

COUNTY ORIGINAL

Lake Whatcom Watershed Land Transactions

Memorandum of Agreement

between

Whatcom County

and

Washington State Department of Natural Resources

September 23, 2008

WHATCOM COUNTY  
CONTRACT NO.

200809021

### Purpose of the Proposed Transaction

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

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

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

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

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

## **Summary of the Agreement**

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

## **Background and Context**

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

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

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

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

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

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

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

### **Scope of the Land Transactions**

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

### **Rationale for the Inter-grant Exchange**

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

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

## **Inter-grant Exchange Process**

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

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

## **Inter-grant Exchange Steps**

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

## **Rationale for the Re-conveyance**

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

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

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

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

***Lookout Mountain Regional Park:***

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

***Lake Whatcom Regional Park:***

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

**Re-conveyance Process**

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

**Re-conveyance Steps**

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

- b. Consistency with an approved county recreation plan, and
  - c. Consistency with the state comprehensive outdoor recreational plan, including consultation with other entities if applicable.
- 3) DNR will give public notice of a public meeting per RCW 42.30.060 to seek public comment, jointly with the County, on the need for the subject land as public park land, and consistency with the applicable recreation plans.
  - 4) The region will use public input, internal review, and consultation with other agencies and tribes, to identify any necessary conditions for continued management of adjacent trust lands, including:
    - a. Conditions that maximize multiple use, and
    - b. Reservation of rights-of-way to manage other public lands in the area.
  - 5) The region will prepare for the Board of Natural Resources a summary of public comments and a recommendation regarding acceptability with applicable recreation plans, including necessary conditions.
  - 6) The County will present the request for re-conveyance to the Board of Natural Resources as an agenda item at a scheduled meeting.
  - 7) The Board of Natural Resources may:
    - a. Approve the request,
    - b. Approve with conditions, or
    - c. Deny the request if found to be inconsistent with the state outdoor recreation plan.
  - 8) If approved, DNR will prepare the necessary transfer paperwork to complete the re-conveyance.

## **Management Issues to be Addressed by County and DNR**

### ***Roads & Easements:***

Agreements will need to be developed for:

1. The maintenance and repair of roads shared by both the County and DNR – including the status of current road system at time of transfer. (Note: DNR will complete road maintenance and abandonment work meeting State Forest Practices standards by November, 2008.)
2. Access needs across both ownerships (roads and trails)
  - a. Administrative
  - b. Public
3. Easement documentation

### ***Forestry/Resource Management:***

Agreements will need to be developed to address:

1. How forest practices within the potentially re-conveyed areas will be handled by DNR during the negotiation period. For example, timber sales not already prepared and approved will be located to avoid areas being considered for re-conveyance, other than as necessary for salvage.

2. Any roles, responsibilities or obligations DNR would retain on lands re-conveyed to the County, and conversely the roles, responsibilities and obligations the County assumes, including:
  - a. Any potential management of timber on the re-conveyed lands;
  - b. Habitat Conservation Plan obligations;
  - c. Fire control responsibilities;
  - d. Other legal rights, obligations, or liabilities.

### **Management Issues for Retained Trust Lands**

This proposal would result in three blocks of trust ownership that will continue to be managed by DNR for trust beneficiaries. These are the Olson Creek block in the northeast part of the planning area, and the Park Road and Anderson Mountain blocks in the southeast part of the planning area. In addition, DNR will retain approximately five acres at the Lookout Mountain Communication Site and two acres at the South Lookout Mountain Communication Site, which are within the Whatcom County Lookout/Cain management block, for ongoing trust management of these sites. See the "Proposed Inter-grant Exchange and Re-conveyance Map" for locations of these blocks.

#### ***Access:***

As part of this transaction DNR will need to:

- Reserve an easement for the existing LM-1000 and LM-2000 Roads, on property re-conveyed to Whatcom County. This will be necessary for management access to the Lookout Mountain and South Lookout Mountain communication sites.
- Be granted an easement for the existing Lookout Mountain Road (LM-2000), from the Lake Louise Road to existing State Forest lands, from Whatcom County. This will be necessary for management access to the South Lookout Mountain communication site.
- Reserve an easement for access and future construction of up to 0.6 miles of road on property re-conveyed to Whatcom County. This will be necessary for access to a portion of the Olson Creek block and to the existing communication site on Galbraith Mountain.

#### ***Public Use:***

There is existing recreational use of all three management blocks. Hikers and horseback riders regularly use the roads and user built trails in the Olson Creek block. There is less use of the Park Road and Anderson Mountain blocks due to their steeper topography. These uses are currently compatible with resource management activities but conflicts could develop in the future if the frequency of use grows. Potential public concern about resource management in the Lake Whatcom watershed or adjacent to newly created park land would need to be addressed collaboratively by DNR and Whatcom County.

### **Communication and Dispute Resolution**

The County and DNR will at all times attempt to develop and adhere to joint public statements about the re-conveyance and related actions, progress in completing the work

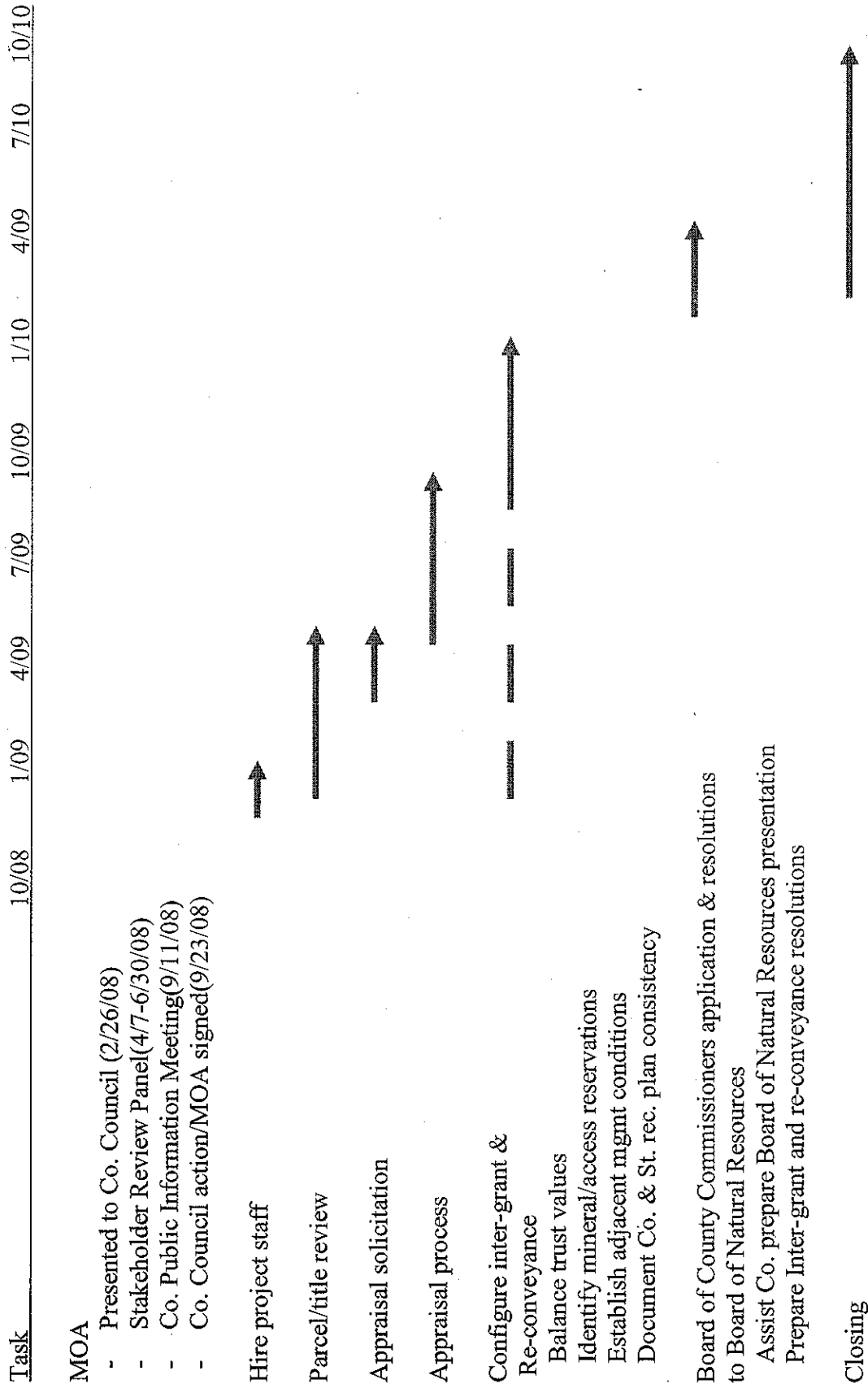
outlined by this MOA, and any issues that arise pertaining to this work. This will include periodic joint statements of progress, as well as a mutual commitment to make public statements regarding the matters related to implementing this MOA only after notifying the other party and attempting to develop a joint statement.

If a dispute or potential dispute arises regarding activities relating to implementing this MOA, the parties agree to attempt to promptly resolve such dispute by consulting together first at the organizational level at which the dispute or potential dispute arises. If resolution is not reached, the dispute will be elevated to the named principal contacts for the MOA, and then, if needed, to the signatories to the MOA or their successors.

### **Staffing**

The County and DNR commit to providing the necessary staff effort to accomplish the transaction described in this MOA approximately according to the timeline presented below. The County and DNR will execute an Interagency Agreement under which the County will provide funds to DNR to hire a staff person to assist with the transaction, so that the timeline can be met. Without that funding, DNR will not be able to meet the proposed timeline.

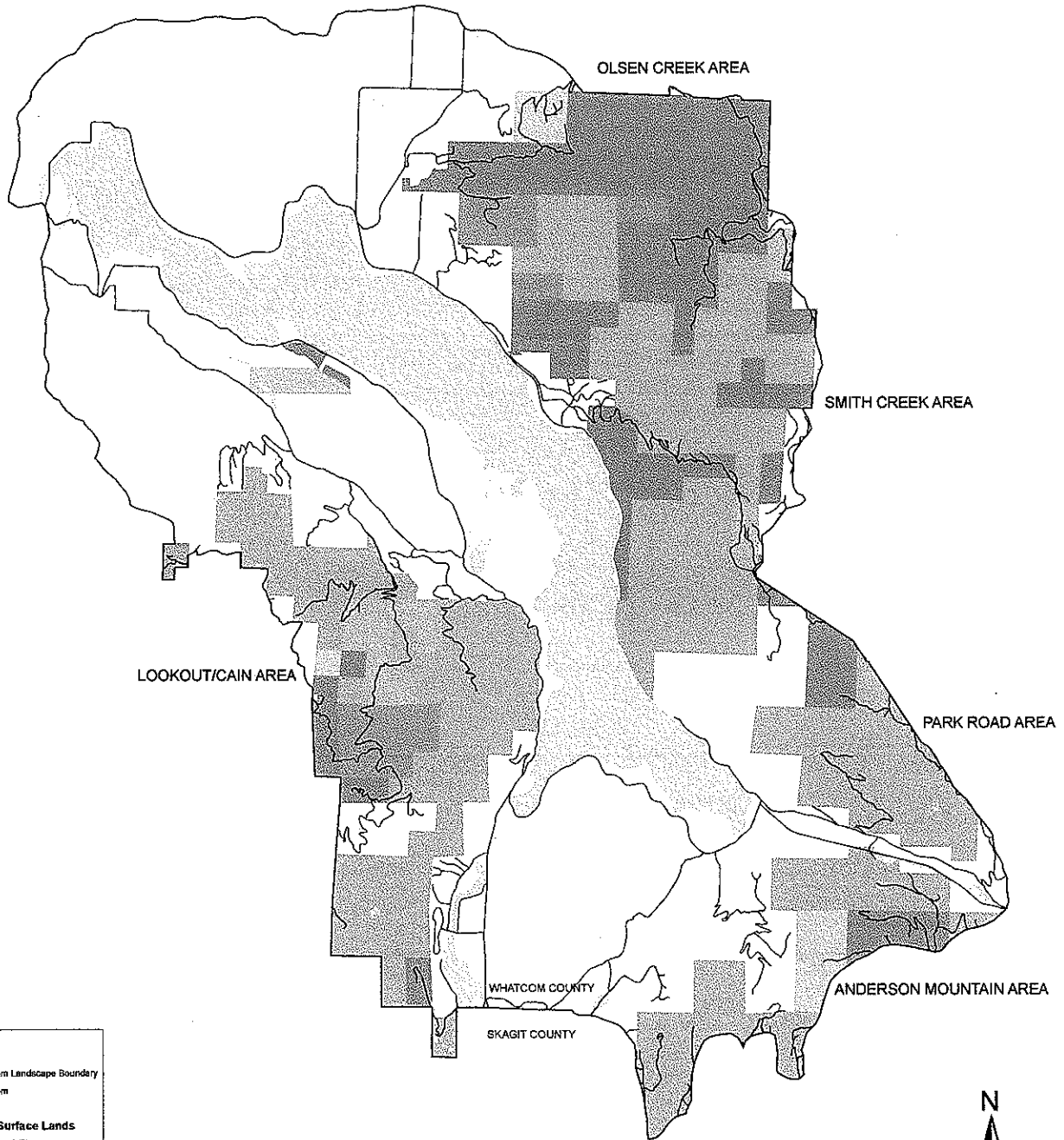
## Inter-grant State Trust Lands Exchange and Re-conveyance Proposed Timeline





# PROPOSED INTERGRANT EXCHANGE - BEFORE

## State Trust Ownerships in Lake Whatcom Landscape



**LEGEND**

- Lake Whatcom Landscape Boundary
- Lake Whatcom
- Roads
- DNR Managed Surface Lands**
- Common School (3)
- Agricultural School (4)
- Scientific School (10)
- Normal School (8)
- University - Transferred (5)
- University - Original (11)
- CEP and RI (8)
- Capital Grant (7)
- State Forest Board Transfer (1)
- State Forest Board Purchase (2)
- NAP / NRCA (74 / 75)
- Other DNR Managed Lands



Disclaimer: Extreme care was used during the compilation of this map to ensure accuracy. However, due to changes in ownership and the need to rely on outside sources of information, there are no warranties which accompany this material.

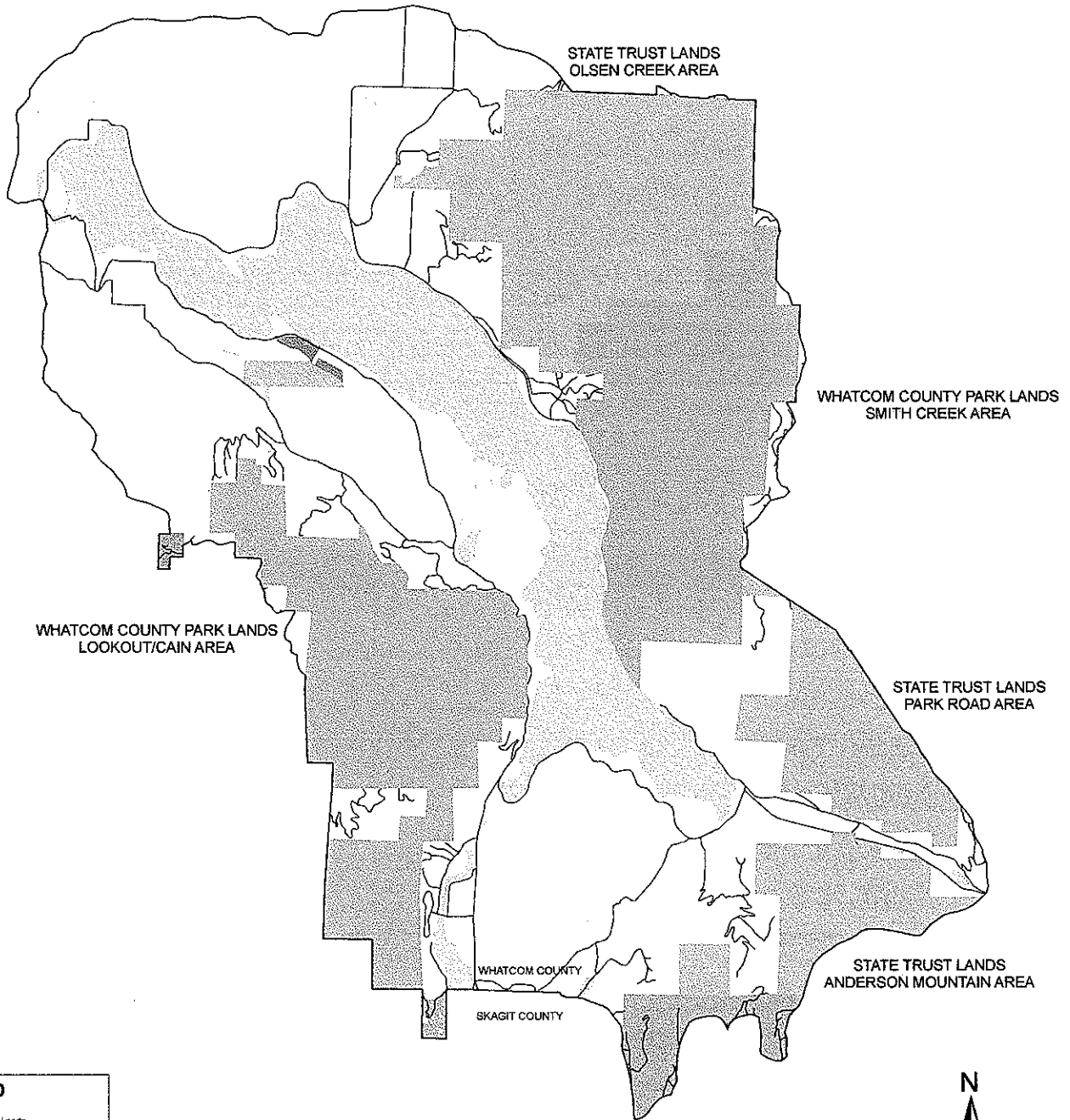
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 Map created: 2/25/2008



WASHINGTON STATE DEPARTMENT OF  
**Natural Resources**  
 Doug Sutherland - Commissioner of Public Lands

# PROPOSED RECONVEYANCE - AFTER INTERGRANT EXCHANGE

State Trust and Whatcom County Ownerships  
in Lake Whatcom Landscape



**LEGEND**

- State Trust Lands
- Whatcom Park Lands
- Lake Whatcom Landscape Boundary
- Lake Whatcom
- Roads
- DNR Managed Surface Lands**
  - Common School (3)
  - State Forest Board Transfer (1)
  - State Forest Board Purchase (2)
  - NAP / NRCA (74 / 75)
  - Other DNR-Managed Lands



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