

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

Authors:

Stephanie Bertaina, Alden Boetsch, Emily Kelly, Eirin Krane,
Jessica Mitchell, Lisa Spalding, Matt Stout, Drew Vankat, Steve Yaffee

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**WHITEFISH NEIGHBORHOOD PLANNING PROCESS:
Land Use Planning for a Growing Community**



Whitefish Lake, Whitefish, Montana

Photograph by Jessica Mitchell

**Case Study by Jessica Mitchell
Researched and Edited by Jessica Mitchell and Lisa Spalding**

INTRODUCTION

Whitefish, Montana is a scenic Northern Rockies community located just outside Glacier National Park. Similar to many western towns, Whitefish has experienced significant growth and development pressure in recent years.¹ In 2003, motivated by these pressures as well as an interest to become more involved in local planning, the Montana Department of Natural Resources and Conservation (DNRC) initiated a Neighborhood Planning Process on 13,000 acres of trust lands in the immediate vicinity of Whitefish. Through this planning effort, the DNRC hoped to develop a Neighborhood Plan to guide the potential conversion of portions of these lands from traditional timber production to non-traditional uses including real estate development. The process, as crafted by the DNRC, solicited community input through a series of facilitated public meetings and smaller breakout groups.

This planning effort was met with criticism from the Whitefish community, which valued the trust lands for their beauty, recreational opportunities and natural resources, and felt disenfranchised and detached from DNRC decision making. In an effort to become more involved in drafting the neighborhood plan, a group of Whitefish community members petitioned the Montana State Board of Land Commissioners (State Land Board) to modify the process. The result was a chartered stakeholder group – the Whitefish School Trust Lands Advisory Committee – which was to work collaboratively with the DNRC to develop the Neighborhood Plan.

Comprised of diverse stakeholders including the Whitefish Chamber of Commerce, Whitefish Credit Union, Flathead County Schools, citizens of the area and special interest groups, the Advisory Committee met for approximately one year to develop a land use plan that would meet the needs of the trust, as well as the community's interests. Over the course of that year, the Advisory Committee and DNRC developed a Whitefish Area Neighborhood Plan that defines future uses for the trust lands in the Whitefish area and provides a framework for reviewing and evaluating land use proposals. The group also overcame significant interpersonal challenges during the process to develop lasting professional and personal relationships.

The State Land Board unanimously adopted the Neighborhood Plan in November 2004. The city of Whitefish and Flathead County also have approved the Plan. While the Neighborhood Plan is not a regulatory document, it will become an integral part of any future growth policies in the area. The Neighborhood Plan is the first large-scale collaborative land use plan prepared for any trust land in the state of Montana.

The Whitefish Neighborhood Planning Process highlights the value of establishing a process framework at the outset to clarify such issues as scope, timeframes and decision-making procedures. This case also reveals the importance of having a neutral facilitator guide the collaborative effort. Finally, the Whitefish case exemplifies how a strong sense of community and passion for surrounding natural areas can be an important facilitating factor for some and a monumental challenge for others.

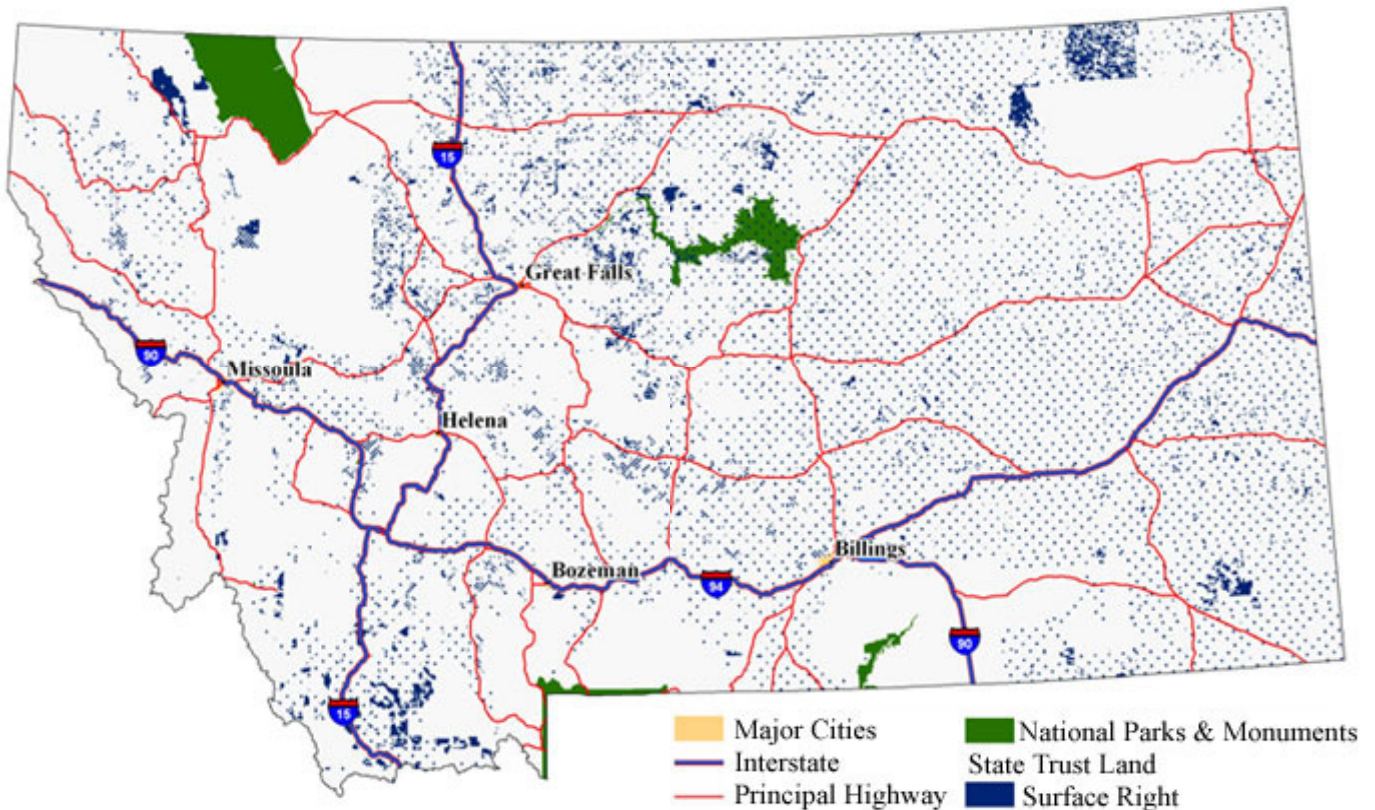
CONTEXT FOR COLLABORATION

Evaluating the Whitefish Neighborhood Planning Process as a collaborative planning effort on state trust lands requires an understanding of the context in which this process unfolded. This section provides a brief discussion of historical, legal and political events and issues that helped shape the Whitefish case.

MONTANA'S LAND GRANT

Montana was admitted to the Union through the Omnibus Enabling Act of 1889.² Upon admission, the federal government granted Montana sections 16 and 36 from each township “for the support of the common schools.”³ This land grant totaled more than 5.1 million acres. In addition, the state received more than 600,000 acres for other educational and state institutions under the Enabling Act and subsequent legislation.⁴ Combined, these land grants totaled more than 5.8 million acres.⁵ Today, Montana holds more than five million acres of surface and 6.2 million acres of subsurface trust lands, constituting approximately 90 percent of its original land grants (Figure 11-1).⁶

Figure 11-1: State Trust Lands in Montana



Source: “Montana 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>.

THE OMNIBUS ENABLING ACT AND MONTANA CONSTITUTION

Under the Omnibus Enabling Act, Montana may: (1) *sell* its trust lands at “public sale” for no less than ten dollars an acre, (2) *lease* trust lands for a limited period of years, (3) *grant easements* or other rights to specified parties and (4) *exchange* lands where the lands are equal in value and as equal as possible in area.⁷ The revenue generated from trust land sales must be placed in a permanent fund established to benefit those institutions for which the lands were granted.⁸

The Constitution does not explicitly identify the beneficiaries of Montana’s trust lands; however, they presumably are the common schools and other educational institutions for which the federal government granted these lands.⁹ In addition to establishing a fiduciary responsibility to these institutions, the Constitution requires that the state “maintain and improve a clean and healthful environment in Montana for present and future generations.”¹⁰ These constitutional obligations have fueled a debate in Montana over whether the state must maximize short-term revenue production for its beneficiaries, or adopt a more long-term management approach that protects its natural assets.¹¹ Indeed, this debate emerged during the Whitefish Neighborhood Planning Process, as discussed below.

LEGAL INTERPRETATIONS OF MONTANA’S TRUST RESPONSIBILITY

The courts have interpreted the Omnibus Enabling Act and Montana Constitution to impose a trust responsibility on the state, with the state (or the State Board of Land Commissioners) as the trustee of the trust.¹²

Pursuant to this trust responsibility, the Montana Supreme Court has acknowledged that the state, as trustee, owes an undivided duty of loyalty to the beneficiaries of the trust.¹³ Thus, the state may not sell or lease trust land without adequate compensation.¹⁴ In the face of this fiduciary obligation, the Montana Supreme Court has recognized that trust land management is subject to state environmental laws, because income is only one of many considerations that must be considered when managing trust lands.¹⁵ Among the state environmental laws that apply to trust land is the Montana Environmental Policy Act (MEPA).¹⁶ Similar to its federal counterpart, the National Environmental Policy Act (NEPA), MEPA requires state agencies to review the environmental impacts of their proposed actions and draft environmental impact statements when necessary to ensure informed decision making.

TRUST LAND MANAGEMENT IN MONTANA

In Montana, two decision-making bodies are authorized to manage trust lands – the State Board of Land Commissioners (State Land Board) and the Trust Lands Management Division (TLMD) of the Department of Natural Resources and Conservation (DNRC). This bi-level management structure played a significant role in the Whitefish Neighborhood Planning Process, posing a challenge for some stakeholders and serving as a key facilitating factor for others.

The Montana Constitution provides that the State Land Board is to “direct, control lease, exchange and sell school lands.”¹⁷ The State Land Board consists of Montana’s five top elected

officials: the Governor, Superintendent of Public Instruction, State Auditor, Secretary of State, and Attorney General.¹⁸ The Governor serves as chair of the Board,¹⁹ which is tasked with “secur[ing] the largest measure of legitimate and reasonable advantage to the state and provid[ing] for the long-term financial support of education.”²⁰

While the State Land Board oversees the care, management and disposition of trust lands, the DNRC (through the TLMD) carries out day-to-day trust land management such as preparing leases and timber sales.²¹ State law provides that this bi-level management structure is hierarchical with the State Land Board retaining ultimate authority over Montana’s trust lands.²²

There are four bureaus within the TLMD which cover the four primary trust land management areas.²³ The Real Estate Management Bureau was most directly involved in the Whitefish Neighborhood Planning Process. Responsible for managing residential, commercial, industrial and conservation uses of trust lands, the Real Estate Management Bureau is the newest of the four TLMD Bureaus. Recently, the Real Estate Management Bureau developed a Programmatic Environmental Impact Statement (PEIS) to guide its decision making on trust land development. The Bureau developed the PEIS pursuant to MEPA. MEPA requires that whenever a state agency contemplates a series of agency-initiated actions, programs or policies which in part or in total constitute a major state action significantly affecting the environment, the agency must prepare a programmatic review discussing the impacts of the series of actions.²⁴ As is discussed further below, the PEIS process coincided with the Whitefish Neighborhood Planning Process.

The DNRC (through the TLMD) manages surface and subsurface uses, as well as land sales and exchanges. According to TLMD Administrator Tom Schultz, the DNRC does not have financial targets for individual trust land parcels.²⁵ The largest single source of trust land revenue comes from oil and gas extraction and other subsurface uses.²⁶ Surface uses include agricultural and grazing leases, timber sales, cabin leases and residential and commercial uses. The Department also generates revenue via recreational use licenses (a component of “surface use”), which people can obtain from the Department of Fish, Wildlife and Parks to recreate on trust lands with legal public access.²⁷

While the Montana Constitution and state regulations permit the State Land Board to sell trust land, traditionally the state has preferred to retain ownership of its trust lands.²⁸ If the state decides to sell trust land, it must do so at a public auction. The state must sell the land to the highest bidder for no less than the value determined by the board after appraisal by a qualified land appraiser.²⁹

When making management decisions on trust lands, the State Land Board and DNRC must consider the local policies of the jurisdiction in which a particular trust land parcel is located. These local policies may include zoning regulations, comprehensive plans and annexation rules. This obligation was clarified in early 2005 when the Montana legislature passed a “Good Neighbor Bill” – introduced by Representative (and former Whitefish City-County Planning Board Chairman) Mike Jopek – which recognized that the State Land Board, and hence the DNRC, must keep local policies in mind when making trust land management decisions. This obligation is not absolute, however. Because the State Land Board cannot abdicate their

constitutional authority, the Board must consider local policies only so long as doing so does not violate the constitution.³⁰

MONTANA POLITICS

Since Montana trust lands are managed by a body of elected officials and state legislation controls this management, state politics played a role in the Whitefish Neighborhood Planning Process. Local politics also infiltrated the process because the neighborhood plan needed city and county approval.

In contrast to other communities in the Flathead Valley and the greater Flathead County, Whitefish tends to be a fairly liberal community. According to many process participants and stakeholders, these liberal leanings combined with political connections helped the Whitefish community gain State Land Board support for their interests.³¹ During the Whitefish Neighborhood Planning Process, the State Land Board was Democratically-controlled. Prior to the 2004 elections, members of the State Land Board were: Governor Judy Martz (R), State Auditor John Morrison (D), Secretary of State Bob Brown (R), Superintendent of Public Instruction Linda McCulloch (D) and Attorney General Mike McGrath (D). All five members faced reelection in November 2004, just as the Whitefish Neighborhood Plan was being presented to the Board.³² Following the elections, Governor Brian Schweitzer (D) and Secretary of State Brad Johnson (R) joined the State Land Board to replace Martz and Brown, respectively.³³ Both State Auditor Morrison and former Secretary of State Brown are native to Whitefish. Governor Schweitzer owned property in the Whitefish area during the planning process.

State Board of Land Commissioners 2003-2004

- Governor Judy Martz (R)
- State Auditor John Morrison (D)
- Secretary of State Bob Brown (R)
- Superintendent of Public Instruction Linda McCulloch (D)
- Attorney General Mike McGrath (D)

During the Whitefish Neighborhood Planning Process, both the state Senate and House of Representatives were Republican-controlled. In January 2005, the Democrats gained control of the Senate and the House became politically split. These politics are noteworthy for the Whitefish case because state legislation affects not only trust land management in Montana, but also implementation of the Whitefish Neighborhood Plan, as explored later in the context of the recent failure of conservation easement legislation.

THE STORY: THE WHITEFISH NEIGHBORHOOD PLANNING PROCESS

Figure 11-2: Glacier National Park



Glacier National Park

Photograph by Lisa Spalding

Situated near the sparkling waters of Whitefish Lake in the shadow of Big Mountain, is the town of Whitefish, Montana. Originally a railroad and logging community, Whitefish is viewed by many as a highly educated, fairly liberal community.³⁴ In recent years, Whitefish also has become known throughout the state for being strong-willed and wealthy.³⁵ This reputation has been fueled by the town's transformation into a resort destination thanks to its close proximity to Glacier National Park and its own spectacular scenery and recreational opportunities (Figure 2). As word of Whitefish has spread, the town has witnessed not only an increase in

tourists, but also an influx of celebrities and other wealthy individuals who have purchased and gated off acres of scenic landscape to build expansive "trophy homes."³⁶ While Whitefish has successfully leveraged this growth to fund a variety of community projects, the town currently is struggling with important issues like affordable housing and future demands for infrastructure. At the same time, Whitefish is trying to preserve the small-town feel and charm that have attracted so many visitors and new residents in recent years.³⁷

PRECURSORS TO A NEIGHBORHOOD PLAN

The need for a Whitefish Neighborhood Plan emerged amidst these community growing pains. Approximately 13,000 acres of trust land surround the town of Whitefish in Flathead County. Traditionally managed by the DNRC for timber and agriculture, these lands are a mix of heavily-wooded areas and sprawling meadows and pastures.³⁸ This area also has become popular with outdoor enthusiasts who enjoy mountain biking, horseback riding, hiking and motorized activities.

As Whitefish's popularity grew, however, the DNRC began receiving inquiries about other uses for these trust land parcels – specifically, development requests. With no decision-making guidelines in place for these development (i.e. non-traditional use) requests, the DNRC – in particular its Kalispell and Stillwater field offices which were tasked with handling trust land proposals in the Whitefish area – found itself in the uncomfortable position of having to make individual land use decisions without understanding how the projects would fit on the larger landscape.³⁹ Rather than venture down that unfamiliar path, the DNRC decided in early 2003 to place a moratorium on proposals for these 13,000 acres and initiate a neighborhood planning process.⁴⁰

The DNRC envisioned that the Neighborhood Plan would define future uses for trust land in the Whitefish area and provide a framework for reviewing and evaluating land use proposals.⁴¹ Pursuant to state law, this plan would not be a regulatory document, but rather an advisory tool for the DNRC and State Land Board.⁴²

The DNRC had three goals for its neighborhood planning process. First and foremost, the agency wanted to develop a framework for assessing potential trust land uses within and adjacent to the Whitefish City-County Planning Area.⁴³ The DNRC recognized that growth in this part of the state was inevitable and could be a significant revenue source for the trust. Accordingly, while the agency sought to avoid piece-meal decision making, it also wanted to secure a way to

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| <p style="text-align: center;">DNRC Goals for Whitefish Neighborhood Planning Process</p> <ol style="list-style-type: none">1. Develop framework for assessing trust land uses2. Address disparity between trust lands and adjoining private property3. Educate local government and public about trust land management |
|--|

leverage this development pressure.⁴⁴ Second, the agency hoped to address the disparity between trust lands and adjoining private property regarding zoning, infrastructure and other public services by securing entitlements for trust lands that were comparable to those of neighboring land. At this time, both the city and county's growth plans viewed trust lands akin to federal lands and improperly designated them as open space and recreational areas. The DNRC attributed this mistaken designation to the fact that the agency was not actively involved in the development of these growth policies. Since Flathead County was updating its growth policy in early 2003, this goal was not only important, but timely. Finally, the agency wanted to educate local governments and the public about trust lands. The local growth plans and interactions with the public suggested to the DNRC that many did not understand the trust mandate and how the DNRC fit in as trust land managers.⁴⁵

While the agency was unfamiliar with the uses being proposed for the Whitefish trust lands, it was not new to the neighborhood planning process. Two years earlier, the DNRC undertook a similar effort in the neighboring town of Kalispell on approximately 600 acres of trust land. That process facilitated the development of a Costco and Lowe's. At the outset of the Whitefish Neighborhood Planning Process, the DNRC thought that it simply would replicate the Kalispell process.⁴⁶ The agency quickly learned, however, that the community dynamics in Whitefish were going to make this a very different and more challenging endeavor.

WHITEFISH COMMUNITY CATCHES WIND OF NEIGHBORHOOD PLAN

Before the DNRC arrived in Whitefish to hold its first public meeting, rumors were circulating and emotions were brewing about the potential Neighborhood Plan. One catalyst of this reaction was a letter that Whitefish community member Tyler Tourville received from the DNRC in February 2003. President of the Flathead Fat Tire Association, Tourville was approached by local DNRC staff in early 2003 about illegal extreme mountain biking that was occurring on Spencer Mountain, a locally-treasured parcel of trust land abutting Whitefish Lake (Figure 11-3). In an effort to work with the agency and continue recreating on the mountain, Tourville applied for a permit to legally construct, maintain and use bike trails on the mountain. In a brief letter, the DNRC denied Tourville's permit application, citing the impending neighborhood planning

process. This process was news to Tourville and most of the Whitefish community. In a town of 6500 people,⁴⁷ word of the DNRC's plan spread quickly. Local interest groups like "Friends of Spencer Mountain," of which Tourville was a member, took the lead in making telephone calls and sending out emails to generate interest in the process and underlying issues.⁴⁸ Whitefish Advisory Committee Chairman Alan Elm remembered receiving numerous emails from different groups and community members about the process prior to the DNRC's first public meeting.⁴⁹

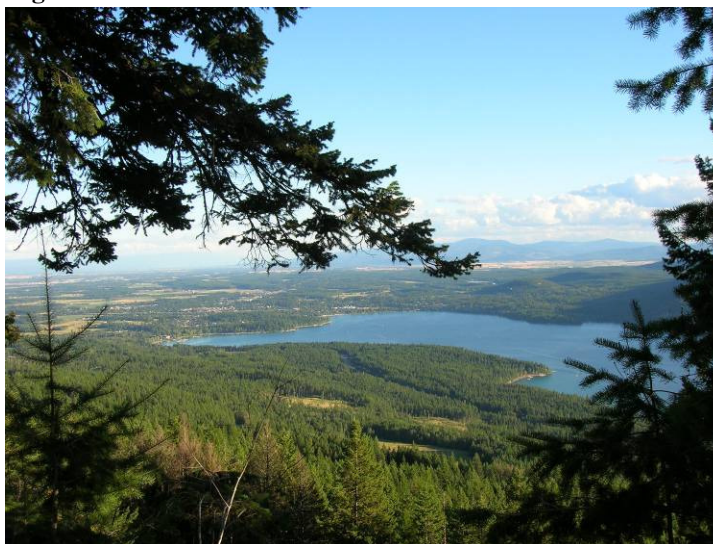
What provoked such a fervent response to a neighborhood plan? Whitefish's growth and changing community dynamics probably played a large role. Tired of watching out-of-towners purchase and gate off large parcels of once-publicly-accessible property, many Whitefishians viewed the neighborhood planning process as yet another effort to privatize and develop open space around Whitefish. The fact that the Kalispell Neighborhood Plan resulted in the razing of trust land for the development of a Costco and Lowe's did not help matters.⁵⁰ Moreover, several community members had spoken with local DNRC planner David Greer who verified many of the development rumors.⁵¹ One Whitefish community member even recalled seeing a copy of potential development plans for Spencer Mountain.

In addition to these development concerns, many in the Whitefish community simply did not trust the DNRC. As DNRC Unit Manager Greg Poncin put it, "there was a healthy mistrust of the government up here."⁵² Some of this suspicion probably was an offshoot of the "western mentality" about government. Much of the community's mistrust also stemmed from the fact that, from the community's perspective, the agency was not forthcoming about its interest in local trust land. The recent Kalispell planning effort only fueled the town's doubt.⁵³

Likewise, the DNRC's ongoing Programmatic Environmental Impact Statement (PEIS) process troubled Whitefish community members who were reading PEIS drafts that expressed an agency desire to match the intensity of residential and commercial development on trust land with that on private property.⁵⁴

Whatever the source of these emotions, by the time the DNRC published a notice about the planning process and upcoming public meetings, many in Whitefish already knew of the process and were mobilizing to oppose it.

Figure 11-3: Whitefish Lake with Town of Whitefish in Distance



THE NEIGHBORHOOD PLANNING PROCESS BEGINS

To initiate the neighborhood planning process, the agency hired a consultant to facilitate the public process and help develop the neighborhood plan. Through a Request for Proposals process, the DNRC contracted with Janet Cornish of Community Development Services of Montana. This \$50,000 contract established a one-year timeframe during which Cornish and her team were to facilitate three public meetings and a series of smaller breakout groups and draft the Neighborhood Plan.⁵⁵ To pay for Cornish's services, the agency received donations from two wealthy Whitefish property owners, Mark Kvamme and Mike Goguen. Interested in possibly purchasing the trust land surrounding their properties to preserve them as open space, Kvamme and Goguen were among those who initially contacted the DNRC about non-traditional trust land uses in the Whitefish area.⁵⁶ Once they learned of the neighborhood planning process, Kvamme and Goguen donated \$20,000 and \$40,500, respectively, to help fund the planning process.⁵⁷ According to the agency, this kind of planning effort often is privately funded.⁵⁸

With a facilitation team in place, the DNRC was ready to hold its first public meeting in Whitefish. Based on past experiences, both Cornish and the agency expected a turnout at the meeting of 50 or so concerned Whitefish citizens. As they drove into town on May 12, 2003, and saw signs posted everywhere about impending trust land development, Cornish and the DNRC realized that this process was not going to be like past efforts. In fact, more than 300 people attended the first public meeting at Grouse Mountain Lodge in Whitefish. Cornish remembered this emotionally-charged evening:

At that very first meeting, rather than 50 to 75 people, we had well over 300 people come. The room we had arranged [for] was not large enough, so we had to break the meeting into two sessions. It was very warm. By the time the second session started, there had been plenty of time to go to the bar. So, we had a very unruly crowd. Also, they were preset to believe that we were there to screw them. Plain and simple.⁵⁹

The large turnout even surprised Whitefish community members who were lucky to find space to stand at the back of the meeting room.⁶⁰ Over the next few hours, Cornish and the DNRC explained its neighborhood planning process and introduced the community to the agency and trust land management. The public meeting also provided the community with an opportunity to ask questions and comment on the impending planning process. Skepticism and anger characterized most of the public comments that night. Many attendees considered trust land development a done deal and repeatedly questioned the DNRC's stated desire to maintain open space and recreational opportunities in the area.⁶¹ Consequently, Cornish and the DNRC immediately were put on the defensive, and the agency, which wanted to stay on the sidelines to preserve the perception of a publicly-driven process, was pushed into the spotlight.⁶²

Some observers believed that the DNRC lost control over the process at this initial meeting.⁶³ The agency nevertheless moved forward with the planning effort. Throughout the summer of 2003, Cornish held a series of focus group meetings with individual stakeholder groups, including the Flathead Fat Tire Association, Montana Department of Fish, Wildlife, and Parks and adjacent landowners, to begin identifying common issues and goals. Cornish also held public

workshops to identify current uses of the trust lands and continue articulating community objectives.⁶⁴ What Cornish and the DNRC did not know was that a group of community members – an “Ad Hoc Committee” – had formed to strategize ways to increase public involvement in the process. The events that followed would drastically change the course of the DNRC’s neighborhood planning process.

THE CREATION OF AN ADVISORY COMMITTEE

The Ad Hoc Committee formed out of frustration with and distrust of the DNRC-crafted process. Determined to increase the community’s role in the planning effort, Whitefish Mayor Andy Feury and Whitefish City-County Planning Board Chairman Mike Jopek convened a group of approximately eight community members to discuss how to “bring the process back home and make the decision locally.”⁶⁵ Committee members wanted to become equal decision makers with the DNRC and discussed a variety of strategies to achieve that level of public involvement. To determine an appropriate and feasible course of action, Committee members contacted State Auditor John Morrison in Helena. Morrison was a State Land Board member, as well as a native of Whitefish.⁶⁶ In the Whitefish Public Library, Morrison and the Ad Hoc Committee discussed the possibility of modifying the DNRC’s public process to involve a citizens advisory group to help the agency develop the neighborhood plan. With Morrison’s encouragement, the Committee decided to propose this process change to the State Land Board.⁶⁷ The Committee was cautiously optimistic about their proposal because, in addition to Morrison’s support, the Committee anticipated the support of Attorney General Mike McGrath and Superintendent of Public Instruction Linda McCulloch because of their liberal leanings.⁶⁸ Political persuasions aside, the community also hoped for the backing of then Secretary of State Bob Brown who, like Morrison, was a Whitefish native. Moreover, the community believed they had the tacit support of then-gubernatorial candidate Brian Schweitzer who had attended the DNRC’s first public meeting and owned a ranch in the Whitefish area.⁶⁹

In August 2003, Committee members traveled to Helena to propose the formation of a citizens advisory group to the State Land Board.⁷⁰ Committee members who spoke at the Board meeting included Chairman Jopek, Tyler Tourville, Jeff Gilman of Friends of Spencer Mountain, Whitefish resident Bick Smith and local attorney Diane Conradi. In addition, representatives from Montana Wood Products Association and MonTrust – a Montana trust land watchdog group – testified about the proposed citizens group, reminding the Board of its fiduciary responsibility to the trust land beneficiaries and advising them not to abdicate the DNRC’s decision-making authority.⁷¹ Perhaps because the Ad Hoc Committee had already met with Morrison to develop this proposal, there was little discussion about the proposal at the meeting. As one Committee member put it, “the idea was pre-sold.” The Board tabled the issue for a month so that the DNRC and Whitefish community (through the Ad Hoc Committee) could identify roles and responsibilities of a potential citizens group. However, this tabling appeared to be more of a formality than anything else.

Over the next month, members of the Ad Hoc Committee met with DNRC planner David Greer and Unit Manager Greg Poncin to negotiate an Advisory Committee Charter (see Appendix, Exhibit 8).⁷² The Charter outlined the roles and responsibilities of the five key players in this case – the DNRC, State Land Board, city of Whitefish, Flathead County and general public.

According to the Charter, the DNRC was to lead the neighborhood planning process, but develop the plan “in cooperation with a public process and through a direct working relationship with [an Advisory Committee].” The State Land Board, city and county were to be kept informed of the planning process through periodic presentations. Likewise, the DNRC and Advisory Committee were to provide the general public with opportunities to offer input on the Neighborhood Plan.

The creation of the Advisory Committee was to be self-selecting to the extent possible with specific interest groups being asked to designate representatives to speak on their behalf. The Charter limited the Advisory Committee to no more than 20 individuals, two of whom were to be DNRC staff. Consequently, while the DNRC was to lead the planning process, the agency lost the authority that it possessed coming into the neighborhood planning process. With the formation of the Advisory Committee, the agency became just another stakeholder sitting at the decision-making table. For the purposes of this case study discussion, however, “Advisory Committee members” refers to non-DNRC members.

Finally, the Charter retained the DNRC’s original one-year timeline and called for the completion of the neighborhood plan by May 2004. In the first few minutes of the September 2003 State Land Board meeting, the Board unanimously approved the Charter, thus initiating the Whitefish School Trust Lands Advisory Committee.⁷³

As the State Land Board and Ad Hoc Committee ironed out the details of a citizens advisory group, the DNRC watched from the sidelines. When asked for agency input at the August State Land Board meeting, TLMD Administrator Tom Schultz voiced support for the citizens group.⁷⁴ Behind the scenes, however, Schultz and the rest of the agency grappled with how to react to this community proposal. Many within the agency did not want a formal citizens advisory group, since it inevitably meant that the agency would have to relinquish some control over the process. Schultz, however, saw the writing on the wall:

At that point in time it was clear to me that if we did not formalize this [community interest], it was going to happen with or without the DNRC. So if we did not charter this group and empower this group – the group already had power with or without us. They were already talking to the Land Board members weekly and monthly about issues ... We were out of the game.

Moreover, Schultz firmly believed that the agency would become more effective once it relinquished some control to the community because “when people are doing things and feel like they are accomplishing things, that is when you get the most done.” The Advisory Committee Charter helped reassure Schultz and others in the agency that the DNRC would remain a decision maker in the neighborhood planning process.⁷⁵

Pursuant to the Advisory Committee Charter, the DNRC, Mayor Andy Feury and Flathead County Commissioner Gary Hall were to identify and select the Advisory Committee members. The Charter also provided a non-exhaustive list of stakeholder groups who were to be represented on the Committee. These groups were:

- Trust beneficiaries
- Recreationists (e.g. hunters, anglers, mountain bikers, hikers and motorized vehicle users)
- Existing lease holders
- Business and industry groups
- Service providers (e.g. police and fire)
- Members of the general public and/or representatives of neighborhood/area associations
- Representatives of local governing bodies

With these guidelines in mind, Mayor Feury and Commissioner Hall published a notice in the newspaper⁷⁶ and sent out an informational email⁷⁷ soliciting letters of interest. Despite being designated as a participant in the selection process, the DNRC, for unknown reasons, was not actively involved in this stage of the process.⁷⁸ Some members of the now-defunct Ad Hoc Committee also approached individual members of the Whitefish community whom they thought would be valuable Advisory Committee participants. Mayor Feury and Commissioner Hall received approximately 45 letters of interest. Using the charter guidelines and considering their own visions for an effective citizens group, they created a Committee of approximately 12 members and two alternates (Table 11-1).⁷⁹

Table 11-1: Whitefish Advisory Committee Membership

| Whitefish Advisory Committee |
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| Charles Abell, <i>Whitefish Credit Union</i> |
| Tyler Tourville, <i>Flathead Fat Tire Club</i> |
| Sheila Bowen, <i>Whitefish Chamber of Commerce</i> |
| Rob Hedstrom, <i>Whitefish Rifle Club</i> |
| Richard Marriott |
| Leesa Valentino |
| Donna Maddux, <i>Flathead County Schools</i> |
| Alan Elm, <i>ReMax Whitefish</i> |
| Paul McKenzie, <i>Stoltze Lumber</i> |
| Greg Gunderson |
| David Greer, <i>DNRC</i> |
| Steve Lorch, <i>DNRC</i> |
| Jeff Gillman |
| Shirley Jacobson* |
| Marshall Friedman* |
| * Originally alternate members |

Source: *Whitefish School Trust Lands Neighborhood Plan*, available at <http://www.statetrustland.com/index.cfm>

The Advisory Committee ended up including representatives of such interests as business, real estate, tourism, mountain biking, logging, Flathead County Schools and the DNRC.⁸⁰ The beneficiaries of the trust lands in the Whitefish area – primarily higher education institutions like Montana State University and Montana Tech – were not members of the Advisory Committee. According to Mayor Feury, they did not apply to be on the Committee, and their interests were adequately voiced by the DNRC.⁸¹

THE NEIGHBORHOOD PLANNING PROCESS RESUMES

The Advisory Committee held its first meeting in November 2003. Pursuant to the Advisory Committee Charter, Janet Cornish was retained to facilitate the Advisory Committee meetings and draft the Neighborhood Plan. As facilitator, Cornish tried to pick up where she had left off in August and continue identifying community goals and objectives for the plan. At this first meeting, the group developed five “major goals” to guide their discussions. These goals were:

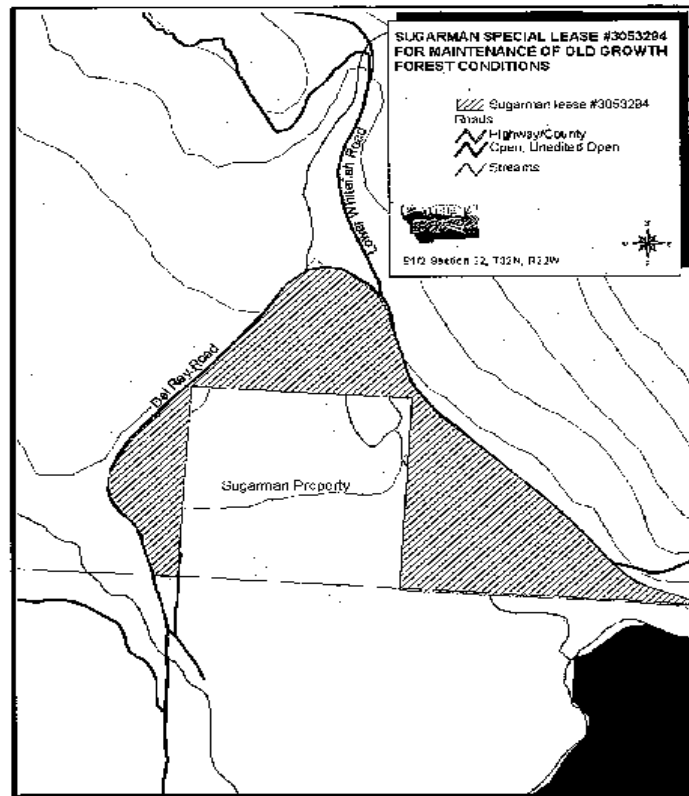
1. Balance traditional uses, including timber, on trust lands with new land use opportunities to produce revenue
2. Look at opportunities to increase revenue to the Trust
3. Protect the environment (wildlife corridors / habitat, watersheds, viewsheds) and reduce hazards associated with development
4. Provide for public access to and management of trust lands for recreation and other open space amenities
5. Integrate the Whitefish plan with local land use policy⁸²

Before the group could make any further progress, however, two events occurred which perpetuated the Committee's mistrust of the DNRC and Cornish. First on the Committee's radar was a planned land swap between the DNRC and Burt Sugarman, a Hollywood producer who owned 130 acres at the north end of Whitefish Lake.⁸³ The plan had been in the works for nine years and called for Sugarman to exchange an office building in Glasgow, Montana and 80 acres of timber property for 50 acres of trust land adjacent to his lakeshore property. Committee members learned of this deal just as the process resumed in the fall of 2003. The planned land swap upset the Committee because many thought it meant the privatization of treasured (and increasingly scarce) lakeshore property, in particular an important access point to Whitefish Lake.⁸⁴ While several process participants have clarified that this perception was mistaken and that the trust land at issue did not have lake frontage, many community members still believe the transaction would have involved lakefront property (Figure 11-4).⁸⁵ In addition, this potential swap angered the Committee because Sugarman's 50 acres were part of the 13,000-acre neighborhood planning area that the Committee had thought was off-limits for deal-making during the process.⁸⁶

The DNRC responded to this outcry by explaining that it had only suspended new project proposals; this project had been in the works for years and thus was not subject to the agency moratorium. Indeed, Janet Cornish mentioned this deal – albeit without naming names – in her opening remarks at the first public meeting back in May 2003.⁸⁷ While this explanation did little to smooth the ruffled feathers within the Committee, Sugarman's last minute decision to delay the land swap until completion of the Neighborhood Plan helped somewhat.⁸⁸

The second incident that fueled the Committee's suspicion of the DNRC concerned funding for Janet Cornish's services. As mentioned earlier, the DNRC received money from two wealthy Whitefish landowners to pay for Cornish's \$50,000 contract. While private donations were commonly used to fund agency planning efforts, the DNRC did not disclose this information to the community. Moreover, when confronted about the donations by the Committee, DNRC planner David Greer declined to reveal the funding source. To some on the Committee, the neighborhood planning process thus appeared rigged to benefit a private interest.⁸⁹

Figure 11-4: Map of Sugarman Land Swap



Note: The hatched area designates trust land acreage at issue; Whitefish Lake is shaded in lower right corner of map
Source: Montana Department of Natural Resources and Conservation

In the face of these struggles with the DNRC, the Advisory Committee worked to define its role in the planning process. The Committee did not necessarily want to resume the DNRC-crafted process, despite Cornish's best efforts. The first thing to give way was the formal discussion structure that Cornish had established. Instead of focusing on values and goals, the Committee wanted to be more involved in the drafting of the plan; they wanted more substantive discussions. Consequently, while the Committee continued to create meeting agendas, the discussions themselves became more open-ended with a lot of back-and-forth. During this transition period, however, the Committee did not develop decision-making guidelines or ground rules.⁹⁰

To increase involvement, Committee members sought more information about planning processes, trust land management and the 13,000-acre study area. In response, City-County Planner Eric Mulcahy conducted a "Planning 101" course and Cornish and DNRC planner David Greer held informational sessions on the trust mandate.⁹¹ The DNRC also brought in model neighborhood plans for the Committee to review and participated in a field trip with the group to the different parcels of trust land within the study area.⁹² Yet, disagreements between the agency and the Committee persisted. A key source of contention was the specificity of the

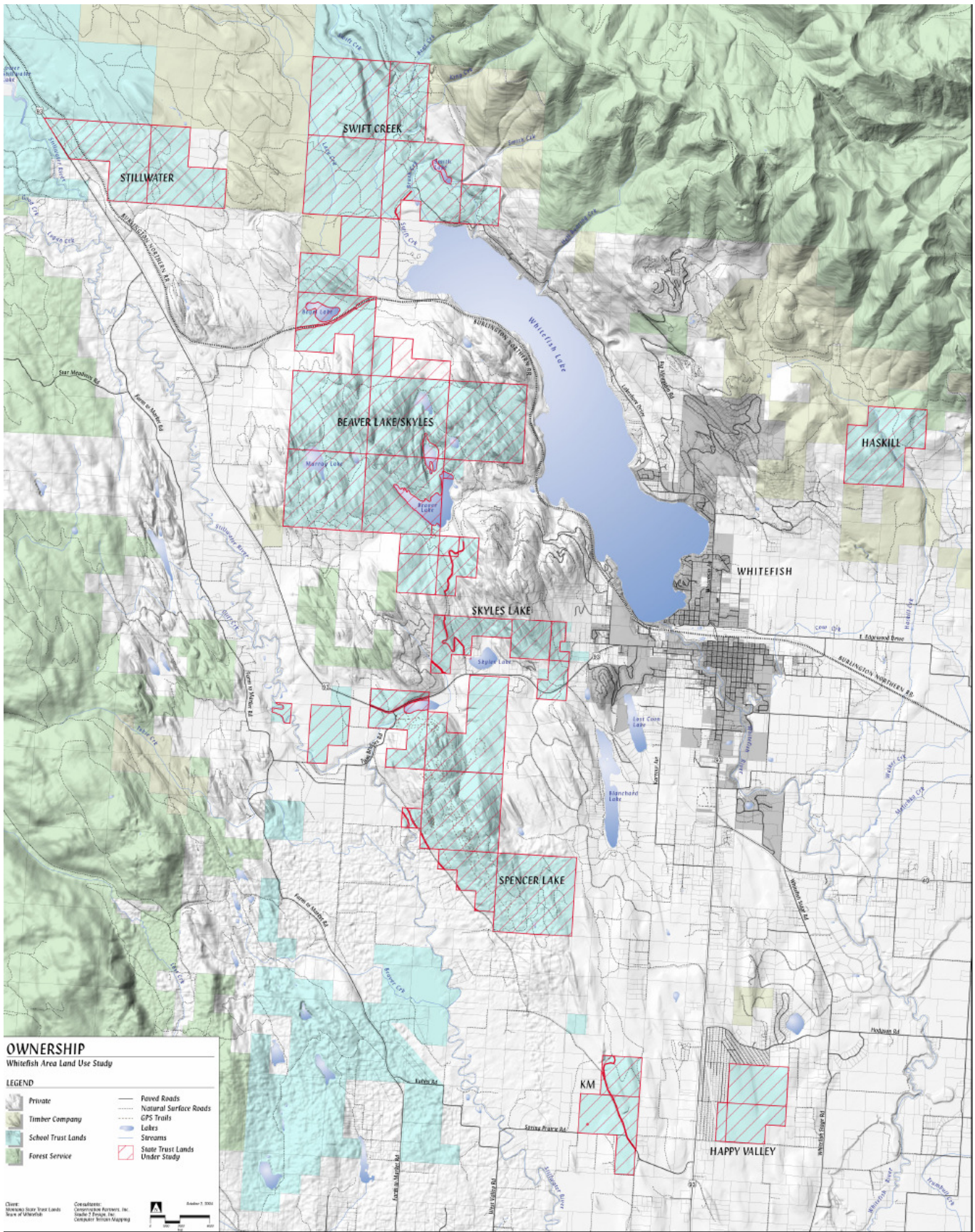
Neighborhood Plan. The DNRC desired a broader, landscape level approach, identifying opportunities for “sub-areas.” Most Committee members, on the other hand, wanted security and hence sought a more specific “project level” approach.⁹³ The six sub-areas of trust land studied within the 13,000-acre area were (Figure 11-5):

- Happy Valley / KM Sub-area
- Swift Creek Sub-area
- Spencer Mountain Sub-area
- Beaver Lake / Skyles Sub-area
- Stillwater Sub-area
- Haskill Basin Sub-area

In addition to this divergence in opinion about the specificity of the plan, the DNRC resisted paying to acquire new information and maps on such issues as wildlife habitat, floodplains and fire history.⁹⁴ The Committee considered this information integral to the planning process. Faced with the agency’s resistance, the Committee ended up collecting the new information independently, soliciting geographic information system (GIS) assistance from a Whitefish resident and designating task forces to research wildlife, fire, economics, land use, recreation and water.⁹⁵

Likewise, the DNRC and Committee argued throughout the planning process about the flexibility of Montana’s trust mandate. The agency’s interpretation faced vocal opposition because people like State Auditor John Morrison and his father, the late Montana Supreme Court Justice Frank Morrison, provided Committee members with a more flexible interpretation of the mandate. According to the Morrisons, there was sufficient ambiguity in the Montana Constitution, Enabling Act and statutes to conclude that the DNRC did not have to actively seek out maximum revenue; rather, the agency only had to maximize revenue when there was a trust land transaction underway.⁹⁶ This interpretation did not necessarily reflect the opinion of the State Land Board, which, according to State Auditor Morrison, has never discussed the interpretation of the trust mandate in great depth.⁹⁷ Nevertheless, the Morrisons’ interpretation was persuasive to Committee members. Committee members like Whitefish Credit Union President Charles Abell also crafted their own rebuttals to the DNRC’s analysis, citing constitutional provisions that indicated that the state was to hold the lands “in trust for the people,” and “maintain and improve a clean and healthful environment in Montana for present and future generations.” Moreover, Abell and others argued that because a large percentage of property taxes funded state schools, the Committee and DNRC should have been concerned with preserving open space in the area to maintain high property values.⁹⁸ In response to this argument, Cornish noted that in the Whitefish area, most of the trust land parcels were assigned to specific beneficiaries, so an overall increase in property values would not be able to generate the revenue for those specific trusts.⁹⁹

Figure 11-5: Whitefish Trust Land Sub-Areas Map



Note: Trust land is shaded in turquoise on the map; red-hatched areas designate the six sub-areas
 Source: Montana Department of Natural Resources and Conservation

While the Committee strove to define its role in the neighborhood planning process, its members worked to find their voice in the group. Early in the process, the group elected local realtor Alan Elm to chair the Committee. According to Mayor Feury, Elm was a good chairman candidate because he had been Vice Chairman of the City-County Planning Board and thus had planning and committee experience.¹⁰⁰ Together with Janet Cornish, Elm ran the Committee meetings. Sheila Bowen, President of the Whitefish Chamber of Commerce, also assumed a larger role, taking on the job of Committee coordinator. As the coordinator, Bowen set up meetings and speakers, handled press releases and oversaw the meeting minutes.¹⁰¹

As is inevitable in any group of diverse personalities and interests, the Advisory Committee had members who were more outspoken than others. These more vocal members also tended to be the ones who liked to “stir the pot” and “throw bombs into the group to try and get people riled up.”¹⁰² These personality differences, coupled with the Committee’s membership structure, generated some internal disagreements over who belonged at the decision-making table. As mentioned, the Committee was comprised of regular members and alternate members. “Support” people also regularly attended the meetings to offer guidance on legal, planning and natural resource issues. According to Mayor Feury, he and Commissioner Hall selected that membership structure to limit the size of the main group. The distinction between regular and alternate members, however, was never clarified to the Committee. Furthermore, some of the more outspoken members of the group were in fact alternate members. The group thus spent a significant portion of time early on debating who belonged at the table instead of discussing substantive issues. As a result, the Committee dropped this membership distinction between regular and alternate members and everyone became regular members.¹⁰³

Once the Committee resolved this internal membership dispute, it faced an external challenge to its membership. At the January 22, 2004, meeting, representatives from Montana State University and Montana Tech – two of the beneficiaries of the Whitefish trust lands – testified before the Committee. These representatives emphasized the unique nature of trust land management and the importance of generating revenue for the specific beneficiaries in the study area. The situation grew hostile as the Montana Tech representative threatened legal action if the Advisory Committee set aside too much land as open space.¹⁰⁴ This testimony was not well-received by most Committee members who described the University representatives as “arrogant” and “overpowering.” Nonetheless, a motion was made to add a beneficiary delegate to the group. Fearing that such a vocal representative would “tilt the scales,” this motion was defeated by a vote of nine to five.¹⁰⁵ This meeting marked the first time that the group used such a formal decision-making approach. It is not clear why the group opted to vote on this issue, since they had not established decision-making guidelines for the process. Regardless of its reasons, the Committee would not resort to voting again until months later, as discussed below.

As the Advisory Committee increased its involvement in the planning process, Cornish began to realize that the project had radically transformed from the one she signed on to facilitate a year earlier. In Cornish’s opinion, it was inappropriate for the Committee to take on a more substantive role in the planning process since the DNRC, not the community, was charged with managing trust lands. While she was willing to work in partnership with the Committee, she did not think that the Committee should have had a final say in the plan. Accordingly, in early spring, Cornish resigned from the Whitefish Neighborhood Planning Process.¹⁰⁶ Around this

same time, DNRC Planner David Greer was promoted to a planning position in Helena. DNRC planner Lisa Horowitz replaced Greer as one of the two agency representatives on the Advisory Committee.¹⁰⁷ She also assumed Cornish's facilitation responsibilities and worked with Committee Chairman Alan Elm in running the meetings.

Throughout the winter and early spring of 2004, the Advisory Committee and DNRC worked under the guidance of Horowitz and Elm. In March, the Committee held its first public meeting. Up until this point, the community's only formal contact with the Committee had been through the public comment period at the end of each Committee meeting. This hearing thus marked the first time that the Advisory Committee was to interact with the Whitefish community. In an effort to bring the public up to speed on the underlying issues, the DNRC led a trust lands 101 course similar to the one that they previously held for Committee members.¹⁰⁸ The Committee also set up stations for each of the six sub-units within study area for the public to visit throughout the evening and review draft goals and policies. At the end of the hearing, the community had an opportunity to provide written and oral comments about the process and the plan. Most of these comments praised the Committee's efforts. Not surprisingly, the community overwhelmingly was in favor of preserving the 13,000 acres as open space for recreation.¹⁰⁹

With this progress came the realization that the group did not have a professional among them to write the Neighborhood Plan. Janet Cornish had been the one tasked with drafting the document. In April 2004, the Committee thus contracted with Marty Zeller of Conservation Partners, Inc. in Colorado to help finish the planning process and ultimately write the plan. Zeller had been involved in a similar collaborative process regarding trust land management in Castle Valley, Utah (see Chapter 4 of this report) and was rumored to support conservation of trust land. The Committee thus thought that he brought the necessary expertise and perspective to help the group finish the Whitefish process.¹¹⁰ The DNRC did not object to Zeller's participation because, in the agency's view, he had the requisite experience with trust land issues. DNRC Unit Manager Bob Sandman credited Zeller with being able to articulate the agency's position in a neutral manner that was well-received by Committee members.¹¹¹

To pay for Zeller, the Advisory Committee hosted a cocktail party, which was well-attended by many of Whitefish's more affluent residents. Ironically, it was the wealthy homeowners whom many Committee and community members blamed for the enclosure and development of once-publicly-accessible property who ended up funding much of Zeller's contract. Committee members estimate raising \$60,000 at that cocktail party. In addition, the DNRC donated what was left of Goguen and Kvamme's earlier contributions.¹¹²

With Zeller on board, the Advisory Committee and DNRC were ready to start writing the Whitefish Neighborhood Plan. Zeller provided needed structure for the group, encouraging everyone to move forward with the plan in mind.¹¹³ Yet, by the time Zeller arrived, some "bad habits" already had developed within the Committee.¹¹⁴ Early into the process a faction of the Advisory Committee formed what other participants and process stakeholders referred to as the "shadow group," which held meetings about the planning process outside of the regular Committee sessions. According to Committee members and process stakeholders, those on the shadow group included local landowners Marshall Friedman, Jeff Gilman and Bick Smith and former Sonoran Institute representative Diane Conradi.¹¹⁵ While this group was not formally

acknowledged, the larger Committee was fully aware of its existence. In fact, one did not need to be a part of the shadow group to know what they were discussing. According to Whitefish Chamber of Commerce President Sheila Bowen, “they always had [their meetings] at the Great Northern or Coffee Traders. If you ever wanted to know anything that is happening in town, you just go and hang out at Coffee Traders around 10 am, or you go to the Great Northern at noon.”¹¹⁶

Despite their predictable meeting locations, the shadow group impaired the planning process. Several Committee members not involved in these outside conversations accused the group of preventing the process from fully functioning.¹¹⁷ Also, important decisions that impacted the planning process were being made during these side meetings without input from the full group. For instance, the idea of Committee-run task forces, mentioned earlier, was developed at a side meeting in the spring of 2004, between members of the shadow group and members of the DNRC staff, including Bob Sandman, Greg Poncin and Lisa Horowitz.¹¹⁸

Side meetings also were the setting for the development of an important document which the group used to guide Committee meetings until Marty Zeller joined the process. Known as the “Top of the Mountain,” this document was based on the metaphor that the group should focus on reaching the top of the mountain (i.e. the end goal) instead of the different ways to get there. DNRC Unit Manager Bob Sandman drafted the Top of the Mountain document with shadow group members in the spring of 2004 ironically in an effort to unite the group by focusing on a common goal.¹¹⁹ Recognizing that the process was not going to meet its May 2004 deadline, this document changed the deadline to October 2004. The Top of the Mountain document also reiterated DNRC’s three main objectives for the planning effort, as well as the fact that the neighborhood plan would remain an advisory tool. Sandman presented the document to the entire Committee at the April 2004 meeting.¹²⁰

Both the Top of the Mountain document and the task forces proposal were presented to the full Committee for approval, however the larger Committee was excluded from the brainstorming sessions in which these important ideas were introduced and developed.

In addition to making important decisions outside of the full Committee, some members of this shadow group were accused of using inappropriate, even aggressive tactics to achieve their agenda. Janet Cornish recalled being contacted early in the process by a few people who wanted her to “pick a position against the DNRC or engage in activities outside the confines of [her] contract.”¹²¹ Also, soon after Marty Zeller joined the process, some shadow group members attempted to “wine and dine him” to gain his support for their cause. When Zeller refused, this faction tried to discredit him, arguing that Zeller was inappropriately pushing the process in a pro-development direction. Finally, some shadow group members attempted to discredit Advisory Committee member and Whitefish Chamber of Commerce President Sheila Bowen by telling her Chamber Board that she was not properly representing the Board’s interests by advocating for more development than the Board wanted.¹²²

In addition to these struggles with the shadow group, the neighborhood planning process suffered a setback in July 2004 when the Advisory Committee learned the DNRC was in talks with Plum Creek – one of the largest timberland owners in the country and the largest private landowner in Montana – to develop a reciprocal access agreement to provide access to trust lands, a portion of

which were within the 13,000-acre study area.¹²³ As with the Sugarman land swap more than six months earlier, the Committee felt betrayed that the DNRC was making deals on property that they thought was temporarily off-limits.¹²⁴ Unlike the Sugarman deal, however, the DNRC reassured the Committee that while discussions between the agency and Plum Creek had ensued, the DNRC was waiting to continue work on the agreement until after the Neighborhood Plan was finished.¹²⁵

Despite the DNRC's reassurances, those on the Committee who opposed trust land development felt compelled to take more serious measures to ensure that the plan would reflect their vision for the 13,000 acres. Thus, a few members of the Committee, without informing the rest of the group, traveled to Helena in July 2004 to meet with State Auditor John Morrison and other State Land Board staffers. These Committee members wanted to gauge how much conservation and open space the State Land Board would be willing to support in the Neighborhood Plan. According to these Committee members, Morrison and other staffers agreed to support very little development at that meeting.

Armed with some "ammo," this group decided they were ready to take a hard stance on development in the plan. Just before the August 5, 2004, Advisory Committee meeting, the group convened those members who they knew would support no or very little development. In total, the group just barely constituted a majority of the Committee. Committee Chairman Alan Elm was among those invited to attend this session. During this informal discussion, the group agreed to enact "Roberts Rules of Order" (a method of making motions for majority voting) at the upcoming Committee meeting to call for a vote to protect various parcels of trust land.¹²⁶ As planned, at the next Committee meeting when the group started discussing different sub-areas within the 13,000-acre area, members made motions to remove certain parcels from development talks and retain them in their traditional use. Since the group had not established a decision-making structure, there was no precedent for or against this approach. Elm's participation in the preliminary discussions thus was viewed by at least one shadow group member as crucial because, as Chairman, his support for the approach helped legitimize it to the Committee. The group ended up voting on five parcels of trust land within the study area – all motions to protect these parcels, while not unanimously supported, passed.¹²⁷ As mentioned, besides the group's decision to exclude the beneficiaries from the Advisory Committee, this was the only time that the Committee explicitly voted on issues.

The decision to implement Roberts Rules of Order upset some stakeholders outside of the Advisory Committee who began questioning some Committee members' true motives. The hard-line approach even forced State Land Board staffer Kathy Bramer to travel to Whitefish to remind the Committee that it had to work with the DNRC and that, regardless of what the Committee thought, it was not guaranteed State Land Board approval of the Neighborhood Plan. The Committee did not "have the State Land Board in its pocket."¹²⁸

After this eventful Advisory Committee meeting, the group under Zeller's leadership pushed to get the plan finished. The process had been dragging on months longer than anyone anticipated. With the upcoming November 2004 elections, the group also felt pressure to present a completed Neighborhood Plan to the State Land Board before any potential administration changes

occurred. Their October 2004 deadline, articulated in the Top of the Mountain document, was chosen with the potential implications of these impending elections in mind.

APPROVAL AND IMPLEMENTATION OF THE NEIGHBORHOOD PLAN

Marty Zeller, the Advisory Committee and the DNRC completed the Whitefish Neighborhood Plan in September 2004 – more than a year after the Ad Hoc Committee first traveled to Helena to petition for a formal Advisory Committee (Table 11-2). In keeping with the Committee’s desire to separately consider the six sub-areas of trust lands within the 13,000-acre study area, the Neighborhood Plan outlines separate management plans and goals for each area.¹²⁹ The Plan allows for development on four percent of the 13,000 acres.¹³⁰ To generate revenue for the trust and meet other objectives, the Plan also includes such tools as:

- Conservation easements
- Conservation development (an approach that involves limited development on a property such that open and productive qualities of land are protected)
- Public purchase of development rights or land
- Land exchanges
- Permitted recreational trail systems¹³¹

The plan outlines management polices for the next 20 years. According to DNRC Unit Manager Bob Sandman, this timeline structure is one of the reasons why the Neighborhood Plan is “revolutionary.” There is an incentive system built into this 20-year timeframe whereby the DNRC has agreed to hold off initiating development projects in the areas identified for preservation for a specified period of time to give the Whitefish community time to plan how to protect that trust land and still generate revenue for the trust using the tools identified above. If the community succeeds in meeting its acreage targets, then the Plan allows the timeframe to be pushed out 20 years before the DNRC can begin considering development plans in the area.¹³²

Once the Plan was finished, the Committee held a final public hearing on September 9, 2004, to provide the community with a final opportunity to comment on the document. To the Committee’s surprise and frustration, many citizens at the hearing seemed unfamiliar with what had become to them basic trust land issues. Thus, the group spent a portion of the meeting reviewing trust lands 101 again.¹³³ From the DNRC’s perspective, though, this public hearing was a tremendous success because the Committee members, not the agency, explained the legal mandate to the community. According to Unit Manager Greg Poncin, “that’s about as rewarding as it gets. A year and a half ago, people didn’t even know what school trust land was. Now they’re defending it to their neighbors as a good thing.”¹³⁴

On November 15, 2004, Bob Sandman, Committee Chairman Alan Elm, local residents Jeff Gilman and Marshall Friedman, and former Sonoran Institute representative Diane Conradi traveled to Helena to present the completed Plan to the State Land Board. Also at the State Land Board meeting were some of the beneficiaries that the Advisory Committee had turned away from the process back in January. They voiced their concern with the Plan because a beneficiary representative was not on the Advisory Committee. They further worried that the Plan would not generate the revenue necessary to satisfy the State Land Board’s fiduciary obligations. A MonTrust representative also testified, raising several legal questions and requesting that the Plan not be adopted until answers were provided.

Despite these objections, the State Land Board unanimously approved the Whitefish Neighborhood Plan. Subsequently, both the city of Whitefish and Flathead County approved the Plan, incorporating it into their growth policies.¹³⁵

Table 11-2: Whitefish Neighborhood Planning Process Timeline

| | |
|------------|---|
| May 2003 | First public meeting held |
| Aug. 2003 | Ad Hoc Committee petitioned State Land Board |
| Sept. 2003 | State Land Board chartered Whitefish Advisory Committee |
| Nov. 2003 | First Advisory Committee meeting held |
| Jan. 2004 | Beneficiaries challenged Advisory Committee membership |
| March 2004 | Advisory Committee held first public hearing |
| April 2004 | Marty Zeller hired to write Whitefish Neighborhood Plan |
| Aug. 2004 | Roberts Rules of Order enacted |
| Sept. 2004 | Advisory Committee held second public hearing |
| Nov. 2004 | State Land Board approved Whitefish Neighborhood Plan |

In April 2005, the DNRC took the first step in implementing the Neighborhood Plan, pushing for legislation that would have explicitly allowed the agency to grant conservation easements to such parties as the Whitefish community and private individuals. Many argue that this clarification is needed because state law currently limits conservation easements to agreements between the State Land Board and the Department of Fish, Wildlife and Parks and two specified nonprofits.¹³⁶ This legislation failed to gain the three-fifths vote needed to reach the floor of the Montana House of Representatives, despite a strong lobbying effort by the agency and local Whitefish residents.¹³⁷ Some attribute the bill’s failure to a lack of understanding among State Legislators about conservation easements and how they affect the State Land Board and DNRC’s fiduciary obligations.¹³⁸

Recognizing that “the ball is in [their] court” to make the Plan happen, the Whitefish community has begun taking action.¹³⁹ Two informal groups have formed out of the Whitefish Advisory Committee – the Lewis and Clark Group and the Whitefish Community Open Lands Alliance (COLA) – to help implement the Plan. Members of COLA include Committee participants Marshall Friedman, Diane Conradi, Alan Elm and Mayor Feury. At the September 6, 2005 City Council meeting, the city announced that it would take the lead in building a recreational trail on trust lands that would circle Whitefish Lake. Under this plan, the city of Whitefish would become the first party to submit an application to the DNRC under the Whitefish Neighborhood Plan.¹⁴⁰ With this at the forefront, COLA is working with Mike Goguen who wants to purchase

large tracts of trust land in the Spencer Mountain and Beaver Lake areas to maintain as open space. Because of the community's feelings about the increasing privatization of Whitefish property, the group is treading lightly with this project. Since some of the property Goguen wants to preserve falls along the planned recreational trail, the group is hoping to portray this deal as a way to increase community access to these trust lands.¹⁴¹

With all of this activity, the story of the Whitefish Neighborhood Plan certainly is not over. Time will tell what this ambitious Northern Montana town can do with a Neighborhood Plan of which they fought so hard to be a part.

THE ANALYSIS: THE WHITEFISH NEIGHBORHOOD PLANNING PROCESS

The following analysis identifies and discusses the benefits, costs, challenges, facilitating factors and lessons learned from the Whitefish Neighborhood Planning Process. This analysis is based on Advisory Committee and process stakeholder observations and reflections, as well as the researchers' external assessment.

Benefits of the process include the development of professional and personal relationships, enhanced public understanding of trust land management and increased conservation of trust lands. The 18-month planning process also imposed considerable time, financial and emotional costs for all involved. Moreover, Advisory Committee members, DNRC and process stakeholders encountered significant challenges during the planning effort, which include Montana's bi-level trust land management structure, mutual mistrust between the Advisory Committee and DNRC and ineffective facilitation.

Facilitating factors that helped the planning process persist include DNRC personnel adjustments, providing the Whitefish community with significant decision-making power and the community's ongoing relationship with the State Land Board and individual political connections.

Finally, lessons learned from the Whitefish case include recognizing that collaborative planning may not be an appropriate approach for all decision-making efforts, obtaining a neutral facilitator at the outset of a process and anticipating end-runs and taking proactive measures to prevent them.

WAS THE WHITEFISH NEIGHBORHOOD PLANNING PROCESS COLLABORATIVE?

DNRC Unit Manager Bob Sandman emphatically believed that the Whitefish Neighborhood Planning Process was "collaborative:"

In fact, I think it almost epitomizes a collaborative process ... In the beginning you have parties who can't agree and don't trust each other. And by the time you're done, you've reached a solution neither one of you would have thought of in the beginning, but both think is a success at the end.

Advisory Committee members and other process stakeholders disagreed as to whether this process was collaborative. Some like State Land Board staffer Kathy Bramer shared Sandman's enthusiasm and said that the process "absolutely" was collaborative because there were so many different interests sitting around the table that did not normally sit down together.¹⁴² Referencing the emergence of the shadow group, former Sonoran Institute representative Diane Conradi reflected that the process was "ultimately, but not cleanly" collaborative.¹⁴³ Janet Cornish, on the other hand, argued that the planning process was not collaborative because she and the DNRC were "strong-armed" out of their role.¹⁴⁴ These reflections highlight the three normative lenses used to measure collaboration in this study of collaborative planning on state trust lands: (1) breadth of stakeholders, (2) degree of transparency and (3) degree of influence on decision making.

Breadth of Stakeholders: From the outset, the Whitefish Neighborhood Planning Process strove to involve a wide range of interests. Before the Advisory Committee formed, Janet Cornish and the DNRC held numerous public meetings, as well as individual focus group sessions with different stakeholders in an effort to gain everyone's input. Indeed, what motivated the Ad Hoc Committee to form and strategize about redirecting the planning effort was not the breadth of stakeholders, but rather the levels of transparency and decision-making influence.

The planning process continued to involve a wide breadth of stakeholders after the Advisory Committee formed. Committee members represented such interests as business, real estate, tourism, mountain biking, logging, Flathead County Schools and the DNRC. Despite this somewhat diverse membership, Committee members and process stakeholders have identified several interests that should have been represented on the Committee. First and foremost, a representative of the beneficiaries should have been a Committee member, since they are a key stakeholder in the management of these trust lands. Some, like Mayor Feury, have argued that a beneficiary representative was not needed because the DNRC adequately represented these interests. Moreover, another Committee member reasoned that former Flathead County Schools Superintendent Donna Maddux adequately represented the beneficiaries.¹⁴⁵ Both Maddux and the DNRC (among others) thought, however, that a beneficiary Committee member was needed to fully take into consideration their stake in this planning process.¹⁴⁶

In addition, several Committee members have said that motorized vehicle and lakeshore representatives should have been on the Committee, since some of the trust land parcels in the 13,000-acre study area were used for motorized recreation and others abutted local water bodies like Whitefish and Beaver Lakes.¹⁴⁷

Degree of Transparency: The DNRC initiated the Whitefish Neighborhood Planning Process with the intention of holding a series of public meetings and smaller breakout groups to gain the community's input and provide progress updates. The agency did not plan to involve the public in the actual drafting of the plan. Nor did the DNRC intend to inform the community of the private donations used to fund Janet Cornish's contract.¹⁴⁸ Consequently, during these early months of the process, the DNRC made substantive decisions behind closed doors thereby compromising the transparency of the planning effort.

The creation of an Advisory Committee increased the transparency of the process by providing community members with seats at the decision-making table and empowering them to help craft the neighborhood plan. Even after the Committee convened, though, the DNRC impaired transparency by continuing to negotiate deals, like those with Burt Sugarman and Plum Creek, on trust land within the study area.¹⁴⁹

Degree of Influence on Decision Making: The Whitefish Neighborhood Planning Process, as originally envisioned and implemented by the DNRC, did not provide stakeholders with a high degree of influence on decision making. While the public meeting format ensured that the DNRC would receive stakeholder input, it did not guarantee that the agency would incorporate this feedback into the Neighborhood Plan. The Whitefish community and other stakeholders thus had limited influence on the DNRC's decisions.

The advent of an Advisory Committee increased not only stakeholder involvement in decisions (which goes to transparency), but also the amount of stakeholder influence on these decisions. Instead of providing Janet Cornish and the DNRC with community goals, stakeholders (through the Advisory Committee) achieved equal decision-making power with the DNRC in crafting the Neighborhood Plan.¹⁵⁰ That said, the Whitefish Neighborhood Plan is an advisory tool only, since state law prohibits it from being a regulatory document. The level of influence on decision making hence is legally constrained. But, the Whitefish community takes heart in the fact that the State Land Board, city of Whitefish and Flathead County have approved this document.¹⁵¹

Effect of the Shadow Group on Level of Collaboration: In addition to the above-mentioned factors, the emergence of the shadow group affected the collaborative nature of the Whitefish Neighborhood Planning Process. Throughout the 18-month process, this subset of the Advisory Committee held important discussions and even made key decisions outside of the formal meetings that significantly impacted the final scope of the Neighborhood Plan. The shadow group thus limited (1) the breadth of stakeholders involved in decisions, (2) the transparency of the process and (3) the level of influence that the Advisory Committee members had on decision making.

BENEFITS OF THE PROCESS

While the Whitefish Neighborhood Planning Process encountered bumps in the road during its 18-month duration, participants and stakeholders identified a variety of benefits to engaging in this land management approach.

Development of Professional and Personal Relationships

First, the process has facilitated the development of professional and personal relationships between the DNRC and community. Because the agency-community relationship traditionally had been plagued by mistrust, no one expected this benefit. According to DNRC Unit Manager Greg Poncin, "we have relationships up there in the community that we could never have hoped to have."¹⁵² These connections, while rooted in the Neighborhood Plan, have extended to external professional and private issues, as Committee Chairman and local realtor Alan Elm explained:

I can pick up the phone and call Bob Sandman on his cell phone whenever I want now and talk to him about a forest fire on my client's property. There's a lot of good relationships that have formed ... Greg Poncin even called me the other day to tell me about a fire on some property that we own.¹⁵³

Because of the local nature of the process and the organization of the DNRC, the community has developed stronger relationships with local agency staff than with those located in Helena.¹⁵⁴ Committee members predict that these relationships will prove vital in the implementation of the Neighborhood Plan. For instance, a COLA member reports that because of the planning process, the group is able to meet regularly with local DNRC staff to strategize about possible projects to help implement the Neighborhood Plan.

Mobilization of Stakeholders

The formation of the Whitefish COLA highlights a second benefit of the planning process – the mobilization of stakeholders to implement the Neighborhood Plan. Whereas prior to the planning process, trust land management and even land conservation in general were peripheral issues for the Whitefish community, today there are at least two groups which focus exclusively on them – the Lewis and Clark Group and Whitefish COLA. Formed to implement the Neighborhood Plan, these groups benefit the community because they ensure that local interests remain a consideration in trust land management decisions. This mobilization is also a benefit for the DNRC and State Land Board because they now have a group of motivated, knowledgeable stakeholders who are committed to realizing the goals of the Plan.¹⁵⁵

Provision of Otherwise-Unavailable Resources to the Decision-Making Process

In addition to supplying creative implementation ideas, the Advisory Committee brought resources to the decision-making process that otherwise would not have been available to the DNRC. Committee members dedicated significant resources to help complete the Neighborhood Plan. They fundraised and paid for a significant portion of Marty Zeller's contract. They also volunteered hours of personal time to this process. DNRC Unit Manager Greg Poncin acknowledged this time commitment: "It's not that common that you find members of a community who are so passionate that they would dedicate hundreds, if not thousands, of hours of their time to something as specific as this with no compensation. The state of Montana owes them a huge debt of gratitude." Furthermore, the agency benefited from the interest, expertise and innovative ideas that Committee members brought to the table.¹⁵⁶ Assistant Attorney General Candace West speculated that Committee members "came up with management and funding ideas that the DNRC probably wouldn't have thought of if they were doing the plan on their own."¹⁵⁷

Equal Allocation of Decision-Making Power

By making the DNRC an Advisory Committee member rather than an entity separate from the Committee, the Whitefish Neighborhood Planning Process provided non-agency Committee members with not only a voice in the process, but equal decision-making power. This power dynamic enabled the Whitefish community to move beyond being a sounding board or a rubber

stamp for the DNRC to become an active participant in the crafting of the Neighborhood Plan. As with the mobilization of stakeholders, discussed above, this change significantly benefited the community because it ensured that the plan would reflect local interests. Indeed, no one denies that the plan probably would have included more than four percent allowable development had the Advisory Committee not been involved in the planning process. The fact that the Whitefish Neighborhood Plan is not a regulatory document does not lessen the significance of this benefit because three levels of government – the state, county and city – have committed to using the plan to guide future land use decisions.¹⁵⁸

Improved Relationships within the Community

The Whitefish Neighborhood Planning Process also has benefited from improved relationships within the community. The process may have been contentious at times, but many Committee members say that they were able to get past labels and build trust as a group. Committee member and Whitefish Chamber of Commerce President Sheila Bowen said that these relationships have manifested themselves in more hugs on the street, as well as greater public involvement in community activities like City Council and local planning meetings.¹⁵⁹ Many Committee members agreed that “the community is better off because we went through this process.”¹⁶⁰

Enhanced Public Understanding of Trust Land Management

Another benefit of the planning process is the public’s enhanced understanding of trust land management. While there are some Committee members who remain partial to a more flexible interpretation of the trust land mandate, most members now acknowledge that these lands differ from public lands.¹⁶¹ According to State Land Board staffer Kathy Bramer, “everybody who has been engaged in [this process] now fundamentally understands that state trust lands are not parks. There is a mandate that they operate within and we’re not trying to be mean and we’re not trying to be greedy. It is what the law requires.”¹⁶² As discussed earlier, the Advisory Committee exemplified their heightened understanding of trust lands at their final public hearing in September 2004 when they took the initiative to explain these legal constraints to their friends and neighbors.¹⁶³

The Whitefish Neighborhood Plan

Many Advisory Committee members and process stakeholders also pointed to the Whitefish Neighborhood Plan, itself, as a benefit of the process. From the community’s perspective, the Plan is “wonderful,” because it reflects local interest in preserving land for open space and recreation.¹⁶⁴ DNRC Unit Manager Bob Sandman has called the Plan “revolutionary” and the document has been praised for introducing innovative approaches to preserving scenic trust land while generating revenue for the trust. The DNRC also has lauded the Plan because it secures zoning and infrastructure for the trust land parcels comparable to entitlements on adjacent private property. While the DNRC does not have financial targets for each trust land parcel, Sandman and fellow Unit Manager Greg Poncin say that the plan will enable the DNRC to produce the financial returns necessary to satisfy the agency’s fiduciary responsibility to the beneficiaries.¹⁶⁵ The creative revenue-generating tools in the plan combined with the value added from land use planning support these predictions.

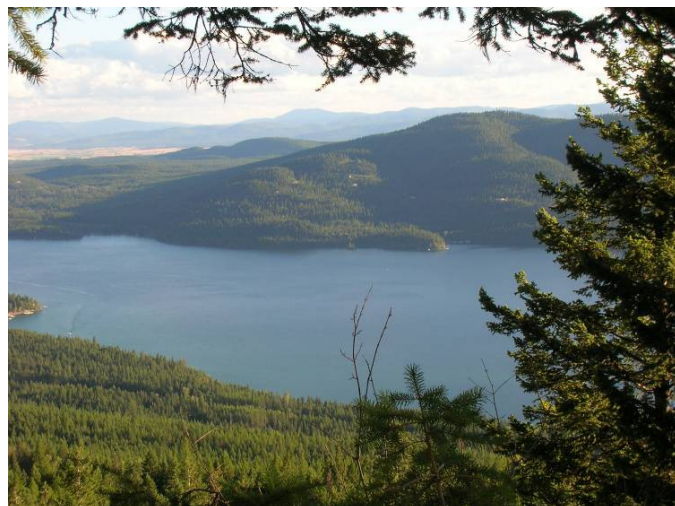
There remain dissenters within the Advisory Committee and DNRC, however. A few Committee members, like Paul McKenzie remain concerned about the feasibility of the Plan. McKenzie questions the group's reliance on its wealthy Whitefish neighbors to implement the Neighborhood Plan. He observes that these people are successful for a reason and are not going to carelessly spend their money. McKenzie and others thus remain in a wait-and-see mode, watching how implementation efforts unfold in the future.¹⁶⁶ Likewise, TLMD Administrator Tom Schultz and Real Estate Bureau Chief Jeanne Holmgren anticipate debates and bumps in the road regarding the interpretation and implementation of the Plan, despite fully embracing the Plan and being committed to its success. While they recognize that there are good elements in the document, they are concerned about what is missing. In addition to limiting development to four percent, the Plan does not address affordable housing, which is a growing problem in the Whitefish area as the influx of wealthy Whitefish residents continues to drive up property values.¹⁶⁷ In response to this concern, Mayor Feury has commented that the Plan never could have addressed affordable housing because the property at issue is miles outside of town and there is no public transportation system in the area. In his opinion, affordable housing is infill housing and thus must be addressed in other ways.¹⁶⁸

Indeed, affordable housing is a contentious issue not only in Whitefish, but throughout the West. The Whitefish Neighborhood Plan identifies the Happy Valley / KM sub-area, the southern most trust land parcel in the 13,000-acre study area, as “well-developed” and notes that “the neighborhood provides a diversity of housing types that are more affordable than [those] found in many areas near Whitefish.” This description suggests that the Happy Valley / KM sub-area could be a good location for additional affordable housing. However, as the Plan details, the area also suffers from a high density of individual septic treatment systems and individual wells, as well as a high water table, which raises a question as to the feasibility of additional development in the area.¹⁶⁹

Conservation Benefits

While there are members of the Advisory Committee and DNRC who are unhappy with the balance struck in the Neighborhood Plan between open space and development, they agree that the planning process produced conservation benefits.¹⁷⁰ Pursuant to the advisory Whitefish Neighborhood Plan, only four percent, or 520 acres, of the 13,000-acre area may be developed (Figure 11-6). The plan also makes use of such tools as conservation easements and land exchanges to limit the local

Figure 11-6: Whitefish Lake and Surrounding Landscape



Source: Photograph by Jessica Mitchell

impact of trust land development. By preserving open space, the plan also indirectly will protect habitat for a variety of wildlife including grizzly bear, lynx, moose and elk, as well as environmental quality, particularly the water quality of Whitefish Lake.

TLMD Real Estate Management Bureau Chief Jeanne Holmgren noted, though, that the Plan preserves the Flathead County zoning density of one home per 20 acres, which may hinder more environmentally-friendly development.¹⁷¹ Moreover, there is at least one Advisory Committee member, Whitefish Credit Union President Charles Abell, who is dissatisfied with the Plan because it only protects 96 percent of the trust land parcels. Abell sought no development on the 13,000 acres and expressed his feeling that the Plan lacks the teeth necessary to hold development to the four percent stated in the document.¹⁷²

COSTS OF THE PROCESS

In addition to identifying benefits of the Whitefish Neighborhood Planning Process, participants and stakeholders acknowledged that they incurred significant costs. These costs included time, financial and emotional investments.

Time Costs

The Whitefish Neighborhood Planning Process imposed significant costs on Advisory Committee members and process stakeholders. From start to finish, the process lasted 18 months – six months longer than anticipated. During that time, DNRC staff members and fellow Advisory Committee members dedicated hours during and outside of Committee meetings and public hearings. Meetings averaged two hours in length, although some lasted upwards of eight hours. In addition to meeting time, DNRC staff and Committee members spent hours outside of these sessions following up on issues and preparing for upcoming meetings.¹⁷³ With bimonthly meetings for approximately nine months (November 2004 – August 2004), the time costs imposed by the Whitefish Neighborhood Planning Process thus were substantial.

Committee member Paul McKenzie recalled having to spend time reading documents and making telephone calls during work. McKenzie and others also said that the process took time away from their families and other activities.¹⁷⁴ As mentioned, the time costs were especially great for Alan Elm and Sheila Bowen who assumed additional responsibilities as Committee Chairman and Coordinator, respectively. They each estimated spending 15 to 20 hours a week outside of the Committee meetings on trust land issues.¹⁷⁵ In fact, the Chamber of Commerce had to hire an additional employee for the busy summer tourist season because Bowen was so busy with the Whitefish planning process.¹⁷⁶

Financial Costs

In addition to time costs, the planning process imposed monetary expenses. While the DNRC did not pay for Janet Cornish's \$50,000 contract (because of the two private donations), her services nonetheless were financially expensive. Moreover, the DNRC had significant staff and resource costs as a result of this lengthy, labor-intensive process.¹⁷⁷ Committee members also faced

financial costs. In addition to hosting a community cocktail party, many Committee members donated money to help pay for Marty Zeller's contract.¹⁷⁸

Criticism and Emotional Costs

Committee members and process stakeholders also faced criticism and emotional costs as a consequence of participating in the planning effort. Throughout the process, the DNRC was criticized by Whitefish community members and trust beneficiaries for its approach to neighborhood planning. TLMD Administrator Tom Schultz recalls the local newspaper, *The Whitefish Pilot*, having a lot of "heartburn" about the roles of the Advisory Committee and the general public in the process. Schultz wrote several editorials defending the agency's approach before and after the formation of the Advisory Committee. Schultz also faced internal strife, further discussed below, from DNRC staff who did not agree with his decision to endorse the community's proposal for a Committee.

Through her association with the DNRC, Janet Cornish received negative local press for her involvement in the planning effort.¹⁷⁹ None of the Committee members, on the other hand, recall receiving external criticism for their involvement in the process. Committee member Sheila Bowen, however, faced internal criticism from her Chamber of Commerce Board when several members of the shadow group told Board members that Bowen was misrepresenting their development interests in the process. This criticism was upsetting for Bowen and other Committee members, not only because it potentially jeopardized her job, but also because Bowen was known for ensuring that everyone's interests were accurately portrayed and genuinely considered throughout the process. While she eventually resolved the misunderstanding with her Board members, Bowen never rectified her relationship with Committee member Marshall Friedman and local landowner and process stakeholder John Kramer, both of whom allegedly were involved in the situation.¹⁸⁰

CHALLENGES AND RESPONSES

The DNRC and Advisory Committee encountered significant challenges during this 18-month neighborhood planning process. Several of these challenges were unique to the fact that this process addressed trust land management.

Public's Unfamiliarity with Trust Land and Ambiguity of the Montana Trust Mandate

One source of struggle was the public's unfamiliarity with trust land. Similar to most Montana communities, most people in Whitefish never realized that trust lands differed from public lands.¹⁸¹ This unfamiliarity was reflected in the Whitefish and Flathead County growth policies, which incorrectly regulated trust lands as if they were state or federal public lands. These policies consequently designated trust lands for open space and recreational use and presumably assumed that, like state and federal lands, the trust lands would remain as such indefinitely. Indeed, one of the DNRC's goals in initiating a neighborhood planning process was to educate the local governments and greater public about the trust mandate.¹⁸² Because of this lack of public awareness about trust land, the DNRC had to spend significant time before and after the formation of the Advisory Committee educating the public about these legal issues. This

education process took up meeting time that could have been spent discussing substantive planning issues. Mistrust of the DNRC complicated and prolonged this education effort; the Committee was suspicious of the teacher and hence the lesson.

An associated challenge that the process faced was perceived ambiguity in the Montana trust land mandate. This perceived legal uncertainty hindered the DNRC's ability to develop a common understanding about trust land management because it provided Committee members with fodder for an opposing interpretation. The theories perpetuated by the Morrises further fueled this opposition. As a result of this perceived ambiguity, Committee members were divided and a disconnect remained between the Committee and the DNRC for much of the planning process.¹⁸³

Time was key to overcoming the challenges of the public's unfamiliarity with trust lands and the mandate's perceived ambiguity. As the process wore on, many Committee members just grew to accept the legal constraints on trust land management. The replacement of Janet Cornish and DNRC Planner David Greer with Lisa Horowitz, a more well-received agency representative, also helped solidify this understanding. Moreover, the hiring of Marty Zeller resolved contention over this issue, since he was well-versed in trust lands and was viewed as a neutral party by most Committee members.¹⁸⁴ Therefore, while some Committee members remain partial to a more flexible interpretation of the trust land mandate, most members now acknowledge that these lands differ from other public lands.

Montana's Bi-Level Trust Land Management Structure

The Whitefish Neighborhood Planning Process also struggled to operate within Montana's bi-level trust land management structure. As discussed earlier, the State Land Board and DNRC share trust land management responsibilities. While the State Land Board has final say about the care, management and disposition of these lands, the DNRC handles day-to-day issues, including neighborhood planning. This decision-making framework has its strengths, but in Whitefish's case it created significant challenges for the DNRC and the process. First, it enabled the Whitefish Ad Hoc Committee to bypass the DNRC when they were unsatisfied with the planning process and directly petition the State Land Board for a citizens' advisory group. As a result, the agency was forced to switch directions midstream and adopt someone else's process. The DNRC also lost some decision-making power, since the agency was forced to give up exclusive control of the process and become an Advisory Committee member. This transition inevitably intensified the tension between the agency and community.¹⁸⁵ Second, because the State Land Board was comprised of elected officials some of whom had local ties and all of whom faced reelection in November 2004, the Advisory Committee was able to maintain a relationship with the Board throughout the process. According to Unit Manager Greg Poncin, "quite a few community members had these State Land Board members on their speed-dial. They had a very good working relationship." The political nature of the State Land Board consequently compromised the effectiveness of the DNRC, which struggled to maintain a level of authority amidst empowered Committee members.¹⁸⁶ Committee members recognized this struggle, taking advantage of the "schism between the State Land Board and DNRC."¹⁸⁷

To overcome the challenge of Montana's bi-level trust land management structure, the DNRC worked with the State Land Board to portray a united front as the process progressed. After the Advisory Committee successfully voted to protect specific parcels of trust land from development in July 2004, for instance, State Land Board staffer Kathy Bramer traveled to Whitefish to remind Committee members not only of the importance of working with the DNRC, but also that the Committee was not guaranteed State Land Board approval of the neighborhood plan.¹⁸⁸ In retrospect, DNRC Unit Manager Greg Poncin credited the State Land Board with "not writing any checks that [the agency] couldn't cash."¹⁸⁹

Mixed Messages from DNRC

The Whitefish Neighborhood Planning Process also encountered challenges that were not necessarily unique to trust land management. As discussed earlier, the Advisory Committee struggled throughout the planning process with mixed messages from DNRC. Some of these inconsistencies were a consequence of the fact that the DNRC is inevitably a "many-headed beast"¹⁹⁰ that, as TLMD Administrator Tom Schultz admitted, is "not without its faults and warts."¹⁹¹ During the Whitefish process, though, many of these mixed messages were more a product of the agency's simultaneous development of a Programmatic Environmental Impact Statement (PEIS) for its Real Estate Management Bureau than simply an inevitability of dealing with a large state agency. The agency's concurrent involvement in the Whitefish Neighborhood Planning Process and the PEIS generated a tremendous amount of confusion within the Advisory Committee. While the PEIS officially was intended to provide the Bureau with "consistent policy, direction, and guidance in the selection and management of real estate activities"¹⁹² on trust lands, many on the Committee viewed the document as a certified development plan.¹⁹³ Because Committee members were unclear about the relationship between the PEIS and the Neighborhood Plan, they would get upset when they read DNRC interviews in the newspaper that referenced the Whitefish plan within the context of the PEIS. The fact that DNRC Planner David Greer was promoted from working on the Whitefish Neighborhood Plan to help complete the PEIS only added to the Committee's confusion and suspicion.¹⁹⁴

Another source of inconsistency was the agency's internal struggle over the direction of the planning process. Many within the agency did not agree with Administrator Schultz's decision to support an Advisory Committee and this disagreement impaired the DNRC's ability to present a united front. Schultz surmised that, "you could talk to a couple of our folks and they would feel that we gave away the farm."¹⁹⁵ Internally, the agency also was dealing with a mindset shift about trust land management, as non-traditional uses were becoming more common in the state. According to Unit Manager Bob Sandman, this internal struggle played out during the Whitefish process. Moreover, as is true in many state agencies, there was a disconnect between the local DNRC and Helena DNRC staff. This disconnect prevented the agency from speaking with a common voice. For a while, it also prevented the local DNRC staff from speaking at all, because they did not have decision-making authority. These various sources of agency inconsistency further contributed to confusion within the Advisory Committee regarding agency intentions and limited the DNRC's effectiveness in the process because Committee members did not think that the agency was engaging in an honest process.¹⁹⁶

To overcome the challenges posed by DNRC's mixed messages, the agency made personnel adjustments to ensure that those involved in the process were of one mindset. First, the agency replaced David Greer with Lisa Horowitz, which, according to Committee Chairman Alan Elm, improved the situation dramatically.¹⁹⁷ Diane Conradi has called Horowitz a "breath of fresh air" for the Committee members.¹⁹⁸ Next, TLMD Administrator Tom Schultz became more involved in the planning process instead of just watching from afar. While he only attended one Advisory Committee meeting, he made himself more accessible to Committee members to ensure that they could have access to necessary information.¹⁹⁹ As a result, Committee members like Chairman Elm were able to meet with Schultz about the Neighborhood Plan. According to Elm, this meeting enabled him to dispel the myth in his own mind that DNRC staff in Helena was manipulating the process.²⁰⁰ Third, DNRC Unit Managers Bob Sandman and Greg Poncin became more involved in the process, attending nearly every Committee meeting, as well as holding lunch meetings when necessary to ensure that the Committee was receiving a complete and consistent message. At some point in the middle of the process, Sandman and Poncin also received decision-making authority from Helena to become fully effective in the process.

Mutual Mistrust between the Advisory Committee and DNRC

The DNRC's mixed messages perpetuated the Advisory Committee's fervent mistrust of the agency. From the outset of the process, many in the community viewed the DNRC as "the big bad wolf looming on the horizon."²⁰¹ According to Committee member Paul McKenzie, this suspicion "torpedoed the ability to do a good planning process. It took a lot of options away from the very beginning."²⁰² For example, the group spent many Committee meetings arguing over rumors and minute details like the order of policies instead of focusing on such substantive issues as the policies themselves. Whitefish Chamber of Commerce President Sheila Bowen remembers spending hours debating the meaning of seemingly-benign words.²⁰³ In addition, the Committee's mistrust of the DNRC hindered the group from coming to a consensus about important underlying issues like Montana's trust mandate. As mentioned, the DNRC's efforts to educate the Committee about trust land management were not well-received because the agency was viewed as biased and untrustworthy.

To a certain extent this mistrust was mutual, as the Whitefish Neighborhood Planning Process also suffered from the DNRC's mistrust of the Committee. Many within the agency did not support the creation of an Advisory Committee, since that unavoidably meant the abdication of some control over the process. This perspective coupled with the community's strategic relationship with the State Land Board fueled agency suspicion of the Committee. Similar to the Committee's suspicion of the DNRC, these feelings impaired the planning process.²⁰⁴

The DNRC personnel changes helped overcome the mutual distrust between the Advisory Committee and the agency. Increased involvement of Lisa Horowitz, Tom Schultz, Bob Sandman and Greg Poncin helped improve agency transparency and dispel the conspiracy theories about DNRC intentions.

Mistrust within the Advisory Committee

In addition to mistrust between the Committee and the DNRC, mistrust infiltrated the Committee itself. Some Advisory Committee members were suspicious of those who were not native Montanans. While this suspicion of newcomers was not uncommon in the community, it often was bolstered by specific interactions during the process. For example, in describing the incident in which shadow group members attempted to discredit Committee member and Whitefish Chamber of Commerce President Sheila Bowen, former Flathead County Superintendent Donna Maddux accused these “imports” of heavy-handing others and bringing to the table “philosophies and tactics” that were contrary to the “Montanan way.”²⁰⁵ According to Whitefish Chamber of Commerce President Sheila Bowen, some Committee members even distrusted those who, while born and raised in Montana, were not native to Whitefish. Unlike “Whitefishians” or “generation” people, these “newbies” were viewed as outsiders who did not belong in this local process.²⁰⁶ These labels and the mistrust they fueled hindered the Committee from working productively as a group. In fact, the group’s ongoing inability to come to consensus on minor issues, mentioned above, was as much a product of internal group mistrust as it was a result of the Committee’s mistrust of the DNRC.

Time proved important to addressing the mistrust within the Advisory Committee. Group activities like the field trip to the local trust land sub-areas also probably helped the group overcome this challenge. Furthermore, the “Top of the Mountain” document, which focused on a common goal rather than individual efforts or ideas helped unite the Committee. While some Committee members remain suspicious of “imports” and “newbies,” participants say that the group was able to get past labels and build trust within the Advisory Committee.²⁰⁷ According to Committee member Paul McKenzie, “we had enough opportunities to discuss our differing points of view that ... we realized that we weren’t quite so far apart on these things.”²⁰⁸

Identification of Interests and Hidden Agendas

Another challenge that the Whitefish Neighborhood Planning Process faced concerned identification of interests and hidden agendas. According to Janet Cornish, community and Committee members were not entirely honest about their interests in the 13,000 acres. In her opinion, many of the local concerns about development and the preservation of open space and recreational opportunities masked a strong “Not in My Backyard” attitude. Cornish believed that “some of their concern was being driven by a notion of protecting property values rather than by a notion of social or environmental justice.”²⁰⁹ Likewise, DNRC Unit Manager Greg Poncin observed that there were strong hidden agendas among Committee members, although he noted that it was difficult to keep those agendas hidden for very long: “everyone knew that Jeff [Gilman] and Marshall [Friedman] were all about protecting Spencer Mountain even though they never did come out and say that.”²¹⁰

Committee members also struggled with hidden agenda issues. As discussed, many believed that the DNRC was not honestly portraying its interest in the 13,000 acres. The fact that the agency was not forthcoming with information about the area only perpetuated this belief.²¹¹ Some Committee members questioned the true intentions of each other, as well. This issue arose not only with Marshall Friedman and Jeff Gilman, as explained by Poncin, but also with former

Flathead County Superintendent Donna Maddux. According to Maddux, she assumed the responsibility of representing the beneficiaries' interests because the beneficiaries were not on the Committee.²¹² But, several Committee members mentioned that it often was not clear during the process whether Maddux was representing the beneficiaries' interest in properly managing the trust or personal interests in land conservation.²¹³

The actual and perceived hidden agendas amongst group members perpetuated mistrust and prevented them from undergoing a fully transparent process. To a certain extent, the group overcame this challenge through regular meetings and interactions, which, as explained by Poncin, helped expose veiled intentions. It is not clear, though, whether the Committee ever tried to clarify what interests each member was representing.

Inadequate Process Structure

In addition to mixed messages, mistrust and hidden agendas, the planning process struggled because of inadequate process structure. The enactment of Roberts Rules of Order in July 2004 exemplifies the significance of this challenge. Because the group never established a decision-making framework to guide the planning effort, shadow group members were able to strategically remove entire sub-areas from development talks and retain them in their traditional use. A shadow group member characterized this effort as a successful "high-jacking" of the process. The group also neglected to establish a clear timeline and deadline at the outset. Without time objectives, the Advisory Committee often got bogged down in details and consequently could only hastily address more substantive issues. Committee member Paul McKenzie does not even remember getting a chance to review the final Neighborhood Plan document before it was presented to the State Land Board. In McKenzie's opinion, the process focused too much on minutia and not enough on the actual planning document.²¹⁴

Problematic Facilitation

The group's failure to adequately structure the planning process at the outset can be attributed in part to problematic facilitation. The Advisory Committee's distrust of the DNRC hindered Janet Cornish's ability to facilitate the process. Many Committee members viewed Cornish as the "state stooge"²¹⁵ and observed that "while her intentions may have been good, she was hamstrung from the beginning because she was hired by someone who wasn't trusted."²¹⁶ The fact that two wealthy local landowners funded her contract further discredited her in the eyes of Committee members. The planning effort suffered because Cornish was an ineffective facilitator. For instance, because Cornish was unable to establish a consensus about the definition of a "neighborhood plan," endless debate ensued about the specificity of the document. As with the Committee's argument over inconsequential details, this debate distracted the group from the substantive issues at hand.²¹⁷ Without an effective facilitator, the group also struggled to manage group dynamics. The Committee often fell victim to the vocal minority as the more dominant voices had the freedom to dominate discussions and overtake meetings. Committee members also were able to prolong debates about definitions and other details, which wasted meeting time and perpetuated internal disagreements.²¹⁸ What is more, without a facilitator's oversight, non-members reportedly were able to have a seat at the decision-making table at certain points in the planning process thereby compromising the breadth of stakeholders.²¹⁹

The arrival of Lisa Horowitz helped the group overcome these structural and facilitation challenges. Along with Chairman Elm, Horowitz ran the Committee meetings and provided some needed structure to discussions.²²⁰ She was too late, however, to address the participation problem mentioned earlier, since the Committee decided to do away with the distinction between regular and alternate members before Horowitz arrived. Hiring Marty Zeller of Conservation Partners also helped manage these facilitation problems. While Zeller did not explicitly assume a facilitation role, he provided the group with needed structure. For example, to help resolve internal squabbles about word definitions, Zeller assisted in the drafting of a glossary to ensure a common understanding going forward.²²¹ Neither Zeller nor Horowitz ever established decision-making guidelines for the process.²²²

Development of a “Shadow Group”

A direct consequence of inadequate facilitation was the emergence of a “shadow group,” comprised of a subset of Advisory Committee members and other stakeholders. This faction also probably was a manifestation of mistrust. These members did not trust the DNRC, so they were unwilling to have faith in a process crafted by the agency, even after the creation of the Advisory Committee. Accordingly, the shadow group tried to control the process to their benefit. Those process challenges aside, some have said that this group was just a product of the personalities of those who were involved.²²³

The shadow group posed a significant challenge to the Whitefish Neighborhood Planning Process by having important discussions and even making important decisions outside of the formal Advisory Committee meetings. These side conversations consequently were not harmless exchanges in which group members gossiped and casually chatted about issues. On the contrary, the shadow group interactions were strategic discussions concerning issues that should have been discussed in the open with the entire group. As such, the shadow group compromised the collaborative nature of the planning process, limiting the breadth of stakeholders involved in the process, the transparency of the process and the level of influence that the Advisory Committee had over decision making.

Rather than stop the shadow group from meeting, DNRC staff and State Land Board members treated them as an inevitability of the process and attended their side meetings. Unit Manager Bob Sandman, for instance, described the shadow group development as “the nature of the process.”²²⁴ This acceptance legitimized the shadow group and hence, to a certain extent, preserved its role in the planning process.

Marty Zeller tried to help the group deal with the power imbalance and shadow group that emerged, meeting with the “ringleaders” of this faction to try and reign in side conversations.²²⁵ Despite this effort, the shadow group endured until the end of the neighborhood planning process. Zeller’s involvement in the drafting of the Neighborhood Plan, however, helped counterbalance the shadow group’s impact on the outcome. Zeller brought innovative revenue-generating ideas to the table which helped the Advisory Committee and DNRC draft a plan that could satisfy the trust mandate despite the development constraints established as a result of the Roberts Rules of Order incident.

Role of the General Public

A final challenge that the Whitefish Neighborhood Planning Process encountered concerned the role of the general public. The Advisory Committee hosted two public hearings during the process to update the community on its progress and solicit comments to incorporate in the Neighborhood Plan. In addition, each Committee meeting allocated time for public comments. Nevertheless, the Committee and DNRC struggled to keep the public abreast of the issues. Committee members reported that they continually had to return to the basics when interacting with the public in these public meetings and other community forums because inevitably there were new citizens present at each session. Even at the public hearing in September 2004, after the plan was written and the process had endured for nearly 18 months, the group came across community members who had yet to hear of the planning process. This interaction with the public was frustrating and difficult for the Advisory Committee and the DNRC.²²⁶

To overcome this challenge, the DNRC would review trust lands 101 at each public session to ensure that the basics were covered. The group also made a concerted effort to keep the public informed of the Committee's progress by providing meeting minutes at the Whitefish Public Library and posting informational flyers outside the Whitefish Chamber of Commerce.²²⁷ The DNRC and Committee members periodically wrote opinion editorial pieces for the local newspapers to share information and keep rumors at bay.²²⁸

FACILITATING FACTORS

Reflecting on the above-identified benefits, costs and challenges reveals several "facilitating factors" that helped the Whitefish Neighborhood Planning Process persist and ultimately produce a document that three levels of government approved.

DNRC Personnel Adjustments

DNRC personnel adjustments were essential to overcoming the mixed messages and pervasive lack of trust that plagued the planning process. Replacing DNRC Planner David Greer with Lisa Horowitz was an important first step early in 2004. In Horowitz, the DNRC found someone who could manage the meetings and deliver the agency's message in a non-threatening way. According to local attorney and former Sonoran Institute representative Diane Conradi, "If [Horowitz] hadn't come in on behalf of the agency, there is no way that the process would have gone forward. [DNRC] needed some talent – talent with land use planning and talent with dealing with people."²²⁹

Increasing the involvement of TLMD Administrator Tom Schultz and Unit Managers Bob Sandman and Greg Poncin also helped the process persevere. Schultz may have attended only one Committee meeting, but several Committee members and process stakeholders have said that he was instrumental to the completion of the planning process. State Land Board staffer Kathy Bramer said that "he is about the most accommodating, least-offensive bureaucrat I have ever met ... he listens to people and he says 'lemme see how we can get that done' ... He always comes at it from 'I can do that, I can make that happen.'"²³⁰ Likewise, Sandman and Poncin helped dispel community misperceptions about DNRC intentions. With these local DRNC

managers gaining real decision-making authority midway through the process, they also were able to fulfill agreements made with the Advisory Committee, which increased the Committee's confidence in the agency and the process. Sandman was especially effective in building trust with the Committee, because "in a group setting, he can deliver a really good pep talk."²³¹ Similar to Schultz, several Committee members have singled Sandman out as integral to the completion of the neighborhood planning process.

Leadership

The effectiveness of Schultz, Sandman and Poncin also exemplifies the importance of leadership in the neighborhood planning process. Joining them in the role of "official" process leaders were Chairman Alan Elm and Marty Zeller. Several Advisory Committee members have credited Elm with helping calm the waters and keep Committee members at the decision-making table.²³² Likewise, most participants have said that Zeller was instrumental to managing personalities and keeping the group focused on the end result – the drafting of a Neighborhood Plan. Zeller was well-received by most Committee members and the DNRC because of his perceived impartiality and past experience with trust land issues, respectively.²³³

Unofficial leaders also played a facilitating role in this process. Among those participants who were influential in the group was Committee member Marshall Friedman. An admitted member of the shadow group, Friedman was considered a vocal Committee member who dominated conversations, but also provided innovative suggestions and motivated people into action. In fact, Chairman Elm credited Friedman and others who had more "extreme" positions with being able to bring the group to a middle ground: "by being way over there, they did help us meet in the middle."²³⁴ Accordingly, while Friedman's leadership hindered the process to a certain extent by encouraging ex parte conversations, his enthusiasm and commitment to the issues also helped craft a Neighborhood Plan that most Committee members are happy with and the State Land Board, Flathead County and city of Whitefish approved.

Community's Decision-Making Power

Providing the community with significant decision-making power also facilitated progress in this neighborhood planning process. Pursuant to the Advisory Committee Charter, Mayor Andy Feury and County Commissioner Gary Hall took control of soliciting applications and selecting the Committee members. This authority legitimized the process for the Whitefish community because their elected officials, not the DNRC, determined who would develop the Neighborhood Plan with the agency.²³⁵ Likewise, allowing the Advisory Committee to select and pay for Marty Zeller gained community buy-in.²³⁶ With this decision-making power, the Whitefish Neighborhood Planning Process changed from a DNRC-crafted process to a DNRC and community joint effort. This transition was crucial to overcoming mistrust and moving forward with the process.

Marty Zeller

Marty Zeller, himself, was a facilitating factor in this planning process. Familiar with collaborative planning and trust land management, Zeller brought needed leadership, structure

and information to a group that had been stuck squabbling over details and rumors. While some Committee members questioned Zeller's impartiality, most, like Whitefish Chamber of Commerce President Sheila Bowen, attested that "it wouldn't have happened without him."²³⁷ In addition to providing guidance, Zeller helped counterbalance the shadow group's impact by attempting to reign in outside conversations and introducing the Committee to creative revenue-generating ideas. Moreover, Zeller was key in keeping Committee members at the table when calling upon political favors seemed most enticing. According to Mayor Feury, "Marty offered the hope of having a long-term solution, not just a short-term political solution. A short-term political solution is only good so long as the political winds are blowing in your favor."²³⁸

Community's Relationship with State Land Board and Individual Political Connections

That said, the Whitefish community's ongoing relationship with the State Land Board and individual political connections were important to this planning process. Without access to State Land Board members like State Auditor John Morrison, the community never may have been able to reroute the process and develop an Advisory Committee. The community's perceived influence at the State Land Board also came into play during the drafting of the Neighborhood Plan. Many Committee members felt comfortable severely limiting development of the 13,000 acres because they thought their political connections increased the likelihood of State Land Board approval. Indeed, despite restricting development to four percent of the study area, the bipartisan State Land Board unanimously approved the Whitefish Neighborhood Plan in November 2004. These political relationships remain important as the Whitefish community transitions into the implementation phase of the process. According to one Committee member:

We have a unique situation here right now. We have significant support at the land board. We have enormous influence at the Governor's office. We have enormous influence with [State Auditor] Morrison and [Attorney General] McGrath. We have a local Senator and Congressman who are very sympathetic to the cause. We have control in the Senate. It's a golden opportunity right now. And we have a Mayor who's sharp as he can be and totally in favor of what we're trying to do.²³⁹

Montana's Bi-Level Trust Land Management Structure

In addition to these political connections and relationships, Montana's bi-level trust land management structure was a facilitating factor in this process. This management structure provided the Whitefish community (through the Ad Hoc Committee) with an avenue to bypass the DNRC and petition for increased public participation in the planning process. Thus, even though this management structure was a challenge from the DNRC's perspective, it also facilitated the process by enabling the creation of the Advisory Committee, which ultimately produced an accepted Whitefish Neighborhood Plan.

The Whitefish Community

Finally, the Whitefish community was a significant facilitating factor in this neighborhood planning process. As exemplified by the public outcry at the first DNRC public meeting back in

May 2003, the citizens of Whitefish have a strong sense of community. According to Mayor Feury, “We are a community that does not like to take ‘no’ for an answer ... people here know that they can make a difference.”²⁴⁰ This dedication was apparent throughout the 18-month process, as Committee members and the public remained committed to drafting a Neighborhood Plan that would be good for their families and neighbors.

Ironically, the community’s increasing affluence played an important role in the success of the planning process. Without the community’s fundraising capabilities, it would have been difficult for the group to afford Marty Zeller. In addition, the Committee drafted the Neighborhood Plan with their wealthy neighbors in mind, assuming that they will provide resources to employ some of the more ambitious and untraditional tools in the plan. Some have said that this planning process and Neighborhood Plan could only happen in Whitefish because of its wealth. According to State Land Board staffer Kathy Bramer, local affluence enabled people to propose policies in the plan that they otherwise could not have proposed.²⁴¹ Mayor Feury viewed the situation as a “weird symbiotic relationship.” While he admitted that the plan leverages the community’s increasing affluence, he also noted that there probably would not have been a need for a neighborhood plan in the first place if these residents had not started moving to Whitefish and driving up property values.²⁴²

LESSONS LEARNED

This assessment of the often-tumultuous Whitefish Neighborhood Planning Process highlights a series of lessons about collaborative planning on state trust lands that can be applied to future efforts.

1. The trust land agency should evaluate community involvement at the outset of a decision-making process to determine whether collaborative planning is an appropriate approach.

To quote DNRC Unit Manager Bob Sandman, “there is not a one-size-fits-all process when dealing with these issues.” Before jumping into a collaborative process, an agency thus needs to assess whether and how the affected community wants to participate in the process. Here, a Whitefish School Trust Lands Advisory Committee made sense because that was the level of community involvement that Whitefish sought. Other communities may not have the time or the interest to participate in a stakeholders group for 18 months.²⁴³ TLMD Administrator Tom Schultz echoes Sandman’s position, stating “I am a firm believer that collaboration, when initiated from government, does not work. If it is going to work, it is going to be because the people want it.”

Recognizing up front that an Advisory Committee is not appropriate for all agency decisions enables the DNRC to participate in such collaborative processes without worrying that they have completely abandoned more traditional decision-making procedures. That concern fueled much of the unrest within the DNRC when Schultz endorsed the Advisory Committee back in August 2003.²⁴⁴ Assessing the appropriate level of community involvement at the outset of an agency decision-making endeavor also helps deal with the problem of forcing the DNRC into someone else’s process, which inevitably generates frustration and mistrust. Several Committee members

have said that if the DNRC had responded to community outcry about the public's involvement in the process by proposing an Advisory Committee, the group would have gained agency and community buy-in and mutual mistrust would have been less of a problem.²⁴⁵

Accordingly, collaboration is appropriate when the community not only expresses an interest in the underlying issues, but also demonstrates a willingness and ability to participate in the decision-making process. As discussed above, such participation can be costly and while it has its benefits, it also can impose significant challenges. The DNRC (or other trust land agency) and the community must consider these variables when determining whether collaborative planning is the appropriate approach.

2. If a stakeholders group is appropriate, then the group must have a diverse and fully representative membership.

The Whitefish Neighborhood Planning Process exemplified the benefit of having the leaders of the two planning jurisdictions select the Advisory Committee members. The final group represented a variety of interests and philosophies. On the other hand, this process also demonstrated the problem of not having all stakeholders at the decision-making table. As discussed earlier, some Committee members said that motorized vehicle and lakeshore representatives noticeably were absent from the planning process.²⁴⁶ It remains to be seen whether their absence resulted in a flawed plan. The implementation phase may reveal the error in the Committee's ways. According to one Committee member, a fight is already brewing with motorized vehicle users regarding use of the planned recreational trail around Whitefish Lake.²⁴⁷

On the other hand, the deliberate exclusion of the trust beneficiaries already has been challenging for the process, as it increased tension and mistrust between the DNRC and the Advisory Committee. While the State Land Board unanimously approved the Whitefish Neighborhood Plan over the objections of trust beneficiaries, these beneficiaries remain important players who could derail the process in the future through aggressive lobbying efforts and even litigation if they are not pleased with implementation.

It is questionable, however, whether including beneficiary representative on the Advisory Committee from the outset, as requested, would have benefited the process. Some have argued that beneficiary participation would have quieted their concerns, gaining their buy-in to the process.²⁴⁸ Others have wondered whether the beneficiaries' involvement would have derailed the process because they were so confrontational and abrasive at the January 2004 Advisory Committee meeting.²⁴⁹ Either way, participants agree that the process would have benefited from a more deliberate consideration of the beneficiaries' interests in the management of these 13,000 acres.

To ensure a diverse advisory group, Janet Cornish and Administrator Schultz advised that the group's creators not rely exclusively on a general call for participation. Instead, they should approach specific stakeholder groups and invite them to select a representative to participate in the process. This method ensures not only that members are truly representative of their stated interests, but also that quieter interests like affordable housing are represented in the group.²⁵⁰

3. Once a stakeholders group is created, the group and trust land agency together must develop a framework for the process, clarifying scope and establishing time objectives, decision-making guidelines and overall transparency.

If there is disagreement about the description and scope of the end product, as was the case in the Whitefish Neighborhood Planning Process, the advisory group and agency must resolve that difference of opinion before moving forward. The process also needs a clear timeline and deadline. TLMD Administrator Tom Schultz said that “collaboration without a timeline is doomed to fail.”²⁵¹ According to Advisory Committee member Paul McKenzie, the Whitefish process lacked a timeline; it only had a deadline. Together, a timeline and deadline provide the process with structure, as well as an end goal.²⁵² Unit Manager Greg Poncin emphasized, though, that the stakeholders not be in a hurry, since this type of process is time-consuming.²⁵³

To establish the proper foundation for the process, the agency and advisory group need to develop decision-making guidelines, as well. Deciding up front whether the group will vote on issues or require unanimous consensus can help prepare the group for important decisions like those that were made when the shadow group enacted Roberts Rules of Order in July 2004.²⁵⁴ Likewise, establishing ground rules for participant conduct during and outside of the meetings can help prevent the formation of a shadow group in the first place. Finally, to avoid unproductive debates about minute details, Whitefish Chamber of Commerce President Sheila Bowen recommended drafting a glossary at the outset of the process to ensure a common understanding of important words and issues.²⁵⁵

4. The collaborative process needs a neutral facilitator to guide the process.

Many Advisory Committee members acknowledged that Janet Cornish had the requisite knowledge about land use planning and trust land management to guide the process, but her perceived bias rendered her ineffective as a facilitator. Marty Zeller, by contrast, was much better received by the Committee because he was considered by most to be impartial. The Whitefish planning process would have benefited from having an effective (i.e. impartial) facilitator from the beginning. Neutral facilitation would have provided the structure and leadership necessary to gain a common understanding about key issues, clarify what interests were being represented and keep bad habits at bay.²⁵⁶ Committee member Paul McKenzie, however, disagreed with this conclusion, noting that “if the facilitator’s role is just to guide the process, then it doesn’t make a difference who the facilitator is working for. The facilitator shouldn’t be guiding the content.”²⁵⁷

5. The trust land agency and process participants must recognize that the political context will affect the power dynamic.

Politics played a key role in the Whitefish Neighborhood Planning Process. As a body of elected officials, the State Land Board inevitably has to cater to its constituents. In the Whitefish case, many pointed to this reality as a reason why the Ad Hoc Committee gained access to State Auditor John Morrison and, in turn, the State Land Board to petition for decision-making power in the planning process.²⁵⁸ In addition to legitimizing the community’s role in the planning process, this political access and perceived political support motivated a faction of the Advisory

Committee to enact Roberts Rules of Order. Being more aware of this political access, as well as the potential manipulation of that access, perhaps could have prevented such a takeover. Indeed, after that event, the State Land Board and the DNRC made a concerted effort to present a more united front to prevent future strategic moves.²⁵⁹

While the bi-level trust land management structure and political nature of the State Land Board is not common to all states, politics will play a role in most, if not all, collaborative planning efforts on state trust lands. Trust land management raises constitutional and legislative issues which bring with them political considerations. Moreover, these planning efforts often pose jurisdictional challenges as state and local governmental entities work to manage trust land parcels. Acknowledging the political context of these collaborative efforts and being aware of the effect politics can have on the process is thus important for all collaborative processes on state trust lands in order to prevent strategic manipulation of the politics to the detriment of the process.

6. The trust land agency and process participants must resist the temptation to control the process.

The Whitefish Neighborhood Planning Process, and in particular the shadow group, exemplifies the danger of giving in to the temptation to control the process. Many accused this group of preventing the Advisory Committee and DNRC from being fully functional. And, a shadow group member admitted that the group high-jacked the process. DNRC Unit Manager Greg Poncin explained that this desire for control is common when a process deals with issues that invoke strong feelings like the future planning of Whitefish. To overcome this temptation, he advised that participants maintain faith in the process and not focus on how they get to the final outcome.²⁶⁰ Moreover, establishing a proper foundation and hiring a neutral facilitator probably can reduce this desire for control.

7. The trust land agency and process participants must anticipate end-runs and take proactive measures to prevent them.

While it is important that the trust land agency and process participants resist controlling the process, they must also anticipate end-runs around the process and take proactive measures to prevent them. In the Whitefish case, the shadow group epitomized a process end-run. For all of the reasons discussed above, allowing this faction to form and persist hindered the collaborative effort by compromising the breadth of stakeholders involved in decision making, the transparency of the process and the level of influence over decision making. The group's side conversations were not harmless banter, but instead strategic discussions that should have been held in the open with the entire Advisory Committee.

Establishing a common understanding at the outset about the destructiveness of end-runs can help prevent the formation of such a faction. To accomplish this common understanding, the group can develop ground rules during the structuring part of the planning process which prohibit ex parte conversations and meetings and encourage transparent discussions. Hiring an impartial facilitator to lead the meetings and manage group dynamics also can thwart end-run efforts. Furthermore, taking the time to build trust between the trust land agency and participants,

as well as amongst participants, can lessen the likelihood that a faction of the group will feel the need to bypass the process to realize its objectives.

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Donna Madux
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John Morrison

Greg Poncin
Bob Sandman
Tom Schultz
Tyler Tourville
Candace West

APPENDIX

Exhibit 8: Whitefish Neighborhood Plan Charter

Exhibit 8

Whitefish Neighborhood Plan Charter



CHARTER FOR THE DNRC WHITEFISH NEIGHBORHOOD PLAN 9/15/03

Whereas, the Department of Natural Resources and Conservation (DNRC) is preparing a land use plan/neighborhood plan for State Trust Lands in the vicinity of Whitefish, Montana in Flathead County and seeks wide ranging public input and involvement in the planning process, and

Whereas, the DNRC is interested in identifying land use opportunities that are in keeping with its mission to generate revenue for the Trust Beneficiaries and that are compatible with local land use values, and

Whereas, the DNRC intends to identify land uses and implementation tools that are reasonable and feasible and in keeping with its stated mandate, and

Whereas, the Northwestern Land office of the DNRC initiated the land use planning process in May 2003 under contract with Community Development Services of Montana, and

Whereas, the public has been actively engaged in the planning process to date including ten (10) DNRC sponsored meetings involving more than 350 individuals and direct contact with more than 35 interested individuals/groups, and

Whereas, the planning process anticipates a 12 month period of public involvement and information collection culminating in the release of a draft neighborhood plan (Whitefish Area Trust Land Plan) for formal application to the city of Whitefish and County of Flathead for amendment to the respective community growth policies, and

Whereas, the neighborhood plan is intended to be presented in a goals and policies format similar to the format of the existing growth policies of Whitefish City and County and Flathead County, and

Whereas, the Whitefish Area Trust Land Plan (WATLP) will be developed under the following goals and objectives that reflect comments from the local community as well as the statutory requirements which govern the management of state trust lands,

Exhibit 8 (cont.)

Whitefish Neighborhood Plan Charter

- Generate Revenue based on fair market value of Trust Lands
- Maintain future revenue generating capacity of the Trust Lands
- Provide public access, recreation and open space opportunities
- Provide management for recreation and other public and private uses
- Provide for wildlife, fisheries and vegetative habitat
- Minimize negative impacts on soil and water resources of Trust Lands and adjacent lands
- Provide a predictable guide regarding future uses of identified State trust Lands, and

Whereas, DNRC would serve as “lead” in the planning process but work in cooperation/partnership with a core team of interested citizens and the general public to develop and achieve the desired goals of the planning effort, and

Therefore, it is desirable to pursue a neighborhood planning effort for school trust lands located in the vicinity of Whitefish and to achieve maximum public involvement and community representation in that process.

ROLES AND RESPONSIBILITIES

DNRC: Will lead the effort to develop a Whitefish Area Trust Land Plan (WATLP), which will provide a policy basis for determining future land use opportunities on School Trust Lands in the area of Whitefish. The DNRC will develop the plan in cooperation with a public process and through a direct working relationship with the Whitefish Area Trust Lands Plan Advisory Committee. The DNRC will submit an application in partnership with the Advisory Committee to amend the Whitefish City-County and Flathead County Growth policies through the incorporation of the WATLP. The adoption process is set forth in 76-1-601 et seq, MCA.

FLATHEAD COUNTY: The County Commissioners will be kept informed of the planning process by DNRC through its planning board staff and presentations at planning board meetings. A maximum of two Representatives of County government and of the County Planning Board could serve on the Advisory Committee and therefore have direct involvement with preparation of WATLP. Based on the recommendation of the County Planning Board, the Flathead County Commissioners will be responsible for the final approval of the amendments to its local planning document (Growth Policy or Comprehensive Plan).

Exhibit 8 (cont.)

Whitefish Neighborhood Plan Charter

THE CITY OF WHITEFISH: The City of Whitefish will be kept informed of the planning process by DNRC through its planning board staff and presentations at planning board meetings. A maximum of two Representatives of Whitefish City government and the City-County Planning Board could serve on the Advisory Committee and therefore have direct involvement with preparation of WATLP. The City-County Planning Board will be responsible for making a recommendation on the WATLP to the governing bodies. Any amendments to the Whitefish Growth Policy, as anticipated by the WATLP, will require joint approval by the City and County.

LAND BOARD: The Board of Land Commissioners (and Land Board staffers) will be kept informed of the planning process by DNRC. The Board will review the WATLP prior to being submitted to the local authorities. The Board will review the WATLP that is adopted by the City of Whitefish and Flathead County Commissioners, specifically the terms and restrictions of the (WATLP) and determine, pursuant to Section 77-1-201 and -203, MCA, whether the Board shall apply the restrictions of the WATLP to the affected state lands.

THE PUBLIC: The public will be provided with continued opportunities for involvement in the WATLP process through public meetings and open houses where members of the public will have an opportunity to provide input on planning concepts.

SELECTION COMMITTEE: DNRC will work with the Community of Whitefish (lead by Whitefish Major - Andy Feury) and Flathead County (lead by the North Valley District County Commissioner - Gary Hall) to identify and create consensus, on a slate of individuals for the selection of a Committee of 7 or fewer individuals. These individuals will help identify and select a Whitefish Area Trust Lands Advisory Committee (Advisory Committee) consisting of no more than 20 individuals. This Selection Committee will be temporary, only established for the purpose of identifying members of the Advisory Committee. Logical members of the Selection Committee could include representatives of the County Commissioners Office, County planning staff, City Council, City planning staff, and DNRC.

The creation of the Advisory Committee by the Selection Committee is intended to be self-selecting to the extent possible, whereby specific interest groups would be asked to identify a particular individual to represent or speak on the behalf their constituency. The Selection Committee would take the lead role in identifying those individuals that have the time and interest to serve on the Advisory Committee. The Selection Committee would work to create a consensus on a slate of individuals for the Advisory Committee. In addition to two members from DNRC, listed below are examples of groups or individuals that may be appropriate to the Advisory Committee. It is possible that additional persons with interest in the planning process or with specific technical knowledge may be asked to participate on the Advisory Committee from time to time. Membership will include, but not be limited to, the following interests:

Exhibit 8 (cont.) Whitefish Neighborhood Plan Charter

Beneficiaries
Recreationists, such as hunters, anglers, mountain bikers, equestrians, hikers, boaters, skiers, and motorized vehicle users
Existing lease holders
Business and industry groups
Service providers, such as police and fire
Members of the Public at large and/or representatives of neighborhood/area associations
Representatives of local governing bodies

WHITEFISH AREA TRUST LANDS PLAN ADVISORY COMMITTEE: The Advisory Committee will be created with the adoption of this Charter as set forth above. The Advisory Committee will work in concert with DNRC to prepare a draft plan, ready for application to the respective planning boards by May 2004. Committee participation will extend through the final adoption process. If at any time, the working relationship of the Advisory Committee to DNRC is unsatisfactory or fails to accomplish the tasks of the planning effort, DNRC may choose to discontinue with the Committee relationship and may terminate the planning process.

The Committee will:

- Serve as a partner to DNRC in developing all components of the Plan.
- Formulate goal and policy statements that will provide general guidance for the future use and management of the trust lands within the planning area.
- Assist in the development of land use alternatives for the planning area, which may also include sub-neighborhoods.
- As land use alternatives are identified, the Committee will examine the feasibility of each approach. Feasibility criteria might include financial feasibility, community acceptance, long-term impacts, and the ability to meet the needs of the Trust Lands' beneficiaries.
- Implementation Strategies: Examine tools and strategies for implementation of Planning Goals and Objectives and land use alternatives for each of the sub-neighborhoods.
- Provide on-going review and recommendations of all plan components.
- Serve a key role in disseminating and discussing draft products generated by the Advisory Committee to the general public through a public meeting format.
- Provide Assistance in Plan Adoption: As the plan moves forward, the Advisory Committee will partner with DNRC to help shepherd the plan through the local adoption process.
- Other items as determined

Exhibit 8 (cont.)

Whitefish Neighborhood Plan Charter

TIMEFRAMES

DNRC contracted with Community Development Services of Montana (CDS) to prepare a draft plan in a 12 month time period. Under this Charter, the roles of DNRC and the consultant are modified but the time-line for application is not expected to change. It is still desirable to make application to the Flathead County Planning Board and Whitefish City-County Planning Board by mid-May 2004 or sooner. Up to 6 months may be necessary to process the WATLP through the county and city adoption process.

FINANCIAL

DNRC will fund the planning process under current expectations. If additional funding becomes a necessity and DNRC is not successful in securing additional budget authority to complete the planning process as desired by DNRC, consultant, and Advisory Committee, then private donations may be acceptable for this purpose under a MOU agreement with DNRC.

Source: Montana Department of Natural Resources and Conservation
(http://dnrc.mt.gov/trust/Whitefish_neighborhood_plan/)

Endnotes

¹ The Whitefish population increased approximately 29% from 1990 to 2004. “Population Finder: Whitefish, MT,” U.S. Census Bureau, available at <http://www.census.gov/>.

² Omnibus Enabling Act, 25 Stat. 676 (1889). Washington, North Dakota, and South Dakota were also admitted as states under the Omnibus Enabling Act of 1889. 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, 98.

³ 25 Stat. at 679 § 10.

⁴ These educational and state institutions include: The University of Montana, Montana State University, Montana Tech, the School for the Deaf and Blind, and the State Reform School. “Trust Land Acreage,” Montana Department of Natural Resources, Trust Land Management Division, <http://www.dnrc.state.mt.us/trust/tlmdhome.htm>.

⁵ “Overview of School Trust Lands,” Montana Department of Natural Resources, Trust Land Management Division, <http://www.dnrc.state.mt.us/trust/tlmdhome.htm>.

⁶ Culp, Conradi and Tuell, 98.

⁷ *Ibid.* (citing 25 Stat. at 679-80, §§ 10, 17).

⁸ 25 Stat. at 679 § 10.

⁹ Culp, Conradi and Tuell, 98.

¹⁰ Mont. Const. Art. IX, § 1.

¹¹ “Montana State Land Board: A Citizens Guide to Montana’s State Lands and the State Land Board,” Montana Conservation Voters Education Fund, <http://www.mcvedfund.org/weblandboard.html>.

¹² *Rider v. Cooney*, 23 P.2d 261 (Mont. 1933) (stating that “the grant of lands for school purposes by the federal government to this state constitutes a trust . . .”); *State ex rel. Thompson v. Babcock*, 409 P.2d 808, 812 (Mont. 1966) (noting that the State Board of Land Commissioners is the trustee of trust lands); *Toomey v. State Bd. of Land Comm’rs*, 81 P.2d 407, 414 (Mont. 1938) (noting that the state of Montana is the trustee of trust lands).

¹³ *Montanans for the Responsible Use of the School Trust v. State ex rel. Board of Land Commissioners*, 989 P.2d 800, 808 (Mont. 1999) (citing *Wild West Motors, Inc. v. Lingle*, 728 P.2d 412, 415-16 (Mont. 1986) (stating that a “trustee must act with the utmost good faith towards the beneficiary, and may not act in his own interest, or in the interest of a third person”); *see also Dep’t of State Lands v. Pettibone*, 702 P.2d 948 (Mont. 1985); *Jeppeson v. Dep’t of State Lands*, 667 P.2d 428 (Mont. 1983).

¹⁴ *Dep’t of State Lands v. Pettibone*, 702 P.2d 948, 954 (Mont. 1985).

¹⁵ *Ravalli County Fish & Game Assoc., Inc. v. Mont. Dep’t of State Lands*, 903 P.2d 1362, 1370 (Mont. 1995) (citing Mont. Code Ann. §§ 75-1-102, 75-1-103, 75-1-105).

¹⁶ Mont. Code Ann. § 75-1-101 et seq. (2005).

¹⁷ Mont. Const. Art. X, § 4.

¹⁸ *Ibid.*

¹⁹ Mont. Code. Ann. § 77-1-201 (2005).

²⁰ Mont. Code Ann. § 77-1-202 (2005).

²¹ The DNRC “has charge of the selecting, exchange, classification, appraisal, leasing, management, sale, or other disposition of the state lands.” Mont. Code Ann. § 77-1-301 (2005).

²² The DNRC is to act “under the direction of the [State Land] Board.” Ibid.

²³ The four bureaus within the TLMD are: Grazing and Agricultural Management Bureau, Forest Management Bureau, Minerals Management Bureau, and Real Estate Management Bureau.

²⁴ The MEPA Model Rules establish the programmatic environmental impact statement requirement. These rules were developed in 1988 and subsequently were adopted by each state agency. “A Guide to the Montana Environmental Policy Act,” Environmental Quality Council, Legislative Environmental Policy Office, <http://leg.state.mt.us/content/publications/lepo/2004mepaguide.pdf>. For the programmatic environmental impact statement requirements as applied to the DNRC, see Mont. Admin. R. 36.2.537 (2005).

²⁵ Tom Schultz (Administrator, Trust Land Management Division, DNRC), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, DNRC, Helena, MT.

²⁶ For Fiscal Year 2005, the DNRC reported generating \$23,641,848 in gross revenue for “minerals management.” “Fiscal Year 2005 Annual Report,” Montana Department of Natural Resources, Trust Land Management Division, http://dnrc.mt.gov/About_Us/publications/2005trust_ar.pdf.

²⁷ “Real Estate Management Bureau,” Montana Department of Natural Resources, Trust Land Management Division, <http://www.dnrc.state.mt.us/trust/tlmdhome.htm>.

²⁸ “Real Estate Management Bureau,” Montana Department of Natural Resources, Trust Land Management Division, <http://www.dnrc.state.mt.us/trust/tlmdhome.htm>; Culp, Conradi, and Tuell, 100-01. Indeed, in Fiscal Year 2004, less than one percent of TLMD’s gross revenue came from land sales. “Report on Return on Asset Value by Trust Land and Land Office for State Trust Lands,” Montana Department of Natural Resources and Conservation, Trust Lands Management Division. Nov. 2004, 12. Available at <http://www.dnrc.state.mt.us/trust/returnonasset04.pdf>.

²⁹ Mont. Code Ann. § 77-323 (2005).

³⁰ H.B. 450, 2005 Leg., Reg. Sess. (Mont. 2005); Kathy Bramer (Montana Office of Public Instruction), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, The Overland, Helena, MT.

³¹ Kathy Bramer (Montana Office of Public Instruction), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, The Overland, Helena, MT; Marshall Friedman (Citizen, Whitefish, MT), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Great Northern Bar and Grill, Whitefish, MT.

³² Neither Governor Martz nor Secretary of State Brown ran for reelection. Secretary of State Brown was the Republican gubernatorial candidate in the 2004 elections. He lost to Governor Brian Schweitzer.

³³ “2004 Election Results,” Montana Secretary of State, <http://sos.state.mt.us/Assets/elections/2004Gen/2004-GenState.pdf>.

³⁴ “Whitefish, MT: Education,” ePodunk, <http://www.epodunk.com/cgi-bin/educLevel.php?locIndex=27851>.

³⁵ Kathy Bramer (Montana Office of Public Instruction), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, The Overland, Helena, MT.

³⁶ “Whitefish: Introduction,” Big Sky Fishing.Com, http://www.bigskyfishing.com/Montana-Info/whitefish_mt.shtm.

³⁷ Lynnette Hintze, “Whitefish at 100,” *Daily Interlake*, April 10, 2005, <http://www.dailyinterlake.com/articles/2005/04/10/news/news01.txt>.

³⁸ “Overview of the Montana Trust Land Management Division & Whitefish Area Plan,” Montana Department of Natural Resources, Trust Land Management Division, <http://dnrc.mt.gov/trust/Planning%20Process%20Overview%20-%20Handout.pdf>. According to the DNRC, timber in this area is responsible for nearly half of the annual statewide sustained-yield harvest. *Whitefish School Trust Lands Neighborhood Plan*, available at <http://www.statetrustland.com/index.cfm>.

³⁹ Tom Schultz (Administrator, Trust Land Management Division, DNRC), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, DNRC, Helena, MT; Paul McKenzie (Stoltze Lumber), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Stoltze Lumber, Columbia Falls, MT; Bob Sandman (Area Manager, Northwestern Land Office, DNRC), telephone interview by Jessica Mitchell and Lisa Spalding, September 7, 2005.

⁴⁰ “Neighborhood in this sense means a sub-area within a larger area covered by a growth policy ... ‘Growth policy’ is Montana’s term for a comprehensive or master plan.” Janet Cornish (Community Development Services of Montana), telephone interview by Jessica Mitchell and Lisa Spalding, August 8, 2005.

⁴¹ Tom Schultz (Administrator, Trust Land Management Division, DNRC), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, DNRC, Helena, MT.

⁴² “A growth policy is not a regulatory document and does not confer any authority to regulate that is not specifically authorized by law or regulations adopted pursuant to the law. A governing body may not withhold, deny, or impose conditions on any land use approval or authority to act based solely on compliance with a growth policy adopted pursuant to this chapter.” Mont. Code Ann. § 76-1-605 (2005).

⁴³ Whitefish Neighborhood Planning Process Meeting Minutes, May 12, 2003, available at <http://www.statetrustland.com/index.cfm>; Bob Sandman (Area Manager, Northwestern Land Office, DNRC), interview by Jessica Mitchell and Lisa Spalding, September 7, 2005.

⁴⁴ Jeanne Holmgren (Real Estate Management Bureau Chief, Trust Land Management Division, DNRC), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, DNRC, Helena, MT.

⁴⁵ Bob Sandman (Area Manager, Northwestern Land Office, DNRC), telephone interview by Jessica Mitchell and Lisa Spalding, September 7, 2005; Greg Poncin (Unit Manager, Kalispell Unit Office, DNRC), telephone interview by Jessica Mitchell and Lisa Spalding, September 6, 2005.

⁴⁶ Tom Schultz (Administrator, Trust Land Management Division, DNRC), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, DNRC, Helena, MT.

⁴⁷ Whitefish Demographics,” Whitefish Chamber of Commerce, http://www.whitefishchamber.org/whitefish_demographics.php.

⁴⁸ Tyler Tourville (President, Flathead Fat Tire Association), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT.

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- ⁵³ Diane Conradi (Attorney, Law Offices of Diane Conradi, and formerly of the Sonoran Institute), interview by Jessica Mitchell and Lisa Spalding, August 19, 2005, Whitefish, MT.
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- ⁵⁶ Tom Schultz (Administrator, Trust Land Management Division, DNRC), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, DNRC, Helena, MT.
- ⁵⁷ David Madison, "Community Trust: Whitefish Grows Wary of its Remaining Open Space," *The Missoula Independent*, July 24, 2003, <http://www.missoulanews.com/Archives/News.asp?no=3394>.
- ⁵⁸ Tom Schultz (Administrator, Trust Land Management Division, DNRC), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, DNRC, Helena, MT.
- ⁵⁹ Janet Cornish (Community Development Services of Montana), telephone interview by Jessica Mitchell and Lisa Spalding, August 8, 2005.
- ⁶⁰ Alan Elm (Realtor, ReMax Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 16, 2005, ReMax Whitefish, Whitefish, MT.
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- ⁶⁴ Whitefish Neighborhood Planning Process Meeting Minutes, May 12, 2003, available at <http://www.statetrustland.com/index.cfm>; Janet Cornish (Community Development Services of Montana), telephone interview by Jessica Mitchell and Lisa Spalding, August 8, 2005.
- ⁶⁵ Andy Feury (Mayor, city of Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT.
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