for failure to pay taxes. The State Legislature put these lands, referred to as Forest Board lands, in trust for the benefit of counties and junior taxing districts. While accounted for separately from federally granted state trust lands, Forest Board lands are managed under similar guidelines. “History of state lands managed by DNR,” Washington State Department of Natural Resources, <http://www.dnr.wa.gov/base/history.html>.

²⁵ “State Lands: Lake Whatcom History,” Conservation Northwest, http://www.conservationnw.org/Statelands/lakewhatcom_history.html.

²⁶ William Wallace (Northwest Regional Manager, Washington State Department of Natural Resources), interview by Alden Boetsch and Matt Stout, August 9, 2005, DNR, Sedro-Woolley, WA.

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²⁹ Steve Hood (Water Quality Engineer, Washington State Department of Ecology), interview by Alden Boetsch and Matt Stout, August 10, 2005, DOE, Bellingham, WA.

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³² Ibid.

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³⁶ Ibid.

³⁷ Linda Marrom (Citizen, city of Bellingham), interview by Alden Boetsch and Matt Stout, August 9, 2005, Tino’s Pizza, Sudden Valley, WA.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

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⁴² Harriet Spanel (Senator, Washington State Senate), telephone interview by Alden Boetsch and Matt Stout, August 30, 2005.

⁴³ Ibid.

⁴⁴ 2SSB. 5536, 1999 Leg., 56th Sess. (Wash. 1999).

⁴⁵ Ibid.

⁴⁶ Harriet Spanel (Senator, Washington State Senate), telephone interview by Alden Boetsch and Matt Stout, August 30, 2005.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ ESSB. 6731, 2000 Leg., 56th Sess. (Wash. 2000).

⁵⁰ Ibid.

⁵¹ The Committee is referred to in DNR documents as the Lake Whatcom DNR Landscape Planning Committee and is distinct from the Implementation Interjurisdictional Committee.

⁵² Steve Hood (Water Quality Engineer, Washington State Department of Ecology), interview by Alden Boetsch and Matt Stout, August 10, 2005, DOE, Bellingham, WA.

⁵³ Ibid.

⁵⁴ Linda Marrom (Citizen, city of Bellingham), interview by Alden Boetsch and Matt Stout, August 9, 2005, Tino's Pizza, Sudden Valley, WA.

⁵⁵ Alan Soicher (Citizen, city of Bellingham), telephone interview by Alden Boetsch and Matt Stout, August 29, 2005.

⁵⁶ Bill McCourt (General Manager, Lummi Tribal Water and Sewer District), interview by Alden Boetsch and Matt Stout, August 8, 2005, Lummi Tribal Water and Sewer District, Lummi Nation, WA.

⁵⁷ Tom Edwards, Jr. (Way of Life Department, Lummi Nation), interview by Alden Boetsch and Matt Stout, August 9, 2005, Tribal, Lummi Nation, WA.

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⁶² Clare Fogelsong (Environmental Resources Manager, city of Bellingham), interview by Alden Boetsch and Matt Stout, August 8, 2005, City Hall, Bellingham, WA.

⁶³ *Lake Whatcom Landscape Plan Preliminary Draft Environmental Impact Statement*, Washington State Department of Natural Resources, <http://www.dnr.wa.gov/htdocs/agency/whatcom/index.html>.

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⁶⁷ “Washington State Commissioner of Public Lands, Doug Sutherland, Biography,” Washington State Department of Natural Resources, <http://www.dnr.wa.gov/base/bio.html>.

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⁶⁹ Doug Sutherland (Commissioner of Public Lands, Washington State Department of Natural Resources), interview by Alden Boetsch and Matt Stout, July 26, 2005, Great Divide Lodge, Breckenridge, CO.

⁷⁰ Richard Rodriguez (Regional Planner, Washington State Department of Health), interview by Alden Boetsch and Matt Stout, August 11, 2005, DOH, Kent, WA.

⁷¹ Doug Sutherland (Commissioner of Public Lands, Washington State Department of Natural Resources), interview by Alden Boetsch and Matt Stout, July 26, 2005, Great Divide Lodge, Breckenridge, CO.

⁷² William Wallace (Northwest Regional Manager, Washington State Department of Natural Resources), interview by Alden Boetsch and Matt Stout, August 9, 2005, DNR, Sedro-Woolley, WA.

⁷³ Ibid.

⁷⁴ Linda Marrom (Citizen, city of Bellingham), interview by Alden Boetsch and Matt Stout, August 9, 2005, Tino’s Pizza, Sudden Valley, WA.

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⁷⁹ William Wallace (Northwest Regional Manager, Washington State Department of Natural Resources), interview by Alden Boetsch and Matt Stout, August 9, 2005, DNR, Sedro-Woolley, WA.

⁸⁰ Wash. Op. Att’y Gen., January 18, 2002.

⁸¹ Alan Soicher (Citizen, city of Bellingham), telephone phone interview by Alden Boetsch and Matt Stout, August 29, 2005; Linda Marrom (Citizen, city of Bellingham), interview by Alden Boetsch and Matt Stout, August 9, 2005, Tino’s Pizza, Sudden Valley, WA; Clare Fogelson (Environmental Resources Manager, city of Bellingham), interview by Alden Boetsch and Matt Stout, August 8, 2005, City Hall, Bellingham, WA.

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⁸⁵ Ibid.

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⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ John Stark, "Logging suit against DNR filed in Superior Court," *The Bellingham Herald*, October 22, 2004, <http://news.bellinghamherald.com/archive-index.shtml>.

⁹¹ Editorial, "Lake logging plan merits our support," *The Bellingham Herald*, November 9, 2004, <http://news.bellinghamherald.com/archive-index.shtml>.

⁹² Editorial, "State should move ahead with logging plan," *The Bellingham Herald*, October 14, 2004, <http://news.bellinghamherald.com/archive-index.shtml>.

⁹³ Linda Marrom (Citizen, city of Bellingham), interview by Alden Boetsch and Matt Stout, August 9, 2005, Tino's Pizza, Sudden Valley, WA; Harriet Spanel (Senator, Washington State Senate), telephone interview by Alden Boetsch and Matt Stout, August 30, 2005.

⁹⁴ Doug Sutherland (Commissioner of Public Lands, Washington State Department of Natural Resources), interview by Alden Boetsch and Matt Stout, July 26, 2005, Great Divide Lodge, Breckenridge, CO.

⁹⁵ "Report to the Board of Natural Resources," Washington State Department of Natural Resources, June 2005.

⁹⁶ Ibid.

⁹⁷ *County of Skamania v. State*, 685 P.2d 576 (Wash. 1984).

⁹⁸ "Welcome to Washington DNR," Washington State Department of Natural Resources, <http://www.dnr.wa.gov/base/aboutdnr.html>.

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¹⁰³ Ibid.

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- ¹⁰⁵ Alan Soicher (Citizen, city of Bellingham), telephone interview by Alden Boetsch and Matt Stout, August 29, 2005.
- ¹⁰⁶ Mary Dumas (Facilitator, Resolution Services, Inc.), interview by Alden Boetsch and Matt Stout, August 9, 2005, Best Western Heritage Inn, Bellingham, WA.
- ¹⁰⁷ Tom Edwards, Jr. (Way of Life Department, Lummi Nation), interview by Alden Boetsch and Matt Stout, August 9, 2005, Tribal , Lummi Nation, WA.
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