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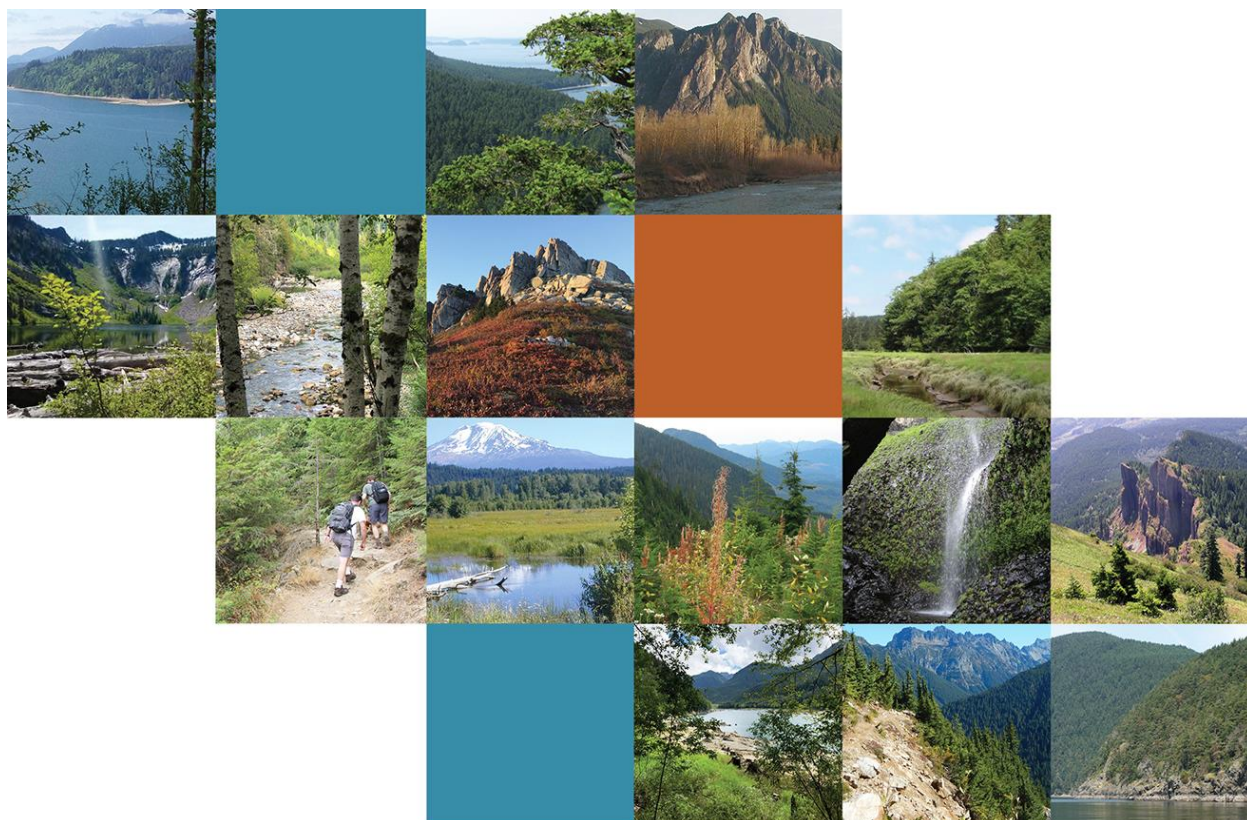
Revitalizing the

# Trust Land Transfer

## Portfolio Management Tool

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Legislative Report | December 1, 2021



Office of the Commissioner of Public Lands, Hilary Franz  
Deputy Supervisor for State Uplands, Angus Brodie



WASHINGTON STATE DEPARTMENT OF  
**NATURAL RESOURCES**

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Legislative Report | December 1, 2021

*Prepared by*  
Washington State Department  
of Natural Resources



WASHINGTON STATE DEPARTMENT OF  
**NATURAL RESOURCES**

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# Acknowledgements and Primary Contacts

## Trust Land Performance Initiative Steering Committee

- Laurie Benson, Conservation, Recreation, and Transactions Division Manager
- Angus Brodie, Deputy Supervisor for State Uplands
- Duane Emmons, Product Sales and Leasing Division Manager
- Andrew Hayes, Forest Resources Division Manager

## DNR Trust Land Transfer Project Team

- Lisa Anderson, Trust Outreach Specialist
- Laurie Benson, Conservation, Recreation, and Transactions Division Manager
- Kristen Ohlson-Kiehn, Forest Resources Division Assistant Division Manager
- Tyson Thornberg, Senior Policy Advisor

## DNR Trust Land Transfer Technical Team

- Cathy Chauvin, Environmental Planner
- Cyndi Comfort, Environmental Planner
- Kari Fagerness, Product Sales and Leasing Assistant Division Manager
- David Gordon, Conservation, Recreation, and Transactions Assistant Division Manager
- Ralph Johnson, Forestry Training Manager
- Kenny Ocker, Communications Manager
- Curt Pavola, Natural Areas Program Manager
- Robert Winslow, Property and Acquisitions Specialist

## Trust Land Transfer Proviso Work Group

- Justin Allegro, Director, State Government Relations, The Nature Conservancy
- Angus Brodie, Deputy Supervisor for State Uplands, Department of Natural Resources
- Matt Comisky, Washington State Manager, American Forest Resources Council
- The Honorable Heidi Eisenhour, Commissioner, Jefferson County
- Jim Freeburg, Board Member, North Cascades Conservation Council
- The Honorable Rob Gelder, Commissioner, Kitsap County
- Peter Herzog, Assistant Director, Washington State Parks and Recreation Commission
- The Honorable Randy Johnson, Commissioner, Clallam County
- Randy Newman, Director, Office of Superintendent of Public Instruction
- Russ Pfeiffer-Hoyt, Chair, Trust Lands Advisory Committee, Washington State School Directors Association
- Cynthia Wilkerson, Lands Division Manager, Washington Department of Fish and Wildlife

## Primary DNR Contacts

Angus Brodie, Deputy Supervisor for Uplands  
[angus.brodie@dnr.wa.gov](mailto:angus.brodie@dnr.wa.gov)

Lisa Anderson, Trust Outreach Specialist  
[lisa.anderson@dnr.wa.gov](mailto:lisa.anderson@dnr.wa.gov)

Brian Considine, Legislative Director  
[brian.considine@dnr.wa.gov](mailto:brian.considine@dnr.wa.gov)

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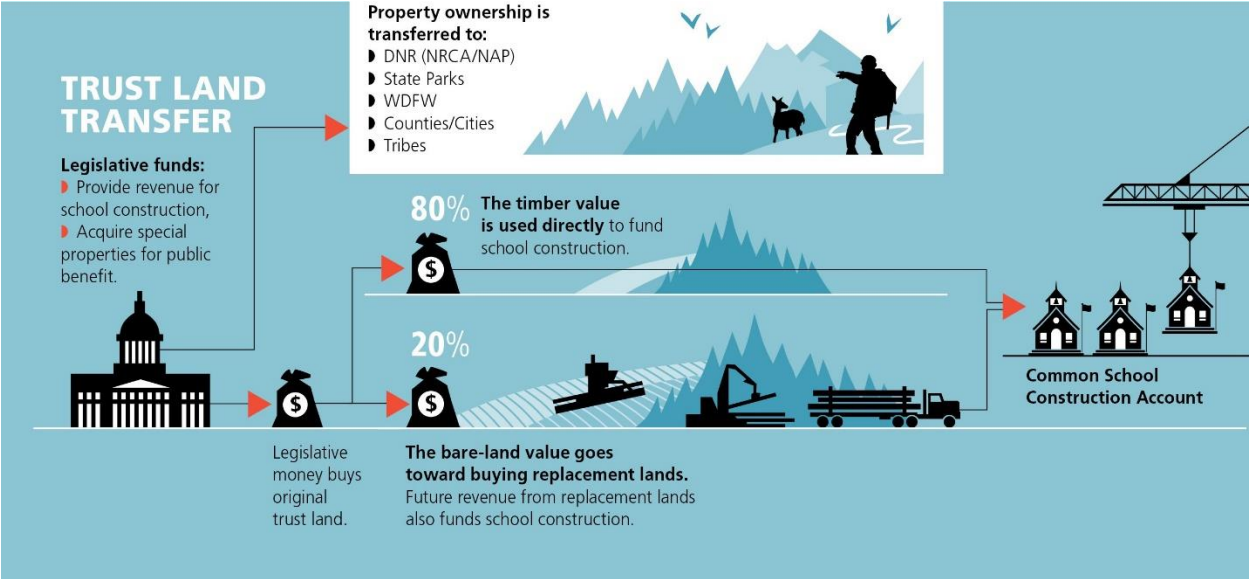
DNR	Washington State Department of Natural Resources
HCP	<i>State Trust Lands Habitat Conservation Plan</i>
NAP	Natural Area Preserve
NRCA	Natural Resources Conservation Area
PILT	Payment in lieu of taxes
TLT	Trust Land Transfer



# Executive Summary

Established by the Washington State Legislature in 1989, Trust Land Transfer (TLT) is a land portfolio management tool that enables the Washington State Department of Natural Resources (DNR) to reposition state trust lands to better serve the trust beneficiaries and the people of Washington. Through provisos in biennial Capital Budgets, DNR transfers economically under-performing Common School Trust lands out of trust status and replaces them with lands that can generate revenue for trust beneficiaries. DNR also conserves lands that have high ecological and social values, and directs funds to the Common School Construction Account. Figure ES-1 demonstrates how the current tool works.

**Figure ES-1. How the current TLT tool works**



Over the past 32 years, DNR has used the TLT tool to transfer from trust status 125,968 acres of state trust lands with outstanding ecological and social values. DNR has purchased 55,546 acres of replacement lands that earn sustainable, long-term revenue for trust beneficiaries. In addition, \$738,787,445<sup>1</sup> has passed through DNR to the Common School Construction Account.

The TLT tool has been instrumental in creating some of the most cherished and iconic natural areas in the state. For example, the Morning Star Natural Resources Conservation Area (NRCA) off the Mountain Loop Highway preserves outstanding alpine scenery and provides miles of hiking trails for the growing populations of Snohomish and King counties. Mount Si NRCA near North Bend protects four mountain peaks, several stream systems, and three alpine lakes, providing room to roam for mountain goats and many other wildlife species. Mount Si has become so popular that in the summer, King County offers weekend shuttle service to the trailhead from Seattle, Bellevue, and North Bend to relieve parking pressure. All told, 43 natural areas that DNR manages in the state owe their existence, in full or in part, to TLT.



**Gothic Basin at Morning Star NRCA**



**Mount Si NRCA**

DNR also has transferred lands to Washington State Parks, Washington Department of Fish and Wildlife, city and county governments, the Hoh Tribe, and local public park districts. Washington State Parks has acquired 15,716 acres for 34 state parks; these acres comprise about 12 percent of the approximately 130,000-acre State Park system.

## Revitalizing for a Prosperous and Sustainable Future

As effective as it is, the current TLT tool can be improved to make it stronger, more transparent, more consistent, and more effective for management of the state trust lands portfolio. The current tool faces the following, primary challenges:

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<sup>1</sup> All dollar values in this report are nominal (not adjusted for inflation).



- **Additional funding is needed for replacement lands.** Currently, only the bare-land value of the transferred parcel is provided to purchase replacement lands (Figure ES-1). Because bare land is seldom available for purchase, DNR must purchase fewer acres of higher-value land. Over the past 32 years, DNR has purchased only 55,546 acres of replacement lands for the 125,968 acres of state trust lands it has transferred out of trust status.
- **Implementation of TLTs should be more transparent and consistent.** Most of the current TLT process is not captured in statutes or DNR planning documents. Instead, direction for implementing TLTs primarily comes from provisos in the biennial State Budget.

The lack of documentation can provide some flexibility for TLTs, but it also makes the TLT process less transparent to trust beneficiaries, stakeholders, Tribes, state agencies, and others.

It also makes the tool less consistent. For example, many budget provisos have required DNR to meet a specific timber-to-land-value ratio (Figure ES-1). The 1989 budget proviso specified a ratio of 92 to 8, meaning the combined value of the timber on all the parcels to be transferred must comprise at least 92 percent of their total, combined property value. The remaining 8 percent or less represents their combined bare-land value. In the 1991 proviso, the ratio was 85 to 15, in 2019 it was 80 to 20, and the most recent provisos have no ratio at all.

- **Timber-to-land-value ratios limit the tool's flexibility.** Timber-to-land-value ratios can make it difficult to transfer properties that are non-forested, have lower timber value, or have high bare-land value due to their proximity to urban areas. As such, these ratios make the TLT tool far less flexible for managing the state trust lands portfolio.
- **Non-Common School Trust parcels require an inter-trust exchange.** Only Common School Trust parcels can be transferred out of trust status using the current TLT tool. For that reason, any non-Common School Trust parcel nominated for TLT must first become a Common School Trust parcel through an inter-trust exchange.

Aside from being difficult and time-consuming, inter-trust exchanges have two significant implications. First, although the two parcels being exchanged must be equal in value, they do not have to be equal in acres. Second, exchanges involving State Forest Lands can affect revenue for county taxing districts. Counties distribute revenue from State Forest Lands to specific taxing districts according to the general tax distribution by tax area codes<sup>2</sup>. Taxing districts can lose revenue when the State Forest Land parcel within their tax area code becomes Common School Trust, and the Common School Trust parcel that becomes State Forest Land is located in a different tax area code. For these reasons, inter-trust exchanges are a significant limitation for the current TLT tool.

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<sup>2</sup> [RCW 79.64.110](#)

- **Additional Funding is Needed for Administration.** Under past budget provisos, DNR has been allowed to use a portion of the allocation for authorized activities including “the actual cost of appraisals, staff time, environmental reviews, surveys, and other similar costs” (SHB 1102, Section 3281). Although it differs from one proviso to the next, the most recent cap was 1.9 percent of the appropriation. This amount often is insufficient to cover administrative costs, so DNR must draw on funds that are needed for other trust management needs.

## Why Revitalization Matters

Now more than ever, DNR needs an effective TLT tool to help it manage state trust lands amid rapid population growth, changing social values, forest health issues, a warming climate, and other current and future challenges. Revitalizing this tool was one of the recommendations of the 2021 [Trust Lands Performance Assessment](#).

A revitalized TLT tool can play an important role in current and future initiatives that are designed to address these challenges. For example, the [Trust Land Performance Initiative](#) aims to transform the way DNR manages state trust lands, ultimately to increase the amount and reliability of revenue DNR provides to trust beneficiaries<sup>3</sup>. This initiative includes goals for diversifying and expanding the trust land portfolio, and for addressing evolving social needs for state trust lands. In another example, the Keeping Washington Evergreen initiative is meant to improve forest health and resilience, conserve critical habitat, protect the livelihoods and character associated with the working forests across the state, and ensure that future generations continue to recognize Washington as “the Evergreen State.” This initiative includes a goal to conserve 1 million acres of working forestland in Washington (refer to Appendix C for more information on this initiative).



**An eastern Washington forest that has been thinned to improve forest health**

## The 2021 Budget Proviso

In its 2021 session, the Legislature recognized and supported the importance of TLT by passing a budget proviso calling for establishing a new TLT tool in a cooperative process between DNR and a work group:

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<sup>3</sup> DNR recently summarized this initiative in its 2021 report to the Legislature, “[Charting a Course to the Future: the Trust Lands Performance Assessment](#).”

*(1) The department of natural resources shall convene a work group of trust land beneficiaries and stakeholders to develop a recommended process for the way trust land transfer proposals are developed and implemented. Consideration should be made for increasing the income value of the trusts, limiting impacts to trust lands not being considered for transfer, conservation value of lands that are a potential candidate for transfer, and use of the land bank for securing repositioned land that would result from any transferred projects, and any other items necessary for a well-supported program. The department of natural resources must report and make recommendations for the establishment of a new trust land transfer program to the fiscal committees of the legislature, by December 1, 2021.*

*(2) For the 2021-2023 fiscal biennium, the department of natural resources may not trade, transfer, or sell any valuable material from the four parcels that comprised the proposed trust land transfer parcels in the 2019-2021 fiscal biennium, known as Blakely Island, Devils Lake, Eglon, and Morning Star (SHB 1080 Sec. 3333).*

DNR convened the work group in July 2021. This 11-member group included representatives of trust beneficiaries, the timber industry, conservation organizations, and public agencies who have received transferred parcels in the past.

## Proposed Framework for a New TLT Tool

Over four months and nine meetings, DNR and the work group collaborated on building a framework for a new, stronger, revitalized TLT tool, which includes a recommended process for the way TLT proposals are developed and implemented. Following are the key features:

- **The TLT tool will be opened to state trust land parcels of any trust designation, land use type, size, or value.** Social and ecological values and the challenges of under-performing state trust lands are not confined to any single land use type or trust designation. Opening the TLT tool to all of these lands gives DNR the flexibility it needs to effectively manage the state trust lands portfolio for the benefit of the trust beneficiaries. It also will reduce the need for inter-trust exchanges, which means that most non-Common School Trust transfers will not affect the Common School Trust portfolio<sup>4</sup>. Opening TLT to all state trust lands may require statutory change. It also will require innovative solutions for potential impacts to county taxing districts from State Forest Land transfers.
- As explained previously, the majority of the TLT appropriation currently is directed to the Common School Construction Account, and only a small portion is re-invested in the state trust lands portfolio. Under the new TLT tool, **all of the TLT legislative appropriation will be reinvested in the state trust lands portfolio to help build its capacity to provide long-term, sustainable revenue to the trust beneficiaries, including distributions to the Common School**

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<sup>4</sup> Inter-trust exchanges will be allowed but not required for transfer of non-Common School Trust parcels.

**Construction Account.** Specifically, the *entire* appropriation will be directed to the Real Property Replacement Account and a new Land Bank account, which DNR will request that the Legislature establish with the Washington State Treasury. Funds in both accounts will be used to purchase replacement lands. This proposed change is meant to **increase revenue generation for trust beneficiaries, including the Common School Trust**, over the long term by investing in productive state trust lands<sup>5</sup>.

These needed changes will enable DNR to more effectively manage the state trust lands portfolio and participate in today's fast-moving real estate market. These changes also make the TLT tool nimble enough to support DNR initiatives such as the Trust Lands Performance Initiative and Keeping Washington Evergreen. Funding for land transactions was identified as a major need in the [Trust Lands Performance Assessment](#).



**Timber harvest on state trust lands provides revenue for essential public services and facilities**

- The new framework will feature a **three-step approval process**:
  1. DNR will make an initial determination of eligibility to ensure the transfer is in the best interests of the trust beneficiaries, and that a willing receiving entity (public agency, Tribe, or DNR's Natural Areas Program) has been identified to receive the transferred parcel. Tribal consultation will occur after DNR has determined the transfer is in the best interests of the trust beneficiaries, but *before* DNR sends the list of parcels to the advisory committee for evaluation and prioritization (Step 2).
  2. A newly-established advisory committee will evaluate and prioritize the eligible transfers according to standardized evaluation criteria.
  3. The Board of Natural Resources will approve the final parcel list.

This thoughtful, structured process will help ensure each transfer meets the needs of the trust beneficiaries, receiving entities, Tribes, stakeholders, and the people of Washington.

- In addition to representatives of trust beneficiaries, county taxing districts, Tribes, conservation organizations, the forest industry, and public agencies, **DNR will invite representatives of**

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<sup>5</sup> Changes to how the legislative appropriation is apportioned and development of the new Land Bank account may require statutory change.

**overburdened communities and vulnerable populations<sup>6</sup> to participate in the advisory committee** to make TLT more inclusive and equitable.

- **The advisory committee will use standardized criteria to evaluate and prioritize nominated parcels.** Having standardized criteria will make the TLT process more consistent and transparent, and will create additional stability for the tool. The standardized evaluation criteria will be approved by the Board of Natural Resources.
- **Information about TLT, including the eligibility and evaluation criteria and approval process, will be posted on DNR's website.** Making this information easily accessible in a central location will make the TLT process easier to implement consistently and far more transparent.
- DNR will **report to the Board of Natural Resources** every two years. The report will include the properties transferred and acquired by trust and county.

## Next Steps

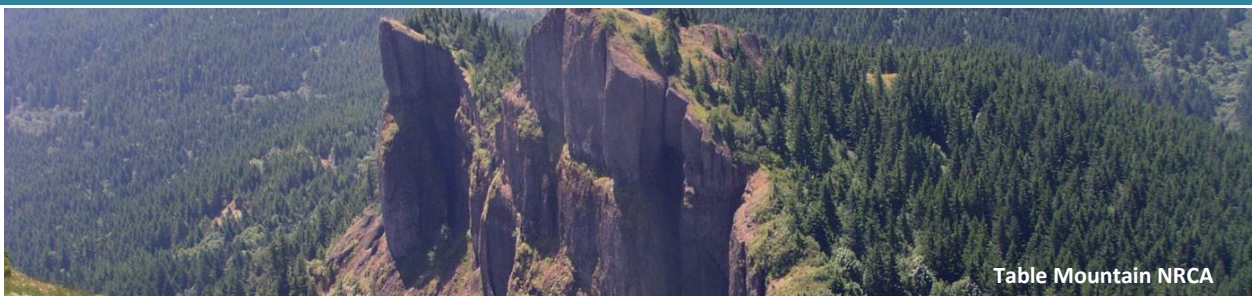
The next phase of this project is to develop the framework into a new TLT tool. DNR will establish an expanded work group for this phase. To this work group, DNR will invite all of the current work group members, plus Tribal representatives and representatives of overburdened communities and vulnerable populations. DNR also will invite others to join the work group who have lived experiences, knowledge, and expertise that will help the expanded work group complete its task. DNR will establish the expanded work group this fall or winter, and plans to schedule work group meetings beginning in January and running through the end of May, 2022. DNR also will continue public engagement and outreach to Tribes throughout this phase of the project.

With its well-considered, equitable, documented, and transparent process, its greater flexibility, and its increased capital for purchasing replacement lands, plus the refinements that will be made in the next phase of this project, DNR is confident that the new TLT tool will meet the needs of today and the challenges of the future. DNR looks forward to completing this work in close cooperation with the expanded work group.

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<sup>6</sup> "Overburdened community" means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to, highly impacted communities as defined in RCW 19.405.020 ([ESSSB 5441](#) Sec. 2 (11)). "Vulnerable populations" means population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms (ESSSB 5441 Sec. 2 (14)).

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## Introduction

In its 2021 session, the Washington State Legislature passed a budget proviso focused on strengthening and improving the Trust Land Transfer (TLT) land portfolio management tool with the help of a work group:

- (1) The department of natural resources shall convene a work group of trust land beneficiaries and stakeholders to develop a recommended process for the way trust land transfer proposals are developed and implemented. Consideration should be made for increasing the income value of the trusts, limiting impacts to trust lands not being considered for transfer, conservation value of lands that are a potential candidate for transfer, and use of the land bank for securing repositioned land that would result from any transferred projects, and any other items necessary for a well-supported program. The department of natural resources must report and make recommendations for the establishment of a new trust land transfer program to the fiscal committees of the Legislature, by December 1, 2021.*
- (2) For the 2021-2023 fiscal biennium, the department of natural resources may not trade, transfer, or sell any valuable material from the four parcels that comprised the proposed trust land transfer parcels in the 2019-2021 fiscal biennium, known as Blakely Island, Devils Lake, Eglon, and Morning Star (SHB 1080 Sec. 3333).*

The Washington Department of Natural Resources (DNR) convened the work group in July 2021. This 11-member group included representatives of trust beneficiaries, the timber industry, conservation organizations, and public agencies who have received transferred parcels in the past. Over four months and nine meetings, DNR and the work group collaborated on building a framework for a new, stronger, revitalized TLT tool, which included a recommended process for the way TLT proposals are developed and implemented. DNR is eager to share the results of this collaborative process. This report is presented in three parts:

- **Part 1** describes the current trust land transfer tool, including its challenges.
- **Part 2** describes the framework for the new TLT tool, including the process used to develop it, the tools' purpose, and each of its elements.
- **Part 3** summarizes the next steps in this process.

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# Part 1: The Current TLT Tool

Established by the Legislature in 1989, TLT is a land portfolio management tool that enables DNR to reposition state trust lands to better serve the trust beneficiaries and the people of Washington. Through provisos in biennial Capital Budgets, DNR transfers economically under-performing Common School Trust lands out of trust status and replaces them with lands that can generate revenue for trust beneficiaries. DNR also conserves lands that have high ecological and social values, and directs funds to the Common School Construction Account. Refer to Text Box 1 for an overview of state trust lands and the Common School Trust.

Common School Trust parcels identified for TLTs are transferred to DNR’s Natural Area Program or another public agency or Tribe. Transferred lands are managed as “state parks, fish and wildlife habitats, natural area preserves, natural resources conservation areas,

### Text Box 1. State trust lands and the Common School Trust

Just before Washington became a state, Congress passed the Enabling Act of 1889 (25 Stat. 676, chs. 180, 276–284) and granted Washington over 3 million acres to generate revenue for public institutions. These lands are called the federally granted lands. Additional lands were acquired by the state from the counties in the 1920s and 1930s, purchased, or acquired as a gift. These lands are called State Forest Lands. All of these lands are collectively referred to as state trust lands, which are held in trust and managed to generate revenue for trust beneficiaries. Revenue is generated through timber harvest and agreements (such as leases, permits, easements and land-use licenses) for agriculture, grazing, commercial real estate, clean energy, communication sites, and other activities and uses.

There are seven federally granted trusts, the largest of which is the Common School Trust at 1.8 million acres. Located across the state, lands within this trust generate revenue for the construction of kindergarten through 12<sup>th</sup> grade public schools. Refer to Appendix B for more information on state trust lands and DNR’s responsibilities as a trust lands manager.

department of natural resources community forests, open spaces, or for recreation purposes” (SHB 1102, Sec. 3281).

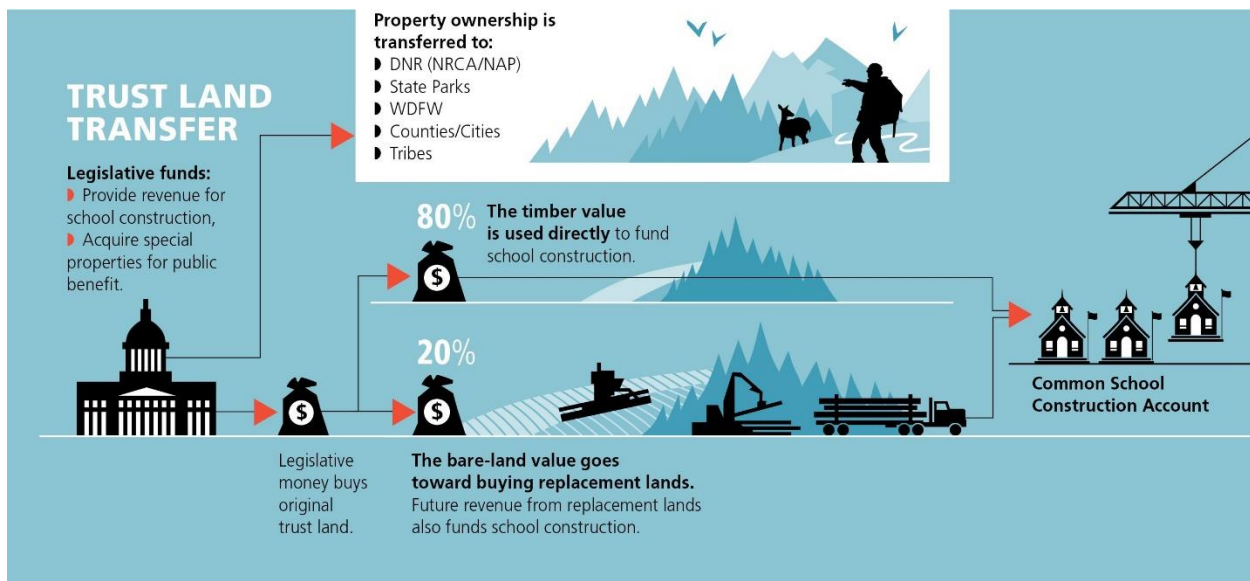
## What is the Current Process for TLTs?

Each biennium, state trust land parcels<sup>7</sup> are nominated for TLT by DNR, state agencies, counties, public utility districts, cities, and others. DNR coordinates the review and prioritization of the proposed list of transfer parcels. DNR also determines whether there is an appropriate recipient to manage each of the nominated parcels.

The list is assembled into an informational package, with maps and property descriptions, that is presented to the Board of Natural Resources and then to the Legislature for funding. The Legislature considers the proposal, determines the makeup of the final package, and sets an appropriation funding level. If approved, the transfer package (or a portion of it) is authorized and funded as a proviso in the biennial Capital Budget.

At the beginning of the biennium, the estimated value of the timber on the parcel to be transferred goes to the Common School Construction Account, to be used to fund school construction. At the time of transfer, the value of the bare land goes to the Real Property Replacement Account, to be used to purchase replacement lands that will generate revenue for trust beneficiaries (Figure 1).

Figure 1. How the current TLT tool works



Many past provisos have required a specific timber-to-land-value ratio for all of the properties on the list combined. Although it has changed over time, the most common ratio has been 80:20, meaning the

<sup>7</sup> Non-Common School Trust lands must undergo an inter-trust exchange prior to transfer; refer to “Challenges with the Current TLT Tool” in this part of the report for more information.

combined value of the timber on all the parcels to be transferred must comprise 80 percent or more of their total, combined property value. The remaining 20 percent or less represents their combined bare-land value. This timber-to-land-value ratio is illustrated in Figure 1.

## 32 Years of Transfers

Over the last 32 years, the Legislature has provided \$882,685,000<sup>8</sup> to facilitate the transfer of 125,968 acres of state trust lands to DNR’s Natural Areas Program (Text Box 2), Washington State Parks, Washington Department of Fish and Wildlife, city and county governments, the Hoh Tribe, and local public park districts (Tables 1 and 2).

Washington State Parks has acquired 15,716 acres for 34 different state parks. These acres comprise about 12 percent of the approximately 130,000-acre State Park system.

### Text Box 2. DNR’s Natural Areas Program

DNR manages two kinds of natural areas.

Natural Area Preserves (NAP) protect the highest quality, most ecologically important sites on DNR-managed lands.

Natural Resources Conservation Areas (NRCAs) protect outstanding examples of native ecosystems; habitat for endangered, threatened and sensitive plants and animals; and scenic landscapes. Environmental education and low-impact public use are allowed when they do not impair protected features.

**Table 1. Acres transferred through TLT since 1989**

Biennium	Funding request	Appropriation	Acres Transferred	Accumulative Appropriation
89-91	\$222,361,750	\$171,500,000	44,056	\$171,500,000
91-93	\$27,648,000	\$57,986,000	7,628	\$229,486,000
93-95	\$64,755,000	\$50,352,000	7,457	\$279,838,000
95-97	0	0	0	\$279,838,000
97-99	\$164,758,400	\$34,500,000	4,799	\$314,338,000
99-01	\$101,848,501	\$66,000,000	6,677	\$380,338,000
01-03	\$109,228,000	\$50,000,000	4,717	\$430,338,000
03-05	\$48,483,450	\$55,000,000	3,974	\$485,338,000
05-07	\$67,090,000	\$61,610,000	8,542	\$546,948,000
07-09	\$100,000,000	\$98,985,000	8,778	\$645,933,000
09-11	\$94,923,000	\$100,133,000	16,538	\$746,066,000
11-13	\$86,540,000	\$60,490,000	3,773	\$806,556,000
13-15	\$56,045,000	\$56,345,000	6,289	\$862,901,000
15-17	\$37,746,000	\$9,784,000	2,118	\$872,685,000

<sup>8</sup> All dollar values in this report are nominal (not adjusted for inflation).

Biennium	Funding request	Appropriation	Acres Transferred	Accumulative Appropriation
17-19	\$30,065,000	\$10,000,000	662	\$882,685,000
19-21	\$27,150,000	\$6,400,000	TBD	\$889,085,000
<b>Total 1989-2021</b>	\$1,211,492,101	\$889,085,000	125,968	\$882,685,000

**Table 2. Recipients of TLT parcels**

Recipients	Total acres transferred
DNR NAP and NRCA	90,494
DNR Blanchard Core	662
Washington State Parks	15,716
Counties/cities	13,518
WDFW	5,414
Hoh Tribe	163
<b>Total</b>	<b>125,967*</b>

\* Total does not match Table 1 due to rounding.

Of all the natural areas DNR manages, 43 have received TLT acres since 1989 and 20 are comprised entirely of TLT acres. These natural areas conserve iconic views and natural features, preserve rare plant and wildlife habitat, and provide recreation access to some of the most popular areas in the state.

One example is the Mount Si NRCA, located outside North Bend, Washington along the I-90 corridor. Established in 1987, this NRCA preserves four mountain peaks, several stream systems, and three alpine lakes, along with examples of old-growth forest and habitat for mountain goat and other wildlife species. With its established trail system, Mount Si offers a backcountry hiking experience not far from large and growing metropolitan areas. It has become so popular that in the summer, King County offers weekend shuttle service to the trailhead from Seattle, Bellevue, and North Bend to relieve parking pressure. Mount Si NRCA was one of the first DNR natural area to receive TLT acres. Of the 13,575 acres within this NRCA, 9,628 acres were transferred through TLTs.



**Hikers at Mount Si NRCA**

Another example is the Morning Star NRCA. Located along the Mountain Loop Highway, this mountainous NRCA protects lakes, wetlands, and meadows, including habitat for threatened and endangered wildlife species, and threatened and sensitive plant species. Six plant species rare to Washington occur within this NRCA. The site is also large enough to provide habitat for threatened and

endangered, wide-ranging wildlife such as Pacific fisher, grizzly bear, and gray wolf. The NRCA is surrounded by public land, including State Parks, Snohomish County Public Utility District land, state trust lands, and Mount-Baker Snoqualmie National Forest, and is part of the City of Everett’s municipal watershed. The area includes numerous hiking trails, providing recreation opportunities for the large and growing populations of King and Snohomish Counties. All 37,842 acres of this NRCA were transferred through TLTs.



Big Greider Lake at Morning Star NRCA

Table 3 shows the number of acres of TLT transfers in natural areas (NAPs and NRCAs) that DNR manages. Also shown is the percent of each natural area that is comprised of TLT acres.

**Table 3. NRCAs and NAPs that have received TLT acres**

Natural Area	TLT Acres	Total Acres	Percentage TLT Acres
Ashford NRCA, Pierce County	78	78	100%
Bone River NAP, Pacific County	795	2,800	28%
Camas Meadows NAP, Chelan County	970	2,018	48%
Cattle Point NRCA, San Juan County	93	112	83%
Charley Creek NAP, King County	1,966	1,966	100%
Chopaka Mountain NAP, Okanogan County	2,645	2,764	96%
Clearwater Bogs NAP, Jefferson County	454	504	90%
Clearwater Corridor NRCA, Jefferson County	2,323	2,323	100%
Columbia Falls NAP, Skamania County	975	1,234	79%
Cypress Highlands NAP, Skagit County	660	1,072	62%
Cypress Island NRCA, Skagit County	29	1,100	3%
Dabob Bay NAP, Jefferson County	1,734	3,210	54%
Devils Lake NRCA, Jefferson County	80	80	100%
Elk River NRCA, Grays Harbor	287	5,560	5%
Ellsworth Creek NRCA, Lewis County	557	557	100%
Granite Lakes NRCA, Skagit County	603	603	100%
Hamma Hamma Balds NAP, Mason County	957	957	100%
Hendrickson Canyon NRCA, Wahkiakum County	159	159	100%
Kitsap Forest NAP, Kitsap County	529	572	92%
Klickitat Canyon NRCA, Klickitat County	1,289	2,336	55%
Lake Louise NRCA, Whatcom County	138	138	100%
Little Pend Oreille River NAP, Stevens County	37	290	13%

Natural Area	TLT Acres	Total Acres	Percentage TLT Acres
Lummi Island NRCA, Whatcom County	671	671	100%
Merrill Lake NRCA, Cowlitz County	114	114	100%
Middle Fork Snoqualmie NRCA, King County	9,026	9,198	98%
Mima Mounds NAP, Thurston County	179	637	28%
Monte Cristo NAP, Klickitat County	1,151	1,151	100%
Morning Star NRCA, Snohomish County	37,842	37,842	100%
Mount Si NRCA, King County	9,628	13,735	70%
Selah Cliffs NAP, Yakima County	176	301	58%
Shipwreck Point NRCA, Clallam County	472	472	100%
Skagit Bald Eagle NAP, Skagit County	1,546	1,546	100%
South Nemah NRCA, Pacific County	2,440	2,440	100%
South Nolan NRCA, Jefferson County	213	213	100%
Stavis NRCA, Kitsap County	1,652	2,996	55%
Table Mountain NRCA, Skamania County	2,197	2,837	77%
Tahoma Forest NRCA, Lewis County	230	230	100%
Teal Slough NRCA, Pacific County	8	8	100%
Trombetta Canyon NRCA, Stevens County	760	760	100%
Trout Lake NAP, Klickitat County	683	1,733	39%
West Tiger Mountain NRCA, King County	3,597	3,914	92%
White Salmon Oak NRCA, Klickitat County	236	551	43%
Willapa Divide NAP, Pacific County	315	587	54%
<b>TOTAL</b>	<b>90,494</b>	<b>112,369</b>	

Since the TLT tool was adopted in 1989, DNR has purchased 55,546 acres of replacement lands that produce revenue for trust beneficiaries. Although the majority of replacement lands have been forested, DNR also has acquired non-forested lands for dryland or irrigated agriculture and other uses. Table 4 shows the number and type of acres of replacement lands acquired since 1989.

**Table 4. Replacement land transactions, 1989 to 2019**

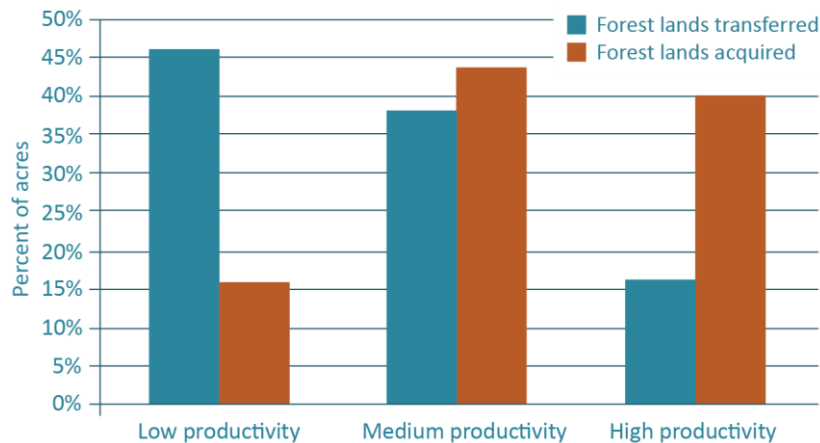
In Asotin, Benton, Clallam, Clark, Cowlitz, Franklin, Garfield, Grant, Grays Harbor, Jefferson, King, Kitsap, Lewis, Mason, Okanogan, Pacific, Pierce, Skagit, Snohomish, Thurston, Wahkiakum, Whatcom, and Whitman counties

Use	Cost	Acres
Forestry	\$80,930,260	46,205
Agriculture (dryland and irrigated)	\$33,878,606	9,328
Commercial real estate	\$17,137,505	10
Urban/rural	\$20,000	4
<b>TOTAL</b>	<b>\$131,966,371*</b>	<b>55,546</b>

\*Includes interest earned on balance

For forested parcels, DNR targets productive lands that are manageable and in close proximity to blocks of existing state trust lands. DNR also targets lands that have young trees and legal access for management to maximize the potential future income from those lands. An analysis of the soil productivity of transferred versus acquired forest lands between 2003 and 2013 shows that acquired lands often are more productive than the lands that were transferred.

**Figure 2. Comparison of site productivity on transferred and acquired lands, 2003 to 2013**



In summary, \$738,787,445 of the \$882,685,000 provided by the Legislature over the past 32 years has passed through DNR to the Common School Construction Account. Of the total appropriation, \$128 million has gone to the Real Property Replacement Account to acquire replacement lands.

## Challenges With the Current TLT Tool

The 2021 budget proviso (SHB 1080 Sec. 3333) is an ideal opportunity to take a step back, assess the TLT tool as a whole, and determine how it needs to change to place it on a secure and prosperous path for the future. Following are the major challenges that need to be addressed in this process.

### *Additional Funding is Needed for Replacement Lands*

Currently, only the bare-land value of the transferred parcel is provided to purchase replacement lands. Because bare land is seldom available for purchase, DNR must purchase fewer acres of higher-value land. Over the past 32 years, DNR has purchased only 55,546 acres of replacement lands for the 125,968 acres of state trust lands it has transferred out of trust status.

### *Implementation of TLTs Should be More Transparent and Consistent*

Most of the current TLT process is not captured in statutes or DNR planning documents. Instead, direction for implementing TLTs primarily comes from provisos in the biennial State Budget.

This lack of documentation can provide some flexibility for TLTs, but it also makes the TLT process less transparent to trust beneficiaries, stakeholders, Tribes, state agencies, and others.

It also makes the tool less consistent. For example, the 1989 budget proviso specified a timber-to-land-value ratio of 92 to 8. In the 1991 proviso, the ratio was 85 to 15, in 2019 it was 80 to 20, and the most recent provisos have no ratio at all. Similarly, some provisos have included a cap on the percentage of the appropriation that can be used for administrative costs, and other provisos have not.

### ***Timber-to-Land-Value Ratios Limit the Tool’s Flexibility***

Timber-to-land-value ratios can make it difficult to transfer properties that are non-forested, have lower timber value, or have high bare-land value due to their proximity to urban areas. As such, these ratios make the TLT tool far less flexible for managing the state trust lands portfolio.

Meeting the ratio can be difficult. As an example, Table 5 shows the estimated timber and land value of the four parcels listed in the most recent budget proviso (SHB 1080 Sec. 3333). The combined value of all the properties on this list is only 66 percent timber to 34 percent bare land.

**Table 5. Timber and land values on four TLT parcels**

TLT parcel	County	Acres	Estimated timber value	Estimated land value	Estimated total value	Timber value as percent of total value
Eglon	Kitsap	640	\$3,350,000	\$3,150,000	\$6,500,000	52%
Blakely Island	San Juan	185	\$1,000,000	\$1,500,000	\$2,500,000	40%
Devil’s Lake	Jefferson	370	\$4,100,000	\$1,500,000	\$5,200,000	79%
Morningstar	Snohomish	1,090	\$3,040,000	\$160,000	\$3,200,000	95%
<b>Total</b>			<b>\$11,490,000</b>	<b>\$6,310,000</b>	<b>\$17,400,000</b>	<b>66%</b>

### ***Non-Common School Trust Parcels Require an Inter-trust Exchange***

Only Common School Trust parcels can be transferred out of trust status using the current TLT tool. For that reason, any non-Common School Trust parcel nominated for TLT must first become a Common School Trust parcel through an inter-trust exchange.

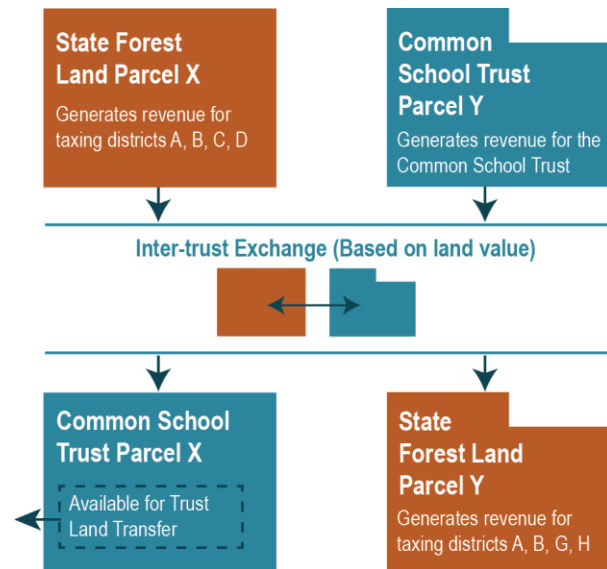
Figure 3 illustrates this process for a State Forest Lands parcel (as an example). The process would be the same for any type of non-Common School Trust land.



To begin the exchange process, DNR first identifies a Common School Trust parcel that is equivalent in value to the State Forest Land parcel it wishes to transfer with the TLT tool. Then DNR exchanges the trust designations of these two parcels (Figure 3). Through this exchange, the Common School Trust parcel becomes a State Forest Land parcel that will earn revenue for that trust. The State Forest Land parcel becomes a Common School Trust parcel that can be transferred out of trust status using the TLT tool.

Aside from being difficult and time consuming, inter-trust exchanges have two significant implications. First, although the two parcels being exchanged must be equivalent in value, they do not have to be equivalent in acres. Second, exchanges involving State Forest Lands can affect revenue for county taxing districts. Counties distribute revenue from State Forest Lands to specific taxing districts according to the general tax distribution by tax area codes<sup>9</sup>. Taxing districts can lose revenue when the State Forest Land parcel within their tax area code becomes Common School Trust, and the Common School Trust parcel that becomes State Forest Land is located in a different tax area code. For these reasons, inter-trust exchanges are a significant limitation for the current TLT tool.

Figure 3. Inter-trust exchange process



### Additional Funding is Needed for Administration

Under past budget provisos, DNR has been allowed to use a portion of the allocation for authorized activities including “the actual cost of appraisals, staff time, environmental reviews, surveys, and other similar costs” (SHB 1102, Section 3281). Although it differs from one proviso to the next, the most recent cap was 1.9 percent of the appropriation. This amount often is insufficient to cover administrative costs, so DNR must draw on funds that are needed for other trust management needs.

## Why Revitalization Matters

Now more than ever, DNR needs an effective TLT tool to help it manage state trust lands amid rapid population growth, changing social values, forest health issues, a warming climate, and other current and future challenges.

A revitalized TLT tool can play an important role in current and future initiatives that are designed to address these challenges. For example, the [Trust Land Performance Initiative](#) aims to transform the way

<sup>9</sup> [RCW 79.64.110](#)

DNR manages state trust lands, ultimately to increase the amount and reliability of revenue DNR provides to trust beneficiaries<sup>10</sup>. This initiative includes goals for diversifying and expanding the trust land portfolio, and for addressing evolving social expectations and needs for state trust lands. In another example, the Keeping Washington Evergreen initiative is meant to improve forest health and resilience, conserve critical habitat, protect the livelihoods and character associated with the working forests across the state, and ensure that future generations continue to recognize Washington as “the Evergreen State.”

This initiative includes a goal to conserve one million acres of working forest (refer to Appendix C for more information on this initiative). The framework for the new TLT tool is designed to be flexible enough to meet these and other needs.



**An eastern Washington forest that has been thinned to improve forest health**

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<sup>10</sup> DNR recently summarized this initiative in its 2021 report to the Legislature, [\*Charting a Course for the Future: the Trust Land Performance Assessment\*](#).



## Part 2: Framework for a New TLT Tool

In this part of the report, DNR presents the framework for a new TLT tool. DNR also describes the process used to develop it.

### Shaping the New Framework

As mentioned in the introduction, DNR assembled a diverse work group in July 2021. Members include the following:

- Justin Allegro, Director, State Government Relations, The Nature Conservancy
- Angus Brodie, Deputy Supervisor for State Uplands, Department of Natural Resources
- Matt Comisky, Washington State Manager, American Forest Resource Council
- The Honorable Heidi Eisenhour, Commissioner, Jefferson County
- Jim Freeburg, Board Member, North Cascades Conservation Council
- The Honorable Rob Gelder, Commissioner, Kitsap County
- Peter Herzog, Assistant Director, Washington State Parks and Recreation Commission
- The Honorable Randy Johnson, Commissioner, Clallam County
- Randy Newman, Director, Office of Superintendent of Public Instruction
- Russ Pfeiffer-Hoyt, Chair, Trust Lands Advisory Committee, Washington State School Directors Association
- Cynthia Wilkerson, Lands Division Manager, Washington Department of Fish and Wildlife

DNR and the work group collaborated on building a framework for a new, stronger, revitalized TLT tool, which included a recommended process for the way TLT proposals are developed and implemented. The work took place in seven, four-hour meetings and two shorter meetings (two to three hours) during the summer and fall of 2021.

In the first two meetings, DNR provided a wealth of background information on state trust lands and DNR's land transaction tools, including the TLT tool. In the third meeting, DNR asked each group member to give a presentation on the key opportunities they identified for revitalizing the TLT tool. The fourth meeting featured a presentation by Dr. Karen A. Johnson, director of the Washington Office of Equity, on how to make the TLT process accessible to all communities. It also included a presentation from Kyle Guzlas and Ben Donatelle from the Washington State Recreation and Conservation Office. In their presentation, they described the grant processes overseen by their agency, including advisory committees, program and project eligibility, and proposal evaluation.

In the next six meetings, DNR and the workgroup developed a framework for a new, revitalized TLT tool. DNR first developed a preliminary, draft framework that was based very closely on the ideas and feedback received from the work group. The framework included 16 elements organized according to the major steps of the TLT process. During the meetings, DNR and the work group discussed each element in detail and revised them per member's comments. In the last two meetings, DNR took a vote on all framework elements to gauge the group's support for each element.

In the final meeting, DNR and the work group reviewed this legislative report and discussed the next steps in this process. One of those steps is to continue collaborating with a similar but expanded work group. To the expanded work group, DNR will invite all of the current work group members plus representatives of Tribes and overburdened communities and vulnerable populations. DNR also will invite others to join the expanded work group who have lived experiences, knowledge, and expertise that will help the work group complete its task. The expanded work group's task will be to work out the practical details that will transform this framework into a new, revitalized TLT tool.

The result of the productive, creative, and collaborative process with the work group is the framework presented in this section of the report. All elements received either unanimous or majority support from members attending the meeting. Concerns that were raised at the meeting were discussed and most will be further explored in the next phase of this project. Refer to Part 3 of this report for more information on next steps, and to Appendix A and [DNR's website](#) for more information on this process.

## Statement of Purpose

As part of this work, DNR and the work group came to consensus on a statement of purpose for the new TLT tool.

Initiated in 1989, and revised in 2021, Trust Land Transfer is an innovative tool for the Washington State Legislature, through the Department of Natural Resources (DNR), to address several trust land management needs. Specifically, this tool enables DNR to achieve the following:

- Transfer out of economically under-performing state trust lands and acquire funds to purchase replacement lands with higher long-term income producing potential; and
- Conserve lands that have high ecological or social values.

## Highlights of the TLT Framework

Following are brief highlights of key elements in the framework for a new TLT tool. Each of these elements will be explained in detail in this part of the report.

- **The TLT tool will be opened to state trust land parcels of any trust designation, land use type, size, or value<sup>11</sup>.** Social and ecological values and the challenges of under-performing state trust lands are not confined to any single land use type or trust designation. Opening the TLT tool to all of these lands will give DNR the flexibility it needs to effectively manage the state trust lands portfolio for the benefit of the trust beneficiaries. It also **reduces the need for inter-trust exchanges**, which means that most non-Common School Trust transfers will not affect the Common School Trust portfolio<sup>12</sup>.
- Currently, the majority of the TLT appropriation is directed to the Common School Construction Account, and only a small portion is re-invested in the state trust lands portfolio. Under the new TLT tool, **all of the TLT legislative appropriation will be reinvested in the state trust lands portfolio to help build its capacity to provide long-term, sustainable revenue to the trust beneficiaries, including distributions to the Common School Construction Account.** Specifically, the *entire* appropriation will be directed to the Real Property Replacement Account and a new Land Bank account, which DNR will request that the Legislature establish with the Washington State Treasury. Funds in both accounts will be used to purchase replacement lands. This proposed change is meant to **increase revenue generation for trust beneficiaries, including the Common School Trust**, over the long term by investing in productive state trust lands<sup>13</sup>.
- The new framework features **a three-step approval process**. First, DNR will make an initial determination of eligibility to ensure the transfer is in the best interests of trust beneficiaries, and that a willing receiving entity (public agency, Tribe, or DNR's Natural Areas Program) is identified to accept the transferred property. Tribal consultation will occur after DNR has determined the transfer is in the best interests of the trust beneficiaries, but *before* DNR sends the list of parcels to the advisory committee for evaluation and prioritization. Second, a newly-established advisory committee will evaluate and prioritize the eligible transfers according to standardized evaluation criteria. Third, the Board of Natural Resources will approve the final parcel list. This thoughtful, structured process will help ensure each transfer meets the needs

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<sup>11</sup> Opening TLT to all trusts may require statutory change. It also will require innovative solutions for mitigating the potential impacts of State Forest Land TLTs on county taxing districts.

<sup>12</sup> Inter-trust exchanges will not be eliminated. However, they will not be required for TLTs involving non-Common School Trust parcels.

<sup>13</sup> Changes to the appropriation of the legislative appropriation and development of the new Land Bank account may require statutory change.

of the trust beneficiaries, receiving entities, Tribes, stakeholders, and the people of Washington.

- In addition to representatives of trust beneficiaries, county taxing districts, conservation organizations, the forest industry, public agencies, and Tribes, **DNR will invite representatives of overburdened communities and vulnerable populations<sup>14</sup> to participate in the advisory committee** to make TLT more inclusive and equitable.
- The **advisory committee will use standardized criteria to evaluate and prioritize the parcels.** Having standardized criteria will make the TLT process more consistent and transparent. The standardized evaluation criteria will be approved by the Board of Natural Resources.
- **Information about TLT, including the eligibility and evaluation criteria and approval process, will be posted on new webpages within DNR's website.** Making this information easily accessible in a central location will make the TLT process easier to implement consistently and far more transparent.
- DNR will **report to the Board of Natural Resources** every two years. The report will include the properties transferred and acquired by trust and county.

## Discussion of Framework Elements

Following is a detailed discussion of each element of the framework. This section of the report is organized according to the major steps of the TLT process:

1. **Application and determination of eligibility:** Submittal of applications and DNR's determination of whether the proposed parcels are eligible for TLT, based on the best interests of the trust beneficiaries.
2. **Evaluation and prioritization:** Tribal consultation on all parcels that DNR has determined are in the best interests of the trust beneficiaries; Tribal consultation will occur *before* the list is sent to the advisory committee. Presentation of eligible parcels to an advisory committee, and the advisory committee's evaluation and ranking of the parcels into a prioritized list.
3. **Board approval and legislative funding:** Submittal of the advisory committee's prioritized list to the Board of Natural Resources for consideration and approval, submittal of approved list to the Legislature for funding, and the Legislature's funding of all or a portion of the prioritized list.

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<sup>14</sup> Overburdened community" means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to, highly impacted communities as defined in RCW 19.405.020 ([ESSSB 5441](#) Sec. 2 (11)). "Vulnerable populations" means population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms (ESSSB 5441 Sec. 2 (14)).

4. **Transfer of parcel and allocation of legislative appropriation:** Final approval from the Board of Natural Resources for each individual, funded parcel on the final prioritized list; transfer of funded parcels to the receiving public agency; and allocation of the legislative appropriation to the Real Property Replacement Account and a proposed Land Bank account for the purchase of replacement state trust lands.
5. **Tracking and reporting:** Reports to the Board of Natural Resources every two years on parcels transferred and acquired through TLTs.

Steps 1 through 3 constitute a key part of this proposal, which is to have an approval process involving DNR, an advisory committee, and the Board of Natural Resources. Each of these steps will be explained in this section.

Topics identified for further discussion with the expanded work group will be discussed in Part 3 of this report.

### ***Step 1: Application and Determination of Eligibility***

#### **► Where Will the TLT Tool be Documented?**

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DNR will document the TLT tool on new webpages within DNR’s website. Information on the new webpages will include the following:

- A statement of the tool’s purpose
- A description of the tool and how it works
- Information about past TLT transfers
- Information about committees, such as the proposed TLT advisory committee
- Information about eligibility and the criteria and process used to evaluate, select, and prioritize parcels nominated for TLT
- Links to application forms
- Application deadlines and timelines for evaluation, prioritization, and approval of transfers
- Information on how members of the public can get involved in TLTs
- Other relevant information

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#### ***Discussion***

DNR and the work group identified a clear need to make the TLT tool both transparent and consistent, which can be achieved by creating a new, well-crafted process; capturing the process in writing; and making that information easily available to trust beneficiaries, stakeholders, Tribes, and the general public through DNR’s website. Having a clear, documented process also should make TLTs easier to plan and implement. **All work group members present supported this element and no one opposed it.**

### ► Who can Nominate Parcels?

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Anyone can nominate a state trust lands parcel for TLT, including DNR staff; citizens; cities; counties; towns; Tribes; non-profit organizations; special purpose districts, public development authorities or other political subdivisions of the state; and state and federal agencies.

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#### **Discussion**

Anyone can nominate a parcel under the current TLT tool. The work group decided to keep this element as part of the new tool.

The majority of work group members present supported this element and no one opposed it. A minority (one member) was concerned that DNR may be giving up a portion of its trust management duties by allowing anyone to nominate a parcel.

### ► Which Parcels can be Nominated?

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**Receiving agency:** To be nominated, each parcel must have a willing entity (a public agency, Tribe, or DNR’s Natural Areas Program) identified to receive and manage it. In addition, the application must include confirmation that the public agency, Tribe, or DNR’s Natural Areas Program is willing to receive the parcel and has the ability and financial capability to manage it. The application also must include a statement of intent for how the parcel will be managed by the recipient.

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#### **Discussion**

Any transfer must have a willing receiving entity in order to succeed. This consideration is important enough to be included in the eligibility criteria.

One member questioned whether it was necessary to specify “financial capability” since the ability to manage a parcel implies having the funds to do so. After discussion, work group members agreed it was necessary to specify financial capability. However, financial capability may mean different things for different entities. Some entities may have the funds to manage the parcel now. Others may have the ability to raise the funds or rely on volunteer help. And some may be in the process of securing funding or relying on funding they will receive in the future. All work group members present supported this element and no one opposed it.

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**Size and value:** Parcels submitted for TLT can be of any acreage or value. However, any parcel over 9,000 acres or \$30 million in value requires a pre-eligibility consultation with the applicant, the receiving entity (public agency, Tribe, or DNR’s Natural Areas Program), and DNR. This consultation must take place at least three months prior to the application deadline.

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### **Discussion**

The current tool does not include any limits on the size or value of the parcel to be transferred. To maintain the flexibility of the tool, DNR and the work group agreed not to impose new restrictions.

The pre-application meeting for large transfers ensures that the unique challenges and issues of these transfers are discussed before the application is submitted. The threshold was based on past transfers, which historically have been smaller than 9,000 acres and less than \$30 million. One member felt these limits should be lower, but ultimately **all work group members present supported this element and no one opposed it.**

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**Land use type:** Parcels submitted for consideration can be of any land use type.

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### **Discussion**

The current TLT tool does not explicitly limit transfers to forested lands. However, as discussed in Part 1, specific timber-to-land-value ratios have made it difficult to transfer parcels that had lower value timber, were non-forested, or had high bare-land value.

This element eliminates the timber-to-land-value ratio and opens TLTs to state trust land parcels of any land use type. **All work group members present supported this element and no one opposed it.**

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**Trust designation:** Parcels submitted for consideration can have any trust designation, including any of the federally granted trusts and any State Forest Land trust. Parcels involving State Forest Lands may include a pre-application review of the proposed transfer from counties and affected taxing districts. Findings of this review will be considered as part of DNR's determination of eligibility.

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### **Discussion**

Currently, only Common School Trust lands can be transferred out of trust status with the TLT tool. Any non-Common School parcel nominated for TLT must become a Common School Trust parcel through an inter-trust exchange process before it can be transferred. This element opens the TLT tool to all trusts, which would reduce the need for an inter-trust exchange (these exchanges could still occur if they are in the best interests of the trusts).

**The majority of work group members present supported this element and no one opposed it.** However, work group members' support for this element is highly contingent upon finding solutions for mitigating the potential impacts of State Forest Land TLTs on county taxing districts, including loss of timber revenue and timber excise taxes. They strongly emphasized that this work is vital to the success of the new TLT tool. This topic is a priority to address in the next phase of this project.

Specific to the pre-application review, work group members liked the idea of working with counties and affected taxing districts early in the process to address their concerns. They also supported DNR considering the findings of this review in its determination of eligibility. Some members felt the meeting

should be required, while others felt it should not be required because it may not be necessary in all cases. After discussion, the work group decided not to require it.

A minority of the work group (two members) expressed additional concerns about the pre-application review. One member felt counties and affected taxing districts should have approval authority instead of just input at this meeting. Another member noted that decisions about a trust asset should be made by the trust manager (DNR) and the trust beneficiary, and felt there should be a robust process in place for this review.

### ► What Makes a Transfer Eligible for TLT?

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As a trust lands manager, DNR has specific fiduciary responsibilities to its trust beneficiaries regarding how state trust lands are managed (refer to Appendix B). DNR will evaluate each application to ensure each proposed transfer is in the best interests of the trusts and therefore eligible for TLT. As part of this analysis, DNR will consider the value of the property; the likely, future revenue potential of the proposed transfer; and other factors. Applicants may request a pre-application meeting with DNR to learn more about trust land management and fiduciary considerations. However, the actual decision on eligibility will be made through this formal DNR process, not in a pre-application meeting.

If a parcel is not eligible for transfer, DNR will communicate the rationale of why it is not eligible to the applicant, receiving entity (public agency, Tribe, or DNR's Natural Areas Program), advisory committee, and Board of Natural Resources. DNR's communication with the applicant could include a possible discussion on whether there are ways to change the proposal that could potentially make it eligible for TLT.

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### **Discussion**

Ensuring the transfer is in the best interests of the trusts is crucial to the success of this tool. The work group discussed options for where this evaluation should fall in the process, and ultimately placed it early in the process, before the parcels are evaluated and ranked by the advisory committee (under Step 2). It is DNR's responsibility, as a trust manager, to make this determination.

The current work group had a robust discussion on encumbrances and reversionary clauses that may be needed on transferred property deeds. For example, as part of the eligibility determination, DNR could identify possible encumbrances and reach out to receiving entities to determine if they could accept them. Development of these clauses would likely be an iterative process between DNR and the receiving entities during Step 4 of the TLT process, and would be unique to each parcel. The group also determined that after a parcel has been transferred, no further encumbrances or reversionary clauses should be added to the property deed, which means DNR must thoroughly evaluate each parcel's potential impacts on trust land management at the time of transfer. More clarification on this topic is needed. Discussions on encumbrances and reversionary clauses will continue with the expanded work group.

The majority of work group members present supported this element and no one opposed it. A minority of the work group (one member) questioned DNR's possible discussion with the applicant. Specifically, they questioned whether it was appropriate for DNR, as the trust land manager tasked with determining eligibility, to take an active role in shaping an application. They also questioned whether this action could result in an application moving forward that is not in the best interests of the trust beneficiaries.

After group discussion, the majority of the work group left DNR's possible discussion with the applicant in this element. An example discussed in the meeting was an application with several parcels that are eligible but one that is not. In this case, a possible discussion with the applicant could result in the removal of the ineligible parcel, which would enable the application to move forward. In addition, the consultation is optional, and DNR would not offer it if there was no workable solution for ensuring the transfer would be in the best interests of the trusts.

## Step 2: Evaluation and Prioritization

### ► Tribal Consultation

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DNR will conduct Tribal consultation on all applications that it considers eligible for TLTs. This consultation will occur *before* the eligible projects are sent to the advisory committee for evaluation and prioritization.

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### **Discussion**

Reaching out to Tribes on all proposed transfers is a priority for the revitalized TLT tool. The majority of work group members present supported this element and no one opposed it.

A minority of the work group (one member) expressed concern that the interests of the trusts would not be represented if DNR did not lead the consultation. Work group members agreed that DNR should lead the Tribal consultation because the consultation is a government-to-government communication. Members also expressed an interest in involving the receiving entity in the consultation, especially when the receiving entity is a state agency.

### ► Who will Evaluate and Prioritize Nominated Parcels?

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Eligible parcels will be evaluated and prioritized by an advisory committee. The committee will be similar in composition to the work group, but DNR also will invite representatives from Tribes, county taxing districts, and stakeholders who have not historically been included, such as representatives from overburdened communities and vulnerable populations.

Applicants with eligible parcels will prepare and give presentations to the advisory committee about how these parcels meet the evaluation criteria. The committee will then score the parcels according to

standardized evaluation criteria and rank the parcels into a prioritized list, which will be sent to the Board of Natural Resources for consideration and approval.

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### **Discussion**

DNR and the work group felt that it was highly appropriate and necessary for DNR to determine the eligibility of a parcel based on the best interests of the trusts, as that decision is a major part of DNR's fiduciary responsibilities as a trust manager. However, once the parcels are deemed eligible, it was appropriate for the nominated parcels to be evaluated and ranked by an advisory committee that includes people from outside DNR. The advisory committee will help make this process more transparent. **All work group members present supported this element and no one opposed it.** Work group members commented on how important it is for the advisory committee to hear the applicant's proposal in person (or in a virtual meeting).

### **► How will the Advisory Committee Evaluate and Rank Nominated Parcels?**

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The advisory committee will evaluate and rank nominated parcels using standardized evaluation criteria. To help inform their work, DNR will provide the committee the information it gathered to determine whether a parcel is eligible for TLT (refer to "What Makes a Parcel Eligible for Transfer" earlier in this section for more information).

The evaluation criteria will be developed by the expanded work group, which will shape them from the following list of topics. This list was agreed upon by the current work group, and is not presented in order of importance.

- How does the proposed transfer impact the local economy in the community where it is located? For example, how does it affect the tourism, forest products, shellfish, agricultural, or recreation industries?
- What are the social values associated with this parcel?
- Has Tribal consultation occurred?
- What is the conservation value of the parcel? Does it fit into landscape-level conservation?
- Are there open space or recreation values associated with the parcel?
- Is the proposed parcel at risk of conversion?
- Does the parcel conserve or restore the diversity of fish and wildlife species and their habitats?
- Does the parcel have additional sources of matching funds<sup>15</sup>, and if so, what are the sources? Is the receiving public agency participating in funding and to what extent? Can they contribute something other than funds? The advisory committee should consider equity and inclusion with these criteria, as some communities have more access to funding than others.

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<sup>15</sup> Matching funds will be considered, but not be required for a parcel to be selected.

- Has the transfer been examined to determine how it affects overburdened communities or vulnerable populations?
- Are there carbon or climate resilience considerations?
- Does the transfer have broad support?
- Are maintenance and operating funds for this parcel available to the receiving public agency?
- Are there fire risk or forest health considerations?
- Is replacement lands of equal or greater value available, especially for State Forest Lands?

The final criteria will be submitted to the Board of Natural Resources for their approval. Any subsequent changes to the criteria also will require the Board's approval.

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### ***Discussion***

Having a standardized list of criteria is absolutely crucial to developing an understandable, repeatable, transparent TLT tool. To further increase transparency, this criteria will be posted on new webpages within DNR's website. All work group members supported this element and no one opposed it. Development of the criteria is a key task for the next phase of this project (refer to Part 3 of this report).

## ***Step 3: Board Approval and Legislative Funding***

### **► Final Approval and Submittal to the Legislature**

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Once the advisory committee has evaluated and ranked the parcels into a prioritized list, DNR will present the list to the Board of Natural Resources. Approval will be a two-step process. DNR will present the list in the first meeting, but will not request a decision until the next meeting. The Board has the authority to remove parcels from the list; however, in order to uphold the advisory committee's evaluation and prioritization, DNR will recommend that the Board not reprioritize the list.

After the Board has made its final decision, DNR will submit the list to the Legislature as a legislative budget request. The request will include funds needed to cover staff time and other administrative expenses.

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### ***Discussion***

The proposed two-step process with the Board will give members more time to understand the proposed transfers and ask questions before coming to a decision.

Requesting legislative funds for DNR staff time and other administrative expenses is extremely important, because it will help ensure that DNR can administer this tool without drawing on funds needed for other vital trust management needs. This funding is needed to maintain the webpages, evaluate applications, administer the advisory committee, track and report on transfers, and other tasks

as outlined in this framework, plus all the tasks associated with the transfer itself, such as appraisals and surveys. All work group members present supported this element and no one opposed it.

## ***Step 4: Transfer of Parcel and Allocation of Legislative Appropriation***

### **► Transfer of Parcel to Receiving Entity**

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DNR will use the legislative capital appropriation for the transfers. DNR will conduct a formal appraisal of each parcel, request approval of the transfer from the Board of Natural Resources, and complete the transfers per applicable RCWs<sup>16</sup>. Transfers will be conducted in accordance with the prioritized list to the extent possible, recognizing the complexity involved in real estate transactions.

Upon closing, the parcel will be transferred to the receiving public agency, and the corresponding land-replacement value will be transferred into the Real Property Replacement Account. The land-replacement value represents the bare-land value and average improvements on the land.

A new Land Bank account will be established with the Washington State Treasury, with a suggested maximum allowable balance of \$100 million. Any funds in excess of the land-replacement value will be placed in the new Land Bank account, up to \$100 million. Amounts in excess of \$100 million will be distributed to the trust beneficiaries.

Funding in these accounts will be used to purchase replacement lands on behalf of trust beneficiaries.

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### ***Discussion***

Currently, at the start of the biennium the estimated value of the timber on the transferred parcels is directed to the Common School Construction Account and the bare-land value is directed to the Real Property Replacement Account, to be used to purchase replacement land for the trust beneficiaries. Under the new tool, the entire TLT appropriation will be re-invested into the state trust lands portfolio, ultimately to increase long-term revenue to trust beneficiaries. Increasing revenue over the long-term was one of the primary challenges identified in the 2021 [Trust Lands Performance Assessment](#).

The appropriation will be allocated between two accounts (Figure 4). The land-replacement value (which represents both the bare-land value and the average improvements on the land) will go into the Real Property Replacement Account. Because bare land is seldom available for purchase, this change will significantly enhance DNR's ability to purchase productive replacement lands.

Replacement land typically has a lower value than the lands DNR transfers through the TLT tool, because the replacement land usually has fewer land improvements. Any funds in excess of the land-

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<sup>16</sup> [RCW 79.17.010](#), [RCW 79.17.200](#)

replacement value will go to a new Land Bank account (Figure 4). DNR will ask the Legislature to establish this account with the Washington State Treasury.

Established in 1977, the Land Bank<sup>17</sup> is a mechanism to purchase and sell state trust lands without diminishing the corpus (body) of the trust. The Land Bank is essentially a holding area for desirable properties waiting to become trust lands, and former trust lands waiting to be sold. To use the Land Bank, DNR must first purchase replacement property and place it in the bank. DNR also must place the lands it wishes to sell in the bank. Then DNR exchanges the trust designation of the two parcels. After this exchange is complete, the purchased land is state trust land and the other parcel has no trust designation and can be sold at public auction (Figure 5). The exchanges must be of equal value. For State Forest Lands, the replacement land must be in the same county. The lands being auctioned must be sold for at least fair market value.

The funds that DNR deposits in the Land Bank account would remain in the account until needed for a land purchase. An initial suggestion is to cap the amount at \$100 million, and to distribute any funds in excess of this amount to trust beneficiaries. The cap is based on the history of the Real Property Replacement Account and the property market for forest and agricultural lands, which can include property values as high as \$50 million for forested and agricultural properties.

The funds in the land bank account would be used to purchase desirable state trust lands with high potential to generate revenue for trust beneficiaries.

Once the land is purchased, it would be placed in the Land Bank, and DNR would exchange it for an underperforming state trust land parcel it wishes to sell at public auction.

The purpose of this new Land Bank account is to make DNR more nimble in the property market. The real estate market can be fast paced, and having funds on hand to purchase desirable properties will enable DNR to take advantage of new purchase opportunities. This account supports a major need that

Figure 4. Distribution changes

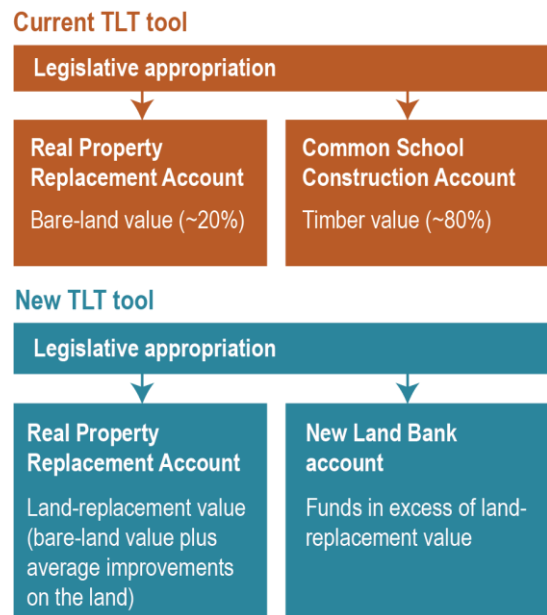
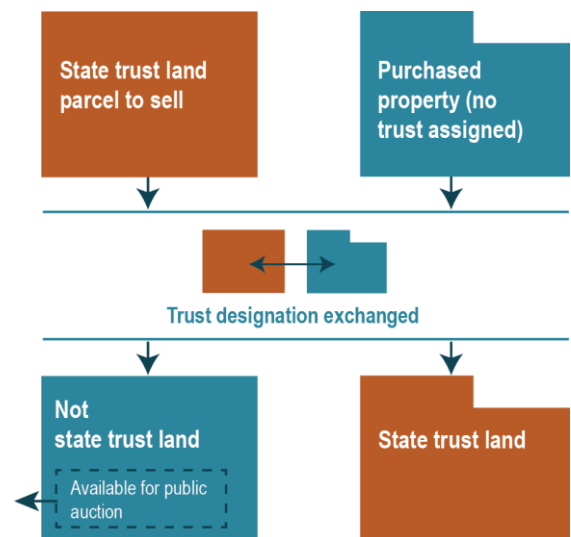


Figure 5. The Land Bank



<sup>17</sup> [Chapter 79.19 RCW](#)

DNR identified in its Trust Lands Performance Assessment, which was to have a new source of capital to purchase desirable properties and ultimately increase the revenue-generating potential of the state trust lands portfolio. Having both a Land Bank account and a source of funding for that account (through TLT) will greatly enhance DNR's ability to use the Land Bank effectively. Establishing this account would require statutory change.

The majority of work group members present supported this element and no work group members opposed it. A minority (one member) needed more time to understand this element, which will be developed more fully in the next phase of this project. Refer to Part 3 of this report for more information.

### ***Step 5: Tracking and Reporting***

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DNR will report to the Board of Natural Resources every two years on TLTs. The report will include the properties transferred and acquired by trust and county. For reported properties, DNR will describe their asset type (forest, agriculture, etc.), value, and acres.

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#### ***Discussion***

The majority of the work group members present supported this element and no one opposed it. A minority (two members) noted that more work needs to be done to develop it. Refer to Part 3 of this report for more information.





## Part 3: Next Steps and Conclusion

The next phase of this project is to develop the framework into a strong, new, revitalized TLT tool. To accomplish this, DNR will continue collaborating with a similar but expanded work group. To this work group, DNR will invite all of the current work group members, Tribal representatives, and representatives of overburdened communities and vulnerable populations. DNR also will invite others who have lived experiences, knowledge, and expertise that will help the extended work group complete its task. DNR will establish the expanded work group this fall or winter, and plans to schedule work group meetings beginning in January and running through the end of May, 2022. DNR also will continue outreach to Tribes and public engagement throughout this phase of the project.

### Topics for Further Exploration

During development of the framework, work group members identified specific topics that the expanded work group must address in the next phase of this project. Following is a description of each of these topics. Other topics likely will be identified and addressed throughout this phase of work.

#### *Potential Impacts to County Taxing Districts*

One of the most important topics for the expanded work group is how to address the potential impacts of State Forest Land TLTs on county taxing districts. As discussed in Part 1, counties distribute revenue from State Forest Lands to specific taxing districts according to the general tax distribution by tax area codes<sup>18</sup>. When DNR exchanges State Forest Lands, taxing districts can lose revenue unless DNR can replace the transferred land with a parcel that is located in the same tax area code. At times, finding such parcels can be difficult to impossible.

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<sup>18</sup> [RCW 79.64.110](#)

This challenge exists whether DNR must perform an inter-trust exchange, as required under the current TLT tool when a State Forest Land parcel is proposed for transfer, or whether it transfers State Forest Lands without an inter-trust exchange, which may occur under the new TLT tool (as noted earlier, inter-trust exchanges have not been eliminated, but will not be required for non-Common School Trust lands).

Following are three preliminary ideas the expanded work group could consider for addressing this challenge. All of these ideas would require statutory change:

- When a replacement parcel is located in a different tax area code than the parcel being transferred, counties could have the flexibility to assign the replacement parcel to the *affected* taxing district, or to the taxing district associated with the replacement parcel's tax area code. [RCW 79.64.110](#) allowed this flexibility between July 28, 2019, and June 30, 2020 only "to test county flexibility in distributing state forestland revenue...."
- Counties could be allowed to consolidate all the revenue collected from State Forest Lands associated with taxing districts, and then distribute revenue equitably to taxing districts based on acres, relative value, or other metrics per their discretion. Counties could be allowed to opt in or out of this program.
- The Legislature approved payment in lieu of taxes (PILT) for DNR-managed natural areas and community forest trust lands in 2005 and 2013, respectively<sup>19</sup>. PILT is paid once a year to the counties in which these areas are located, and the payments continue indefinitely at the discretion of the Legislature. One idea is to expand PILT to cover lands that are transferred to other state agencies.

The expanded work group will examine these and other ideas for revenue distribution and land replacement, for example whether or how the Land Bank might be used to address challenges with county taxing districts. The work group also will discuss how to address any additional, unintended consequences of transfers on county taxing districts. For example, TLTs could result in the loss of revenue from the timber excise tax. Note that opening the TLT tool to state trust lands of any trust designation may require statutory change.

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<sup>19</sup> Natural areas, [RCW 79.70.130](#) and [RCW 79.71.130](#); Community Forest Trust Lands, [RCW 79.155.140](#)

### ***DNR's Determination of Eligibility***

As part of Step 1, DNR will determine if a nominated parcel of state trust lands is eligible for TLT, based on whether the transfer is in the best interests of the trust beneficiaries. The expanded work group will explore the following topics for this element:

- How to make the eligibility determination more transparent for trust beneficiaries.
- Additional considerations that could be part of the eligibility determination, including but not limited to potential impacts on adjacent state trust lands, how the transfer will affect DNR's ability to meet the ecological goals of the *State Trust Lands Habitat Conservation Plan*, potential impacts on county taxing districts, and whether TLT is the most appropriate tool for a nominated parcel.

### ***Advisory Committee***

As stated in Part 2, the advisory committee will include representatives of trust beneficiaries, county taxing districts, conservation organizations, the forest industry, and public agencies, and DNR also will invite Tribes and stakeholders who have not historically been included, such as representatives from overburdened communities and vulnerable populations. The expanded work group needs to determine the exact membership and size of the advisory committee and develop a process for the committee to follow.

### ***Development of Evaluation Criteria***

Further work is needed to develop the topics in the proposed framework into evaluation criteria. For example, the expanded work group will discuss whether the criteria should be weighted and if they should be qualitative, quantitative, or a combination of both.

### ***Land Bank Account and Allocation of the Appropriation***

As explained in Part 3, the new TLT tool includes proposed changes to how the TLT legislative appropriation is allocated. Instead of directing a portion of the appropriation to the Common School Construction Account, the entire TLT legislative appropriation would be directed to the Real Property Replacement Account and a new Land Bank account, which would be established with the Washington State Treasury. These concepts need to be developed further and likely will require statutory changes.

### ***Administrative Funding***

Currently, DNR utilizes approximately 1.9 percent of the appropriation to cover administrative costs. As noted in Part 1, this amount is often insufficient, so DNR must draw on funds that are needed for other

trust management needs. The work group's preliminary recommendation is for DNR to include administrative costs in the legislative budget request. This funding is needed to maintain the webpages, evaluate applications, administer the advisory committee, track and report on transfers, and other tasks outlined in this framework, plus all the tasks associated with the transfer itself, such as appraisals and surveys. Discussion on this topic will continue with the expanded work group.

### ***Tracking and Reporting***

The expanded work group will explore the type of information that DNR tracks and reports to the Legislature. For example, work group members expressed an interest in capturing whether replacement lands increase the revenue-generating potential of the portfolio, and whether the replacement property is of equal or higher value than the transferred property. DNR may need to build the capacity to address these ideas.

### ***Other Considerations***

The current work group identified two potential, additional ideas for further exploration: DNR's development of a workbook or manual for the TLT tool that would be reviewed each biennium, and posting signs on natural areas indicating they were fully or partially established through TLTs. Another topic that needs more discussion is the content and design of the proposed TLT webpage.

## **Conclusion**

DNR greatly appreciates the hard work, engagement, and commitment shown by each of the work group members in developing this framework for a new TLT tool. Work group members were highly engaged and offered many productive and innovative suggestions on a wide range of topics. They were also generous with their time, not only participating in seven, four-hour workshops but agreeing to two additional workshops at short notice. Development of this solid TLT framework would not have happened without their support and time over this past summer and fall.

With its well-considered, equitable, documented, and transparent process, its greater flexibility, and its increased capital for purchasing replacement lands, plus the refinements that will be made in the next phase of the project, DNR is confident that the new TLT tool will meet the needs of today and the challenges of the future. DNR looks forward to completing this work in close cooperation with the expanded work group.

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# Appendix A: Work Group Process

## Work Group Membership

As part of the 2021-23 Capital Budget, the Washington State Legislature directed the Washington State Department of Natural Resources (DNR) to convene a work group to develop a framework for a new Trust Land Transfer (TLT) tool:

*(1) The department of natural resources shall convene a work group of trust land beneficiaries and stakeholders to develop a recommended process for the way trust land transfer proposals are developed and implemented. Consideration should be made for increasing the income value of the trusts, limiting impacts to trust lands not being considered for transfer, conservation value of lands that are a potential candidate for transfer, and use of the land bank for securing repositioned land that would result from any transferred projects, and any other items necessary for a well-supported program. (SHB 1080 Sec. 3333).*

The work group was convened in July, 2021 and consisted of the following members:

- Justin Allegro, Director, State Government Relations, The Nature Conservancy
- Angus Brodie, Deputy Supervisor for State Uplands, Department of Natural Resources
- Matt Comisky, Washington State Manager, American Forest Resource Council
- The Honorable Heidi Eisenhour, Commissioner, Jefferson County
- Jim Freeburg, Board Member, North Cascades Conservation Council
- The Honorable Rob Gelder, Commissioner, Kitsap County
- Peter Herzog, Assistant Director, Washington State Parks and Recreation Commission
- The Honorable Randy Johnson, Commissioner, Clallam County
- Randy Newman, Director, Office of Superintendent of Public Instruction
- Russ Pfeiffer-Hoyt, Chair, Trust Lands Advisory Committee, Washington State School Directors Association
- Cynthia Wilkerson, Lands Division Manager, Washington Department of Fish and Wildlife

## Work Group Meetings

Between July, 2021 and October, 2021, the work group attended a total of nine meetings. Following is a brief summary of each meeting. All meetings were held over Zoom due to the ongoing COVID-19 pandemic and were open to the public. DNR also posted information on the work group on its [website](#), such as agendas, presentations, meeting notes, and meeting recordings.

### ***Meeting 1, Friday, July 9, 2021, 8 to 11 a.m.***

In this introductory meeting, DNR explained the task that the work group would complete and the process they would use to do so. The group reviewed the project charter and timeline and listened to a presentation in which DNR described the TLT tool and its key complexities and challenges.

### ***Meeting 2, Wednesday, July 28, 2021, 8 a.m. to 12 p.m.***

In this second meeting, DNR provided background information that the work group needed to develop recommendations. DNR first provided more information on the types of state trust lands. DNR then described its current land transaction tools, including direct transfer, re-conveyance, public auction, the TLT tool, land purchase, land exchange, and the Land Bank, including how these tools work and which tools are used with which types of state trust lands. DNR also provided two TLT case studies to help participants develop a deeper understanding of the TLT tool.

### ***Meeting 3, Friday, August 6, 2021, 12 to 4 p.m.***

In this meeting, work group members each provided a brief presentation in which they summarized the opportunities they perceived in revitalizing TLT. These presentations were a chance for work group members to understand the full range of opportunities from different perspectives, as a first step toward building consensus on a set of recommendations.

### ***Meeting 4, Monday, August 16, 2021, 9 a.m. to 1 p.m.***

This meeting featured a presentation by Dr. Karen A. Johnson, the director of the Washington Office of Equity. In her presentation, Dr. Johnson recommended reaching out, in as many ways as possible, to the groups of people who will be most impacted by TLTs so that their values and needs are understood and heard. She also provided recommendations on which groups to contact and how to make the TLT process accessible to all communities.

This meeting also included a presentation from Kyle Guzlas and Ben Donatelle from the Washington State Recreation and Conservation Office (RCO). In their presentation, they described the grant processes overseen by their agency, including advisory committees, program and project eligibility, and proposal evaluation. Work group members queried the speakers on a number of pertinent topics, such as how long it takes to develop a prioritized list of projects, whether the RCO participates in carbon markets, and how RCO incorporates diversity, equity, and inclusion into their process.

### ***Meeting 5, Thursday, September 2, 2021, 12 to 4 p.m.***

In this meeting, DNR staff presented a preliminary, draft framework for a new trust land transfer tool based on what the work group had presented and discussed in prior meetings. The purpose of this meeting was to gather as much feedback on the draft framework as possible.

The draft framework was based on the feedback DNR received over the past four meetings on how a new TLT tool should be structured. It also was based on the requirements listed in the budget proviso. The framework was structured around three key questions:

- How does a parcel get identified and put onto the TLT list?
- What criteria is used to evaluate and prioritize parcels that are on the TLT list?
- Who evaluates the parcels and prioritizes the TLT list?

Under each of these questions, DNR included 15 specific topics, such as trust responsibilities, legislative funding, timber-to-land-value ratios, and the approval process. An additional topic (transparency) was discussed in relation to all three questions. Over the course of the meeting, work group members discussed each of these topics in detail. Members also requested additional clarity on the Land Bank and how it fits into the draft framework.

### ***Meeting 6, Tuesday, September 14, 2021, 12 to 4 p.m.***

In this meeting, work group members discussed each element of the draft framework as the final step toward developing a recommendation for the TLT tool to submit to the Legislature.

Prior to this meeting, DNR refined the draft framework based on the discussion in Meeting 5. The revised framework was organized around the major steps of the TLT process, and each step was broken out into 16 elements. For example, the elements under “application and eligibility” included development of a webpage, who can nominate properties for TLTs, the size and land use type of properties to be nominated, whether a receiving public agency must be identified for each nominated parcel, whether or not the proposed parcel must be Common School Trust land, and the role of DNR in this process as the fiduciary manager of state trust lands.

Work group members engaged in a robust discussion of each element. At the end of each discussion, DNR noted the work group’s suggestions for each element. Although the work group supported some elements, more discussion was needed on other elements, such as whether to open TLTs to all land use types and trusts. Work group members agreed to reconvene in additional meetings to address these elements, committing more of their valuable time to this process.

### ***Meeting 6.5, September 24, 2021, 12:30 to 3:30 p.m and Meeting 6.75, September 30, 2021, 8:30 to 10:30 a.m.***

Work group members met with DNR in two additional meetings to continue discussions on the framework, including the modifications made based on the group’s discussions. In particular, these meetings were necessary to explore and understand DNR’s proposal for a new Land Bank account, and to discuss other remaining topics. At these meetings, DNR took a vote on all framework elements. Elements that needed further discussion with the expanded work group were noted in the framework.

### ***Meeting 7, October 29, 2021, 8 a.m. to 12 p.m.***

In this final meeting, the work group provided comments to DNR on this legislative report and discussed the next steps in the process, including the establishment of the expanded work group.

## **Public Webinars**

### ***August 11, 2021, 9:30 to 11 a.m. and November 10, 2021, 3 to 4 p.m.***

During the work group process, DNR held two public webinars. In the first webinar, representatives from DNR and two members of the work group (Matt Comisky, American Forest Resource Council Washington State Manager and the Honorable Heidi Eisenhour, Jefferson County Commissioner) described the TLT tool, the budget proviso, and the work that would be completed under the proviso by DNR and work group members. Attendees were provided with an opportunity to ask questions. After the webinar, DNR opened a portal on its website in which interested members of the public could provide comments. A summary of the comments and questions from the public webinar was shared with work group members at Meeting 5 on September 2, 2021. In the second webinar, DNR reviewed this legislative report.

## **Tribal Outreach**

On July 22, 2021, DNR held a meeting with Tribes to discuss the Trust Lands Performance Assessment (TLPA) and the TLT proviso. DNR staff described the TLT tool, the budget proviso, and the work that would be completed under the proviso by DNR and work group members. Staff answered a question on how work group members were chosen and asked the Tribes how they would like to be involved in both the TLPA and TLT proviso projects in the future. Tribal members expressed a strong interest in being involved and provided DNR with ways to contact and involve Tribal members.

DNR invited Tribes to have representatives on the work group itself, and will invite the Tribes to be part of the expanded work group and the advisory committee when it is formed.

Additional meetings were held on October 20<sup>th</sup> and 22<sup>nd</sup>. DNR will continue the conversation with the Tribes in the next phase of the project.



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## Appendix B. State Trust Lands and Trust Manager Responsibilities

State trust lands are lands held in trust and managed to generate revenue for specific trust beneficiaries. There are two categories. The first category is the federally granted lands, or State Lands,<sup>20</sup> which were granted to the state at statehood through the 1889 Enabling Act<sup>21</sup> as a means of support for various public institutions in the new state. The majority of state trust lands fall into this category. The federally granted lands support the following seven trusts, each of which is assigned acres on which revenue is generated.<sup>22</sup>

- **Common School Trust** (1,787,047 acres): Supports construction of public kindergarten through 12th grade schools.
- **Capital Building Trust** (109,510 acres): Supports state government office buildings.
- **University Trust** (89,051 acres): Supports the University of Washington.
- **Scientific School Trust** (84,177 acres): Supports Washington State University.
- **Charitable, Educational, Penal and Reformatory Institutions (CEP&RI) Trust** (71,624 acres): Supports institutions such as those managed by the Department of Social and Health Services, Department of Corrections, and University of Washington.
- **Agricultural School Trust** (71,148 acres): Supports Washington State University.
- **Normal School Trust** (66,786 acres): Supports Eastern Washington University, Central Washington University, Western Washington University, and The Evergreen State College.

The second category is State Forest Lands,<sup>23</sup> which themselves are separated into two categories:

- **The State Forest Transfer lands** (538,015 acres) were acquired by 21 counties in the 1920s and 1930s through tax foreclosures. Pursuant to state law,<sup>24</sup> most of these lands were transferred to the state of Washington and placed in trust status.
- **The State Forest Purchase lands** (79,384) were either purchased by the state, or acquired by the state as a gift.

The beneficiaries of State Forest Lands are the counties in which these lands reside. In most cases, counties distribute the revenue they receive from State Forest Lands according to the general tax

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<sup>20</sup> [RCW 79.02.010 \(15\)](#)

<sup>21</sup> 25 Stat. 676, chs. 180, 276–284

<sup>22</sup> For consistency with the assessment completed by Deloitte and Earth Economics, acres are based on DNR's June, 2018 GIS data.

<sup>23</sup> [79.22 RCW](#)

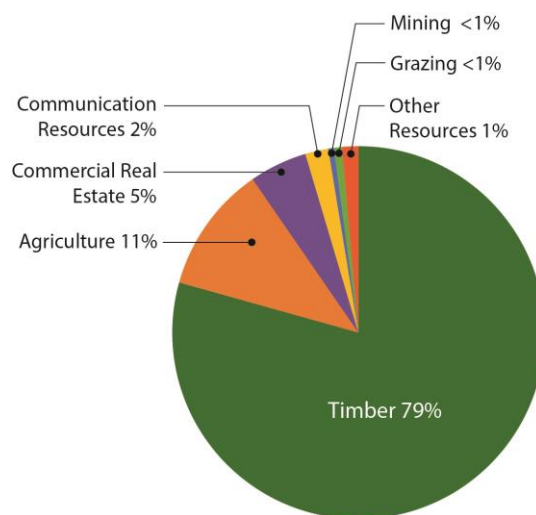
<sup>24</sup> [1935 c 126 § 1](#)

distribution by tax area codes. Examples of typical recipients include taxing districts such as state schools and county roads, as well as fire districts, cemeteries, emergency medical services, hospitals, ports, and libraries.

Revenue is generated from seven asset classes (Figure B-1). Each asset class consists of state trust lands on which revenue is generated from specific uses. The largest asset class is timber (2,056,507 acres). On these lands, revenue is generated through timber harvest. For the remaining six asset classes, DNR generates revenue through agreements (such as leases, permits, easements and land use licenses) for the following uses<sup>25</sup>:

- **Agriculture** (237,635 acres): Dryland and irrigated farms and orchards.
- **Grazing** (750,490 acres): Grazing of livestock.
- **Commercial real estate** (1,034 acres): Large retail outlets, single businesses, and small rural businesses; includes premise leases and ground leases.
- **Communication resources** (91 acres): Microwave antennas, emergency communication radio repeaters, private radio repeaters, and television (TV), radio, cellular, and digital telephone antennas.
- **Other resources** (530,202 acres): Solar and wind energy; special uses such as archery clubs, underground storage, golf courses, and research agreements; right-of-way access; and special forest products such as floral greens (for example, salal) and boughs.
- **Mining** (5,869 acres): Extraction of rock, sand, gravel, and minerals, plus prospecting leases.

**Figure B-1. Asset Classes and Percent of Gross Revenue Generated by Each**



State trust lands management is funded through a portion of the revenue generated on these lands. Revenue retained from the federally granted lands is placed into the Resource Management Cost Account (RMCA), and revenue retained from State Forest Lands is placed into the Forest Development Account (FDA). The Washington State Legislature sets the maximum percentage DNR may retain for the RMCA through RCW 79.64.040, and for the FDA through RCW 79.64.110. The Board of Natural Resources sets the actual percentage and adjusts it periodically.

<sup>25</sup> Some of the listed acres are counted more than once due to overlapping uses between asset classes.

At the time of this writing, each beneficiary of the federally granted lands receives 69 percent of the revenue earned from these lands and the remaining 31 percent goes to the RMCA. Revenue for beneficiaries is placed into accounts specific to each trust (such as permanent funds) and distributed according to the rules that govern each account.<sup>26</sup>

Beneficiaries of the State Forest Transfer Lands receive 75 percent of the revenue generated on these lands and the remaining 25 percent is placed into the FDA. On State Forest Purchase Lands, 50 percent of the revenue goes to the FDA, 25 percent goes to the state general fund, and 25 percent goes to the beneficiaries.

## What are the Trust Management Responsibilities of the Legislature and DNR?

The federally granted lands are held in trust pursuant to the Enabling Act and Washington Constitution. The Washington Supreme Court landmark decision in *County of Skamania v. State of Washington*, 102 Wn2d 127, 685 P.2d 576 (1984) clearly recognized that these are real, enforceable trusts that impose upon the State of Washington the same fiduciary duties applicable to private trustees. The Legislature created the State Forest Lands trust by statute and these lands are also governed by fiduciary principals. *Skamania* recognized that the Legislature's authority to enact statutes specific to the federally granted lands are constrained by the Enabling Act and Washington Constitution, and fiduciary principles. As a statutory trust, the State Forest Lands trust can be altered by the Legislature. However, *Skamania* held that as long as the statutory trust exists, statutes specific to these lands also are constrained by fiduciary principles. In other words, the State of Washington, acting through the Legislature, as the trustee of these asset classes, has fiduciary obligations to the beneficiaries in managing federally granted lands and State Forest Land trusts. The fiduciary obligations can be found in common law principles governing the administration of private trusts. These obligations include, but are not limited to, undivided loyalty to the trust beneficiaries to the exclusion of all other interests, exercise of reasonable care and skill in managing the trust, and impartiality. These obligations are further described in the formal opinion of the Attorney General (AGO 1996 No.11) and in *Skamania*.

The Legislature created DNR in 1957 and assigned to it many responsibilities with regard to state trust lands, including that of trust manager (RCW 43.30.010, RCW 43.30.030, RCW 43.30.215, RCW 79.02.010). In this role, DNR manages state trust lands on behalf of specific trust beneficiaries, consistent with federal and state law. In managing these lands, DNR must comply with laws of general applicability and follow the common law duties of a trustee. For example, DNR must administer the trust in accordance with the provisions that created it; maintain undivided loyalty to each of the trusts and its beneficiaries; manage trust assets prudently; make the trust property productive, while recognizing the

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<sup>26</sup> For more information, refer to the [DNR annual report](#).

perpetual nature of the trusts; deal impartially with beneficiaries; and reduce the risk of loss to the trusts.

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# Appendix C. Keeping Washington Evergreen Initiative Fact Sheet

## Keep Washington Evergreen: Restore, Conserve, Reforest

The Department of Natural Resources' (DNR) Keep Washington Evergreen initiative recognizes the need for bold action to tackle the multifaceted threats facing our forests, and responds with ambitious goals:

- 1 million acres of forest health restored,
- 1 million acres of working forest conserved, and
- 1 million acres reforested by 2040.

### *Restoration*

DNR's 20-Year Forest Health Strategic Plan already set the goal to restore 1.25 million acres of forest to healthy conditions by 2037. HB 1168 provided the critical funding necessary to tackle this problem and prevent future, catastrophic wildfires.

### *Conservation*

Between 2007 and 2019, Washington permanently lost almost 400,000 acres of forestland across the state. Forest conversion jeopardizes rural livelihoods and communities, creates greater fire risk to people and property in the wildland-urban interface, and threatens clean air and clean water. DNR will identify and prioritize our most critical forests, and harness the potential of carbon markets, other incentives, and assistance to small forest landowners to conserve 1 million acres of working forestland by 2040.

### *Reforestation*

With millions of acres of forest lost to wildfire and development, it is not enough to simply restore and protect the forests and tree cover that remain; we must be proactive in replanting. We will reforest 1 million acres across the state, including post-burn areas, as well as places that were once forested and could be so again. Furthermore, we will increase urban tree canopy cover, prioritizing our most vulnerable communities who are also least likely to have adequate tree cover.

***DNR proposes to:***

- Conduct environmental and economic analyses to identify and prioritize our most threatened forests, and our highest-priority areas for conservation and reforestation.
- Develop a strategic plan to meet the goals of 1 million acres of working forests conserved and 1 million acres reforested by 2040.
- Identify existing tools and incentive programs to achieve the goals, as well as gaps to be addressed.

By accomplishing these goals by 2040, DNR will build the necessary resilience in our forests and communities to mitigate and adapt to our changing climate, while maintaining our vital and sustainable forestry industry. DNR expects to work with diverse stakeholder groups to develop innovative and scientifically grounded approaches to solve the complex challenges of working forest conservation, and reforestation. Together, we will improve forest health, protect critical ecological values alongside the livelihoods and character provided by the working forests across our state, and ensure that future generations continue to recognize Washington as the Evergreen State.