

Trust Land Transfer Proviso Workgroup Meeting 6 September 9, 2021 12pm-4pm

Member	Attendance
Randy Newman	Present
Heidi Eisenhour	Present
Robert Gelder	Present
Jim Freeburg	Present
Justin Allegro	Present
Matt Comisky	Present
Cynthia Wilkerson	Present
Peter Herzog	Absent
Angus Brodie	Present
Russ Pfeiffer-Hoyt	Present
Randy Johnson	Present

DNR Staff Present:

- Lisa Anderson
- Kristen Ohlson-Kiehn
- Laurie Benson
- Tyson Thornburg
- Ralph Johnson
- Cathy Chauvin
- Cyndi Comfort
- Bob Winslow
- Dave Gordon

Workgroup Business

- Workgroup members agreed to record the meeting.
- Workgroup members tabled approval of the notes from TLT Workgroup Meeting 5 as some members had not had a chance to review the document.

Draft Process Framework

- Section A: The Agency will create a webpage explaining what the program is and how it works.

- A workgroup member said they don't see listed criteria of projects. They asked if DNR really wants to be the last step in being the gate-keeper for proposals, given that by that point proposals may already have advocates and momentum. They said initial criteria should be established for proposals or it would open up all trust lands at risk of being proposed for reasons other than ecological value.
 - DNR staff said this issue would be discussed under Section E.
 - The workgroup member said they felt like there wasn't any criteria for projects or limited eligibility for projects.
- A workgroup member said it would be helpful to have information on past projects on the TLT website. They said an important piece of transparency would be having clear signage on parcels that have gone through the TLT process.
 - Another workgroup member suggested a QR code for TLT signs.
- A workgroup member said a purpose statement for TLT should be published on the website to narrow the scope of the program to the conservation or ecological value of the parcel.
- Section B: The program is open to anyone (cities, counties, towns, tribes, non-profit organizations, citizens, special purpose districts, public development authorities or other political subdivisions of the state, state agencies) interested in submitted an application.
 - A workgroup member said DNR has a big role in putting forth projects from regions that aren't earning up to their full potential. They felt it was important to list DNR as an entity that proposes projects. They wanted to clarify that there is an expectation from DNR that the natural areas program should have input into the TLT parcels.
- Sections C (Projects can be of any size) and D (Projects can include any land use type):
 - A workgroup member said they don't see a purpose in including agricultural or commercial land in trust land transfer as they're already generating revenue and don't seem to meet the criteria of ecological value.
 - DNR staff said there are some lands that are labeled commercial land for zoning but they are actually forests. The workgroup member said the zoning may be different, but if they aren't natural lands they don't fit under TLT.
 - The workgroup member clarified that they consider cultivated or vineyard land agriculture, and that they don't consider grazing lands under agriculture.
 - A workgroup member said they were working under the assumption that forestland was a categorization of how DNR thinks about trust lands. They preferred that sections C and D stay as drafted by DNR so projects can be any size and any type of land. They don't believe there is a huge concern about a large number of proposals or a misuse of the property

because there must be a willing receiving agency (as noted in section E), which is a big hurdle for projects to cross and will weed out projects that are inappropriate for TLT.

- A workgroup member said they still want revenue to go to schools, and feel like the 80/20 rule conversation has not been resolved. They wanted to make sure there was a meatier conversation on the rule in section K.
- A workgroup member said there needed to be a better definition of size for section C, whether acreage or value.
- A workgroup member said the issue of the type of land needs to be nested in the overall goal of rebalancing the different values for the program. They said there are a lot of agricultural lands that may not be bringing in a lot of revenue and may have a higher value being managed for other use. The Department of Fish and Wildlife is looking at some parcels that are zoned as agricultural land that may have a higher value if there was different management of the land. They don't believe the type of land for proposals should be limited, but should be taken into consideration.
- A workgroup member said they supported keeping TLT open to all types of land, given that range land and commercial land may still have ecological values. They said there might need to be different criteria for inclusion and prioritization.
- A workgroup member said they didn't support allowing any size of parcel for TLT. They were trying to figure out how to put parameters that are rational and realistic for size limitations. They like the idea of looking at the history of TLT projects to find a good size limit. They don't want to create an environment where the DNR is spending a lot of time trying to vet unrealistic proposals. They think some criteria with acreage limits would help solve this problem.
- A workgroup member said they didn't think value should be considered under this section as a "type of land".
 - Another workgroup member said parcels considered for TLT should have limited revenue-generating capability and that has strong ecological value.
 - Another workgroup member said the value of the land should be discussed under section G instead of under section D.
- DNR staff said the largest historical TLT project was 9,000 acres, and the smallest was 4 acres. The single largest expenditures value for a project was about \$30million and the smallest was \$20,000.
- DNR staff asked if the workgroup was in general consensus with the recommendations in items A-D:
 - Project Size: Majority in agreement with DNR statement as written, minority believes there should be a limit on size.

- Projects Land Use: Majority support including a broad definition, minority said only lands that don't have high value for trusts should be eligible for TLT
 - Section E: Projects need to have a willing receiving public agency or tribe identified. The application will require confirmation that the receiving agency or tribe is willing to receive and has the funds and ability to manage the property.
 - A workgroup member asked if the group should consider recommending a provision that the property would be reverted back to the trust if the receiving agency is no longer able or willing to manage the property. They said fire and garbage are issues they were concerned about and said there might need to be standards of management to consider.
 - A workgroup member said they appreciate what is being proposed by DNR. The Recreation and Conservation Office grants have similar recommendations for receiving agencies. It's important to make sure receiving agencies have the capacity to manage lands before the land is transferred.
 - A workgroup member said the reversionary language could be problematic because of problems defining the trigger for when the property would be reverted. They asked if there was an expectation that a receiving agency would have some skin in the game, like a type of match that would establish a level of commitment to the long-term management of the property.
 - A workgroup member said if DNR is going to receive properties into their natural areas program then there needs to be an awareness about the ongoing maintenance costs for the property.
 - A workgroup member said they thought it was an interesting question about whether a funding match should be part of the criteria for evaluating properties. They wondered if that would make a disincentive to propose properties or may limit the ability of certain groups to propose properties if they can't afford a match. They also asked what would happen to the funds that were given to the real property replacement account if land was reverted.
 - A workgroup member said the purpose of the transfer is tied into the thoughts about reversionary rights. If a receiving entity decides to sell the land or use it to generate revenue that would not fit the intent of the transfer and the property should be reverted.
 - A workgroup member said the content of the "intent of use" statement from receiving agencies should be seen as an enforceable document and may be included on the deed of the rights.
 - A workgroup member said an encumbrance for public access is crucial. This was one of the most important issues raised by legislators. Another workgroup member said an encumbrance on use is critical to prevent receiving agencies from selling lands in the future.

- The majority of the group supported a requirement of intent of use for parcels from the receiving agency.
- Section F: Option 1-Projects can be submitted for lands of any trust designation (Common School, State Forestlands, Federally Granted trusts, ect). Option 2-Projects can be submitted for Common School trust lands only. Any proposals for trust lands other than Common School, including State Forestlands, would require an inter-trust exchange.
 - A workgroup member said the state constitution prohibits funding received from selling trust land from being put anywhere except the permanent fund, which prevents DNR from redirecting the funding back to beneficiaries. They said this problem means the inter-trust exchanges are the best options.
 - DNR staff said there are statutes that allow DNR to do a direct-transfer of land to public entities. In these cases, the funds from the property would go into the real property replacement account. The workgroup member said this only works for the Common School Trust because the constitution allows for funds related to that trust only to be deposited into the real property replacement account. DNR staff said they would look into the legal issues.
 - A workgroup member said they like option 1 for the purpose of simplifying the inter-trust exchange process. They were concerned about the effect on taxing districts under option 1 though. They said option 1 may take away funding for taxing districts. DNR staff said they felt that option 1 was neutral about how revenues are distributed to taxing districts, the option just states that any trust land can be eligible for TLT. The workgroup member said they still have concerns about the implications on junior taxing districts, especially for fire districts. They would like to see how Option 1 would affect junior taxing districts.
 - A workgroup member said they recognize that the existing system is cumbersome, but any system that involves the state forest trust is going to be cumbersome because of the state taxing districts. They said some parcels may not make sense for TLT because of the effect on junior taxing districts, and said a criteria about the effects on junior taxing districts could be considered for transfers, or a criteria that replacement lands be in the same taxing districts.
 - A workgroup member said it seemed like both options would be needed. They said their biggest concern was the ability of junior taxing districts to earn revenue. They said they know the group could figure out a way to make sure the junior taxing districts are taken care of and want to see proposals from DNR about how to make that happen.
 - A workgroup member said it might be helpful to have a set of principles for what TLT is trying to achieve. If a parcel fits the principles of TLT, but may have negative impacts on taxing districts, then DNR needs to figure out how to deal with those negative impacts.

- They also said there should be some kind of review and adaptation built into the TLT program so that if unintended consequences are discovered they can be fixed.
 - A workgroup member said they think the group needs to spend some time on the junior taxing district issue. They didn't understand how the land bank addressed the junior taxing district issue. They said a possible option is to build strong criteria into the process that ranks concerns about effects to junior taxing districts higher into the ranking criteria.
 - A workgroup member said there were negatives under both options for junior taxing districts. They said option 1 is going to force DNR to engage more with junior taxing districts and beneficiaries, but if the group goes with option 1 then there needs to be a full conversation about the funding from the legislature for the program. They said option 2 is more likely to be adopted by the legislature and create an easier path forward for the recommendations.
 - Four group members voted in favor of Option 1
 - Four group members voted in favor of Option 2
- Section G: DNR has a fiduciary obligation to its beneficiaries regarding how trust lands are managed. Project applications will be evaluated by DNR to ensure they are in the best interest of the trust and are therefore eligible.
 - A workgroup member asked if the Tribal consultation process was advisory or if they had the ability to eliminate proposals from the list. They also asked if there were any parameters or timelines on Tribal consultation given how much time the process could take. They also asked if there could be an iterative process where projects could be eliminated or improved based on preliminary discussion with DNR if projects don't make sense.
 - A workgroup member said an applicant should be allowed to revise their proposals to make them more appropriate. They said the Board of Natural Resources has the ultimate trust responsibility, so in the absence of having criteria established, the workgroup member has discomfort of having a go-no-go decision before it reaches the board. They said without seeing the criteria, they prefer to have a go-no-go decision from DNR staff later in the process.
 - A workgroup member said they like section G as written. DNR staff under the commissioner needs to control the process in the best interest of the trusts. By doing this as the gatekeeper, it saves the advisory committee a lot of time looking at projects that DNR doesn't want to do in the first place. They also said the commissioner is an elected statewide official, so there is a statewide political process that oversees the DNR that ensures that it operates in the interest of the public.
 - A workgroup member said there should be more transparency in how DNR evaluates properties. DNR staff said they needed more time to develop the framework by which properties would be evaluated.
 - A workgroup member said they also want more clarity on the evaluation process. They said they like the way G is written but would like this evaluation to be earlier

in the process. They also asked if the board of natural resources had ever voted no on a proposal for TLT. DNR staff said they had voted no on individual projects. The workgroup member said they would like to see examples of no-votes from the BNR on projects.

- A workgroup member said it seems like there is a public interest piece that the primary responsibility is to keep the trust whole. They asked how DNR was interpreting the “best interest of the trust” language. DNR staff said “best interest of the trust” is a legal term with legal definitions. When DNR makes judgements, it’s not solely based on number values or metrics; there are a variety of factors that are used to evaluate if something is in the best interest of a trust.
- Majority: Want more transparency about what goes into the criteria and thinking. Not sure where this evaluation should go in the process.
- Section H: Tribal consultation will occur prior to any project going to the advisory committee.
 - A workgroup member asked if there was a sense if the Tribal consultation would be determinative or advisory. DNR staff said it would be a process where DNR would get input from Tribes, and would be a criteria by which proposals are evaluated.
- Section I: Eligible projects will be evaluated by an advisory committee comprised of representation similar to the TLT proviso work group with the addition of tribal representatives and stakeholders that have not historically been included such as representatives from overburdened communities and vulnerable populations. The committee will evaluate projects according to predetermined criteria and develop a prioritized list which will be shared with the Board of Natural Resources (BNR).
 - A workgroup member said they like this addition to the process.
 - A workgroup member said the advisory committee needs expanded representation from beneficiaries, including individual school districts and taxing districts (such a fire, port, and library districts). This is especially important if state forest trusts are eligible for participation in TLT. Another workgroup member said they agreed with the representation from junior taxing districts.
 - A workgroup member said this language said the review would be shared with the BNR, when it sounds like it might be shared with DNR staff if the DNR review were pushed back in the process.
- Section J: Applicants with eligible proposals will prepare presentations for the advisory committee that answer/address a predetermined set of evaluation criteria.
 - No comments
- Section K: A new advisory committee will assist DNR in developing a list of standardized project evaluation criteria that will include consideration of the following list of topics: How does the project impact the local economy in the community where it is located? (i.e. tourism, forest products, shellfish, agricultural industries, recreation, etc.); What are the social values associated with this proposal?; Does the project impact tribes?; What is the conservation value of the parcel; Are there open space or recreation values associated with this project?; Does the project conserve and/or restore the diversity of fish and wildlife species and their habitats?; Does the project have additional sources of

matching funds? (ie. Climate solutions account, etc.); Does the project benefit overburdened communities and/or vulnerable populations?; Are there carbon or climate resilience considerations?; Does the project have broad support?; Are there maintenance and operating funds for this proposal available to the receiving agency?; Are there fire risk or forest health considerations?

- A workgroup member said impact on relevant trusts and impact on junior taxing districts should be criteria that are considered and presented on for projects. They also said the idea of matching funds for projects could be a good idea for criteria (does the project have matching funds, what is the source of the funds).
- A workgroup member said another criteria that should be considered is if the receiving agency is participating in funding and to what extent. Another criteria should be if replacement land for the transfer is of equal or greater value. If there is a trust land transfer of state forest land, the replacement land would need to be of the same value in the same county, but with common school trust land there is more flexibility.
- A workgroup member said in-person presentations are invaluable to the process. They said the wording from the proviso about increasing the income value of the trusts needs to be a criteria.
- A workgroup member said they were still trying to figure out which criteria leads to the issue of increasing the value of the trust. They also asked if the criteria of determining the impact on the local economy would include an economic impact study, including the impacts on junior taxing districts. They also want to add in criteria on if the project will impact or harm overburdened communities. They said another criteria could be “does the project support the Trust Lands HCP?”.
- A workgroup member said they were assuming some of the work that needs to be done would be determining the weighting of certain criteria. It doesn’t look like there is a criteria about the existing and future revenue generation by the parcels. For replacement lands, they asked how DNR is dealing with the concept of replacement lands (are replacement lands bought project-by-project or is the money put into a pot). Do proposals need to identify replacement lands? They also said they didn’t understand the conversation about matching funds from receiving agencies and how that would work in the ranking. State agencies don’t have discretionary budgets for the purchase of lands, and thus would not be able to provide a match. Perhaps a match could be existing support or programs that could be used to manage the lands.
- A workgroup member said there have been a number of comments about current performance and impacts to trusts. They said it seems like there is a question of when DNR would address whether projects are in the best interest of the trusts and eliminate projects deemed to not be in the best interest.
- DNR staff asked what a criteria would look like that shows how the project increases the value of the trusts.
 - A workgroup member said when they take a look at a property, there is an income value to the property, so if the new property has a greater income value then it meets the criteria of increasing the value of the trust.

- A workgroup member said TLT is not the only tool or always the best tool for disposing of properties. Some priorities are better sold at auction where they may get another price. This needs to be included in DNR's determined evaluation. They also said one thing they like about the current way of evaluating timber is that because the legislature doesn't have to come up with actual money (they use passed-through bonding money), they have been very liberal with funding for timber values. If this didn't happen, then trusts wouldn't get the full value of the timber. They said they want to come up with a more realistic actual ratio of bare land value to timber value based on actual proposals. If DNR can come up with a realistic value for how much cash is needed to purchase replacement land that would be beneficial. If DNR came up with that number, they would support that as the new ratio.
 - A workgroup member said they thought of some examples of natural areas that increased the value of the trust. Some ecosystems are on prairies or shorelines, which are valuable real estate but don't have a lot of revenue generation potential. If those areas are put through TLT, their high valuation would result in being able to purchase replacement lands with higher revenue potential.
 - DNR staff asked how project applicants would be able to demonstrate its value to the trusts.
 - A workgroup member said they liked a modified land-bank process where proposals would need to identify replacement lands up front. That would make a cleaner project and would make it easier for proposals to demonstrate how their proposal increases the value of the trusts.
 - A workgroup member said they agreed with a comment that at a project level, you need to show that there are constraints to revenue generations. They said it could be beneficial to have a legislative check-in on the process of purchasing replacement lands every year.
 - A workgroup member said it was unfair to put the burden of finding revenue generating replacement lands on people proposing projects. DNR likes to bundle money from multiple projects to get a better deal on parcels. The program needs to identify replacement lands, not the people who propose projects.
- Section L: The program would have three levels of approval that include the Department of Natural Resources staff, an Advisory Committee, and the Board of Natural Resources.
 - A workgroup member said they would like to switch the order of the advisory committee and DNR staff approval. They would like to give DNR the authority to change the order of the project list developed by the advisory committee or remove projects that aren't eligible. They asked if this process would happen absent of the timber and land value evaluations. DNR staff said during DNR's evaluation a land value estimate would be done.
 - A workgroup member said they would add the Tribal consultation as one of the steps in the approval process, prior to the advisory committee. They also would

add that DNR takes ownership of the proposals between the DNR and advisory committee evaluations. This could include DNR repackaging some of the proposals to make them better for the trust.

- A workgroup member said the order listed makes the most sense as it allows DNR to exercise its duty as the trust manager and not cede its fiduciary responsibility. They also liked the idea of allowing the DNR to repackage proposals.
- A workgroup member asked if the Tribal consultation in this section would be in addition to the previous Tribal consultation discussed and what that would look like.
- Sections M (After approval by the BNR, DNR's prioritized trust land transfer list will be submitted as a capital budget request from the State's bonding authority and program funding (GF-State for operating the program) and N (Legislative capital appropriations for the trust land transfer program will be used for the transfer of identified properties on the prioritized list, starting with the highest prioritized property first. DNR will conduct the transfer of the property per RCWs (RCW 79.17.010, RCW 79.17.200) conducting a formal third party appraisal and requesting board approval for the transfer. Once the board has approved transfer, and upon closing, the property will be transferred to the recipient agency, and the corresponding "land replacement value" funds will be transferred into the Real Property Replacement Account. The "land replacement value" represents both the bare land value and average improvements on the land (see note for additional explanation regarding forest land replacement purchases)
 - DNR staff gave an overview of the DNR proposals for these sectional
- Section O: A new Land Bank Account will be established with the Treasury with maximum allowable balance of \$100M. Any new funds in addition to the land bank replacement value will be placed in the new Land Bank Account, up to \$100M. Amounts in excess of \$100M will be distributed to the trust beneficiaries.
 - A workgroup member asked what the money in the land bank account was doing. DNR staff said the money in the land bank account would be used to acquire replacement properties.
 - A workgroup member asked how the \$100 million in the land bank account would be invested. The account would need to be structured in a way to ensure it was benefitting the trust. DNR staff clarified that the fund's purpose was to be an account that is used to purchase land assets and not to hold funds.
 - A workgroup member asked for confirmation that this was an account that would allow DNR to purchase property and assign it with a designation of land-bank that could then be used to exchange with unproductive trust lands. DNR staff confirmed.
 - DNR staff gave a presentation that showed the new land-bank proposal.
 - A workgroup member said the difference between this proposal and the status quo is that under the new proposal there would be no revenue pay-out to the common school construction account. That money would then go to the new land bank account, which would help in the long-term. They asked if this could be seen as another way to do a transfer without the funding from the legislature.

- A workgroup member asked why the legislature would like this proposal as it requires additional money. DNR staff said one appeal is that the land bank can be used for all trusts without inter-trust exchanges. The land bank can also acquire more lands for trusts. It also allows for unproductive trust lands to be sold for private ownership if that is determined to be its best use. Over time, once the land bank account has a balance that's reasonable, it won't need more funding from the legislature into it.
- A workgroup member said there was the option of buying private land instead of doing an inter-trust transfer, which would make it easier to use for non-Common School Trust lands. Common school trust revenue is going to increase once the program is up and running, which means the trust will be a bigger percentage of common school construction account eventually.
- A workgroup member said their members have been reminding them that unless DNR is acquiring lands that are at high risk for conversion, just taking and changing the name from a private company to DNR is an overall loss in the marketplace because you are taking working forest land out of production and replacing it with land that is already working forest land.
- Section P: DNR will report to the BNR every two years on the Trust Land Transfer program. The report will include the properties transferred and acquired by trust and county. For reported properties DNR will describe their asset type, value, and acres.
 - A workgroup member said it would be interesting to include a pathway to assessing the revenue received off of lands transferred from TLT.
 - A workgroup member said it would be good to loop back to unintended consequences and impacts to junior taxing districts.
 - DNR staff it could be helpful to survey participants in the process and update the criteria/process to address issues.
 - A workgroup member asked if everything could be done via proviso. They asked DNR to determine what could be done via proviso and what would need legislative proposals.

Wrap-Up

- The workgroup members agreed to a three-hour meeting before the 7th meeting to continue conversations.