

# COLLABORATIVE PLANNING ON STATE TRUST LANDS

by

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## ABSTRACT

This report examines collaborative planning within the context of state trust lands. By analyzing eight case studies, the report aims to inform trust land agencies, local communities and other interested parties about the benefits, costs, challenges, facilitating factors and lessons learned associated with these collaborative planning efforts. The report concludes with a look ahead to future collaborative planning opportunities on state trust lands, providing a set of best management practices and recommendations for overcoming barriers to this trust land management approach.

State trust lands are a category of land distinct from traditional state and federal public land. These lands were granted to states by the federal government upon statehood to support specific beneficiaries, including public schools. As a result, state trust lands are held in perpetual, intergenerational trust with the state acting as trustee. The state thus has a specific legal responsibility, known as a fiduciary duty, to conscientiously manage these lands for the designated beneficiaries. Today, there are approximately 46 million acres of state trust lands in the continental United States, mostly concentrated west of the Mississippi River. States historically have managed trust lands to generate revenue, primarily from natural-resource based activities. In recent years, rapid urbanization coupled with growing public interest in recreation opportunities, wildlife habitat, open space and ecosystem services have imposed new pressures on state trust lands in the West. These changes have provided new sources of revenue and created conflict over trust land management decisions. In response, some states have explored new ways to plan and manage state trust lands. With its promise of reducing conflict, creating mutual gains, minimizing poorly-planned development, creating flexible strategies and producing durable solutions, collaborative planning has been one approach that states have taken to balance their fiduciary duty with other interests.

To examine the experience of collaborative planning on state trust lands, the research team selected eight cases from a larger pool of identified processes. These cases span seven western states and represent a range of issues, including land use planning, land management for oil, gas and ranching practices, open space conservation and forestry and watershed management. The cases also vary in the impetus for collaboration, size of trust land parcel(s) examined, level of completion of the process and scope of the outcome. To develop the case studies, researchers conducted on-site and telephone interviews of participants and studied the technical, legal and political issues involved in the case.

A comprehensive cross-case analysis, informed by an extensive literature review, provided answers to several common questions about collaborative planning on state trust lands. First, in regards to what makes a process “collaborative,” the research showed that the breadth of stakeholders involved in the process affects the durability of the solution. Processes that were internally and externally transparent enjoyed low levels of public scrutiny and controversy. Most participants believed that they had influence over decision making and the outcome, although state trust land agencies did not give up their decision-making authority.

Second, the research identified a number of factors that motivate and sustain collaborative planning on state trust lands. A sense of threat motivated most of the cases. Other reasons for

pursuing collaboration included a sense of place, a set of common goals and public pressure. Participants joined collaborative processes because of a professional or personal interest or because of a direct financial stake. The researchers found that career changes and process restrictions, such as an advisory committee charter, were the main barriers to sustaining collaboration. Factors that maintained collaboration included financial incentives, investment in the process, leadership and lack of attractive alternatives.

Third, the research identified a variety of benefits and costs of collaborative planning on state trust lands. The primary benefits of collaboration included an increase in the value of the trust, an improvement in the natural environment and/or urban environment and a higher quality solution in terms of durability, creativity and the incorporation of science and outside knowledge. Secondary benefits included new and improved relationships, greater understanding and public awareness of state trust lands and better state and federal agency coordination. Costs associated with the process included direct planning costs, opportunity costs, periods of poor public relations and personal and emotional costs. In one case, participants identified a reduction in the value of the trust asset as a cost, whereas in another case, participants identified a potential loss of environmental protection as a cost. While benefits and costs were not quantified in each case, the majority of participants interviewed in each case study said they thought the process was successful or that they would collaborate again in the future.

Fourth, the research addressed how legal constraints affect collaborative planning on state trust lands. In some cases, the trust mandate empowered stakeholder groups and, in others, created a division between the trust land agency and other participants. The clarity and flexibility of the mandate influenced participation, allocation of decision-making power and group dynamics. External legal constraints like federal and state laws posed a challenge for some cases by introducing new timelines and constraints, and served as a facilitating factor for others by keeping people at the table. Many of the cases strategically used the law to initiate or influence the process, define issues, create options or shape the final outcome. Several participants mentioned that collaboration is easier in the state trust land context than other natural resource contexts because trust land agencies are afforded greater legal flexibility than other agencies.

Fifth, the research showed how agency structure, culture and politics affect collaborative planning. Access to the state land board, changes in agency institutional structure and land commissioner term limitations were some of the structural elements that influenced the processes. Cultural factors that influenced the process included trust land agency interaction with communities and other agencies, integration of collaboration with agency operating procedures, concern about abdication of decision-making power and uncertainty about accepting help from outside sources. Politics affected the process either as a means to gain influence over decision making or to impede or facilitate the process.

Sixth, in regards to how to structure an effective collaborative process, the research showed that process structure, decision making and management are important. Process elements included deciding upon process design, dealing with representation and participation, defining roles and responsibilities and organizing subcommittees or task forces. Key steps for



addressing decision making were setting ground rules and establishing decision rules. Setting objectives and timelines, conducting activities that build understanding and coordinating with other state and federal processes were important strategies for effectively managing the process.

Seventh, the research addressed how leadership and facilitation affect collaboration. Official and unofficial leaders helped guide, inspire or represent others. These leaders often, but not always, benefited the process. Professional or internal facilitators in many cases proved to be invaluable resources that assisted the groups in running meetings, communicating and making decisions.

Eighth, the research showed how interpersonal dynamics influence collaborative planning on state trust lands. Positive relationships among stakeholders helped facilitate progress, provided an incentive to stay involved, fostered respect and built a greater understanding of the issues. Several participants observed that the collaborative process improved relationships and anticipated that these relationships would help with implementing the planning outcome and addressing future resource management issues. Many groups achieved a more even distribution of power by consensus decision making. Power imbalances did arise, but in most cases they did not prevent the groups from achieving their goals.

Finally, the research addressed how collaborative planning processes incorporate scientific information. In many of the cases in this report, science had a significant influence on the process, whether scientific and technical information was explicitly central to the process or became an important tool along the way. The origin of this information impacted the process through strengthening group relationships or increasing the perception of the legitimacy of information. In some cases, science acted as a major facilitating factor to informed decision making while in other cases, the lack of information or the uncertainty of information significantly delayed the process. Incorporating science and technical information into the process often influenced the process structure and could act as a significant resource drain on participants who produced such information. While science influenced the process, collaborative processes also determined what science was gathered, how it was collected and by whom.

From this cross-case analysis, the research team developed a set of best management practices (BMPs) and recommendations. The BMPs provide guidance to state trust land managers and other stakeholders interested in creating and/or guiding a collaborative process. The BMPs address effective ways to set the groundwork for a process, determine membership composition of the collaborative group, merge the people with the process, create a decision-making structure, effectively manage the people and the process, deal with information or lack thereof and implement the outcome. The recommendations address the broader context of challenges that impede collaboration on state trust land. They identify areas for change in regards to resource allocation, knowledge and skill sets, organizational structure, organizational culture, policy and law. The recommendations conclude with advice for continued dialogue and learning among agencies regarding collaboration on state trust land, as well as suggestions for future research.



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# CHAPTER 1

## INTRODUCTION

Approximately 46 million acres of state trust lands are located in the continental United States, most of which are concentrated in 11 states west of the Mississippi River. State trust lands are the third largest category of western public lands, with a history that dates back to the late 18th century. Pursuant to the General Land Ordinance of 1785 and the Northwest Ordinance of 1787, states were granted land upon admission into the Union to support a variety of public beneficiaries, including common schools, state universities and hospitals. While some of the states that received these grants sold all or most of their state trust lands, many of the western states have retained a significant percentage of their original trust land grants and continue to manage these lands.

State trust lands encompass a diverse range of landscapes, including rolling grasslands, arid deserts and expansive forest and mountain ranges. Unlike other categories of public land, state trust lands are held in perpetual, intergenerational trust with the state acting as trustee. State trust lands thus impose a specific legal responsibility, known as a fiduciary duty, on the state to conscientiously manage these lands for the designated beneficiaries of the land grant. To fulfill this duty, states historically have managed state trust lands to generate revenue, valuing their holdings primarily in terms of economic potential. Traditional trust land uses include grazing, timber, agriculture and oil, gas and other mineral mining. Recently, states have begun considering other “nontraditional” uses like conservation and recreation, as they have found that managing trust lands for these other purposes can benefit the trust and thus is consistent with their legal responsibility.

In recent years, state trust land management has garnered increasing attention as a growing number of western communities urbanize and their economies shift away from natural resource extraction. These changes have directly affected state trust lands, especially because a significant percentage of these lands are located on the edge of growing urban areas, thus making them valuable for future real estate development and annexation into rapidly growing cities. As a result of these changes, trust land management is affecting more and more parties, including municipalities, developers, industry, conservationists and neighboring communities.

In response to this growing development pressure, as well as rising public interest in the recreation and open space values of these lands, some states have begun to explore new ways to plan and manage state trust lands. Collaborative planning has been one way that states have tried to balance their fiduciary duty with community interests and needs.

For the purposes of this report, “collaboration” is defined as a transparent process where multiple stakeholders who represent various interests have an opportunity to influence or affect decision making. This definition highlights three key elements of collaboration: (1) transparency of meetings, agreements and decisions, (2) meaningful involvement of a breadth of stakeholders such that all key interests are represented and (3) some degree of

influence in decision making for all stakeholders. Collaborative planning has proven effective in public land contexts, including contentious cases involving land use planning, community planning, forest management and mineral and oil extraction. Studies show that collaboration can reduce conflict, create win-win situations, minimize poorly-planned development, create flexible strategies that meet the needs of all parties involved and produce durable solutions. However, little research has been conducted on the use of collaborative planning on state trust lands.

To address this and other state trust land issues, the Lincoln Institute of Land Policy and the Sonoran Institute Joint Venture convened a State Trust Lands Research and Policy Analysis Roundtable on October 21 and 22, 2004. Roundtable participants included five current or former state land commissioners and experts in state trust land management, economics, urban planning and institutional and program evaluation and assessment. Together, the group defined a proposed research agenda for state trust lands in the West. The Roundtable discussed the growing use of collaborative planning on state trust lands, and found that states have experienced mixed results with this land management approach. While some collaborative processes have led to favorable trust land outcomes, others have not. Moreover, they found that little research has been conducted on collaboration within the unique framework of state trust lands. The Roundtable consequently called for a region-wide survey and analysis of cases where collaboration was used to manage state trust lands. This study would identify the lessons learned from past experiences and develop a set of best management practices to guide future collaborative efforts.

The purpose of this Master's Project is to fill the research void identified by the State Trust Lands Research and Policy Analysis Roundtable. The goals of this report are to:

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

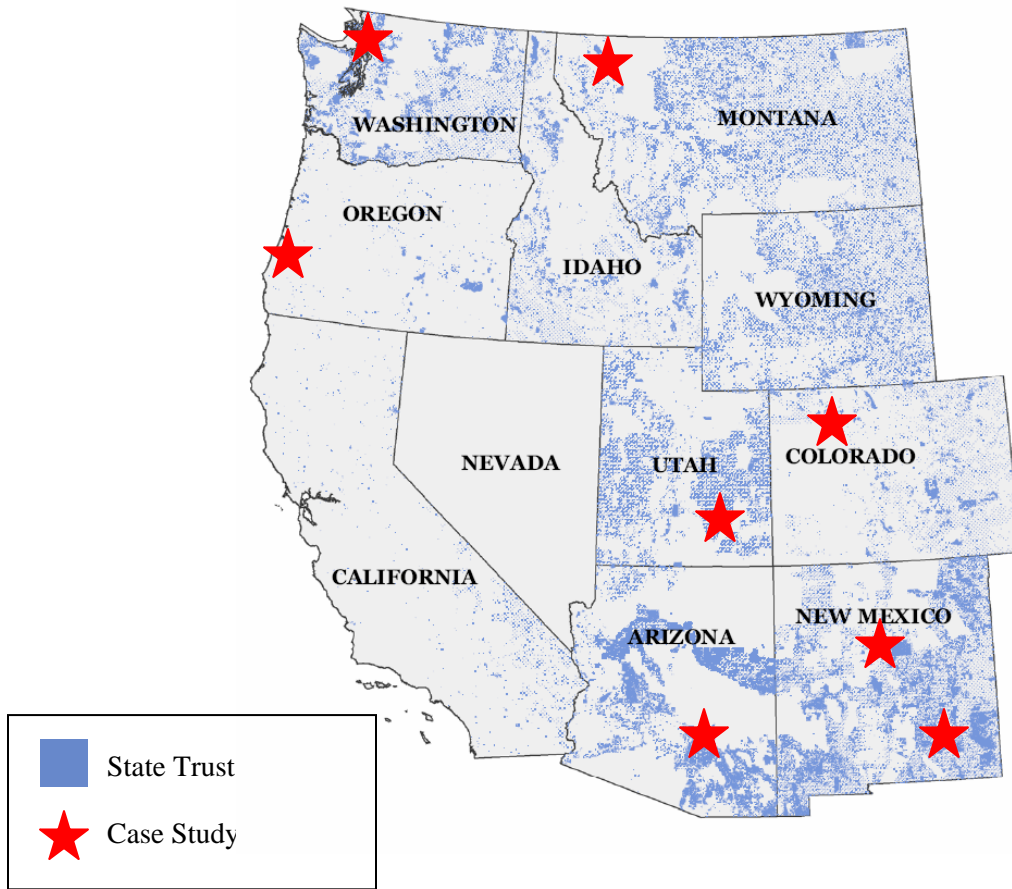
To accomplish these goals, the rest of Section I provides a brief history of state trust lands, explores how trust land management has evolved over the years and outlines the methods used to conduct this research. Section II of this report then examines eight cases in which state trust land managers collaborated with stakeholder groups in the planning and management of specific trust land parcels. These cases span seven western states – Arizona, Colorado, Montana, New Mexico, Oregon, Utah and Washington – and address such themes as land use planning in both urban and small-town settings, land management for oil, gas and ranching practices, open space conservation and forestry and watershed management (Figure 1-1). The cases also vary in the impetus for collaboration, size of trust land parcel(s) examined, level of completion of the process and scope of the outcome. In addition to detailing the story of the collaborative process, each case study identifies the benefits, costs, challenges, facilitating factors and lessons learned associated with the collaborative planning effort.

Section III of this report provides a cross-case analysis to answer a series of questions about collaborative planning on state trust lands. Specifically, the report addresses the following questions:

- What makes a process collaborative?
- What motivates and sustains collaborative planning processes?
- What are the benefits and costs of collaborative planning?
- How do internal and external legal constraints influence collaboration?
- How do agency structure and culture and politics influence collaboration?
- How were collaborative processes structured to be effective?
- What is the role of leadership and facilitation in a collaborative planning process?
- How do interpersonal dynamics influence a collaborative planning process?
- How do collaborative planning participants obtain, incorporate and process scientific information?

Section IV of this report draws from the cases and cross-case analysis to outline a set of best management practices (BMPs) for collaborative planning on state trust lands. The BMPs provide guidance to state trust land managers and other stakeholders interested in creating and/or guiding a collaborative process within the unique context of trust land management. The report concludes with a collection of bigger-picture recommendations that address the broader context of challenges that impede collaboration on state trust land.

**Figure 1-1: Distribution of State Trust Lands in the American West and Location of Case Studies**



Source: Adapted from “Map of Trust Lands in the 11 Western States,” Trust Land: A Land Legacy for the American West, The Sonoran Institute & Lincoln Institute of Land Policy, available at <http://www.trustland.org>.

## CHAPTER 2

### STATE TRUST LANDS OVERVIEW

State trust land is a somewhat obscure classification of lands that exists in a “quiet corner of public land management.”<sup>1</sup> The designation of state trust lands is woven into the history of how the United States developed as a nation. State trust lands are different from and more deeply rooted in the history and political traditions of the nation than federal lands and resources management.<sup>2</sup> While federally owned public land is meant to be managed for the use and enjoyment of the general public, the purpose of state trust land management is to generate revenue for the trust beneficiaries, which include common schools and other public institutions.

This report examines several cases of collaborative planning on state trust lands. However, the unique nature of these lands, with their constitutional mandate to produce revenue for schools and other public institutions, has often served as a perceived barrier for trust land agencies to engage in collaborative planning. In addition, because the public is typically not familiar with the history, purpose and location of the trust lands, it is difficult for trust land agencies to engage others in collaborative planning processes.

This section provides background information on state trust lands, their management and history through a discussion of the following topics:

- The placement of state trust lands in the context of public land management
- A history of state trust lands and how they were created
- The trust system
- Trust resources
- Emerging issues in state trust land management

### **STATE TRUST LANDS IN THE CONTEXT OF PUBLIC LAND MANAGEMENT**

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The majority of state trust lands were granted by the federal government to the newly-created states to be held in a “perpetual, intergenerational trust to support a variety of beneficiaries including public schools, universities, penitentiaries, and hospitals.”<sup>3</sup> Public schools were designated as the principal beneficiary of most of these grants. From the early 20<sup>th</sup> Century through the present, the primary source of revenue from state trust lands has reflected the focus of Western economies on natural resource extraction. These traditional trust land uses include, but are not limited to, oil and gas leasing, hard rock mining, grazing, agriculture, timber and land sales.

Although the purpose and designation of state trust lands are not as widely known by the general public, they are comparable to federal lands and make up a significant portion of public land in the Western U.S. In total, state trust lands comprise 46 million acres of land in the lower 48 states.<sup>4</sup> The nine states with the largest and most significant holdings of state



trust lands are: Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington and Wyoming. Collectively, these states manage more than 40 million acres of state trust lands.<sup>5</sup>

In comparison to federal land holdings, state trust land acreage falls in the middle of the spectrum. However, state trust land generates significantly more revenue than federal land, which highlights how the trust land agencies’ mandate to manage these lands in trust for designated beneficiaries, explored further below, influences trust land management (Table 2-1).

**Table 2-1: Federal Lands and State Trust Lands Compared**

	<b>Acres (millions)</b>	<b>Gross Annual Revenues (millions of dollars)</b>	<b>Net Returns to Treasuries (millions of dollars)</b>
<b>U.S. Forest Service</b>	192	1,000	465
<b>Bureau of Land Management</b>	261	187	142
<b>National Park Service</b>	80	97	1
<b>U.S. Fish and Wildlife Service</b>	90	8	5
<b>State Trust Lands</b>	135	4,500	3,500

Source: Jon A. Souder and Sally K. Fairfax, “The State Trust Lands,” <http://www.ti.org/statetrusts.html>; Bureau of Land Management, <http://www.blm.gov>.

## **HISTORY OF STATE TRUST LANDS**

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Granting land to support public education is not a new concept. Land grants for educational institutions date back to the Roman Empire, ancient Greece and the kingdoms of Egypt. The American colonies were using land grants by 1785 when Congress established the policy of granting schools in new states some federally-owned sections of land in each 36-square mile township.<sup>6</sup> The early colonial state governments of Connecticut, Massachusetts, New York, New Hampshire, New Jersey, Pennsylvania, North Carolina and Georgia all made substantial land grants in support of public education.<sup>7</sup>

One of the first tasks facing the new American Continental Congress after issuing the Declaration of Independence was managing the rampant land speculation in the Western territories and the westward expansion of settlements. Without a system in place for regularizing the process of land claims and organizing territorial governments, each new Western settlement increased the possibility that some or all of the relocating populations would form independent states outside of the control of the Union.<sup>8</sup> Congress grew increasingly concerned about how to police the newly-settled territories and finance the governments that would be necessary to oversee the new territories.<sup>9</sup> Moreover, Congress wanted to ensure that the new territories would hold to the democratic values that were the

fundamental cause for waging the Revolutionary War.<sup>10</sup> As the war drew to a close, the Continental Congress was further limited in its ability to provide federal monies to resolve these pressing issues.

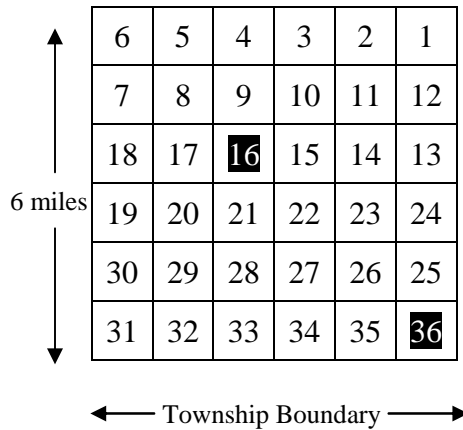
There was a strong sentiment among the Congressional leadership that providing for public education in the territories would be an essential element in ensuring a democratic future for the expanding nation.<sup>11</sup> The Eastern states had established a system in which land grants and property taxes could provide the revenues necessary to fund public education. The Western territorial areas lacked these resources, leaving it to the state governments or new federal government to subsidize public schooling until a sufficiently large population and economic base was established. Additionally, lands not settled and in the public domain were exempt from taxation by the new states, thereby limiting the tax base from which a state could draw revenue.

As a solution to the problems of debt, land speculation, expansion and funding for education, Congress began brokering negotiated cessions of the colonies' Western land claims to the federal government. The rationale behind this move was to create a system to administrate land and provide a solution to the organization of settlement and the formation of new states. This system also would provide public education and other essential services while repaying the burgeoning national debt.<sup>12</sup> The Western territories also wanted to gain from their entrance into the Union and the administrative land system that developed into the land grant program filled that need.

### **IMPORTANT FEDERAL LEGISLATION**

The U.S. federal government passed two important pieces of legislation to lay the groundwork for state trust land grants in the new territories. First, the General Land Ordinance of 1785 established the rectangular survey system, which created rules governing the sale of land by the federal government.<sup>13</sup> The Ordinance also created a process for recording land patents and records necessary to create a chain of title for public domain lands. Finally, it provided for the first reservations of lands for new states, stating that section 16 in every township would be reserved "for the maintenance of public schools within the said township."<sup>14</sup> A section is one square mile of land that adjoins the center of a 36-square mile township (Figure 2-1). The cadastral system and township measurement established by the General Land Ordinance was used as a basic survey system to reference all federal lands. The best way to conceptualize the survey system is to imagine Figure 1 as a grid on top of a map of the U.S.

**Figure 2-1: State Trust Land Granting Patterns**



Source: Souder and Fairfax, *State Trust Lands: History, Management, & Sustainable Use*, 29.

Second, the Northwest Ordinance of 1787 created a system of territorial governments and a process for transitioning territories into new states. The Ordinance also propagated a vision of cheap land, state equality and public education that was considered essential to the success of the Western states.<sup>15</sup> Article III of the Northwest Ordinance reinforced the belief among Congressional leaders that education was an essential element of the Union’s foundation. It stated that “Religion, Morality and Knowledge being necessary to good government and the happiness of mankind, schools and the means of Education shall forever be encouraged.” Article V, in turn, provided that Congress should admit every new state on an “equal footing” with the existing states.<sup>16</sup> The concept of equal footing was included to ensure that all states ceding to the Union were given similar acreages of land grants, thus limiting political influence in issues such as slavery on state accession processes. In addition, the Western territories expected some return for their cession and the federal government intended to make the distribution and administration of land grants a self-supporting, even lucrative project.<sup>17</sup> Many of the ideals espoused in the Northwest Ordinance were derived from Thomas Jefferson’s vision of an agrarian democracy where the township was the most basic unit of government, with populations oriented around agrarian communities that would provide for the democratic education of their citizens.<sup>18</sup>

The state admission process established by the Northwest Ordinance was never strictly followed by Congress, particularly in the years leading up to and continuing through the Civil War. During this time, the admission of new states was a process that was politically charged with conflicts over slavery and the desire of Northern and Southern states to maintain an equal balance between free and slave states.<sup>19</sup> Ohio was the first public domain state admitted into the Union in 1803 and the first to receive a land grant to support schools. Public domain states were created from land gained by the Union as a result of land purchases or wars. The area currently known as Ohio was originally a British territory that the American government gained after the Revolutionary War. After Ohio, nearly every state admitted to the Union received substantial land grants at admission.<sup>20</sup> However, there were

exceptions in so far as the amount of land granted (namely, Maine, Texas and West Virginia).

Land grants to new states were an important component of Congress's effort to control the accession process while balancing the Northwest Ordinance principle that new states should join the Union on an equal footing.<sup>21</sup>

### **THE STATE ACCESSION PROCESS AND THE ENABLING ACT**

The accession process was complex and often characterized by prolonged negotiations between the territory and Congress. The Northwest Ordinance laid out the steps for a state-in-the-making. After a region had been organized into a territory, the Territorial Legislature or its delegate in Congress, or both, could request admission. If the petition was favorably received, Congress would pass an "enabling act" authorizing a constitutional convention for the state-to-be.<sup>22</sup> The state constitutional convention would then meet and draft a governing document, which would be subjected to a referendum in the Territory. In short, the enabling act is an act to enable the people in a territory to form a constitution and a state government.

Upon admission into the Union, new states typically received sections 16 and 36 in each township. The amount of land granted was detailed in the enabling act. While the rectangular survey system established in the General Land Ordinance of 1785 had mathematical appeal, population centers in the West tended to develop around natural, economic and military features without regard for the artificial township boundaries. Thus, there were not always local governments associated with each township to manage the granted lands.<sup>23</sup> Many lands in these cases were granted to teachers in lieu of a salary, for example, until sufficient tax revenues could be gathered to pay them.<sup>24</sup>

The size of land grants increased significantly as the state accession process moved west of the 100<sup>th</sup> Meridian. With this move west came a marked change in landscape from the rich farmlands that predominated in the east to the steeper and more arid lands of the West.<sup>25</sup> It was therefore necessary for these Western states to receive a larger quantity of land to generate the necessary revenues to support schools and other public institutions.<sup>26</sup> For example, four of the seven states examined in this report – Oregon, Colorado, Montana and Washington – were granted the traditional 16<sup>th</sup> and 36<sup>th</sup> sections, while the other three states studied – Utah, New Mexico and Arizona – received the 2<sup>nd</sup>, 16<sup>th</sup>, 32<sup>nd</sup> and 36<sup>th</sup> sections. Later in the accession process, Congress took up the practice of allowing states to select "in lieu" lands from elsewhere in the public domain when private landowners or various federal reservations already occupied their reserved lands in a given township.<sup>27</sup> Some states also received the beds and banks of navigable waterways as part of their land grants.

The progressive increase in the size of land grants was also a reflection of the growing political power of the West. Initially, Congress provided little guidance to states on how they should manage their trust lands; the lands were granted directly to the township for the use of schools specific to that township.<sup>28</sup> As a result of this lack of management guidance, many states sold all or most of their lands for profit soon after entering the Union. To halt the rapid sale of lands, Congress designated the state as trust land manager and placed increasingly

stringent requirements on new states to regulate the use of state trust lands. Since most Western states entered the Union in the late 19<sup>th</sup> and early 20<sup>th</sup> Centuries, including the ones studied in this report, they had to comply with these stricter requirements, and, as a result, today retain most of their original state trust lands.<sup>29</sup>

Of the seven Western states studied in this report, six joined the Union between 1876 and 1912. The exception is Oregon, which was made a state in 1859. Montana, North Dakota, South Dakota and Washington were all admitted under a single omnibus enabling act. However, New Mexico, Arizona and Utah struggled with Congress for decades to find a balancing point that ensured “equal footing” for both sides (Table 2-2).

**Table 2-2: Trust Land Acres Granted at State Accession**

	<b>Year of Statehood<sup>30</sup></b>	<b>Surface Acres Granted (thousands)<sup>31</sup></b>	<b>Surface Acres Today (thousands)<sup>32</sup></b>	<b>Percent of Original</b>
<b>Arizona</b>	1912	8,093	9,271	115%
<b>Colorado</b>	1876	3,685	2,858	78%
<b>Montana</b>	1889	5,198	5,156	99%
<b>New Mexico</b>	1912	8,711	9,217	106%
<b>Oregon</b>	1859	3,399	773	23%
<b>Utah</b>	1896	5,844	3,5	60%
<b>Washington</b>	1889	2,376	2,9	122%

## **UNDERSTANDING THE TRUST SYSTEM**

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The granting of state trust lands occurred during a time in U.S. history characterized by conflict, political upheaval and economic growth. The conditions of state accession and the language of the enabling acts frequently influenced the granting of trust lands, as seen in New Mexico, Arizona and Utah. As such, the size of the land grant and the laws governing state trust land administration vary substantially from state to state. The trust land management system currently in place has evolved from the original system. For example, the term “trust” was not explicitly mentioned in state enabling acts until late in the accession process. The differences in trust land management programs make it difficult to generalize across the Western states. However, the history of land grants demonstrates that state trust lands, regardless of location, share a common origin and a common trust responsibility.<sup>33</sup>

There are three themes regarding the trust responsibility that apply to most Western states still in possession of trust lands: (1) these lands are held in trust by the state; (2) the state, acting as trustee, has a fiduciary responsibility to manage the lands for the benefit of designated “beneficiaries”; and (3) this fiduciary responsibility constrains the discretion of the state, requiring that lands be managed in a manner consistent with the best interest of the trust.<sup>34</sup>

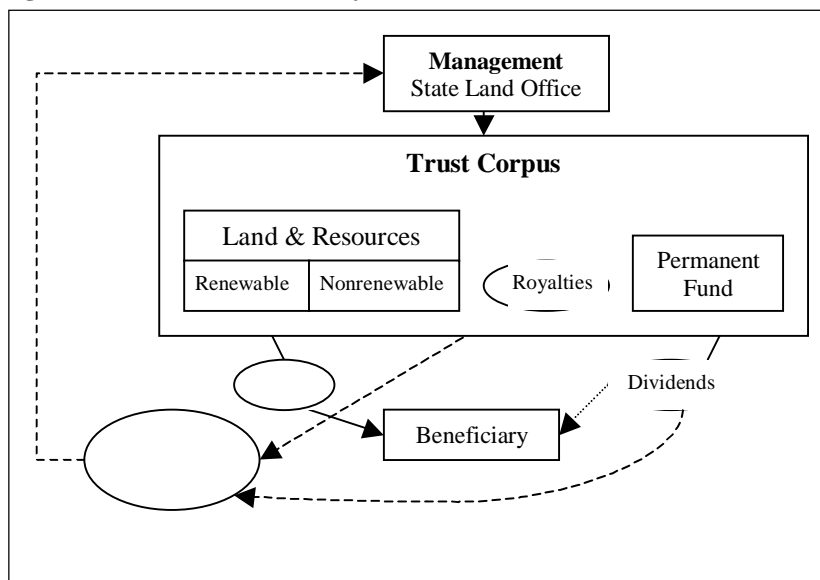
It also should be noted that the present-day state trust land doctrine has been shaped by judicial decisions at the state and federal level. Modern jurisprudence in this area of land management did not emerge until the early 20<sup>th</sup> Century, starting with the U.S. Supreme Court decision, *Ervien v. United States* in 1919.<sup>35</sup> As a result, it was not until the latter half of the 20<sup>th</sup> Century that states began managing state trust lands with their fiduciary duty in mind.

A litany of terms defines the basic legal elements of trust lands and the states' consequent fiduciary responsibility. Understanding the legal terminology and lexicon of trust land management elucidates the rationale behind the initial granting and current management practices. The key legal definitions associated with trust land management include:

- **Trust:** A legal relationship in which one party holds and manages property for the benefit of another.
- **Trustee:** The person or party who is charged with the responsibility of managing the trust. In the context of state trust land management, the trustee usually is the state.
- **Fiduciary Duty:** A legal obligation imposed on the trustee to act with strict honesty and candor and solely in the interest of the beneficiary.
- **Beneficiary:** The person or party for whose benefit the property is held in trust. In the context of state trust land management, the beneficiaries are the designated public institutions for which the lands were granted (e.g., common schools and state universities).<sup>36</sup>

To understand the mechanics of trust lands and their management, one must not only understand these legal definitions, but also examine the elements that comprise the “trust system.” The trust system includes the permanent school fund, the trust mandate, trust properties and the revenue distribution system. Because trust lands were granted to states to support public institutions, the trust system is focused on fulfilling this duty (Figure 2-2). State land offices receive revenues from three basic sources: (1) the sale of nonrenewable resources, usually oil, gas, coal and minerals; (2) the sale of granted trust lands; and (3) the use of use of renewable resources, which usually come in the form of agriculture and grazing fees, timber sales, commercial or special purpose leases and the surface rentals and bonus bids received for oil, gas, coal and mineral leases.<sup>37</sup> These revenues are further classified into rents, royalties and dividends that are derived from different parts of the trust and, depending on the classification, are diverted to the permanent fund, the beneficiary or the management of the state trust land agency.

**Figure 2-2: Trust Production System**



Source: Souder and Fairfax, *State Trust Lands: History, Management, & Sustainable Use*, 39.

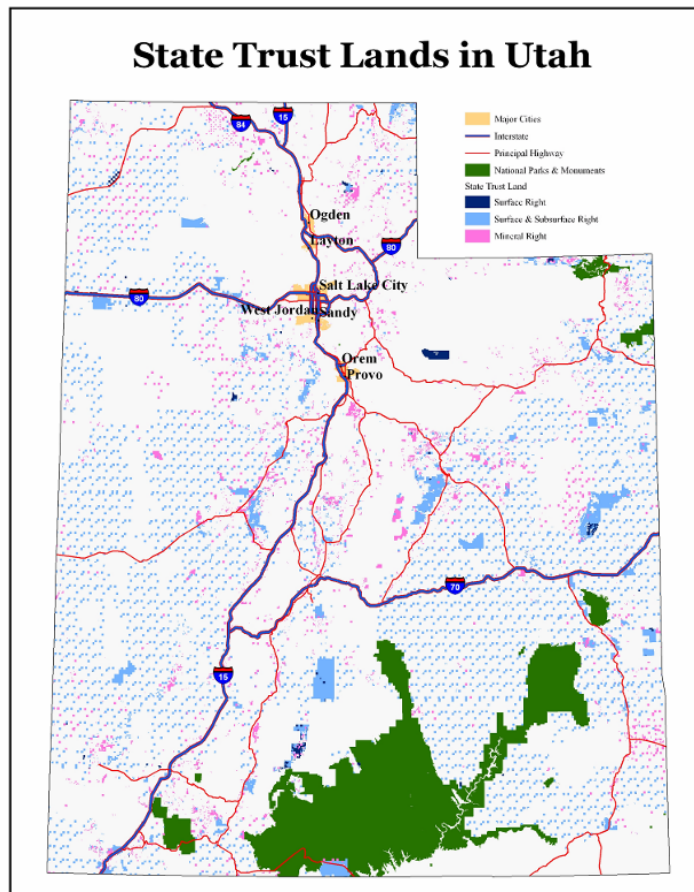
The permanent fund is essentially a bank account into which all revenues from trust land sales and management flows. The advent of permanent funds in state trust land management corresponded with the shift to state-level management in the mid 19<sup>th</sup> Century. Michigan was the first state to set up a permanent fund in its 1835 Enabling Act. The Act states that the proceeds of all lands that have been granted to Michigan by Congress for the support of schools “shall be and remain a perpetual fund, the interest of which, together with the rents of all such unsold lands, shall be inviolably appropriated to the support of common schools throughout the State.”<sup>38</sup> In most states, neither the state land office nor the beneficiaries have direct control over management of the fund. The revenue distribution varies from state to state, as does the size of the permanent fund. The states with the largest permanent funds tend to be those with significant mineral values or an ability to sell trust land at relatively high prices. For example, oil, gas and coal royalties in New Mexico have produced a permanent fund worth billions of dollars. Arizona and Oregon, on the other hand, are not as rich in mineral resources, but have other profitable sources of revenue, namely real estate development and timber extraction, respectively, and manage funds worth hundreds of millions of dollars.<sup>39</sup> Some states have smaller permanent funds due to outside interventions. For example, Utah’s permanent fund is one of the smallest because in the 1980s the legislature allowed beneficiaries access to the principal, or the capital of the permanent fund, to maintain their programs.<sup>40</sup>

## TRUST LANDS AND THEIR USES

Outside of Alaska, the lower 48 states have retained approximately 50 million acres of trust land out of the approximately 1 billion granted.<sup>41</sup> Because public or “common” schools are the primary beneficiary of state trust lands, close to 80 percent of the 50 million acres is dedicated to their support. The remaining 20 percent of land is managed for such beneficiaries as public universities, counties, public buildings, prisons, hospitals and other schools and institutions.<sup>42</sup> Recall that trust lands were granted using the Northwest Ordinance’s rectangular grid system. Despite the mathematical appeal of dividing states into townships to facilitate designating trust parcels, the system created a checkerboard pattern of land that has proved challenging to manage. Many of the sections of trust land are “locked” within other types of land, making them difficult to access. An examination of a public land ownership map in any Western state shows this challenge. State trust lands traditionally are designated by light blue on these maps and can be seen in some states that do not have significant consolidated holdings as sprinkled among other land ownership categories. Utah’s public land ownership map illustrates this phenomenon (Figure 2-3).

The system of land granting also has resulted in a diverse spectrum of land holdings that are valuable for a variety of uses. Trust land uses fall primarily into four main resource extraction categories: minerals, timber, crops and grazing. Sales of trust lands also have been an important component of revenue generation for the permanent fund. Moreover, recently urban development has created significant earnings for the trust (Table 2-3).

Figure 2-3: Public Land Ownership in Utah



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



**Table 2-3: State Trust Land Resources (in thousands of acres)**

<b>Trust Lands and Their Uses*</b>	<b>Timber</b>	<b>Grazing</b>	<b>Crops</b>	<b>Oil &amp; Gas</b>	<b>Coal</b>	<b>Minerals</b>
<b>Arizona</b>	35	8,457	161	61	0	21
<b>Colorado</b>	71	2,539	127	1,518	40	91
<b>Montana</b>	727	4,3	350	6,3	6,189	5,848
<b>New Mexico</b>	0	8,700	0	4,875	4,875	0
<b>Oregon</b>	754	620	0	30	0	0
<b>Utah</b>	0	3,561	12	1,777	72	245
<b>Washington</b>	2,078	1,044	164	241	1	69

Source: Jon A. Souder and Sally K. Fairfax, “The State Trust Lands,” [www.ti.org/statetrusts.html](http://www.ti.org/statetrusts.html).

*\*The numbers reflected in this table are circa 1996 and are not necessarily representative of current land uses. The table is meant to be illustrative of the diversity of trust lands management in the seven states examined in this report.*

## **EMERGING ISSUES IN TRUST LAND MANAGEMENT**

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State trust land management has been in a state of flux in recent years as Western communities begin to shift away from natural resource extraction to more diversified, knowledge-based economies.

### **CHANGES IN THE WEST**

Observers of the economic and sociological shifts in the West have stated that key Western natural resource industries are in permanent decline – particularly agriculture, ranching and timber production. The engine of the West’s new economy increasingly is being driven by location and lifestyle choices, a rapid rise in retirement and investment income and the growing attractiveness of communities surrounded by protected public lands to an increasingly-mobile and professional population.<sup>43</sup> Many Western communities also are being rapidly transformed by urbanization.<sup>44</sup> Furthermore, the decline in natural resource industries and the explosive growth in many Western communities is leading some trust land managers to explore lucrative residential and commercial development opportunities on trust lands. States are attempting to balance their fiduciary responsibilities as trust managers with the public values associated with the preservation of landscapes, open spaces and planning for urban growth.<sup>45</sup>

### **NEW MANAGEMENT STRATEGIES**

In addition to the economic and mindset shifts occurring in the West, a number of state court decisions and a more business-minded attitude toward trust land management has “reinvigorated” trust principles and shifted management toward a more “beneficiary-oriented” approach.<sup>46</sup> Many states reevaluated trust management as a result of state legislation, court rulings and more contemporary interpretations of the trust mandate. For

example, in Oregon a state Attorney General Opinion issued in 1992 resulted in a major reassessment of the state's trust obligations, offering further clarification of the trust mandate language. The original language states that common school lands should be managed with intent of obtaining the "greatest benefit for the people of this state" using sound techniques of land management.<sup>47</sup> The Attorney General Opinion interpreted this language to signify that the state land agency was to maximize revenue in the management of its resources for the state's permanent fund (known as the Common School Fund). Management of the permanent fund also has become more aggressive with some states experimenting with investing portions of the fund in equities, or stocks. In Oregon, equities investments have become the primary source of revenue for the trust, outshining rents and royalties from resource-based activities. State trust land agencies also have begun to hire staff specifically devoted to managing the multi-million dollar funds.

## **NEW RESOURCES**

State trust land agencies have begun to explore new resources to expand the amount and diversity of revenue sources to the permanent fund. In some cases, this has meant becoming increasingly sensitive to the economic value of products that were historically not worth attention.<sup>48</sup> For example, coastal states like Oregon have begun to respond to the growing market for kelp and oysters. However, the most significant of the new resources in trust land management has been commercial development. Commercial development of state trust lands is one of a few sources of rapidly escalating values for states, especially if they are not endowed with many natural resources.<sup>49</sup> Development will likely be one of the most lucrative endeavors of trust management as Western urban areas, and by proxy land values, continue to increase exponentially. Indeed, several of the collaborative planning processes examined in Section II of this report, like the Houghton Area Master Plan Process in Arizona and the Mesa del Sol Planning Process in New Mexico, deal specifically with urban development of trust land.

Land exchanges are another new avenue trust land agencies are exploring to consolidate land and potentially increase the value of the trust. Typically, land exchanges occur between the state trust land agency and either the federal government or private entities. They can provide benefits for both parties, including adding more land to a national park or monument, which benefits the federal government, and consolidating the trust lands into more contiguous parcels which are often more efficient to manage. Land exchanges can occur in two ways; via an administrative exchange or a legislative exchange. Administrative land exchanges are negotiated by the parties whose land is involved in the exchange. Legislative exchanges are initiated after Congress passes a bill containing the details of the exchange. The case studies in Colorado and Utah both dealt with land exchanges as part of the collaborative process.

## **NEW CONTROVERSIES**

Along with the new resources that have come into play in trust land management and its increasing visibility, new controversies associated with that management also have emerged. These controversies largely revolve around the public misunderstanding that undeveloped state trust lands are purely open space and the changing public amenity value of trust lands.<sup>50</sup>

The controversies and federal legislation relevant to this report that affect trust land management include the pressure to conserve trust lands and the Endangered Species Act of 1973 (ESA).

The ESA is one of many laws that influence how trust lands are managed, especially in regards to the wildlife that inhabit those lands. The primary section of the law that affects the trust land management decisions, section 9, requires a permit from the U.S. Fish and Wildlife Service (USFWS) if a proposed action has the potential to “take” a listed threatened or endangered species. “Take” is defined as harming, harassing or killing a species.<sup>51</sup> To obtain a permit to take a threatened or endangered species, an applicant must prepare a Habitat Conservation Plan that must meet the specifications of the USFWS. State level judicial opinions have held that the trust agencies are not exempt from complying with the ESA.

It remains to be seen how far the issue of preservation for aesthetic reasons, and thereby non-monetary benefits, can be pushed in the context of the trust responsibility. Two court cases in Colorado and Utah suggest that under growing pressure from environmentalists and communities, open space preservation will continue to be part of the state trust land agenda.<sup>52</sup> In 1991, the Colorado Supreme Court took an aggressive approach to aesthetic preservation, halting a mining operation on state trust land in the picturesque Flat Iron Mountains, visible from the city of Boulder.<sup>53</sup> In 1993, the Utah Supreme Court took a somewhat less aggressive approach, but suggested that it may be possible for the trust land division to protect and preserve aesthetic values without diminishing the economic value of the land.<sup>54</sup>

In addition to the growing pressure for aesthetic trust land preservation, environmental advocates, the courts and the states are beginning to explore ways to compensate the trust from parcels specifically managed for preservation. Both the ESA and trust land preservation will continue to be important issues in trust land management as states establish new ways to take into account these considerations while upholding their commitment to the trust responsibility.

The context in which state trust lands are managed has changed considerably since the lands were granted. Recent development and growth of communities surrounding state trust land has increased the public’s interest in state trust land management and has increased scrutiny of this management. Typically, the trust land issues and decisions that are under the most scrutiny deal with controversial issues, include oil and gas leasing, urban development projects, endangered species protection, watershed and forest management and open space preservation. Despite the conflict that accompanies many of these issues, they also offer new opportunities for partnerships and strategies for resource management. The seemingly-competing interests underlying these issues in addition to new resources under exploration by agencies and the greater visibility of state trust land management offer opportunities to explore new and interesting answers to fundamental questions about public resource management. Collaborative planning is a land management tool that can assist trust land agencies and others in providing answers to many of these questions.

## CHAPTER 3

### RESEARCH METHODS

This project employed a case study based research approach. The research team determined that because of the level of in-depth research needed to understand the complex dynamics of collaborative planning on state trust land, a case study approach was the most effective mechanism to meet this need. The objectives of the research were to identify examples of collaborative planning on state trust land in the American West and to investigate the benefits, costs, challenges, facilitating factors and lessons learned from those examples of collaborative planning.

To achieve the research objectives, the research team conducted nine phases of research. Early in the planning process, the team developed a set of research questions. The team then created an analytic framework through which to interpret relevant literature on collaborative planning and state trust land issues. The team also conducted preliminary investigation to identify as many examples as possible of collaborative planning on state trust land and then used a set of case selection criteria to decide on the final eight cases and three alternates. In addition, the team developed interview questions based on the basic research questions.

At the same time, the team prepared for an initial presentation of research concepts to an audience of state trust land commissioners and managers at the Western States Land Commissioners Association Conference, where the research team solicited feedback from the conference participants on their research approach and research questions. Individual case research teams then conducted on-site interviews with participants of the eight cases and wrote in-depth case studies. Finally, the research team developed a cross-case analysis framework to guide the cross-case analysis and the development of best management practices, recommendations and additional research products.

The project incorporated the following research phases:

1. Development of research questions
2. Creation of an analysis framework and completion of background literature review
3. Preliminary case investigation and case selection
4. Development of interview questions
5. Development of Western States Land Commissioners Association Conference presentation and information gathering
6. Completion of case research and case study writing
7. Development of cross-case analysis framework
8. Cross-case analysis of case studies
9. Development of best management practices and recommendations

## 1) DEVELOPMENT OF RESEARCH QUESTIONS

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The first step in the research process was the development of a set of research questions to guide the project in its focus. The research team created these research questions through an initial review of the literature on collaborative processes and state trust land management in conjunction with the advice of the project advisor and client. The final set of research questions were:

1. What makes collaborative planning on state trust land unique and different from other land management collaborative efforts?
2. Why did the state trust land stakeholders in the selected case studies engage in collaborative planning? Why was collaborative planning not used in some cases?
3. What benefits were derived from engaging in collaborative planning? For example:
  - More informed decision-making
  - More effective and stable outcomes
  - Common ownership and shared understanding of the issue(s)
  - Improved conservation/environmental outcomes
4. What costs were associated with engaging in collaborative planning? For example:
  - Increased demand on resources, time and/or staff
  - Undesirable outcome(s)
5. What are the challenges associated with engaging in a collaborative planning process on these lands (recognized at the time of collaboration, as well as in hindsight)? How did participants deal with these challenges?
6. What are the measures of success for collaborative planning on state trust land?
  - How did the participants measure “success” within these collaborative efforts?
  - What are objective measures of “success” for these collaborative efforts?
  - How do the objective measures of “success” compare within the selected collaborative efforts and what common themes are illuminated in a cross-case analysis?
7. How do the collaborative efforts compare within the context of the participants' measures of success, as well as within the context of the objective measures of success? What common themes can be illuminated in cross-case analysis?

These research questions guided the literature review and formation of interview questions for the cases.

## **2) CREATION OF AN ANALYSIS FRAMEWORK AND COMPLETION OF BACKGROUND LITERATURE REVIEW**

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In order to effectively analyze the literature on collaborative planning and state trust land management, the research team created an analysis framework through which to interpret the literature. This framework was used to categorize the information gathered in the background literature review. The framework was based on the team's research questions and helped formulate the interview questions in a later phase of the research. The research team divided the relevant literature into several categories and assigned team members to research sources for each of the categories. These categories included literature on state trust lands, general collaboration and collaborative planning, collaboration on public lands, case study research methods and relevant articles from the project client's websites. From this list, the research team isolated key resources and then completed the framework for each key resource. The frameworks served as a basis for understanding and compiling the literature relevant to the project's focus.

## **3) PRELIMINARY CASE INVESTIGATION AND CASE SELECTION**

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Case selection involved three steps.

1. To identify all relevant instances of collaborative planning on state trust land from states west of the Mississippi that still held substantial amounts of state trust land.
2. To identify case selection criteria from which the total number of identified cases would be narrowed down to eight, apply those criteria to the cases and select an initial 19 possible cases.
3. To narrow down the cases to a final eight based on the case selection criteria, create research teams and assign teams to research the various cases.

### **STEP ONE**

The first step in case selection was to research state trust land planning processes in 18 of the states west of the Mississippi, including Arizona, Colorado, Idaho, Kansas, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Washington, Wyoming and Utah. California was excluded since it no longer has a significant amount of state trust land. Each team member researched potential collaborative cases within two of these states. In identifying all possible cases, the researchers used the following definition of collaborative planning:

***A transparent process where multiple stakeholders who represent various interests have an opportunity to influence or affect decision making.***

The research team formulated this definition using the following three dimensions: (1) the breadth of stakeholders involved, (2) the degree of transparency of the decision-making

process and (3) the degree of influence the stakeholders had on the decision. The team used these dimensions and the definition of collaboration to guide the identification of potential cases. Methods of investigation included internet research, examining the states' annual reports and phone calls and emails to state land departments to gather additional information.

Basic talking points for phone interviews were as follows:

1. I'm just in the beginning stages of my research and am trying to learn more about state trust land management in the west. Could you tell me a little more about how your state approaches trust land management?
2. Are there examples of state trust land planning efforts in your state that have included participants from outside the agency or where managers used a collaborative approach to decision making?
3. Do you have any suggestions for other people I should talk to or reports or websites I should research?

Forty-two possible cases were identified from this process (Table 3-1).

## **STEP TWO**

The second phase of case selection was to develop case selection criteria. These case selection criteria included:

- Geographic representation
- Level of completion
- Range of size
- Issue range
- Level of information available
- Impetus for collaboration
- Scope of the plan

The research team determined a desired distribution for cases within these criteria (Table 3-2).

Nineteen of the 42 identified cases that fit the definition of collaboration most closely were submitted to these case selection criteria (Table 3-1).

## **STEP THREE**

The third and final step of case selection was to assess the 19 cases and narrow the selection down to eight, develop research teams and assign research teams to cases. The goal of the final narrowing down was to compile a set of cases that exemplified the breadth of geography, land use, parcel sizes and types of collaborative planning found in Western state trust land. The research design allowed for eight total case studies, with a pair of researchers working on each case, and each team member working on a total of two cases. Thus, the research team selected eight cases that best fit the selection criteria, with the addition of three alternates to choose from if one of the original eight cases was later found to be unsuitable.

**Table 3-1: Cases Identified from Step One**

<b>State</b>	<b>Case Name</b>
Arizona	Altar Valley Conservation Alliance*
	Desert Hills Conceptual Planning Process
	Empire Ranch – Biological Planning Team*
	Houghton Area Master Plan Process*
	Sonoran Desert Invasive Species Council*
Colorado	Baca Ranch./Great Sand Dunes National Park*
	Emerald Mountain Planning Process*
	Kremmling*
	Lowry Air Force Base*
Idaho	Coeur d’Alene Timber Sale*
Kansas	---
Minnesota	---
Mississippi	---
Montana	Whitefish Neighborhood Planning Process*
	Strategic Plan for Trust Land Management
Nebraska	---
Nevada	---
New Mexico	Mesa del Sol Planning Process*
	Southeast New Mexico Working Group*
	Vecinos del Rio*
North Dakota	Coordinated Resource Management Plan
Oklahoma	Lake Texoma Lodge and Park*
Oregon	Elliott State Forest Planning Process*
	Public Land Management Plan Working Group
South Dakota	State Trust Land Advisory Council
Texas	Padre Island National Seashore Oil Drilling
Utah	Castle Valley Planning Process*
	Coral Canyon, St. George
	Desert Tortoise, St. George
	Dwarf Bear Claw Poppy
	Eagle Mountain, Utah County
	Fort Pierce Industrial Park, St. George
	Hidden Valley and Fossil Hills, St. George
	Nine Mile Canyon
	Onion Hill, near Moab
	Orgill Distribution Site, near Hurricane
	Prairie Dogs, Wayne County
	South Block, St. George*
	Stephen’s Canyon, Cedar City*
	Stream Restoration, Cache County
Washington	Conservation Assessment
	Cooperative Planning Efforts with San Juan County
	Conservation of 237 Acres of Open Space
	Lake Whatcom Landscape Management Planning Process*
	Wildfire Protection Plans
Wyoming	Policy Decision with Public Comment
	State-Wide Strategic Planning Process

\*Cases that were selected as the 19 semi-finalists in Step Two.



**Table 3-2: Case Selection Criteria Requirements**

<b>Criteria Category</b>	<b>Desired Distribution</b>
Geographic Representation	Represent a minimum of 6 states
Level of Completion	At least 50-75% completed
Range of Sizes	Wide range of sizes represented
Issue Range	6 land use, 2 natural resource based
Level of Information Available	Maximum amount of information available
Impetus for Collaboration	Mandated v. voluntary (both represented)
Scope of the Plan	Both short-term and long-term plans included

The final eight cases included:

- Castle Valley Planning Process (Utah)
- Elliott State Forest Planning Process (Oregon)
- Emerald Mountain Planning Process (Colorado)
- Houghton Area Master Plan Process (Arizona)
- Lake Whatcom Landscape Planning Process (Washington)
- Mesa del Sol Planning Process (New Mexico)
- Southeast New Mexico Working Group (New Mexico)
- Whitefish Neighborhood Planning Process (Montana)

These final eight cases fit the selection criteria because (Table 3-3):

- The cases represented seven **different states** (Arizona, Colorado, Montana, New Mexico, Oregon, Utah and Washington);
- Greater than 60 percent of the cases' processes were **completed**;
- The cases represented a **wide range of land parcel sizes**;
- Six cases dealt with **land use issues** while two dealt with **natural resource issues**;
- All cases had **sufficient information** available;
- The cases involved both **mandatory and voluntary** processes;
- Two cases related to **short-term** planning and six related to **long-term** planning.

In response to a request from the team, the research team advisor helped designate eight total case research teams by matching the team members' individual case preferences, schedules and skill sets. The research design matched each individual researcher with two different researchers in order to ensure adequate mixing of skills and experience. Each case research team prioritized its preferences for specific cases, and all researchers participated in assigning the teams to cases according to these preferences. Each team then assumed the responsibility for researching the background of its assigned case and conducting on-site interviews at the case location.

**Table 3-3: How the Final Eight Cases Fit the Selection Criteria**

<b>Selection Criteria</b>	
<b>Desired Distribution</b>	<b>Selected Cases' Distribution</b>
Represent minimum 6 states (Include UT, NM, AZ, CO)	7 States (AZ,NM,OR,WA, CO, UT, MT)
50-75% Completed, fewer current or ongoing	5/8 completed >60%
Wide range of sizes	3,000 (Mesa Del Sol) to 109,000 (Southeast New Mexico Working Group)
6 land use, 2 natural resource	6 land use, 2 natural resource
Include those with most information available for a richer analysis	Sufficient
Mandated vs. Voluntary (include both)	1 Mandated, 7 Voluntary
Short term planning verses long-term planning	2 ST, 6 LT

#### **4) DEVELOPMENT OF INTERVIEW QUESTIONS**

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The research team developed interview questions that served to address the research questions to be used in the on-site case interviews. The research team based the interview questions on additional information gathered from the background literature review, from input from the project advisor and client and from the stated objectives of the project (to assess the benefits, costs, challenges, facilitating factors and lessons learned from collaborative planning on state trust land). The research team reviewed the initial set of interview questions multiple times and made changes to the content and form of the questions throughout the first three phases of the research process (see Appendix, Exhibit 1).

#### **5) DEVELOPMENT OF WESTERN STATES LAND COMMISSIONERS ASSOCIATION CONFERENCE PRESENTATION AND INFORMATION GATHERING**

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During the first four phases of research, the research team worked on developing a presentation and panel discussion session for the Western States Land Commissioners Association (WSLCA) conference held in July 2005 in Breckenridge, Colorado. The purpose of presenting at this conference was twofold: (1) to propose the research concept to an audience of state trust land commissioners and other conference participants and (2) to solicit feedback on the research concept and methods in order to refine the interview questions and research approach.

The team created the following products for this Conference: (1) a color executive summary brochure of the project's goals and selected cases, (2) a presentation to WSLCA conference attendees and (3) a facilitated panel discussion about the project's research design, methods and desired products. Panel members included Mark Winkleman, Commissioner of the Arizona State Land Department; Tom Schultz, Trust Land Administrator of the Montana Department of Natural Resources and Conservation; and Ric McBrier, Assistant Director of Planning and Development of Utah's School and Institutional Trust Lands Administration. Feedback and comments from WSLCA participants provided guidance on the specific research questions and helpful products that could be developed to communicate the results of the study.

## **6) COMPLETION OF CASE RESEARCH AND CASE STUDY WRITING**

The eight case research teams conducted background research on their cases, identified potential participants to interview, conducted informal initial phone interviews with potential interviewees and scheduled the in-person interviews during May through July 2005. Prior to conducting the interviews, case research teams sent follow-up letters to interviewees confirming the date and time of scheduled interviews and providing additional details about the project (see Appendix, Exhibit 2). The case research teams also provided an informed consent document to each interviewee and obtained verbal consent prior to conducting all interviews (see Appendix, Exhibit 3).

The case research teams conducted on-site case research in August 2005. Each case research team conducted between 11 and 17 interviews per case, each lasting approximately one to two hours. The teams attempted to garner the broadest possible base of stakeholder representation in their interviews, in order to get as full a picture of the case details as possible. The number of interviews conducted varied from team to team based on the types and numbers of stakeholders involved in that case. When permission was granted by the interviewee, interviews were digitally recorded and then later transcribed and/or summarized by the case research teams.

Interview transcriptions and summaries; notes taken during the interviews; supplemental materials; and information from archival research, internet sources and interviewees served as the data for each case. Several case research teams conducted follow up phone interviews with participants who they had interviewed in person in order to ask follow-up questions or to obtain clarification. In addition, some of the case research teams conducted phone interviews with other case participants who could not be interviewed in person.

After the research was completed, the research teams wrote in-depth case studies during the fall 2005. Each case study had one lead author who was one of the primary researchers for that case. Each lead case study author wrote a summary of the state trust land background for the state in which the case took place; a synopsis of the events of the planning process in the case; and an analysis of the benefits, costs, challenges, facilitating factors and lessons learned about collaborative planning from the case. Each author based his or her analysis on themes that emerged from interview transcriptions and notes and other supplemental materials used

in the case research. The case research partner then edited their partner's draft case study for content, interpretation and grammar. The research team then peer-reviewed cases in which they were not involved for both content and grammar. The project advisor and clients also were provided opportunity to comment on the draft case studies, which were edited accordingly.

After lead authors made all relevant changes to their case studies, they sent them to all interviewees who were directly quoted in the document to get approval to use the quotes and to check for errors in fact or representation. Case study authors then made the appropriate changes to the cases.

## **7) DEVELOPMENT OF CROSS-CASE ANALYSIS FRAMEWORK**

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The research team developed a framework for cross-case analysis through a brainstorming session during which all of the case research teams shared their initial perceptions of the major benefits, costs, challenges, facilitating factors and lessons learned from their cases. The area of overlap between the cases served as the beginning of a matrix that served as the basic framework for cross-case analysis. The information in the matrix was augmented by adding in cross-case comparisons by the team advisor and individual team members.

Additionally, the research team held a cross-case analysis charrette, where all team members and the project advisor contributed ideas to creating the outline and substance for the cross-case analysis section. After the charrette, team members, the project advisor and the project clients helped continue to shape the cross-case analysis outline. After the cross-case analysis outline was completed, the research team assigned individual section writers to each section, and those section writers were responsible for researching and drawing the key lessons from all of the case studies that were relevant for their section(s).

## **8) CROSS-CASE ANALYSIS OF CASE STUDIES**

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Each cross-case analysis section writer analyzed and wrote about a specific theme of the cross-case analysis such as legal issues, motivating factors or leadership. To do so, each writer read and analyzed all eight completed case studies and looked for common themes, similarities and differences regarding the theme in question. The author also based his or her writing on the content that emerged during the cross-case analysis charrette. The cross-case analysis sections also included discussion of relevant lessons from the collaborative planning literature where relevant.

## **9) DEVELOPMENT OF BEST MANAGEMENT PRACTICES AND RECOMMENDATIONS**

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After having written the case studies and cross-case analysis sections, the research team brainstormed a set of best management practices and recommendations based on the full set

of lessons learned and cross-case analysis from the eight cases. To do so, the research team held a charrette to jointly develop best management practices and recommendations for overcoming the barriers to successful collaborative planning involving state trust land. During this charrette, the research team developed the basic categorization and substance for the list of best management practices and recommendations. The best management practices focused on providing on-the-ground guidance for collaborative planning processes on state trust land that are getting started or currently ongoing. The recommendations addressed the broader context of challenges that impede collaboration on state trust land, providing a bigger-picture and often longer-term recommendations to overcome those barriers.

## **SECTION II: CASE STUDIES**

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## **CHAPTER 4**

### **THE CASTLE VALLEY PLANNING PROCESS: Conserving Trust Land in a Unique Landscape**



Castle Valley, Utah

Photograph by Stephanie Bertaina

**Case Study by Stephanie Bertaina  
Researched and Edited by Stephanie Bertaina and Eirin Krane**



## INTRODUCTION

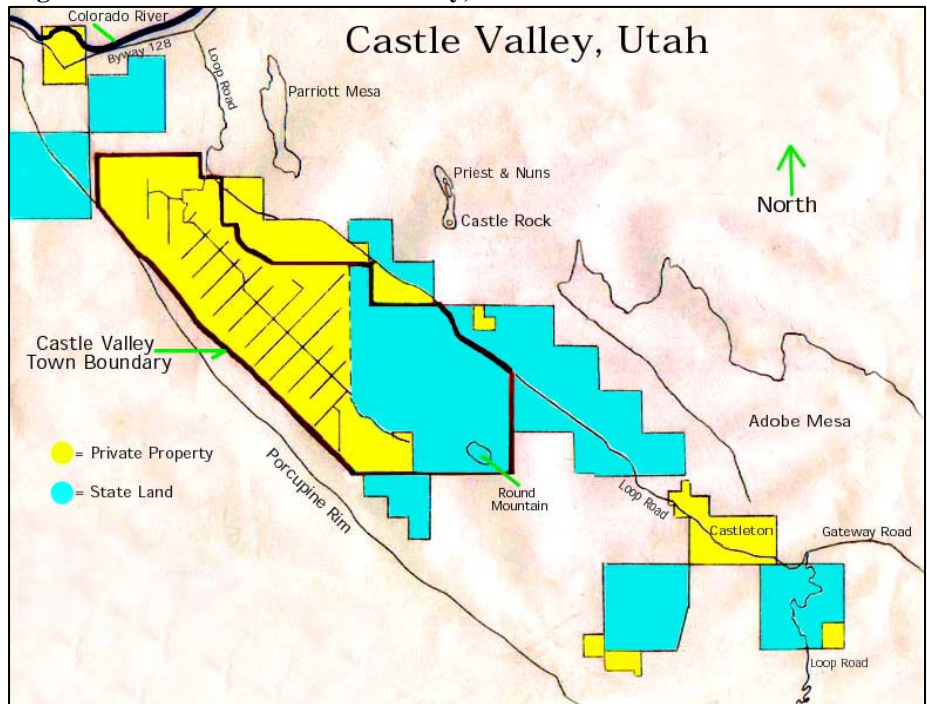
The small, rural community of Castle Valley is located in the beautiful red rock desert of southeastern Utah and is surrounded by 4,500 acres of trust lands. The town is comprised of only 350 residents, many of whom describe themselves as “urban runaways” or “renegades” attempting to escape the hustle and bustle of life in the city or suburbs.<sup>1</sup> Despite its size, Castle Valley is a diverse community, representing a wide array of ages, religious faiths, political beliefs and economic backgrounds. However, all of the residents of Castle Valley share the fact that they have chosen to live in the southeastern Utah desert, more than a thirty-minute drive from the nearest town, to live in the harshness and beauty of the desert landscape.

Approximately 4,500 acres of school trust land in Castle Valley are spread throughout the Valley, surrounding existing development and extending toward the southeast portion of the Valley into the undeveloped sections (Figure 4-1).

Before the Castle Valley Planning Process, which began in 2000, many community members were unaware of the differences between trust lands and other types of state or federal land in the

Valley, and most residents of Castle Valley never expected that the land surrounding them could be sold and developed.<sup>2</sup> Rather, they thought that the undeveloped land in the Valley, complete with its red rock formations and untamed wildness, would remain as open space. However, in the fall of 1998, Utah’s School and Institutional Trust Lands Administration (SITLA), the trustee and manager of the land, decided to auction land at the base of Parriott Mesa, one of the prominent red rock geological features in Castle Valley, to raise money in support of public schools (Figure 4-2). As a result, the community realized that additional residential development within their community was a real possibility.

**Figure 4-1: Trust Land in Castle Valley, Utah**



Source: Town of Castle Valley, [www.castlevalleyutah.com](http://www.castlevalleyutah.com).

The sale of the land at the base of Parriott Mesa was truly a wake-up call for the community. Shortly after the land sale, a group of concerned residents formed a citizens' action committee, the Castle Rock Collaboration (CRC), to represent the conservation interests of the town. A multi-year process ensued in which SITLA and the Castle Valley community, represented by CRC and the town government, engaged in efforts to plan for appropriate development, and potentially allow for

**Figure 4-2: Parriott Mesa**



Source: Photograph by Stephanie Bertaina

conservation options, on the trust land. The process brought together stakeholders with seemingly contradictory goals of generating revenue from the land and maintaining open space in perpetuity and achieved an outcome that none originally thought possible.

This collaborative process highlights the importance of defining the roles and responsibilities of all participants in the process from the outset, particularly when legal restrictions are at play. In addition, the Castle Valley Planning Process emphasizes the importance of having dedicated leadership involved in the process, especially when dealing with the reality of unequal power relationships among participants. The challenge of navigating conflict in the collaborative process also is seen in this case, as relationships between individuals and organizations both motivated and hindered the collaborative process along the way.

## **CONTEXT FOR COLLABORATION**

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Assessing the Castle Valley Planning Process as a collaborative planning effort on trust lands requires an understanding of the context in which this process occurred. This section discusses the historical, legal and political events and issues that influenced the process.

### **UTAH'S LAND GRANT AND ENABLING ACT**

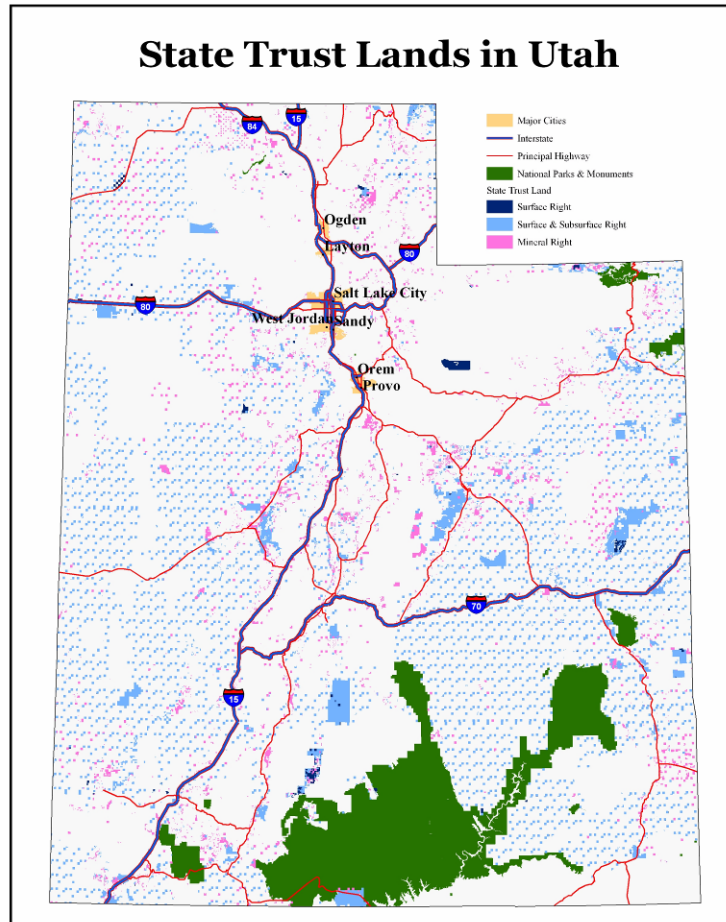
The Enabling Act of 1894 granted Utah designated sections of land in each township to support the common schools and 11 other public institutions, encompassing approximately 7.5 million acres of land in a checkerboard pattern around the state.<sup>3</sup> Utah retained about 44 percent of this original 7.5 million acres, and sold the remaining land, primarily during the first 35 years after statehood.<sup>4</sup> In fact, about 30 percent of what is now private land in Utah came from the sale of trust lands.<sup>5</sup> The state now owns 3.5 million surface acres and 4.5 million subsurface acres of trust land, which comprise roughly seven percent of the land area

in Utah (Figure 4-3). Approximately 70 percent of Utah’s land is in federal ownership, and only 21 percent is privately owned.<sup>6</sup> The large percentage of federally-owned land makes private land a valuable commodity in Utah.

### TRUST LAND BENEFICIARIES AND THE PERMANENT STATE SCHOOL FUND

Although the common schools are Utah’s largest trust beneficiary group, holding 95 percent of Utah’s trust lands, 11 other public institutions are designated beneficiaries.<sup>7</sup> These other beneficiary groups receive funding in the form of interest and dividend payments from separately managed grant land funds, plus all net revenue except land sale revenue.<sup>8</sup> State law mandates that all net revenue generated from the lease, sale, rental or use of common school lands and all gross revenue from sales be placed in the permanent State School Fund, which was designated by Utah’s Constitution to support public schools. Interest and dividends generated from the fund are distributed directly to schools by school districts on a per pupil basis. Each school has a School Community Council comprised of parents, teachers and the principal. With their school’s trust allocation, this Council develops and implements a plan to improve student academic performance that has been approved by their local school board.<sup>9</sup>

Figure 4-3: Trust Lands in Utah



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

### LEGAL INTERPRETATIONS OF UTAH’S TRUST RESPONSIBILITY

Utah’s Enabling Act places few restrictions on the minimum sale or lease price of trust lands, as compared to those of several other Western states. This flexibility enables the state to engage in negotiated trust land sales, as well as public auctions, which was important in the Castle Valley Planning Process. Despite this flexibility, the legislature mandated that the state obtain fair market value for trust land and that it fulfill its fiduciary responsibility to its

beneficiaries.<sup>10</sup> According to the legislation, Utah also must be concerned with both the short term concerns of current beneficiaries, as well as the long-term interests of future beneficiaries. Because of this requirement, the state must balance these competing interests in a way that enables both short-term and long-term goals to be met for the trust's beneficiaries. The debate surrounding the trust's responsibility to balance short and long-term goals emerged during the Castle Valley Planning Process and became both a challenge and motivating factor.

Prior to 1994, Utah's Division of State Lands and Forestry managed the state's trust lands. This Division was housed within the Department of Natural Resources, which also managed a number of other activities – a fact that precluded trust land management from being an agency priority. Because the Division of State Lands and Forestry was not able to prioritize trust land management activities, their effectiveness in managing the trust portfolio was limited and revenue generation suffered as a result. The agency received criticism because of their failure to generate adequate revenues for the trust and specifically their inability to manage land with real estate development potential, which had become important given the skyrocketing value of real estate in Utah.<sup>11</sup> In response, the State Legislature created the State of Utah School and Institutional Trust Lands Administration (SITLA) in 1994 as an independent state agency.<sup>12</sup> SITLA was tasked with “administer[ing] the trust lands prudently and profitably for Utah's schoolchildren.”<sup>13</sup> SITLA was required to manage the lands for both the short-term and long-term financial support of the trust beneficiaries. In addition, the legislation required SITLA to make clear that trust lands are not intended to benefit “other governmental institutions or agencies, the public at large, or the general welfare of the state.”<sup>14</sup>

Although the legislation does not explicitly require SITLA to ameliorate conflicts of interest between trust land management and adjacent land managed by other agencies with different mandates, the state often tries to balance community desires with the beneficiaries' interests out of good citizenship and to avoid unnecessary conflict.<sup>15</sup> The balance between reducing conflict with existing land users and ensuring that the trust beneficiaries' interests were represented became difficult for SITLA at points during the Castle Valley Planning Process.

## **TRUST LAND MANAGEMENT IN UTAH**

The legislation that created SITLA sets forth how the organization is directed and managed. By legislative mandate, SITLA manages all of Utah's school and institutional trust lands and assets. The agency is guided by a Director, who is appointed by the agency's Board of Trustees. The Utah Governor appoints the seven-member Board of Trustees with the consent of the Senate. The Board is composed of individuals who are qualified in the areas of real estate, renewable resources and non-renewable resources management or development. Prospective members of the Board are nominated by an 11-member committee, including a variety of stakeholders recommended by the State Board of Education, the Governor and the president of the Utah Association of Counties.<sup>16</sup>

SITLA is organized into three Groups: Surface, Minerals and Planning and Development. The Surface Group primarily works on leasing and sales of trust land surface uses, such as



grazing, forestry, hunting access and development.<sup>17</sup> The Minerals Group manages the leasing and sales of mineral and subsurface uses of trust lands.<sup>18</sup> The Planning and Development Group, which manages approximately one percent of all trust lands in Utah, works primarily on tracts of land that have higher potential surface values in the form of real estate, land planning and conservation. This Group works with the private sector, government representatives and other parties to plan and create value through creative transactions.<sup>19</sup>

Although subsurface uses, including oil, gas and mineral extraction, comprise the majority of Utah's trust land revenues, surface uses such as real estate development sales have become increasingly important. SITLA's interest in planning and development is evidenced by the Planning and Development Group's activities. This Group has worked on planning, zoning and developing infrastructure on select parcels of land rather than selling unplanned, raw land. Since SITLA's formation, the Planning and Development Group's activities have resulted in the sale of more than 5,300 acres of trust lands, bringing in more than \$42 million, with expectations of privatizing land in the future for a total expected value of \$1 billion.<sup>20</sup> The Planning and Development Group played a significant role in the Castle Valley Planning Process, as SITLA's interests were represented by the Assistant Director of the Planning and Development Group throughout.

#### **UTAH AND SITLA POLITICS**

Ric McBrier, Assistant Director of Planning and Development at SITLA, described his agency as a "quasi-private" agency that is much less governmental than similar organizations in the West.<sup>21</sup> SITLA funds all of its activities from revenue generated from the trust land management activities, as opposed to relying on state taxes for its budget; although the Governor and the State Legislature oversee expenditures.<sup>22</sup> Even though SITLA's 7-member Board of Trustees is appointed by governmental officials, the agency has been perceived to be more similar to a private agency than a governmental one.<sup>23</sup> SITLA Director Kevin Carter echoed the level of political independence and power of the organization, "We have a pretty unique and powerful situation." Carter explained this situation by describing that the conservative nature of the Utah State Legislature and the clarity of SITLA's statutory mandate result in the legislature being very supportive of the agency's decisions in general. These factors also explain some of the difficulties entities attempting to challenge SITLA's decisions in court have faced in the past.<sup>24</sup> Because of SITLA's clear mandate, it is a very powerful agency by reputation and in reality. SITLA's level of power, both perceived and real, was important in shaping the discussions in the Castle Valley Planning Process, particularly from the Castle Valley community's perspective.

An important political factor that historically has influenced the management of trust lands in Utah is the role of beneficiary representatives. These representatives, who primarily represent Utah school children, have pushed for greater revenue generation from the trust land holdings. Margaret Bird is a Beneficiary Representative for the Utah State Office of Education and one of the directors of the Children's Land Alliance Supporting Schools (CLASS) who is particularly active in interacting with SITLA.<sup>25</sup> CLASS is a non-profit

organization focused on educating the beneficiaries of trust land in 24 states; its mission includes improving education through achieving:

... increased funding from school trusts, support by education communities for congressional actions that benefit school lands and schools, increased revenue from permanent school funds through investment strategies, provision of information to support the land managers and assistance in the development of public information about the trust lands and their purpose for the children.<sup>26</sup>

The Utah State Board of Education and CLASS both have been instrumental in influencing the management of Utah's trust lands. Margaret Bird indicated that as a Beneficiary Representative, she meets regularly with the SITLA Director and staff members, as well as members of the Utah State Legislature to ensure that the beneficiaries' interests are honored in all transactions on trust land. The reorganization of Utah's trust land management in 1994 to form SITLA was due in part to the education community's lobbying for change.<sup>27</sup> The beneficiary representatives, although not directly part of the Castle Valley Planning Process group, were nonetheless important in the outcome of the process through their influence on SITLA's decisions.

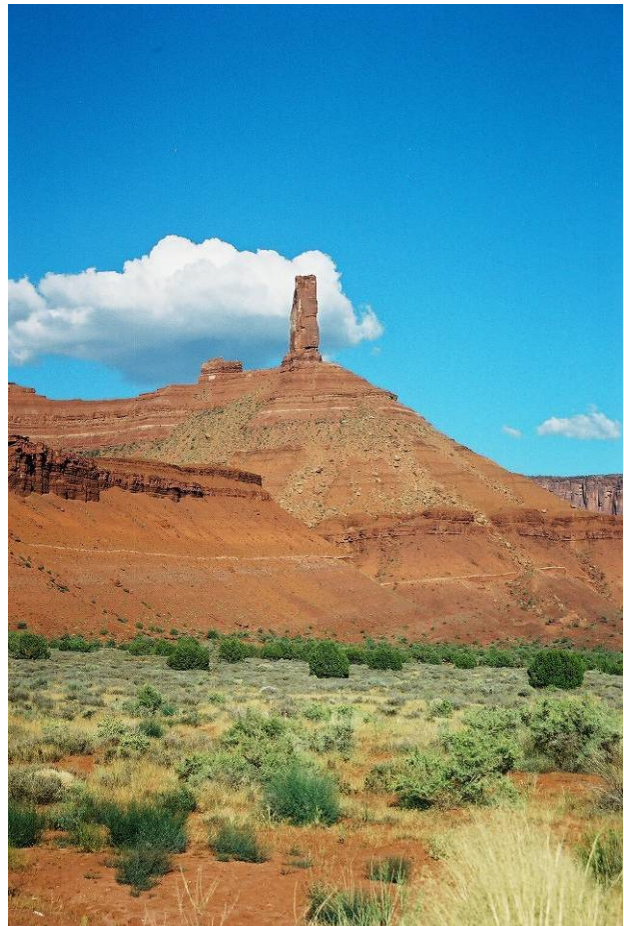
#### **THE STORY: THE CASTLE VALLEY PLANNING PROCESS**

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In the fall of 1998, the Surface Group at the School and Institutional Trust Lands Administration (SITLA) decided to sell at auction an 80-acre and 40-acre piece of trust land at the base of Parriott Mesa, a majestic and well-known red rock formation in Castle Valley.<sup>28</sup> This tract of land was purchased quickly and sold to a developer and his business partner, who subdivided it and subsequently sold three lots to private buyers.<sup>29</sup> This sale upset many of the citizens of Castle Valley not only because it resulted in the subdivision of previously-undeveloped land, but also because citizens believed that there was little, if any, community input in SITLA's decision to sell the land.<sup>30</sup> Rumors that the trust land at the base of Castleton Tower, another spectacular red rock formation and a famous climbing venue, was intended to be auctioned next further upset the community (Figure 4-4).<sup>31</sup>

In response, a grassroots citizens' group, the Castle Rock Collaboration (CRC), was

**Figure 4-4: Castleton Tower**



Source: Photograph by Stephanie Bertaina

formed in early 1999. Comprised of residents of Castle Valley and the surrounding area, the group formed literally overnight in response to the sense of urgency and perceived need to act quickly.<sup>32</sup> Interested community members aware of the sale called their neighbors and friends to gather and form a cohesive group to address the issue.<sup>33</sup> Cris Coffey, one of CRC's founding members, recalled how and why the group emerged:

We got together and voiced our fears, disbelief and unwillingness to have [the land sales] happen ... It was like a groundswell – something that's meant to happen. Everyone was giving their best ideas, what was in their hearts and minds. We knew that we would meet again and try to do something, a group of friends and interested parties coming together. We all went down our phone lists and tried to circulate the word, so that all interested people could participate.<sup>34</sup>

CRC's founding members included steering committee members Brooke Williams, Terry Tempest Williams, Cris Coffey, Karen Nelson, Bill Hedden, Eddie Morandi, Paula Martin, Alice Drogin, Susan Ulery, Laura Kamala and Dave Erley. Kamala and Erley led the group's activities, with Kamala as Chair of the CRC Board.

Even though CRC developed in response to the sale of Parriott Mesa trust land, several members of the community had become aware of SITLA and the presence of trust land in Castle Valley much earlier. Dave Erley, one of CRC's founding members, noted that trust land issues became prominent locally with the creation of the Grand Staircase-Escalante National Monument in 1996 that resulted in the exchange of 200,000 acres of trust lands with federal lands to complete the monument.<sup>35</sup> In addition, Erley had discussed the extent of trust lands with several neighbors prior to the Parriott Mesa sale, including author Terry Tempest Williams and her husband Brooke Williams, who were influential in CRC's formation. Grand Canyon Trust Director Bill Hedden, also a resident of Castle Valley, had been involved in Utah conservation and was knowledgeable about the nature of Utah's trust lands, having authored a position paper on the topic.

Despite some residents' early awareness of trust land in the Valley, many residents were unaware of the scope of the issue. It took the sale of the Parriott Mesa trust land to catalyze CRC's formation.<sup>36</sup> Brooke Williams and Terry Tempest Williams were instrumental in suggesting that a collaborative, community-based approach could work to address the issue. Brooke Williams also had connections with SITLA Assistant Director of Planning and Development Ric McBrier, and conversations between the two fostered the belief that SITLA and the community might be able to work together on trust land issues in the Valley.<sup>37</sup>

At the same time that CRC was organizing, the town of Castle Valley responded to the sale of the Parriott Mesa trust land. Although the trust land that had been sold was outside the town's boundaries, elected officials were concerned that trust land within the town would subsequently be sold. In response to this concern, the town Planning and Zoning Commission considered rezoning SITLA's unsubdivided trust land within municipal boundaries from one unit per five acres to one unit per 40 acres in August 1999.<sup>38</sup> The rezone would decrease the allowable development density to stymie additional development.<sup>39</sup> When SITLA Associate

Director of Administration John Andrews received a copy of the agenda for the Planning and Zoning Commission's meeting to discuss the rezoning proposal, he was concerned because he believed that SITLA had not received adequate notice of the proposed zoning change and that the town lacked legal authority to rezone the trust lands. In response, he wrote a letter requesting that the Commission table the proposal pending the master planning effort that SITLA and the community of Castle Valley had begun the week prior.<sup>40</sup>

The town and SITLA subsequently agreed that working together to solve the differences jointly through a master planning process would be more efficient than going through a contentious rezone. John Andrews recalled, "It made more sense to talk than fight."<sup>41</sup> Castle Valley Mayor Bruce Keeler, who was involved in the formation of CRC, continued a conversation with SITLA Assistant Director Ric McBrier about the possibility of working collaboratively on the problem rather than pursuing litigation and further land sales. CRC member Cris Coffey remembered that CRC "decided that one of the things we needed to do was to contact [SITLA] and find out if there was a way we could work together for a win-win situation."<sup>42</sup> As a result of this conversation and earlier discussions between Brooke Williams and McBrier about the possibility of SITLA working with the community, the town tabled their efforts to rezone and SITLA agreed to place a voluntary moratorium on all land sales for an indefinite period of time while the community and SITLA jointly worked on a planning effort for trust land in Castle Valley.<sup>43</sup>

As discussions about joint planning began, CRC continued working to address the land that had been sold at the base of Parriott Mesa. The CRC steering committee contacted Wendy Fisher, the Executive Director of Utah Open Lands, a Utah-wide land trust based out of Salt Lake City, to see if there was an opportunity for CRC to partner with the organization to pursue purchasing the land back from the developers. In the early spring of 2000, roughly six months after its formation, CRC became a branch of Utah Open Lands, which enabled a partnership with a well-established land trust that could engage in tax-deductible fundraising efforts.<sup>44</sup> Laura Kamala and Dave Erley were hired by Utah Open Lands part-time to coordinate CRC's activities.

While CRC was organizing, time was of the essence as developers intended to quickly begin developing the trust land at the base of Parriott Mesa. Utah Open Lands Executive Director Wendy Fisher remembered that the organization wired \$28,000 to the developers the day the bulldozers arrived to start flattening the house sites in order to stop development.<sup>45</sup> On April 1, 2000, Utah Open Lands signed an option agreement with the developers, providing six months to raise the rest of the funds to purchase 60 acres of the Parriott Mesa land back from the developers.<sup>46</sup> After engaging in fundraising efforts, Utah Open Lands purchased the Parriott Mesa property from the developers for \$196,000 on October 6, 2000, an event that the community perceived as a stunning conservation success.<sup>47</sup>

## **A PLANNING PROCESS EMERGES**

The planning process officially began in January 2000.<sup>48</sup> As part of the planning effort, three stakeholder groups were originally identified to participate in the process: (1) SITLA, (2) the community as represented by CRC and (3) the town of Castle Valley as represented by its



elected officials. SITLA was represented by Assistant Director of Planning and Development Ric McBrier, CRC was represented by its members and the town was represented primarily by Mayor Bruce Keeler, Town Council member Karen Nelson and Planning and Zoning Commission members Richard Schwartz and Brooke Williams. However, the distinction between CRC and the town was sometimes unclear.

At the beginning of the process in the late spring of 2000, the group decided that they needed an outside, neutral facilitator and planner who could help with the negotiation and planning efforts. Jointly, the parties submitted Requests for Proposal to various facilitators and planners, conducted interviews of applicants and ultimately hired Marty Zeller and his colleagues from the Denver-based firm Conservation Partners, Inc. SITLA and the community evenly split the \$72,000 cost for hiring Conservation Partners. The community's portion was covered by grants and a donation from the Castle Valley River Ranchos Property Owners Association.<sup>49</sup>

The planning process began as a series of meetings during which the parties discussed their positions, interests and goals and explored alternative uses of the land, including conservation and development options. With a facilitator on board, one of the group's first activities was to acknowledge that the community and SITLA had very different interests and objectives. The community, particularly as represented by CRC, was clear that their ultimate goal was 100 percent conservation of trust land in the Valley. Likewise, SITLA Assistant Director Ric McBrier openly indicated that SITLA's concern was to ensure that they achieved their fiduciary responsibility.<sup>50</sup>

At the beginning of the process, the community expressed some mistrust towards SITLA. CRC leader Laura Kamala remembered, "There was a basic distrust of SITLA. That was a big problem and a baseline that we started from."<sup>51</sup> She added that despite this fact, "We all had our doubts, our fears, our distrust, but we were willing to go forward and to try something new and different."<sup>52</sup> The mistrust stemmed from the community's perception that SITLA had failed to work effectively with local communities in the past and their fear that SITLA would not hear their interests. Mayor Keeler reflected on what he had heard from other communities who had worked with SITLA in the past.

All through this process, I was in communication with communities all over the state. Basically, they kept telling me, "What are you dealing with these people for? You can't trust them. You can't do business with them. They're going to screw you in the end." That's what every Mayor, every Planning Commissioner, every Board of Supervisors said, whether from counties or cities. They all told us we were crazy to even enter into this. They told us we'd never pull it off. Basically, we were told by just about everyone we talked to, that no matter what SITLA told us would happen, don't expect that by the time it gets through the [SITLA] Board, it will look anything like what you agreed to ... I went to conferences and would spend all my free time talking to communities who had trust lands in their towns and counties and felt that they were being nailed to the wall, that they were having things shoved down their throats by SITLA that the communities did not want.<sup>53</sup>

CRC leader Dave Erley explained that in the past, the common perception was that there was “a lot of blustering and bullying on SITLA’s part. We were concerned because we had seen what SITLA has done with their prize developments.”<sup>54</sup> Because of the community’s perceptions of SITLA’s reputation prior to the planning process, mistrust existed from the outset.<sup>55</sup>

In order to address the participants’ varying interests and the issue of mistrust, the group developed a set of principles and criteria for success (Table 4-1). The principles guided the process, set forth standards for group members’ interactions with one another and established measurable goals, objectives and outcomes by which success in the process could be determined, with the help of the facilitator Marty Zeller.<sup>56</sup> The principles acknowledged the participants’ opposing viewpoints, but established that they were not necessarily mutually exclusive. As described by Zeller:

The principles basically were an exercise at the beginning of the process to get [the participants] to start talking to each other, to define some areas of common ground and to create an initial focus for the planning effort. [The principles] got them engaged constructively as opposed to destructively in the process.<sup>57</sup>

The principles also encouraged the participants to drop preconceived notions and be willing to explore a variety of alternatives for the land. Zeller explained that the principles enabled the participants to espouse openness to new ideas, “The Town said they’d consider development as one of those alternatives and [SITLA] said they would consider non-development as one of those alternatives.”<sup>58</sup>

**Table 4-1: Castle Valley Planning Process Principles for Success**

<b>Castle Valley Planning Process Principles for Success</b>	
<b>1. Open and Collaborative Process.</b>	The aim of this planning process is to define both a conservation and real estate product for the parcel of Utah School Trust Lands (the “Trust”) identified on the attached map. This process should meet the primary objectives of the Town, the Trust and the Castle Rock Collaboration (CRC). All parties recognize that they are starting with very different objectives but that the risks of not exploring creative alternatives in a collaborative fashion far outweigh the consequences of typical disposition and conventional development of these properties. In order to arrive at an acceptable plan, all parties must be willing to openly explore alternatives without commitment to preconceived solutions. There is mutual risk taking. All parties desire to maximize benefits and minimize potential losses through this joint planning process. All parties enter this process with constructive, open and flexible attitudes.
<b>2. State Trust Objectives.</b>	The primary objective of the Trust is to realize an economic return from the disposition/use of these lands for the benefit of the state school trust, which is comparable to the fair value of these lands at the time of disposition. In addition, the Trust desires to explore strategies that add value to its properties, including timing or phasing approaches and to work cooperatively with the Town of Castle Valley and CRC so that the conservation and real estate products produce public benefits far greater than simple disposition of these properties.

<b>Castle Valley Planning Process Principles for Success Continued</b>	
<b>3. Castle Valley Community Objectives.</b>	The primary objective of the Town of Castle Valley and CRC is to see that the lands that have important conservation values on the Trust properties are protected to retain those characteristics for the benefit of the Town and County residents, the State of Utah and the national and international visitors who annually experience the valley. When the Town, CRC and their partners acquire lands, or interests in lands, in order to protect conservation values, they expect to pay fair value for these interests. In the event that neither the Town, CRC or their partners are able to acquire lands for conservation purposes, and to the extent that real estate development is indicated on these properties in order to generate economic value for the Trust, new development should respond to the preferences and interests of the Town and CRC so that the development both fits in the landscape and responds to input from the local community.
<b>4. Conservation and Development Opportunities, Constraints and Strategies.</b>	All of the Trust parcels should be analyzed for their conservation and development potential and value. The objective of this exercise is to define those parcels that have high conservation values, high opportunities for development or a mix of conservation and development products that are appropriate for these areas but also strategies to achieve the Trust's financial objectives and the Town's and CRC's community objectives. A full range of creative conservation and development options should be considered.
<b>5. Real Estate Products.</b>	In defining the types of potential real estate products, preferences shall be given to those kinds of development which fit in and blend with the natural landscape, which meet the Town identified needs, which meet economic objectives and which minimize the amount and area of disturbance. The Town, CRC and the Trust desire that the development product be accessible to a diverse range of potential buyers. In exploring alternative real estate products, a diversity of locations and product types should be considered. The Town expects that new development will pay its own way, that the Town will not be subsidizing the costs of new development and that the pace of development will occur at a rate that does not overwhelm Town services. The Town, CRC and the Trust will have to identify the types of development which are desirable from their different perspectives.
<b>6. Conservation and Development Plan and Time Table.</b>	The ultimate plan should identify the conservation and development program for each of the Trust parcels. In this fashion, the parties will have the assurance that the maximum allowable level of development for each of the parcels has been defined. In addition, the planning process should explore the concept of developing a time frame for disposition of the parcels. This time frame would identify the minimum amount of time prior to the development or marketing of each of the parcels. No parcel would be disposed of prior to the date identified in the proposed timetable. The objective of this time table concept is twofold: (i) to give the Town of Castle Valley, CRC and their partners reasonable time to develop alternative acquisition or protection strategies which might lessen the impact of development or lead to greater conservation benefit, and; (ii) to identify a set time frame for the Trust which would allow reasonable disposal of the individual parcels, with the assurance that the Town will support such development. In conjunction with the time table, the planning process should explore the strategies and structures for granting the Town, CRC and their conservation partners, the opportunity to acquire certain lands or interests in lands.
<b>7. Valuation.</b>	The Trust will ascertain through analysis or appraisal that the plan developed through this process has comparable value to open market disposition, minus any retained interests. This valuation should occur throughout the planning process so that they process may respond creatively to information generated through these analyses. The valuation process should be done in a manner that enhances the credibility of the conservation and development products.
<b>8. Implementation.</b>	The Town, CRC and the Trust understand that various agreements will need to be approved by the governing boards of the implementing parties. All parties agree to a good faith commitment to seek any reasonable means to achieve the stated objectives of the parties.

Source: "Castle Valley Planning Study: Principles or Criteria for Success," Castle Rock Collaboration, <http://www.castlerockcollaboration.org/initiative.html> (website not currently available).

Another way that the community began to overcome their mistrust of SITLA was through developing relationships. Mayor Keeler recalled, "[The community] built our trust with Ric [McBrier] through developing a working relationship with him we felt good about."<sup>59</sup>

## **CRC FOCUSES ON COMMUNITY OUTREACH**

As the process continued, CRC worked on reaching out to the Castle Valley community and other stakeholders who would be interested in the plan. They identified and engaged several groups including: recreational interests, the Seventh Day Adventist community, the Church of Latter Day Saints community, Castle Valley Ranching Operation, Grand County, state and federal land management agencies including the Bureau of Land Management (BLM), the United States Forest Service (USFS) and the Utah Division of Wildlife Resources (DWR), the Castle Valley River Ranchos Property Owners Association and other conservation groups, who participated to varying degrees during the process.<sup>60</sup> CRC leader Laura Kamala recognized that reaching out to these interest groups was important, but that reaching out to individuals in the community was essential, as well:

We tried to identify the interest groups that we should engage in our collaborative process ... but what it boiled down to was that there were individuals we had to approach as well ... We had a lot of public meetings with the planners at every step along the way when we were going through the [planning process]. We invited the community in, and some meetings were more well-attended than others.<sup>61</sup>

Kamala also acknowledged that outreach to Castle Valley community members was challenging:

There are people in the community who are really engaged and are very concerned about what the future holds for our watershed and who are committed to that. This was the core group of Castle Rock Collaboration. Then there were the people outside who we also approached. We tried to engage those who were outside the process who were maybe skeptical or judgmental of those of us who were involved. [We would] tell them what we were doing, give them an opportunity to say what their concerns were and try to draw them in. It was successful only to the extent that it could be. This place is inhabited by strong individualists.<sup>62</sup>

SITLA Assistant Director Ric McBrier remembered that because “the community’s perspective was that they didn’t want any development, for some of [the community members] even working on a plan was to acknowledge defeat. There was a split in the community on whether they should work on the planning or not.”<sup>63</sup> Laura Kamala and other CRC members experienced difficulty encouraging members of the community to fully engage in the process because of their concern that development would be the unavoidable outcome. While Kamala reminded the community that SITLA was partnering with them in efforts to find options that would suit all stakeholders’ interests, including the community’s desire for conservation, some residents remained skeptical.<sup>64</sup>

Another challenge for CRC was overcoming the perception that they were just another environmental group, which made the more conservative members of the community

suspicious. CRC and Town Council member Karen Nelson recalled the difficulty CRC had in overcoming the environmental group label:

It was difficult for [CRC members] who started working on this project to encourage the more conservative members of the community to not label [CRC] some environmental group. And it's really not. There is that aspect of it. But if you realize all of the other economic ties, and you are open to communicating the economic and quality of life issues, it's their quality of life and our quality of life. A lot of effort was made to try to bridge that, and it was not always successful.<sup>65</sup>

In addition to the individualist nature of community members and misperceptions regarding the nature of CRC as an organization, the group struggled because Castle Valley had few effective methods for communication among its residents. Castle Valley does not have a community phone book, and the town typically communicates with residents by posting notices on a bulletin board at the mailboxes at the edge town.<sup>66</sup> Ron Drake's column "The Castle Valley Comments" in the Moab *Times-Independent* was another venue for communication, although not everyone in the Valley consistently read the newspaper.<sup>67</sup> The lack of efficient methods of communication hampered attempts at community outreach and limited community involvement to some extent (see Appendix, Exhibit 4 for images of the Castle Valley area that illustrate its rural and unique nature). Despite the many challenges CRC faced in its outreach efforts, the planning process continued.

## **THE PLANNING PROCESS CONTINUES**

One of the group's first formal activities after developing the principles for success was to develop a shared understanding of the resources of the Valley by developing and analyzing a set of maps. Since SITLA's 4,500 acres of trust land represented a substantial percentage of land in the Valley, the group needed a common understanding of the types of land in the area suitable for development and natural resource protection. Conservation Partners, with help from Studio 2 Designs and Computer Terrain Mapping, carried out mapping analysis of the trust lands' geologic hazards, vegetation, wildlife migration patterns, viewshed patterns, skyline, drainage patterns and other features. The group used the mapping as a starting point to analyze the development potential of the land and identify particularly important lands for natural resource protection.<sup>68</sup> The town also contracted a hydrological study to assess the aquifer's quality and capacity to accommodate development.<sup>69</sup>

Initial mapping indicated that a little more than 60 percent of the land was unsuitable for development because of geological or natural resource restrictions.<sup>70</sup> This constraint reduced SITLA's potential development density from 884 units (based on one unit per five acre lot size over the total 4,500 acres) to approximately 400 units.<sup>71</sup> With an understanding of the land's restrictions, the group engaged in a series of activities to explore potential development and conservation options. The land was divided into 10 parcels and development and conservation plans were created for each of these parcels.<sup>72</sup> Throughout the process, facilitator Marty Zeller reminded the group that the effort needed to reflect the interests of both SITLA and the community. According to Zeller, "The plan had to address

both the community's desire to see as minimal amount of development as possible and [SITLA's] objectives of getting fair value for the interest that they own in Castle Valley."<sup>73</sup>

The existing community of Castle Valley was developed in the 1970s as a five-acre subdivision in a somewhat haphazard way without much consideration of geological hazards, environmental constraints or design criteria.<sup>74</sup> For example, many of the dirt roads stemming from the central, paved Castle Valley Drive are oriented in such a way that they climb directly up the steep slopes of the surrounding Valley walls, leading to problems with erosion after storm events. Additionally, the original layout of infrastructure and lot density did not take into consideration the potential effects on the watershed. In describing the problems of infrastructure layout and lot density, CRC leader Laura Kamala stated, "I believe this community would be a lot better off if it had a better, more sensible plan from the outset, but that's not how it evolved."<sup>75</sup> Moreover, there is no consistency with building design requirements. As a result, the existing structures in the Valley range from teepees and log cabins, to Sante Fe-style adobe structures, to large, sweeping ranchettes.<sup>76</sup>

Since Castle Valley residents unanimously indicated that they did not want new development to occur in the same unplanned manner as the existing community, Zeller helped orchestrate development options that were environmentally-sensitive and purposeful. The plans included a "cluster subdivision" option as a means of creating denser development in some areas to conserve open space in other, more valuable areas for natural resource protection. In addition, the new plans included design requirements, including limits on fencing, use of earth tones on exteriors to blend in with the surrounding area and other criteria to ensure development compatibility with the landscape.

During the planning process, a tentative agreement was made whereby SITLA agreed to offer the parcels to the community for purchase so that the land would not be developed but would remain as open space, while still generating income for SITLA. This discussion was important because it provided potential conservation options for the land and showed SITLA's openness to engaging in conservation transactions with the community. According to the plan, if the community was unable to raise the needed funds, SITLA would have the right to put that piece of land up for public auction, sell it and have it developed according to the agreed upon development scenario. In essence, the plan was a three-tiered approach, where the community would first have the option to purchase the land for 100 percent open space conservation. If they were not able to raise the funds to purchase the land outright, they would have the opportunity to find a conservation buyer who would buy the land and primarily keep it for conservation purposes. If the community was unable to find a conservation buyer, SITLA would then have the right to sell to any interested developer according to the plan.<sup>77</sup>

A great deal of time during the process was spent determining how to divide the parcels of trust land, in what order they would be offered to the community and then put on the market and how much time would lapse between each parcel being offered. The group decided on an order of parcel release and a roughly 20-year timeframe for disposition of the 10 parcels, which included approximately 207 possible development units spread across the parcels, reduced by 75 percent from the original 884 possible units.<sup>78</sup> Because trust land in Castle

Valley was approximately evenly split between the jurisdiction of the town and Grand County, an additional element of the plan included the annexation of the County’s trust land into the town, so that the planning document and agreement with the town would apply to all the SITLA land.<sup>79</sup> The final goal of the planning process was to create a contract between the town and SITLA that specified the agreements made throughout the process regarding the development densities on the land, the timing, order and geographical location of the parcels, and the process of the community’s option to purchase a parcel through a negotiated deal prior to its release on the open market. The contract, once finalized, would be signed by SITLA and the town.

### THE FIRST CONSERVATION TRANSACTION

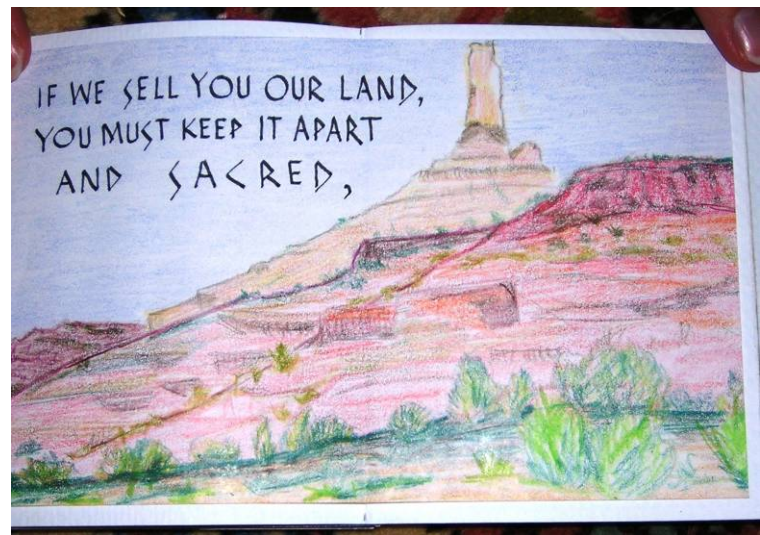
In May 2001, although the plan was not yet completed, Ric McBrier and SITLA agreed to make the Castleton Tower property available to the community for purchase, if they could raise the necessary funds. This offer was made to create trust between the groups. Thus the Castleton Tower Preservation Initiative served as the first unofficial test case of the planning process implementation. It also served as Utah Open Lands and CRC’s first effort to acquire a piece of the trust land from SITLA. In August 2001, Utah Open Lands and CRC began to gauge support for raising funds to purchase 217.3 acres at the base of Castleton Tower.<sup>80</sup> On December 14, 2001, after determining that fundraising would be possible, Utah Open Lands and CRC (as a branch of the organization) entered into a purchase agreement with SITLA, providing 18 months to raise the purchase price of \$640,000. Utah Open Lands spearheaded the Castleton Tower Preservation Initiative, securing a lead grant of \$100,000 from the George S. and Dolores Doré Eccles Foundation.<sup>81</sup> CRC leader Laura Kamala described the Initiative as “an incredible collaborative process.”<sup>82</sup> Because of

**Figure 4-5: Watercolor Book by Cris Coffey, Front and Back Cover**



Source: Photograph by Eirin Krane

**Figure 4-6: Watercolor Book by Cris Coffey, Pages 11 and 12**



Source: Photograph by Eirin Krane

Castleton Tower's prominence as a top climbing venue, Utah Open Lands employee Dave Erley focused on obtaining support from the Outdoor Industry Association, a trade association representing the outdoor industry, and climbers who had a stake in maintaining climbing access to Castleton Tower. Castle Valley and nearby Moab are home to several well-known climbers, including Kitty Calhoun, Greg Child, Jay Smith and Jack Tackle, all of whom assisted Erley with raising awareness of the issue in the larger climbing community. Erley and other Utah Open Lands representatives attended outdoor industry trade shows, advertised in climbing magazines such as *Rock and Ice* and partnered with organizations such as the Access Fund, a non-profit group focused on maintaining open access to climbing areas, to raise awareness and funds for the Initiative.<sup>83</sup>

At the same time, other CRC members participated in fundraising efforts aimed at those interested in maintaining trust land as open space for its recreational, environmental and scenic value. They did so by creating a website for the organization to disseminate information ([www.castlerockcollaboration.org](http://www.castlerockcollaboration.org), which is not currently available), using the Utah Open Lands website ([www.utahopenlands.org](http://www.utahopenlands.org)) and conducting outreach through informational brochures. CRC member Cris Coffey also made a book of watercolor images of favorite Castle Valley locations, combined with quotes borrowed from Chief Seattle in Washington about his feelings towards selling land (Figures 4-5 and 4-6). Coffey remembered how the book was used in the campaign, "[CRC] ended up collating more than 400 copies of the book and sending them out to Castle Valley property owners and other interested parties in order to marshal support and get people thinking about how they felt about the land."<sup>84</sup>

In June 2003, after the massive fundraising effort was completed, Utah Open Lands and CRC raised the needed funds to purchase the 217.3-acre piece of land at the base of Castleton Tower.<sup>85</sup> Donors who contributed to the land purchase fees or administrative costs included many representatives from the outdoor industry, such as PETZL America, Black Diamond Equipment LTD and Patagonia, as well as foundations, non-profits and private individuals.<sup>86</sup> The State of Utah also provided a grant from Utah's LeRay McAllister Critical Lands Fund that covered approximately 15 percent of the cost of the land.<sup>87</sup> Although the Castleton Tower land was no longer officially part of the planning process, CRC saw this conservation transaction as the first success of the process, since without the initiation of the planning process and the relationships that were being developed, the option would not have existed. CRC leader Laura Kamala emphasized the importance of conservation transactions to the planning process:

I see all the conservation initiatives we did with SITLA as part of the process, because it was key in our growing relationship with them, in proving that there was a conservation market here for SITLA, and it's viable. We could show up with the money and do what we said we were going to do, even with a better record than a lot of the developers they were working with at the time.<sup>88</sup>



## THE TOWN TAKES ANOTHER PATH

As the planning process continued, the town government realized it was ill-prepared to deal with potential development in the Valley. In particular, Mayor Bruce Keeler, Castle Valley Town Council members and Castle Valley Planning and Zoning Commission members realized that the town's general plan and zoning ordinance were outdated.<sup>89</sup> The general plan and zoning ordinance, to which the subdivision ordinance was appended, were borrowed from Grand County in the 1980s when the original town formed, and had been in place ever since.<sup>90</sup> Out-of-date ordinances were a symptom of a larger problem in Castle Valley town government – they simply were not ready for the situation that faced them.

The town's lack of preparedness stemmed from its spotty history. Originally a ranch site, Castle Valley was developed into 448 five-acre plots in the 1970s and was part of Grand County's jurisdiction, governed informally by a loose group of property owners via the Castle Valley River Ranchos Property Owners Association.<sup>91</sup> In an effort to increase the community's political clout over decisions affecting land use near the residential development, Castle Valley incorporated as a town in 1985, with mixed support from community members.<sup>92</sup> Since that time, there have been multiple attempts to undo the town's incorporation most recently in 1998, illustrating the community's contrasting feelings about a governmental entity guiding the community.<sup>93</sup> The town had not faced development pressure since the original community was formed in the 1970s, and the potential sale of large blocks of trust land was problematic for a relatively-inexperienced government system.

Since approximately half of the 4,500 acres of trust land fell within the boundaries of the town, Mayor Keeler, the Town Council and the Planning and Zoning Commission realized that it was imperative that the ordinances be revised. As a separate but concurrent effort from the planning process, the town officials began the challenging task of revising the general plan and local ordinances in May 2000. The town hoped to rewrite the ordinances to create a new general plan, a master development plan ordinance and a subdivision ordinance.<sup>94</sup> As described by Mayor Keeler, "It was made very clear to SITLA at the beginning of the process that the town would be developing on a separate track along with this [planning] process, a subdivision master development ordinance."<sup>95</sup> In addition to Mayor Keeler, the main town officials involved in the ordinance revision included Planning and Zoning Commission Chair Catherine Howells, Brooke Williams and Richard Schwartz from the Planning and Zoning Commission and Jerry Bidinger and Karen Nelson from the Town Council.

The town hired an attorney, Jerry Kinghorn, to advise them in revising the outdated ordinances. Kinghorn discovered that Utah statute requires that all towns have updated ordinances, and that a developer submit a plan to the town government for approval prior to initiating development on the land. Because of this legal discovery, and due to the fact that the town did not want to have a conflict of interest by collaborating in the development of a plan with a landowner and potential developer (i.e. SITLA), the town's interactions in the planning process became much less formal and removed.<sup>96</sup> Furthermore, the town worried about potentially binding future town government entities to provide infrastructure, water and sewer or septic services to future development, which the town and its residents might not be

able to afford.<sup>97</sup> Although several individual members of the town government continued to be involved in planning with SITLA, including Brooke Williams, Richard Schwartz, Karen Nelson and to some extent Mayor Keeler, their involvement became a personal, separate function from their roles in town government.

### COMPLICATIONS ARISE

Despite the progress that had been made in the planning process and the success of the Castleton Tower Preservation Initiative, challenges emerged that threatened implementation of the group's planning. It was understood from early in the planning process that the end product would be a signed contract specifying the agreements reached during the process. The parties to the contract would be the town of Castle Valley and SITLA, since CRC was not an entity with authority to make a legally-binding decision for the town. As articulated by CRC and Town Council member Karen Nelson, "A group of citizens [such as CRC] cannot represent the town unless the town appoints them."<sup>98</sup> It was understood, however, that CRC would still be instrumental in implementing the agreements made in the contract, particularly in regards to coordinating land purchases. However, due in part to the town's hesitance in signing a document that was not perceived to be part of the town's normal development process and that would legally bind future town government to approving development that stemmed from the plan, the contract never reached its final form, and the town expressed reluctance in signing any documents.<sup>99</sup> In fact, both SITLA and the town perceived elements of the process to be unsuccessful, which caused the planning process to flounder.

The challenges faced towards the end of the process stemmed from the town's development of land use ordinances, the results of the hydrological study and questions surrounding the town's water rights. In addition, personality conflicts and miscommunication added to the difficulty of completing and implementing the group's planning efforts.

The foremost challenge to the process involved the town's process of revising its land use ordinances, which was orchestrated primarily by the Planning and Zoning Commission. The ordinance revisions seemed to complicate the planning group's ability to finalize and sign the planning contract. The contract's viability depended on the town giving legislative authority to it, since the town was legally responsible for overseeing planning activities within the town's boundaries and because the plan included an agreement whereby the town would annex the trust land outside its boundaries into the town. SITLA Associate Director of Administration John Andrews described it this way, "Ultimately that plan [contract] would have to be legally implemented through the town passing an ordinance that vested that right to develop in the landowner."<sup>100</sup> Thus, without the town's approval, the planning contract could not be implemented. According to CRC and Planning and Zoning Commission member Richard Schwartz, there was concern among the town's representatives that problems might emerge by engaging in the planning process with SITLA:

There was concern that the town was committing itself to a course of action and implicitly binding future leaders of the town to this course of action without having been through [the town's] due process. There was some concern that if some of the development proved to be more dense than could

be supported by the aquifer and there became groundwater problems, that people might sue the town for having entered into this development that subsequently led to problems.<sup>101</sup>

It was this concern that further spurred the town's desire to update the land use ordinances. Through the process of updating the ordinances and in consultation with the town's attorney Jerry Kinghorn, the town subsequently determined that it could not explicitly acknowledge the work that was being done in the planning process, since colluding with a potential developer would be considered a conflict of interest. Planning and Zoning Commission member Richard Schwartz described the situation:

The crux of the matter was a feeling on the part of some people that [the Planning and Zoning Commission] simply cannot acknowledge in any way the work that had been done [in the planning process]. And the feeling on the part of a lot of other people that it would be foolish, as well as somewhat both disingenuous and somewhat in bad faith, to not explicitly acknowledge what had been going on. That was the major unraveling.<sup>102</sup>

Because of the legal advice that restricted the town's interactions with the process, the dynamics of the process changed. CRC leader Dave Erley described how in writing the ordinances:

The negotiations changed from the Castle Rock Collaboration which was very flexible to the town and the town's Planning Commission, which by state statute was forced into some rigid things regarding timing, requirements and how things had to be written. That certainly changed the dynamic in the negotiation. It became much more tense and sometimes adversarial.<sup>103</sup>

There was also concern from the other members of the planning process that the ordinances would provide the town with too much discretion in the development process, and questions emerged about whether the town was adhering to its commitment to the planning process. Facilitator Marty Zeller described the controversy that arose when the ordinances came out, "When the ordinances were put out, the discretion was so thoroughly with the town as to what could happen, it raised the question as to whether the town was acting in good faith and whether SITLA would have any development rights at all ... That's where it really broke down."<sup>104</sup>

Some members of the planning process also felt that the town's process of revising the ordinances was not within the spirit of the collaborative planning process. Town Council member Karen Nelson remembered that there were some individuals who thought the planning process was a stalling tactic, buying time so that the town could create and pass ordinance revisions that were needed and legally necessary. However, some participants felt that using the process as a stalling tactic was not necessarily consistent with the agreements made in the planning process:

Because we were still in the planning process and it was still taking a lot of time, there were members of the governmental body who felt that it was going to be advantageous to use [the planning process] to slow down any other actions so we could get the zoning ordinance written and have it very restrictive so that it would take care of most of our issues and circumvent the need to solve the problem through negotiation. The document would be restrictive enough and would make development so expensive that we wouldn't have to worry about it.<sup>105</sup>

Some participants also perceived the ordinances as one-sided, unfair and imbalanced, particularly against SITLA's interests. Some also thought the ordinances were a smoke screen attempting to cover efforts to derail the planning process. Participants attributed the motivations behind enacting such strict ordinances to a failure of mutual risk-taking on the part of the town and asserted that although SITLA had agreed to reduce development density on the land, the town was less willing to assume risk in accommodating any development.

Despite some planning participants' feelings that the ordinance revisions were not within the spirit of the planning effort, town attorney Jerry Kinghorn and several town representatives, particularly Planning and Zoning Commission Chair Catherine Howells and Mayor Bruce Keeler, acknowledged that they were legally required.<sup>106</sup> Kinghorn advised Mayor Keeler not to sign the planning contract and to focus instead on revising the ordinances.<sup>107</sup> CRC leader Laura Kamala described how the process started to break down when the town expressed concerns about signing the contract:

In good faith, we were all going forward for a long time. Then things fell apart really towards the end when it got closer to the time when the town needed to make a commitment to signing some of the documentation. That was when it really fell apart ... Part of [the fear of signing paperwork] was because there was a lack of belief that [the community] could go forward with our original vision which was to continue to do conservation initiatives.<sup>108</sup>

So, instead of working to complete and sign the contract, the planning process slowed and the town focused on revising their general plan, master development plan ordinance and subdivision ordinance. The Planning and Zoning Commission completed the new general plan and ordinances and posted them for public comment in December 2003, giving community members and SITLA the opportunity to comment.<sup>109</sup> The Commission then revised the ordinances according to public feedback and sent them to the Town Council for approval. The Town Council passed the ordinances September 2004.<sup>110</sup>

According to Kinghorn, to adhere to Utah state statute, the planning process contract would have to be submitted to the Planning and Zoning Commission for review as specified in the ordinances. However, the contract never was introduced through the town's process. Mayor Keeler explained what needed to happen to move forward with the planning process, since the town could not sign the planning contract without it being submitted to the Planning and Zoning Commission:

What needed to happen was that SITLA at that point needed to come to the town with their application to the Planning Commission and plug it in, and Ric [McBrier] didn't want to do that. He said in an open meeting that the town broke its commitment to the process by making SITLA go through the subdivision process.<sup>111</sup>

Because the ordinances laid out very specific requirements to which a potential developer would have to adhere, they served as an obstacle from SITLA's perspective. CRC leader Dave Erley recalled that once the town began to revise its ordinances, "It was clear that SITLA wasn't going to like things that the town was going to do."<sup>112</sup> Town Council member Jerry Bidinger described the problems that SITLA faced in the planning process:

SITLA saw a series of ordinances put in place that said if you're going to go forward with this planned development, you're going to have to do a series of studies, [provide] a lot of environmental impact information and the developer would be responsible for a series of costs that the town isn't going to bear on its own.<sup>113</sup>

Mayor Keeler acknowledged that SITLA was concerned that developing ordinances might undo the progress made through the planning effort:

Ric [McBrier] was always very concerned that if [the town representatives] didn't like what was coming out of the plan, we would write an ordinance to prevent it, so that we would actually short circuit anything we weren't comfortable with. Which we didn't do ... we did do a state of the art, very contemporary master development subdivision ordinance.<sup>114</sup>

Despite varying perspectives about the legitimacy of the town's ordinance revision process, it certainly changed the direction of the planning process significantly.

## **THE PROCESS REACHES A STALEMATE**

As the ordinances were being revised, personality conflicts and miscommunication further complicated the process. Mayor Keeler recognized, "There were people [in the community] who had disagreements with some people working on the planning process," and these conflicts became aggravated by the issues raised surrounding the land use ordinances, water quality and water rights, which were emotionally charged.<sup>115</sup>

Issues surrounding the town's land use ordinances seemed to elicit personality conflicts. CRC and Planning and Zoning Commission member Richard Schwartz remembered that once the Commission started revising the land use ordinances, "There was a lot of personal animosity generated by the interaction of the Planning and Zoning Commission with the whole process, but maybe that was necessary and inevitable."<sup>116</sup> Despite the fact that the ordinances were required by Utah law, some members of the planning group felt that the manner in which they were created was problematic because it resulted in "defensive posturing and a lost spirit of cooperation."<sup>117</sup> According to CRC leader Laura Kamala, the

manner in which the town representatives created such strict ordinances “seemed personal to me. It seemed like it was some kind of personal vendetta, a personal mission they were going to at the last minute, after everything.”<sup>118</sup> Schwartz indicated that once the town’s involvement focused on creating the ordinances, the planning process “became less collaborative and more contentious as it went along. In some senses, CRC and SITLA were less contentious towards each other than either was toward the town. If things were going to fracture, I wouldn’t have expected it to be that way.”<sup>119</sup> Indeed, several community members felt this way. Some felt that the sense of contention between the town and CRC and SITLA resulted from the perception that “CRC stayed committed to the vision of the planning process while the town seemed to abandon that.”<sup>120</sup>

The hydrological study results damaged the process further. The results, which came in during March 2004, indicated that a density of one unit per 15 acres was the maximum allowable development density to maintain the quality of the water in the aquifer.<sup>121</sup> The Castle Valley aquifer, from which all Castle Valley residents draw their water, was designated as a pristine, sole-source aquifer by the Environmental Protection Agency (EPA) in 2001, thus increasing the importance of preserving it in an undisturbed state. Although the average density in the plan was one unit per 20 acres, some areas of the plan were as dense as one unit per five acres, which was denser than the hydrological study recommended. As a result, some participants suggested that parts of the development plan would have to be revised according to the hydrological study results.<sup>122</sup>

In addition to the hydrological study results, the town of Castle Valley began to realize that it had been negligent in proving its water rights over the last few years, adding an additional complication to the process. In Utah, any entity with water rights must illustrate once every five years that it has used the amount it has been designated. Under this “use-it-or-lose-it” approach, the state can decrease or rescind a town’s water rights if they have not been fully utilized.<sup>123</sup> Around September 2004, Castle Valley town representatives began to realize that the town’s records for proving its water rights were deficient.<sup>124</sup> Towards the end of the planning process, the town entered into discussions with Grand County and the state of Utah about the legitimacy of its water rights. This uncertainty surrounding the town’s water rights complicated the planning process toward the end because the planning contract assumed that a developer would be entitled to use the town’s water.<sup>125</sup> Dave Erley described the problems that water rights issues brought to the surface, “It was clear that there was starting to be questions about the amount of water rights that the town of Castle Valley really has, and part of these negotiations was about SITLA getting water rights.”<sup>126</sup>

The fractures in the planning process manifested themselves through difficult community interaction. Laura Kamala remembered, “There were a couple of meetings where the town got together ... and it turned into a shouting match and fell apart. It wasn’t working, wasn’t going anywhere, wasn’t happening.”<sup>127</sup> She continued:

There was a lot of hurt, anger and betrayal with Ric [McBrier] and Marty [Zeller]. They were trashed [by other members of the planning group]. There were some public meetings that I witnessed where I was shocked at the kind of interactions it deteriorated into, the way that people were so disrespectful to one another. I was really disappointed.<sup>128</sup>

Other members of the planning process and town government similarly felt that personality conflicts were challenging for the process. Dave Erley remembered: “[The planning process] cost me some sleepless nights. It’s not like it’s just people you work with, it’s people you live with, and these people don’t go away. You need to be able to face them.”<sup>129</sup> Planning and Zoning Commission Chair Catherine Howells felt that because the Commission was heading up the ordinance revisions and because she had always asked questions about the town’s role in addressing land use issues throughout the process, she was pinpointed as the one to blame for the process’ failure:

The town can’t get involved in land purchase issues; they have to get involved in land use issues. The plan looked more at the land purchase issues and didn’t really deal with land use issues. When [the planning group] was forced to look at the land use issues, it literally exploded, and I was the target.<sup>130</sup>

However, some members of the planning group felt that the plan did address land use issues in addition to land purchase issues.<sup>131</sup>

In addition to problems with personality conflicts, some community members began to question Marty Zeller’s knowledge base and neutrality as a facilitator. Some members of the town government wondered if Zeller was aware of the state legal requirements concerning town ordinances. Catherine Howells remarked, “As a planner, Marty [Zeller] should have known that [the planning process] had to hit the Planning Commission, and if he didn’t know, what kind of planner is that?”<sup>132</sup> Because SITLA hired Zeller to work on other projects, some Castle Valley community members also became concerned that Zeller had a conflict of interest. Town Council member Karen Nelson articulated the challenge this created for the process, “By taking on more jobs through SITLA, and I can understand why he did, the appearance of favoritism emerged, which was detrimental. There was the appearance of taking a side.”<sup>133</sup> Furthermore, by the end of the process the costs for Conservation Partners exceeded the original bid amount, and SITLA covered this amount of approximately \$6,000.<sup>134</sup> Some community members expressed concern about this fact, given that the original concept was that the community and SITLA would divide the facilitation costs evenly.

As a result of the challenges faced by the planning process, a stalemate occurred. The last planning process meeting occurred in the spring of 2004, after which no major actions were taken regarding the planning process. The town was reluctant to sign the contract because of their legal obligations and the Planning and Zoning Commission’s belief that SITLA should submit the planning process contract to the Commission’s process for review. SITLA was hesitant to sign the contract in response to the town’s reluctance and the feeling that the town was not fulfilling its commitments to the planning process. SITLA was also less likely to continue with the process due to a negative response from school trust beneficiaries about the situation, who felt that the town was not acting in good faith. As recalled by Beneficiary Representative Margaret Bird, “Ultimately, as beneficiaries we went to the [SITLA] Board and said, ‘We don’t intend to collaborate with [the community of Castle Valley] any longer unless they will come to the table in good faith and sign their half of the document.’”<sup>135</sup> CRC

members, frustrated by the events that occurred at the end of the process, were not able to influence the town or SITLA to reconsider their positions. Thus, the planning process slowly stalled and some members of the group began to explore the possibility of a land exchange that could serve as an alternative to the planning process.

Despite the fact that the planning process did not result in a signed contract, another conservation transaction was conducted. In January 2003, with Laura Kamala and Wendy Fisher's leadership, Utah Open Lands and the Utah Division of Wildlife Resources combined resources and entered into a purchase agreement with SITLA to purchase 530 acres of trust land in the Valley that included critical habitat for a population of La Sal Mule Deer that uses the land for its winter range (Figure 4-7).<sup>136</sup> The purchase agreement provides five years for Utah Open Lands to purchase the land, which will be paid for by funds from the Utah Division of Wildlife Resources and by funds still being raised by Utah Open Lands. A conservation easement will be placed on this wildlife habitat once purchase is secured.<sup>137</sup>

**Figure 4-7: La Sal Mule Deer**



Source: Photograph by Eirin Krane

#### **A LAND EXCHANGE OPTION**

During the process, the group discussed the option of a land exchange whereby trust land would be traded for public land managed by the Bureau of Land Management (BLM). Since land exchanges were typically lengthy and difficult to achieve, however, the group preferred the planning process contract.<sup>138</sup> But, given the difficulties that arose from trying to work out the details and signing of the contract, a land exchange option became more attractive to the group. SITLA had engaged in two successful land exchanges in the past.<sup>139</sup> Starting in 2003, SITLA began to seriously consider including the Castle Valley trust lands in a land exchange, with encouragement from Castle Valley Planning Process participants, including Grand Canyon Trust Executive Director Bill Hedden and Laura Kamala, who had become Grand Canyon Trust's Director of Utah Programs. Kamala described the importance of pursuing the land exchange once the planning process contract failed to come to fruition, "I wasn't willing to let the whole thing fall apart and have no other options for addressing the ultimate outcome that we desired. There had to be a way, there had to be another way. And fortunately, there was."<sup>140</sup>

Because of the groundwork that had been laid and the relationships that had been developed through the planning process, SITLA included all the trust lands in Castle Valley in a proposed legislative land exchange with the BLM.<sup>141</sup> This land exchange would trade up to 40,000 acres of environmentally-sensitive trust land in Grand County with up to 48,000 acres of BLM land in Uintah County that could be used for oil and gas development.<sup>142</sup> The Utah Recreational Land Exchange Act of 2005 was introduced in May 2005, and is still awaiting action in Congress.<sup>143</sup> The land exchange proposal has received a great deal of support from



the Utah State Legislature, Utah Governor, Grand and Uintah Counties, city of Moab, town of Castle Valley, Utah Guides and Outfitters, the Grand Canyon Trust, the Outdoor Industry Association and the Nature Conservancy, among others.<sup>144</sup> Many of the participants in the process believed that the inclusion of Castle Valley lands in this proposed legislative land exchange was a direct result of the work that went on in the planning process.<sup>145</sup>

The overall consensus of the participants in the process is that if the land exchange is enacted and implemented, the overall objectives of all groups involved will be reached – the community will have the land preserved and SITLA will obtain valuable lands in another county that can be used for lucrative oil and gas development. Although the path that the process eventually took was different than expected, members of the group still considered it fruitful. Dave Erley described the unexpected outcome of the land exchange, “At the beginning, we had a blueprint of how we were going to be successful, and it didn’t turn out according to the blueprint, but we might have actually been more successful. I’m not sure everyone’s come around to realizing that.”<sup>146</sup> Likewise, Laura Kamala spoke positively about the land exchange option, “I’m very grateful that everything we did evolved into this wonderful opportunity for the land exchange, that it went in that direction. No one could have imagined that would have happened when we started out six or seven years ago.”<sup>147</sup>

Many involved in the process also have thought about what potentially might happen if the land exchange does not go through. SITLA Associate Director of Administration John Andrews indicated that due to the “complex legal background surrounding the interpretation of the uniform appraisal standards for federal land acquisition,” appraisal of the trust lands included in the proposed land exchange will likely be difficult and controversial.<sup>148</sup> Because of the importance of having the land’s value represented in the appraisals, SITLA Director Kevin Carter indicated, “If [SITLA is] going to pull lands out [of the proposed land exchange agreement], the Castle Valley lands will be some of the first we would pull out. They’re good leverage.” Planning and Zoning Commission and CRC member Richard Schwartz discussed his concerns, “If the land swap doesn’t happen, then we have to start thinking about what happens now. What, if any, of this work can be applied? Will [SITLA] still be amenable to picking up where we left off a year and a half or two years ago?”<sup>149</sup> Many feel optimistic that the work that was done through the planning process could still serve as a basis for future discussions, even if the land exchange does not proceed. Laura Kamala expressed her positive feelings, “I think [the planning process] is something that could be revisited in the event that this land exchange option for some reason falls apart.”<sup>150</sup> By no means is the land exchange guaranteed, and until it is finalized, the future of trust land in Castle Valley remains undecided.

#### **UPDATE ON LAND EXCHANGE PROCEEDINGS**

At the end of September 2005, Laura Kamala testified before the U.S. House of Representatives Resources Subcommittee that is reviewing the land exchange legislation. She also attended many Congressional Committee meetings in which the legislation was discussed, and to date the bill has gone through numerous rewrites. The full House Resources Committee is likely to conduct a markup on the legislation soon.<sup>151</sup>

## **STATUS OF RELATIONSHIP BETWEEN UTAH OPEN LANDS AND CRC**

After the planning process ended, the relationship between Utah Open Lands and CRC was dissolved and CRC is not currently active, due in part to the fact that the trust lands in Castle Valley are now included in the pending land exchange.<sup>152</sup>

## **THE ANALYSIS: THE CASTLE VALLEY PLANNING PROCESS**

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Analysis of the Castle Valley Planning Process reveals benefits, costs, challenges, facilitating factors and lessons learned, which will be identified and discussed in this section. This analysis is based on stakeholder observations and reflections, as well as the researchers' external evaluation.

Benefits of the Castle Valley Planning Process include improved understanding among stakeholders, development of a sense of ownership in the issue, provision of time for thoughtful decision making, increased trust land value, positive conservation outcomes, increased town government capacity to manage growth and the formation of effective professional and personal relationships. The planning process also imposed substantial time, financial, opportunity and emotional costs for those involved.

In addition, planning process members encountered significant challenges during the planning effort, which include mutually exclusive objectives, the newness of the process, the unique nature of school trust land, mixed success with community outreach, confusion about the role of the town in the collaborative process, water quality and quantity issues, personality conflicts and maintaining momentum in times of impasse.

Facilitating factors that helped the Castle Valley Planning Process continue include partnerships, establishing common ground and shared goals, shared experiences and joint fact-finding.

Finally, lessons learned from the Castle Valley Planning Process include the importance of clearly defining participants' roles and responsibilities, ensuring that legally appropriate stakeholders are represented and legal sideboards and requirements are understood, engaging in joint risk taking and compromise, having professional, neutral and knowledgeable facilitation, utilizing formal and informal leadership opportunities and recognizing the effect of unequal power relationships in motivating and hindering the process.

## **WAS THE CASTLE VALLEY PLANNING PROCESS COLLABORATIVE?**

Participants in the Castle Valley Planning Process expressed mixed feelings regarding the collaborative nature of the process. Most participants felt that though the process was collaborative overall, there were elements and periods of time when the collaborative effort broke down. SITLA Assistant Director Ric McBrier remembered, "We collaborated; there is no question about that."<sup>153</sup> Utah Open Lands Executive Director Wendy Fisher added, "It

depends on how you define collaboration ... There were definitely parts where I felt it was a complete collaboration. Then there were times when it seemed like it wasn't about protecting the land, it wasn't about planning, we weren't sure what it really was about."<sup>154</sup>

While the planning process began as a collaborative effort, it reached a stalemate toward the end when the planning contract was not completed. As a result, many participants felt that the process became less collaborative. CRC and Town Council member Karen Nelson recalled, "[The planning process] was collaborative for the vast majority of the time. At the end, it broke down because a few people pulled a power move within the community."<sup>155</sup> CRC and Planning and Zoning Commission member Richard Schwartz echoed the sentiment that the planning process "became less collaborative and more contentious as it went along."<sup>156</sup> Some Castle Valley residents believed the origins of the process were collaborative but that the town's legal responsibilities were not considered, making the entire process less collaborative. Planning and Zoning Commission Chair Catherine Howells recalled, "The discussion of the plan was collaborative, but the end result, since it so thoroughly fell apart, was not collaborative. The process didn't include the reality of town government."

**Breadth of Stakeholders:** A wide range of stakeholders was represented in the Castle Valley Planning Process, although there were some groups and individuals whose added involvement could have increased the success of the process. In particular, the process could have benefited if the Town Council and Planning and Zoning Commission had been involved more directly and clearly from the outset and if a broader range of community members had been represented in CRC.

The town government's limited and sometimes unclear involvement caused some challenges to the process. According to some town government representatives, the planning group occasionally made decisions without the town's full input, which resulted in overlooking the town's legal perspective. Town Council member Jerry Bidinger noted that, "The town needed to have a more robust role from the very beginning to try to publicize what's going on by having a community meeting."<sup>157</sup> Although facilitator Marty Zeller felt that the Mayor and other town representatives were involved to some degree throughout the process, he agreed that "the town, through its elected representatives could have been more forcefully represented in the process."<sup>158</sup> SITLA Director Kevin Carter also acknowledged that the breadth of stakeholders represented may have been deficient when it came to the local government:

Although [SITLA representatives] felt like we were working with a representative sampling of the community there, it turned out that the local planning and the local leaders were not affiliated with the collaboration ... and did not feel that they were committed to any of the agreements that the collaboration had made with us regarding our land in Castle Valley.<sup>159</sup>

Attempts to include all the governing bodies in the collaborative process may not have been successful, because as Planning and Zoning Commission Chair Catherine Howells explained:

The Planning Commission was not included in the collaborative process, and could not have been ... The Planning Commission's charter is to look at the well-being of the whole town and to take requests from developers, so that it would be a conflict of interest for the Planning Commission to help with the development plan.<sup>160</sup>

While some participants disagree about how involved the Planning and Zoning Commission could have been, the fact that there was a lack of consensus about the town's role underscores the importance of understanding the legal restrictions under which each of the affected stakeholders must operate. Mayor Bruce Keeler noted, "You've got to know that your collaborative group is representative of the overall community, because you could go through all the collaborative efforts you want, but if the group representing the community is not accepted, then it's all for nothing."<sup>161</sup> In general, having broader representation of some of the residents of Castle Valley, such as members from the Seventh Day Adventist community and the Church of Latter Day Saints community, could have added to the legitimacy and effectiveness of the planning group.<sup>162</sup> However, some planning group participants felt that community members who chose not to be involved in the process did so consciously – a fact that may have precluded broader representation from the community.<sup>163</sup>

Despite some of the real or perceived deficiencies in achieving a complete range of stakeholder representation, overall many of the interested parties were involved, and the process benefited from their range of experiences and perspectives.

**Degree of Transparency:** The level of transparency in the process varied over time. Participants shared information freely in general, but sometimes the inner workings of each individual entity (SITLA, town of Castle Valley, CRC) were such that they conducted their own decision-making processes that were not always clear to members of the other groups. For example, Town Council member Jerry Bidinger recognized that the town often made its own decisions:

Once I was involved, most of the decisions the town made it made on its own. [The town] gave SITLA the opportunity to comment on the kinds of ordinances we wanted and on the positions we were taking, but at the end of the day, it was our obligation to make a decision as an incorporated municipality.<sup>164</sup>

However, CRC often had difficulties making its actions visible to the general community of Castle Valley, as well. Bidinger remembered his experiences with CRC meetings:

One of the problems with having a number of citizens get together and pursue issues on their own is that their activities can be unknown to a substantial body of the community. It's hard enough for a town, or any government to communicate to all its citizens and tell them what's going on, let alone convince them you're doing the right thing. When you're a private group of individuals, the opportunities for a broad range of communication is even less. It was a little bit difficult to figure out what was going on. I went to meetings

and I'd see some people and get a sense of what was happening, and when I got invited to [another] meeting, then I could see who the core people were.<sup>165</sup>

Members of the planning process sometimes felt that the Planning and Zoning Commission was not always forthright with their activities as well. CRC leader Laura Kamala recalled her frustration with not knowing exactly what was going on when the Planning and Zoning Commission was working on the ordinances:

As much as possible, to the best of our ability, [the planning group] kept hanging in there as the town went through its motions with the town attorney ... they really went off and tried to do a separate thing from my perspective when that started to happen. I kept waiting for feedback from them. "What are you doing? Could I see what you're doing with the town attorney? How will it all fit with what we're trying to do here?" There were schisms happening.<sup>166</sup>

The lack of transparency perhaps contributed to the disintegration of the planning process as it continued. CRC member Cris Coffey recognized that while CRC worked to communicate with the broader community, sometimes they were not totally successful, "We tried hard to keep the community abreast of what was going on. And some people had a vast interest in what we were doing, and others, I don't know that they really realized what was going on. I think that's often the case in communities like this."<sup>167</sup>

**Degree of Influence on Decision Making:** The stakeholders involved in the process had a fairly high degree of influence over the decision-making process, since the planning process and contract were based on the input of all the parties, through a long and detailed effort. Even though the contract was never signed, three important conservation transactions occurred on trust land in the Valley, which illustrates the influence the planning process has had on the future of at least some of the Castle Valley trust land. Furthermore, a land exchange involving the remainder of Castle Valley trust land is pending because of the groundwork that was laid through the process. Jerry Bidinger articulated what could have occurred if the process had not taken place:

The outcome could have been that without community involvement at all and any give and take, that SITLA not knowing what the community's interests are could have pursued a course of action that would have been inconsistent with community's interests and would have created ill will and bad feeling between SITLA and the town.<sup>168</sup>

Had the planning process not occurred, trust land in the Valley could have been auctioned by SITLA piece by piece over time, upsetting the community and leading to political unrest and potentially jeopardizing SITLA's reputation. If all trust land in the Valley were developed in the same fashion as the existing development, the population of the town could have nearly doubled, placing a strain on the environment and town infrastructure. Laura Kamala recognized what might have occurred without the planning process, "If those 4,000 acres [of trust land] you see out there were developed into a town the size of the already existing town, the effect of what could happen to this community would be tremendous."<sup>169</sup> Because the

collaborative planning process occurred in Castle Valley, up to this point the decisions made by SITLA have been influenced by community input, increasing the chance that these decisions will be supported in the future.

## **BENEFITS OF THE PROCESS**

Although the planning contract was never signed, the planning process resulted in several benefits and positive outcomes that were identified by various stakeholders in the process. These benefits included improved understanding, an increased sense of ownership, time for thoughtful decision making and positive conservation outcomes.

### **Built Understanding**

The planning process created an opportunity to build understanding among participants, particularly about SITLA's mandate and the nature of trust lands in Utah. A well-known problem is that the general public rarely understands the intricacies of school trust lands. According to Laura Kamala, "Most people don't realize that when they look out, they're looking at state trust lands scattered all over the federal lands. They don't get it."<sup>170</sup> Through this process, however, an education process occurred. According to SITLA Director Kevin Carter:

Some of the people that were involved in the collaboration certainly understand who we [SITLA] are better, they understand what our respective mandates, tasks and obligations are, and as a result of that, some of those individuals have been very helpful in unrelated activities that we've done. There was certainly an education process and some bridge-building that went on there.<sup>171</sup>

In addition to increasing the community's understanding of SITLA's mandate, the planning process enabled all participants to openly express their ideas and learn from each other. Jerry Bidinger recalled:

A lot of different viewpoints were aired openly with a full presentation of emotion and passion and commitment to a lifestyle, of the state's needs and of the obligations from both sides. I think there was a pretty frank, free and open exchange of attitudes and opinions, which is really healthy and important. That interchange went on for a substantial period of time. It wasn't just one afternoon on a phone call. It stretched out for a couple of years.<sup>172</sup>

Because of these interactions, planning process participants from CRC, the town and SITLA understood each other in a more meaningful way than before.

### **Increased Sense of Ownership among Participants**

By engaging in the Castle Valley Planning Process, the participants developed a sense of ownership of the issue. The joint decision-making process enabled meaningful participation

of all involved and allowed everyone to play a key role. In considering her involvement in the CRC after learning of the sale of the Parriott Mesa parcel, Cris Coffey noted the empowerment she experienced through being involved in the process, “I gained a sense that there was something I could do rather than just waiting for what seemed like a very bad thing to happen.”<sup>173</sup> The planning process also allowed the community and SITLA to be proactive about problems facing the community.

The sense of ownership was particularly evident among community members involved in the process and those who observed it as it progressed, who had previously thought that issues involving state agencies could not involve small communities such as Castle Valley. Laura Kamala recalled discussing the process with Ron Drake, a leader in the local Church of the Latter Day Saints and the author of “The Castle Valley Comments,” a column in the *Moab Times-Independent* newspaper. Although Drake was not a direct participant in the process, he often observed the events as they unfolded.

I had this conversation with [Ron Drake] one day, and he thanked [the planning group]. He said, “I knew about the state lands situation. I worried about it, but I didn’t think there was anything we could do. You’ve shown me that as a community we can engage with State Trust Lands; we can relate with them; we can say what we want.” He had no idea that was even possible. He was really very happy and was very supportive of the process when we were in it.<sup>174</sup>

### **Provided Time for Thoughtful and Creative Decision Making**

The planning process also allowed time for the community and SITLA to make well-informed, thoughtful decisions that addressed the concerns of everyone involved. During the four-year process, the participants were able to take the time to conduct extensive mapping of the Valley’s resources and development potential, which would not have occurred had the planning process not been initiated.<sup>175</sup> The mapping information helped the group make informed decisions about what type of development would be appropriate for the trust land in the Valley by taking into consideration environmental constraints and coming up with creative development schemes that minimized the impact on the landscape.<sup>176</sup> The time spent in the planning process also resulted in reducing the number of potential development units on the trust land from 884 to 207 without decreasing the value of the land.<sup>177</sup>

From the community’s perspective, the planning process also slowed the development process and bought time for fundraising, enabling them to successfully purchase trust land for conservation purposes. Karen Nelson agreed that “The process was a success because it slowed everything down” and enabled the community to take the time to raise funds to purchase trust land around Parriott Mesa, Castleton Tower and critical wildlife habitat. From the town’s perspective, the process provided time to revise the land use ordinances, which were very out of date. Catherine Howells articulated the importance of having time to update the ordinances, “Part of me looks at [the process] and says thank you so much for doing this process. It bought the Planning Commission the two years we needed to write the land use code.”<sup>178</sup>

## **Increased Value and a Financial Return from the Trust Land**

From SITLA's perspective, one of the primary benefits of the collaborative planning process was the increase in trust land value that resulted from an investment in planning and creating development options for the land.<sup>179</sup> By creating a development plan for the area rather than selling the land in its raw form, future developers would have preapproved development rights and limited community opposition, and the value of trust land in the Valley would be increased substantially. In addition, the money made from the three conservation transactions (Parriott Mesa, Castleton Tower and the critical wildlife habitat) all contributed to SITLA's financial portfolio that provides funding to the beneficiaries.<sup>180</sup>

The conservation transactions had the added benefit of possibly serving as the baseline for comparable sales that could be used in future appraisal of trust lands, including appraisals for the land exchange. SITLA Assistant Director Ric McBrier indicated that "even though the planning contract may not have been formally adopted by the town, the plan will probably still create value for the trust in the exchange with the federal government because there has been planning done for the property."<sup>181</sup> Moreover, the value of trust land surrounding conserved parcels is increased by simply being adjacent to conserved land.<sup>182</sup> John Andrews, the Associate Director for SITLA's Administration, underscored the importance of realizing the revenue-generation potential of the land, "We can collaboratively plan, but at the end of the day, we have to be looking at revenue generating potential. Money is it."<sup>183</sup> Facilitator Marty Zeller remembered that the process allowed SITLA to generate revenue through non-development options, something that had not been attempted in the past. "What we demonstrated in this whole process was that non-development can produce an economic return that may be as great or greater than you can [produce] from a development solution."<sup>184</sup>

## **Positive Conservation Outcomes**

Three successful conservation initiatives resulted from the planning process including the protection of 60 acres at the base of Parriott Mesa that were purchased from the developers and 217.3 acres at base of Castleton Tower and 530 acres of critical wildlife habitat that were purchased directly from SITLA. The purchased land is valuable from a conservation perspective because it provides crucial wildlife habitat for La Sal Mule Deer and other species, recreation opportunities for hikers, climbers and mountain bikers, areas for aquifer recharge and open space and scenic views, all of which are highly valued by the community. In discussing the land at the base of Parriott Mesa and Castleton Tower, Jerry Bidinger noted, "If CRC and Utah Open Lands didn't get involved, I don't know what would have happened to those two pieces of land."<sup>185</sup> Wendy Fisher emphasized the centrality of the planning process in the conservation outcomes. "The planning process served to put these lands on the radar screen for the community, for the state, for the [SITLA] Administration, for Utah Open Lands and for the conservation community at large."<sup>186</sup> CRC leader Dave Erley articulated the importance of the Castleton Tower Preservation Initiative in particular:

This purchase at Castleton Tower was the first time that [SITLA] had sold "developable lands" for conservation, so they weren't in the habit of doing



this kind of deal. We had to break a lot of inertia within the organization, and having the collaboration certainly was highly advantageous to being able to do that.<sup>187</sup>

The Castleton Tower Preservation Initiative was a conservation success because of the amount and quality of land it protected, the collaborative efforts it initiated by involving people all around the world who contributed to fundraising efforts and the symbolic precedent it set by illustrating that highly-valued trust land can be conserved.

In addition to setting aside valuable land for conservation, the planning process had the added effect of changing communities' perceptions of what is possible in the realm of community-based conservation efforts. Fisher recalled:

A lot of people know about what happened in Castle Valley, and I think a lot of people see it as a template for guiding their own destiny. That just because something happens, it doesn't mean it has to be that way. I think that is a benefit for all conservation, quite frankly. That is a benefit for all communities who want to strive to have uniqueness, to continue to have vitality and economic sustainability in the future and to not just become Anytown, U.S.A.<sup>188</sup>

### **Increased Town Government Capacity to Manage Growth**

The Castle Valley Planning Process served to increase the town's understanding of development and their ability to address growth issues in their community. As a fairly young, small town that had never faced development pressure before, the town of Castle Valley was fairly informal in its land use regulations and governmental structure prior to the planning process. This informality is not unusual for smaller, rural communities in the West. According to Karen Nelson, "That's one of the issues when you have an established rural community. Sometimes there's not the understanding of what growth is and what it does to your life."<sup>189</sup> Nelson added that "because of the urgency of getting involved in the process because they were talking about auctioning off these lands, we just jumped in, but we weren't really prepared. I think a lot of rural communities aren't prepared in their zoning."<sup>190</sup>

Both the town's zoning ordinances and its general plan needed to be updated in the face of increasing growth pressures and to comply with Utah law. Mayor Bruce Keeler remarked, "This was the first time we were coming up against [development pressure]. For the community, it was a big learning curve. It helped bring us up in the way we deal with things."<sup>191</sup> Catherine Howells was primarily responsible for researching and working on the new ordinances. She noted that through the process of revising these ordinances, "We learned ... a whole lot. As a town we became more sophisticated in land use and asking the questions we're asking. This is a very positive outcome."<sup>192</sup> If it had not been for the external impetus of the planning process, the town would not have felt the need to increase the sophistication of their land use ordinances or their general procedure for dealing with development within the town's boundaries.

## **Established Relationships that Laid the Groundwork for Future Activities**

One of the most important and beneficial outcomes was establishment of effective professional and personal relationships. Laura Kamala noted that, “In any collaborative process, the single most important thing is the relationships between the people involved.”<sup>193</sup> Cris Coffey echoed Kamala’s sentiment, “[The planning process] was a chance to spend really productive time with lots of people I love, my very close friends, and to do something important.”<sup>194</sup>

The relationships that developed through the process included those among planning process participants and those with outside organizations. One of the most important relationships was between the community and SITLA. Kamala recalled, “Relationship building [between SITLA and the community] was a big part of doing this whole process, so that [the community] could do business with [SITLA] so we could have our ultimate conservation goal and also honor their mandate which is to raise money for the school trust.”<sup>195</sup>

According to Mayor Keeler, working relationships between members of the community also developed that had not previously existed. “[The planning process] really opened the community up to each other. We had people working together who would hardly sit at the same table before that. It really helped to unite the community quite a bit.”<sup>196</sup> For facilitator Marty Zeller, the planning process helped him develop an effective working relationship with SITLA that led to being hired to work on additional projects for the agency.<sup>197</sup> SITLA Assistant Director Ric McBrier said that being able to work with local communities is extremely important to his work: “The opportunity to get to know communities, to engage the communities and to make a difference in the communities is a large part of what has kept me working [at SITLA].”<sup>198</sup> Planning participants also developed working relationships with outside organizations, particularly during the Castleton Tower Preservation Initiative in which several organizations such as the Outdoor Industry Association and the Access Fund partnered with CRC and Utah Open Lands to raise funds to purchase the land at the base of Castleton Tower.<sup>199</sup>

The relationships formed through the planning process, both between individual members of the group and with outside institutions, were instrumental in reaching creative solutions throughout the process. Zeller commented that the process “has produced a lot of relationships that led to some creative deals that made things happen that wouldn’t have happened otherwise.”<sup>200</sup> In particular, Zeller noted that “the process identified a range of tools and techniques to conserve land that neither the town nor SITLA knew about.”<sup>201</sup> The most important groundwork that was laid through the process was the relationship building, which enhanced the community’s knowledge about the trust lands mandate, provided the opportunity to conduct conservation transactions on trust land and encouraged SITLA’s decision to include the Castle Valley trust lands in the land exchange that is now pending Congressional approval.<sup>202</sup>

## **COSTS OF THE PROCESS**

Although there were several benefits resulting from the planning process, many stakeholders acknowledged that they incurred significant costs, as well. These costs include time, financial resources, lost opportunities and emotional energy and strained relationships.

### **Volunteer and Staff Time**

Given the length of the process, time was a major cost for all involved. The process began around 2000 after the community and SITLA agreed to jointly work on a planning process following the sale of the Parriott Mesa parcel. While the planning process ended in 2004, some of the participants continue to work on the land exchange today.

The planning process involved a series of meetings, many of which required a great deal of time, including preparation time, travel time and time spent during the actual meetings. Meetings throughout the process were held in Castle Valley, Salt Lake City, Boulder and Denver, and many participants traveled to meeting locations throughout the process. The process began with an initial charrette, led by Conservation Partners facilitators who gathered community input about a range of issues.<sup>203</sup> In addition to the initial charrette, the project team and CRC held a series of meetings with specific stakeholder groups within the community, including the Property Owners Association, the Seventh Day Adventist Academy, the Church of the Latter Day Saints community, climbers and recreationists.<sup>204</sup> Zeller led meetings throughout the planning process in which CRC members, Utah Open Lands representatives, town officials and SITLA discussed the goals, direction and progress of the planning process.<sup>205</sup>

The planning group also held two open houses in Castle Valley, in which any interested party could attend.<sup>206</sup> During the first open house, Conservation Partners presented a series of maps and overlay data illustrating the various issues. They also presented their preliminary development options based on the data and sought community input and reactions to the recommendations.<sup>207</sup> Following a series of negotiations with the planning group and incorporation of the feedback received from the first open house, Conservation Partners led a second open house in which a more final plan was presented to the community for comment.<sup>208</sup> Zeller emphasized the amount of time needed to successfully complete a process of this scope. He stated, “Don’t underestimate the amount of community interaction time that will be necessary to get to a constructive solution and the amount of time that it’s going to take getting the parties in front of each other so that they can build trust and communicate effectively.”<sup>209</sup>

Most of those involved from the community of Castle Valley, particularly those involved in CRC, volunteered their time and were not compensated. Utah Open Lands Executive Director Wendy Fisher estimated, “for community members engaged in the process ... they probably spent 75 to 80 percent of their time, and I could not tell you how much of their time is spent today, though I know many of the individuals in the Valley are very engaged in ongoing land issues.”<sup>210</sup> CRC board members met once or twice a month for a period of two or three years during the planning process, during which board members opened their houses

to hold the meetings.<sup>211</sup> Laura Kamala and Dave Erley, the organizers of the community's involvement in the process, worked at least 20 hours per week throughout the process and often much more.<sup>212</sup> They were compensated for part of the time they spent working on the process, after they were hired by Utah Open Lands.<sup>213</sup>

Members of the local government, including those on the Planning and Zoning Commission and the Town Council, volunteered their time as well, or were paid only part time. During the planning process, town representatives' typical time commitments increased. CRC and Planning and Zoning Commission member Richard Schwartz recalled, "There were times when the Planning and Zoning Commission met two or three times a month, as opposed to once a month."<sup>214</sup>

Similarly, many of the other organizations involved dedicated a significant number of staff hours to the process. Ric McBrier, the key representative from SITLA, spent a great deal of time working on the process and frequently presented material to SITLA's Board of Trustees, who consequently also spent time on the process.<sup>215</sup> Utah Open Lands also spent a significant amount of time on the process. Executive Director Wendy Fisher estimated the organization's contribution:

From a Utah Open Lands perspective, a tremendous amount of organizational time was spent on the planning process, fundraising for individual pieces [of land] and the negotiation of those properties. From 2000 when we worked on the first piece to 2003 when we entered into a contract for the critical winter range piece, an average of 60 to 70 percent of the organization's time was spent in Castle Valley. Today, Utah Open Lands employs one individual who works exclusively on land issues in Castle Valley and the greater Grand County area.<sup>216</sup>

## **Financial Resources**

Those involved in the process invested a great deal of financial resources in the planning process, as well as the conservation initiatives and transactions that resulted. These costs were shared among process participants. Prior to the planning process' formal beginning, several community members from Castle Valley paid for much of the pre-planning activities themselves, such as initial maps, without being reimbursed.<sup>217</sup> Multiple stakeholders contributed to the various planning process expenses once it began, including paying the planners, engaging in the mapping activities, conducting the hydrological study, funding land appraisals and paying for staff time. As a rough estimate, Mayor Keeler guessed that overall, "there was probably a quarter of a million dollars spent on the planning process."<sup>218</sup>

The costs of hiring Conservation Partners were shared among the town of Castle Valley, SITLA and CRC as a branch of Utah Open Lands. The town obtained a state planning grant to assist in their portion of the payment, and CRC and Utah Open Lands received a grant from the Sonoran Institute.<sup>219</sup> SITLA Assistant Director Ric McBrier estimated that the organization "spent in excess of \$100,000" on the planning process itself.<sup>220</sup> Utah Open Lands' costs included CRC expenses and payroll, project and fundraising management costs

and appraisal and negotiating costs which amounted to approximately \$50,000 per year during the process.<sup>221</sup> Funds for these expenses came from grants from a variety of organizations, including the Sonoran Institute, Patagonia and Tides Foundation.<sup>222</sup>

In addition to the direct expenses of the planning process, a great deal of fundraising occurred to purchase the three conservation areas. The land at the base of Parriott Mesa was purchased by Utah Open Lands for \$192,000, the Castleton Tower parcel was purchased by Utah Open Lands with CRC as a branch organization for \$640,000, and the critical wildlife habitat was purchased by Utah Open Lands and the Utah Division of Wildlife Resources for \$954,000.<sup>223</sup> All of the funds for these properties were raised through extensive fundraising campaigns, and were successful only because of the donations of many organizations and private individuals.<sup>224</sup>

### **Opportunity Costs**

Several of the participating organizations had to weigh their involvement in the Castle Valley Planning Process against many other activities in which they could engage. Jason Keith, Policy Director for the Access Fund which was one of the contributors to the Castleton Tower Preservation Initiative, stated, “There are always opportunity costs when you focus on one issue and you can’t focus on another.”<sup>225</sup> For the Access Fund, whose mission is to keep access to climbing areas open and to conserve those areas, maintaining access to Castleton Tower clearly fit within the scope of the organization’s work. However, as an organization participating in the Castleton Tower Preservation Initiative, Keith recognized that the Access Fund had to ensure that this task would not take resources away from other programs. He also needed to reassure the organization’s board that it was not setting a precedent for preserving viewsheds, which would be outside the realm of the organization’s mission.

Utah Open Lands Executive Director Wendy Fisher echoed Keith’s sentiment, noting that when an organization focuses most of its time and energy on one issue, it has to ensure that the activity fits the mission of the organization and does not take away from energies that should be directed towards other areas. For Utah Open Lands, the Castleton Tower Preservation Initiative was only one issue related to the organization’s mission of conserving land and open space in the state of Utah. Being involved in Castle Valley limited the amount of energy and resources that the organization could spend on other projects across the state. Fisher commented, “The Castleton Tower Preservation Initiative was the sole land preservation project for the organization for two years. Land preservation and the stewardship of the three parcels Utah Open Lands owns will continue forever.”<sup>226</sup>

### **Emotional Energy Spent and Strained Relationships**

Many involved in the process also viewed the process as imposing less tangible costs, including emotional energy and strained interpersonal relationships. Richard Schwartz described these costs. “There were some friendships at least strained and maybe in some instances ruined or severely stressed ... and that’s not a success.”<sup>227</sup> Wendy Fisher echoed this saying, “You get personally involved. It can be emotional, and it can be draining, and you make friends, you lose friends.”<sup>228</sup>

The delicacy of interpersonal relationships and the strain on emotional energy was particularly salient for those participants who lived in the community of Castle Valley, since they had to face their neighbors every day.<sup>229</sup> Indeed, toward the end of the process, it seemed that relationships among some of the town members and members of the planning process became strained to the point of interference with the process. Margaret Bird, a Beneficiary Representative at the State of Utah Office of Education, noted that sometimes the emotional strain of these issues stems from the fact that they are about larger issues relating to land and people's experiences with it. "It disturbs people because it disturbs how they view life. It's about a bigger, global issue. It's about land and people's strong personal ties to that land."<sup>230</sup> In the Castle Valley Planning Process, people's ties to the land were clearly very strong, and oftentimes this feeling manifested itself in difficult interpersonal relationships.

## **CHALLENGES AND RESPONSES**

Participants also faced challenges in the process of collaborating, including having mutually exclusive objectives, achieving mixed success with community outreach and trying to understand the role of the town in the collaborative process.

### **Mutually Exclusive Objectives and the Challenge of Finding Common Ground**

One of the most challenging elements of the process was the perception, and at times the reality, that the stakeholders possessed diametrically-opposed perspectives. In essence, SITLA's goal was to maintain the value of their lands and obtain revenue from them through development or another revenue-generating activity. The community's goal, on the other hand, was to maintain open space and prevent development from occurring. While SITLA wanted to increase the value of trust land in the Valley, the community did not want the land to increase in value, because they were concerned that they would then be unable to afford to purchase the land according to the plan. Marty Zeller articulated this well: "I don't know if [Conservation Partners] had worked anywhere else where the two sides came at this from more diametrically-opposed viewpoints."<sup>231</sup> The participants' opposing viewpoints often stalled the process and led to mistrust.

Throughout the process, however, the group discovered that their positions might not be mutually exclusive. They made a breakthrough early in the process when they discovered that SITLA's mandate was not necessarily to develop the land but to generate revenue from the land, and that generating revenue does not necessitate development. This discovery was key to overcoming the perception that the stakeholders had mutually exclusive positions and enabled the conservation initiatives to serve both the revenue needs of SITLA and the open space interests of the community. Furthermore, although the community's stated goals were to totally prevent development, Laura Kamala noted that the community discussed some flexibility there as well. She stated, "Aside from having the ultimate goal of finding a 100 percent conservation solution ... if that wasn't possible, then we wanted to have the best possible development scenario on the lands."<sup>232</sup> The goal of developing a plan that was

acceptable for all involved was critical to establishing common ground. This goal was achievable because of the willingness of participants to compromise.

Once common ground was established, participants faced the challenge of developing a shared commitment to finding a solution. Marty Zeller emphasized the need for people who were engaged in the process and mentioned the difficulty of having some who were not committed:

You need to have constructive, engaged people as part of these processes. This process if anything showed that if you have individuals involved who want to derail the process and are not committed to a constructive solution, they can be very detrimental to positive outcomes. Having constructive attitudes and believing in the process are important.<sup>233</sup>

Many of the process participants were constructive and engaged, but some however, seemed to obstruct the process at points. This fact was particularly evident when the role of the town was unclear and members of the town government and members of CRC and SITLA became adversarial.

### **The Newness of the Process**

The Castle Valley Planning Process was a new experience for most individuals and organizations involved. It was also precedent-setting because it was not only the first time SITLA had engaged with a community in a joint planning effort but also the first time developable trust lands had been sold for conservation purposes in Utah. SITLA Associate Director John Andrews noted that collaborative planning was new to SITLA at the time of the Castle Valley Planning Process, though the agency has been involved in similar collaborative processes since that time.<sup>234</sup> Mayor Keeler also recognized that the process was new for Castle Valley:

We're going to have our 20<sup>th</sup> anniversary as a town in November [2005]. Besides the planning process, we're learning each year how government functions. We don't have a long history of how you deal with things. In most cases, you make just small changes. We don't have any details or parameters upon which to base our decisions.<sup>235</sup>

According to Wendy Fisher, Utah Open Lands had been involved in collaborative processes before, but this process was different:

This [planning process] was really different because of the starting point. There were a lot of things that hadn't been done before. I don't know that the community had a master plan prior to the process, and there hadn't been a need to look at what would happen if we had large-scale onslaught development in this community ... SITLA also hadn't negotiated a developable piece of property with a conservation organization before. It was

also the first time Utah Open Lands bought a property back from the brink of development.<sup>236</sup>

Because the collaborative effort was a fairly new endeavor on SITLA's part and because the town of Castle Valley was also inexperienced in collaborative planning, the process required communication regarding the various limitations and abilities of the stakeholders to participate in the process.

### **The Unique Nature of School Trust Lands**

Because of SITLA's mandate to manage trust lands for the financial benefit of the public schools and other beneficiaries, the financial outcome of the process was a necessity. Unlike other federal or state land management agencies whose lands are designated for multiple uses, trust land management is designated for the sole financial support of its beneficiaries. While this mandate posed some restrictions on SITLA's ability to consider conservation options in the process, it also allowed for some flexibility in entering into collaborative agreements – a flexibility that is not enjoyed by other federal or state agencies that are bound by a set of strict procedures and rules. SITLA Assistant Director Ric McBrier stated that SITLA is “absolutely” more flexible and able to collaborate with local communities than federal government agencies.<sup>237</sup> According to McBrier, “If a professional manager [at SITLA] can see that [a collaborative approach] is in the beneficiaries' best interest, and how do you figure that out without probing into it, then theoretically we should be free to do it.”<sup>238</sup> In discussing the difficulties the federal government faces in making land use decisions that involve local communities, Beneficiary Representative Margaret Bird contrasted the ability of federal government agencies and SITLA to collaborate:

We've created a situation where things are frozen in the current [with federal agencies]. We've made it impossible for them to do administrative land exchanges and impossible for federal officials to come in and collaborate. However, Trust Lands can collaborate because [the legislature has] set their rules up pretty liberally.<sup>239</sup>

However, not all participants in the planning process felt that SITLA's mandate encouraged collaboration. Mayor Keeler recalled some of the challenges the mandate posed for the process:

I think the mandate's kind of a hindrance. It does not allow for looking at the highest and best use very readily. I think that's why Ric [McBrier] had to fight with the [SITLA] Board. I will say that Ric really worked this process. He tried very hard to make this thing work, and I think he was very invested in it. Unfortunately, in the world that Ric functions in, by not having the deal done at the end, was a hard thing to accept and for the Board to accept. I think that their mandate makes it very hard to do this.<sup>240</sup>

SITLA's mandate both allowed for collaboration and posed some restrictions over it. However, in contrast to federal agencies governed by a more cumbersome set of restrictions,



SITLA had a unique ability to consider and engage in a collaborative effort with the community.

### **The Challenge of Community Outreach**

The lack of full involvement from the community was perhaps due to the urgency from which the process originated, the lack of effective mechanisms for communication in the Valley and the deeply individualistic nature of many members of the community.<sup>241</sup> Because residents involved in the process were not totally effective at reaching out to the greater Castle Valley community, the process suffered.

#### ***Urgency of the Process***

The urgency from which the process emerged contributed to the difficulty in community outreach. The process was a reaction to the perceived crisis of the sale of land at the base of Parriott Mesa. The community quickly formed CRC as a result, which may have precluded full involvement from all members of the community who may not have been notified from the outset. Many CRC members remembered that when the group initially formed, each member called his or her friends and neighbors to alert them to the issue.<sup>242</sup> However, this informal phone tree method of reaching out to the community may not have been the most effective way to reach out to all members of the community.

#### ***Lack of Effective Communications Mechanisms***

The lack of efficient methods of communications in the Valley also may have contributed to the challenge of community outreach. Castle Valley is a remote and quiet town with few mechanisms for effective communication among its 350 residents. For example, there is no phone book designated for Castle Valley.<sup>243</sup> Internet access is available in the Valley, but residents' email addresses are not posted. The town and CRC post notices about planning process meetings and other information at the entrance to town on a bulletin board where the mailboxes are located, but this method has its limitations as community members often do not read the notices. In addition, information presented in Ron Drake's column in the *Times-Independent* was not always read by all interested parties.<sup>244</sup> Cris Coffey reflected on Castle Valley's communication methods and how they affected community outreach, "Although the first [CRC] meetings were quite large, it was hard to know if everyone was represented ... [CRC] just tried to put the word out. We put a note at the front gate, sometimes that's a good place. We don't have a really good communication system in the Valley."<sup>245</sup>

The fact that communications mechanisms are limited in Castle Valley created a challenge in accomplishing community outreach. Coffey described the difficulty that having limited communications caused, "It's always important to involve and include everyone. Sometimes it seems like the same people are the ones who are involved in everything ... Some people never seem to get involved, and some seem to get over involved in everything."<sup>246</sup>

#### ***Individualistic Nature of Castle Valley***

The lack of effective outreach also may have stemmed from the nature of the community itself, which is comprised of a diverse group of individuals with varying backgrounds and perspectives. Laura Kamala articulated this challenge, "Every door you knock on you'd find

a strong opinion that's different from the next. Trying to pull that together was a bit of a challenge."<sup>247</sup> Kamala continued in saying that even though she would bake pies to take to individuals in the community and try to engage them in the process, some people were still reticent to becoming involved. Mayor Keeler recalled that one of the reasons conducting effective outreach to the community was so difficult was because, "there are a number of people in this community who like to exclude themselves, who won't work with so-and-so."<sup>248</sup> The fact that many Castle Valley residents moved to the Valley to "get away from it all" may have also limited the full involvement from the community, particularly those who wished to remain uninvolved in seemingly political or environmental issues.

Because of the urgency of the process, the lack of effective communications mechanisms and the individualistic nature of the community, many participants noted that outreach to the community was successful only to a point. Several participants noted that they wished the Church of the Latter Day Saints community and Seventh Day Adventist community members had participated to a greater extent, in addition to a more diverse representation from the community as a whole. Jerry Bidinger commented, "I would have liked to see more of the articulate, honest, decent, hardworking people in the Valley come out, but they didn't. Some did, but a lot did not. You almost have to pry them out with a crowbar to get them to come."<sup>249</sup>

Some community members felt that communication and outreach were ineffective during the process. Planning and Zoning Commission Chair Catherine Howells was among those who did not feel particularly included in the process. "There wasn't the real inclusion of the whole community, and that's hard. It's hard to get them engaged and it's hard to listen to things you don't want to hear. The propensity is always to not listen."<sup>250</sup> In describing her personal feelings about the process, Howells stated, "I wasn't heard. If you weren't part of the [CRC] group, you weren't heard. They may have held meetings and presentations, but that wasn't the level of involvement you need."<sup>251</sup> Despite the fact that not every member of the community participated in the process in an equal fashion, the leaders of the process felt that overall there was ample opportunity to participate and most of those who desired to participate were able to do so.

### **The Appropriate Role of the Town**

Determining the town of Castle Valley's legally appropriate role in the process was an obstacle. From the outset, the distinction between CRC's role in the process and the town's role as a governmental entity was not well established. At the beginning of the process, Mayor Keeler participated through CRC. But as the process continued, he was advised to separate himself from CRC and the planning process, and thus he and the town's governmental representatives (including the Town Council and Planning and Zoning Commission) became more focused on the legal role of the town itself.<sup>252</sup>

The town's main objective during the planning process was to update its general plan and zoning ordinances. While this was separate from the planning process, SITLA and CRC were aware of the town's efforts. Mayor Keeler noted, "It was made very clear to SITLA at the beginning of the process that the town would be developing on a separate track along with

this process, a subdivision master development ordinance.”<sup>253</sup> In addition, several of the members of the Town Council and the Planning and Zoning Commission also were involved in the planning process as individuals, including Karen Nelson, Richard Schwartz and Brooke Williams. Because the town engaged in zoning and subdivision ordinance revisions separately from the planning process, a tenuous balance between commitment to the collaborative process and to the legal requirements to update zoning ordinances was present. According to CRC and Town Council member Karen Nelson, “It was very difficult to balance the community’s right and our obligation to take care of and protect our citizens ... and our obligation to the collaborative process.”<sup>254</sup> This balance was difficult to achieve because on the one hand, the town felt that it should recognize the work that was being done in the planning process, but on the other hand it had a legal requirement to govern future planning in the town.

In the end, the town’s process precluded local officials from being able to forthrightly acknowledge the work that was being done in the planning process, and communications between the town and CRC and SITLA broke down as a result. Furthermore, the zoning ordinances included some elements of the plan developed through the planning process, but they included a greater level of detail and more requirements than were in the planning process document. This created additional tensions between those who thought that the town was correct in creating more stringent ordinances and those who thought that the town was not acting in good faith given the collaborative agreement.<sup>255</sup>

The timing of the ordinance revisions upset some of the people involved in the collaborative planning process who felt it was unfair that the town engaged in this action. Some perceived the town’s actions as failing to comply with the agreements of the planning process. Facilitator Marty Zeller was among those who felt that the town government acted contrary to the planning agreements. He recalled:

My read on it was that the town basically wasn’t willing to take the risk and they weren’t living up to the principles ... When the town said, “Well, this is the way we’re going to play the game,” the game was rigged. It wasn’t a fair game anymore. That’s when the process really broke down ... it really divided the town, and it was very challenging for everybody.<sup>256</sup>

Jerry Bidinger was involved in the redrafting of the ordinances and felt that the process engaged by the town was quite fair. He discussed the importance of the ordinances to SITLA and the planning process in saying:

Those ordinances were of substantial interest to SITLA. They created a planning process so that if one wants to develop land inside the town of Castle Valley, one has to go through a process of planning that lays forth a master development plan that has to be ultimately approved by the Town Council, and then after you go through that, go through the process of actually developing a project. This places a planning obligation on a developer and it creates obligations for a developer to ensure that the developer carries the

burden of water, sewer, streets, and that there be a certain amount of open space.<sup>257</sup>

These changes were seen as important to protect the town's citizens from bearing the burden of development. In a small community of only 350 residents, it was important to the town to ensure that the cost of infrastructure from any future development would be paid for by SITLA or the developer, rather than the residents of the town who might not be able to afford increased taxes or other fees.

### **The Role of Water in the West**

Complications with water rights, quality and quantity also posed challenges to the planning process. As in most Western states, water in Utah is the limiting factor for development. The Castle Valley Planning Process addressed the issue of water from the outset. The understanding was that through the planning process, the town would provide the development, if it occurred, with access to its water rights. However, towards the end of the planning process, the town's water rights were called into question because the records on water use were not up to date. In Utah, water rights are governed by a "use-it-or-lose-it" principle, whereby an entity owning water rights must prove every five years that it will use that amount annually.<sup>258</sup>

The uncertainty surrounding the water rights, in addition to the town's hesitance in committing itself to providing water for future development, caused a significant challenge to the process. Laura Kamala described the results of the hydrological study that examined the quality and quantity of Castle Valley's aquifer, "The hydrological study showed that it would have been far wiser for the development ... to be 15-acre, rather than five-acre lots."<sup>259</sup> Because parts of the plan had assumed a minimum five acre lot size, some participants were concerned that portions of the planning would have to be redone. However, since financial resources were gone by the time the study results were reported, the plan was not revamped accordingly. Because Castle Valley's aquifer was designated as a sole source aquifer by the EPA, the town had no choice but to ensure that its water be protected or else risk the contamination of the only source of water for its residents' use.<sup>260</sup> Catherine Howells expressed concern with the way that water issues were dealt with in the group's plan, "If we had just accepted SITLA's plan and not used our land use ordinances, we would have given up a phenomenal amount of water and we would have had to pay for that infrastructure."<sup>261</sup>

### **Personality Conflicts**

Throughout the process, but particularly towards its end, personality differences were challenging. Many of the stakeholders in the process mentioned the difficulty of conflicts between individuals. Marty Zeller remembered that "there were personalities involved that were very difficult to work through." These personality conflicts were often addressed through talking things out. CRC member Cris Coffey mentioned that conflicts were often addressed through thinking things through and by talking things out with one another, which helped to overcome differences of personality and opinion:

Sometimes it is important to talk about something before you act. Because, a few times someone would get hot under the collar and say something just for the release of doing that. Then there was a lot of fence-mending to do. But that's just because the process was so important to everyone.<sup>262</sup>

Catherine Howells indicated that using facts to overcome the challenges of emotional reactions can be helpful:

In true collaboration, you have to be willing to do a whole lot of talking and a whole lot of listening and try to get past the emotional stuff. I'm a great believer in presenting facts, thinking through the process, and always coming back to the scientific/legal facts ... It cuts through a whole lot of the emotional stuff when you do that.<sup>263</sup>

In the Castle Valley Planning Process, using shared mapping information to make decisions helped the group overcome emotional reactions in some cases. Facilitator Marty Zeller remembered:

The biggest challenge was just getting people to sit down and interact and trust each other so they could discuss some options ... I think that having people sitting down and interacting in an organized fashion, having everyone sitting at a table looking at maps together with the same information, helped build a level of trust about what was really going on with the land and what the options really were. That was probably the first key thing. The inventory and analysis of the site conditions helped both parties realize what you could do and what was probably not desirable to do.<sup>264</sup>

Despite the fact that the group was able to overcome some emotional reactions about the trust land, the group still faced the challenge of overcoming personality differences, particularly those related to the town's involvement in the process and its ordinance revisions.

### **Maintaining Momentum and Overcoming Impasse**

Another challenge to the process was maintaining momentum when faced with hurdles that threatened to slow or stall the process. Many of these hurdles stemmed from the fact that the process was prolonged and required more work than originally expected. Although the group knew the effort would take a significant amount of time, a limited budget and unclear roles challenged the completion of the process.

Marty Zeller voiced his concerns with limited funding sources, "The limitations are a result of the fact that there haven't been enough resources dedicated to allow the process to work effectively. These things just take time to work through and be efficient. That's certainly probably the key lesson."<sup>265</sup> In this case, most of the financial resources for the planners were gone by the time the hydrological results came in. As a result, resources were not available to address some of the challenges that were faced at the end of the process, including the need to update the development plan to create 15 acre rather than five acre lots.<sup>266</sup>

Maintaining momentum was particularly problematic at the end of the process, when it came to signing the planning contract. Because of confusion surrounding the role of the town's zoning ordinances in the planning process, the process eventually lost momentum and participants were not able to regain forward motion. As a result, some members of the planning group pursued the land exchange option instead.

## **FACILITATING FACTORS**

Several factors facilitated the collaborative planning process in Castle Valley. These included partnerships, establishing common ground and shared goals, shared experiences and joint fact-finding.

### **Partnerships**

Partnerships were central to the planning process success, particularly in achieving conservation goals. The key partnership in this case was between CRC and Utah Open Lands, without which the process and the conservation initiatives would not have been as successful.<sup>267</sup> Utah Open Lands provided an avenue for collecting donations for the conservation initiatives, helped spearhead a good deal of fundraising efforts, provided legitimacy for the new branch organization (CRC) and provided resources and networking during all three conservation transactions. CRC member Cris Coffey agreed that Utah Open Lands' involvement was important, particularly in purchasing the Parriott Mesa parcel. "Once we joined forces with Utah Open Lands, their financial backing and contributions were absolutely essential. We wouldn't have been able to buy back the Parriott piece if they hadn't advanced the money to do that ... Having that kind of support and trust was very important to us."<sup>268</sup> Dave Erley also recognized Utah Open Land's key role in the process:

At the end of the day, the community would have experienced a far different, and much less satisfactory, result without the involvement of Utah Open Lands ... Without Utah Open Lands and their leadership, resources and fundraising ability we would not have been nearly as successful ... In fact, after the process got going I believe Utah Open Land's involvement was the biggest single factor in the community's success.<sup>269</sup>

However, CRC's relationship with Utah Open Lands was not without its complexities. The two entities struggled to make sure their respective missions were compatible. CRC had to determine if it wanted to be a branch organization, and Utah Open Lands had to assess whether CRC would consume too many resources or too much time. In the end, CRC and Utah Open Lands crafted a very successful relationship by determining the roles and responsibilities of each entity. This partnership also was fostered through the leadership of Dave Erley and Laura Kamala who were hired part-time by Utah Open Lands in order to facilitate the process. Erley and Kamala worked to ensure that the goals of both Utah Open Lands and CRC were being met.<sup>270</sup>

In the Castleton Tower Preservation Initiative, several other organizations were essential, including the outdoor industry, the climbing community and the Access Fund, all of which assisted with fundraising for obtaining the Castleton Tower trust land. The Access Fund provides a good example of an organization with which CRC collaborated to achieve the goals of the Castleton Tower Preservation Initiative. In addition to a \$20,000 grant, Jason Keith, Policy Director at the Access Fund, indicated that his organization, “provided a direct connection to the climbers themselves through our membership, e-news alerts, hard copies that go out. We provided that and public relations for [the Castleton Tower Preservation Initiative].”<sup>271</sup>

## **Establishing Common Ground and Shared Goals**

Although the participants in the process often emphasized their seemingly contradictory goals, the process did work to establish common ground. Even though SITLA needed to generate revenue in some way, perhaps through development, and the community wanted the land to remain in its same undisturbed state, everyone could agree on the need to create a quality plan. This common goal helped to guide the process despite the seemingly opposing individual objectives. Wendy Fisher attributed the development of common ground to the group’s recognition that all participants could benefit from the process. “Everybody involved, whether it was said specifically, knew that the reason we were all coming together was that there was something about the land, there was something about the community, there was something about the idea of working together towards a common resolution that was mutually beneficial for everybody.”<sup>272</sup> In addition to this recognition, the group developed common ground by understanding that everyone involved was committed to having an outcome that would be positive for as many of the participants as possible. As articulated by Laura Kamala, “The overarching common goal was that we all wanted a good plan.”<sup>273</sup>

## **Shared Experiences**

The role of shared experiences was key in the Castle Valley Planning Process. Often, participants in the planning process would go for hikes, share potluck dinners or engage in other activities that encouraged building personal relationships and shared understanding that was crucial to the progression of the process.<sup>274</sup> For example, Dave Erley remembered hiking in the Valley with CRC member Eddie Morandi, SITLA Assistant Director Ric McBrier, and McBrier’s wife and dog. On the strenuous hike, Erley recalled offering to carry McBrier’s dog down the steep trail, so it would not get injured.<sup>275</sup> According to McBrier, hiking trips and other shared activities throughout the planning process fostered the development of friendships that have continued past the conclusion of the process.<sup>276</sup>

Wendy Fisher remembered that celebrating shared successes throughout the process was essential, “We celebrated different milestones along the way, and that was key. You’ve got to focus on the quality of the experiences that everybody has, and one of the ways to do that is to celebrate little milestones, little successes, in an inclusive, not exclusive way.”<sup>277</sup> One of the major successes that the group celebrated was the milestone of purchasing the trust land at the base of Castleton Tower that benefited all members of the planning process.<sup>278</sup>

## Technical Information and Mapping

Discussions over technical data and mapping helped to facilitate the Castle Valley Planning Process. One of the first activities in which the group engaged was detailed mapping of the environmental constraints and development potential of the trust lands. Copies of maps made during the process were made available to community members attending public meetings.<sup>279</sup> The mapping process and distribution facilitated the sharing of information, which, in turn, helped foster a common understanding of how the land could and could not be used and allowed for trust to be built among the participants.<sup>280</sup> Marty Zeller articulated the importance of the mapping:

The first key thing was that the inventory and analysis of the site conditions helped both parties to realize what you could do and what was probably not desirable to do. It dispelled a lot of preconceptions about how valuable the land was from a natural resources standpoint and an economic standpoint.<sup>281</sup>

Richard Schwartz agreed with Zeller that the scientific information was important. He also emphasized that the information be shared with as many people as possible. “Base whatever development strategies you’re going to use on as good a science base as you can. And make that as widely available as you can online, on websites, on CDs, whatever.”<sup>282</sup> Likewise, Mayor Keeler concurred that the science was central to the process, but emphasized that sometimes waiting for the appropriate scientific data takes time, “If you’re doing a process like this, you have to be able to sit with it until the technical science parts are finished that give you your underlying data that show you how far you can go.”<sup>283</sup> In this case, the science was the crux of the issue and it helped the group move forward.

## LESSONS LEARNED

Several overarching lessons can be taken from the Castle Valley Planning Process.

### **1. Effective collaboration requires clearly defined roles and responsibilities for all stakeholders involved in the process.**

One of the primary challenges in the Castle Valley Planning Process was the lack of clarity about the roles and responsibilities of the various stakeholders. In particular, the process would have benefited from having the roles of CRC and the town more clearly defined. Even though the two entities were separate, it was not clear from the beginning who was representing which party. Facilitator Marty Zeller described the perceptions of the two groups, “The Castle Rock Collaboration was definitely not the town, and the town felt that it was very different from the Castle Rock Collaboration.”<sup>284</sup> However, SITLA Director Kevin Carter indicated that little attempt was made to distinguish the town from the community as represented by CRC, “I don’t know that there was any effort to collaborate with the town separately at all. We were under the impression that the Castle Rock Collaboration coalition group was taking care of that end of the process.”<sup>285</sup> This highlights the importance of



ensuring that all parties define their responsibilities and relationships to other parties within the collaborative effort at the outset. According to Richard Schwartz:

Make sure the parties involved, especially if one of them is a jurisdiction, a town or county or something, has early on defined its relations with the unofficial participants, and that any participation of the town from the beginning is clearly understood and done under whatever due process has to be done in that state for the town.<sup>286</sup>

**2. Prior to engaging in collaborative planning process, the group should ensure that all legally appropriate stakeholders are represented and that legal sideboards are understood.**

Another lesson learned from the process was that the legal sideboards of the process should be identified as early as possible and all legally appropriate stakeholders should be included from the outset. The town's involvement was particularly important, and its interests were not always separated from those of CRC and the community in general. Because of the lack of understanding of the town's legal responsibilities and restrictions, the town might not have been represented in an effective manner. SITLA Director Kevin Carter acknowledged this in saying, "Certainly a shortcoming in the process was that it didn't include the people who were ultimately going to be making the decisions."<sup>287</sup> In this case, it was the town government that represented the decision-making agent. Planning and Zoning Commission Chair Catherine Howells reemphasized the need for the legal requirements to be met in a collaborative process, "You can't have a collaborative process and not follow due process of law as part of that process."<sup>288</sup> Town Council member Jerry Bidinger noted:

A collaborative process is one that requires that the town, county, city pass those legitimate ordinances that are recognized as legal and proper and not overbearing, that have been recognized in your state or in the surrounding states, that you put those in place, just as the state agency has an obligation to pursue the broad interests of all the citizens of the state.<sup>289</sup>

Had the town's legal requirements been fully understood and explored from the outset of the process, the planning efforts may have been more successful. Carter summarized SITLA's major lesson learned through the Castle Valley Planning Process, "The take-home lesson is that in the future, we need to make sure that the people we're collaborating with represent the entities that can make the final decision."<sup>290</sup>

**3. Effective collaboration is facilitated by joint risk taking and compromise.**

Another lesson from the planning process is the need for mutual risk taking and compromise from all sides. Karen Nelson discussed the importance of risk taking, "Without risk on both sides, you're not going to ever succeed. You have to assume some risk."<sup>291</sup> The stakeholders in the process all assumed the risk that they might not achieve their ultimate goal. For the community, the goal was 100 percent conservation of trust land. For SITLA, the objective was to achieve the mandated revenue generation from the trust land. Ric McBrier articulated SITLA's risks in choosing to engage or not to engage with the community:

There was a risk to us from not engaging, what I call the political risk, the risk of developing a reputation of being big brother and not caring about the community's interests and perspectives. When you own 7,500 pieces of land, that would be a heavy burden to carry around with you every day, and word travels fast ... There was a risk on the other side that by engaging [the community] we would compromise our responsibilities to the beneficiaries.<sup>292</sup>

The different goals required stakeholders to be flexible and to be willing to compromise on their objectives. McBrier emphasized the importance of compromise in the process: "This is about compromise at some level. Collaboration makes it sound like no one compromises, that's not what it's about. People are compromising. Maybe they are learning areas in which the compromises are easier to make, but there is compromise inherent in this thing."<sup>293</sup> He also emphasized the importance of sticking with the process in the face of compromise, "You can't know the outcome without walking through it ... I think that it is about having some faith and some trust in good possibilities."<sup>294</sup>

#### **4. Collaborative processes benefit from professional, neutral and knowledgeable facilitation.**

Facilitation was key to the planning effort in Castle Valley. The planners and facilitators provided ground rules, mapping and technical information and general guidance to the group throughout the process. Marty Zeller, as the lead facilitator, directed participants through meetings, took group comments and feedback and came back with revised work products.<sup>295</sup>

Overall, the consensus in the group was that Marty Zeller was effective in balancing the needs of the community with SITLA's needs. Mayor Bruce Keeler recalled that Zeller was good at helping the group to overcome distrust, "In the beginning, we were all very skeptical of working with each other. Marty Zeller did a great job in bringing everyone together."<sup>296</sup> He added, "Marty was very good at keeping the two sides moving and finding ways to move through times when we were butting heads. He brought us together, and his facilitating skills were good."<sup>297</sup> Laura Kamala added that Zeller "was very effective in the way he addressed the layers of the community."<sup>298</sup> Many participants viewed the fact that the community and SITLA jointly funded Conservation Partners as a positive factor, in that it established that the facilitator was a client of both sides.<sup>299</sup> Furthermore, participants mentioned that the mapping provided by Conservation Partners was essential to the group's progress. Mayor Keeler indicated that Zeller "also did a good job with the on-the-ground mapping."<sup>300</sup>

Towards the end of the process, however, some began to question Marty Zeller's neutrality, when SITLA hired Zeller to work on other projects not related to the Castle Valley Planning Process. Regardless of the accuracy of speculations surrounding Zeller's neutrality, they played an important role in how several of the participants, particularly from the community, evaluated Zeller's role as a facilitator.

In addition, many of those involved would have liked to have seen Marty Zeller take a more proactive position at the beginning of the process when the issue of the ordinances and the

legality of the contract between SITLA and the town arose. Some suggested that perhaps since Zeller was from Colorado, and since Utah laws are different regarding the jurisdiction of towns, he might not have had an appropriate knowledge base about the specific circumstances governing the process in Castle Valley.

Overall, though, facilitation was clearly a key factor in much of the progress the planning group made throughout. For instance, CRC member Cris Coffey said that she was pleased with Zeller's participation. "The planner, Marty Zeller, is a wonderful person. [He] had all the technical training and a philosophical attitude that was very helpful to us. We were very lucky."<sup>301</sup>

## **5. Formal and informal leadership can enhance collaborative efforts.**

Leadership was another key component to the collaborative process. Ric McBrier, as a representative of SITLA, built relationships and trust with CRC members and planning group participants because of his attitude and his willingness to engage in the process. Many of the residents of Castle Valley felt that McBrier was essential in providing the motivation to engage the community. Regarding this, Cris Coffey stated that "I've always felt that we were very fortunate that Ric McBrier was the one in that office when we started the project."<sup>302</sup> Many process participants felt that not many in McBrier's position would have engaged the community in the same way. McBrier also played a key role in representing the community and the planning process to the SITLA Board of Trustees, who ultimately were the decision makers for the agency. For an agency that had not attempted to collaborate in this way with a community before, having a champion for the collaborative process on its staff was key.

Process participants also recognized Wendy Fisher, Laura Kamala and Dave Erley as essential leaders in the process. Dave Erley remembered that without Wendy Fisher's leadership in the process, it would not have been as successful. "Wendy Fisher and Utah Open Lands were the glue that held the community together and got us through some very difficult times with SITLA and the town of Castle Valley for that matter."<sup>303</sup> Cris Coffey mentioned that "Laura [Kamala] and Dave [Erley] were hugely important. Although their working styles were very different, they had totally complementary skills."<sup>304</sup> Division of labor between Kamala and Erley was also very effective, with Kamala primarily taking the role of communicating with the various stakeholders and particularly interfacing with SITLA, and Erley taking the chief responsibility for spearheading some of the fundraising efforts for the various conservation initiatives and engaging the outdoor industry and climbing community. Kamala, in conjunction with Fisher, also took on the main fundraising role for the wildlife habitat initiative. Kamala mentioned some of the qualities that any leader of a collaborative process should have:

You have to have some leaders that really care, to the point where they're willing to go through hell and keep showing up. That's the only way you can have success ultimately ... You have to have stamina, you have to believe in your ultimate outcome whatever that is. You have to have enough passionate engagement and even a handful of people who have that and are willing.<sup>305</sup>

**6. Unequal power relationships can both motivate and hinder collaborative planning, particularly with relationships between trust land agencies and local communities.**

As a state agency that is not technically required to adhere to local planning and zoning, SITLA did not have to engage the community in a collaborative process. Director Kevin Carter described the unilateral power held by SITLA: “If it’s too much hassle to deal with the local community, I’ll just sell the land and walk away from it. It’s always a valid question, ‘Is what I could potentially get out of a collaborative process worth the effort?’”<sup>306</sup> Although McBrier, as a SITLA representative, tried not to wield this power over the community, the inequality of power between SITLA and the community was palpable. McBrier discussed the agency’s power, “We had power, but I think the showing of the power after it was initially understood would have been really destructive.”<sup>307</sup> He also described the importance SITLA considers in making long-term decisions and how working with communities rather than grandstanding about power relationships often is more effective:

We practice a philosophy here in Utah, at least in my department, that we try to hit doubles and triples. We don’t swing for home runs. That means that there’s room ... to pay attention to community interests. When you have 7,500 pieces of land, you’re not just doing one transaction; you have a legacy and a long-term engagement that it is very important to pay attention to beyond just the money. I think that gives us flexibility, but ... you have to be prepared to answer the questions that come up about, “Couldn’t you have gotten more money doing it a different way?” And the answer is, and always may be, “But this is what we thought was in the best interest, and this is why.” We’ve worked very hard at articulating that idea. We have to say it over and over and over. We think that it’s starting to prove itself because people work with us.<sup>308</sup>

Interestingly, it was probably this power that enabled the collaborative process to occur by motivating planning process participants from the community to stay involved. As described by McBrier, “It was our power to act unilaterally and change the status quo that created the foundation from which the collaboration developed. Absent that power [the community] never would have engaged [with] us.”<sup>309</sup> He also described how SITLA’s involvement may have been contingent on having more power: “I was collaborating from a position of power. Collaboration from a position of no power might be an entirely different experience ... If we hadn’t had that power then we might not have been as willing to walk into the engagement.”<sup>310</sup> Unfortunately, the community’s perception that SITLA could stop the process and just sell the land led to some misperceptions and mistrust at the beginning of the process, but the relationships built between McBrier and the community helped to ameliorate some of this concern. Thus the inequality in power between the community and SITLA was perhaps both the motivation for and a challenge to the process.

## **ACKNOWLEDGEMENTS**

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Karen Nelson  
Richard Schwartz  
Wendy Fisher  
Marty Zeller

## **CHAPTER 5**

### **THE ELLIOTT STATE FOREST: Planning for Threatened Species and Fiduciary Responsibility**



Elliott State Forest, Southwestern Oregon

Photograph by Eirin Krane

**Written by Eirin Krane  
Researched and Edited by Eirin Krane and Drew Vankat**

## INTRODUCTION

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Tucked away in southwest Oregon's Coast Range, the relatively unknown Elliott State Forest, cut by knife-edged ridges and a myriad of streams, contains trees ranging from 100 to 150 years old (Figure 5-1). The forest is a contiguous block of land approximately 18 miles long (north to south), and 16 miles wide (east to west) covering a total of 93,282 acres. The Umpqua River is located due north of the forest and to the west, the Elliott extends within six miles of the Pacific Ocean.<sup>1</sup> More than 90 percent, or 87,934 acres, of the Elliott State Forest is Common School Forest Land. The remaining 9,088 acres are owned by the Board of Forestry (BOF),<sup>2</sup> the governing body of the Oregon Department of Forestry (ODF).<sup>3</sup>

Named for Oregon's first State Forester, Francis Elliott, the forest is prime habitat for the northern spotted owl, marbled murrelet and coho salmon,<sup>4</sup> all federally listed threatened species. The Elliott is the state's largest block of Common School Forest Land<sup>5</sup> and while it is owned by the Oregon State Land Board, the ODF handles its day-to-day management. Oregon's constitutional mandate to produce revenue for the Common School Fund requires that the Elliott be managed as a working, timber-producing forest. However, the Elliott also provides important wildlife habitat, and management policies now recognize this additional responsibility. One such policy was the decision to apply for a Habitat Conservation Plan (HCP) in response to the federal listing of the spotted owl and the marbled murrelet. In 1994 and 1995 as part of the HCP, a 60-year Incidental Take Permit (ITP) was issued for the spotted owl and a six-year ITP was issued for the marbled murrelet.

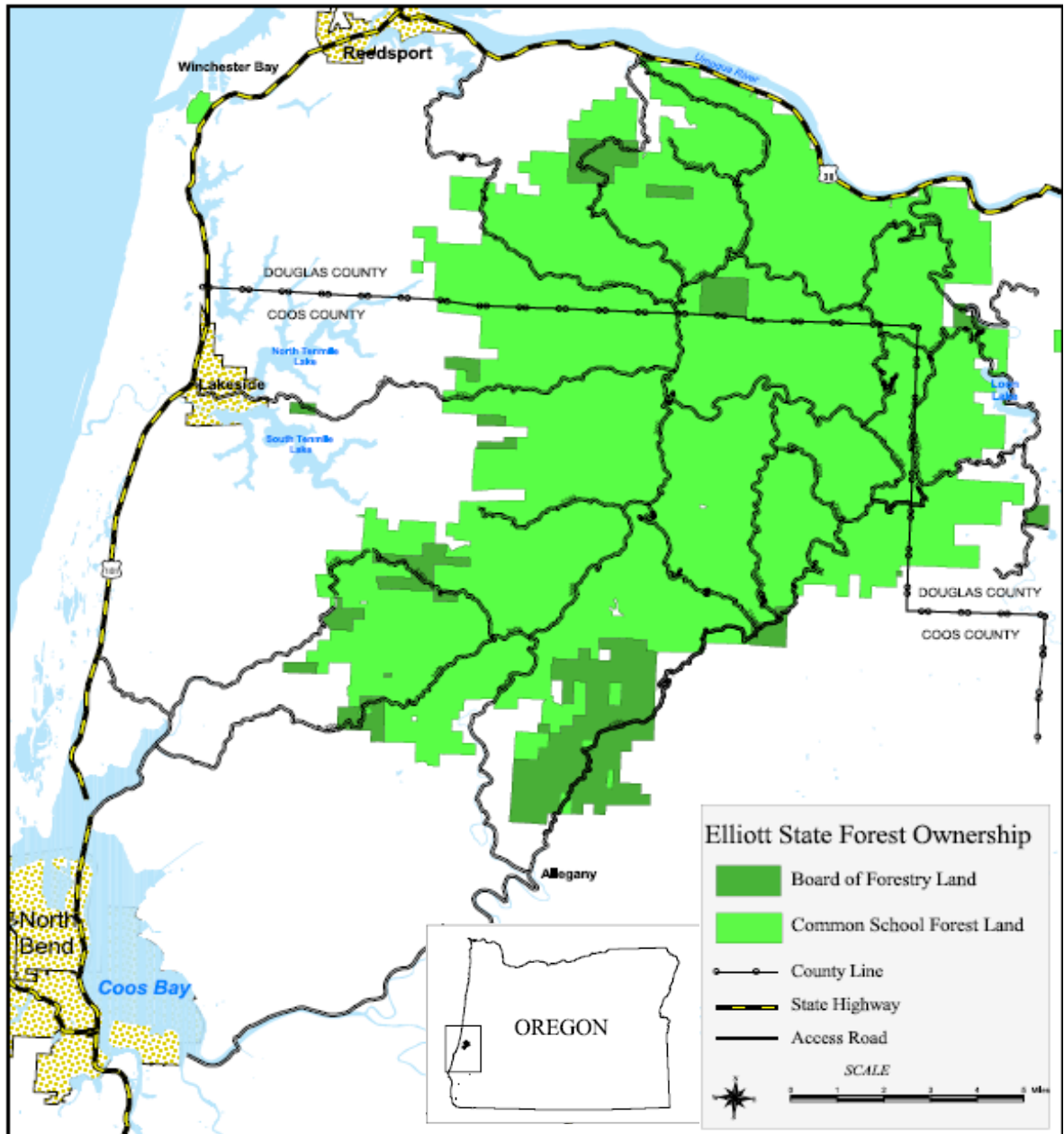
In 2000 with the marbled murrelet ITP due to expire, the State Land Board, the Department of State Lands (DSL) and the ODF decided to forgo a quick revision of the 1995 HCP and instead created a bi-level committee to spearhead the planning process to draft a multi-species HCP. Both the State Land Board and the BOF felt that a more comprehensive HCP that included species that might become listed in addition to the owl, murrelet and recently-listed coho salmon, was prudent to ensure more management certainty in the long run.

The Elliott State Forest Planning Process is bound by the regulations and requirements of the U.S. Fish and Wildlife Service (USFWS) HCP process and the state trust constitutional mandate. The Planning Process members included staff from the DSL, ODF, Oregon Department of Fish and Wildlife (ODFW), a local elected official and eventually a beneficiary representative. In addition to revising the HCP, the Steering Committee and Core Planning Team also were charged with revising the Forest Management Plan (FMP), the overarching, broad document that will ensure long-term management of the forest using a landscape approach.<sup>6</sup> The goal of the HCP and FMP drafting processes is to find a middle ground between wildlife conservation and revenue generation for the state's education coffers. Pending initial approval from the State Land Board and the BOF, the HCP will be submitted for approval to the USFWS and NMFS in 2007. The FMP will likely be approved at the time both plans go before the respective boards.

The Elliott State Forest Planning Process highlights the complexities of initiating a collaborating process within the institutional framework of a state and federal process. This

process is unique because never before have the agencies traditionally responsible for overseeing the forest been engaged in a process with such a diverse array of agency and beneficiary stakeholders at the table. The Planning Process is best conceptualized as an internal, highly collaborative process that created a well-defined, bi-level structure to best utilize the time and expertise of the participants. In addition, the process highlights the challenges and complexities of interpreting scientific data into policy. Finally, the Planning Process exemplifies that compatible personalities, the inclusion of the beneficiaries on the Steering Committee and relationship building has made it in most estimations successful.

Figure 5-1: Map of the Elliott State Forest



Source: Oregon Department of Forestry, <http://egov.oregon.gov/ODF>.



## **CONTEXT FOR COLLABORATION**

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A complete understanding of the elements at play and the intricacies of Common School Forest Land management in Oregon requires a careful examination of the context in which this process has developed. A brief review of the legal and policy framework currently in place, the history of the Elliott State Forest and common school land management and finally the political climate surrounding timber and endangered species in southwest Oregon follows.

### **LEGAL AND POLICY FRAMEWORK FOR OREGON STATE FORESTS**

The primary legal framework in which the Elliott State Forest is managed is the land grant mandate set forth in the Oregon Constitution. Article VIII, Section 5 of the Oregon Constitution authorizes the State Land Board to manage the Common School Forest Lands, “with the object of obtaining the greatest benefit for the people of this state, consistent with conservation of this resource under sound techniques of land management.”<sup>7</sup>

The State Forester is authorized to manage the Elliott for the DSL under Oregon Revised Statute 530.500. According to the agreement:

The overriding objective for Common School Forest Lands shall be maximizing revenue to the Common School Fund over the long-term, as determined by the Land Board. In addition, the plans shall also maximize (to the extent consistent with the primary revenue objective) other public values which the Land Board determines will obtain the greatest benefit for the people consistent with conservation of the resource under sound techniques of land management.<sup>8</sup>

After legal concerns were raised over threatened species protection and meeting the fiduciary responsibility of “obtaining the greatest benefit” outlined in the state Constitution, former State Attorney General Charles S. Crookham issued a formal opinion on July 24, 1992, addressing the lawful uses of the Common School Lands and the effect of federal or state regulations on such uses.<sup>9</sup> Crookham’s opinion was issued in response to these concerns and discussed whether the State Land Board’s compliance with the federal and state Endangered Species Act (ESA) conflicted with their fiduciary responsibility. By this time, both the northern spotted owl and marbled murrelet had been listed on the federal register of threatened species and the Land Board was trying to determine their legal obligation to obtain HCPs on the Elliott and other Common School Forest Lands.

The former Attorney General also found that the State Land Board was not exempt from complying with the ESA. Crookham stated that neither the Oregon Admission Act nor the Oregon Constitution were cause for exemption.<sup>10</sup> He went on to state that:

The state ESA does not restrict the State Land Board’s exercise of its constitutional powers over the disposition and the management of the Admission Acts lands ... the Board must comply with the state ESA unless

the ESA “unduly burdens” the Board’s constitutional responsibilities to manage the Admission Act lands.<sup>11</sup>

He also stated that it was unlikely that the courts would exempt the Board from the federal law.<sup>12</sup>

Crookham’s opinion also lent further interpretation and clarification of Article VIII, Section 5 of the Oregon Constitution. He interpreted the trust mandate to strengthen the term “greatest benefit” into the maximization of revenue. For example, if the DSL sells timber or land, the agency is required to maximize the revenue from the sale. However, the DSL has broad discretion over what lands are sold so long as the agency can foresee an economic return to the Common School Fund either in the short term or in the future.<sup>13</sup>

This opinion had the potential to dramatically change the way in which state forests were managed. According to Crookham, in addition to the Land Board’s responsibility to manage these lands in trust for the benefit of the schools, the board has a constitutional obligation that extends to the protection of natural resources.<sup>14</sup> The constitutional obligation implied in Article VIII, Section 5 was further defined by Crookham’s opinion, stating that the “greatest benefit” standard requires the Land Board to use the lands for the schools and the production of income for the Common School Fund.<sup>15</sup> Crookham defined “resources” to include other values besides timber. He stated that the term resources “include[s] all of the features of the land that may be of use to the schools ... the Board should consider uses of other resources, such as minerals, water, yew bark<sup>16</sup>, etc., that may offer revenue for the fund.”<sup>17</sup> This was the most controversial part of his opinion because it assigned value to non-revenue producing resources such as water and natural chemicals found in plants. Though his opinion has not been challenged in courts or in the media, it does loosen the constitutional mandate to consider other values besides extractive, potentially making it less ironclad insofar as the manner in which the state manages land and revenue in the long-term compared to other states’ mandates.

Other than Crookham’s opinion and the constitutional mandate of the trust, there are several pieces of legislation that affect the management and the scope of the planning process on the Elliott. The National Environmental Policy Act (NEPA) is one of the regulatory frameworks that affect the Elliott planning process. NEPA establishes environmental policy for the nation, provides an interdisciplinary framework for federal services to prevent environmental damage and contains enforcement procedures to ensure that federal agency decision makers take environmental factors into account.<sup>18</sup> The NEPA process includes public scoping, as well as potentially the development of a draft Environmental Impact Statement (EIS).<sup>19</sup> The USFWS or NMFS must comply with NEPA when evaluating potential impacts related to the issuance of an incidental take permit through the Habitat Conservation Plan process.<sup>20</sup>

The federal Endangered Species Act (ESA) was enacted “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved to provide a program for the conservation of such endangered and threatened species.”<sup>21</sup> The ESA allows the “taking” of a “threatened” or “endangered” species if the purpose is to carry out an otherwise lawful activity, so long as the applicant submits an HCP, which must

include measures to minimize and mitigate such impacts.<sup>22</sup> While the primary objective of an HCP is not the recovery of a listed species, it is an important consideration in the HCP's development.<sup>23</sup> Another crucial aspect of the HCP is the issuance of an ITP. Based on the ecology of the specific species, a certain number are allowed to be taken in accordance with typical uses of the land, so long as measures are taken to mitigate habitat in other areas.

The Board of Forestry (BOF) is the governing body of the ODF, directing all state forest planning and management. The BOF has a legal mandate to manage state forest lands, including an obligation to share income with the counties in which the forest lie and protect and use a variety of natural resources.<sup>24</sup> Because a portion of the lands that lie with the boundaries of the Elliott State Forest are BOF lands, those lands must be managed in accordance with ODF forest policies. The legal mandate for managing BOF lands is similar to the trust mandate in that the BOF lands are to be managed so as "to serve the greatest permanent value of such lands to the state."<sup>25</sup> The BOF is required to manage with the dual obligation of sharing revenue with local counties and conserving, protecting and using a variety of natural resources.<sup>26</sup> The main difference between BOF lands and Common School Forest Lands, such as the Elliott State Forest, is that the BOF and the State Forester are not required to manage their forestlands to maximize revenues.

The Oregon Forest Practices Act declares it public policy to encourage economically efficient forest practices that assure the "continuous growth and harvesting of forest tree species and the maintenance of forest land for such purposes as the leading use on privately owned land, consistent with sound management of soil, air, water, fish and wildlife resources and scenic resources in visually sensitive corridors."<sup>27</sup> The Act establishes the standards for reforestation, road construction, timber harvesting and application of chemicals and disposal of slash.<sup>28,29</sup> It is a statewide guide that establishes a framework for proper forest management. The standards set forth in the Forest Practices Act govern the management of the Elliott, as well.

## **COUNTY POLITICS, THE TIMBER ECONOMY AND THE SPOTTED OWL**

The nationwide debate on the protection of endangered species and resulting timber industry job losses heavily influenced the political climate in Oregon in the early 1990s and was a likely contributor to Crookham's opinion. In the 1980s, concern over the habitat of the spotted owl instituted a change in public forest management practices to protect the owl's habitat.<sup>30</sup> In 1989, the timber industry and timber dependent communities were up in arms about potential court injunctions imposed on the timber harvest to protect owl habitat. The decision whether or not to list the owl was hugely controversial. If the owl was listed as a federally endangered species, it would become a crime to disturb owl habitat, threatening to bring the logging industry to a standstill.<sup>31</sup> By some estimates, court injunctions would have put 40 percent of forest lands off limits to logging.<sup>32</sup> In Oregon at that time, timber was a \$7 billion-a-year industry employing 150,000 people.<sup>33</sup> But environmentalists saw timber's destruction of old growth forest – with an estimated 15 percent left and rapid disappearance – as unacceptable.<sup>34</sup> Mainstream media published scenes of extreme environmental group members chaining themselves to trees and machinery to disrupt timber harvests.<sup>35</sup> Thus, the

spotted owl became the lightning rod for the ideological war between the timber industry and environmental groups in Oregon.

Roseburg, Oregon located just miles from the Elliott State Forest, was ground zero for this divisive debate. Due to the injunctions that halted logging in certain areas, the local economy stood to lose \$13 million a year in timber revenue, not to mention a significant loss of jobs.<sup>36</sup> In Douglas County those supporting the timber industry were often seen wearing t-shirts or hats with such colorful phrases as, “Save a logger – eat an owl” and “I like my spotted owl ... fried.”<sup>37</sup> The sentiment about the owl and the reduced timber cuts was also carried over into losses for local schools that received income from federal and state timber sales. One banner headline in a Roseburg newspaper stated, “Saving spotted owl seen as threat to schools.”<sup>38</sup> The national spotted owl controversy died down when then-President Clinton signed the Northwest Forest Plan into law. Soon after, a slump in domestic timber and an increase in the use of mechanized harvesting made the economic argument for continued logging less compelling.

In the end, Oregon lost fewer jobs than were originally predicted. Early estimates of timber-related job losses were about 67,000 jobs; however, due to the increased logging on private lands and a healthy regional economy, job losses totaled around 13,800.<sup>39</sup> Nevertheless, the timber industry continues to be an important source of income in southwest Oregon. A large percentage of the workforce in southwest Oregon is employed in wood processing, much larger compared to the state as a whole. Both Douglas and Coos Counties have strong timber industry roots. Douglas County, in which Roseburg is located, employs 17 percent of its workers in the lumber and wood products industry. The county processes almost half of the timber harvested from the Elliott State Forest. The Elliott accounts for ten percent of the timber harvested in Coos County.<sup>40</sup>

## **FEDERAL LAND OWNERSHIP IN OREGON**

The Elliott is an island of state forest surrounded by national forests and a small acreage of industrial forest. The federal government owns approximately 50 percent of the land in the State of Oregon. Though it is not unusual in the West for the federal government to own such a significant percentage of land, the State of Oregon owns relatively small amounts of forest land in comparison to other states. Possibly due to the symbolic and economic importance of forests in Oregon, the State Land Board has retained ownership of the Elliott despite pressure to sell.

## **POLITICAL HISTORY OF DEPARTMENT OF STATE LAND**

Established in 1859, the State Land Board is the oldest board in the state of Oregon. Article VIII, Section 5 of the Oregon Constitution created it as, “the Board of Commissioners for the sale of school, and University lands, and for the investment of the funds arising therefrom.”<sup>41</sup> Since its inception, the State Land Board has been comprised of the governor, secretary of state and state treasurer.

Oregon was granted common school land in its 1859 Admission Act. The act ceded the 16<sup>th</sup> and 36<sup>th</sup> section of every township for public school use and, in cases where these sections fell upon land that was already deeded, the state was allowed to choose other public lands in lieu of the constitutionally-designated lands.<sup>42</sup> The income generated from the sale and management of these properties forms the basis of the Common School Fund. The Common School Fund also was established by the Oregon Admission Act to support and maintain schools.

Between 1859 and 1912, Oregon attempted to liquidate its school lands as quickly as possible. State officials felt that the development of those lands by private citizens would yield more for schools via property taxes and other economic benefits.<sup>43</sup> Thus, many of the Common School Lands were sold to the settlers and entrepreneurs. However, a large portion of the land was fraudulently obtained, given away or sold for next to nothing. In some cases government officials gave away land as repayment for political favors. From the 1850s to the early 1900s, swindlers and land speculators discovered ways to defraud the state of its land.<sup>44</sup> As an example, swamplands thought to have no value were sold at the price of \$1 per acre during that time, while school trust land, much of it highly valuable, was sold for only \$1.25 to \$2.50 an acre.<sup>45</sup> At this time, surveying, land records and security measures were incomplete and corruption was extensive. State investigations were conducted in 1872, 1878 and 1896, and the resulting land fraud trials continued until 1913, concluding with 21 convictions of high-level state and federal officials.<sup>46</sup> By 1912, only about 130,000 acres of Common School forest land was left in the state's hands with about 70,000 of those acres "locked" within National Forest boundaries.<sup>47</sup> This historical loss of land has colored the current relationship between the DSL and the beneficiaries of the trust.

Despite this land scandal, much of the Land Board's early history was spent defining its powers and procedures.<sup>48</sup> Until 1864 there was no formal procedure for selling land to settlers. The first formal sale of land occurred in 1871.<sup>49</sup> Subsequently, laws were passed differentiating the sales of various types of land, from university and college land to swamp and tidal lands.

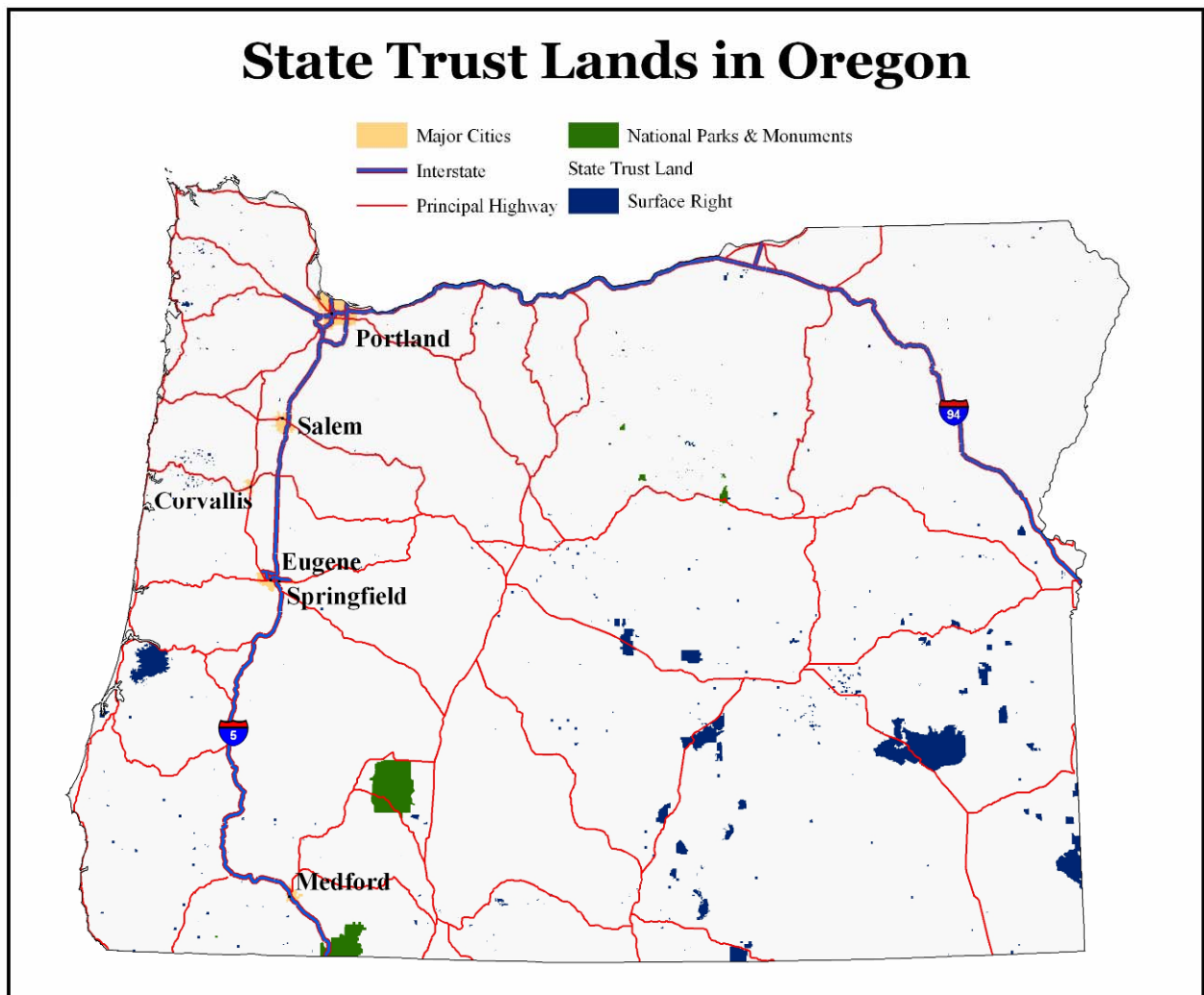
The board's early leasing programs emphasized the most important factors in Oregon's economy: mining, timber and agriculture. In the 1960s, many changes in board policy and structure occurred. In 1967, the Legislative Assembly elevated the Office of the Clerk to agency status and renamed it the Division of State Lands. The new law transferred all of the responsibilities and management duties of the board to the Division. The Division took on the day-to-day management of the common school lands as it was becoming increasingly challenging for the Land Board to manage the lands in addition to their other responsibilities. The Board maintained its role in general policy making and review of agency decisions. At the same time, all state forest lands were placed under the administration of the Oregon Department of Forestry (ODF).

In 1968, due to voter responses, the mission of the Land Board was modified to stress environmental management of lands as long-term investments, rather than selling them for short-term revenues. The constitution was amended to include long-term resource conservation as a major emphasis of the land board's and the DSL's activities.<sup>50</sup>

In 1995, the DSL produced an Asset Management Plan designed to be a comprehensive tool for land and resource management. It includes a land classification program and strategies for management, conservation, revenue, enhancement, investment and disposal. In the plan, forest lands are to be managed to provide the greatest revenue for the Common School Fund over the long-term.<sup>51</sup>

The 2003 Legislature changed the name of the Division of State Lands to the Department of State Lands (DSL<sup>52</sup>) to be consistent with the names of other state agencies. The DSL serves as the administrative arm of the State Land Board. The DSL operates in accordance with general policies formulated by the board and through the laws prescribing its own duties and powers. The DSL's mission is, "To ensure a legacy for Oregonians and their public schools through sound stewardship of lands, wetlands, waterways, unclaimed property, estates and the Common School Fund."<sup>53</sup> For a current map of state trust lands in Oregon, see Figure 5-2. The trust lands are shown in blue.

Figure 5-2: State Trust Lands in Oregon



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

## **COMMON SCHOOL FUND**

The Common School Fund is a constitutional trust created to manage assets derived from common school land. The state treasurer and the Oregon Investment Council manage and invest the fund. Aside from the revenue gained from land and natural resource management, the original Common School Fund assets included money paid for exemptions from military service, money accrued to the state from escheats and forfeitures, grants, gifts, bequests, 500,000 acres of land that were given to Oregon by an 1841 act of Congress, and five percent of all proceeds from the sale of federal land within the state.<sup>54</sup> Amendments passed in 1968 and 1980 have added other revenue sources (See Article VIII, Section 2). As of February 14, 2006, the fund was worth \$1 billion.<sup>55</sup>

Resources dedicated to the Common School Fund include: nearly 644,000 acres of range land and agricultural lands, beds and banks of all navigable rivers (including half of the Columbia and all of the Willamette) and lakes, tidal and submerged offshore land and more than 133,000 acres of forest land. Interest from the fund is paid biannually to public schools in all 36 counties, on the basis of school-age population.

In the early 1990s, the financial managers of the trust began investing a part of the trust into equities. This was a fortunate move as the stock market took off shortly thereafter. Since then, equities have been the major source of revenue for the Common School Fund, far overshadowing the revenue produced from resource extraction and leasing.<sup>56</sup> Annual distributions to the schools have fluctuated from \$9 million to \$40 million depending on Land Board policies and market conditions.<sup>57</sup>

## **DEMOGRAPHICS OF COMMON SCHOOL LAND**

The agency's holdings include nearly 644,000 acres of rangeland and agricultural land, located primarily in the eastern side of the state.<sup>58</sup> These lands contribute approximately \$400,000 of annual revenue.<sup>59</sup> Approximately 500 acres are classified for industrial and other purposes.<sup>60</sup> The Land Board owns approximately 131,000 acres of forest land, 85,000 of which are located in the Elliott State Forest. The 6,403-acre Sun Pass State Forest, located in Klamath County, is the next largest parcel of common school forest land. The remaining forest land is found in small tracts scattered throughout the state of Oregon. In the 2004 Fiscal Year, the Common School Fund received \$14,310,341 in revenue from timber sales. In the same year, the DSL had \$4,714,830 in expenditures related to forest lands, representing the cost of contracting the ODF to manage the forestlands.<sup>61</sup>

The Elliott is a large asset and a substantial value for the trust. It produces the highest amount of revenue of all the State Land Board's landholdings.<sup>62</sup> The majority of annual income to the Common School Fund, as stated before is equity investments. While these monies are substantial the Elliott still maintains a very high "book value"; meaning that the revenue the DSL expects to earn from timber sales in the future is considered when analyzing the overall value of the forest. Current harvests on the Elliott average about 25 to 28 million board feet

of timber annually, producing average revenues of \$16 million per year.<sup>63</sup> On average, timber sales constitute approximately 26 percent of the revenues earned by the Common School Fund.<sup>64</sup>

## **HISTORY OF THE ELLIOTT STATE FOREST**

The history of the Elliott State Forest has played a significant role in shaping the environment of the planning process. In 1869, the Coos Bay Fire burned approximately 300,000 acres, including close to 90 percent of the present day Elliott State Forest, and killing trees estimated to be 300 years old. After the fire the forest regenerated naturally as a Douglas-fir dominated forest. The area now known as the Elliott State Forest was created via land exchanges of scattered trust land inholdings locked within national forests and lands in Eastern Oregon with the federal government. The Elliott State Forest is the largest contiguous block of forest land owned by the DSL (Figure 5-3).<sup>65</sup>

The state began locating property boundaries and developing roads in the 1930s with intensive forest management beginning in the 1950s. The 1950s and 1960s saw a tremendous housing boom and many of Oregon's forests were logged to meet the demand. The Elliott was less intensively logged during that time compared to other forests in the Coast Range because it was a relatively young forest.<sup>66</sup>

Today, the Elliott contains trees ranging in age from 100 to 150 years old, while the surrounding forests are 45 to 55 years old. Spotted owls and marbled murrelets typically favor older growth trees, thus many of the birds prefer the trees in the Elliott over the younger forest that surrounds it.

The ODF states that the Elliott is currently managed to produce revenue for the Common School Fund and conserve important fish and wildlife habitat. Another goal is to provide opportunities for dispersed recreation, such as hunting, fishing, picnicking and camping in unimproved areas, though the Elliott receives relatively few visitors.

**Figure 5-3: Elliott State Forest, Southwest Oregon**



Source: Photograph by the Sonoran Institute

## **THE STORY: THE ELLIOTT STATE FOREST PLANNING PROCESS**

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The Elliott State Forest Planning Process originated in the changing context of forest management in Oregon in the 1980s and 1990s. The national attention on the spotted owl and other threatened species created a political spotlight on forest management in the Northwest. Timber extraction has been the historical mainstay of the Oregon economy, providing



revenue for counties primarily in the southwest region of the state. This coupled with the fact that the Elliott is “rich” in endangered species had made managing it to produce the “greatest revenue” for the Common School Fund challenging. The expiration of the 1994-1995 marbled murrelet HCP initiated a new round of forest planning and a multi-species HCP process spearheaded by the ODF and DSL. A unique factor of this particular process was the inclusion of non-traditional stakeholders, an emphasis on an ecosystem-based management approach and the desire to increase the harvest yields on the forest. Thus the Elliott State Forest Planning Process was created to develop the plans and inform the policies necessary for such an endeavor.

### **1994-1995 HABITAT CONSERVATION PLANS**

The Elliott straddles Coos and Douglas counties, both heavily steeped in the wood products industry and one of the last outposts of the “logging wars” of the 1980s and 1990s. The owl and its seabird counterpart became famous in the early 1990s when they were listed as federally threatened species and became figureheads of the ideological war between the timber industry and environmentalists. The comparatively “older” trees in the Elliott make them prime habitat for the northern spotted owl and marbled murrelet.<sup>67</sup> The Elliott is both “owl and murrelet rich,” which forced the ODF to reduce timber harvest on the forest to provide additional habitat protection in compliance with the Endangered Species Act (ESA). As a result, the timber sold on the Elliott dropped substantially from 50 million board feet<sup>68</sup> a year in the 1980s to 10 to 12 million board feet, and back up to 28 million board feet a year under the 1995 HCP.

In the mid-1990s, in an attempt to mitigate the drastically reduced timber sales, the State Land Board, the Division of State Lands (DSL)<sup>69</sup> and the ODF decided to develop a HCP. Separate HCPs were drafted for both species. In 1994-1995, the U.S. Fish and Wildlife Service (USFWS) approved a 60-year ITP for the spotted owl and 6-year HCP for the marbled murrelet. The HCP was the first ever completed on state forest land.

### **KEY PLANNING DOCUMENTS: THE FOREST MANAGEMENT PLAN AND THE HABITAT CONSERVATION PLAN**

At the core of the Elliott State Forest Planning Process are two separate documents, the Forest Management Plan (FMP) and the Habitat Conservation Plan (HCP). The Environmental Impact Statement (EIS) is completed under the umbrella of the HCP process and Implementation Plan (IP) is the document that outlines how the FMP will be implemented. The FMP is the comprehensive, overarching plan for the management of the forest. It takes a landscape approach to management, using a set of pre-defined strategies for integrating the management of timber, fish, wildlife and forest health.<sup>70</sup> The purpose of going through the HCP process is to obtain an ITP. The ITP would allow harvesting to continue in designated portions of the forest in exchange for creating nesting, roosting and foraging habitat elsewhere in the forest. This is done by leaving certain stands in either reserve status or placing them in hundred year rotations or growing stands that produce habitat. Thus, while both plans are inherently separate they are developed in tandem with the wildlife habitat needs in the HCP informing the broader management approach in the FMP. Another key

document in this planning process is an EIS. The USFWS and NMFS must comply with NEPA when issuing and ITP, thus an EIS is necessary. In addition, per ODF policy, an Implementation Plan (IP) will be created for the revised FMP/HCP. The IP is a ten-year plan that allows foresters to locate harvests for the first 20 years and “look ahead” to the next decade to make sure planned harvest levels are available.<sup>71</sup> The final piece of the HCP and FMP is the development of an implementing agreement between the State and federal agencies. The Department of Justice will work with the Core Planning Team and federal solicitors to complete the agreement prior to the ITP issuance.<sup>72</sup>

## **PRECURSORS TO THE PLANNING PROCESS**

Under ODF management since 1950, the Elliott State Forest has been managed to produce a sustainable timber supply while providing revenue for the Common School Fund. From 1950 through 1990, management of the forest was based on silvicultural objectives, with the primary focus on timber harvesting and maintaining the sustained yield of timber coming off the Elliott.<sup>73</sup> According to Dan Shults, ODF Southern Oregon Area Director, from 1950 through 1990, “management progressed pretty well based on silvicultural and harvest objectives for the Department of Forestry working through the DSL and the Land Board.”<sup>74</sup>

Forest management in the Pacific Northwest came under scrutiny during the 1980s, at a time when concern was growing about endangered species, such as the northern spotted owl and the marbled murrelet. The northern spotted owl, *Strix occidentalis caurina*, was listed as a federal threatened species in 1990 followed by the listing of the marbled murrelet, *Brachyramphus marmoratus marmoratus*, in 1992.<sup>75</sup> At this time long-range plans for the Elliott were primarily timber-based management plans. After the spotted owl was listed in 1990, ODF surveys found a substantial number of owls in the Elliott, requiring the agency to reduce timber harvest dramatically. The harvest levels in the forest dropped from 50 million board feet to 12 million board feet a year. Shults stated that the modus operandi for the ODF was “a take avoidance policy where we protect the owls to the extent we feel is biologically acceptable for the owl population and will maintain the populations.”<sup>76</sup> The take avoidance policy was developed by ODF using the USFWS rescinded guidelines for spotted owls. According to Shults, the objective was to avoid damage to owl habitat or the owls themselves.<sup>77</sup>

Given the large population of spotted owls and murrelets found in the Elliott, the Land Board and the BOF were faced with two management options. According to Shults:

There’s two ways you can deal with endangered species legally. One is to avoid take – you have policies in place to adequately protect the species. Another is to develop an HCP where you work with the services, in this case [U.S.] Fish and Wildlife, to come up with a method on the ground that will both protect the owls and improve your ability to continue your activities there. A major benefit of this is management certainty.<sup>78</sup>

In order to ensure stable timber harvests and habitat protection for the owl and murrelet, the Land Board and the BOF found it necessary to complete an HCP and revised FMP for the

Elliott.<sup>79</sup> Given the high amount of media attention being paid to the threatened and endangered species in Oregon at the time, the decision was likely political as well. The Land Board is composed of the three highest elected officials in the state, the governor, secretary of state and the treasurer. In this situation the decision to move forward with the HCPs was probably the safest move in balancing their fiduciary responsibility and habitat conservation and balancing the interests of environmentalists and the timber industry.

## **HABITAT CONSERVATION PLAN PROCESS**

The purpose of an HCP is to identify potential impacts to species listed under the ESA and describe the planned measures that will minimize and mitigate those impacts and other to the maximum extent practical those impacts if necessary.<sup>80</sup> The applicant also can request an incidental take permit, which is required by the USFWS whenever non-federal activities result in the “take” of a threatened or endangered wildlife. An HCP must accompany an application for an incidental take permit.<sup>81</sup> “Take,” as defined in the ESA, is to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any threatened or endangered species.”<sup>82</sup> The HCP must also include a description of alternatives to the proposed takings and why those alternatives are not considered feasible.<sup>83</sup> According to the USFWS, an HCP allows a landowner to legally proceed with an activity that would otherwise result in the illegal take of a listed species.<sup>84</sup> As required under NEPA regulations, a 30-day public comment period is required for all completed HCP applications.<sup>85</sup>

In the case of the Elliott, the HCP was used to obtain an Incidental Take Permit (ITP) that allowed timber harvesting to continue conditionally as long as certain measures were taken to protect habitat for the owl and murrelet. The HCP was developed within the context of the broader FMP, which requires the completion of an Environmental Impact Statement (EIS). The EIS was developed in collaboration with a private contractor and the federal services to provide an in-depth analysis of the effects of the proposed HCP.<sup>86</sup> Due to the presence of threatened fish species on the Elliott, the National Marine Fisheries Service (NMFS) also has been consulted in the process.

In 1991, the State Land Board directed the ODF to work with ODFW, DSL and other state agencies to develop a new long-range management plan to address the Elliott forest ecosystem consistent with the management contract between the Land Board and ODF.<sup>87</sup> The ODF and DSL convened a group of ODF staff including foresters and wildlife biologists to complete both plans in tandem.

The endeavor came to fruition in 1995 when the USFWS approved two separate HCPs for the spotted owl and the marbled murrelet. At the time, strategies for protecting the murrelets were seen as short term solutions because little was known about their habitat needs. As a result only a six-year incidental take permit (ITP) was granted. Research on the northern spotted owl was more advanced and thus the ODF was able to get a 60-year incidental take permit for the owl. During the six-year murrelet ITP period, the HCP required the ODF to fund research to gather additional data on murrelet habitat requirements to inform future strategies to support a longer term ITP for the murrelet. Also conditional with both ITPs was the performance of additional monitoring on both murrelet and spotted owl populations.<sup>88</sup>

## MARBLED MURRELET INCIDENTAL TAKE PERMIT DUE TO EXPIRE

In early 2000, in anticipation the expiration of the marbled murrelet ITP on October 3, 2001, the ODF initiated an FMP and HCP revision process.<sup>89</sup> In March of that year, ODF staff met with USFWS and NMFS representatives to determine the best way to go forward with the revision process. NMFS was consulted for the second HCP because the Coho salmon, *Oncorhynchus kisutch*, was listed as threatened in 1997.<sup>90</sup> At this point there were two options under consideration; one was a quick revision of the 1995 murrelet HCP and the second was a longer, more involved HCP process that included the collection and dissemination of information on the forest ecosystems and species habitat requirements. According to Jim Young, ODF Coos District Forester, the USFWS and NMFS felt that a quick revision would not be adequate to ensure final approval of the HCP. They felt that there would be wildlife management certainty in the long run if a more careful re-evaluation of the forest and wildlife was conducted.<sup>91</sup>

Following the meeting with USFWS and NMFS, the ODF met with the Land Board in August 2000 to report the HCP revision options.<sup>92</sup> According to ODF Southern Oregon Area Director Dan Shults:

Clearly the main driver for the HCPs was mitigating the harvest restrictions they placed on the forest. When you have that kind of revenue loss on a key fund that helps fund schools it is a huge impact to the state and gets the governor's and Land Board's attention as well as the DSL.<sup>93</sup>

It also became clear at the time that other species, either now or in the near future would need to be included in the HCP. Rather than go through another planning process in the future if an additional species became listed, the decision was made to create a multi-species HCP.<sup>94</sup> Federal regulation establishes that:

In the event an unlisted species addressed in the approved conservation plan in subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Endangered Species Act.<sup>95</sup>

However, this was not a free ticket for any potentially threatened species to become part of the HCP. The Land Board and the BOF determined that, at a minimum, the revised HCP was intended to include the spotted owl, marbled murrelet and coastal Coho salmon. Other species considered at risk for listing known to live in the Elliott also were up for consideration, provided there was suitable scientific knowledge.<sup>96</sup> Based on the advice of the ODF, the federal agencies and the desire to obtain further management certainty, the Land Board and BOF opted to take the longer, albeit safer route to obtain a new HCP and revise the current FMP. According to ODF Coos District Forester Jim Young, the benefits of a multi-species HCP included "management certainty while at the same time meeting the

mandates for different types of land ownership and complying with the Endangered Species Act.”<sup>97</sup>

Given that the planning process for completing the HCP and FMP would exceed the October 2000 expiration date for the murrelet HCP, the ODF is allowed to continue managing the forest under the provisions of the 1995 ITP.<sup>98</sup>

### **THE STEERING COMMITTEE AND CORE PLANNING TEAM ARE FORMED**

In response to the 2000 decision by the Land Board and the BOF, Ray Craig, then-Assistant State Forester, in consultation with the DSL, created a preliminary Steering Committee made up of ODF field and program staff to oversee and provide direction for the FMP and HCP drafting processes. Jim Young, the Coos District Forester and Dan Shults, ODF Southern Area Director assisted Craig in putting together the Steering Committee. All three men felt that given the gravity of the situation – operating at drastically reduced harvest levels and the potential for further species listings – called for a more inclusive planning process that represented the interests and viewpoints of all who had a stake in the forest. From the beginning, it was recognized that interests outside the realm of the status quo should be included in the Steering Committee, as ten percent of the Elliott is BOF land and Douglas and Coos Counties have a financial interest in how both the BOF and Common School Forest Lands are managed. To facilitate a broader set of interests, a bi-level committee structure was developed, comprised of a Steering Committee and a Core Planning Team. The Steering Committee was designated to deal with the overarching policy issues concerning the Elliott and involve stakeholders, namely the DSL and county officials, at that level.<sup>99</sup> Beneath the Steering Committee was the Core Planning Team. It was characterized as the “technical planning group” and its members were responsible for assembling the science information and drafting both the FMP and HCP.<sup>100</sup>

In early 2000, Craig, Young and Shults brainstormed the interests they felt should be represented on the Steering Committee. According to Shults, “we made an effort to try and stick with those who had a key interest in the financial outcome of what was coming off the Elliott.”<sup>101</sup> A number of the state agencies invited to join the Steering Committee were natural choices and well-prepared to engage in this endeavor. These agencies included the ODF, Oregon Department of Justice (ODOJ) and the Oregon Department of Fish and Wildlife (ODFW). These agencies were sought out to contribute their expertise in forestry, legal matters and wildlife, respectively, to the process.

The inclusion of ODF staff at various levels within the agency was an obvious choice. The ODF characterizes itself as a “can do” agency that is comfortable collaborating with other agencies and the public. It is a standard operating procedure for the ODF to seek public comment on all of its FMPs in state forests. In developing FMPs and HCPs, the ODF is charged with the “nuts and bolts” aspects of the process – coordinating logistics, drawing on agency expertise and authoring the requisite planning documents. The ODF has been the contracted manager of DSL Common School Forest Lands for 70 plus years; thus the agency is comfortable operating within the confines of the trust mandate. ODF staff from the Salem headquarters also was included to provide their perspective on the on the documents

produced by the Steering Committee and the Core Planning Team to make sure they were consistent with state wide forest policies. Additionally, as stated by Steve Thomas, Assistant State Forester and member of the Steering Committee, his role as part of the ODF Salem contingent was to “try to provide any assistance I can to the core group and their effort to make sure agency processes are being taken care of as smooth as possible; to make sure everyone who needs to be informed about the process; to make sure the Board of Forestry can get the approvals [for the HCP and FMP].”<sup>102</sup>

The inclusion of ODF Salem and DSL staff members was also a key element of the process because they had more direct access to the BOF and State Land Board and thus could better facilitate the flow of information to and from the respective Boards. Prior to being submitted to the USFWS and NMFS, both plans must be approved by the BOF and the State Land Board. The ODF and DSL are structured such that all policy decisions, like the approval of both plans, must go through ODF and DSL Executive Staff. The ODF Executive Staff representative on the Steering Committee was the Assistant State Forester for Forest Management Division who acted as a liaison between the Committee and State Forester Marvin Brown – the highest executive at the ODF.<sup>103</sup> Information and policy guidance would then filter up the BOF via the State Forester. The Assistant Director for Policy and Planning at the DSL, John Lilly, acted in a similar role. He provided information to the DSL Director, Ann Hanus, who would then pass that information along to the State Land Board. The majority of the members of the Steering Committee were chosen based on their existing job duties and affiliations with the Elliott State Forest.

Though they had not been included in the 1995 HCP process, ODFW staff was invited to participate on the Steering Committee to provide their expertise. The ODFW is considered the “sister agency” to the ODF and has the necessary experience in managing and knowledge of Oregon fish and wildlife. ODFW oversees the state fish and wildlife programs, including everything from budget and personnel to legislative and programmatic issues.<sup>104</sup> Many of the ODFW biologists also had previous experience with HCPs and the NEPA process.

It was recognized early on that legal issues would likely arise during the Planning Process, thus a representative from the Oregon Department of Justice (ODOJ) was invited to participate on the Steering Committee. Though not as active as the other members, the ODOJ representative was at the table to provide legal counsel and serve primarily in an advisory role.

Once the agency representation at the table had been solidified, the anticipated role of the Steering Committee was fleshed out further to assist in determining what other stakeholders would be offered a seat at the table. The Steering Committee’s role was to provide policy direction to the Core Planning Team as issues arose and to periodically review and provide input on planning issues and guide the planning process.<sup>105</sup> The Steering Committee members would also have to keep other stakeholders, political leaders, and others informed of planning issues and both plans’ progress.<sup>106</sup> In addition, they were responsible for maintaining contacts with opinion leaders and constituents to promote understanding and acceptance of the plan.<sup>107</sup> The early-defined role of the Steering Committee served to inform the scope of stakeholder representation on the Committee.

Other stakeholders were discussed as being potential members of the Steering Committee, including timber and environmental interests and adjacent land owners. However, the decision was made by the preliminary members of the Steering Committee to limit direct involvement on the Committee to those with key interests in the forest's management. According to Shults, they "tried to include all those who primarily had some fiduciary interest as stakeholders, rather than include hunters, recreators and environmental groups on the Steering Committee itself."<sup>108</sup> This sentiment was later echoed by Rick Howell, when questioned about the diversity of representation among the Steering Committee. He iterated:

Everyone that deserves a seat at the steering committee has one. This is not a community project. It's a forest plan ... There's a lot of opportunity for people to comment on the development of the plan. It would be very hard for somebody who is interested in what's happening on the Elliott to say that they didn't have a lot of opportunity for input into it.<sup>109</sup>

While they could not include everyone who had a potential interest in the forest on the committee, the Steering Committee members felt that the public input opportunities would allow representatives of those interests to submit feedback and opinions on both plans.

It also was decided that the Bureau of Land Management (BLM), the U.S. Forest Service (USFS) and Weyerhaeuser, both managing forest land adjacent to the Elliott, would not be Steering Committee members, despite the overlaps in owl and murrelet habitat ranges. This decision was largely attributed to the difference in management mandates. Said Shults:

We consciously did not include the federal land management agencies. The constitutional mandate for the Elliott State Forest is far different from the mission on federal lands in Oregon. We felt that there would be little value added to the process and likely an increase in the time it would take to develop the plan; likewise with adjacent landowners. The private lands approach to compliance with the Endangered Species Act, generally speaking, is different from public lands.<sup>110</sup>

Added Young, "We thought if they were interested, they would chime in during the public process either at the meetings or via the public comment period."<sup>111</sup> Regardless of the decision not to include adjacent landowners on the Steering Committee, information about location of threatened species was shared among the land managers. Because ODF implements the Oregon Forest Practices Act, they are aware of the location of spotted owls, marbled murrelets and salmon habitat on all lands in the area.<sup>112</sup> The Forest Practices Act encourages the economically efficient forest practices consistent with sound management of soil, air, water, fish and wildlife resources.<sup>113</sup> The Forest Practices Research and Monitoring Program conducts surveys and studies on all forests to monitor conditions and expand the base of scientific knowledge.<sup>114</sup> Wildlife surveys and studies are also gathered in the program.

## THE STEERING COMMITTEE

The complete Steering Committee, with the exception of the beneficiary representative, was in place by May of 2000. At that time the Steering Committee was composed of managers from the ODF Salem headquarters, Division of State Lands, Oregon Department of Justice, ODFW SW Region, and the Coos County Board of Commissioners. The roles of the Steering Committee members are as follows:

- **Chair:** ODF Southern Area Director Dan Shults was chosen as chair of the Steering Committee because he has overall responsibility for supervising and managing field programs in the ODF region in which the Elliott is located. As chair of the Steering Committee, Shults, was the final arbiter of decisions when consensus could not be reached.
- **Project Leader:** As the on-the-ground manager of the Elliott, Jim Young was selected as project leader and functioned as the link between the Steering Committee and the Core Planning Team.<sup>115</sup> Part of his job was to raise policy issues raised during Core Team meetings to the Steering Committee for resolution.<sup>116</sup>
- **ODF:** As the link to the Executive Staff at the agency, Assistant State Forester Steve Thomas' role on the committee was to ensure that the agency processes are followed and that all relevant ODF officials are informed about the process. He also made sure documents created by the committee aligned and were consistent with state wide forest policy.<sup>117</sup> Other ODF Salem staff were added to the Steering Committee including, Lisa DeBruyckere, State Forests Program Director, and Mike Schnee. Schnee, State Forests Planning and Policy Manager, was also a member of the Core Planning Team, providing a policy perspective to the technical aspects of both plans. He recently retired and has been replaced by Barbara Lee.
- **DSL:** As the Assistant Director for Policy and Planning at the DSL, John Lilly's role on the Steering Committee was to serve as the representative for the Director and the Land Board.<sup>118</sup> He also made sure that both plans were developed within the confines of the school land mandate. Now that John Lilly has transitioned into another area of the DSL, Steve Purchase has taken over his seat at the table.
- **ODFW:** Regional Assistant Supervisor Steve Denney has oversight of all fish and wildlife programs in southwest Oregon. He was selected because the ODFW has more experience with Environmental Impact Statement (EIS) projects and the NEPA process and could provide technical expertise in both wildlife and fish habitat needs.<sup>119</sup>
- **Department of Justice:** Jas Adams served as the representative for the Attorney General's office and provided legal advice to the committee.
- **Local Area County Commissioner:** The desire to involve a local elected official led to a seat being offered to a member of the Coos County Board of Commissioners. John Griffith was elected to the Coos County Board of Commissioners in 2000. When his term began in 2001 he replaced his predecessor on the Steering Committee and subsequently became much more involved in the process.
- **Beneficiary Representative:** Rick Howell, Superintendent of the South Coast Education Service District (SCESD) located in Coos Bay, Oregon, was chosen to



represent the beneficiaries on the Steering Committee. He was chosen to provide a locally-based beneficiary perspective. Howell joined the Steering Committee in 2003.

As of 2006, the Steering Committee has been meeting for nearly six years and due to the length of the process, it has experienced minor attrition. Some of the original members are no longer on the committee due to retirement, change in career, promotion and other factors. Typically, each agency's representative(s) are on the Steering Committee based on their job position. Both leadership positions, Chair and Project Leader, have remained with the same individuals since the Steering Committee's inception. The most current roster of the Steering Committee is:

- Chair – Dan Shults, Southern Oregon Area Director, ODF
- Project Leader – Jim Young, Coos District Forester, ODF
- Steve Purchase – Assistant Director, DSL
- John Lilly – Assistant Director for Policy and Planning, DSL (currently in the process of transitioning out of this role to Assistant Director of Wetlands and Waterways)
- Steve Denney – Southwest Region Assistant Supervisor, ODFW
- John Griffith – Coos County Commissioner
- Jas Adams – Attorney General's Office, ODOJ
- Mike Schnee - State Forests Planning and Policy Manager, ODF
- Steve Thomas – Assistant State Forester for the Forest Management Division, ODF
- Lisa DeBruyckere – State Forests Program Director, ODF
- Barbara Lee – State Forests Planning and Policy Manager, ODF
- Dan Postrel – Public Affairs Director, ODF
- Rick Howell – Superintendent, South Coast Education Service District

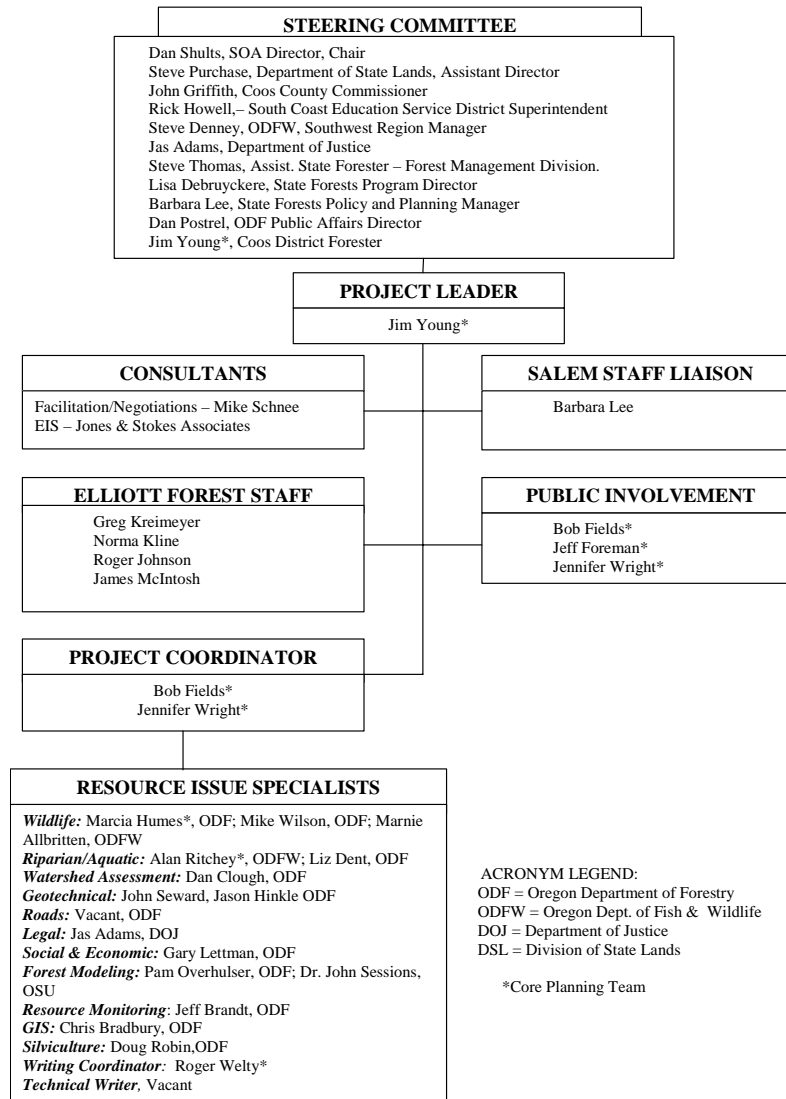
For a complete diagram of the Steering Committee and Core Planning Team, see Figure 5-4.

In the initial stages of the planning process, the Steering Committee typically met once a month. Often the meetings would be held in the ODF Western Lane District Office in Veneta, Oregon. Located 15 miles outside Eugene, it is roughly the same amount of traveling time for Steering Committee members coming from Salem, Coquille, Coos Bay and Roseburg; ranging from 1.5 to 2.5 hours by car. Because of the distance traveled to attend the meetings, they typically last for a full day. While at meetings, the Steering Committee members would schedule the next meeting two months ahead of time to ensure that everyone could make it to as many meetings as their other job duties would allow. Now that the process is nearing completion, the Steering Committee meets approximately once every other month.

### **THE CORE PLANNING TEAM**

The Core Planning Team was developed to work on the technical aspects of the process including gathering data and researching and writing both the FMP and HCP. The team members did not start meeting regularly until October 2000. Led by Jim Young, the team was responsible for developing the overall resource management strategies for the forest and synthesizing those elements in both the FMP and HCP. The species' habitat requirements outlined in the HCP has informed the management approach taken across the entire Elliott State Forest ecosystem.

**Figure 5-4: Elliott State Forest Management and Planning Team**



Source: *Elliott State Forest Management Plan*, Oregon Department of Forestry, available at <http://egov.oregon.gov/ODF/>.

The Team was made up primarily of ODF biologists and foresters and ODFW wildlife biologists. The USFWS and NMFS were approached in late 2000 and invited to join the Core Planning Team. Jim Young recalls the rationale for including USFWS and NMFS, “we wanted to get them involved so they could provide input, have a better sense of it and more knowledge of it when it comes to the HCP negotiation process.”<sup>120</sup> Early on, when the basic strategies for the process were being laid out, the federal agencies were less involved. However, as surveys were conducted and data gathered, USFWS and NMS staff provided their own data for comparison and acted as a sounding board. According to Young, the USFWS and NMFS staff participated in Core Planning Team discussions, but not as actively as the other members: “the team members would ask [the USFWS and NMFS] questions,

such as whether or not they were on the right track. They gave feedback and tried to be helpful and make sure we had a successful process.”<sup>121</sup>

Members included:

- Jim Young, Coos District Forester and Project Leader, ODF
- Larry Sprouse, Project Coordinator, ODF
- Marcia Humes, Wildlife Biologist, ODF
- Logan Jones, Planning Coordinator, ODF
- Jeff Brandt, Resource Monitoring Coordinator, ODF
- Jane Hope, Planning Specialist, ODF
- Mike Schnee, State Forests Planning and Policy Manager, ODF
- Jeff Foreman, Public Information Officer, ODF
- Marnie Allbritten, Wildlife Biologist, ODFW
- Howard Crombie, Fisheries Biologist, ODFW
- Greg Kreimeyer, Assistant District Forester, ODFW.<sup>122</sup>

The Core Planning Team met until September 2004, when the committee was dissolved.

## **CREATING THE GUIDING PRINCIPLES**

The September 2000 Steering Committee meeting laid the foundation for the Planning Process (At this point the committee was not completely formed). In an effort to figure out the direction of the process, the committee members brainstormed 12 ground rules they agreed to follow. These rules included, for example, keeping in mind the mandate to produce revenue for the Common School Fund. The ground rules were originally deemed “planning principals.”<sup>123</sup> Jim Young described how the content of the planning principles evolved over time:

Over the next year [the planning principals] were discussed at meetings in which we wordsmithed them and made changes. This was done through an open discussion in which we sought consensus. There was not much disagreement; it was mostly over the use of certain words. Occasionally there were instances where wording was left in even if everyone did not agree.<sup>124</sup>

The Guiding Principals were finalized from the original planning principles in early 2001. They took into consideration the forest vision, management goals and monitoring assumptions and were designed to set the direction for the management plan. The Guiding Principles are referred to in a draft version of the FMP as “the compass that guides our navigation.”<sup>125</sup>

## **GUIDING PRINCIPLES**

- The plan will recognize that the goal for the Common School Forest Lands is the maximization of revenue to the Common School Fund over the long-term. The goal for the BOF lands is to secure the greatest permanent value to the citizens of Oregon

- by providing healthy, productive, and sustainable forest ecosystems, that over time and across the landscape provide a full range of social, economic, and environmental benefits to the people of Oregon.
- The plan will be developed within the context of the Elliott State Forest as a managed forest.
  - The plan will recognize that the forest is intended to be an important contributor to timber supply for present and future generations.
  - The plan will be a comprehensive, integrated forest management plan taking into account a wide range of forest values.
  - Lands will be identified and managed for long-term revenue production while providing for a sustained contribution to biological capability and social values. The plan will recognize that there will be trade-offs between revenue producing activities and non-revenue producing activities.
  - The plan will examine opportunities to achieve goals through cooperative efforts with other agencies, user groups or organizations.
  - The plan will be developed through a collaborative and cooperative process involving the State Land Board, the BOF, the public, local and tribal governments, and other resource management agencies including the federal services.
  - The plan will be goal-driven.
  - The plan will view the Elliott State Forest in both a local and regional context.
  - The plan will consider the overall biological diversity of state forest lands, including the variety of life and accompanying ecological processes.
  - The forest will be managed to meet the state and federal Endangered Species Acts (ESA) while fulfilling the State Land Board's responsibilities under the Oregon Constitution and the BOF's statutory responsibilities.<sup>126</sup>

## **DEVELOPING MANAGEMENT STRATEGIES**

Once the direction of the planning process had been determined, the Core Planning Team began the process of gathering and analyzing the data to inform both plans. During Core Planning Team meetings, there was a lot of discussion about the scientific points of the process, focused primarily on trying to balance wildlife habitat needs with the DSL's constitutional mandate. Finding the appropriate balancing point was often a point of contention among the scientists, as explained by Jim Young, Project Leader of the Core Planning Team: "Overall the team functioned pretty smoothly, although there is always some disagreement. I would make the decisions if there was a stalemate. To make my decision, I usually referred back to the Guiding Principles."<sup>127</sup>

In the initial meetings, the biologists inventoried the data they already possessed on the owl, murrelet, salmon and other potentially-threatened species and determined what information they were lacking. Numerous studies already had been conducted on the owls and murrelets, but little was known about the potentially-threatened species and salmon. One of the decisions that came out of the meetings was the need to conduct a watershed analysis of the forest to acquire more data on the state of the salmon fisheries. The Planning Team decided that they also needed a survey of species for which they had little information (e.g., song birds, bats and amphibians). An independent firm was hired to conduct the bulk of the

surveys while the ODFW biologists completed the rest. The biological surveys were underway from January through November 2001 and included:

- Surveys on winter and summer aquatic habitat on streams in the Elliott that had not been previously surveyed conducted by the ODFW
- Amphibian surveys were conducted to determine species presence and abundance to assist in determining how manage actions might affect their habitat
- Songbird, pilated woodpecker, and bats were surveyed to determine presence in the forest
- Pilot radar surveys for marbled murrelets were conducted to determine flyways and high use areas in the forest<sup>128</sup>

In 2001, the planning team organized the array of possible management scenarios under consideration into eight conceptual management plans. These conceptual management approaches were devised to capture the variety of possible management scenarios envisioned by the Steering Committee. The eight models are as follows:

- Model 1: Continue managing in accordance with the 1995 FMP/HCP
- Model 2: No HCP – manage under take avoidance for owls, murrelets, and fish
- Model 3: Continue managing under the 1995 FMP/HCP with revised riparian strategies
- Model 4: Manage forest to create an array of forest structure conditions
- Model 5: 50 percent of forest allocated to conservation areas
- Model 6: HCP for owl only and managed with a take avoidance strategy for murrelets and Coho salmon.
- Model 7: 25 percent of forest allocated to conservation areas
- Model 8: 100 percent conservation<sup>129</sup>

The Core Planning Team then approached Dr. John Sessions, Professor Forestry and Forest Engineering at Oregon State University, to model the eight scenarios. The modeling system was designed to display the impacts and outputs of each strategy on the forest ecosystem throughout 30 consecutive five-year periods.<sup>130</sup> Dr. Sessions also produced a Conceptual Management Approaches Summary as a supplement to the modeling. It explained each model with specific references to the affect of timber production, conservation areas, and riparian strategies on the forest. Three key concepts emerged from the modeling. These were used as a benchmark for narrowing the options for potential management models and included:

1. Reserves for the protection of important habitat.
2. Revised aquatic/riparian strategies
3. The use of stand structure concepts in defining habitat

The modeling described what would happen to conservation reserves, marbled murrelet habitat areas, owl areas, aquatic habitat, scenic corridors, etc. over a 100-year period. The output from the modeling allowed the Steering Committee to compare the net present value of the forest under each strategy. This information aided them in determining the best course of action for Elliott management. John Lilly, then-Assistant Director for Policy and Planning at the DSL, identified the utility of the modeling in providing output on what each strategy could produce in timber harvests: “What the difference is between one model and another could be the cost of meeting the federal ESA requirements.”<sup>131</sup>

Once the initial modeling was completed, the Core Planning Team devised a preliminary matrix as a means to select the best model or combination of models (Figure 5-5). In 2002, during a Core Planning Team meeting each member individually ranked the eight models on a scale from one to five. The rankings were averaged and presented to the Steering Committee. The Steering Committee directed the Planning Team to incorporate the three key concepts identified from the modeling into the development of the draft landscape strategy. Using the revised decision matrix, the Core Planning Team reexamined each model and rated it on a scale of 0 to 5 (5 being the highest score) as to the political viability of each management scenario, and how it met the three main goals and objectives of the planning process: maximization of revenues to the Common School Fund in the long run, contribution to the survival and recovery of threatened and endangered species, and prevention of future listings.<sup>132</sup>

## DRAFTING OF KEY PLANNING DOCUMENTS

While the modeling was underway, the Core Planning Team also began drafting the FMP, HCP and other key planning documents. In September 2001, the ODF, Oregon State University, and economic consultants conducted a socio-economic study to assess the economic and social effects both locally and regionally of the management of the Elliott State Forest.<sup>133</sup> The report provided information on the value of timber harvest sold on the Elliott to the local and regional economies, and on the value and frequency of recreational use on the forest.<sup>134</sup> The key findings of the study were as follows:

**Figure 5-5: Decision Matrix**

<b>Decision Matrix</b> <i>Elliott State Forest Management Approaches</i> <b>Core Planning Team Analysis</b> Rating: Scale 0 to 5      5 = highest score								
Goals and Objectives	Management Approach							
	1	2	3	4	5	6	7	8
Maximize revenues to Common School Fund in the long run.	3	2	3	3	3	1	5	0
Important contributor to timber supply, present and future.	*	*	3	3	3	*	*	*
Sustained yield over long term	*	*	4	4	4	*	*	*
Contribute to survival and recovery of T&E species, and prevent future listings.	3	3	4	3	5	4	1	5
Meet federal and state ESAs.	*	5	5	5	5	5	1	5
Provide recreational opportunities.	*	*	3	3	2	*	*	*
Manage for biological diversity.	*	*	3	4	3	*	*	*
Achieve ecosystem restoration and watershed health.	*	*	3	3	4	*	*	*
Maintain/obtain HCP.	*	*	5	2	3	*	*	*
Political viability (likely approval by SLB and acceptance by public)	5	2	5	2	3	2	1	0

Shaded areas mark the high scores among the three fully rated management approaches.  
 \* Indicates no rating. Core Team determined 1) these management approaches fell outside constitutional mandates, or 2) the ratings would be insufficient to receive final consideration.

Source: *Expectations*, September 2002, Oregon Department of Forestry

- Southwest Oregon has a larger percentage (17 percent) of its workforce in the wood processing industry than the state as a whole.
- Timber industries account for 10% of personal income in Coos County.
- Tourism to the Oregon Coast is significant to Coos County's economy.
- Hunting is an important recreational activity on the Elliott.
- Every one million board feet of timber harvested from the Elliott State Forest generates between 11 and 13 jobs in southwest Oregon with an average annual wage of approximately \$32,000.
- 37 percent of Elliott harvests are processed in mills in Coos County.<sup>135</sup>

The findings of the socioeconomic study were another element that served to balance the economics and science at play in the planning process. These findings were especially poignant for Coos County Commissioner John Griffith:

A million board feet here and a million there might be what some people would want for owls and murrelets but I am the one that has to face those 11 to 13 guys for every million feet and explain that I blinked or was asleep at the switch and now they don't have a job. I have to let the guys on the Committee know this. I am never going to be able to not see the faces of those men and families who lost their jobs because I didn't hold out for everything I could get.<sup>136</sup>

During 2003, using the three concepts identified by the Steering Committee, the Core Planning Team developed and wrote the first draft of an Integrated Landscape Strategy. The Integrated Landscape Strategy was the foundation from which the HCP and the FMP were built. It was designed to meet the legal mandates for revenue production while providing what the team determined was an adequate level of habitat for threatened species that will comply with the Federal ESA.<sup>137</sup>

The team also continued to work with Dr. Sessions on modeling variations of the draft management scenarios and updating inventory data on the model. Initial model runs of the draft Landscape Strategies were done in early 2004. Since then, other management scenarios ranging from an emphasis on conservation to an emphasis on timber production have been run. The outputs were analyzed and resulted in minor adjustments of the Landscape Strategies until the first half of 2005.<sup>138</sup> A scientific peer review of the draft Strategies and draft FMP was conducted at the end of 2003 and early 2004.<sup>139</sup>

### **THE BENEFICIARIES JOIN THE STEERING COMMITTEE**

In October 2003, the make-up of the Steering Committee was broadened to include Rick Howell. At that time, the DSL decided the constitutional interest of the beneficiary warranted involvement in the Steering Committee. Chuck Bennett, an education interest group lobbyist and member of the Beneficiary Advisory Council, was consulted on whom should be selected to represent the beneficiary interest in the planning process. He suggested Rick Howell, the Superintendent of the South Coast Education Service District (SCESD) located in Coos Bay, Oregon.<sup>140</sup> Howell was a logical choice because he has close ties with local

area schools and education interests and is familiar with the Elliott State Forest. Howell had some reservations about joining the Steering Committee:

One of my concerns going into the process was who am I talking to? I know my attitude going into this was getting the maximum sustainable production ... I didn't know if I was going into a room full of environmentalists, of which in some circumstances I consider myself one, but not to the same extent in this circumstance because my mandate is different.<sup>141</sup>

The beneficiaries of the Common School Fund and the education interest groups are organized into what could be best described as a very loose coalition. In many ways the beneficiary interest group is in its infancy of organizing itself. According to Bennett:

We have had really good access to the DSL and State Land Board. They have taken us into pretty strong consideration but we are still the new kids on the block. Ranchers, retailers and other interest groups have been there for years pushing back on Common School Fund claims. We are really new. We have allowed this thing to go on for 150 years without getting involved so we are trying to be pretty reasonable as we move ahead.<sup>142</sup>

The overarching beneficiary organization is the Confederation of Oregon School Administrators (COSA). Founded in 1974, its primary goal is to give Oregon's educators a voice in public policy, encourage professional development, and play a more active role in shaping the public school system. It represents more than 2,000 school administrators throughout Oregon.<sup>143</sup> Recently, COSA has become a powerful lobbying organization. COSA, in addition to other Oregon education interest groups has become involved with Children's Land Alliance Supporting Schools (CLASS), a westwide beneficiary organization. Director of State Lands Ann Hanus also has been active in getting beneficiaries more involved in DSL activities. She organized a large group of representatives from the Oregon teacher's union, classified employee union, school administrators and Parent Teacher Associations involved in CLASS. SCESD serving Coos, Curry and Western Douglas counties, is a member of COSA. SCESD provides schools high-cost services that would be difficult for them to provide on their own, such as special education teachers, technology services and consultation services.<sup>144</sup>

At the same time, Director Hanus has encouraged the involvement of beneficiary groups like COSA to become part of the advisory and other Steering Committees managing common school land. Hanus was also instrumental in getting members of these groups on the Beneficiary Advisory Council, Asset Management Plan Committee and Rangeland Advisory Committees.<sup>145</sup> This has occurred over the last five to six years. One of the main goals of the beneficiary groups, outside of being more involved in the management of the school land portfolio, is to maximize income and assets to the state.<sup>146</sup> They hope to maximize the income to the Common School Fund is by increasing the harvest yield sold in the Elliott. According to Bennett, the beneficiaries in general "tend to advocate cutting more than environmental groups. More cutting equals more money. 'Stumps on the hill, money in the till' is a longstanding saying here in Oregon."<sup>147</sup>



## BALANCING REVENUE AND THREATENED SPECIES PROTECTION

The issue of balancing the increase of timber harvest sales and providing adequate protection for the threatened species in the Elliott State Forest came to a head during a series of Steering Committee meetings in 2003. Commissioner John Griffith has been characterized by the other committee members as pushing the hardest to increase harvest levels. As a former logger, reporter for the *Oregonian* and member of the State Ocean Policy Advisory Council, Commissioner Griffith has been at the center of numerous controversies on resource management. On January 16, 2002, the Coos County Board of Commissioners, led by Commissioner Griffith, voted to sue the USFWS over critical habitat violations for the western snowy plover.<sup>148</sup> Griffith and the Board felt that the USFWS only considered the biology of birds when designating critical habitat and did not take the economic impact of beach closures into consideration. The snowy plover breeds primarily on coastal beaches from southern Washington to southern Baja California and is vulnerable to disturbance by humans, pets and nest scavengers, such as crows and ravens.<sup>149</sup> Protecting the plover breeding sites necessitated the closure of many beaches and limited access to certain area by off-road vehicles (ORVs). The Oregon Dunes draw many tourists to Coos County and ORVs are a main source of recreation for tourists and locals. The lawsuit was decided in May 2003 in Coos County's favor.<sup>150</sup>

Prior to the lawsuit when Griffith was working as a reporter, he covered the Advisory Council appointed by then-Governor Kitzhaber to implement the Coastal Zone Management Act (CZMA) and other ocean-related policies. The Advisory Council put the state agencies in the position of either adopting their recommendations or vetoing them, but not allowing them to make changes. The change in management of the coastal zone also took away authority from coastal counties. Griffith states that he became, "such a pain in the neck that in 1998 they put me on the council."<sup>151</sup> He was subsequently fired from the council. The media "went nuts" on the story. In 2003, after being approached by the State Legislature, Griffith re-drafted a section of a bill to make it more responsive to the coastal communities. The bill was revised and passed into state law.

Commissioner Griffith's reputation and his somewhat acrimonious feelings towards some state officials and the USFWS have made him somewhat of a maverick on the Steering Committee and averse to taking what others consider the safer route. He also has taken the revenue maximization mandate of the DSL to heart. He laminated Article VIII, Section 5 of the Oregon Constitution – the actual text of the mandate – to the binder he takes to Steering Committee meetings. According to Griffith, "By and large they want to get out as much timber as [the other Steering Committee members] can. The difference is that I think they can get out more and they don't think they can get out as much as I think they can."<sup>152</sup> Steve Thomas, Assistant State Forester, expressed his view of Commissioner Griffith's opinions in relation to the rest of the Steering Committee:

If John had his way, he would want to go closer to the Forest Practices Act and give the [USFWS and NMFS] the old 'one two' and give them only what he absolutely had to give them ... he takes a slightly different view of our

negotiations with them. John would lean more towards an industrial [forest management] model. The rest of us are pretty well aligned.<sup>153</sup>

The other Steering Committee members did not want to have the HCP rejected by USFWS and NMFS because it was overzealous in the amount of harvesting allowed and not stringent enough in its provisions for species protection. The underlying goal of revising the HCP was to increase harvest levels while at the same time putting in place the necessary measures to mitigate threatened species habitat loss. Moreover, there was a general understanding that the levels would not return to pre- 1995 HCP conditions.

The discrepancy in viewpoints between Commissioner Griffith and the rest of the committee became heated in one of the meetings. Griffith states:

I thought that we weren't really making headway towards meeting our constitutional obligations. We had one meeting where it was pretty face-to-face. I told them where I thought the shortcomings were and they told me where they thought their constraints were. We got that all aired out and it has been better since.<sup>154</sup>

When it comes to resolving conflicts and making everyday decisions, both the Steering Committee and the Core Planning Team attempted to reach consensus on each decision point. According to Griffith, "usually we work things out and there is no major heartburn about anything ... you just try to get it to where for the most part it is just text changes to a draft."<sup>155</sup> However, when it was clear that consensus could not be reached, the chairman had the authority to make the decision. As chair of the process, Shults saw himself as more of a facilitator to make sure that the committee got through the process. Of his duties, Shults stated, "It's a little bit of a balancing act. I try not to direct the process but facilitate it so we get the right amount of folks inputting and we get all of their thoughts on the table and include them in the process."<sup>156</sup>

Though the issue of balancing the fiduciary responsibility of the DSL with the habitat conservation of the owl, murrelet, salmon and other species was resolved within the Steering Committee, both the Committee and the Core Planning Team have struggled with the issue in drafting both the FMP and HCP. Even though staff from USFWS and NMFS has been involved, there remains uncertainty about whether or not their participation will directly result in an approved HCP. Commissioner Griffith gave his opinion of the situation:

I don't know if those guys have the experience I do or believe as firmly as I do that the federal agencies, particularly NMFS, are of the tendency of saying "Your plan is not good enough," but they do not tell you specifically what they want. They just hang it out there and it is like they have one hand behind their back and you don't know it it's a flower or a gun.<sup>157</sup>

## **DRAFTING OF KEY PLANNING DOCUMENTS CONTINUES**

In April 2004, the peer reviews of the FMP strategies were reconciled and revisions were completed. By May, the first draft of the FMP was available for public comment and work on a draft Implementation Plan began.<sup>158</sup> The Core Planning Team hired Jones & Stokes Associates to write the Environmental Impact Statement (EIS) and to assist them in going through the NEPA process.

In the midst of the process, the beneficiaries and state legislators considered selling the Elliott and investing the money to increase revenue for the trust. They feared that the HCP would not allow enough timber sales making it a resource sink instead of an income-producing forest. A budget note from the Oregon State Legislature allowed the Land Board to hire Mason, Bruce and Girard Associates to conduct a cost-benefit analysis of the forest. The cost-benefit analysis was designed to provide information important in determining a benchmark to meet the Land Board's fiduciary responsibility and to guide the Board's long-term plans for the Elliott State Forest. It estimated the forest's income value under two alternatives: continued state ownership of the Elliott (net present value of Common School Fund income) and sale of the Elliott and investment of proceeds (Common School Fund income from sale).<sup>159</sup> The conclusion reached by the authors of the report determined that selling the forest, depending on economic conditions at the time, would be more or less equivalent to keeping the forest and continuing its long-term management.<sup>160</sup> Once the results of the analysis were complete, the Land Board issued a statement saying they had no intention of selling the Elliott State Forest because of its importance to the Common School Fund portfolio.

Once it was determined that selling the Elliott State Forest was not a viable option, work on the draft FMP and HCP continued. In February through June of 2005, the draft Implementation Plan was written. By September 2005, the final draft of the FMP for public review was completed and the initial draft of the HCP was developed. The most current iteration of the FMP was published on the ODF website on January 2006.

Though the Planning Process still has a few more hurdles to pass, the Steering Committee is optimistic that the outcome will be positive – meaning HCP approval and an increase in timber sold in the Elliott. According to Shults, “At the end of the process the Steering Committee and the core team will go away and hopefully we’ll get Jim Young and the local managers managing under that plan.”<sup>161</sup>

## **PUBLIC INPUT PROCESS**

From the outset, avenues for public input were built into the FMP/HCP process; some, like the public meetings were held at specific times while others such as comments submitted via the ODF's webpage were available at all times. The public involvement process consisted of newsletters, public meetings and forest tours, information posted on the ODF website and informal contacts with groups and individuals.<sup>162</sup>

The first public meetings were held in January through February 2001 in Coos Bay, North Bend, Roseburg and Salem. Prior to the meetings, the ODF had purchased newspaper advertisements in the *Coos Bay World*, *Eugene Register-Guard*, *Portland Oregonian*, *Roseburg News-Review* and *Salem Statesman-Journal* to announce the first public meeting and invite public participation. The focus of this meeting was to provide background on the reasons for revising the FMP and HCP, and to seek public input on the management of the forest.<sup>163</sup> The second round of public meetings was held in Salem, Coos Bay and Roseburg during June 2004 to discuss strategies for the FMP. In May 2005, public meetings were held for the EIS scoping process. The last public meeting occurred in September 2005 in Coos Bay and Roseburg to discuss the final draft of the FMP.<sup>164</sup>

Another means by which the Steering Committee kept the public apprised on the status of the Planning Process was via a newsletter, *Expectations: A Newsletter about Elliott State Forest Planning*. The newsletter contained information about Elliott State Forest management and habitat conservation and was published in May 2001, January 2002, September 2002 and May 2004 by the ODF. The newsletter was available online and by post. The first issue states its intended purpose:

The ODF will use this newsletter to communicate with interested persons during the planning process, which is expected to take three years. The newsletter will be published on an as-needed basis to note progress in the planning process and to announce upcoming opportunities for public involvement.<sup>165</sup>

*Expectations* included information on: (1) history of Elliott State Forest, (2) natural resources found in the Elliott, (3) information and updates about the FMP and HCP processes, (4) summaries of comments from public meetings, (5) other sources of information on the Elliott and ODF, (6) an explanation of the different harvest models under consideration, (7) the Guiding Principals, (8) specific questions for the public to address in their comments, (9) actions the ODF and ODFW were undertaking to improve habitat on the Elliott (counting salmon, placing large pieces of wood in the streams for better spawning grounds), (10) species information and (11) information on common school lands mandate. *Expectations* also contained pictures, graphs and maps complementing the written material. In some issues, the project timelines of both the FMP and HCP were included on the back page.

Another venue for public comment was made available through the ODF's website. Through this medium, the public was free to submit comments anytime. Typically people were asked to respond to focused questions regarding the direction of the plan and management techniques, such as the Integrated Resource Management Strategies. Opportunities for these types of comments and comment periods were advertised in *Expectations* and more recently on the ODF website.

When public comments were submitted on-line or via another written format, they were filtered and condensed by ODF staff, specifically dedicated to reading and processing the volumes of comments. The Steering Committee responded only to comments that were relevant to the subject of the comment period; superfluous comments or ones not based in

reality were not given responses. Responses are typically a sentence or two and at most a paragraph. Many comments addressed why the Steering Committee had chosen a certain path with their management strategies. The written responses were then posted on the ODF website so the public could view them.

The comments also were condensed into an internal document that was passed along from the Steering Committee members to their supervisors. Comments also are seen by the State Land Board albeit after much censoring and condensing. State Land Board assistants had the opportunity to review them and pass along information at their discretion. It is not clear whether the Governor, Secretary of State and Treasurer actually saw the public comments in their entirety.

The Steering Committee and Core Planning Team also held public meetings to inform the public on the progress of the FMP and HCP and to allow them to provide verbal feedback. *Expectations* described the public meetings as “listening posts” where opinions are sought from participants in a formal setting.<sup>166</sup> Core team members typically ran the meetings. Sometimes the Steering Committee members attend to listen to the comments, but they did not necessarily participate in the discussions. Often, the specialists that worked on the plan were available for discussions at walk-up stations. The ODF staff attempted to answer all of the questions and addressed comments during the meeting. The meetings have been held in Salem, Coos Bay, North Bend and Roseburg. Since the process began there have been four, all of which have been advertised on the ODF’s website and in *Expectations*, when it was still in publication. The attendance of the meetings is usually low with a turnout of approximately 25 to 30 people.<sup>167</sup> Steve Thomas described his feelings of frustration with some of the initial public meetings:

We put the dog and pony show together. We had twelve resource analysts come to Roseburg, Coos Bay and Salem. We set it up so that there would be a brief introduction and have all these resource tables – one about habitat, one about trees, one about water ... all these [staff] are lined up and only ten people showed up. We outnumbered the number of people.<sup>168</sup>

Perhaps unsurprisingly, attendance at meetings closer in proximity to the Elliott was higher than the meetings held in Salem.

In 2005, newspaper inserts were used to reach more of the “general public” and attract a broader audience to public meetings. The inserts were placed in Roseburg and Coos Bay papers and provided an overview of the Elliott process in addition to advertising meeting times and locations. They were published before the most recent public meeting in September 2005. Steve Denney originally suggested the idea because it had worked well for the ODFW’s Diamond Lake Restoration Process. According to Jim Young, the Core Planning Team was satisfied with the insert’s effectiveness, as different people showed up other than the “usual suspects” – meaning environmentalists and timber interest groups.<sup>169</sup>

However, despite the small success of the newspaper inserts, the Steering Committee struggled in coming up with effective means in which to actively involve the public. Roger Welty, a Planning Specialist at ODF, gave his opinion on the public comment process:

When talking about “the public,” it is a very diverse public. There are some people that are very involved with the Elliott FMP and HCP. We’re not sure how many people they represent. Some people read and spend enough time checking the plans, that it makes you wonder how they have time for a job and other responsibilities and interests in their life. The other part of the public is working all day, have family and other responsibilities and find it difficult to get to public meetings. They don’t have time to read the whole Forest Management Plan draft or HCP.<sup>170</sup>

In addition to public comment periods, meetings and written publications, ODF planners also met with interested individuals and groups over the course of the planning process. These contacts included informal meetings and tours of the Elliott, telephone conversations, distribution of informational materials and outreach to local media outlets.<sup>171</sup> The ODF also gave presentations to local timber operators including Douglas Timber Operators and Friends of New and Sustainable Industries.

#### **INTEREST GROUPS OUTSIDE OF THE PROCESS**

The perspectives of stakeholders outside of the Elliott State Forest Planning Process, while not affecting the process directly, can further elucidate the context in which the process operated in and offer a more complete picture of the process from an outside vantage point. While it is challenging to categorize the spectrum of the public that participated in some form during the meetings and public comment periods, two distinctive groups were perceived as representing of the “extreme” views on how the Elliott State Forest should be managed – the environmentalists and the timber industry.

Francis Eatherington, Forest Monitor for the Roseburg-based Umpqua Watersheds, Inc (UW), a local environmental non-governmental organization, was one of the more vocal of the environmental groups interested in the Elliott. UW is a 501(c)(3) organization dedicated to the protection and restoration of the watersheds in the Umpqua River Basin. UW does this by monitoring the activities of federal, state and local agencies that manage public land and forests within the watershed. Eatherington expressed her concerns about the way the Elliott is currently managed: “In the [Elliott State] Forest the ODF is selling and logging the biggest and oldest trees in any of Oregon’s state forests. The Elliott has different logging practices than federal agencies. It’s more backward and less progressive. There are bigger clear cuts, more herbicide use and smaller stream buffers. The state uses prison labor paying about \$2 a day.”<sup>172</sup> She went on to describe her perception as to how the Steering Committee has misinterpreted the DSL’s mandate:

The mandate the state has to manage common school fund land doesn’t necessarily mean that they have to liquidate the oldest forests as fast as they can; that is not the mandate. Instead the mandate requires ODF to return

revenues of a sustainable logging program into the Common School Fund. They have interpreted this as being we have to make as much money as possible now.<sup>173</sup>

During the process, Eatherington inquired if she could be on the Steering Committee or sit in on the meetings so she could better direct her comments on the FMP and HCP. She was denied both requests.

Bob Ragon, the Executive Director of Douglas Timber Operators (DTO), a regional trade association representing the wood products industry in southwest Oregon, represented the timber industry interests in the Elliott. The members of DTO, ranging from Weyerhaeuser to individuals, are the principal buyers of the timber sales the Elliott produces. Ragon offered his perspective on the Planning Process:

My line of comment has been along the edges of “you have a fiduciary responsibility to schools in the state of Oregon to provide revenue and that ought to be your prime function.” With respect to the other things they get involved in I have questions about how valid they are, so I provide my comments. Much of that revolves around the ESA and the wide reach it has on resource management. I know there are other groups are out there that advocate that we shouldn’t be harvesting any trees on the Elliott because it’s a unique ecosystem ... my comments are totally on the other side of the equation. I believe very strongly in managing forests. There too many examples, particularly on federal lands in the west, where the US Forest Service has walked away from management and now they are burning up. I don’t think that benefits anybody.<sup>174</sup>

Ragon added his opinion about the restrictions imposed the Endangered Species Act (ESA) and job loss in Southwest Oregon: “Before taking this job I was the CEO of a local mill and watched thousands of jobs disappear in Oregon because of endangered species. What did succession of harvests in public lands do for endangered species? Nothing. They are no better off today than they were before.”<sup>175</sup>

## **THE ANALYSIS: ELLIOTT STATE FOREST PLANNING PROCESS**

The following analysis identifies and discusses benefits, costs, challenges, facilitating factors and lessons learned from the Elliott State Forest Planning Process. This analysis is based on the observations, reflections and perceptions of Steering Committee members, in addition to environmental and timber representatives. The analysis also reflects the researchers’ external assessment of the process.

Benefits of the Planning Process include the increased involvement of beneficiary groups, increased stakeholder buy-in and the relationships built as a result of the process.

Facilitating factors that enabled the Steering Committee to persevere and develop what most consider a successful plan were the personalities and relationships of the Steering Committee members, a commitment to the process, the Planning Process structure and, finally, the forest modeling.

In sum, the lessons learned and advice from the Elliott State Forest Planning Process include using technology to capture the values of land, recognizing the challenges of grabbing the attention of the public, ensuring that participants have adequate time to commit to a collaborative effort, using collaboration in situations that warrant its added time and energy and understanding that stacking the representation towards one interest can lead to an uneven process.

### **WAS THE ELLIOTT STATE FOREST PLANNING PROCESS COLLABORATIVE?**

Compared to traditional management processes, the Planning Process used to complete the FMP and HCP for the Elliott State Forest was collaborative. While all state forests including Common School Forestlands are managed via forest management plans, the process used to devise them is not considered collaborative. For example, the 1994-1995 Elliott FMP and HCP was an internal process between DSL and ODF.<sup>176</sup>

However, while many members of the Steering Committee stated that the process was collaborative, there was a general acknowledgement that it was not a traditional collaborative process and that the collaboration varied at different levels of the process. John Lilly, Assistant Director of Policy and Planning for the DSL, explained that, “it’s collaborative in the sense that those sitting around the table feel equally involved but not all have the same stake in the outcome” and that, “[the process is] a collaborative effort but not traditional.”<sup>177</sup> Dan Shults further elucidated the different levels of collaboration, adding that the Core Planning Team is “a very collaborative effort too with ODFW, USFWS, NMFS and a lot of the technical folks from the Elliott State Forest itself. So there are two levels of collaboration there. There is the working group actually forging the plan and the [Steering Committee].”<sup>178</sup> Though many felt that the Steering Committee and Core Planning Team were collaborative, there was a general sentiment that outside of these two structures the process was less collaborative. Steve Thomas agreed that the Steering Committee was “collaborative,” but the public outreach was not collaborative: “I would say that the whole issue of public involvement is not collaborative. It’s more of a give us your input and we respond kind of thing.”<sup>179</sup> Steve Denney of the ODFW iterated a similar thought, stating that the process is “collaborative with the people involved.”<sup>180</sup> Added Commissioner Griffith, “I’d say it’s more collaborative than most.”<sup>181</sup> Rick Howell stated that he thought the Planning Process was “very collaborative.”

The Elliott State Forest Planning Process was collaborative within the sphere of the Steering Committee and Core Planning Team; however, outside of the scope of the planning structure the process was less collaborative. Bob Ragon, Executive Director of Douglas Timber Operators, explained how he felt about the level of collaboration: “They are trying to reach out to all different interest groups, but the decision can’t be a collaborative decision in my view. We don’t all get a seat at the table and we don’t get to vote.”<sup>182</sup> Francis Eatherington,



Forest Monitor at Umpqua Watersheds, Inc., cited numerous frustrations with the public meetings, comment process and the lack of response by the ODF and said that she feels as though the decision on how to manage the forest has already been made.<sup>183</sup>

The reflections on the level of collaboration and the experiences of participants in this process can be further examined via three lenses used to measure collaboration in this report: (1) breadth of stakeholders, (2) degree of transparency and (3) degree of influence on decision making.

**Breadth of Stakeholders:** In so far as striving to create a Planning Process with a diverse breadth of stakeholders with an economic interest in the Elliott State Forest, this process was successful. Former Assistant State Forester Ray Craig, Jim Young and Dan Shults orchestrated an inclusive Steering Committee and Core Planning Team to develop an FMP and HCP for Common School Forest Lands in Oregon that met the “economic stake in the management of the forest” criteria set forth in the beginning of the process.

From the beneficiary perspective, involvement in the Steering Committee was demonstrative of the more active role they are taking in all aspects of DSL management and the broader influence of CLASS. John Lilly stated that in the last five years there has been more emphasis on school financing and that:

Organizations like CLASS helped too because there has been an outreach from grassroots people to their interests ... they have a story to tell and it is somebody else telling the story not just the department. When the department talks about trust land and the trust responsibility it sounds a little self-serving, like “you guys are just trying to protect your jobs.”<sup>184</sup>

The involvement of the beneficiaries has served deepened the broader understanding of the trust mandate and fiduciary responsibility for beneficiary and education interest groups in Oregon.

However, if other interests in the Elliott are considered outside of those who stood a chance to experience monetary gains from their interests, the breadth on the Steering Committee and Core Planning Team was shallow. The Steering Committee actively acknowledged that not all stakeholders or interested parties were invited to participate in the Planning Process outside the realm of public comment opportunities. Those not invited to participate included adjacent landowners (BLM, USFS and Weyerhaeuser), timber interest group and environmentalists. Recall, that the reason for not including the adjacent landowners was because of the difference in operational mandates. John Lilly, Assistant Director for Policy and Planning at DSL, went on to further acknowledge the interests lacking representation on the Steering Committee:

There is an environmental interest in the Coos Bay and Roseburg areas that watch over our activities on forest lands that aren't on the Steering Committee. There are people who buy the timber, there are the loggers, and folks who purchase the timber that aren't represented. There are local people

who use the forest for all sorts of things, recreation purposes or what have you; those folks aren't on the Steering Committee even though they have an interest in the outcome. They are the ones that might thwart the outcome through legal or political efforts. There are no legislators and there isn't a County Commissioner from Douglas County.<sup>185</sup>

Recall that it was decided early on that the Steering Committee would be made up of those with an economic interest in the forest. While some of the interests listed by Lilly could fall into that category, there was also the feeling that it would be too complicated to determine which individuals would serve as representatives for the timber interests, environmentalists or the public at large. According to Dan Shults:

We manage the land with the permission of the public and the public has to be involved and understand what we're all about. It's always a challenge because you never know whether the person at the table really represents the "public." The "public" consists of a lot of different perspectives.<sup>186</sup>

Interests outside of the Steering Committee had access to the process primarily via public meetings and written comments and were not allowed to attend meetings. Eatherington recalled one such incident when she inquired if she could come to a Steering Committee meeting as an observer: "I was told I could not come, that the meetings were closed. Only those that have an economic interest in the Elliott can be on the committee."<sup>187</sup> She added, "We do talk to timber industry folks and in the past we have collaborated with Roseburg Forest Products. We are used to sitting at the table with them. We can work with the timber industry but not with ODF. There is no table for us to come sit at."<sup>188</sup> Jim Young felt slightly differently than the other committee members, and stated the he felt that, "the environmental perspective may not have been adequately represented on the committee."<sup>189</sup> Young's belief is noteworthy because both outside interest groups interviewed – pro-timber and pro-environment – agreed that their participation on the Steering Committee would not have aided the process.

**Degree of Transparency:** This process was highly transparent within the scope of the Steering Committee and Core Planning Team. However, outside of the process the visibility of the process, rationale for decision making and access to information was less transparent. Francis Eatherington shared her thoughts on the transparency of the process:

I actually don't really have much of an idea how the [Steering] Committee works or what the process is or who comes to meetings other than what I see. From what I understand the [Core] Planning Team hasn't met in 2005. I asked for meeting minutes and they said there aren't any.<sup>190</sup>

Eatherington also cited the poor accessibility of information on the DSL and ODF webpages as an impediment to her participation in the Planning Process. Eatherington explained:

They [ODF] need to have a link on their website for the Elliott under "State Forests." When they post something on the site they should have a list of

recipients that are notified that something has been posted, otherwise we never know it's there unless we go to the site on a regular basis.<sup>191</sup>

In contrast, Bob Ragon, Executive Director of Douglas Timber Operators stated that there was, “no concern on my part that I do not have access to enough information.”<sup>192</sup> While it appears that the inability or difficulty in accessing information was unintentional, much of this depends on the perspective through which the process is viewed. The Steering Committee clearly felt that they had made numerous efforts to reach out to the public and inform them of the proposed management plans for the Elliott. They published the newsletter, *Expectations*, for four years, put all announcements and draft FMPs and HCPs on the ODF website and held numerous public meetings. Ragon felt comfortable with his access to information; however if one person found it difficult to find the relevant information on the Planning Process then it is likely that others did, as well.

While the degree of transparency associated with information related to the process varied depending on perception, the Steering Committee was arguably less transparent about the manner in which decisions were made. The Steering Committee made a sincere effort to make all of the written products of process available to the public. The drafts of the FMP and HCP were posted to the ODF website, making them accessible to all who wanted to read them. However, the perception in the environmental community in Roseburg was that the decision to increase harvest levels, thus putting the threatened species in further danger, had already been made. Eatherington stated her frustrations with the Steering Committees lack of transparency about the management decisions, “I feel like it's a done deal. I feel like it doesn't matter what we say, that they have already decided what they are going to do.”<sup>193</sup>

Arguably, the HCP and FMP process were as transparent to the public as other ODF forest management processes. Collaboration with the public is becoming a part of the culture of the ODF, and more recently, part of the DSL as well. According to Dan Shults, the agency “is using more collaboration in recent years in all elements of the organization. There are a diverse array of stakeholders with different viewpoints and interests and, being a public agency, we value their input.”<sup>194</sup> Steve Denney iterated a similar statement, “We could have sat in a smoke-filled room and done all of this. We chose to make it a more open process. That is the strength of it.”<sup>195</sup> Because collaboration and transparency are amorphous terms that can be interpreted in numerous ways, it is challenging to gauge the differences between internal perspectives of the process and external perceptions. Moreover, since the transparency of the Elliott State Forest Planning Process was determined by a combination of NEPA process requirements and ODF standard operating procedures there is the possibility that this sent mixed messages about the transparency of the process to the public and interest groups.

**Degree of Influence on Decision Making:** The Elliott FMP/HCP Planning Process did not afford Steering Committee and Core Planning Team members a high level of influence in the decision-making process. This was largely due to the bureaucratic environment in which the Planning Process had to occur. Both plans had to be approved by separate Boards representing congruent, but not necessarily identical, interests in forest management. Additionally, once approval was granted from the Land Board and BOF, the USFWS and

NMFS had to sign off on HCP as well. While the Steering Committee attempted to work within the confines of what they thought the federal agencies would deem acceptable, each stage of approval further confined their ability to influence the process outside of the committee except on a small scale.

While the public at large had numerous opportunities to submit written or oral feedback on the Elliott FMP, HCP and EIS, their input had a very little influence on the decisions made by the Steering Committee over the course of the process. The lack of power in this capacity can be linked to a few factors. First and foremost, it was time consuming for the ODF staff to collect, sort, process and respond to written comments. The volume of comments received and their pertinence to the process also had to be assessed and condensed before being reviewed by the Steering Committee. Second, based on the comments of the Steering Committee member interviewed, they often looked to the public comments to affirm the course of action they were taking to manage the forest because many of the comments desired uses of the Elliott that were considered against the spirit of the trust mandate. Commissioner Griffith explained:

How do you deal with those general public comments that can't allow the outcome that the commenters desired? You have to go back to the laws and constitutional obligations that are associated with the [Elliott State] Forest. But how do you be firm and compassionate at the same time? How do you tell them this is the purpose for these lands, this is the constitutional mandate for these lands and not have them take the perception, "then why did I comment if you were going to do that anyway?"<sup>196</sup>

Additionally, there was no ground rule or standard operating procedure set forth in the Steering Committee to actively consider public input in the decisions made. The Steering Committee had the choice of incorporating feedback or not; thus the public had a relatively low level of influence on the decision making process.

## **BENEFITS OF THE PROCESS**

Although the Elliott State Forest Planning Process is not yet complete, members of the Steering Committee cited numerous benefits of engaging in a collaborative process. These benefits include increased involvement of beneficiaries in DSL management, increased stakeholder buy-in and the relationships built among the participants. Though these benefits seem small in number it is likely that more will be realized upon the completion of the process. Many Steering Committee members felt the benefits of the process were contingent on the approval of the HCP and FMP.

### **Increased Involvement of Beneficiaries**

One of the hallmarks of this process, and what sets it apart from traditional management processes, has been the inclusion of the beneficiaries on the Steering Committee and in the management of the DSL's portfolio. As mentioned earlier, beneficiary involvement in DSL management activities has been slowly evolving in the last five to six years. Chuck Bennett,

lobbyist and Director of Government Relations for the COSA, explained Director Hanus' motivation for including the beneficiaries in management committees similar to the Steering Committee: "For her it has been an assistance in terms of educating our constituency (the education community), education public interest groups and also the legislature."<sup>197</sup> In Oregon, the education interest is considered a very aggressive advocacy group. At the same time, CLASS has brought beneficiary involvement and trust management accountability much higher on the radar throughout the entire Western U.S. According to Bennett, "they get virtually every western state involved with CLASS and creating awareness regionally."<sup>198</sup> Thus the decision to make sure beneficiary groups are more involved in getting their input in on trust management is both a political and progressive move by Director Hanus.

The more active role of beneficiaries in Oregon was evident in the makeup of the Elliott State Forest Steering Committee. Rick Howell, a later addition to the Committee, was chosen because of his position as Superintendent of the SCESD located in Coos Bay.<sup>199</sup> Bennett's rationale for selecting Rick Howell was that, "the more involved local school districts get in the Common School Fund lands, the better."<sup>200</sup> In this capacity Rick Howell serves as the beneficiaries' "man on the ground" who could share their perspective on the Steering Committee.<sup>201</sup> According to Bennett, the beneficiaries perceive that the Elliott State Forest has evolved in way it is viewed by locals and statewide interest groups and that environmental issues, water quality issues, and recreation, among others, are values that have begun to supersede the true value of the forest – which is to produce revenue for the Common School Fund.<sup>202</sup> Bennett surmised, "We are showing up and saying, 'wait a minute those are the kid's logs.' We are a newcomer but the fundamental reason the Elliott exists."<sup>203</sup> The greater involvement of the beneficiaries via Rick Howell on the Elliott Steering Committee is part of a state-wide movement in which the beneficiaries are becoming increasingly active in common school land management.

### **Increased Stakeholder Buy-In**

An additional benefit of having more stakeholders represented in the Steering Committee and Core Planning Team has been an increased level of buy-in to the process from all stakeholders involved. Dan Shults iterated the benefits of a stakeholder buy-in in collaborative process, "Collaborative processes take an awful lot longer time initially than directed processes. However over the long-term I think you save a lot of time, arguments, and future controversies by having the right folks involved from the get go."<sup>204</sup> John Lilly, Assistant Director for Policy and Planning at the DSL had a similar take on the process:

The benefits are that in any team exercise the collaborative efforts of the people around the table are always better than the efforts of just one party alone. Though there isn't always 100 percent agreement on the direction to go, at least there are opposing or different points of view expressed and the final decision at least gets weighed out against those points of view.<sup>205</sup>

In addition to their more active role on the Steering Committee, the beneficiary advocacy groups have seen a direct connection between buy-in and an increase in revenue for the common school fund. According to Chuck Bennett, one of the most effective tools to making

his voice heard has been, “literally showing up at the meeting where the discussion is occurring ... we have gotten more money because we have gotten more involved.”<sup>206</sup> Time will tell if this is the case with the Elliott, though at this point in the Planning Process it appears that the harvest level increases outlined in the FMP will cause the Common School Fund to experience greater revenues.

All Steering Committee members interviewed felt that the collaboration within the committee was value added to the process and allowed them to better work within the constraints of the trust mandate, the HCP process, and the need to increase harvest levels. Shults gave his opinion of the value of collaboration:

The value of the collaborative process is that folks are brought along, along the way. They see the stumbling blocks, they see the problems the issues they're aware of, the negotiation issues with the [USFWS and NMFS] to get things accomplished rather than at the end game laying something out for them and saying, “Hey, this is the best we could do. Sign off on it.” They're aware of the challenges along the way and involved in solving them so there is more buy-in to what we are trying to do.<sup>207</sup>

The inclusion of the USFWS and NMFS in the Core Planning Team and, to a lesser extent, on the Steering Committee was strategic move to develop federal buy-in to the process and to mitigate the constraints of the planning process. The federal biologists that participated on the Core Planning Team will not decide whether or not to approve the HCP. They too must report to their superiors who will ultimately make the final decision. The decision whether or not to approve the HCP are often both politically and scientifically based, leaving space for a rather high degree of uncertainty. However the Steering Committee hopes that inviting the federal biologists to participate in the process will give the HCP a better chance of being approved. According to Shults, “As we get closer to the end game, we will be able to go to their on-the-ground folks and supervisors and they will have buy-in. Hopefully they will be able to support what we are proposing together and I think that will help but it's a challenge, too.”<sup>208</sup>

Although according to Jim Young, “it is likely that we would have ended up with a similar plan if it had been the status quo. The only difference would be in the wording and emphasis on particular parts.”<sup>209</sup> Dan Shults iterated a similar thought, “I don't know whether or not the new plan increase in harvest and dollar return is a direct result of their involvement. We aren't to the end of the process yet.”<sup>210</sup> While substantive differences in the FMP and HCP as a result of a more inclusive Steering Committee are not apparent, Shults commented that “there is more buy-in from stakeholders. This is particularly true, I believe, of Coos County and the SCESD Superintendent ... we have their support in a ‘bottom line’ in our negotiations.”<sup>211</sup> Shults and Young were optimistic that the involvement of the USFWS, NMFS, Commissioner Griffith and Rick Howell will play an important role in the final HCP negotiation with USFWS and NMFS and in future endeavors as well.

## **Relationships Built**

Another benefit of the process cited by Steering Committee members were the relationships built between the participants during the process. Many participants commented that the Steering Committee gives them the opportunity to work with people they would normally not converse with outside of the traditional agency interactions. Steve Denney, ODFW Southwest Regional Assistant Supervisor, summed up what he saw as beneficial about having contact with non-agency participants within the Planning Process: “Participating on the Steering Committee allows me to interact with other players like the SCESD and local County Commissioners. Sometimes we [ODFW] only deal with them in confrontational roles so it’s better to interact in a collaborative process and that’s a benefit to me in the long run.”<sup>212</sup> Added Denney about building relationships with other state agency staff within the process: “[ODFW] come[s] at it from a wildlife perspective. [Other agency staff] understand the issues we deal with and we understand their political process and statutes and that has been really positive. It has set the stage for future efforts, not just on the Elliott.”<sup>213</sup>

## **Measuring the Success of the Process**

According to those interviewed, much of the process’ success is contingent on the outcome, namely getting the approval of the State Land Board, the BOF and the federal agencies on the HCP. However, many members of the Steering Committee have found successful elements of process despite the fact that the process is not yet complete. A clear majority of the Steering Committee also stated that the process itself has been successful in what it has accomplished thus far. Shults gave his opinion on the process as a whole:

It’s taken a lot longer than I ever thought it would at the beginning, but I would characterize it as successful in that we have good collaboration, we have a solid plan, and it looks like we will be able to increase harvest levels – big dollars – and at the same time protect the species as well as, and maybe better than, under the first plan.<sup>214</sup>

When questioned about the success of the process and what elements would deem it successful Steve Denney offered what he considered to be the ideal finale of the process: “I think it’s going to be [successful]. I say the ultimate success is that they [the ODF and DSL] get the incidental take permits and the FMP is approved with minimal protest and no court involvement. It’s a very tricky tightrope we’re walking on now.”<sup>215</sup> Added John Lilly, “I think the goals have been achieved; if the goals are having a voice.”<sup>216</sup>

## **CONSERVATION OUTCOMES**

While it is evident that there are conservation outcomes that have been produced as result of the HCP, since that was its intended purpose, there is some level of uncertainty as to how effective the HCP is in protecting endangered species that reside in the Elliott. The decrease in spotted owl population on the Elliott State Forest begs the question as to whether HCPs are effective at protecting species. A survey was conducted a survey in 1993 to inform the 1994-

1995 HCP process that counted 69 owls on or partially on the Elliott. The resulting Incidental Take Permit allowed the ODF to “take” 43 of the owls over a 60-year period. The ODF was also expected to protect 26 owls over a 60-year period.<sup>217</sup> In 1998, five years after the initial survey, another survey was conducted of owls on state lands. The survey found that the owl population had plummeted to 23 owls.<sup>218</sup> Though the decline in number of spotted owls can arguably be attributed to other factors including habitat invasion by bard owls, loss of owls is nonetheless concerning. Additionally for those individuals and groups concerned about the loss of old growth forest in Oregon, the Elliott FMP and HCP will not explicitly conserve those trees; however, to be fair, that was not the goal of either plan.

What can the Elliott State Forest Planning Process tell us about HCPs on Common School Land? There are a number of lessons questions about the effectiveness of HCPs that can be gleaned from the Planning Process. Many of the challenges faced by the Steering Committee and Core Planning Team highlights some of the faults of HCP process including a lack of direction from the USFWS and NMFS on what they would consider an acceptable plan. The decline of the spotted owl population under the 1994-95 HCP raises some concern about the ability of the plan to maintain a viable owl population. In addition, with the likelihood that the new FMP and HCP will raise harvest levels on the forest there is the potential that more losses on the forest could occur. However, while it can be perceived that the Steering Committee tends to prioritize the economic value of the forest more than the environmental value, the Committee is meeting federal ESA requirements. Perhaps a revision of the federal HCP process would reduce the frustrations experienced by applicants and implement more effective wildlife conservation measures. Time will tell if this new HCP will be effective in protecting the spotted owl, marbled murrelet, coho salmon and other species in the Elliott State Forest.

## **COSTS OF THE PROCESS**

The costs associated with the Elliott State Forest Planning Process are best conceptualized when broken in down into monetary, opportunity and time costs.

### **Monetary Costs**

The monetary costs associated with the Elliott State Forest Planning Process included both agency costs and personal costs. The bulk of the expenses associated with Planning Process were shouldered by the DSL. Most of it can be considered part of the cost the agency experiences as a result of contracting the management of the forest out to the ODF. That said, the process bore significant costs largely due to the length of the process. The Elliott State Forest Planning Process has taken more than five years to complete and is still not finished. The DSL spends approximately \$4.7 million annually for forestland management of Common School Forest Lands. The management of the Elliott makes up a large portion of the annual expenditures. Despite the high cost of managing the forest, the Elliott also produces a significant amount of revenue. Dan Shults provided an estimate on the costs and returns associated with the Planning Process:



In the millions of dollars when you add in all the time it takes for meetings and the district people to develop new strategies, watershed analysis work, and paying contractors for the EIS. But when you look at the revenue that comes off the Elliott annually, it pales by comparison. The timber sells for approximately \$500 per 1,000 board feet and the potential for 40 million board feet a year; that is a lot of money [\$20,000,000].<sup>219</sup>

The Mason Bruce & Girard Cost-Benefit Analysis was a useful tool to determine the best course of action for the Steering Committee when it came to finding the least-cost option. The cost-benefit analysis measured the cost of an outright sale or continued management of the forest. According to the findings of the report, under continued state ownership at its current harvest level, the forest is worth \$282 million to the Common School Fund. At the expected harvest level under the revised FMP and HCPs, the value of the forest would increase to between \$318-381 million.<sup>220</sup> However, if the forest was sold the range of net income from the sale would only be worth between \$245-488 million to the Common School Fund.<sup>221</sup> The Cost-Benefit Analysis made it clear that it was in the best interest of the Land Board to continue managing the Elliott for timber production even with the constraints of an HCP in place. It should also be noted that none of the Steering Committee members interviewed associated collaboration with incurring higher costs to the DSL. Thus the dollar amount the collaborative process has “cost,” or rather taken out of the Common School Fund, can be considered in the realm of the usual management costs.

There were additional monetary costs associated Core Planning Team. To defray the costs of the ODFW staff on the Core Planning Team, the ODF paid some of the participating their salary, allowing the ODFW to become more involved in the process.

Personal expenses borne by the Steering Committee members were also a cost of the process. These expenses included travel for meetings, meals and occasionally overnight stays. Steve Denney described the costs he incurred as a result of being on the Steering Committee, “My expense has been running to meetings and meals. There weren’t too many overnight stays. My personal expenses were pretty minimal.”<sup>222</sup> Commissioner Griffith also had to bear some of the cost of traveling to Committee meetings. Because Coos County Commissioners are not provided county cars or compensation for mileage, Commissioner Griffith has incurred personal costs to be a part of this process. However, some of his mileage is covered via the revenue from the 7,000 acres of BOF land in the Elliott.<sup>223</sup>

### **Time Costs**

Costs in the form of work and personal time vary between members of the Steering Committee. Some of Steering Committee members approximated the percentage of time they dedicate to the process compared with previous job time allocation. As Chair of the Steering Committee and ODF Southern Area Director, Dan Shults stated that he prior to the Planning Process he spent 20 to 30 percent of his time working on Elliott-related issues. His duties on the Steering Committee have caused him to devote more hours than normal to the Elliott.<sup>224</sup> Similarly, Jim Young said that he spends 50 to 75 percent of his time on Elliott-related work, both related to the Planning Process and his day-to-day management duties. Even if the

Planning Process was not going on, he stated that he would still be spending about 50 percent of his time on state forest issues. Steve Denney spends two to three days a month working on Elliott planning process accounting for three to five percent of his work time.<sup>225</sup>

Commissioner Griffith added that he devotes five to ten percent of his work time to the Steering Committee in addition to the extensive reading and preparation he does at home.<sup>226</sup>

### **Opportunity Costs**

The participants of the Steering Committee also incurred opportunity costs as a result of their participation in the Planning Process. Many stated that the additional time spent working on the Planning Process took away time typically devoted to their other job responsibilities. Jim Young mentioned that if he were not acting as Project Leader, more of his time would be spent on other responsibilities, such as administering the Forest Practices Act, providing assistance to family forest owners, and participating in the fire protection program.<sup>227</sup> Dan Shults explained in more detail how opportunity costs have impacted the ODF:

[The Planning Process] certainly takes more field time, staff time and involvement of our people. When you engaged in process like this, you're not as able to keep up on the day-to-day stuff. The district people are suddenly thrust into doing a lot of other things in addition to their regular duties. I would say the same is true for a lot of the other [participants] dealing with their normal jobs ... It's expensive and organizationally it has impacted what we've been able to do in our day-to-day work. It takes a lot of my time away from other things.<sup>228</sup>

Opportunity costs were clearly significant when compared to the other costs of the Elliott State Forest Planning Process.

### **CHALLENGES AND RESPONSES**

The Elliott State Forest Planning Process encountered significant challenges during the five plus-year planning process. Many of these challenges were unique to the fact that this process addressed trust land management within the context of a federal HCP process.

#### **Lack of Public Interest and Participation**

Challenges stemming from lack of public interest and involvement have plagued the FMP and HCP processes. One of the main challenges cited by Steering Committee members was getting comments from a diverse array of interests from the local communities. According to Jim Young, ODF Coos District Forester, the reason for limited interest may be that, "It is not controversial how the forest is being managed. Most people feel okay or are not that concerned. It isn't really big on their radar screen; they have other things to worry about."<sup>229</sup> Steve Thomas, ODF Assistant State Forester, indicated that he felt that the Steering Committee is constantly grappling with the question of what they are trying to achieve via public comment, how to make it meaningful for the public and the agencies, and if they were doing enough to involve them. "We kept getting the feeling that the same people that talk to

you at board meetings, show up at public meetings. The mantra doesn't change. We wonder if there is somebody else out there with additional insight. How do you grab them?"<sup>230</sup> Said Rick Howell, Superintendent of the SCESD, of public interest in management of the Elliott:

Unless it affects them personally they aren't going to be interested in it. Their interest in the Elliott planning is not going to be because how it affects the Common School Fund it's going to be in how it affects their ability to go into the Elliott and do what they want to do. Our plan allows that ... Hopefully we're going to bump it up to about 40 million, in a five billion dollar budget not a huge impact. Even money not going to make them be as aware of or care unless it's 40 million transferred into their bank account. That doesn't mean we don't ask them.<sup>231</sup>

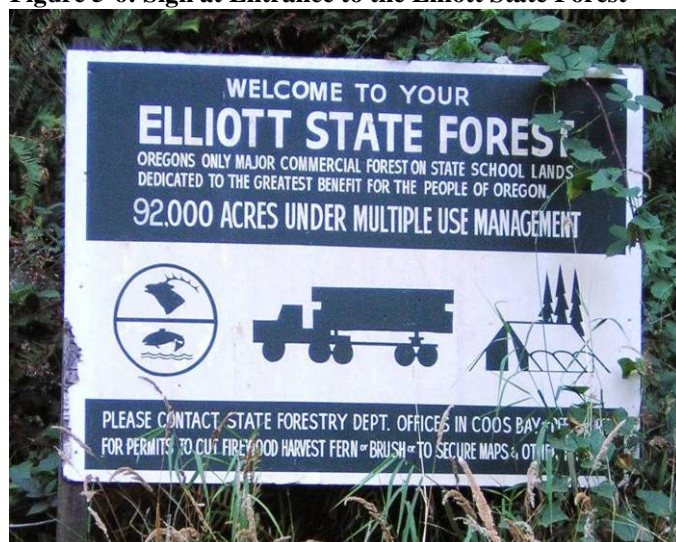
A number of factors could explain the poor turnout at meetings. First and foremost, the Elliott is a long way from Portland. According to Steve Thomas, Assistant State Forester, if there is a meeting for a plan on the nearby Tillamook and Clatsop forests, 100 people show with lots of questions.<sup>232</sup> According to Francis Eatherington, Forest Monitor at Umpqua Watersheds, Inc, there are significant differences between the attentions paid to the Elliott compared to other more well-known forests:

It is very difficult for us in Roseburg because we don't get the same input as the Salem/Portland folks. They get to go to more meetings and participate in public comment. The Board of Forestry knows who they are. The Elliott doesn't get the same advocacy as the Tillamook does. The Tillamook is right outside of Portland and there are a lot of people loving it. The Elliott is sort of this lost forest out here that only the murrelets love.<sup>233</sup>

The Tillamook has a significantly higher amount of recreational use compared to the Elliott. The Elliott does not have any hiking trails, only logging roads and a few scattered campsites leaving few opportunities for recreational use. Eatherington added that the sign at the entrance to the Elliott is also misleading in what it purports (Figure 5-6):

I think the spirit of the sign is good but camping, fishing, and hiking? There is none of that there ... there are zero miles of hiking trails on the Elliott. Want to know why? There is no good reason why. [The ODF and DSL] say that it's illegal to have them on Common School Land but I have yet to come across a CFRI that says that ... they could advertise it as a bicycle trip. You can see the ocean from the ridge road.<sup>234</sup>

**Figure 5-6: Sign at Entrance to the Elliott State Forest**



Source: Photograph by Eirin Krane

Secondly, many of the Steering Committee members interviewed conceded that the times of the public meetings, typically in the evenings when people were at home with their families, made it challenging for local people to attend unless they had a high degree of interest. Stated Bob Ragon of Douglas Timber Operators:

The problem with most of these processes is that the average public tunes out. Who is going to read an [Environmental Impact Statement] that is two inches thick? ... Part of the reason [for the lack of public involvement] is that the issues are so complex and the detail is so great that the average citizen won't bother to read or understand it.<sup>235</sup>

Thirdly, as Ragon mentioned, the complex nature of the FMP and HCP and the huge volume of material to read, it would be nearly impossible for anyone to read two reports, each hundreds of pages long in their spare time. Also, most people are not familiar with the legal requirements and policy frameworks that come into play on Common School Forest Lands, like the Elliott, making it more difficult for them to give substantive comments.

### **Online Comment Process**

While the online comment period proved useful for those who could not attend the public meetings, there were mixed feelings as to the success of this input venue. Bob Ragon, Executive Director of Douglas Timber Operators, a regional trade association representing the woods products industry in southwest Oregon, stated that he feels the process is very open: “[The Steering Committee is] interested in comments. I could send them a letter tomorrow and they would say ‘thank you very much.’”<sup>236</sup> Francis Eatherington had different feelings about the comment process:

Last year we kept waiting for an announcement that the Annual Operations Plan was up for comment. There was no email or written announcement. I went to the website and found it was over in a day ... They extended the

comment period for me a couple of weeks because I wasn't notified. This year I kept checking. A simple email list or a post on the website would work but they don't do that. The BLM does that. From the BLM we get notifications all the time that the websites has been updated.<sup>237</sup>

Eatherington also mentioned that the ODF website is difficult to navigate, with no direct link to the Elliott State Forest. She goes further to express her frustration at the lack of response to her comments by the ODF:

Traditionally, I do not get any response from the [ODF]. One of my biggest beefs is that they don't write us a letter back. They put the response to everyone's comment on all operations for the state of Oregon in one document on the website. I might have an issue that I wrote in about and I might find a reference to it in one line. Then they put it on their website and don't notify anyone when it goes up.<sup>238</sup>

While the online comment periods had mixed reviews by those who utilized them, the parties that were more critical of the FMP and HCP were clearly frustrated by the lack of response to their concerns.

### **Lack of Public Understanding of Trust Mandate**

Though the Steering Committee actively sought public involvement, its ability to incorporate suggestions into the final plans has been hampered by the regulations of the HCP and the constitutional mandate of the trust. The fiduciary responsibility constrains the Committee from considering the Elliott as a reserve-based forest with no cutting, a common suggestion from the public. According to Steve Thomas, with the substantial owl and marbled murrelet populations, it would be better to move towards a multi-value forest and at the same time gain the needed stability with the HCP to serve the dual purpose of protecting the species and increasing timber harvests.<sup>239</sup> John Lilly stated that the public's misunderstanding concerning the trust mandate has been a challenge: "Getting credibility about it is a challenge, in other words some people might say, 'well that's just a lot of legal mumbo jumbo that you guys are just trying to hide behind to keep you from doing the right thing on the ground.'"<sup>240</sup>

While this appeared to be the perception from inside of the process, the two interest group representatives outside of the process stated that they had knowledge of and understood the trust mandate. In this case it is difficult to draw a conclusion about whether or not knowledge of the trust mandate is widespread in Oregon; however, it is clear from the comments made by the Steering Committee members and the groups outside of the process that perhaps the values associated with Common School Lands are not well understood.

### **Creating an Us-versus-Them Dynamic with Polarized Interests**

When questioned about the public comment process, Steering Committee members noted that comments largely came from environmentalists and the timber industry, two groups with opposing views on management of the Elliott. Though not explicitly stated, many of the

comments made by those interviewed indicated that the perceptions and input of these groups, particularly “environmentalists,” were sometimes discounted because they were perceived as extreme and conservation beyond the HCP could not be accommodated given the trust mandate. This could have to do with the fact that the “environmentalists” were being critical of the process while the timber interests tended to be more supportive, with only minor criticisms. As a result, the perception of an “us-versus-them” dynamic arose between the Steering Committee and the environmental groups.

### **Problems Inherent in the HCP Process**

Challenges have also arisen in adapting to the HCP process timeline and its restraints. The HCP document is not as straightforward as the FMP, and control of the cadence of both processes is not up to the state agencies. The HCP must provide extensive data on owl, murrelet, salmon and other potentially-threatened species. The Core Planning had a lot of ground to cover to make sure the science was in place to inform the policies to manage the Elliott. The surveys, watershed analysis and dissemination took years to complete, often putting both the team and the Steering Committee behind in their work plan. John Lilly describes the complexity of the issues inherent in the Planning Process:

The Elliott is a different creature because you are trying to get a federal permit at the same time so you have to sequence all this stuff out. How do you leave decision space for the policymaker - that is the Land Board – in a way that doesn’t lock them down before the USFWS has tipped their hand as to what they will accept as an HCP? You’ve got to leave all that decision space mushy so that you’re not taking away your policymaker’s prerogatives. We’ve always said that if the price of the HCP is too high, we won’t get one. How do you know if it’s too high, until you walk that road with the scoping, the draft EIS, the plan to present on the HCP to find out whether or not it’s going to be something that is acceptable to USFWS and NMFS and we can decide to go back to the board and say, “Board, we think this is worth the effort. We think this is going to be okay.”<sup>241</sup>

When the subject of working with the federal services was broached, all of those interviewed felt that this represented one of the largest impediments to the process. Dan Shults summed up his frustrations, “The goalposts seem to move. You think you have a pretty good agreement on a set of principles or set of objectives or management you’re going to employ and somewhere down the line, someone higher up in the organization can say, ‘nope, that’s not going to work.’”<sup>242</sup> The general consensus was that the federal services were not very forthcoming about what is acceptable. Lilly summed up his impression of the situation: “The federal services want to be outside the process because they have veto authority. They tell you whether or not. They are not negotiating. They are above the process.”<sup>243</sup>

The Steering Committee attempted to overcome this challenge by including staff from the USFWS and NMFS on the Core Planning Team. The Team worked jointly with the federal agencies’ staff to conduct wildlife, hydrology and aquatic species surveys on the Elliott. This was strategic according to Dan Shults:

A key value of this collaborative process is including the services along the way and getting them out on the ground and looking at some of the stuff on the ground ... they are part of the process in developing solutions ... as we get closer to the end game we'll be able to go to their supervisors and they will have buy-in. Hopefully they will be able to support what we are proposing together and I think that will help.<sup>244</sup>

The decision on whether or not to approve the HCP is not made by the “on-the-ground” staff, but rather their superiors at USFWS and NMFS. The real determinant as to whether the Steering Committee’s efforts at including the federal services has been an aide in overcoming the challenges inherent in the HCP process is yet to be seen because the plan has not been submitted for approval. However, if the Incidental Take Permit (ITP) is issued, the inclusion of USFWS and NMFS staff in the Planning Process will likely be seen as a large part of its success.

### **Technical Uncertainty and Interpreting Scientific Data**

The Steering Committee has also grappled with the issue of science and how to interpret the findings of the studies conducted by the ODF in cooperation with USFWS and NMFS. Throughout the HCP process there have been issues concerning the validity of scientific information collected by the USFWS and NMFS versus the data collected by the state agencies. Said Dan Shults: “You’d think good science is something everyone agrees on, but there’s a very fine line between what is scientifically proven and what scientific opinion is.”<sup>245</sup> Additionally, many of the threatened species that inhabit the Elliott State Forest have only recently been under observation by scientists. The examination of habitat requirements for the marbled murrelet intensified when the 1995 HCP was approved per one of the contingencies of the ITP. Data on the spotted owl has been produced since the early 1990s and some would argue that their remains to be a complete understanding of the species habitat requirements.

Members of the Steering Committee felt at times that the HCP process was unduly burdensome. Some felt that they were being penalized by being forced to mitigate threatened species habitat in the Elliott when there were other factors affecting the wildlife outside the forest that they had no control over. According to Shults, “Salmon are hugely impacted by ocean conditions that we have no control over. That said, it’s also important to have good habitat on the inland side ... but the degree to which you maintain it, what is actually required versus someone’s opinion of what is required is arguable.”<sup>246</sup> Though no simple solutions could resolve the interpretation of science, the Steering Committee members opted to be conservative in balancing the trust mandate and threatened species protection by increasing the amount of timber harvested in the HCP by a moderate amount. They also included potential, but non-listed species in the HCP to ensure they would not have to go through another HCP process if one or some became listed.

## Dealing with the State Agencies and State Politics

The number of state agencies involved in the Steering Committee and the management of the Elliott was challenging in so far as each agency has its own hierarchical structure that could impede the forward movement of the HCP/FMP process. The DSL is a small agency with many management responsibilities. Thus, the DSL staff had to be strategic about allocating their time and attention to each area of concern. Steve Thomas, ODF Assistant State Forester offered his perspective of this issue: “Another tough area for us resource wise for us [Steering Committee] with the DSL ... it is not a big agency and they have a lot of things going on. The Planning Process has strapped them to be at our meetings.”<sup>247</sup>

The hierarchical structure of the Land Board and the DSL has, at times, impeded the forward movement of the process. Recall that the Land Board is made up of the three highest elected officials in the state; the governor, secretary of state and treasurer. Because the Elliott also contains BOF lands, they must also be consulted on policy decisions within the HCP and FMP processes. Steve Thomas described some of his frustrations with the system:

The Land Board is made of people you just don't get at meetings to talk about things. When at official board meetings if you get an hour, it's like manna from heaven, it's like nirvana. Usually you get 10 minutes. Typically you end up talking to them through their assistants. When you come to the meeting everything is supposed to be taken care of. Whereas with the BOF there are no secondaries to go through there is just the Board. The BOF wants to hear everything; they don't want anything filtered out. The Land Board is not the same case. They don't want everything to come floating out on the table during the meeting because of the political situation.<sup>248</sup>

Added Thomas about a situation where the Secretary of State and the Treasurer requested additional meetings to discuss the Planning Process, “We can't talk to [the Secretary of State and State Treasurer] together because any combination of two of them together is a quorum.”<sup>249</sup>

The state-level politics associated with the Land Board also affected the Planning Process. Because the Land Board is made up of elected officials, they are more vulnerable to endangered species politics and timber interest groups. Conversely, the Steering Committee, with its majority of participants being bureaucrats, is more insulated from state politics. Many of the committee members are also from southern Oregon, an area steeped in the timber industry and ground zero for the logging wars of the 1990s. While it has not created an overt conflict between the Land Board and the Steering Committee, there is recognition of the clash in values between the two within the Steering Committee. According to Commissioner Griffith, “[The Land Board members] are state-wide politicians and the majority of Oregon citizens are in the Portland area. They are not going to do anything to offend too many people whether the schools are closing or not.”<sup>250</sup>



## **FACILITATING FACTORS**

Several facilitating factors were instrumental in creating a positive collaborative process for the members of the Steering Committee within the Elliott State Forest Planning Process. These include personalities and relationships, commitment to the process, the process structure, and forest modeling.

### **Personalities and Relationships**

The personalities and the relationships developed among the Steering Committee members have facilitated the forward momentum of the process. Nearly all interviewees cited the healthy relationships between committee members as having facilitated what they see as by and large a successful process.

One of the most colorful personalities on the committee belonged to Commissioner Griffith. When Commissioner Griffith joined the committee, he replaced his predecessor who had not taken an active role in the process. In his past positions, Commissioner Griffith has been a reporter, logger and member of several collaborative resource management councils. All of these experiences have colored his opinions on the Elliott Planning Process. Commissioner Griffith saw his role as pushing for as much timber extraction as was feasible with the HCP. He described his role in the Steering Committee:

Because they are bureaucrats, permanent employees or as permanent as they can be of the state agency that ultimately have to answer to the Land Board, they're not as situated as I am or of the same sort of view as to how far they can push to meet the constitutional goal. They don't, since they are employed by ODF, want to risk irritating the governor too much, whereas me, I think it's my job to do so when the local economy and school funding are on the line.<sup>251</sup>

According to Steve Thomas, Assistant State Forester, "John caused us to sharpen our pencil a bit."<sup>252</sup>

The relationships between Steering Committee members also served to keep all members up to date on the process. As the only two on the committee that were not employed in a state agency, both Commissioner Griffith and Rick Howell had to become familiar with ODF practices and policies relatively quickly. Howell described how he felt upon joining the Steering Committee and how Jim Young helped him get up to speed on the process:

When I came on the process I was behind by quite a bit and [Jim Young] and an ODF staff member came in and spent a lot of time with me. They had a bunch of maps and charts and gave me some visual aides ... They took me on a trip to see all the different basins [in the Elliott] so I could get a better picture of what they were talking about. I got to see current cuts and how they are managed and where the current sales are. The trip made it more real.<sup>253</sup>

The personalities of the rest of the Steering Committee also have facilitated a more open process. Says Dan Shults, “Everyone knows where other people are coming from and where the push-pull is and we end up with pretty good compromise and resolution on those things.”<sup>254</sup> Steve Thomas, Assistant State Forester, felt similarly: “Getting different people’s perspectives; that is always useful. We are all open-minded but we all have our glasses that we look at the world through.”<sup>255</sup>

### **Commitment to the Process**

The commitment to the Elliott State Forest Planning Process also served as a facilitating factor in the process. Commissioner Griffith took particular interest in researching and understanding all aspects and legislation guiding the Planning Process. He also employed a technique to keep himself and other Steering Committee members on track:

I had this laminated to the front of my Elliott binder in case the guys get a little out of shape – Article 8, Section V<sup>256</sup> of the state constitution. They hate it when I have to do that; they can tell when we are starting to get to an impasse. When I first got on the Steering Committee I had to do quite a bit of work – I thought it would be easier to photocopy it and laminate it to my binder. It brings them back closer to the track.<sup>257</sup>

The Steering Committee members also were very committed to putting in the extra work and personal time to attend meetings and keep abreast of the numerous iterations of the FMP and HCP. This commitment was considerable given the voluminous amounts of reading that accompanied the process. Dan Shults described what he saw as one of the many successful elements of the process: “The Steering Committee folks have been really good about doing their homework ... page by page as a group they have made a lot of fairly significant changes for the betterment of the plan.”<sup>258</sup>

The addition the commitment of the two non-traditional stakeholders, Rick Howell and Commissioner Griffith, also drew praise. According to Steve Thomas, Assistant State Forester, “Putting education folks on there [Steering Committee] was DSL’s call. We had no idea what the relationship was going to be like but Rick has jumped in there like a trooper and has worked out just like everybody else.”<sup>259</sup> Thomas went on to describe in more detail how Howell and Griffith have added to the Planning Process:

I have enjoyed Rick Howell’s participation. He has come into an arena that is completely outside of his normal workings, has asked good questions, gotten involved and stayed up with the material. If I hadn’t known John Griffith through another forum, I would have been amazed at the due diligence he puts into every homework assignment. He reads everything in front of him. He’s a really value-added person to the group because he digs into everything.<sup>260</sup>

Evidently, the involvement of these two non-traditional stakeholders has been a benefit to the process, facilitating positive relationships and constant reinforcement of the committee’s obligation to meet the trust mandate.

## **Planning Process Structure**

The decision to create of a bi-level planning process, with the Steering Committee focused on policy issues and the Core Planning Team on science, has by all accounts been successful. The structure of the process allowed Jim Young and Mike Schnee, State Forests Planning and Policy Manager, to serve as liaisons between the two groups. They facilitated the communication between the scientist and policy advisors. On the Steering Committee, Young and Schnee presented the scientific findings and data to the participants to keep them up to speed on the technical aspects of the plans. On the Core Planning Team, Young and Schnee provided the policy perspective. The well-defined structure of the Steering Committee has also facilitated the success of the process.

The adoption of the Guiding Principles as part of the structure also facilitated a smoother process. The Guiding Principles gave the process direction as well as specific goals and objectives to work towards while developing the FMP and HCP. The regulatory frameworks in which both the FMP and HCP had to fit within were included either explicitly or implicitly in the text of the principles. The early Steering Committee spent a significant amount of time crafting them and often referred back to them over the course of the process. Said Jim Young in regards to the utility of the having the Guiding Principles, “What it did was define the playing field for us essentially. They made sure we were not getting off on a tangent that we didn’t belong on.”<sup>261</sup>

## **Forest Modeling**

Many felt that the ability to display scientific data on ecosystem-wide level was an extremely helpful tool in the Elliott State Forest Planning Process. The forest modeling in particular was initiated to assist the Steering Committee in better understanding what the Elliott would look like under various management regimes. According to the DSL’s John Lilly modeling was the hallmark of the process: “Once you can present to a policy maker a chart that on one page they can see what the harvest levels would be under various management regimes, then you have a very powerful tool to help them make informed decisions.”<sup>262</sup>

However, one of the Steering Committee members felt that modeling was a panacea. This concern was largely derived from the challenges inherent in understanding the complexities and outputs of the modeling program. Steve Denney, Southern Area Director for ODFW, identified some of the elements he found challenging about the modeling:

They hired people to construct very specific timber harvest models. I think they are really difficult for people to understand. The outcomes of models, in my experience with wildlife population models, are only as good as their inputs. You have to build trust that the inputs are good to get people to buy in on the outputs and people will often question whether the information was good to begin with ... With some of the modeling aspects, I get completely lost. If I am lost then lots of others will be too.<sup>263</sup>

The two perspectives on forest modeling demonstrate that while tools such as modeling can be very useful, they are not error-free and can be challenging to comprehend. However, despite these issues, the use of forest modeling was a facilitating factor in developing the FMP and HCP.

## **LESSONS LEARNED AND ADVICE FOR FUTURE PROCESSES**

Several lessons can be taken away from the analysis of the Elliott State Forest Planning Process to further inform collaborative efforts on state trust lands.

### **1. Using technology to capture both the economic and environmental values of land can be beneficial.**

John Lilly saw the technological tools such as modeling an important part of quantifying the values associated with the forest. This not only allows more cogent assessment of all the factors involved in the HCP and FMP but in the outcomes as well. He offered this advice:

You've got to find a way on key issues to quantify or qualify them to a point where you describe biological functions, populations, habitats, and the condition of those habitats to the point where people can then talk about how they value the number of critters or the quality of habitat. Say if you want 60 percent of the forest under advanced structure then we know how to silviculturally get you that.<sup>264</sup>

While tools such as modeling can synthesize many complex aspects of a process it is important to remember that the model cannot necessarily capture every element appropriately. Models are only as good as the input data, and while they can be useful tools for informing future outcomes, they cannot include all factors that exist in reality. Therefore, models and other technology-based tools to capture environmental and economic values should be considered only as tools and not as an accurate depiction of the future.

### **2. Soliciting public input in a top-down collaborative effort can be ineffective if the public is not interested in the issue and serves to frustrate outside interest groups if they perceive that they are not being heard.**

Implementing an effective public input process was one of the more thorny issues of this planning process. Despite the valiant attempts of the Steering Committee to provide numerous ways for the public to give feedback on the process, it was viewed as largely unsuccessful. To quote Jim Young, "The public process hasn't appeared to facilitate greater understanding of what the Elliott is supposed to do and be. It seems like there is not much interest in the forest from the public side and I am not sure how effective the public meetings are."<sup>265</sup> The Steering Committee members often mentioned that they wanted to hear from the "general public" in the comment period but in the same breath they stated that most of the general public does not have the time to attend meetings and read the planning literature. It is clear from the comments mentioned previously by Francis Eatherington that she was interested in the Planning Process and made a significant effort to voice her concerns in

public meetings and through written comments. However, her comments also indicate that she felt frustration because her comments and suggestions were not acknowledged in an appropriate manner. Thus, any endeavor that includes opportunities for public involvement should be prepared to address a lack of public interest in the issue and be sensitive to how those outside of the process perceive it.

### **3. Ensure that participants have adequate time committed to the effort and be strategic about how time is used.**

Given that the Elliott State Forest Planning Process has taken place over five years and is still not complete, participants in a similar process must be willing to see it through to the end. This can be challenging when participants have other professional and personal responsibilities they must attend to. One of the ways that the Steering Committee and Core Planning Team were strategic about using their time was to outsource some of the information gathering. Outside contractors were hired to complete species surveys and a watershed analysis was also useful in expediting the process. Had the Core Planning Team tried to conduct the surveys in addition to their other duties, it is likely that the Planning Process would have lagged even further behind its projected work plan. Jim Young offered practical advice for engaging in another collaborative process:

My suggestion for the future is make who ever are working on it their only project or primary project. If people devoted their time solely to this project then it would have gone faster. Also, consider hiring a contractor with relevant experience and that is familiar with these types of plans.<sup>266</sup>

### **4. Use collaboration strategically in situations that warrants its added time and energy.**

All of the participants interviewed stated that the Planning Process was value-added. They had a lot of advice to impart to others considering a similar process, largely directed at the amount of time involved. Dan Shults found the process highly beneficial, but also stated that collaborative is not always appropriate in every circumstance:

Make sure the stakeholders are engaged and involved and listen to what they have to say. Be prepared for a process that takes a lot more time that you think initially. It's time well spent because it saves you time on the other end. We probably wouldn't have needed to do a collaborative process but in cases where people have a lot of outside interests that are divergent and in some cases conflicting then you need to look hard at a collaborative process. It's not a cure-all; there's some places where it's what you need to do and others where it's probably not.<sup>267</sup>

One of the key take-away lessons from an analysis of the Elliott State Forest Planning Process is that not all resource management issues on state trust lands can incorporate a high degree of collaboration with the public and interest groups outside of the process. The HCP processes include public comment and review, but the public is not actively part of the decisions being made. The public is only being heard in a general, albeit censored way. With

that caveat, however, the Elliott State Forest Planning Process can be considered an effective collaborative process

##### **5. Stacking the representation of stakeholders towards one interest can lead to an uneven process.**

The stakeholders represented on the Steering Committee were those who had an economic interest in the management of the Elliott State Forest. From the outside, the representation on the Committee could be viewed as uneven with respect to non-economic interests. The assembly of representatives at the table reflected the complexity of the situation at hand; completing a multi-species HCP with the ultimate goal of raising harvest levels on the forest. Arguably with the challenges inherent in crafting an HCP and the added pressure of a timeline for the process made selecting those with similar interests a logical choice. Despite the fact that many Steering Committee members iterated that they felt the similarities in interests facilitated the process Young indicated that it might have been a beneficial to have a representative from the environmental community on the Steering Committee, though he was the only one interviewed who felt this way. “We didn’t have somebody that represented that necessarily. We did have folks interested in the revenue side of things but we didn’t have an environmental player.”<sup>268</sup> While it can be viewed as inviting more conflict into a situation, including representatives from interest groups that have frequently voiced opposition to a process can be educational for all parties involved and facilitate buy-in from all parties at the table.

## **EPILOGUE**

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In October 2005, the USFWS announced it was considering de-listing marbled murrelets from the threatened species list. It is likely that the announcement came as a response to arguments from the wood products industry that the murrelets found from California to Washington do not represent a distinct population from those found elsewhere. Hundreds of thousands of the marbled murrelets can be found in Canada and Alaska. Jim Young stated that, “the Committee isn’t quite sure what we are going to do, but it is likely that we will continue with the HCP as planned.”<sup>269</sup> This is a prudent decision because when the final decision from USFWS comes down, either way it is highly likely that a long and drawn-out court battle will ensue.

Both the FMP and HCP are getting closer to completion. Once complete, the revised FMP and HCP must be approved by the Board of Forestry, ODF’s governing body, and the State Land Board. The Steering Committee went before the BOF for preliminary approval of the FMP on January 4, 2006. According to Young:

The Board had a list of questions and concerns about the HCP with regard to the murrelet and the Coho [salmon]. We got approval to continue developing the HCP and at the time both plans are ready for approval, we will ask the Land Board and Board of Forestry for approval.<sup>270</sup>

In February, the Steering Committee will go in front of the State Land Board and ask for the same approval.

The revised plan will likely increase harvesting to about 38 to 44 million board feet per year. That gives the forest a net present value of approximately \$370 to 389 million and a rate of return of barely four percent on asset value. In the cost-benefit study, the consultants felt that under an industrial model, the forest would be worth in the neighborhood of \$600 million.<sup>271</sup> Even though this seems lower in comparison, since the Land Board owns the Elliott outright a rate of return of four percent is acceptable. The Land Board takes a very long-term approach to Elliott's management and according to John Lilly:

At the same time we're going to be able to manage resources to preserve them for the future so that if these critters recover, and the forest can be more intensively managed in the future, then we have that option ... If the state of the biology of these birds changes, if they get de-listed, if somebody discovers that they're more able to cope in more habitats than we think today then that's going to change the complexion of things and we can come back and revisit the plan.<sup>272</sup>

In March 2006, the final draft of the HCP and the final draft of the EIS will be available for public review. The Steering Committee hopes that by November both plans will be finalized. April 2007 has been slated as the approximate date in which the USFWS and NMFS will issue their decision on whether or not they will approve the HCP and subsequently issue the ITPs for all the species listed in the HCP.

## **LIST OF ACRONYMS**

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**BOF** – Board of Forestry

**DSL** – Department of State Lands

**DTO** – Douglas Timber Operators

**EIS** – Environmental Impact Statement

**ESA** – Endangered Species Act

**FMP** – Forest Management Plan

**HCP** – Habitat Conservation Plan

**IP** – Implementation Plan

**ITP** – Incidental take permit

**NMFS** – National Marine Fisheries Service

**NEPA** – National Environmental Protection Act

**ODF** – Oregon Department of Forestry

**ODFW** – Oregon Department of Fish and Wildlife

**SCESD** – South Coast Education Service District

**USFWS** – U.S. Fish and Wildlife Service

**UW** – Umpqua Watersheds, Inc



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John Lilly  
Bob Ragon  
Dan Shults

Steve Thomas  
Roger Welty  
Jim Young

## CHAPTER 6

### **THE EMERALD MOUNTAIN PLANNING PROCESS: Partnering to Achieve Trust Outcomes and Protect Local Landscapes**



Emerald Mountain and adjacent private ranch land, Steamboat Springs, Colorado  
Photograph by Lisa Spalding

**Written by Lisa Spalding  
Researched and Edited by Lisa Spalding and Matt Stout**

## INTRODUCTION

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As with many of Colorado's ski towns, the landscape around Steamboat Springs has changed as out-of-towners moved into the area and purchased natural and agricultural land for residential use.<sup>1</sup> Emerald Mountain is a scenic, 6,000-acre parcel of state trust land that lies west of adjacent Steamboat Springs. The parcel currently generates yearly revenue for the State Land Board (SLB) from agricultural leases. However, considering its attractiveness to developers in a vibrant Colorado ski town, it could be subdivided and sold for residential development to allow the Land Board to purchase higher revenue-producing property in its place.

The increased development interest in Emerald Mountain raised public concern in Steamboat Springs. In an area with rapid growth and rising land values, this large tract is increasingly cherished by the community for its agricultural use, wildlife habitat and scenic and potential recreational resources. Citizens who are concerned about preserving Routt County's agricultural heritage and open space, and local governments have begun stepping up their efforts to conserve the remaining undeveloped tracts of land.<sup>2</sup>

To conserve this resource for the community as well as meet its constitutional duty of raising money for public schools, the SLB entered into a unique collaboration with members of the Steamboat Springs community. The collaboration began in 1993 with informal monthly meetings between the SLB and local stakeholders. In 2000, this group evolved into the Emerald Mountain Partnership (the Partnership), a community non-profit organization working to identify ways to protect the property's agricultural, scenic, and recreational values. The SLB worked with this Partnership in two ways: the agency had a regional representative working directly with the community throughout the 12-year process and it eventually entered into a contractual relationship with the Partnership to give the group time to purchase the parcel at market value.

To garner these funds, the Partnership explored several unsuccessful options before deciding to coordinate a land exchange between the Bureau of Land Management (BLM) and the SLB. Through this transaction, the BLM would exchange several small, scattered and difficult-to-manage parcels within Routt County for the Emerald Mountain parcel. The BLM would then manage the property according to the agency's multiple-use objectives. Since 2002, the Partnership, SLB and BLM have progressed through the federal land exchange process. The Partnership has proposed a management plan for the parcel to the BLM, which the agency will consider as one of the four alternatives for the BLM's amendment to its regional Resource Management Plan.<sup>3</sup> The exchange is yet to be finalized.

The story of the Emerald Mountain Partnership reveals the importance of communicating openly and often with the public about the collaborative group's process and progress. This case also illustrates the value of including all potential stakeholders in the collaborative group, especially as scope of the project changes, to make sure new stakeholders are brought into the fold. Finally, the Emerald Mountain case demonstrates the importance of anticipating and mitigating potential controversies that might hinder progress or implementation.

## CONTEXT FOR COLLABORATION

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Appraising the collaborative planning work of the Emerald Mountain Partnership requires a familiarity with the context in which this project unfolded. The following is a brief overview of the relevant historical events and political issues that shaped the Emerald Mountain story.

### COLORADO'S LAND GRANT

The 1875 Colorado Enabling Act, passed by the U.S. Congress, granted sections 16 and 36 in every township for the support of common schools, totaling 4.6 million acres.<sup>4</sup> Once the lands were granted, the state followed the familiar pattern of quickly selling off trust lands to generate income for schools and encourage settlement in the state. As the landscape became more settled, the state began retaining more of their trust lands to generate income through grazing and farming leases (Figure 6-1).<sup>5</sup> Today, the state owns approximately three million acres of surface and the three million acres of subsurface below it, as well as 1.5 million acres of subsurface land to which they only have subsurface rights (Figure 6-2).<sup>6</sup>

### TRUST LAND MANAGEMENT IN COLORADO

In the early 1990s, the SLB was involved in several controversial real estate transactions that opened the agency up to public scrutiny and criticism.<sup>7</sup> In response, the structure and mission of Colorado's SLB was overhauled midway through the Emerald Mountain Planning Process. Indeed, the parcel became the "poster child" of the campaign for Amendment 16, the constitutional amendment to reform Colorado's state trust land management. At the outset of the Emerald Mountain case, the SLB consisted of three full-time salaried Commissioners, who were appointed by the Governor. The SLB operated under the Department of Natural Resources, and had six district offices throughout the state.<sup>8</sup>

Prior to Amendment 16, the SLB managed land for short-term financial benefits. While neither the state's Constitution nor statutes explicitly required the SLB to maximize revenues, court rulings interpreted the Constitution to direct the Board to achieve the maximum possible value in each transaction.<sup>9</sup> The "old" SLB's philosophy of managing state trust lands was, according to Charles Bedford, "To respond, or react to something that draws their attention to a parcel. The 'old Board' appeared to feel that the mandate to maximize revenue required it to consider selling land to whoever walked in the door at any time."<sup>10</sup>

**Figure 6-1: State Trust Land Sign on Emerald Mountain**

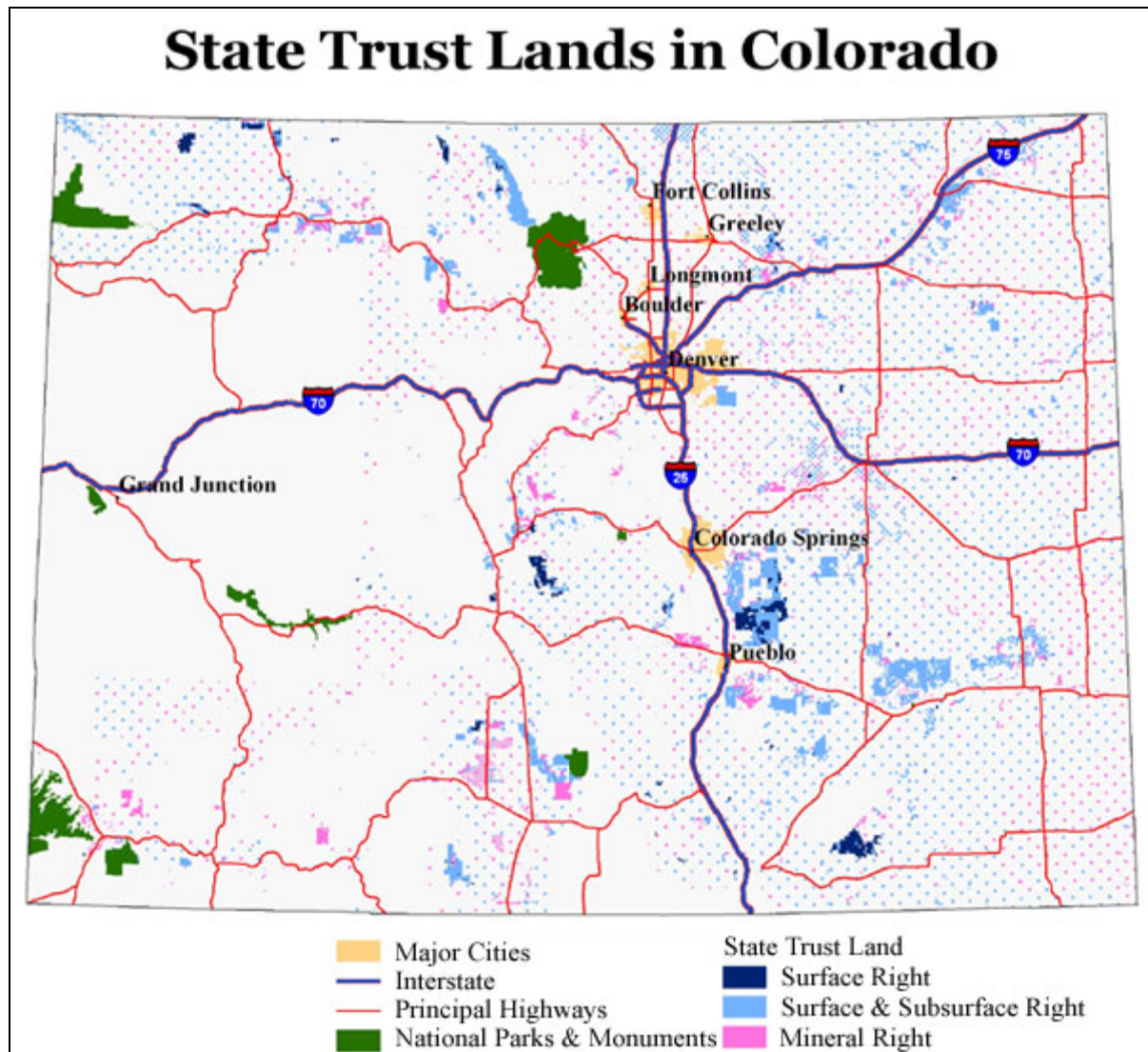


Source: Photograph by Lisa Spalding



This reactionary management style meant that the Board did not plan for the long-term, or conduct outreach or public relations work. One example of this insular approach is the Board’s approach to their monthly (public) meetings. On the day prior to the scheduled public meetings, the Board would hold a private “workshop,” which included an unrecorded dress rehearsal of the following day’s meeting, working through the agenda with full analysis of all relevant information, and open debate and discussion. At the formal meeting the next day, the Board’s discussion was an abbreviated, somewhat artificial version of the former day’s discourse, with no opportunity for interaction with the public in attendance.<sup>11</sup>

Figure 6-2: Map of State Trust Lands in Colorado



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

## **COLORADO AND ROUTT COUNTY POLITICS**

The debate over Emerald Mountain was influenced by Colorado’s political dynamics. This politically-divided state has small, dense pockets of Democratic-leaning urban areas (including the ski towns like Steamboat Springs) within a broader Republican-leaning rural landscape. When the Emerald Mountain conflict heated up in the early 1990s Democratic Governor Roy Romer’s hand-picked SLB was in place. There was “constant noise” from communities that were displeased with SLB management in their areas.<sup>12</sup> Romer, who was in his third and final term, responded by initiating the campaign for Amendment 16 to radically change the way the SLB approached land management.

## **THE STORY: EMERALD MOUNTAIN PLANNING PROCESS**

### **RIISING VALUES AND INCREASING USES CREATE LOCAL CONFLICT**

West of the Continental Divide near the northern edge of the state lies Routt County, which is traditionally home to agricultural and mining operations, and also the growing city of Steamboat Springs (Figure 6-3). A ski and resort town with a rich ranching heritage, Steamboat Springs’ population is approximately 10,000, comprising almost half of the county’s population.<sup>13</sup> The main commercial ski hill opened in the mid 1960s, and since then the town’s reputation as both a winter and summer resort destination has grown rapidly, with Olympic-caliber skiing facilities, hot springs, river sports and a downtown shopping village. Today, the town has a strong tourism-based economy, bolstered by the pastoral landscape that surrounds it.

**Figure 6-3: View of Steamboat Springs, Colorado from City-Owned Property on Emerald Mountain**



Source: Photograph by Lisa Spalding



While Emerald Mountain historically had been leased by the SLB for grazing, the agricultural activity around Emerald Mountain had diminished over time. Before 1970, approximately 25 farms and ranches operated around Emerald Mountain in Steamboat Springs. Six of these operations held grazing leases on the state trust land on the mountain.<sup>14</sup> Over the last 30 years, however, most of these agricultural parcels have been subdivided into residential properties (Figures 6-4 and 6-5). Only five ranches still operate commercially around the mountain.<sup>15</sup> Routt County's economic boom in the 1980s and early 1990s helped to fuel these changes and resulted in rising land values as out-of-towners moved into the area and purchased properties.<sup>16</sup>

As large tracks of agricultural land continued to be subdivided for residential use, the landscape began to visibly change. The public became increasingly concerned about how to preserve Routt County's agricultural heritage and open space.<sup>17</sup> Emerald Mountain Partnership Chairman Ben Beall who served as County Commissioner from 1993 to 2001 remembered, "Everyone could see all these folks were moving in, and the land was being broken up. How do we preserve our heritage, our agricultural heritage, so we don't become like every place in America?"

The "Emerald Mountain parcel" is actually a general name for a piece of state trust land that spans a broad area that includes Emerald Mountain, Agate Peak, Quarry Mountain, Quaker Mountain, Cow Creek and Twenty Mile Park.<sup>18</sup> The land is rugged with steep slopes and access is limited by private properties on the east and north sides. County roads, power line corridors, and service roads create access to the parcel.<sup>19</sup> Most of the parcel has been leased for grazing since the early 1890s, and in the 1990s four adjacent ranchers held grazing leases on the Emerald Mountain.<sup>20</sup>

Emerald Mountain was valuable not only for agriculture, but also for recreation and wildlife habitat. The rising population created more demand for convenient recreation areas for Steamboat's large community of mountain bikers, hikers and cross-country skiers. While public access is illegal on Colorado's state trust lands,

**Figures 6-4 and 6-5: Farmland for Sale in Steamboat Springs**



Source: Photograph by Lisa Spalding

mountain bikers, hikers and cross-country skiers often trespassed on the parcel. The robust elk population on Emerald Mountain dates back to a reintroduction that occurred in the early 1900s by entrepreneurs intending to create a game park on adjacent Howelson Hill for wildlife viewing. Eventually, the park management stopped and the elk remained.

In response to these increasing pressures in and around Steamboat Springs, the community took several measures to improve land use planning in the region in the early 1990s. They updated their subdivision and zoning regulations, developed community plans, set up a land trust, and passed a purchase of development rights policy. The City worked to conserve the land on Howelson Hill, which is part of Emerald Mountain that is visible from downtown. During this effort, they contacted the SLB to discuss possibilities for opening up the state trust land parcels on Emerald Mountain for recreational opportunities on existing trails and roads.<sup>21</sup>

**Figure 6-6: The Stanko Family Ranch, with Emerald Mountain in the Background**



Source: Photograph by Lisa Spalding

Increased recreational pressure on Emerald Mountain created conflicts between diverse user groups. Historically, lessees have controlled all access to the state trust land on which they hold leases. According to Jim Stanko, whose ranching family held a lease on Emerald Mountain from 1923 to 2000, “If you lease it, it becomes like yours. You have the total say over access, over who does what, when, where, and why” (Figure 6-6).<sup>22</sup> While lessees have provided hunting access to their lands, demand for access was low because there were a range of other hunting areas available.

But as Steamboat Springs grew, recreational lands within the city limits were disappearing or becoming more crowded. All of this put added pressure on Emerald Mountain to fulfill the recreational needs of the growing community.<sup>23</sup> “The problem was that if you weren’t one of our friends, you didn’t get to hunt. That started irritating people that didn’t fall into that classification,” remembered Jim Stanko.<sup>24</sup> While some lessees charged a nominal fee in order to cover their cost, others made a business venture out of these leases and charged individuals \$4,000 to \$5,000 annually for hunting access. Conflicts grew among other user groups. In some cases, mountain bikers would ride up the county road on the mountain and turn onto trails on state land and trigger openly hostile responses from one particular ranch manager.

In response to increased recreational interest in state trust lands statewide, the SLB developed a multiple-use policy to increase revenues in the early 1990s.<sup>25</sup> This policy, which allowed public and private groups to apply for recreational leases, amplified the tensions between Emerald Mountain’s agricultural and recreational users. To no one’s surprise, the current



agricultural lessees preferred to control access to the land they leased. After designating Emerald Mountain under the new policy, the SLB issued new recreational leases that allowed leaseholders to charge the public for activities such as hunting and horseback riding. While some of the grazing lessees applied for recreational leases, the city of Steamboat Springs also looked into purchasing a lease for trail development. Debate ensued over which uses would be covered by each set of leases, and who would control access to the parcels.

**COMMUNITY TEAMS UP TO RESPOND TO DEVELOPMENT PLANS**

As real estate prices rose, the increasing attractiveness of Emerald Mountain for development purposes moved the SLB to consider the possibilities of developing residential home sites.<sup>26</sup> In the mid-1990s, the Colorado SLB began to explore ways to manage Emerald Mountain for increased revenue. With rising land values and high demand for developable land, land disposal was an important opportunity to increase revenue for public schools and other beneficiary institutions.<sup>27</sup> On Emerald Mountain, agricultural leases were bringing in only \$40,000 in annual revenue, yielding an asset value of only roughly \$1 million.<sup>28</sup> The agency did not know the market value of the parcel, but current real estate trends suggested it was rapidly increasing.

The growing conflict among user groups, the City’s interest in developing recreation trails on the mountain and the parcel’s potential inclusion in the SLB’s urban portfolio stirred up concerns throughout the Steamboat Springs community about future of land use on Emerald Mountain. This interest led to the creation in 1993 of an ad-hoc collaborative planning group, which became known as the “Core Group.” While the name of the collaborative group changed several times over the next 12 years, most members of the original Core Group endured (Table 6-1). These early meetings laid the groundwork for long-term collaboration between the SLB and diverse user groups in Steamboat Springs.

The Core Group met monthly over approximately two years and discussed a variety of ways to balance competing interests and generate revenue for the SLB. The County Extension Office hosted the meetings, and Extension Agent C.J. Mucklow facilitated. Beall described the group, which included Beverly Rave, northwest representative of SLB, as “congenial” despite some differing opinions: “Sure, the State Land Board wanted to sell it, and we wanted to preserve it. But, there was a way to meet. There was a way to do both.”<sup>30</sup> Discussions were freeform, with no formal decision rule or voting process. Beall explained, “We all discussed and worked things out, and got on the same page without any knock-down, drag-out fights.”<sup>31</sup>

**Table 6-1: Emerald Mountain Core Group Membership**

<b>Core Group Membership:<sup>29</sup></b>	
CJ Mucklow	Agricultural Extension
Ben Beall	Routt County Commissioner
Jim Stanko	Lessee
Ralph Painter	Manager for Newel Grant, lessee
Jim Kemry	Lessee
Jim Hicks	Colorado DOW
Chris Wilson	City of Steamboat Springs
Robert McCarty	Colorado SLB

The SLB's goal for participating in the Core Group was to "get the value of that parcel for our beneficiaries." according to Beverly Rave.<sup>32</sup> Having created and worked with collaborative processes before, Rave also saw value in the opportunity to take "the controversy out of what we might otherwise have done. Give the community the opportunity to participate, so that the end result meets with their interests as well as ours."<sup>33</sup> Since the parcel was appreciating dramatically throughout the 1990s, Rave saw little cost to investing many of those years into working with the community: "Regardless of the fact that we weren't getting a whole lot of money out of it in terms of revenue, it was very obvious to me that we were still getting value from it because the price was going up, pretty quickly."<sup>34</sup>

Beall remembered how Beverly Rave represented the SLB's perspective to the group, "She and I have knocked heads, but in a good way. She would come down and we would negotiate. That's probably not the right word, but everybody at the table understood that it was their land, so they were at the table."<sup>35</sup>

The group examined a range of potential solutions, including creating grazing partnerships, applying for foundation grants and working with land trusts. After two years of monthly meetings, participants had made several compromises. They chose to draft a "consensus opinion" that outlined how Emerald Mountain should be managed in the future. Jim Stanko, a cattle rancher who leased a portion of the Emerald Mountain parcel, was satisfied with the members' mutual compromises. His wife Jo remembered, "When he first went, he thought they were all coming from such different directions, that they thought they'd never come to a consensus. And Jim was so proud and excited, when this group, this diverse group began working together and came together with a consensus."<sup>36</sup>

The group submitted this joint opinion as a "Community Statement" to the SLB. The document declared that the sale or development of any or all Emerald Mountain state trust lands was unacceptable, and the SLB's current policy of maximizing short-term revenues should be reconsidered to take into account both local needs and long-term goals. The group then outlined their set of goals for the parcel:

- Prohibit housing development on the land
- Retain agricultural use and maintain livestock grazing
- Allow public hunting with controlled hunter numbers
- Improve wildlife management and reduce wildlife conflicts with adjacent landowners
- Allow controlled public recreation that pays its fair share and is compatible with other uses
- Generate more revenue for the Colorado SLB in perpetuity than is currently generated today by fully utilizing the multiple-use plan
- Develop a land use management plan to improve all the resources, both natural and human, of Emerald Mountain<sup>37</sup>

Finally, the Core Group requested five years to develop a community plan for the parcel that "benefits our community and the citizens of Colorado as well as substantially increasing revenues to the State Land Board." During this time, they proposed to identify potential uses

and stakeholders, evaluate alternatives, assemble funding sources, write a plan and create an organizational management structure.

The SLB felt they needed to explore a range of options to generate a reasonable rate of return. Around this time, the agency continued discussing moving the Emerald Mountain parcel into their urban portfolio, a status shift that meant it could be considered for disposal or residential development. This Urban Lands Account was a holding bin for lands being prepared for development within ten years or less.<sup>38</sup> The community took this proposal as a sign that the possibility of development on the parcel was imminent.

To continue to explore this option, the agency hired a contractor named Charlie Foster in 1995 to conduct a planning study to assess the property's development potential and outline a set of development scenarios to increase revenue. Beverly Rave described the report: "Charlie put together a basic study of the property and developed some alternatives that the Board might consider for what they could do with that parcel to get some additional revenue."<sup>39</sup> Foster outlined scenarios for six to 18 building sites and presented the following three alternatives:

- Continue current uses, but develop limited large tracts or subdivisions in selected areas
- Initiate a multiple use plan that involves limited development
- Sell or exchange all significant areas of Emerald Mountain, if effective and fiscally responsible management is not an option<sup>40</sup>

Foster recommended the second, multiple-use planning option and estimated the value of the parcel at between \$6 million and \$7 million.<sup>41</sup> With the report completed and approved by the agency, the SLB held a public meeting in 1995 in Steamboat Springs to present its findings to the community.<sup>42</sup> Jim Stanko remembered the community's strong reaction to the presentation: "Once the word got out that it was going to be sold, the city of Steamboat got excited, the county got excited, you know, all kinds of people got excited. Everybody protested."<sup>43</sup>

To develop an alternative solution, Routt County proposed to coordinate a community-based planning process to work out an alternative solution.<sup>44</sup> The Emerald Mountain Steering Committee was born. The County Planning Department led this continuation of the local planning effort, and expanded the set stakeholders and interests from those represented in the Core Group. The new Steering Committee included representatives from the County, City, adjacent property owners, lessees, recreational interests, local land conservation organizations, wildlife interests and community members.<sup>45</sup> The SLB's Beverly Rave joined the group meetings to offer guidance.

The group initially proposed to write a land use plan for the parcel, intending for this plan to be adopted into the County's Master Plan. However, the SLB was concerned that their plan would not incorporate development options, so it would not realistically address the Board's mandate to manage the land for revenue. In response to the agency's concerns, the Steering

Committee switched gears in 1995 and tried to pursue the multiple use option included in the Foster Report.

The group's new objective was to develop a multiple-use land management plan based on the Core Group's joint set of goals. A subset of Committee members representing all the above interests undertook this task, and was chaired by County Commissioner Ben Beall. "So the Board agreed to do a planning lease to Routt County for five years to give them a chance to see what they could come up with," described Beverly Rave.<sup>46</sup> The terms of the 1995 five-year planning lease negotiated by the SLB and the Routt County Board of County Commissioners were to include one rent-free year, followed by four years charged at \$1 per acre annually, totaling \$6,900 per year.<sup>47</sup>

### **AMENDMENT 16 OVERHAULS COLORADO'S STATE LAND BOARD**

Emerald Mountain was not the only parcel of Colorado's state trust land that was mired in conflict in the 1990s. Some other parcels being considered for sale around the state were also highly valuable to local communities for open space, scenery or wildlife habitat. The public was increasingly concerned about the impacts of sprawl development and rapid growth, and increasingly voiced concerns with sale proposals.<sup>48</sup> Controversial SLB transactions fueled growing public scrutiny over the agency's decision making. One controversial sale occurred in southern Routt County in 1995. The SLB failed to adequately consult local government before entering into a contract with a developer to subdivide a 640-acre parcel into 35-acre parcels (which, due to their size, avoid local land use regulations and oversight).<sup>49</sup> While this action increased the tension between the SLB and Routt County Board of County Commissioners, similar SLB transactions were creating friction with many other Colorado communities.<sup>50</sup>

The Governor's office received a rising number of public objections to the SLB's activities. Indeed, a subsection of the Emerald Mountain Core Group went to Denver to voice their concerns to Romer in hopes of influencing the SLB's actions from above. Jim Stanko's message to Romer on that trip was, "Governor, your land board is out of control. Do something about it."<sup>51</sup> Charles Bedford, who was Romer's deputy legal advisor at the time, recalled that Emerald Mountain was prominent on the list of grievances:

We started hearing about Emerald Mountain and about the Land Board's desire to develop or sell, or maximize value, back in 1994. There was just constant noise about it. They were basically just at loggerheads. The Land Board would propose something 'let's do 800 houses on this part of it' and the community would come unglued. The governor's office would say to the Land Board, "what are you doing?" The Land Board would say, "we're just trying to maximize value."<sup>52</sup>

In response to heated controversy around proposals for land disposition, Governor Roy Romer worked with his staff and environmental groups in 1995 to write Amendment 16. This ballot initiative would redesign both the principles and the structure of the SLB. With the assistance of Citizen's to Save Colorado's Public Trust Lands and other environmental

groups, Governor Romer collected sufficient signatures to get the proposal on the ballot, and fought hard to see it pass by a margin of 1.8 percent.<sup>53</sup>

The Amendment, according to Charles Bedford, “Basically brought [the SLB] out of the 1890s into the 1990s.”<sup>54</sup> This revision shifted the SLB’s mission away from maximizing trust land revenue to “producing reasonable and consistent income over time,” and replaced the existing three-member salaried board with a newly appointed five-member volunteer board with broader geographical representation, expertise and constituencies.<sup>55</sup> Most importantly to the Emerald Mountain case, the Amendment required the SLB to comply with local land use regulations and plans. This obligation opened the door for collaborative work with local communities to coordinate planning on state trust lands.<sup>56</sup>

The Amendment also created a Stewardship Trust of 295,000 to 300,000 acres (approximately 10 percent of landholdings) determined to be valuable in the long-term, in order to preserve land for future benefits to the trust. Stewardship Trust land can not be sold unless it is first removed, which required the consenting votes of at least four of the five SLB Commissioners. The Trust would be established through a statewide public nomination process, and any land removed must be replaced with the coincident designation of other lands of roughly the same acreage. The Amendment also made other important changes, including explicitly allowing the Board to sell or lease conservation easements on state trust land and developing stewardship incentives for grazing lessees.<sup>57</sup>

Many citizens, including some of those on the Emerald Mountain Steering Committee, mistakenly thought that the Stewardship Trust would protect land in perpetuity. The Committee had strongly advocated for the Amendment in hopes of including the Emerald Mountain parcel in the Stewardship Trust. The misunderstanding was perhaps a consequence of Emerald Mountain’s widespread use as the “poster child” in Romer’s state-wide campaign promoting the Amendment. This promotion occurred most notably when Governor Romer visited the site to launch the petition initiative, producing public relations photos of him literally pointing to Emerald Mountain in the background as an example of state trust land that should be conserved for future generations.<sup>58</sup> Once the Amendment passed and the Stewardship Trust was established, the community advocated for, and successfully nominated the Emerald Mountain parcel for designation.

However, after the parcel was designated into the Stewardship Trust in 1998, the Emerald Mountain Steering Committee got a rude awakening and had to work within the constraints of the Amendment. Only some members understood that the actual Amendment promises only that a certain number of acres would always be held in trust, and parcels would require the SLB’s four-fifths vote to be removed. Susan Otis described this widespread confusion:

The citizens of the state felt the Stewardship Trust was going to set aside some of the State Land Board lands so they would be free from development, or they wouldn’t be under pressure of development. But in reality, the State Land Board interprets the Amendment in a way that only gives communities the opportunity to “buy” the time to come up with the money to resolve the protection of those lands.<sup>59</sup>

For some participants, the realization that the Stewardship Trust was merely a temporary fix was frustrating. Jim Stanko recalled:

We thought, that'd be it! We'd get it in the Stewardship Trust. Then, you know, they couldn't sell it. Everybody could use it. It would become what Amendment 16 was supposed to be about. Well, we got it into the Stewardship Trust. And then the State Land Board said well, this is only a temporary thing.<sup>60</sup>

### **A NEW EMERALD MOUNTAIN PARTNERSHIP IS BORN**

At the end of 1999, the County's five-year planning lease was approaching expiration. The SLB conducted an appraisal of the fair market value of the parcel based on the highest and best use, which was one "gentleman rancher" purchasing the entire parcel. This appraisal came back as \$17.2 million.<sup>61</sup> The community was concerned that a land sale was imminent, and with the support of Routt County and the city of Steamboat Springs, the Emerald Mountain Partnership (the Partnership) was born in February 2000.<sup>62</sup> The Partnership's goals were the following:

- The prudent management, location, protection, sale, exchange or other disposition of trust lands within Emerald Mountain in order to produce reasonable and consistent income over time for the beneficiaries of Colorado State Board of Land Commissioners trust lands
- The conservation, preservation, protection and enhancement of open space and scenic lands for the benefit of the public and future generations
- The maintenance, protection and enhancement of wildlife habitat and wildlife resources
- The maintenance and preservation of agricultural lands, agricultural operations and activities and the agricultural heritage of Routt County
- The creation and management of public recreational opportunities compatible with open space preservation, wildlife and agriculture
- The development and implementation of educational and scientific opportunities and programs relating to wildlife, wildlife management, land preservation, conservation, and sustainable agricultural activities
- Collaboration and communication with, and the development of cooperative programs with the Colorado State Board of Land Commissioners and other state and federal agencies, charitable organizations, citizens groups and others to promote the purposes and goals set forth above<sup>63</sup>

The Partnership originally was designed with a seven-member Board of Directors composed of two City appointees, two County appointees and three additional members. Over time, however, the Board was expanded due to high level of interest and commitment of old and new members.<sup>64</sup> Based on legal advice, the Partnership also created an Advisory Council comprised of individuals, organizations or agencies who either had "a land ownership interest [and] who would benefit from Emerald Mountain," or possessed helpful knowledge

or expertise.<sup>65</sup> Members of the latter would be included in discussions but did not have a vote in decision making (Table 6-2).

**Table 6-2: Emerald Mountain Partnership Membership**

<b>2000 Membership</b>		<b>2002-2006 Membership</b>	
<b>Board of Directors</b>	<b>Affiliation</b>	<b>Board of Directors</b>	<b>Affiliation</b>
Ben Beall (Chair)	Routt County Commissioner	Ben Beall (Chair)	Routt County Commissioner
Ken Brenner	Steamboat Springs City Council	Jim Ficke	Routt County appointee
Jim Ficke	Routt County appointee	Doug Monger <sup>66</sup>	Now a County Commissioner
Bob Enever	Steamboat Springs City Council appointee	Dr. Dan Smilkstein <sup>67</sup>	Steamboat Springs Nordic Council
Doug Monger	Rancher from Hayden, CO	Chris Young	Routt County Riders
Dr. Dan Smilkstein	Steamboat Springs Nordic Council	Ken Brenner	Served as both the City Council appointee and Board appointee
Chris Young	Routt County Riders	Susan Otis	Formerly on Advisory Council
<b>Advisory Council</b>		Sally Wither <sup>68</sup>	Educator, Steamboat Springs City Council appointee
Jim Stanko	Lessee	Paul Strong	Steamboat Springs City Council
Ed Trousil	Lessee	<b>Advisory Council</b>	
Lymon Orton	Adjacent Landowner	Jim Stanko	Lessee
Susan Shoemaker	Adjacent Landowner	Ed Trousil	Lessee
Scott Flower	Adjacent Landowner Representative	Susan Shoemaker	Adjacent Landowner
Debbie Fuller	Yampatika	Scott Flower	Adjancet Landowner Representative
John Spezia	Outdoor Educator	Alan Keefe	Lawyer, interested citizen
Wano Urbonas	Bicyclist	Libby Miller <sup>69</sup>	CO DOW
Jim Hicks	Interested Citizen, former CO DOW representative	Carol O'Hare	Interested citizen
Susan Dorsey Otis	Yampa Valley Land Trust	Lynn Abbot	Interested citizen
Linda Kakela	City of Steamboat Springs	Jim Hicks	Interested citizen, former CO DOW representative
Libby Miller	CO DOW		
Dennis Scheiwe	CO State Parks		

The Partnership's structure and meetings were highly organized. The group incorporated as a 501(c)(3) non-profit organization, and developed bylaws, articles of incorporation and a strategic plan. Roles were created for chairperson, chair pro tem, secretary and treasurer, and numerous subcommittees were created over time to accomplish focused tasks such as writing a management plan for the parcel, or revising the strategic plan to allow for the group's evolving vision. Semi-monthly meetings were open to the public and advertised regularly in the local Steamboat newspaper, *The Steamboat Pilot*. One member developed a website and posted all agendas, meeting minutes and important documents for public access and comment.

Not surprisingly, Ben Beall immediately was elected chairman of the Partnership. Beall, a long-time Routt County Commissioner, had spearheaded the local Emerald Mountain

planning effort from its inception. The other three leadership positions changed hands several times during the Partnership's work due to member resignations. Each time, the Board of Directors would hold a vote to elect a different member to fill the vacancy.

Because the five-year planning lease was expiring, the first order of business for the Partnership was to buy more time to conduct their planning efforts. When the SLB initiated its sealed bidding process in August of 2000, the Partnership seized this opportunity and drafted a Memorandum of Agreement (MOA) to submit as their bid. The MOA specified that the Partnership would purchase the Emerald Mountain parcel at market value within five years, based on a current appraisal. During those five years they would lease the parcel for \$6.50 per acre. The SLB received two other sealed bids for the property: a vague proposal from a Steamboat Springs realtor who intended to try to find a buyer for the parcel and a \$17.2 million bid from Cordillera, the developers of a major resort community in Vail Colorado.

When the sealed bids were opened in September, the Partnership's MOA prevailed. The local realtor's bid was not considered legitimate because it lacked a funding plan. While Cordillera's bid was legitimate (and would have been accepted over the Partnership's because it was cash), the developer elected to retract the bid upon learning of the Partnership's proposal. The reason provided to the SLB, according to the agency's northwest district manager Beverly Rave, was that prior to this bid process they had successfully taken on and mitigated controversy around other development projects in the Steamboat Springs area by working closely with the local community. With these successful projects now in progress, Cordillera preferred not to work against that same community on the Emerald Mountain property.<sup>70</sup>

The SLB accepted the Partnership's MOA and gave the Partnership the option to purchase the Emerald Mountain parcel prior to March 15, 2005.<sup>71</sup> While the MOA essentially froze the parcel for five years, if the Partnership were not able to purchase that property within that timeframe, the SLB could consider other offers and remove the property from the Stewardship Trust.<sup>72</sup> The MOA included two phases: Phase One required the purchase of a 1,400-acre parcel on or before March 15, 2004, and Phase Two was the purchase of the rest of the property on or before the final deadline one year later.<sup>73</sup> This arrangement allowed the SLB to obtain some early revenue and ensure that progress was being made towards the complete purchase.

The Partnership developed a strategic plan for its five-year effort to purchase and conserve the Emerald Mountain parcel. During its first year, it conducted a mail survey in Steamboat Springs to determine the level of community support for preserving the parcel and to measure their willingness to commit public funds for the cause. The survey found that while 85 percent of respondents supported preserving the parcel, only 37 to 47 percent were willing to accept a tax increase to purchase the parcel, depending on the amount and term.<sup>74</sup> A consulting firm analyzed the data for the Partnership, which helped them determine that community support for public funding was inadequate to pursue a local ballot measure for a tax increase.



Next, they decided to look for conservation buyers, in hopes to find an individual buyer who would either preserve the entire property, or perhaps develop a home site on the parcel and conserve the rest as open space.<sup>75</sup> While the Partnership received six proposals, mostly from adjacent landowners, only one considered purchasing the entire parcel. However, this proposal from Yampa Valley Community Foundation included a more significant development and would privatize most of the property. Chairman Ben Beall remembers, “some of it actually may have been preserved as open space, but it wouldn’t have been public open space.”<sup>76</sup>

During its first two years, the Partnership was vigorously spinning its wheels, but was unable to make significant progress towards acquiring the funding or a buyer to purchase Emerald Mountain. According to City Council member Paul Strong, “Before the BLM got involved, we were really kind of floundering for ways to do this.” They explored other funding opportunities through a variety of organizations including the City, County, Sierra Club, Community Foundation of Northern Colorado and Great Outdoors Colorado (GoCo). They created a mailing list of “friends” and sent out letters of appeal for individual donations. One of their more creative strategies was to help a wealthy adjacent rancher throw a fundraiser on his property, complete with horseback and walking tours of the state trust land parcel he leased for grazing. However, none of the funding they received came close to the quantity of money necessary to acquire the parcel.<sup>77</sup> Susan Otis remembered the group’s predicament:

The question is, how do you conserve Emerald Mountain when you have GOGO saying we’re not giving you the money, and a community that says don’t tap our pockets? So how does one think outside of the box to come up with another way to put this land conservation transaction together?<sup>78</sup>

Meanwhile in 2000, the Emerald Mountain state land parcel that land rancher Jim Stanko leased was exchanged and became private land. The City had been working with rancher Newell Grant to purchase his ranch adjacent to the Emerald Mountain parcel. Since Grant had already received a proposal from a developer, many were concerned that the area would be subdivided and developed. In an attempt to preserve the open space, several parties offered to purchase pieces of the ranch, including the city of Steamboat Springs, CO DOW, CO State Parks and Recreation, and a private individual. One portion of the ranch that was difficult to sell was incorporated into a deal with Byron Cressy, owner of Wolf Run Ranch, who would purchase the parcel and then exchange it for 840 acres of state trust land directly behind his own property. This trust land happened to be the land that the Stanko family had leased for decades.<sup>79</sup>

The land swap enabled the SLB to connect their trust lands on Emerald Mountain with those on Saddle Mountain and create a continuous block of land. However, this deal came at a personal cost for the Stanko family. From then on, Jim Stanko leased the land directly from Byron Cressy, at the same rate as his former lease with the state. He was no longer able to hunt on the land, and was required to reduce the number of cattle he ran on the property. This swap had far-reaching economic and personal ramifications for the Stanko family and their ranching operation, which will be discussed further below.<sup>80</sup>

## THE BLM SUGGESTS A LAND EXCHANGE TO ACQUIRE EMERALD MOUNTAIN

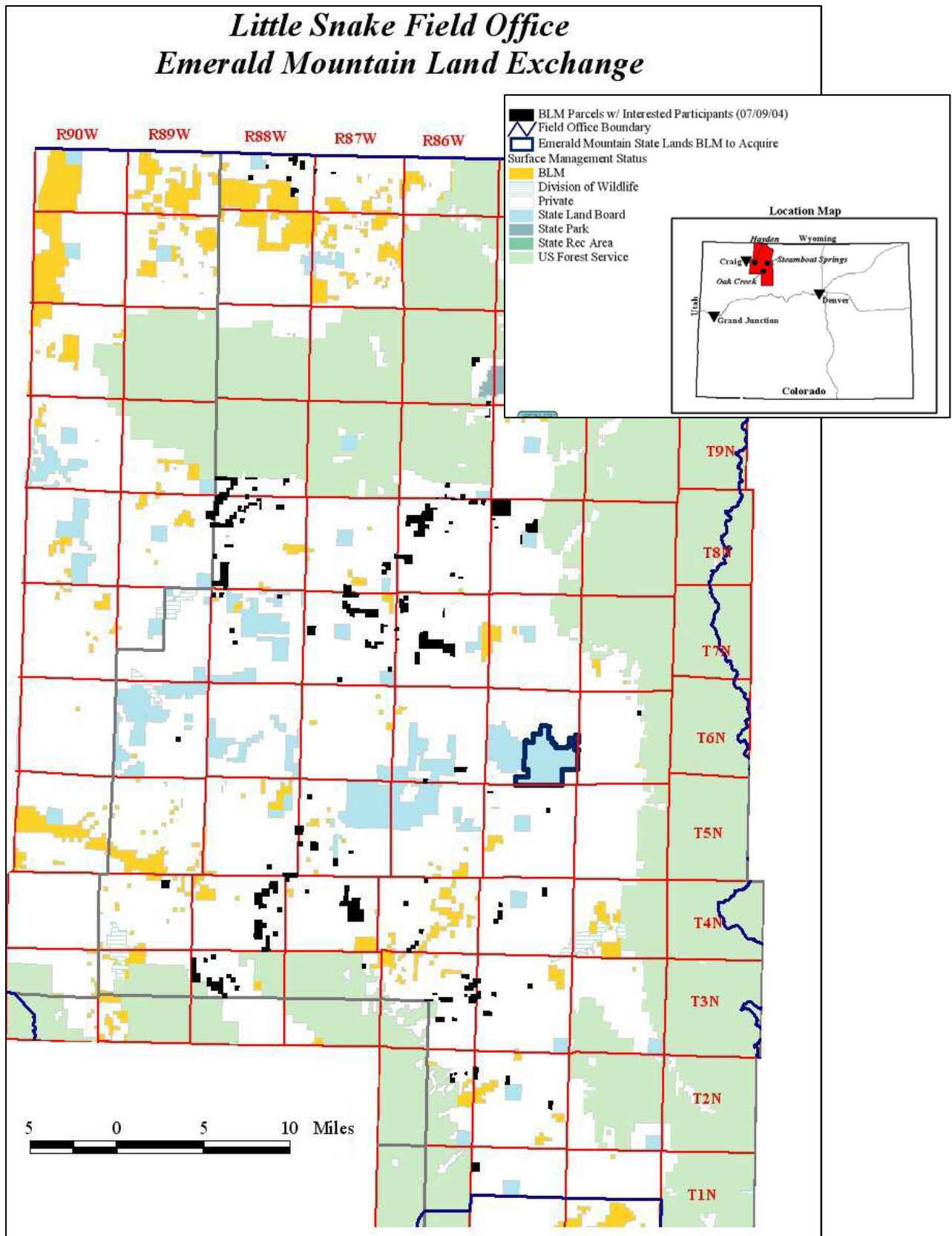
In early 2002, geologist and Steamboat Springs resident Fred Conrath of the BLM's Little Snake Field Office suggested the possibility of exchanging BLM parcels in Routt County for the Emerald Mountain parcel. The BLM had undertaken a similar land exchange for state trust land in nearby Grand and Jackson Counties, and it had been a favorable transaction for both agencies involved. The BLM had been struggling to manage landholdings in Routt County that were small, irregularly shaped, scattered and landlocked (i.e. surrounded by private lands with no public access). Emerald Mountain, a large, contiguous block of publicly-accessible land was a desirable alternative that they could manage for multiple uses including wildlife, grazing and recreation. Ben Beall invited John Husband, manager of the Little Snake Field Office, to join a February 2002 Partnership meeting to discuss the BLM parcels in question, and explain the federal land exchange process. Husband brought Tim Wohlgenant of the Western Land Group to the following Partnership meeting to discuss logistics. Wohlgenant had facilitated a similar exchange in Grand and Jackson Counties, and was willing to broker a similar deal for Emerald Mountain.

The Partnership came to a consensus that the swap was their best chance for protecting Emerald Mountain, and decided to approach the SLB to obtain their "blessing."<sup>81</sup> Six members of the Partnership attended the February SLB meeting in Denver to discuss the exchange. These individuals reported back at the Partnership's next meeting that the SLB was positive, but would require the Partnership to handle the logistics.

The exchange would be a three-party transaction, coordinated by the Partnership. Wohlgenant would seek out private buyers for certain scattered BLM parcels in Routt County, and the revenue from the sale would be used to purchase of the 6,345-acre Emerald Mountain parcel. The BLM identified 41,523 acres of difficult to manage land, spread out across 269 parcels, of which they were interested in disposing (Figure 6-7). The Partnership, particularly the representatives from DOW and the Yampa Valley Land Trust, then evaluated these parcels to determine if they had values such as community significance, open space, critical wildlife habitat or adjacency to already conserved land, any of which would deem them preferable to remain in BLM ownership. The SLB also identified certain preferred BLM parcels that the Board was interested in acquiring. Most of these properties were contiguous to existing or future SLB landholdings. The agency also withdrew their interest in some parcels that had public access in an attempt to avoid controversy. This process narrowed down the potential acreage under consideration.<sup>82</sup>

The Partnership attempted to avoid conflicts between potential buyers of BLM land by constructing an analytical formula that would offer current BLM grazing lessees the option to purchase the land, and keep existing agricultural land in agriculture.<sup>83</sup> Private landowners who owned contiguous property were contacted to determine their interest in participating in the Exchange. Susan Otis described the complex formula the group developed to determine land eligibility: "The Partnership developed a set of selection criteria for the Exchange to systematically determine who would have the first opportunity to purchase BLM lands." Otis described the criteria as a "formula" or "a flow chart, for determining how properties were considered, and how decisions were made to ensure fairness. Decisions were made based on the surrounding properties and circumstances. Decisions were *not* based on personalities, which can happen all too often in small communities."<sup>84</sup>

Figure 6-7: Map of Emerald Mountain Land Exchange



Source: "Emerald Mountain Land Exchange Maps & Statistics," U.S. Bureau of Land Management, Colorado, [http://www.co.blm.gov/lra/emerald\\_mtn/em\\_map.htm](http://www.co.blm.gov/lra/emerald_mtn/em_map.htm).

Tim Wohlgenant viewed his own function in the exchange as that of a “mediator” working in a “transparent, fishbowl atmosphere.”<sup>85</sup> Wohlgenant’s role was to execute a scoping process to identify and contact all parties who might want to purchase the BLM parcels, primarily by contacting all contiguous landowners. He also worked closely with the SLB, BLM, and the Partnership. Of the 25,000-30,000 BLM acres that remained after the initial Partnership screening, Wohlgenant identified 59 buyers for approximately 129 parcels, totaling 15,621 acres.<sup>86</sup> Of these properties, 75 percent were inaccessible to the general public because all accesses are privately owned and 84 percent of the BLM lands currently leased for grazing were set up to go to the current grazing lessee.<sup>87</sup>

To the Partnership’s surprise, the land exchange triggered fervent opposition. Paul Strong summarizes their standpoint: “There are other people outside of the Steamboat Springs area that don’t have any problem saving Emerald Mountain but don’t want to sacrifice any BLM lands to achieve that.”<sup>88</sup> Some landowners in Routt County were unhappy when they did not receive the opportunity to purchase the BLM land adjacent to their property (presumably there was another neighbor with greater adjacency who was willing to purchase it). Others were frustrated that, while they were presented with the opportunity to purchase the land, they did not have the financial means. Some individuals had the means but did not want to purchase property that they had always used for free, but did not want to lose it either. In these cases, they simply elected not to participate. The most “intense” opposition came from people who owned less than 50 percent of the adjacent land and did not want to see the owner with the greatest adjacency acquire the property.

A small group of these citizens formed a group called “Citizens to Save Our Public Lands” and sent representatives to most Partnership meetings that occurred after 2002. This group employed a range of arguments, challenging the description of the BLM parcels as “landlocked,” by asserting that they can still be reached by helicopter. The opposition also criticized the assessment process, saying that \$17 million was too low a value for the Emerald Mountain parcel. At times, their airing of grievances in meetings escalated into heated arguments with Chairman Ben Beall.<sup>89</sup> This citizens group also met with the BLM and the SLB several times, submitted letters to the editor of local papers, and placed ads in papers criticizing the exchange.

By 2004, the window of opportunity was closing, because the MOA deadline was rapidly approaching. To provide adequate time to complete the necessary assessments for the BLM’s federal land exchange process, and because they viewed the exchange as a strong opportunity to obtain the value of the Emerald Mountain parcel, the SLB issued an amendment to the MOA. The amendment waived the requirement for an early, “Phase One” land purchase and extended the March 15, 2005 deadline to March 15, 2006.<sup>90</sup>

As of December 2005, parties to the exchange are awaiting the results of appraisals of both the BLM parcels and the Emerald Mountain parcel, as well as an environmental assessment. The appraisal is a critical determinant of how the land exchange will proceed, because the values of the BLM and SLB properties must be equal in order to complete the exchange. If the value of the BLM parcels exceeds the value of the Emerald Mountain parcel, some BLM lands will be taken out of the exchange. However, if the Emerald Mountain parcel is valued at more than the BLM sites, either the BLM would have to re-enter the scoping process to

identify more parcels for sale, or a portion of the Emerald Mountain acreage would be removed from the exchange and remain under the SLB's ownership.<sup>91</sup> The appraised values of BLM parcels will also determine if buyers are able to complete the transaction to acquire the land.<sup>92</sup> Private landowners participating in the exchange are paying for the environmental assessment required by the federal exchange process, and will consider the impacts of both the exchange and the management plan, which will eventually be an amendment to the BLM's Little Snake Resource Management Plan. One of the three management alternatives being considered in the assessment is the Partnership's management plan.<sup>93</sup> While the BLM often allows ORV use, the Partnership opposes motorized recreation on the parcel

## **THE ANALYSIS: EMERALD MOUNTAIN PLANNING PROCESS**

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The following analysis identifies and discusses the benefits, costs, challenges, facilitating factors and lessons learned from the Emerald Mountain Planning Process. This analysis is based on the observations and reflections of process participants, as well as the researchers' external assessment.

Benefits of the process include reduced conflict and improved understanding and relationships between the SLB and community, improved personal and professional relationships within the community and generated a unique solution that achieved both the SLB's and Partnership's goals. The 12-year process also imposed time, financial and even public relations costs on participants. Individuals and organizations faced a range of challenges throughout the process, which included dealing with the SLB's constraints, tensions between City and County, misperceptions of the Stewardship Trust and coping with federal bureaucratic delays.

However, several facilitating factors helped move the planning process along and keep participants at the table. These beneficial activities and tools included strong leadership, contractual agreements between parties, the Partnership's shared goals and vision statement, and shared skills and perspectives among participants.

Finally, the lessons learned from the Emerald Mountain case include notions that reaching out to educate the public can improve a collaborative group's effectiveness, groups should evaluate proposals to anticipate potential controversies and identifying and including all potential stakeholders is key, especially if the project's scope changes.

### **WAS EMERALD MOUNTAIN PROCESS COLLABORATIVE?**

All members of the Emerald Mountain Partnership described this process as "collaborative." Chris Young described the Partnership as a "Collaboration of ranchers and recreation people, and normally we're at odds with each other."<sup>94</sup> Susan Otis agreed that the Partnership was "incredibly open" to the general public.<sup>95</sup> Charles Bedford described the SLB's interaction with the Partnership as "A constant stream of communication back and forth between the Land Commissioners, my boss, members of the community, Beverly Rave, and others. A constant, iterative process." These reflections highlight the three axes used to measure

collaboration in this assessment of collaborative planning on state trust lands: (1) breadth of stakeholders, (2) transparency and (3) level of influence on decision making.

**Breadth of Stakeholders:** In its early stages, the Core Group included representatives from a wide range of interest groups on the Emerald Mountain parcel, including the grazing lessees, DOW, bikers, county, city, land trust and SLB. Over time, the group expanded its representation in some ways, such as including other types of recreation, but it eventually lost its formal representation from the County. When the land exchange idea broadened the project's scope so that it would impact BLM lands in other towns, the group failed to actively seek out these broader geographic interests. The county-based opposition to the proposed land exchange seems to indicate that perhaps the inclusion of more county stakeholders might have improved the county response, modified the exchange to be more palatable to those interests or even developed an alternative solution. Paul Strong described the lack of county-based stakeholders on the Partnership:

We selected the members of the board of directors to be people who were for this exchange, people who would work for it and be advocates for it. So you just end up hearing your closed circle of people who think it's a great thing. I'm not saying we should have necessarily broadened the members of the Board, but should have somehow gotten wider representation on the Advisory Council.<sup>96</sup>

**Degree of Transparency:** The Emerald Mountain Partnership planning process was highly transparent for both participants and the general public. The group advertised their meetings in the paper, posted agendas, minutes, documents and plans on their website and allowed the public to attend and participate in all meetings. When opposition arose to the land exchange, these individuals were able to come to Partnership meetings to learn more about the process and discuss their concerns. The Partnership also held public meetings in Steamboat Springs to gather input and share ideas. According to Beverly Rave, these meetings also helped increase local understanding of the SLB's mandate, "[The Partnership] wanted to make sure people were really informed about what it was they were trying to accomplish, and at the same time, really make it clear to people what our mission was and our expectations had to be for that property."<sup>97</sup> The Partnership also held public meetings in several other towns in the county, joined by the BLM and SLB, to educate people about the land exchange and solicit public comment. Between the Partnership and the SLB, former Director Charles Bedford described the process as "a constant stream of communication."<sup>98</sup>

**Degree of Influence on Decision Making:** The Partnership clearly had significant impact on the SLB decisions, but only because they were acting within the bounds established by the SLB. The nature of the Partnership's influence on SLB decision making was based upon offering proposals of strategies to generate revenue from the parcel. Simply put, a proposal would be accepted if and when it was able to achieve market value, and no less. Charles Bedford recalls the SLB's regular check-ins with the Partnership to assess progress:

Every six months, they would come back in and brief the Board on where they were, show the Board what they had and the Board would say, look, there's

no revenue here. There's no way for us to capture any value. So go back to the drawing board. So they'd grumble and go back to the drawing board.<sup>99</sup>

The Partnership's successful bid in 2000, which created the five-year MOA, greatly increased their influence in several ways. First, a significant degree of influence was exerted by the mere presence and persistence of such a strong local coalition. This sway inspired Cordillera to withdraw its bid upon learning of the local group's proposal to have an MOA with the SLB, and left the agency with no option but to choose the Partnership's proposal. Beverly Rave described the position the SLB was in at the time: "Without a question, we would have had to have taken that bid. It was the best bid we had, you know, for the beneficiaries. But, the fact that they withdrew it eliminated that opportunity."<sup>100</sup> Second, the MOA then provided the Partnership a five-year exclusive agreement to purchase the parcel, preventing the SLB from pursuing other options. But while the SLB chose to relinquish this right, it had no obligation to accept any of the Partnership's proposals.

Had the SLB not worked with the Partnership, some predict the stalemate over development could have continued indefinitely. Charles Bedford thought "it just would have sat there in uncertainty." And as for the agency itself, he saw enormous risks of continuing with a status quo of making decisions without accounting for local appeals:

There's a set of things that can happen to you as a public agency. You can get overhauled, like amendment 16 did or like the Arizona initiative is. You can have your budget either continued in the same [meager] fashion that it did or even be cut – we actually experienced that – or you can just spend a lot of time in court. And you've got 29 staff, and only two people who you could actually send into a courtroom, for fear having a complete disaster occur. You have a lot of resources going towards those lawsuits. And those are the negatives, those are the things that you gain by ceding some control to the community groups that are worried about land board developments.<sup>101</sup>

## **BENEFITS OF THE PROCESS**

Participants from various stages in this 13-year collaborative planning process identified several benefits of having used this approach.

### **Improved Understanding and Relations between State Land Board and Community**

One of the major benefits the SLB observed from working with the Partnership was the increased visibility of both the agency and the state trust lands, themselves. Beverly Rave observed that the Partnership greatly improved relationships between the SLB and the community: "I think that whole community has a much better understanding of what state trust lands are, and why we have to manage those lands in the manner in which we do. There were more public meetings about Emerald Mountain than any other property the SLB owns in Colorado."<sup>102</sup> According to Rave, most of this public outreach was accomplished by the Partnership: "They wanted to make sure people were really informed about what it was they were trying to accomplish, and at the same time, make it clear to people what *our* mission

was. What our expectations had to be for that property.”<sup>103</sup> Rave also observed that Emerald Mountain has received statewide publicity, which has provided wide-reaching education about Colorado’s state trust lands.

From the BLM’s perspective, the collaborative group involved the public from the outset, which helped accomplish one of the BLM’s major responsibilities as a public agency. Through public meetings and surveys, the group gained tremendous knowledge of the interests of citizens in Steamboat Springs, particularly for the protection of wildlife as a top priority for Emerald Mountain.<sup>104</sup>

### **Reduced Conflict between Community and State Land Board to Facilitate Future Interactions**

A major benefit for the SLB in engaging in this process is that it diminished the conflict surrounding this parcel of land to allow the agency to eventually generate more revenue from the parcel. Charles Bedford summarized this accomplishment as, “resolving a set of disputes that is impeding the value realization of a piece of state property.”<sup>105</sup> Bedford compared working with the Partnership with the alternative: “This is successful because there is not a log jam happening in the Land Board. There’s not litigation, or angry letters, and the Land Board is not spending an awful lot of their own resources, which needs to be part of the fiduciary equation.”<sup>106</sup> Bringing the community into their decision-making process enabled the SLB to be presented with an outcome that could satisfy both their own mandate and local needs. Beverly Rave agreed that working closely with the Partnership “took the controversy out of what we might otherwise have done, and gave the community the opportunity to participate in that so that the end result met with their interests as well as ours.”<sup>107</sup>

This process also has a long-term benefit of preempting future conflicts, by establishing relationships and shared understanding between the SLB and the local community. Charles Bedford even recommended that if an agency has a regional representative stationed in an area that they embark on a similar community-based planning process early on:

Because you develop these relationships early on, so that essentially you never have to go through these processes anymore. You do this in more of an informal, ongoing fashion, this sort of ongoing collaborative process. Sometimes you’ll still have conflicts come up. But if you have the same guy that lives there for 10 to 15 years, that’s passionate about this place, that has to go to the same supermarket as the enviro goes to, and has a personality that allows for kind of problem-solving, then you’ve really created an incredibly powerful vehicle for going forward.

### **Improved Personal and Professional Relationships within the Community**

Charles Bedford’s comment also illustrates how valuable the relationships are that can develop out of planning processes like Emerald Mountain. Beverly Rave found that working with the Partnership, “went a long way towards improving the relationship with the SLB and



that community.”<sup>108</sup> All participants in the Partnership report that their involvement in this planning fostered their relationships with individuals and organizations that they were often working with on other issues. According to Ben Beall:

The people at the table, let’s say myself, the DOW, we’re also at the table on other issues. In Routt County, there are only so many people that are involved, and they’re all the same at all the tables. So when you go to those tables, even though you’re going to a meeting on Emerald Mountain to figure that one out, you’re also there with the same folks that are trying to do the other conservation projects, or they’re worried about the urban boundary, or how are we going to get that trail connection.<sup>109</sup>

Some even reported enjoying going to Partnership meetings merely to touch base with others and be reenergized. Others found that serving on the Partnership helped them professionally. For Libbie Miller, participating in the Partnership helped improve her effectiveness and credibility in her work with the DOW:

As an enforcement officer, I think the more interaction you are able to have with your community the better. People see you in a different light and they see the agency in a different light. When you interact on a different level instead of just strictly writing tickets to people or taking them to jail, you have a whole different kind of involvement.<sup>110</sup>

Libbie Miller found the Partnership especially helpful in forging new relationships, having recently moved from working for the Utah Department of Wildlife Resources:

It was a huge benefit for me, because I got to meet a lot of people who I would not necessarily. It is likely I would have gotten to meet them over time. However, when you work with somebody on a monthly basis, you certainly develop professional relationships that you wouldn’t get in any other scenarios.<sup>111</sup>

### **Provided a Rewarding Experience for Participants that Fostered Creativity**

The earliest stage of collaborative planning on Emerald Mountain, referred to as the Core Group, is viewed by many as one of the most rewarding periods of the Partnership’s 12-year history. Chris Young remembered these early stages as being open-minded and engaging: “The initial core group was stimulating and thought-provoking. An experience I’d never had before. I really enjoyed that.”<sup>112</sup> One element that made the Core Group stimulating was that it was the initial phase of working through the conflicting interests in the parcel and the community at large by bringing together a diverse group of stakeholders who all wanted to keep the land “green” for different reasons. These disparate interest groups were surprised and excited to discover they had mutual interests and could make compromises. Jo Stanko recalled her husband Jim’s rewarding experience with the Core Group: “when he first went, he thought they were all coming from such different directions, that they thought they’d never come to a consensus. And Jim was so proud and excited, when this group, this diverse

group began working together and came together with a consensus.”<sup>113</sup> Charles Bedford also found satisfaction in the potential for this process to resolve a problematic issue, “There’s a satisfaction in that, in sort of disposing of a tricky issue, a sticky problem ... That’s a personal motivation.”<sup>114</sup>

### **Generated a Unique Solution that Achieved both the State Land Board’s Revenue Targets and the Partnership’s Conservation Goals**

One of the greatest benefits of the Emerald Mountain collaborative process is the unique solution developed by the group of a land exchange with the BLM. This exchange was a creative response to the need for a multiple-use management approach on the parcel, brainstormed locally between a BLM employee living in Steamboat Springs and members of the Partnership. The Partnership’s involvement heightened the public education and outreach efforts to help increase local awareness and support.

Federal ownership of the land will allow grazing, hunting and wildlife management activities and enhance trails and recreation opportunities, all under the oversight of an experienced multiple-use land management agency. For the SLB, the exchange also will generate roughly \$17.2 million, the full value of the parcel, and if it does not, the SLB will reduce the acreage to be included in the exchange so the values correspond. This revenue will then be invested into higher revenue-generating properties, which will further benefit the trust.

For the community, the future availability of Emerald Mountain for grazing, recreation, and wildlife habitat has been ensured. This solution has greatly increased opportunities for the general public to access the land, which was previously prohibited. Ben Beall described his vision of the parcel’s potential to act as a magnet for local recreation, easing the impact of such uses on other undeveloped lands in the area:

You’ll have a central park. Something in the midst of this urban development. I believe, if in the West, we could have areas inside of or adjacent to urban areas, where people could get out of those areas and feel like they were in the West, feel like they are in a rural area, feel like they’re in a park, maybe they won’t go out and build and ruin the whole countryside.<sup>115</sup>

### **COSTS OF THE PROCESS**

#### **Time**

The primary cost cited by all participants was the extraordinary time investment the Emerald Mountain Partnership required. While for some, time spent volunteering with the Partnership could have been allocated for paid employment, most people observed that personal time was expended. Susan Otis, Executive Director of the Yampa Valley Land Trust observed that while the Partnership’s work aligned with her organization’s mission, she still had to accomplish all of her normal duties and volunteer time to the work of the Partnership: “Most individuals have a set job with certain hours, and when you voluntarily expand on that position it just cuts into personal time. But still, it’s worth it, this is something I’m very

passionate about.”<sup>116</sup> Libbie Miller agreed, “For me personally, the biggest issue was the time commitment; huge. There also was mental fatigue at times.”<sup>117</sup> Libbie Miller also acknowledged that some of the extra workload was voluntary.

The management plan was something that I did not necessarily have to do. It was something that I felt needed to be done. Extra tasks like this often require people willing to accept additional responsibilities. I felt if we didn’t step up to get it done, then perhaps it may not get done.<sup>118</sup>

Jim Stanko’s wife, Jo, went through their old calendars to quantify the amount of his time spent in or preparing for meetings on Emerald Mountain, and estimated that Jim had spent almost 1500 hours over 12 years. As with so many other participants in this process, the time costs for Jim were personal, because volunteer hours “can’t come from the time needed to ranch, so that time came from family, recreation and relaxation time.”<sup>119</sup>

For the SLB, the time commitment by Beverly Rave was an expense, but it was probably a small investment compared to what would have happened if the SLB had not engaged in the collaborative planning process. Charles Bedford outlined how he weighed his decision to continue working with the Partnership:

The question is, is it going to be cheaper for you to send Beverly to a meeting once a month with community people that she’s going to have to work with anyways on issues, and to have that community group come in quarterly or every six months and report on their progress. Or is it cheaper to try to cram something through, give subdivisions, and try to parcel out the lands. What’s the downside to that? And we clearly made the judgment that it was cheaper to do the former rather than the latter. It was one of those things where you were just going to run into a brick wall a hundred times, and spend a lot of energy and time on a lot of these negative outcomes like lawsuits and angry letters.<sup>120</sup>

## **Financial Costs**

Financial costs were easier for some participants to identify than others. From the SLB’s perspective, the Emerald Mountain Parcel may have depreciated in value over the last 10 years, according to Beverly Rave:

I definitely think this property has reached its peak and if anything is going down. So right now, my focus is to dispose of this property as quickly as possible, with the best scenario that we possibly can. Because if we’re going to start losing value ... then we’re not doing a very good job for our beneficiaries.<sup>121</sup>

Also, the fact that Cordillera retracted its bid for \$17.2 million in 2000 has cost the beneficiaries six years of interest on that amount, totaling approximately \$4.5 million.

A wide range of costs were borne by the Partnership and its members at different times throughout the 12-year process. The Partnership's five-year planning lease on the Emerald Mountain parcel totaled \$27,600.<sup>122</sup> Other expenses paid by the Partnership included the cost of advertising space in *The Steamboat Pilot*, a consultant to analyze the survey data, the appraisal of Emerald Mountain, postal and office expenses and website hosting. The group found several creative sources for these funds, including personal donations, fundraisers, Routt County and a grant from the Yampa Valley Community Foundation.<sup>123</sup>

The Stankos spent money working to put a conservation easement on their land, "to show our good faith with the SLB." But they were not able to take full advantage of the federal tax credits because their taxable income was not high enough. Losing their lease to the land exchange between the SLB and Cressy cost them as well, since they view their investments in controlling "white top" (a noxious weed) on the state land as a lost investment. In terms of the land exchange, the BLM had no separate budget for its work with the Partnership to set up the exchange, and thus staff time came out of their general operating budget. Landowners assembled to purchase BLM parcels are paying the costs of the land exchange's environmental assessments and Tim Wohlgenant's fees.

### **Public Relations Challenges for Some Organizations**

For a state agency like the DOW, appearing to support a controversial land exchange raised some criticism from those that opposed the deal, and also put a magnifying glass on those agency employees who were involved with the process. Libbie Miller remembered:

We might have taken some hard knocks from the opposition, being perceived as a supporter. People wanted to know "How could we possibly be supporting this, particularly since losing these lands is going to hurt the economy of our local towns through the loss of hunting!" There are probably some people who feel a little bit negative about the Division or myself, with our position on the exchange.<sup>124</sup>

While participants remember the DOW receiving criticism for supporting the exchange, they also recall DOW under fire for raising concerns about the exchange at one Partnership meeting. The process exposed possible conflicts of interests because the DNR houses both the DOW, whose mission is to protect wildlife, and the SLB, whose mission is to generate revenue. This conflict, along with other land use issues and controversies occurring around that time, prompted the DOW to redesign their inter-agency land use commenting procedures.

Tim Wohlgenant and the Western Land Group also received public criticism stemming from their involvement in the exchange. A 2002 *Denver Post* article criticized the firm's use of political connections, fees and methods.<sup>125</sup> The reporter met with staff of the WLG to discuss the Emerald Mountain land exchange, as well as with opponents of the exchange, and, according to Wohlgenant, "completely missed the issue of Emerald Mountain and how interesting that process is, choosing to focus on our company instead." Chairman Ben Beall also received criticism that he failed to adequately share information.<sup>126</sup>

## CHALLENGES AND RESPONSES

### State Land Board's Constraints and Goals

Some of the intricacies of SLB policies were challenging for community members to work within. According to Beverly Rave, the SLB cannot legally provide an indirect benefit to parties who are not formal beneficiaries: “We can’t damage our beneficiaries by doing something in the collaborative process. As long as everyone understands that the solution has to be in the best interest of the trust, and agrees on that goal, we’re fine. There is plenty of flexibility within that.”<sup>127</sup>

Another difficult issue to navigate was the revenue requirements for disposing of trust land. Beverly Rave recalled that “There were a lot of people over there that were convinced that if they just pushed hard enough or waited long enough that the Land Board would just give it to them. And we couldn’t do that. And so, changing those expectations or clarifying those expectations was tough.”<sup>128</sup> However, the specific amount of revenue necessary for a plan to be legitimate was never made explicit, because the SLB needed to obtain market value for the parcel at the time of the transaction. Without a specific price identified, the Partnership and the SLB went back and forth several times with different proposals. Charles Bedford remembered:

The Land Board wouldn’t say ‘this is how much we want’, and the community wouldn’t say “this is how much we’ve got,” so there was little bit of a stalemate for awhile, and they went down some wrong tracks for awhile, trying to develop ecotourism and grazing models of production that just weren’t really realistic.<sup>129</sup>

The hierarchical structure of the SLB also frustrated members of the Partnership at times. For example, Beverly Rave had to consult the Denver office on issues such as extending the MOA.<sup>130</sup> Indeed, the mere fact that the SLB owned the land and held the ultimate decision-making authority was somewhat daunting. Chris Young reflected on this unique challenge of dealing with the SLB as, “Knowing that they were in charge. It was their land, and they could decide whether they wanted to work with us or not. I was relieved and gratified that they were willing, and still are, to hang in there while this thing creeps along.”<sup>131</sup>

The group addressed this challenge in several ways. One strategy was to maintain a high degree of communication between Ben Beall and the Board, with Beall visiting Denver every six months or so to update them on the process. These visits helped reinforce the SLB’s revenue expectations, and maintained open lines of communication between the eventual decision-makers and the Partnership. Also, Beverly Rave made it a point to be clear and forthright about the SLB’s requirements. Susan Otis described Rave’s style as, “Beverly Rave just gets it out right front and center ... She has a job, and she knows what her job is.”<sup>132</sup> Even when the revenue requirements were ambiguous early on, the SLB and the Partnership still maintained a strong mutual respect. As Charles Bedford described, “People agreed to figure it out, let’s lay down the arms, and figure out how to solve the problem.”<sup>133</sup>

## **The Reluctance of Some Members of the Partnership to Consider Development Options**

While members of the Core Group, Steering Committee and eventual Partnership generally agreed on a common goal of conserving Emerald Mountain, those that were more open to development options tended to feel less well-received. One participant in the early-mid 1990s was Bob Enever, active in the local real estate scene, who proposed clustered housing on the northwest side of the property which was out of site from the town: “I’m not sure everyone understood what I was trying to do, where I was coming from. And some that did understand just rejected it. Just didn’t think it was a good idea. I think it is just that it smacked of what the SLB was trying to do.”<sup>134</sup> Interestingly, a few years after Enever’s involvement in the Partnership, the group was soliciting conservation buyers similar to those which he had proposed. Enever suggested that his ideas perhaps were offered too early in the process and the Partnership needed to pursue several other strategies before realizing that conservation buyers might be a necessary option. Both the passage of time and failed attempts at other strategies seemed to have effectively broadened the range of possible solutions considered by the Partnership.

## **Opposition to Land Exchange**

The Partnership’s decision to coordinate a land exchange to protect Emerald Mountain made them the target of criticism from land exchange opponents. The fact that a Steamboat Springs-based community group was selling off BLM land to create a “playground” in their backyard inspired resentment that may not have existed if the BLM had conducted the exchange directly with the SLB. Many of these landowners expressed a sense of unfairness that they were losing public land. As one BLM representative explained, supporters of the exchange felt differently, “The public response was that ‘hey, you’ve had this public land for free for a long time and no one could get to it.’”<sup>135</sup> One particular member of the opposition made more personal accusations, such as calling members of the Partnership “insider traders” and accusing Chairman Ben Beall of not sharing information openly. Western Land Group’s involvement also was criticized, with accusations that they had failed to properly inform all neighboring landowners.<sup>136</sup>

To deal with such criticisms, the group considered holding private meetings, but chose not to.<sup>137</sup> Instead, members of the Partnership and Wohlgenant felt they made a good faith effort. According to Chris Young, “We did the best we could, but we were working with inaccurate or out of date information on peoples’ addresses.”<sup>138</sup> Wohlgenant acknowledged the importance of the set of land exchange criteria, especially in light of the fact that the BLM is not able to auction off public lands: “The Emerald Mountain Partnership’s criteria was an important step, but very controversial. It allowed some people to participate in the trade and precluded others.” Interestingly, several members of the Partnership as well as representatives of the BLM and SLB acknowledged that if they had “free” public lands adjoining their own properties, they would have resisted the exchange, as well. “There were a lot of people who had the opportunity to get involved who chose not to. They already surround [the BLM land], and there’s no incentive to buy them. The only incentive is if there is a risk of future BLM policy change.”

## Tensions between the City and County

At the heart of the controversy over the land exchange was that Steamboat Springs masterminded an outcome benefited the City at the cost of other areas in Routt County. Steamboat Springs' residents were more likely to use Emerald Mountain than citizens of Hayden or Oak Creek, 20 miles away. Susan Otis recalled a conversation at a public meeting in the neighboring town of Oak Creek:

One individual stated that she was irritated because as she stated, any time there's an issue in Steamboat Springs that needs to be resolved, it's the "brain trust" of Steamboat Springs that comes to the rescue and resolves it. I told her she needs to realize that every community has the potential of a "brain trust."<sup>139</sup>

The BLM's Dwayne Johnson reports that compared to the strong support for the land exchange in Steamboat Springs, only about half the citizens who came to public scoping meetings in neighboring Oak Creek and Hayden were in favor of the swap. He summarized the latter sentiments as, "So, that just gives Steamboat Springs something else. We're not going to go up there and use it anyways, so why should we be for it?" Most of those people in the Oak Creek and Hayden area are snowmobilers, and use 4-wheelers. They're not going to buy a mountain bike and go to Emerald Mountain and ride it."<sup>140</sup> While some vocal opposition exists, however, Johnson clarified that they do not represent the majority opinion in the County:

A lot of them, I've talked to them about the exchange, they don't have an opinion one way or another. They're not being impacted because they're not the one that's losing access to BLM right in their backyard, and they're not going to go to EM if it does happen, they use public lands, the large blocks, to hunt, or to play on, and Emerald Mountain just doesn't interest them.<sup>141</sup>

The controversy over the land exchange highlights the fact that, while the Partnership claimed to represent stakeholders in both the City and the County, there were no County Commissioners on the Partnership while the exchange was being planned. Ben Beall had not run for the position again, and Commissioner Doug Monger, who had been a Board member on the Partnership, had resigned from the group to avoid public concern that he might have a personal stake in the land exchange. His family owned property adjacent to BLM land that was listed as potential for exchange, but was not eventually included due to the high public value of the parcel. Ben Beall described the tensions between Steamboat Spring and the rest of the county:

Steamboat Springs is the gorilla in Routt County, the outlying areas don't necessarily appreciate everything that Steamboat Springs does, you know, they're jealous, [our] school districts are better, the parks and recreation are better, [we've] got money, and that is a political problem for us [the Partnership] is that we're associated.<sup>142</sup>

Ben acknowledged that the opposition to the exchange has a “legitimate complaint,” and that it does not help that “if you look at the map, there aren’t many parcels that we’re taking around Steamboat Springs, because those parcels have been bought up, purchased, done something with them before.”<sup>143</sup>

### **Misinformation and Misperceptions of Emerald Mountain and the Stewardship Trust**

When elements of either the Emerald Mountain parcel or the land exchange were misrepresented, the Partnership had to invest time into educating the public and negotiating misunderstandings. Some residents of smaller towns in Routt County were “concerned about or had been misled that the particular parcels provide a significant amount of hunting revenue for their community,” Libbie Miller remembered:

When in reality, having spent years on the ground checking hunters, the few parcels within the exchange that have public access have limited use and are primarily used by locals. Their economic contribution to the community is not changing one way or another based on where they hunt. Public access was a consideration from our Division perspective when we said we don’t want to lose these areas, and indirectly the economic aspect was part of our considerations.<sup>144</sup>

Another example is the common misrepresentation of Emerald Mountain as the “scenic backdrop of Steamboat Springs” in literature about the state trust land parcel on the mountain. In fact, the state trust land portion of the parcel is not visible from downtown Steamboat Springs, or the ski hill. Susan Otis spent a lot of effort challenging this misconception, “The community was so confused. They thought Emerald Mountain was Howelson Hill. Emerald Mountain is not the scenic backdrop to Steamboat Springs.”<sup>145</sup> To counter this notion, Otis took a driving tour around the mountain and took photographs from all sides, then placed them on a map to show what the views were from different angles, and how much of those views actually included state trust land.

A third example of misconceptions that challenged the process was early on, over Amendment 16 and the definition of the Stewardship Trust. Jim Stanko recalled the confusion over what the Stewardship Trust would do:

Our goal, and that’s what we did as a Core Group, was to get Emerald Mountain in the Stewardship Trust. Because we thought, that’d be it! We get it in the Stewardship Trust, then they couldn’t sell it, everybody could use it, it would become what Amendment 16 was supposed to be about.<sup>146</sup>

Stanko and some others on the Core Group were disillusioned when the Amendment was not interpreted the way proponents had expected. Susan Otis agreed:

The citizens of the state felt the Stewardship Trust was going to set aside some of those lands so they would be free from development, or they wouldn’t be under pressure of development. But in reality, the SLB interprets it that it only



gives communities the opportunity to buy the time to come up with the money to resolve potential future sale and development of SLB parcels.<sup>147</sup>

The SLB's Beverly Rave did not disagree with these observations:

The general public may have been misled to some extent about what the Stewardship Trust was supposed to be. And I think that had the Judge ruled differently on the legal challenges of Amendment 16, the result may have been a bit closer to what people thought they were voting for.<sup>148</sup>

According to Beverly Rave, Judge Babcock's ruling indicated that the Stewardship Trust portion of Amendment 16 was not unconstitutional, but the lands could not be free and designation did not necessarily mean they were open to the public. His ruling set the stage for the SLB to develop their designation process, which included a mechanism to remove properties from the Stewardship Trust, meaning they would not be designated in perpetuity.<sup>149</sup> In response to the confusion and disappointment around the Stewardship Trust, the Partnership returned to the drawing board to find an alternative solution. The Amendment had authorized the SLB to work closely with local communities, supplying the time and the political will for collaborative planning.

### **Dealing with Federal Bureaucratic Delays**

The BLM's land exchange process is highly complex, and requires a sign-off from the Washington D.C. office. When the Little Snake Office sent their draft feasibility report to Washington, it took a year and a half to be approved. Part of this was due to the fact that the Administration changed mid-way. Dwayne Johnson remembered being at a standstill during some of that time, "We were kind of waiting, and waiting, and waiting for Washington to say that they wanted us to go with the exchange ...."<sup>150</sup> This delay was particularly frustrating for members of the Partnership, who were used to conducting their planning activities at a more local, hands-on level. Chris Young summarized the groups' feelings during this time: "we were ... very disappointed about the length of time that people in Washington took. That was unbelievable and inexcusable. But we kept saying, oh well, that's the federal bureaucracy."<sup>151</sup> It was not only the delay in Washington that was difficult. In general, Chris Young described the "machinations of the BLM" process as "moving, I guess, at a glacial pace. I wish the BLM process was less convoluted and felt more local, and less abstract and out there. These things are going on and decisions are being made and we're not getting direct input."<sup>152</sup>

## **FACILITATING FACTORS**

### **Strong Leaders**

All members of the Partnership acknowledged that Ben Beall's leadership and dedication helped the Emerald Mountain Partnership achieve its mission. Bob Enever, an early participant, summed up Ben's 12-year persistence: "I give so much credit to Ben. He just doesn't go away."<sup>153</sup> Throughout the planning process, Beall would visit Denver every six to eight months to update the SLB on the Partnership's work, float different proposals and ideas

and then head back to the drawing board in Steamboat Springs.<sup>154</sup> The DOW's Libbie Miller observed, "I think he's driven and he didn't give up, and he's one of the people that have been with this process from its inception." Commenting on his own involvement, Ben Beall remained enthusiastic: "Maybe it's because of my interest in this project, but I've been staff and everything else to keep this thing going. I've enjoyed it. I've had fun doing it, and I think it's a goddamn great project."<sup>155</sup> Strong leadership was important not only at the local level, but at the state level as well. Charles Bedford observed that Governor Romer's commitment to the process was a critical factor in its success: "A lot of this has to do with personalities. Romer was a classic collaborator personality type."<sup>156</sup>

### **Contractual Agreements between the County and State Land Board**

Both the five-year planning lease and the MOA issued by the SLB to the County gave the Partnership legitimacy, the incentive to commit themselves to the process and the time to consider a range of possible strategies. The MOA was especially powerful, because during that agreement the SLB could not consider any other offers for the parcel for the term of the agreement. While these opportunities empowered the Partnership, Charles Bedford acknowledged that these contractual relationships were a balancing act. "The risk was creating expectations that the plan, whatever the plan they came up with, was going to be accepted ... You have to balance it, because they have to believe that something that they're doing is going to be meaningful, and it's going to impact the decision-making process." Giving the community the opportunity to develop a plan for trust land also requires a certain amount of trust on the part of the SLB: "You have to in your heart believe that what they're going to come up with is going to be something you can work with," said Charles Bedford.<sup>157</sup>

### **Shared Goals and a Common Vision Statement**

The collective desire to keep Emerald Mountain free of development and to manage it for multiple uses united diverse community stakeholders around a common purpose. Participants were proud of the fact that stakeholders who entered the process with such seemingly divergent goals were able to develop a mutually agreeable solution to the management of the parcel. One factor that seems to have helped the group progress in that direction is the exercise of developing a set of common goals for both the Core Group and the Partnership. The group determined that overall, they wanted to keep development off of the parcel, and allow grazing, wildlife management, hunting and other recreation, all concurrently. This agreement on a multiple-use outcome also illustrates that individuals recognized each others' interests in the land and were willing to compromise to develop mutually agreeable goals. This process highlighted their mutual aspirations to conserve the land. All participants had in common a passion for green spaces in their community, and a powerful sense of place. It appears that by agreeing to the goal of multiple-use management, they recognized their interdependence and could move forward around a common mission.

### **Shared Skills and Perspectives**

The Core Group, Partnership and Advisory Council provided the opportunity for rich discourse between a broad range of perspectives on the future of Emerald Mountain. Some

individuals particularly stand out as bringing unique and valuable information or perspectives to the group, which would otherwise have been lacking. All participants mentioned Jim Stanko, long-time grazing lessee of Emerald Mountain, as having skillfully represented the agricultural values of the parcel, and provided a valuable “reality check that we wouldn’t have had if you just had your recreationists. The reality of ‘hey, my livelihood depends on this property, and if I want to pass on my ranch to future generations and have it be economically feasible, then this is the type of stuff that needs to happen.’”<sup>158</sup> Libbie Miller explained the critical role of Stanko’s perspective in the overall debate over the future planning of Steamboat Springs:

Routt County is unique, and Steamboat Springs is unique from the standpoint that while we do have tourism and skiing, agriculture is still a really important part of the community here. We value that and want to keep that. So, it was good to have somebody like Jim in there saying “hey, we can’t let this type of stuff go.”<sup>159</sup>

Other participants also were important to the effectiveness of the process. Susan Otis of the Yampa Valley Land Trust provided the group with expertise in land conservation strategies as well and networking. Libbie Miller also provided her professional skills in preparing for public meetings and took the lead role in writing the management plan. Chris Young’s training in psychology helped manage the diverse interests during the more heated meetings with Citizens to Save Our Public Lands. Ben Beall, through his experience as County Commissioner, provided contacts in city and county governments and the media, general expertise in policy process as well as resources such as meeting places in the county court house.<sup>160</sup> Some members of the Partnership brought logistical skills that kept the day to day operations of the Partnership progressing. Lynn Abbot’s administrative skills, combined with her willingness to contribute her time, were particularly valuable. Libbie Miller recalled, “Lynn would always say, ‘I’m willing to do the mailings. I’m willing to write up a letter ... you need something, let me know. You need editing, let me know.’ She was really useful.”<sup>161</sup>

## LESSONS LEARNED

### **1. The Colorado State Land Board’s clear mandate, few regulatory constraints, and regional representatives equip them well for engaging in collaborative planning.**

Several aspects of the SLB make them easier to work with than many other types of agencies, and affords them more flexibility than one might assume. The clarity of the SLB’s mission makes them an easier party with whom to negotiate. Susan Otis, Director of the Yampa Valley Land Trust, observed this during her work with the agency: “I love the directness of the SLB, even though I don’t always agree with their philosophy to dispose of their state lands.”<sup>162</sup>

Not only does the agency have an explicit mission, but they also have fewer constraints in engaging in collaborative planning than federal agencies. Charles Bedford observed from his time as Director of the SLB that he actually had much more flexibility than federal agencies do in choosing to collaborate with local communities: “State governments have so much

more flexibility and leeway, even within the fiduciary mandate. I mean, every time you convene a group on the federal level, you have to go through the FACA process, which ... makes for very stiff kind of meetings.” However, Charles Bedford differentiated between the regulatory constraints agencies face, and the confining influence of their own cultures and institutional structures: “Regulatorily it’s a lot easier on the state level. Culturally and institutionally, it’s dependent on the personalities within the Land Boards. They have the flexibility, whether they want to use it or not, that’s another question.”<sup>163</sup>

The SLB’s structure of six regional offices also equips them with on the ground personnel that can engage communities and represent the SLB in local planning processes. In the case of Emerald Mountain, the SLB hired Beverly Rave early on in the planning process. She had significant experience with collaborative planning, which was helpful in managing the process at the local level.<sup>164</sup> But merely having a local office is not adequate. Local personnel need to actively connect with the community to foster collaborative interactions. Beverly Rave explained the importance of “talking to people face to face. County Commissioners, other people, generally in a public forum ... And being visible, being out there, looking at the land, doing inspections, just doing my job, really. But before I was there, the State Land Board had very little visibility.”<sup>165</sup>

## **2. Communicate openly and often with the public about the group’s process and progress.**

The Partnership also would have benefited from using public relations strategies to share even more information with the public about their process, and to generate even broader support for their activities. The group received some criticism for not getting Great Outdoor Colorado (GOCO) Trust Fund involved (a state granting program funded by the Colorado Lottery), however GoCo does not fund the acquisition of STL (because the money would merely be shifted from one state agency to another). Chris Young recalled this predicament: “We were criticized for not getting GoCo involved ... I didn’t know that GoCo wouldn’t fund state trust lands, and we should have put it in the paper in big banner headline.”<sup>166</sup> The group also would have benefited from publicizing the many avenues they tried, to illustrate that the BLM Land exchange was the best option. Chris Young thought they could have publicized their RFQ and RFP processes more. Wohlgenant agreed that the PR strategy could have been improved by generating more visible support for the land exchange early on, both in the community and among political leaders.

## **3. In a long-term collaborative planning process, evaluate each new proposal to anticipate and mitigate potential controversies that might hinder acceptance or implementation.**

In retrospect, some members of the Partnership felt they should have spent more time anticipating potential controversies around their work and how to address them. Chris Young advised, “anticipate what the opposition will bring,” and Libbie Miller agreed:

You need to do some brainstorming beforehand, particularly about what some of the potential pitfalls you are likely to run into. Obviously you can’t think of

every one, but develop a list of some things that might come up, and how you are going to address them if they do come up.<sup>167</sup>

She used the example of parties opposed to the exchange coming to Partnership meetings. While they did not oppose protecting Emerald Mountain, they disagreed with selling off public lands in other towns to achieve this goal. Libbie Miller thought the Partnership was ill-prepared to work with this conflicting perspective: “In my opinion, as a Partnership we didn’t handle that very well. When the opposition started bringing in their concerns, we might have done a better job handling these, if we had thought how we were going to address those ahead of time.”<sup>168</sup>

One strategy to alleviate this conflict could have been to include and expand county representation on the Partnership as soon as the project broadened to include a land exchange with the BLM. Because this exchange process is still underway, the outcome is unknown, however there are many channels through which those opposed to the exchange could impede or prevent its final passage. Ben Beall forewarned, “Some of these guys are wealthy enough, there will probably be a lawsuit, because they didn’t get opportunity to buy land.”<sup>169</sup> McBrayer commented, “If it gets stopped in Washington, it will be political. Someone will tell the BLM director this is a bad idea ... We have people in the area who can pick up the phone and talk to the Secretary of the Interior.”

#### **4. Identify and include all potential stakeholders, and reevaluate if the project scope changes to make sure new stakeholders are brought into the fold.**

One of the strongest lessons participants in the Emerald Mountain process learned is that as the scope of the project grew (from a city conservation effort to a county-wide land exchange), it would have been critically helpful to seek out and work with representatives from this broader community of stakeholders. Libbie Miller advised future groups to “more clearly identify who your stakeholders are, and make sure that you are not farther than you think you are in terms of who this could or could not impact. Then actively work to engage those people.”<sup>170</sup> Chris Young agreed that the Partnership did an inadequate job of maintaining a steady representation from county-based interests:

When we got into county and city appointed members, and those members selecting other members, the personality of the group changed, and it was very disappointing to me. I mean, I have nothing against the individuals, but right now, four of the nine members are either current or former city council members, and in my mind that does not adequately represent Routt County ... We don’t have any representation from South Routt. We have no representation from West Routt. We’re all from Steamboat.<sup>171</sup>

Beverly Rave noted that including representatives from all involved stakeholder groups improves communication across these groups: “Try to make sure that all the people who have an interest in what you’re doing are at the table, so that you’re not having to carry info out of that room and trying to pass it on to someone else.”<sup>172</sup> Libbie Miller suggested that even if individuals are not interested in participating, “Document that you’ve attempted to engage

people numerous times. If you can show that they have not shown an interest, or even better, support what you're going for, it may help clear things up down the road."<sup>173</sup> Wohlgenant also agreed that once the exchange was proposed, the Partnership no longer represented the entire county. However, he wondered if it was the Partnership or the BLM's responsibility to represent those interests, citing that the federal land exchange process is intended to gather public input from all stakeholders involved. It is unclear whether they would have selected the land exchange as the best option if more groups from the county were represented in the Partnership, or would they have chosen a solution that was less controversial in surrounding communities.

##### **5. In designing the group's structure, be aware that hierarchical membership categories can breed conflict and may alienate some stakeholders.**

One issue that has yet to be resolved within the Partnership was the decision to separate lessees and other parties into the Advisory Council because of a perceived conflict of interest. While members of both the Board of Directors and Advisory Council are welcome to come to meetings to discuss the issues, if the group reaches a point where they need to take a vote, only the Board is able to vote. Ben Beall described the two categories of membership in the Partnership: "We set that up just so we could have more people involved, so we could expand the interest groups ... when we discuss around the table, they're right there, saying the same thing. It's if we ever had to vote ... when I say what the yae or nay."<sup>174</sup>

However, not all participants felt that the distinction between the two groups is innocuous. This sentiment is especially true of individuals who were involved with the initial Core Group, and then relegated to the Advisory Council, such as Jim Stanko: "You're told you can't be part of it anymore because you've got a conflict of interest, and a person that's trying to get a bicycle trail through the thing is appointed, and they don't have a conflict of interest?" Jim Stanko was not comfortable with the fact that he did not have a vote in group decisions: "when it comes down to actually making the decision, or coming up with something, you know, I don't have a say in it."<sup>175</sup> This particular division seems to have had somewhat serious consequences in group relationships in recent years. While Ben Beall claimed that "I don't know if we've ever had a dissent after our discussion, as far as trying to work something out," Jim Stanko felt differently: "Now it's the Partnership off doing something and the rest of us may or may not know what they are doing, even though I'm supposed to be on the Advisory Council."<sup>176</sup> Perhaps the decision to distinguish between the two classes of stakeholders was necessary to maintain credibility, as was legally advised; however, it is unclear whether that benefit outweighed the cost of losing the participation and endorsement of such a critical stakeholder.

##### **6. Individuals with direct interests in the outcome may be more invested in the process, thus may endure through other personnel changes.**

Several participants in the process differentiated between members of the Partnership who directly rely in the Emerald Mountain parcel for their livelihood, and those that merely have an interest in using it. Libbie Miller felt directly linked to the outcome: "I was tied to it, as an

agency person representing wildlife values that needed to be addressed. And as a landowner like Jim Stanko, you're tied to it because it's your livelihood and your future."<sup>177</sup> Miller observed that there tended to be more turnover in representatives of recreational interests:

It would really be neat to mountain bike up there. It would really be neat to cross country ski up there. However, when it's all said and done, it's likely going to matter less one way or the other. We had a lot of people that would get really involved for a year or two and drive really hard, but would end up getting burnt out. It's difficult to maintain that enthusiasm through all the momentum plateaus in this type of process.<sup>178</sup>

Implied in this statement is that those with more direct interests in the outcome are more likely to persevere in the process.

Other participants observed a similar division within the group. Jim Stanko reflected, "To really make it successful, you've got to involve the people who really have a passion for it or the heart, or want to do it. And, when you started getting the people that had an agenda, you're in trouble." In his view, those with the "passion" were those that have a direct interest in finding an outcome that includes their own interest, but is livable for others as well. Unfortunately, in Jim Stanko's opinion, such individuals:

... in a lot of cases don't have the time, they've got to make a living. And the people who have the agenda are the people who are the trust fund babies and the people who can sit around for four to five hours a day with nothing better to do than to.

Stanko perceived, in particular that some of the individuals representing recreational interests did not seek a holistic solution to the user conflicts on Emerald Mountain:

Like the bicycle people, that's all they want. Or the recreation people ... they don't care how it's managed ... everything else can go to an oblivion. All they can see is this bicycle trail and them riding on it. And they lose all sight of, you know, who's going to patrol, how are you going to miss the cattle. You know, even the wildlife was a main thing; you can't get them to talk hunting season. What are you going to do in hunting season?<sup>179</sup>

## **7. Using a neutral spokesperson could help mitigate controversy and divert public scrutiny of process leaders.**

Some participants thought the Partnership could have been more effective dealing with the controversy around the land exchange if they had chosen spokesperson who appeared more neutral, and who had strong mediation skills, instead of having Ben Beall act as both Chairman and spokesperson. This could have helped the opposition feel more listened to. Libbie Miller remembered, "I think sometimes that was their concern. They felt that they were never listened to."<sup>180</sup> While Beall was the fundamental driver of the collaborative process, that fact alone may have made him a target for those opposed to the land exchange.

Chris Young recalled this dynamic with some regret: “Ben has been a wonderful leader, but regrettably been the lightning rod. I wish some of the rest of us could have shared the grief. I felt bad about that that it seemed so focused on him and not on all of us.”<sup>181</sup>



## **ACKNOWLEDGEMENTS**

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Libbie Miller  
Beverly Rave

Jim Stanko  
Joanne Stanko  
Paul Strong  
Tim Wohlgenant

## **CHAPTER 7**

### **THE HOUGHTON AREA MASTER PLAN PROCESS: Urban Planning for Future Growth**



Houghton Road Area, Tucson, Arizona

Photograph by Alden Boetsch

**Written by Alden Boetsch**  
**Researched and Edited by Alden Boetsch and Jessica Mitchell**

## INTRODUCTION

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Mountain vistas and the ecologically-diverse and beautiful Sonoran Desert surround the City of Tucson in southeastern Arizona. Like many popular Western cities, Tucson is experiencing significant growth as more and more people make their home there. As Tucson's pattern of growth trends from northwest to southeast, a large section of undeveloped land on the southeastern edge of the city known as the Houghton Road area is projected to become the focus of future development. The Arizona State Land Department (ASLD), the agency responsible for managing Arizona's state trust land, owns the majority of the land in this area.

Traditionally Tucson has grown by annexing small pieces of land from surrounding Pima County that the county already has developed or planned. This method has not allowed for comprehensive or planned growth in Tucson and has resulted in development that is not well-connected. However, the Houghton Road area, which was annexed into the city between the 1970s and the 1990s, is a large section of mostly undeveloped land. The City of Tucson decided to take the opportunity to develop a comprehensive growth strategy for the area as part of a larger sustainable growth initiative. The product of this effort was the Houghton Area Master Plan (HAMP), which serves as a framework to guide development in the area based on the Desert Village model. The Desert Village model is a style of development that promotes mixed-use land use patterns, a range of housing types and prices, transportation options that encourage walking, biking and mass transit and development that is sensitive to the desert's natural features.<sup>1</sup>

In 2003, the city initiated a collaborative planning process for the development of the HAMP by creating a Citizens Review Committee (CRC). The CRC was comprised of citizen representatives of neighborhood groups surrounding the Houghton Road area, as well as a number of local people with professional land use planning and development backgrounds. A planner from the ASLD attended the CRC meetings and served as a resource on ASLD-related issues that arose during the process, although he was not an official member of the CRC.

The HAMP was completed in 2005 and unanimously adopted by the Tucson Mayor and City Council the same year. Despite this citywide approval, the future of the HAMP remains uncertain and only time will tell how effective this planning document will be as the ASLD, the largest landowner in the area, begins disposing of property in the area. To achieve the goals of the Desert Village model put forward in the HAMP, the city has encouraged the ASLD to sell parcels of no less than 500 acres in the area covered by the HAMP, and to push the purchasers of these parcels to develop a master plan for each parcel before selling off smaller pieces for development.<sup>2</sup>

The HAMP development process raises some interesting issues and offers some valuable lessons about the collaborative planning process, including the importance of having a well-planned and prepared-for process and the important role momentum and consistency can play. It also reveals some of the nuances of collaborating with a state trust land management agency that operates under one of the strictest mandates in the country.

## CONTEXT FOR COLLABORATION

In assessing the development of the Houghton Area Master Plan (HAMP) it is important to first understand the historical, political and legal context in which the process took place.

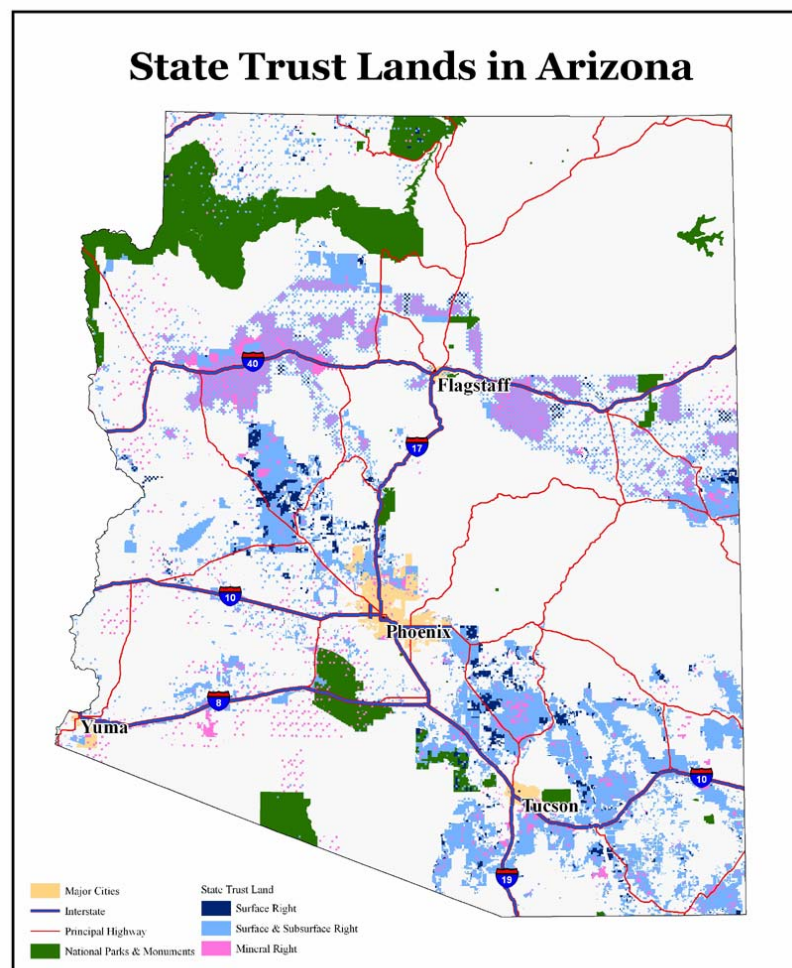
### ARIZONA'S LAND GRANT

The federal government granted Arizona sections two, 16, 32 and 36 in every township at statehood to be managed “for the support of the common schools.”<sup>3</sup> Arizona has retained a significant amount of the 10.8 million acres originally ceded to it and the Arizona State Land Department (ASLD) currently manages 9.2 million acres of trust land throughout the state.<sup>4</sup>

Some of Arizona's state trust land is scattered in a checkerboard pattern across the state, but the majority of it is in larger, contiguous parcels (Figure 7-1). The reason for this distribution is that by the time Arizona became a state, some of the sections it was granted already were being used by the federal government for other purposes. Arizona was allowed to choose other sections of land *in lieu* of the original sections to make up the difference.<sup>5</sup> In many cases the state chose contiguous *in lieu* sections that helped consolidate their holdings and provide for more efficient management of the land.

While the majority of Arizona's state trust land is in rural areas of the state and is primarily leased for grazing, the ASLD's most lucrative activities involve their urban land holdings.<sup>6</sup> As a result, the ASLD focuses many of its resources on the lease and sale of these parcels. The state trust

Figure 7-1: State Trust Land in Arizona



Source: “Arizona Trust Lands,” Trust Land: A Land Legacy for the American West, The Sonoran Institute & Lincoln Institute of Land, available at <http://www.trustlands.org>.

land in the area addressed by the HAMP is one such large, contiguous parcel of urban land with high development potential.

## **THE NEW MEXICO-ARIZONA ENABLING ACT AND ARIZONA CONSTITUTION**

The New Mexico-Arizona Enabling Act was passed in 1910, and as the name suggests, contained provisions for both the territories of New Mexico and Arizona. In 1912, the two territories were admitted to the Union as separate states. Because the New Mexico-Arizona Enabling Act was the last of such legislation in the continental United States, it is the most restrictive with regard to the management of state trust land.<sup>7</sup> This Enabling Act is the only federal legislation to specifically require that the land granted to the states at statehood be held “in trust,” which has heightened the Arizona State Land Department’s (ASLD) sense of its fiduciary duty in the management of Arizona’s state trust land.<sup>8</sup> The stringency with which the ASLD approaches this responsibility was apparent during the development of the Houghton Area Master Plan (HAMP) and is one of the elements explored later.

The Act also outlines specific parameters about the disposition and management of state trust land, including the requirement that the land only be sold or leased “to the highest and best bidder at a public auction” for no less than its appraised value.<sup>9</sup> This requirement has a significant effect on current land management and transactions. While this provision ensures that the ASLD maximizes the revenue for the trust beneficiaries from any transaction, it also limits the flexibility the ASLD has to conduct these activities. For example, the ASLD is not allowed to act as a private landowner might and negotiate the terms of a sale or lease with a potential buyer privately.

The Arizona Constitution contains many of the same guidelines and restrictions for the use and management of state trust land as the Enabling Act, including that the land be held in trust and that it only be sold or leased at public auction to the highest bidder.<sup>10</sup>

## **LEGAL INTERPRETATIONS OF ARIZONA’S TRUST RESPONSIBILITY**

Over the years, Arizona’s trust responsibility has been interpreted by state and federal courts to impose a restrictive trust responsibility.<sup>11</sup> Through these interpretations the courts have confirmed that: all state trust land sales have to take place at public auction, even if the purchaser is a city; the Arizona State Land Department (ASLD) is prohibited from engaging in land exchanges; and the ASLD must be compensated for the full appraised value of any right-of-ways it grants on state trust land.<sup>12</sup> Arizona’s strict trust management mandate and these legal interpretations of it preclude the ASLD from interacting with other state agencies and municipalities in the more accommodating manner that is often afforded state agencies.

## **TRUST LAND MANAGEMENT IN ARIZONA**

The Arizona State Land Department (ASLD) was established in 1915 to manage Arizona’s state trust land and maximize revenue generation for the Trust’s beneficiaries.<sup>13</sup> A gubernatorially-appointed State Land Commissioner manages the Department. The ASLD is divided into six divisions, which include Administration and Resource Analysis; Land

Information, Title, and Transfer; Real Estate; Southern Arizona Real Estate Division; Natural Resources; and Forestry Management.<sup>14</sup> In addition, the department has a five-member Board of Appeals, which is responsible for approving land sales and commercial leases, and hearing appeals of the Commissioner's classification and appraisal decisions.<sup>15</sup> The Governor appoints Board members for six-year terms. Three board members are appointed to represent the 15 counties in Arizona, which are divided into three districts of five counties each, and two members are appointed at large.<sup>16</sup> No more than three members can be of the same political party and each must have a background in real estate classification and appraisal.<sup>17</sup>

The ASLD's current mission is:

To manage State Trust lands and resources to enhance value and optimize economic return for the Trust *beneficiaries*, consistent with sound stewardship, conservation, and business management principles supporting socioeconomic goals for citizens here today and generations to come. To manage and provide support for resource conservation *programs* for the well being of the public and the State's natural environment.<sup>18</sup>

#### **A SHIFT IN FOCUS TO URBAN LAND USE ISSUES**

Most of Arizona's state trust land is leased for grazing, but the Arizona State Land Department (ASLD) currently manages more than one million acres of state trust land that is adjacent to or within rapidly growing urban areas of the state.<sup>19</sup> The lease and sale of the ASLD's urban lands currently generates the most revenue for the trust. According to Commissioner Winkleman, "We don't have oil and gas, so the revenues that we generate are from disposing of our real estate in these expanding urban areas that have grown out into our properties."<sup>20</sup> In the past, most of the ASLD's urban land transactions have been focused in and around Phoenix. However, as that state trust land continues to be sold and leased, the ASLD has begun to focus some of its attention on its state trust land holdings around Tucson. This change was reflected in the ASLD's involvement in the issues surrounding the development of the Houghton Area Master Plan (HAMP).

The state of Arizona has recently experienced a population increase that far exceeds the national growth average for the United States.<sup>21</sup> This increase in population has meant, among other things, an increase in the size and number of the state's urban areas. In many cases, this expansion has meant that the demand to develop state trust land in and around these urban areas has increased. This demand, combined with the large amounts of revenue the ASLD can earn from urban land transactions has helped shift the ASLD's role and focus as a land management agency from one that deals primarily with traditional land use management issues like grazing to an agency involved in urban growth issues like real estate disposition and land use planning. Also instrumental are three important pieces of legislation that have helped create the framework in which this shift has occurred:

- **The Urban Lands Act**

The Urban Lands Act, passed in 1981, allows the Commissioner, either on his or her own initiative or at the request of the governing body of a city, town or county, to designate certain parcels of state trust land as urban lands suitable for urban planning or conservation purposes if the land is to be planned in conjunction with land that is to be developed.<sup>22</sup> The Act is the first legislative indication of the shift of the ASLD's primary focus away from natural resource management to real estate and urban development issues, and allows the ASLD to capitalize on the increase in revenue that planning adds to state trust land appropriate for development.<sup>23</sup>

- **Growing Smarter and Growing Smarter Plus Legislation**

In 1998 and 2000, the Arizona Legislature passed the Growing Smarter and Growing Smarter Plus Legislation, respectively, which were intended to strengthen land use planning activities throughout the state. The legislation requires, among other things, that the ASLD prepare and periodically update conceptual plans for state trust land located in urban areas of the state and create five-year disposition plans. The purpose of the conceptual plan is to portray the ASLD's long-term land use goals for the area.<sup>24</sup> The ASLD also is required to work with local municipalities to integrate their conceptual plans with the general plan of the city, town or county in which the land is located.<sup>25</sup> In addition, local communities are required to identify potential growth areas and develop strategies to ensure that the growth is planned so that it can provide for its share of the public facilities that will be necessary to serve it, including the development of master planned communities.<sup>26</sup> The City of Tucson's General Plan identifies the Houghton Road area as one of the city's areas of potential growth.<sup>27</sup>

The Urban Land Planning Oversight Committee, consisting of five members appointed by the Governor for staggered, four year terms, was established to make recommendations to the ASLD on the creation of these conceptual plans, give advice on the kinds of studies that are necessary to create the conceptual plans, and review and make recommendations for approval of the conceptual plans and five year disposition plans.<sup>28</sup>

- **The Arizona Preserve Initiative**

The Arizona Preserve Initiative (API), passed in 1996, and revised in 1997, 1998 and 1999, is intended to encourage the preservation of certain parcels of state trust land as open space in and around urban areas.<sup>29</sup> The API allows the Commissioner to sell, or lease for up to fifty years, state trust land in urban areas for conservation purposes and describes the processes that must be followed to do so.<sup>30</sup> Consistent with the Enabling Act, these sales or leases must be done at public auction and based on a fair market value appraisal of their worth. The API also establishes a Conservation Advisory Committee whose role is to help evaluate and prioritize applications for land to be considered for conservation and making recommendations to the Commissioner.<sup>31</sup> Members of this five-member Committee, three of whom are appointed by the

Governor and two of whom are appointed by the Commissioner, serve staggered five-year terms and must have a background in natural and historical conservation issues.<sup>32</sup>

In addition, Governor Napolitano appointed Mark Winkleman to head the ASLD as Commissioner in January 2003. Commissioner Winkleman has applied his previous professional experience in real estate to his management of the agency and has been credited with helping increase the ASLD's revenues to historic levels through urban land dispositions.<sup>33</sup>

## **CURRENT ARIZONA POLITICS AND THE ARIZONA STATE LAND DEPARTMENT**

Arizona, in general, is a politically conservative state. However, although the governor appoints the Arizona State Land Department's (ASLD) Commissioner and the agency relies on the State Legislature to appropriate its funding, the agency is less affected by the more direct sorts of political influence than it would be if the Commissioner were an elected official. This, combined with the fact that the ASLD has experienced a substantial increase in revenue generation under the current Commissioner, has meant that the agency has been able to operate relatively autonomously.

As the state capital as well as the biggest urban area in the state, Phoenix is where most of the political power is concentrated and where the ASLD has its headquarters. Historically, the majority of the ASLD's urban land development resources focused in and around Phoenix where development is primarily welcomed and encouraged. In contrast, Tucson is known as a more liberal city where there is less agreement on issues related to development and growth. While some in Tucson see development as a necessary element in attracting new residents and sustaining the city's economic vitality, others are more resistant to the idea.<sup>34</sup> The city's desire to address these kinds of questions by managing and planning for its growth was the main reason for creating the Houghton Area Master Plan (HAMP).

Historically, there has been some tension between the City of Tucson and Pima County, in which it is located. The reason for this tension is that Pima County is the only county in Arizona that has a substantial urban population living in an unincorporated area (only slightly more than half of the population of the Tucson metro area lives within city limits, the rest live in Pima County). This situation forces the county to provide urban services, a task it is not really equipped to do.<sup>35</sup> This tension over provision of services has led to conflict between the two entities in the past. However, some of this tension was relieved as the two entities interacted during the development of the HAMP.

After the passage of the Urban Lands Act in 1981, the ASLD's relationship with other agencies and municipalities began to change. Instead of being perceived as a public land agency like the U.S. Forest Service or the U.S. Bureau of Land Management, the ASLD began to be seen as a real estate focused agency.<sup>36</sup>

This new, more development-centric focus, and the enforcement of the ASLD's specific mandate to generate revenue has caused and continues to cause tension between the ASLD



and other agencies, municipalities and in some cases organized interest groups who either do not understand the ASLD's unique mandate or construe it in ways that differ from the ASLD interpretation.<sup>37</sup> The different interpretations of the ASLD's mandate are seeing it as a guide for what the ASLD cannot do versus exploring how new or different land management and development ideas might compliment the ASLD's mandate.<sup>38</sup> Both points of view exist to some extent, within and outside of the ASLD. This debate manifested itself during the development of the HAMP, not as differences of opinion over whether or not the area should be developed, but instead as the details of what form the development should take.

Historically, as a state agency, the ASLD has had super zoning power over local municipalities and technically did not have to cooperate with them in terms of zoning. In the past, this authority was a point of contention between the ASLD and Arizona localities. However, the Growing Smarter and Growing Smarter Plus legislation requires that before adopting a conceptual land use plan for state trust land, the ASLD Commissioner must consult with the local municipality in which the land is located on integrating the conceptual plan into the general land use plan of the municipality.<sup>39</sup> Likewise, the legislation directs municipalities to work with the ASLD in coordinating the production of their general plans with the creation of the ASLD's conceptual plans.<sup>40</sup>

Commissioner Winkleman has recognized that sales suffer because of the uncertainty created by this lack of past cooperation and has begun working with municipalities to make sure the ASLD and the municipality share a common vision for the property before it is put on the market.<sup>41</sup> As demonstrated during the development of the HAMP, others at the ASLD also recognize the potential importance and attendant benefits of working together with a locality during the planning phase of a development endeavor.

#### **TRADITIONAL METHODS OF STATE TRUST LAND MANAGEMENT IN ARIZONA**

As mentioned earlier, the Arizona State Land Department (ASLD) historically has focused on natural resource management, although recently it has shifted its primary focus to urban land management and planning issues. The ASLD often works together with local communities and jurisdictions on state trust land management issues, by either serving as a resource for the community or planning group, or soliciting public comment and holding public hearings.<sup>42</sup> The former role was exemplified during the Houghton Area Master Plan (HAMP) process; an ASLD representative attended the Citizens Review Committee, participating as a resource person in an advisory capacity.<sup>43</sup> It is difficult to make a general statement about how the ASLD interacts with local jurisdictions because it varies across the state, but from the ASLD's perspective, the more a city is interested in growth and interested in planning, then the more cooperative the relationship will be.<sup>44</sup>

Traditionally, the City of Tucson has grown by annexing land that has already been planned or developed by Pima County.<sup>45</sup> The opportunity to develop a plan for an undeveloped area as large as the one covered by the HAMP thus was a new experience for the city.<sup>46</sup> While Tucson was inexperienced with such large-scale planning, it had been involved with citizen-based groups in the past. However, prior to the HAMP process, the city never had initiated a citizens process that addressed land use planning issues for such a large area.<sup>47</sup> This

inexperience had some interesting repercussions for the development of the HAMP that are discussed in depth later.

## **THE STORY: THE HOUGHTON AREA MASTER PLAN PROCESS**

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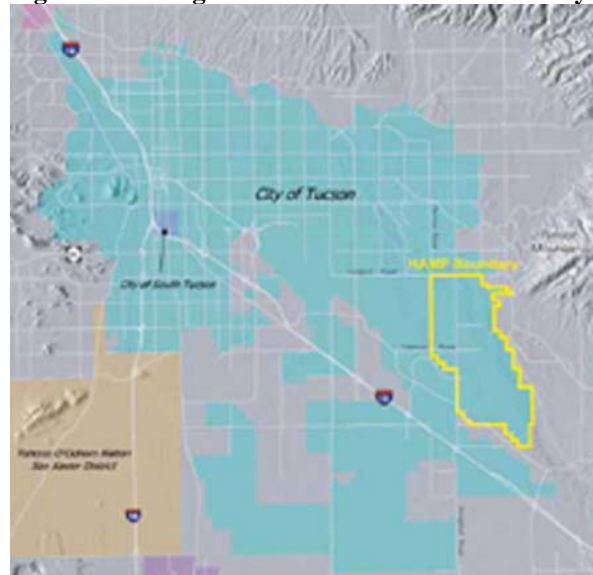
Set in the ecologically unique and beautiful Sonoran desert, and surrounded by four arresting mountain ranges, Tucson has been inhabited for thousands of years. Traditionally a center for farming, mining and ranching, and now a popular location with tourists, retirees, outdoor enthusiasts and professionals alike, Tucson is the second largest city in Arizona.<sup>48</sup> Drawn by its natural and cultural attractions and economic and academic opportunities, an increasing number of people are calling Tucson home.<sup>49</sup>

As it grows, the City of Tucson is interested in protecting its character and expanding in a sustainable way. The city hopes to accomplish this goal by focusing on growing “smarter” in new areas of development through urban planning efforts, by taking advantage of opportunities to redevelop the downtown area and by improving existing services and infrastructure.<sup>50</sup> The Houghton Road area is on the “evolving edge” of the southeast side of Tucson, an area where the majority of new growth in the city is predicted to take place.<sup>51</sup>

In an effort to direct how this growth will occur in a way that is consistent with their development goals, the city decided to create a Houghton Area Master Plan (HAMP). The HAMP addresses an area of approximately 10,800 acres of land that, while within city limits, is still about twenty miles from downtown Tucson.<sup>52</sup> The area is bounded by the city’s corporate boundary to the east and south, Irvington Road to the north and extends about one mile west of Houghton Road, which runs directly north south through the area.<sup>53</sup> (Figure 7-2) The Rincon Mountains rise to the east in the Saguaro National Park and the saguaro and cholla cactuses and ironwood trees of the Sonoran desert stretch out to the east and south (Figure 7-3).

There are currently three subdivisions in the area, but the majority of the land is undeveloped. While two of the subdivisions resemble typical suburban development, one of them, Civano, stands out. Civano was developed in the late 1990s using the tenets of New Urbanism, which include creating communities that contain mixed-use areas and a range of housing types and prices, are walkable and denser than typical subdivisions and are environmentally sustainable in their use of energy.<sup>54</sup> Civano is considered a mixed success

**Figure 7-2: Houghton Area Master Plan Boundary**



**Note:** The blue denotes the city of Tucson and the yellow line outlines the HAMP boundary.  
Source: *Houghton Area Master Plan*, Tucson Department of Urban Planning and Design, <http://www.tucsonaz.gov/planning/plans/all/hamp.pdf>.

**Figure 7-3: Cholla and Saguaro Cactuses in the Sonoran Desert**



Source: Photograph by Alden Boetsch

depending on from which perspective it is approached. On the one hand, it has had significant financial struggles in the past, which makes some developers wary of the market readiness of that kind of development in the Houghton Road area. On the other hand, however, Civano embodies the type of growth that many espouse and is home to many happy residents.<sup>55</sup> Finding a balance between using smart growth development strategies for the area and ensuring that the new development is financially viable and lucrative is one of the biggest tasks

facing those involved in the development of the Houghton Road, namely the city and the Arizona State Land Department (ASLD).

The ASLD owns 76 percent (7,742 acres) of the area covered by the HAMP, all of which is undeveloped and currently not adequately served by public facilities.<sup>56</sup> The rest of the land is either owned privately or by the City of Tucson or by Pima County.<sup>57</sup> As the major landowner in the area, the ASLD's land disposition decisions will have a significant effect on how the land will be developed, and subsequently how that part of Tucson will take shape. Both the ASLD and the city have an interest and a stake in how the Houghton Road area is developed and the HAMP planning process was one step in the process of bringing them together.

### **PRECURSORS TO THE HOUGHTON AREA MASTER PLAN**

The passage of the Growing Smarter and Growing Smarter Plus legislation in 1998 and 2000, respectively, had a big effect on the planning efforts of the ASLD and Arizona towns and counties. The new legislation required the ASLD to develop and integrate conceptual plans for state trust land in and around urban areas of the state with city and county plans for the same areas. The ASLD uses conceptual plans to assess the allocation of land uses on a particular parcel and determine if it is being used in a way that is most financially beneficial to the trust.<sup>58</sup> One of the requirements of the City of Tucson, like all cities, through the legislation was to identify potential areas of growth at its edges and ensure that development in these areas was planned. The purpose of requiring the ASLD and local jurisdictions to integrate their conceptual plans was to ensure that growth occurred in a coordinated way.

In 1999, the ASLD, as part of its compliance with the new law, awarded a land use planning contract to Houghton Road Plan Associates to create a conceptual plan for 7,742 acres of

state trust land in the Houghton Road area of southeast Tucson.<sup>59</sup> Houghton Road Plan Associates was a consortium of area planning, development, engineering and conservation professionals, as well as representatives from the City of Tucson.<sup>60</sup> Within a few months, the group submitted a plan to the ASLD, although the plan was later modified by the ASLD to include higher density development and less open space.<sup>61</sup>

Using information in the conceptual plan to inform its decision, the ASLD held an auction for a 1,071-acre parcel of state trust land in the Houghton Road area in 2002. Vistoso Partners, a Phoenix-based development company, was the successful bidder and bought the parcel for \$29.1 million.<sup>62</sup> However, they later defaulted after failing to pay the additional money due within 30 days of the auction.<sup>63</sup> Vistoso Partners sued to have the auction rescinded, claiming it had been misled about what lands were included in the auction.<sup>64</sup> The suit was settled, with Vistoso Partners forfeiting most of the money it paid at auction.<sup>65</sup> Although no land ultimately was sold as a result of this auction, it still crystallized for the city the fact that development in the area was imminent, and helped catalyze the Houghton Area Master Plan (HAMP) development process.<sup>66</sup>

Also, in accordance with the new law the City of Tucson in 2001 amended its General Plan to identify areas of potential growth and strategies to plan for that growth in ways that ensured that it would be able to pay for an equitable share of the additional services required. These amendments to the General Plan, the document at the top of the plan hierarchy, created some inconsistencies with the two existing area plans – documents on the next lower level in the plan hierarchy – for the Houghton Road area.<sup>67</sup> Instead of amending the two area plans, the city began to consider developing a single new plan for the area, an idea that would later be manifested as the HAMP.<sup>68</sup>

In addition to these activities by the city and the ASLD, city Councilperson Shirley Scott, who represents Ward Four where the majority of the Houghton Road area is located, also began to get involved in planning efforts for the area. In September 2002, she convened the Southeast Planning and Coordinating Committee (SPCC). The SPCC was made up of planning and development professionals, neighborhood representatives, architects, members of the education community, representatives of the nearby Davis-Monthan Air Force Base, area business people, religious organizations in the area, local politicians and various other interested parties.<sup>69</sup> The group was tasked with addressing planning issues in the area.<sup>70</sup> The group met regularly for almost two years to study the area and to get a sense of what residents and area land and business owners envisioned in terms of future development.<sup>71</sup>

The ASLD's activities in the Houghton Road area, as well as the city's own sense that it was time to start actively planning for growth in the area, led to the formal commencement of the Houghton Area Master Plan development process.

#### **THE CITY OF TUCSON CONVENES THE CITIZENS REVIEW COMMITTEE**

Tucson's Department of Urban Planning and Design began work on the Houghton Area Master Plan (HAMP) in early 2003. As part of this process they decided to include a public participation element in the form of the Citizens Review Committee (CRC). The city's

decision to create a citizens committee was reflective of both its general management philosophy and the way it perceived the community expected to be engaged on civic issues.<sup>72</sup> The city saw the CRC as a way to receive feedback on the HAMP from a variety of local interests and perspectives.<sup>73</sup> The city's expectations for the CRC were that its members would review and provide input on the policies, concepts and other components of the HAMP as they were developed.<sup>74</sup>

As the major landowner in the area, the Arizona State Land Department (ASLD) also was asked to participate on the CRC, an offer that they accepted in an advisory capacity. Greg Keller, a project manager in the ASLD's Real Estate Planning Division in Phoenix, attended the majority of CRC meetings on behalf of the ASLD. Keller served as a resource for the CRC on issues relating to state trust land management, but was not an official member of the group. The ASLD prefers being involved in community planning groups in an advisory capacity to maintain a greater amount of flexibility in their final decision making about how to manage their land assets.<sup>75</sup>

Prior to the creation of the CRC, city council member Scott asked the city to assume the role of managing the SPCC because it was becoming too difficult for her office to manage.<sup>76</sup> The city did not fulfill Scott's request, instead deciding that it would be better politically if a new committee was created.<sup>77</sup> The Mayor and Council decided that membership in the group should include representatives of registered Neighborhood Associations, appointees from city Wards made by city council members and individuals and professionals from a broad range of interests applicable to the development of the HAMP.<sup>78</sup> Using these recommendations, the city's Department of Urban Planning and Design's project leader for HAMP, Roger Schneider, then extended invitations to a large number of potential members to join the CRC.<sup>79</sup> While quite a large group, many participants thought that the appropriate range of interests was represented (Table 7-1).<sup>80</sup>

The city's Department of Urban Planning and Design's project leader for HAMP, at first Roger Schneider and then later Michael Wyneken, was in charge of preparing materials and running the meetings, while professional facilitator Freda Johnson was hired by the city to facilitate CRC meetings for the first year.<sup>81</sup> Officials at the Department of Urban Planning and Design thought that it would be beneficial to have an outside facilitator because of the large size of the group and because the city had never run a citizens input process for a project of the magnitude of the HAMP process.<sup>82</sup> While Johnson kept meetings running on time, some CRC members commented that this adherence to process sometimes came at the expense of creative discussion.<sup>83</sup> Professional planner and CRC member Linda Morales summed up her impression in this way: "Freda ran an amazingly structured meeting. She made sure you stayed on topic and you got out on time, which everybody loves. She didn't allow anyone to dominate, but in a way this stifled some of the creative process."<sup>84</sup>

Johnson's one-year contract was renewed around the time that the CRC went on hiatus until there was a complete HAMP draft on which to comment.<sup>85</sup> By the time the group reconvened, however, Michael Wyneken, the city's project leader for the HAMP, decided the group could effectively proceed without an outside facilitator and assumed the facilitation role in place of Johnson.<sup>86</sup>

The city also created a Technical Advisory Team (TAT), to advise them on the creation of the HAMP. The TAT was made up of representatives from the City of Tucson, Pima County, the Arizona State Transportation and Land Departments, Vail School District and private utility companies. The group was tasked with addressing the technical aspects of providing services for any future development in the HAMP area.<sup>87</sup> The TAT, as the name suggests, was more technical in nature and did not contain the citizen element of the CRC. The two committees served different purposes for the city and worked relatively independently of one another, although information about what each group was working on was shared intermittently between the two.

**Table 7-1: Houghton Area Master Plan Citizens Review Committee Members**

<b>Affiliation</b>	<b>Name</b>
Diamond Ventures	Ken Abrahams
Sonoran Institute	Suzanne Bott
Community Technical Assistance Center	Dale Calvert
Saguaro National Park	Sarah Craighead
American Institute of Architects	Brent Davis
Resident	Sheila Enos
Bear Canyon Neighborhood Association	Margaret Fowler
School of Landscape Architecture, University of Arizona	Mark Frederickson
Vail School District	Margie Hildebrand
Washington Mutual	Sandie Jacobson
Esmond Station Historical Interests	Bill Kalt
Transportation and Infrastructure Planning	Curtis Lueck
McGraw's Restaurant	Lex McGraw
Commercial Federal Bank	Carl Maass
South Harrison Neighborhood Association	John Macko
Pima College East	Suzanne Miles, Ph.D.
The Planning Center	Linda Morales
Coyote Corridor Neighborhood Association	Peggy Nolty
Development Center for Appropriate Technology	Tony Novelli
Civano Housing and School Design	Cathy Rex
Eastside Neighborhood Association	Frank Salbeo
Ray Schneider Company (real estate)	Ray Schneider
Bicycle Community	Roy Schoonover
Pantano Stables	James Shinn
Pantano Stables	Betty Shinn
Civano Neighborhood Association	Jeff Simms
Architect, SPCC member	Phil Swaim
Rita Ranch Neighborhood Association	Michael Tone
Rincon Institute	Michelle Zimmerman

Source: *Houghton Area Master Plan*, Tucson Department of Urban Planning and Design, <http://www.tucsonaz.gov/planning/plans/all/hamp.pdf>.

The first CRC meeting was held in March 2003. The original schedule for the group included a monthly meeting for one year, after which the HAMP would be submitted to the Tucson Mayor and City Council for approval in April 2004.<sup>88</sup> This schedule was later revised because of delays in the plan development process and the HAMP was eventually approved in June of 2005.

During the first CRC meeting, participants introduced themselves and identified the group or interest they represented. Then, led by the facilitator Freda Johnson, CRC members developed a set of ground rules to guide the meetings:<sup>89</sup>

- Stay on point
- Start and end meetings on time
- No one person should monopolize the meeting
- There will be a “parking lot”, or list of questions and requests for information from city staff to be answered in writing by city staff at future meetings
- Be nice and play fair
- No side conversations
- Meeting participants will put \$1.00 in a communal pot if their cell phone or beeper goes off during meetings
- Add new rules as needed

In response to questions from CRC members during this first meeting, the city later clarified for the group that decisions generally would be made by consensus, but that some voting would occur on specific proposals and anyone wishing to make a minority statement on a vote was welcome to do so.<sup>90</sup>

Also at the first meeting, Roger Schneider, HAMP project leader for the city, presented background information on the area covered by the HAMP and the themes of the plan development project and described the advisory role the CRC would take in the process.<sup>91</sup>

Linda Morales, a professional planner and CRC member, commented that the first meeting was a bit of a surprise for some members: “I think everybody was a little taken aback when we started because it was a huge committee first of all, and we went to the very first meeting and they started presenting plans and it felt like we were there just to kind of rubber stamp.”<sup>92</sup> Frustrations continued at different points throughout the plan development process because of differing perceptions and expectations of the role of the CRC members.

The CRC met monthly for the next two years, with the exception of a few interruptions. During these interruptions the city gathered and assessed data on the area, and during one six-month period the city finished writing the full draft of the HAMP.<sup>93</sup> These interruptions were frustrating for CRC members and city staff, alike, and many commented that they caused the group to lose momentum and connection to the plan development process.<sup>94</sup>

For the most part, meetings consisted of a brief review of the previous meeting, a presentation to the group on some element of the plan development process or other relevant information by city staff, outside consultants or experts and, on at least two occasions, CRC

members themselves and a discussion period. During one meeting, CRC members worked in small groups to brainstorm a list of issues and concerns they had about future development in the HAMP and identify important topics they would like discussed in future meetings.<sup>95</sup> Also, in an effort to provide an opportunity for a shared experience and to make sure everyone on the CRC had a good sense of the area they were discussing, the city organized a field trip to the Houghton Road area in April 2003.<sup>96</sup>

### **THE CITIZENS REVIEW COMMITTEE PROCESS FALTERS**

Although the CRC's involvement in the development of the HAMP was at first envisioned as an engaging experience, some elements of the process began to fray. Between a change in the city's HAMP project leader, delays, a lack of data on the area being planned and frustration and confusion over the roles of the CRC, the city and ASLD, attendance at CRC meetings dwindled and many members stopped participating.<sup>97</sup>

A few months after the CRC began meeting, the city's Department of Urban Planning and Design's original HAMP project leader, Roger Schneider, retired. Michael Wyneken, another planner in the department, was assigned the task of managing the process.<sup>98</sup> As Wyneken jokingly told it, "I personally got involved because everybody who was working on the plan left and it got dumped on me while I was out of town."<sup>99</sup> Wyneken found it difficult to work within the parameters the previous manager had established for the development of the HAMP and the use of the CRC. He found that with the budget and time constraints already facing the HAMP development process, "the care and feeding of a monthly meeting process drives the process ... you spend more time on that at some points than you do on the actual plan."<sup>100</sup> He also reflected that if he had been in charge of the process from the beginning:

I personally would have done all of the constraints mapping and then brought in as many good examples as we could of what master planned communities are like with some pictures and maps and descriptions and said "Okay, here's our landscape, here are the constraints, here is the policy direction we have from the General Plan. How do we get from these constraints in this area to [the HAMP] and what components do you want to put emphasis on?"<sup>101</sup>

Developing a plan for an area of undeveloped land as large as the one covered by the HAMP was a new experience for the city. As CRC member, and local planning professional Linda Morales noted, "a lot of times [in Tucson] the planning is done after the horse is out of the barn and you've got development that you're working around. This was a blank slate and was a really unique opportunity."<sup>102</sup> However, the CRC was initiated before the city had compiled information on the natural and physical constraints of the area and relevant social and economic data.<sup>103</sup>

The city tried to simultaneously collect this data and run the CRC input process, but this led to interruptions and delays in the CRC meeting schedule and frustration for CRC members who felt their time was being used inefficiently. CRC member and local developer, Ken Abrahams observed that:



It was so obvious to us that what was going on was so confused ... [the CRC asked the city to] show us what you're trying to do, and they couldn't do that ... they were busy worrying about hydrology maps when they didn't have an idea of where they wanted to drive the bus they were driving.<sup>104</sup>

Phil Swaim, a local architect and CRC member, mentioned that his previous experience with developing a land use plan was typically that, “you do your research, and then you bring it forward and you do the planning after, you keep people moving and building consensus and then go out and resolve things. Unfortunately I think the momentum [of the HAMP development process] was difficult to keep going.”<sup>105</sup>

Eventually, the city completed the necessary mapping and developed a partnership with the Sonoran Institute, a Tucson-based non-profit dedicated to community-based environmental stewardship, to, with support from the Lincoln Institute of Land Policy, hire the consulting firms Clarion Associates and Economics Research Associates to complete background research on the economic and social issues affecting planning in the area. The two firms produced two reports that helped inform the planning process. One, *Growing Smarter at the Edge*, was a selection of case studies that served as examples of successful models of development similar to what was being envisioned for the HAMP area.<sup>106</sup> The second was a market conditions report that set the context into which the HAMP was being introduced by describing the regional economic context, market, population and employment trends, and the success of other master planned communities in the Tucson area.<sup>107</sup>

In addition to concerns about the CRC meeting process, there was also confusion about what role, and the influence of that role, each of the three main entities – the city, the ASLD and the CRC – was playing in developing the HAMP. Some CRC members used terms like “rubber stamping” and “a box checking exercise” to describe how they or others perceived their involvement in the process.<sup>108</sup> There was also confusion sometimes about how their input was being used and incorporated in the different drafts of the HAMP.<sup>109</sup>

Some CRC members noted that although it was helpful to have a representative from the ASLD present at the meetings to answer questions and inform the group about the ASLD's perspective on issues, there was also uncertainty about what kind of influence the plan would actually have over what the ASLD ultimately decided to do with the land they owned in the area.

CRC member Ken Abrahams mentioned that in terms of the city and the ASLD working to define their roles with one another, “the communication between two governmental bureaucracies trying to reconcile two significantly different mandates is very interesting and kind of painful to watch.”<sup>110</sup> Although the ASLD's representative at the HAMP meetings, Greg Keller, was perceived positively by many involved, there was some frustration over the message of the strictness of the ASLD's mandate in terms of what they could and couldn't do that he had to deliver.<sup>111</sup>

## COMPLETION AND ADOPTION OF THE HOUGHTON AREA MASTER PLAN

Despite the challenges faced along the way, the Houghton Area Master Plan (HAMP) was eventually completed. After a two-year planning process the document was submitted to the Tucson Mayor and City Council and was approved unanimously on June 7, 2005.

The HAMP not only provides a plan for the Houghton Road area that is in compliance with Tucson's updated General Plan, but also helped the city clarify its vision for growth in that area. The process of developing the HAMP also allowed the city to communicate this vision to the Arizona State Land Department (ASLD) and in turn learned what the ASLD's expectations for the area are. Building on some of the ideas already proposed for the area, the HAMP also includes many of the elements found in the Houghton Road Plan Associates plan from 1999 and the subsequent ASLD plan from 2001.<sup>112</sup>

The HAMP includes written policy guidance on six major development elements, including proposed land use patterns, circulation and mobility patterns, the treatment and incorporation of natural and cultural resources, the provision of public services and facilities, the ways new development will help pay for itself and generally how parcels of land within the HAMP area should be developed.<sup>113</sup>

The HAMP also includes maps that show the area covered by the plan and its surroundings, the existing constraints on development in the area (e.g. washes and existing development), an example of the components of a planned community and how they are usually arranged, conceptual land uses and circulation routes, a cross section of what major streets should look like (complete with pedestrian paths and vegetated areas), conceptual parks and trails, locations of the 100-year floodplain and riparian habitat, a chart with the parameters of different kinds of parks and the potential location of public facilities.<sup>114</sup>

Many involved in the planning process call the Houghton Area Master Plan (HAMP) a qualified success, as it has yet to be implemented, and are reserving judgment until its effectiveness can be proven.<sup>115</sup> Also, under Tucson's current Land Use Code, there is no mechanism with which to implement the master planned community concepts included in the HAMP. The city's Department of Urban Planning and Design has drafted an amendment to the Land Use Code that would establish a Planned Community District zone to allow for the implementation of the new planning concepts in the HAMP. Planning staff at the city are planning to present the new zoning classification to the Mayor and City Council in the spring of 2006 for approval.<sup>116</sup>

A major factor in determining the outcome of the area seems to be the ASLD. The ASLD is under no legal obligation to implement the HAMP or require that whoever buys state trust land in the area act within its parameters. This is not to say, however, that the ASLD intends to disregard the plan, as they recognize the financial benefit of having a common development vision with the municipality in which their land is located.<sup>117</sup> The significant uncertainty that remains about the eventual implementation of the HAMP will not be resolved until the ASLD starts to auction off the land and developers begin to develop it.

## **THE ANALYSIS: THE HOUGHTON AREA MASTER PLAN PROCESS**

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The Houghton Area Master Plan (HAMP) development process illustrates many of the benefits, costs and challenges of using a collaborative approach for land use planning. The benefits and costs of the HAMP process were in general similar to the elements typically found in collaborative processes, while the challenges faced by participants in the HAMP process illuminate some of the unique challenges of collaborative planning on state trust land. The challenges also are reflective of the unfamiliar situation the City of Tucson found itself in as it set out, without any previous experience, to develop a master plan for the thousands of undeveloped acres that make up the HAMP area.

### **WAS THE HOUGHTON AREA MASTER PLAN PROCESS COLLABORATIVE?**

Participants in the HAMP development process had a range of opinions about whether or not it was a collaborative experience. Although there is no consensus among participants, it seems as though the HAMP development process was collaborative to a certain extent, as measured by the three representative categories used in this report: (1) breadth of stakeholders, (2) degree of transparency of process and (3) degree of influence the participants had on decision making.

**Breadth of Stakeholders:** CRC member and architect Phil Swaim commented that he thought the city “did a good job of being inclusive” in the composition of the CRC, a view that was reflective of general sentiment about the group.<sup>118</sup> Membership on the CRC was comprised of representatives from neighborhood associations, local business owners and citizens with professional planning and development backgrounds. Even though, the ASLD representative, Greg Keller, was not an official member (because of agency preference), his presence at the meetings helped provide an important link to the agency for the group.

**Degree of Transparency:** CRC meetings were open to the public and meeting notes and summaries often were compiled and distributed to members, which lent a degree of transparency to the process. However, some CRC members expressed frustration over how the CRC’s comments were being incorporated into the creation of the HAMP. Ken Abrahams commented that he thought, “There was a gigantic disconnect between the dialogue [during CRC meetings] and what kept coming back when [the city] brought [the HAMP] back.”<sup>119</sup> There was also a fair amount of direct communication between city staff and the ASLD going on simultaneous to the CRC process, the results of which were not always shared openly with the group.<sup>120</sup> Abrahams also offered the following critique of both the HAMP development process and other collaborative processes he had been involved in in the past:

It was representative of what I’ve seen happen to the public input process over the last decade, which has been what I call the “talking into the microphone” approach. You can say anything you want, but the microphone isn’t connected to anything. It’s a process of checking boxes, having meetings, allowing people to gather, but there’s no connectivity between what is said and then what is actually changed in the process or implemented in the planning process.<sup>121</sup>

Abrahams' comments hold valuable lessons about the kinds of behaviors and techniques to avoid when developing and conducting an effective collaborative process

**Degree of Influence on Decision Making:** CRC members' use of terms like "rubber stamping" and "box checking exercise" to describe how they perceived the CRC's level of influence over the decisions made during the development of the HAMP mark this as one of the least collaborative aspects of the process.<sup>122</sup> Abrahams made this comparison to illustrate how he felt about this aspect of collaborative processes in general: "There's a Bob Dylan lyric 'the masters make the rules for the wise men and the fools' and that's what you feel like when you sit in those meetings."<sup>123</sup>

## **BENEFITS OF THE PROCESS**

Participants in the Houghton Area Master Plan (HAMP) development process identified four major areas in which they found the process beneficial. These included: creating a higher quality product and ensuring a more beneficial outcome than would have been possible without the Citizens Review Committee, forming positive relationships that will make future interactions more effective, creating an experience to learn from and build off of in the future and planning for a larger amount of open space than may have been possible without a plan. ASLD Commissioner Winkleman also offered this observation about the benefit of land use planning activities to the trust: "Obviously planning will add value to our property – our business is to add value to as much as we possibly can and to maximize revenue for our beneficiaries."<sup>124</sup>

### **A Higher Quality Outcome**

City of Tucson officials' decision to include the ASLD, the largest landowner in the HAMP area, in the Houghton Area Master Plan (HAMP) development process was a step toward accomplishing its goal of creating the kind of planned development it envisions for the Houghton Road area. Opening a line of communication between the two agencies on what each wanted and was able to do allowed for greater understanding and more efficient decision making.

Albert Elias, the Director of the City of Tucson's Department of Urban Planning and Design recognized the mutual benefits to the city and the ASLD:

All this planning work only enhances the value of their land and it's good for the city too because it ensures that we have better quality development ... our mission and their mission do have a lot of overlap and by working together instead of against each other we'll have a better outcome. Both of us will have a better outcome and both of us will be in a better position to fulfill our respective organizational objectives.<sup>125</sup>

Members of the CRC also recognized the benefits of working together on the plan development process in terms of the quality of the actual plan that was produced. CRC

member and local developer Ken Abrahams observed that “the product ... does move us one step further and with its strong points and its weak points it’s still better than where we were.”<sup>126</sup> According to Michael Wyneken, the HAMP project leader for the city, the plan the ASLD currently has in place for the area includes significant amounts of density and only about nine percent open space. In his view, the land use patterns outlined in the HAMP are much more attractive than the existing ones.<sup>127</sup>

### **Relationships Created Through Collaboration**

Another commonly mentioned benefit that participants observed from the HAMP development process was the relationships that were forged through working together. Participants not only recognized the benefit of these relationships during the HAMP development process in terms of facilitating professional interactions, but also forecasted that they will be beneficial in future professional interactions between participants. In some cases the creation of these relationships came as a welcome surprise, as Albert Elias, the Director of the City of Tucson’s Department of Urban Planning and Design, observed:

The level of trust and interaction and willingness to work together and all of that is a benefit of that planning process that I would never have predicted at the beginning of the process, and I’m very pleased about that, and I think those bode well for the challenges that we face ahead.<sup>128</sup>

Freda Johnson, the facilitator for part of the HAMP development process, noted that she thought, “There was much more respect cultivated between people who might not normally be in the same camp on some of these issues.”<sup>129</sup> The creation of this respect helped cultivate an atmosphere where CRC members could work together in a positive way, which had benefits both during the HAMP process and potentially in the future also.

Addressing this benefit from a professional perspective, ASLD Commissioner Winkleman noted the historical significance of the relationship forged between the City of Tucson and the ASLD through the HAMP development process: “It showed that we could sit down with city staff and work cooperatively ... this is a much better position for us to be in with the City of Tucson than the Land Department has ever been in before.”<sup>130</sup> The ASLD opened a Southern Arizona Office in Tucson in May 2005 to focus more attention on its property in and around Tucson, of which the HAMP area is currently one of the most important pieces.<sup>131</sup> The relationship building experience afforded by the HAMP development process served as the first step in the two agencies evolving involvement.

In addition to the beneficial relationships created between the ASLD, the city and CRC members, HAMP Project Manager Michael Wyneken mentioned that, as a result of the HAMP process, the city has been working with staff from Pima County on wastewater-related issues in the HAMP area, which has facilitated a broader discussion about drinking water issues.<sup>132</sup> An unexpected benefit, this city-county dialogue is particularly significant because of the tension that has plagued the two entities since the 1970s regarding jurisdictional issues and the provision of urban services.<sup>133</sup>

## **Learning from Experience**

The HAMP development process was the City of Tucson's first experience creating a plan for such a large area. Albert Elias, the Director of the city's Department of Urban Planning and Design, recognized how the HAMP experience can benefit future planning projects on large parcels of state trust land south of Tucson: "I think a lot of the lessons that we learned in the HAMP can be applied there, not that we want to replicate it, but getting through the hard parts will be easier because of the things we learned in the Houghton process."<sup>134</sup>

Going through the HAMP development process also gave the city an opportunity to clearly express its vision for development in the southeast part of Tucson. This experience doing large-scale planning may prove helpful in the future as other similar planning opportunities arise. Thus, the city is now in a better position professionally than they were prior to initiating the HAMP process. Albert Elias commented that "We are better positioned to continue in the process of what ultimately is going to happen out there ... we're better equipped to make good decisions about the quality of growth and development there than we were before."<sup>135</sup>

## **Opportunities for Conserving Open Space**

One of the benefits of engaging in master planning is the opportunity to approach the development of an area holistically and plan for features like open space. Although there is debate in Tucson over the benefits of continuing to develop at all, HAMP project leader, Michael Wyneken noted that "We can't stop people from coming here, so what we have to do is make sense of it. Plan it out and be ready to make [the development] the best we can."<sup>136</sup>

Although the ASLD is very clear on its mission to maximize revenue for its beneficiaries, Ron Ruziska, Director of the ASLD's Southern Arizona Office, mentioned that it is sometimes possible to accomplish this goal while also creating open space if a parcel is appropriately planned and includes open space as part of a larger development plan.<sup>137</sup>

## **Adding Value to the Trust**

From the ASLD's perspective, working together with the municipality within which the land it owns is located to develop a common vision for how the land should be planned can lead to an increase in revenue for the trust.<sup>138</sup> Developing a common vision can help eliminate the uncertainty that potential state trust land buyers face in terms of knowing what they will be allowed to do with the land once they buy it. Typically, the less uncertainty there is for the buyer, the higher the price of land can be, which translates to an increase in revenue generation for the ASLD.<sup>139</sup>

In reference to this benefit in general terms, ASLD planner and CRC meeting attendee, Greg Keller, said, "Chances are, if you collaborate with [the community] and you show that you're willing to listen to their issues, most of the time, not all ... we're able to enhance the value of

the trust land which is really our goal.”<sup>140</sup> Gordon Taylor, ASLD Planning Section Manager elaborated on this point and gave a specific example in terms of going through the land entitlement process, which can at times be lengthy: “When you have a collaborative effort ... by the time you bridge all your differences and you have a final product, there is normally a consensus which means it’s going to be easier to sail it through that entitlement process.”<sup>141</sup> Likewise, ASLD planner Greg Keller observed that “Before, Tucson had nothing in that area, but they now have a vision for that area that didn’t exist before that ... As far as the collaborative effort, it [has] helped both the city and their vision.” According to Keller, the process also was a success for the ASLD because a land use plan has been created which will “further the effort of the agency to generate revenue, to get those properties out to disposition.”<sup>142</sup>

### **COSTS OF THE PROCESS**

When the Citizens Review Committee (CRC) was convened, members anticipated a one-year process, however, it actually took two years to develop the HAMP. The monthly meetings during the HAMP development process imposed significant time costs on citizen CRC members. Professional planner Linda Morales mentioned that this cost was manifested for CRC members as personal time given up, or missing spending time with family.<sup>143</sup>

However, when asked if they would engage in a similar collaborative effort in the future, all the citizen CRC members interviewed responded that they would. The biggest reason for this was because they cared about their community and wanted to be involved in the way it was developed.<sup>144</sup>

Commissioner Winkleman expressed the same sentiment about time, although not from a personal perspective, but from one of deciding how to devote scarce staff resources.<sup>145</sup> Allocating staff time to the Citizens Review Committee meant that other things could not be done. However, in this case the benefits of engaging in the collaborative process outweighed the costs.

### **CHALLENGES AND RESPONSES**

The HAMP planning process was full of challenges. However, there is a lot that can be learned about collaborative planning by examining these challenges and extrapolating from them lessons about when collaborative planning can be a useful tool, what kinds of elements need to be in place for a collaborative planning effort to be successful and what should be avoided. The challenges faced during the HAMP development process include dealing with a new planning situation and a new interaction between the city and the Arizona State Land Department (ASLD), creating an effective structure for the collaborative process to occur in, interpreting and working within the parameters of the ASLD trust mandate and addressing issues of authority, bridging expectations about the outcome of the process and grounding them in political, economic and market realities and dealing with both the ASLD and city’s lack of staff and financial resources.

## **A New Experience**

Not only had the City of Tucson never engaged in the large-scale planning of a mostly undeveloped area before, but the city had never worked together with the ASLD on such a project. Michael Wyneken commented:

The whole thing was new, it was new to everybody, so it's just a dance that you have to do. You have two entrenched bureaucracies who are trying to do something a little bit, you know, totally new, a little bit innovative and it was a struggle on both parties' parts.<sup>146</sup>

Wyneken also highlighted another aspect of this challenge by discussing the differences between Phoenix, which embraces development and is “the Land Department’s world ... when it comes to selling their land,” and Tucson, which is less clear on its development position and where finding a balance between continuing to develop or not is hard to find.<sup>147</sup> As Wyneken put it, “It’s almost like you have to drive a bulldozer or you have to be chained to a tree, there’s no middle ground allowed here.”<sup>148</sup> He also reflected on how these polarized views can be difficult for a planner who recognizes that, “we’re going to grow, we can’t stop people from coming here so what we have to do is make sense of it. Plan it out, be ready and make it the best we can do.” Wyneken was curious to see if the HAMP could become a working example of finding middle ground on this issue.

## **Creating and Implementing an Effective Process**

One of the first challenges faced by the CRC came in the first few months of the HAMP development process when the city planner that had initiated the HAMP process retired.<sup>149</sup> Michael Wyneken was assigned to take over the project management and, in his own assessment of the situation in which he found himself, Wyneken reflected, “Always try to be the person who starts the project, it’s really difficult to take over a project.”<sup>150</sup> Around the same time that the HAMP project manager changed, the Department of Urban Planning and Design experienced a reorganization that left it with fewer planners and a reduction in the amount of money that had been allocated for the HAMP process and product development.<sup>151</sup>

Although more a result of circumstance than any controllable element, these changes in staff and resources created a situation where the project manager felt constrained by the parameters set by the previous manager. While Wyneken was recognized as a talented planner by the CRC members interviewed and many appreciated his technical ability and grounded approach to the HAMP, he lacked the group process expertise that would have helped guide more effective CRC interactions.<sup>152</sup> This point illustrates the importance of recognizing and preparing for the human elements demanded by a collaborative planning process. As Calvin Baker, the Superintendent for the Vail School District and Technical Advisory Team member observed, “It seems so easy to call a group of people together and work on something, but it’s not, there are a lot of nuances involved.”<sup>153</sup> Having someone leading the process who recognizes the nuances of running a collaborative planning process



and has a sufficient amount of time and resources at their disposal is an important step in creating an effective collaborative planning effort.

### **Providing Adequate Information to Enable the Process**

Once the HAMP development process began, the city's inexperience with large-scale land use planning quickly became apparent. This inexperience frustrated many of the CRC members with professional planning or development backgrounds; in their opinion, the city had not conducted the background research necessary to meaningfully involve the CRC in the planning process. This lack of research meant that the CRC had very little context in which to base their recommendations with regards to the natural features and economic and market conditions of the area. It also meant that there were periods when the CRC was not meeting to plan, but waiting for the necessary research to be completed. According to CRC member and local architect Phil Swaim, the HAMP process was not following the typical structure of collaborative planning efforts: "You do your research, and then you bring it forward and you do the planning after, you keep people moving and building consensus and then go out and resolve things."<sup>154</sup>

Joint fact-finding and research often is identified as a benefit of collaborative planning; by uncovering the information together, the group often strengthens its bonds and the outcome of the process. However, this particular critique of needing to have basic information in place before beginning the collaborative planning process addresses a slightly different situation. In this case, the issue was not about what was already in the HAMP area, but what was going to be there; basic maps and studies about existing conditions were needed to inform the plan that was being produced.

CRC member Linda Morales recognized that while the research phase may have been helpful for the members of the CRC without professional planning or development backgrounds, others more familiar with the planning process found it frustrating and attributed some of the attrition the committee experienced to this factor.<sup>155</sup> This comment raises an interesting point that in addition to the importance of having basic information in place before beginning the collaborative planning process, it is important to recognize and manage disparate levels of familiarity with the subject during a collaborative planning effort so that everyone is engaged and appropriately informed.

Both ASLD planner Greg Keller and CRC member and local developer Ken Abrahams commented on the unusualness of the city attempting to produce this background information in-house. In their prior experiences, consultants usually are hired by a municipality to develop it before the planning process begins. Eventually, the city, in partnership with the Sonoran Institute, contracted for two studies, one of which examined the existing market conditions of the area and another that provided examples of other Western master planned communities that the CRC and the city used to inform the HAMP.

## **Clarifying the Role of the Citizens Review Committee**

Another challenge of the HAMP process was clarifying and communicating the expectations for the Citizens Review Committee (CRC). This ambiguity frustrated some CRC members, as they struggled to figure out what their role in the process was. CRC member Phil Swaim remembered the group asking themselves, “Why are we here if you’re just coming and presenting to us as opposed to actually getting our feedback and what we are supposed to be able to tell you?”<sup>156</sup> Linda Morales, another CRC member also mentioned that at first the CRC felt like they were being asked to just “rubber stamp,” or approve the city’s ideas without much discussion or opportunity to provide substantive input.<sup>157</sup> This confusion over whether the CRC was to absorb information about the process or actually participate in plan development decisions fueled CRC members’ frustration.

The issue of how to best use the expertise and time of the CRC members also arose in some CRC members’ response to how meetings were structured. Suzanne Bott, a former employee of the Sonoran Institute and CRC member made this observation, “I think a citizens committee needs a lot of structure so that people really can evaluate various elements and have kind of a road map to follow as they proceed through discussion.”<sup>158</sup> In her assessment, the CRC meetings lacked this element.

## **Maintaining Momentum**

The delays caused by the need to complete background research and later write the HAMP impaired the momentum and continuity of the planning process. This lack of momentum led to feelings of disconnection, lack of interest and attrition. Developer and CRC member Ken Abrahams expressed this frustration:

In fact, the committee process was not what it should have been because it just got burned out. You can’t restart the process four times and have people come and spend hours and hours of their personal time and say “now we’re going to start all over again, now where going to start all over again,” people stopped coming.<sup>159</sup>

This lack of momentum also led to an unanticipated lengthening of the timeframe for the plan’s completion and contributed to some of the attrition of the CRC. According to CRC member Phil Swaim:

It went for months and months at a time and nothing happened. They hired a consultant to go out and do floodplain mapping and said “this will take three months” and it actually took nine months ... Because it was drawn out so long, probably half the Committee stopped participating ... It was very difficult to be able to maintain interest and keep things going.<sup>160</sup>

One of the ways the city tried to address this challenge was to send updates and schedule meetings only when there was something new to present to the CRC.<sup>161</sup> However, Michael Wyneken, the city’s HAMP project leader recognized that the loss of momentum due to

unanticipated breaks in the meeting schedule was a challenge and concluded that even though he sent periodic updates to the CRC during those breaks “we just really lost all connection.”<sup>162</sup>

### **Getting Bogged Down in Process**

The city’s inexperience with a collaborative planning process for such a large-scale project also made it difficult for the CRC and city to find a balance between developing the process and developing the product. Ken Abrahams offered this critique of the situation: “What happens in this new style of public input and committee work is you talk a lot about process and hardly at all about product ... Talking all about process and hardly anything about product isn’t any way to have public input.”<sup>163</sup>

Some CRC members also observed that the professional facilitator who was involved for the first year of CRC meetings occasionally emphasized keeping the meeting process moving in a way that “stifled some of the creative process” to the detriment of productive group discussion.<sup>164</sup>

### **The Unique Nature of State Trust Land Management**

The ASLD’s mandated obligation to maximize revenue generation in its management of state trust lands adds a unique element to the collaborative planning process. Usually collaboration, like any kind of negotiation, involves parties making certain concessions in pursuit of a mutually-accepted outcome. However, the ASLD’s legal obligation to generate revenue for the trust beneficiaries presented a challenge to making any kind of concessions during the HAMP development process.

ASLD Commissioner Winkleman offered this perspective that recognizes the importance of collaborative planning, but also the potential limitations of the process for the ASLD:

I’m personally always a proponent of trying to work with people and accomplish something. While we can sit back and say, “Well, we’re the state and we’re not going to listen to your plan and if you don’t like our plan we’re going to take our ball and go home,” that really doesn’t further our mission of generating revenue ... But, that being said, it’s something that we’d be supportive of unless we get to the point where you’re saying “well, our goals are not the same and the ASLD is not being treated fairly and we can’t afford to spend this much time and effort working with folks with whom we’re not going to get anything accomplished so we’re going to go work somewhere else.”<sup>165</sup>

All of the HAMP development participants interviewed had a clear understanding of the ASLD’s trust mandate and understood the limitations within which they were working. However, even though the CRC’s understanding of these parameters was essential to the plan development process, some expressed frustration with what this meant in terms of participation in a collaborative process. Some members of the CRC noted that participants

sometimes struggled with how their collaborative planning efforts would effect the ASLD's ultimate decision on what they did with their parcels in the HAMP area.<sup>166</sup>

However, CRC member Suzanne Bott observed that the ASLD's mandate does not have to impede collaborative planning, "For the most part as long as people can agree that they are working toward the ultimate goal of getting the state land department the most revenue, and yet providing the local community with the best possible outcome, then they can agree that they're not working at cross purposes."<sup>167</sup>

The biggest challenge the ASLD faces when participating in collaborative planning processes is the lack of public understanding of what state trust lands are and how they are managed. Mary Mangotich Grier, an Assistant Attorney General in the Natural Resource Section of the Arizona Attorney General's Office, who was peripherally involved in the HAMP development process, assessed the situation in this way, "The land department is in a relatively unique position because it's a state agency and citizens expect there to be responsiveness to their concerns, but it's a state agency with a private party mandate."<sup>168</sup>

Commissioner Winkleman narrowed this point by explaining under what kinds of circumstances this becomes an issue:

We don't get along well with communities who see state trust land as their open space. And so instead of trying to facilitate growth or add value they say, "well, that's public land so we're not going to have any growth out there," and that is obviously counter to our mission. Generally speaking, we're going to be okay with somebody if we're treated similarly to similarly situated private land.<sup>169</sup>

Commissioner Winkleman elaborated further on how this issue should be addressed in a collaborative planning process by saying, "To have a successful process I think there needs to be an education of 'here's what the trust is, here's what it's set up to do, here's what it can do, and here are the things we can't do,' and acknowledge that up front."<sup>170</sup>

### **Defining the Boundaries of the Arizona State Land Department's Authority**

The ASLD believes that in order to engage in collaborative planning in a way that remains beneficial for the trust, it must make sure that it is protecting its interests. This position makes it difficult for the ASLD to find a balance between participating and maintaining decision-making authority. During the HAMP Process, this position also posed a challenge for the CRC participants in terms of determining the influence the HAMP will have and the evaluating the value of their participation.

One of the ways the ASLD tries to maintain its decision-making authority during a collaborative process is by remaining in a resource role. The reason for this approach was explained by the ASLD's Gordon Taylor:

We get involved with committees, but it's as a resource person. We've found that if we get put on a committee, like a general planning committee or a steering committee, and then they craft their document and we're listed as one of the people that has supported it even though we may be in objection to certain elements of it, but by virtue of our association with the committee then there's ... tacitly the buy in, if you will, and that could conceivably be used by the community to leverage the Department on various land issues. So for that reason we ... basically like to be on the outside looking in and be there in an advisory capacity and not to have our name listed on the document.<sup>171</sup>

Taylor went on to mention that in the case of the HAMP development process he thought the ASLD was able to find this balance of participation and maintenance of decision-making authority by making their mandate clear to the group.<sup>172</sup> Commissioner Winkleman further elaborated on the issue of maintaining the ASLD's interests throughout a collaborative planning process and also recognized an additional aspect of the ASLD's balancing act in terms of trying to strategically make the best use of the additional resources that can be provided by a collaborative planning process:

We don't have enough people and we don't have the money to do an adequate job. One of the things I've stressed since I've been here is we're going to accept the help and embrace the help as much as we can, don't be fearful of these people, we'll look after our own interests. But if somebody can truly help us, let them help us because we can't adequately help ourselves. But, you do that knowing that everybody's going to have a reason for helping. There are few times where it's just the benevolence of "we want to help the Land Department." It's because they're furthering some issue. The City of Tucson has its goals, the Sonoran Institute has its goals, and the citizens that show up at these meetings have the things they like. So the challenge for us is accepting help and accomplishing something, but not having somebody undermine our goals and satisfy their own to the detriment of the beneficiaries and us. So that is the tension that always goes with these processes.<sup>173</sup>

However, these actions by the ASLD also can be challenging for other participants in terms of determining what influence their advice and participation in the collaborative process has. CRC member Phil Swaim noted that it is "difficult with the State Land Department sort of sitting back and saying we'll wait and see what you come up with and see if we support it or not."<sup>174</sup>

Another challenge related to the ASLD's authority was the uncertainty among CRC members as to the extent to which the ASLD will use the HAMP as a guide when disposing of land in the Houghton Road area, as it is under no legal obligation to follow it. While the ASLD does not anticipate that it will radically depart from the guidance of the HAMP, questions still remain about how the plan will be implemented.<sup>175</sup> CRC member and former Sonoran Institute employee Suzanne Bott commented, "[The ASLD doesn't] feel like they have to abide by the plan. That can be particularly frustrating and make participants feel, 'well, why

are we even going through the exercise, what difference does it make?’ yet it is empowering because it is a public process.”<sup>176</sup>

### **Linking the Plan to Effective Implementation**

Throughout the HAMP development process, the CRC faced the challenge of figuring out how to make sure that the product that resulted from the collaborative effort was grounded in economic and development realities and could be realistically implemented. The reports produced by Clarion Associates and Economic Research Services on similar kinds of planned communities and the specific market conditions in the Tucson area helped address this challenge by providing the HAMP participants with information with which to make more informed decisions. However, uncertainty remains because of the possibility that market conditions will change over the course of the many years it will take to develop an area as large as the area covered by the HAMP. For this reason, some participants expressed the importance of the plan having the flexibility to adapt to changing conditions because, as Commissioner Winkleman put it, “You can’t plan the perfect community, things are going to evolve, trends will come and go.”<sup>177</sup> Ken Abrahams, developer and CRC member also commented on the importance of having flexibility in a master plan: “It is a living thing, it’s not just a paper exercise and it has to have in it a pretty flexible adaptability to changing market conditions because they are ten- to fifteen-year projects.”<sup>178</sup>

Another challenge was Tucson’s ability to implement the HAMP under its current land use code. CRC member and developer Ken Abrahams explained the situation:

Probably the biggest concern, which the city is working on with its planned community district ordinance for the land use code, is there’s no tool in the tool box to implement this plan, it’s a plan that has to sit on the shelf until they amend the land use code.<sup>179</sup>

The city’s Department of Urban Planning and Design has addressed this challenge by developing an amendment to Tucson’s Land Use Code that would create a Planned Community District zone to allow for the implementation of the new planning concepts in the HAMP. The city’s planning staff intends to present the new zoning classification to Tucson’s Mayor and City Council in the spring of 2006 for approval.<sup>180</sup>

### **Lack of Resources**

Both the ASLD and the City of Tucson’s Department of Urban Planning and Design experienced the common challenge faced by many government agencies of being understaffed and underfunded.

This challenge was manifested in the HAMP development process on the part of the city in terms of being able to complete the necessary background research on the area and keeping the process moving effectively to meet plan development deadlines.<sup>181</sup> One of the ways the city addressed the challenge of completing some of the necessary background research was to take advantage of some of the additional resources brought to the planning process by

other members of the collaborative process. In partnership with the Sonoran Institute, with support from the Lincoln Institute of Land Policy, the city was able to hire the consulting firms Clarion Associates and Economics Research Associates to complete background research on the economic and social issues affecting planning in the area.

The ASLD also faced this challenge in the sense that they had to be strategic about how they devoted their limited resources. According to Commissioner Winkleman:

We really do have to be careful how we allocate our people and our planning dollars ... so where we devote time to the HAMP it means we're not devoting it to something else. And when you look at the amount of land that is in the path of growth – as a matter of fact growth has leapt over and gone beyond us – we're shortchanging ourselves always at some point.<sup>182</sup>

## **FACILITATING FACTORS**

There were a number of elements of the Houghton Area Master Plan Process that helped facilitate the collaborative effort. These include participants having a common goal, a financial interest and the potential for a higher quality outcome.

### **A Common Goal**

In the HAMP Process, the City of Tucson's Department of Urban Planning and Design and the Arizona State Land Department (ASLD) shared the common goal of wanting to plan for development in the Houghton Road area. By initiating a collaborative process in the form of the Citizens Review Committee, the city was able to create a forum in which both governmental agencies, as well as interested citizens, could work together in pursuit of that goal. While there was a certain amount of variation in why and how each party wanted to accomplish this goal, they were able to work together to begin achieving it. The city and the ASLD had professional and financial reasons for wanting to plan for development in the Houghton Road area, while some members of the CRC expressed both a professional and personal interest in how the area developed.

### **Financial Motivation**

As the majority land owner in the area covered by the HAMP, the ASLD had a financial motivation to remain involved in the CRC process and be party to the creation of the HAMP. By both working with the city on a common goal for development in the area, and by planning for the development, the ASLD may be able to realize an increase in revenue for the trust once it starts to sell or lease its land in the area. Working with the city on a common vision of how the area will be developed could help eliminate some of the uncertainty that may otherwise face potential buyers of the state trust land. Having a better idea of what they will be allowed to do with the land once they buy it makes the land more valuable to potential buyers, which could translate into an increase in the amount the land would sell for at auction, and therefore an increase in revenue for the trust.

## **The Potential for a Higher Quality Outcome**

Planners in the City of Tucson's Department of Urban Planning and Design and participants in the CRC, alike, recognized the potential to produce a higher quality outcome for development in the Houghton Road area by working together in a collaborative planning process. By creating the HAMP, the city was able to both express its vision for how it would like development in the southeastern part of town to take place, and create a plan that it hopes will guide future growth in the area. Some members of the CRC were motivated to engage in the collaborative process because of the potential to help create a plan that could result in higher-quality development in the area and that some see as an improvement over the plan that is currently in place for the area.

### **LESSONS LEARNED**

#### **1. Prepare appropriate background information and research before initiating a collaborative process.**

One of the keys to an effective collaborative process is gathering as much relevant information relating to the issue at hand before initiating the process. Being prepared in this way will not only allow for a more efficient and effective use of participants' time, but also help avoid possible delays while additional information is collected. In the case of the HAMP, the City of Tucson had not prepared enough information about the physical, social and economic characteristics of the area they were planning and had to interrupt the schedule of meetings in order to do so. CRC member Phil Swaim commented on the critical aspect of keeping up process momentum: "I think there needs to be a certain amount of momentum and efficiency in keeping people involved and enthusiastic about what's happening. Otherwise there's no way to keep everybody going and so as soon as you start losing all the members then it's no longer this collaborative effort."<sup>183</sup>

#### **2. Have a clear vision of what is to be accomplished and how the collaborative process will help achieve it.**

Having a clear idea of what is to be accomplished by the end of a collaborative process will help structure how to get there. This is not to say that a specific result should be predetermined, but that it is helpful to have a clearly communicated goal for the content of the end product or result of the collaborative effort to guide the process. Some participants in the HAMP Process felt confused at points about what the goal for the product was. CRC member Ken Abrahams expressed his frustration about this element of the HAMP development process in reference to the city: "They ought to just sit down and figure out what they want to do and then start from there."<sup>184</sup> It is also important to have a clear idea of how the collaborative process will help achieve these goals. Clearly defining participants' roles and addressing any concerns regarding participants' expectations can help alleviate confusion or frustration among group members.



### **3. Set and keep realistic deadlines.**

Having a clear sense of how long a collaborative process will take and sticking to deadlines once they are set will make participating in or running a collaborative planning process much more enjoyable and productive. The process of developing the HAMP took twice as long as originally expected, and many members, frustrated by what they saw as an inefficient use of their time, stopped participating. If deadlines need to be extended or modified, it is important to clearly communicate the reasons for the delays and work to keep participants engaged in the process during them.

### **4. Understand the unique management mandate of the state trust land agency.**

Collaborative planning on state trust land is different from other kinds of land use planning because of the unique mandates of state trust land agencies. Understanding these mandates from the beginning can help clarify the parameters within which the collaborative group is working.

HAMP participants offered a lot of advice on the importance of understanding the unique management requirements of state trust land based on the lessons they learned during the HAMP development process. Albert Elias, the Director of the city's Department of Urban Planning and Design mentioned:

The only advice I would give is really try to learn as much as you can about how the trust land was originally established and learn all the background ... Learn as much as you can about the enabling statutes, learn as much as you can about the agency that has a fiduciary role in managing the trust, learn as much as you can about the politics associated with trust land and their own unique challenges ... It's a very different animal, it's not like operating a relationship with a regular private landowner.<sup>185</sup>

HAMP project manager Michael Wyneken offered this advice: "Do the best you can to get the land department into the process from day one and fully absorb what their constraints are, because the more you do that the easier the whole thing is going to be."<sup>186</sup> Likewise, Citizens Review Committee (CRC) member Ken Abrahams noted, "Understand their mandate. It doesn't do any good to try and put something together unless you really understand and accept the box that the other person's in."<sup>187</sup>

Officials from the ASLD also commented on the importance of making sure a collaborative group understands their trust mandate and how it influences their land management decision-making. The ASLD's Southern Office Director, Ron Ruziska, encouraged collaborative planning participants to "think long-term, embrace the mandate of the trust".<sup>188</sup> Commissioner Winkleman recognized the role that the ASLD can play in helping others achieve a greater understanding of what the ASLD's trust mandate:

Probably the biggest key for us to succeed is to sit down with whoever it is, whether it's the city, the citizens group, or the county or whoever and say,

“Here’s who we are, here’s what we do, here’s the things we can do and here’s the things we can’t do.”<sup>189</sup>

## **5. Maintain communication throughout the process.**

Maintaining communication between parties during a collaborative planning process will ensure that everyone is informed about how things are developing as the process progresses. This communication also will help participants maintain a feeling of relevancy if they are well-informed about how their suggestions are being incorporated into the final product.

CRC member Suzanne Bott offered some suggestions on ways the feelings of uncertainty felt by CRC participants about the effectiveness of what they were doing could be alleviated:

I think more of a commitment to take the information under advisement by the state land department would help people feel like they weren’t just whistling in the wind and that their voices were going to be heard and would have an effect, would enhance the credibility of the process.<sup>190</sup>

HAMP project leader Michael Wyneken pointed out that he learned from his experience during the HAMP development process that in order to keep participants interested in continuing to work collaboratively it is important to, “Provide as much information and have a series of meetings and then come back and develop some alternatives and show how the input that we took resulted in different components of these alternatives.”<sup>191</sup>

## **ACKNOWLEDGEMENTS**

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We would like to thank the following people for taking the time to reflect on their experience in the Houghton Area Master Plan Process. These participants were invaluable resources during the interview and writing processes:

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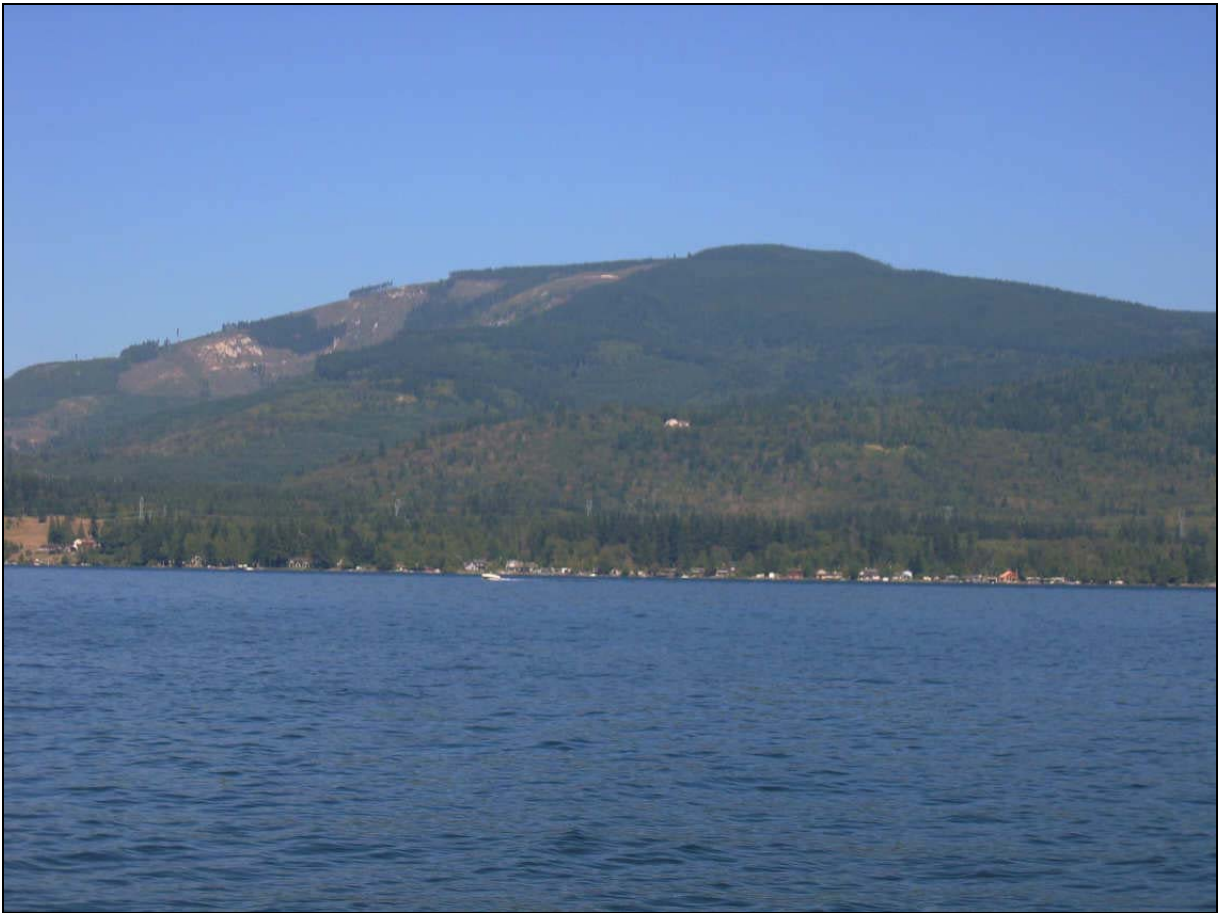
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**CHAPTER 8**

**THE LAKE WHATCOM LANDSCAPE PLANNING  
PROCESS:**

**State Forest Planning for a Municipal Watershed**



Lake Whatcom, Bellingham, Washington

Photograph by Matt Stout

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

## INTRODUCTION

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

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

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

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

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

planning process reveals the need for setting realistic timelines and having procedures in process ground rules for overcoming disagreements.

## **CONTEXT FOR COLLABORATION**

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

### **PHYSICAL ASPECTS OF STATE TRUST LAND IN WASHINGTON**

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

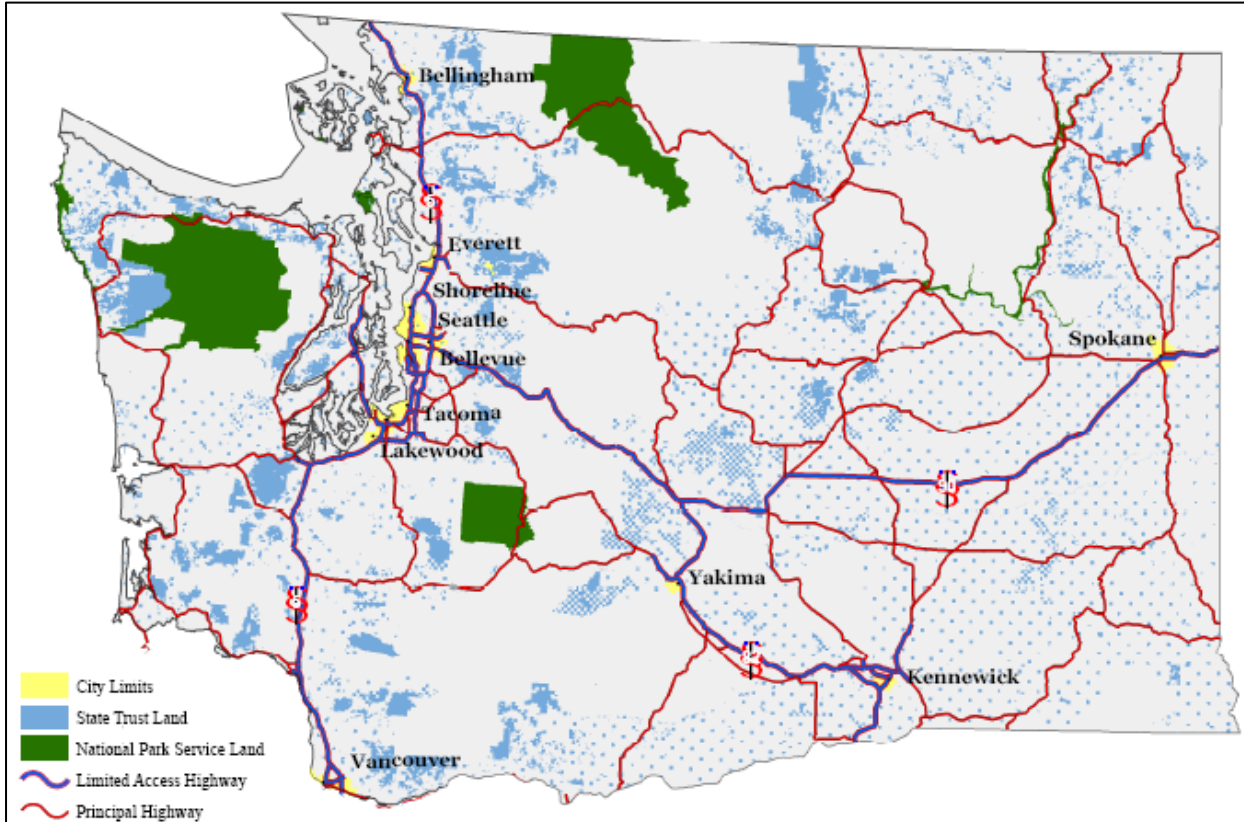
In the Pacific coast region, west of the Cascades, where Lake Whatcom is found, heavy rains support dense forests of spruce, fir, cedar and hemlock. State trust lands in this region are used primarily for logging. The timber industry is one of the Washington's largest industries and has been an important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

### **LEGAL BACKGROUND**

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

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

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



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

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

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

## MANAGEMENT

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

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

**Table 8-1: Trust Beneficiaries**

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

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

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



accounts are appropriated. Distributions to trust beneficiaries pay for capital expenditures and operating expenses or are deposited in trust permanent funds, which are managed by the Washington State Investment Board.

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

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

**Table 8-2: Department of Natural Resources 2004 Revenue**

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

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

## THE LAKE WHATCOM WATERSHED

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

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

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

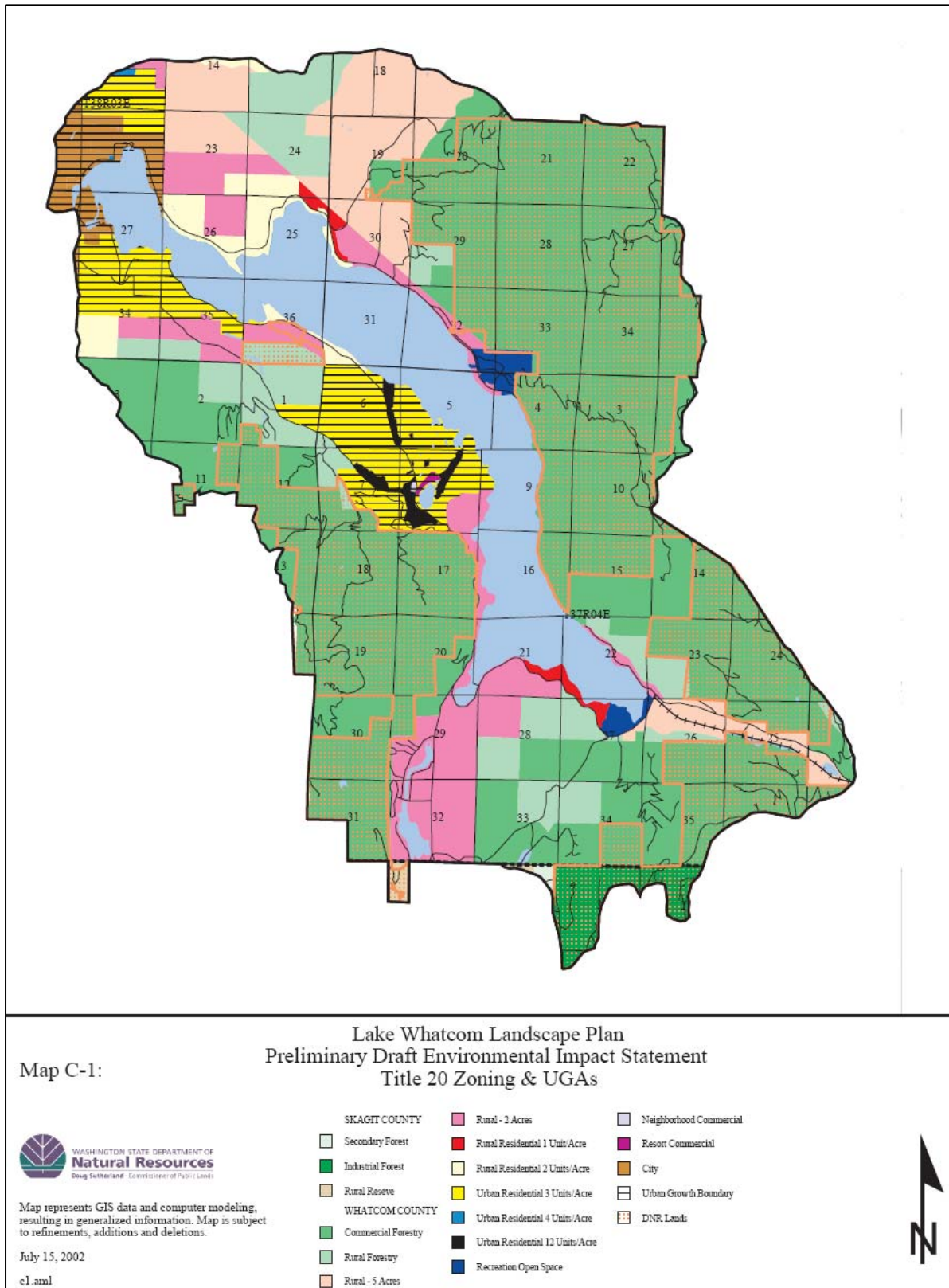
**Table 8-3: Trust Types in the Lake Whatcom Watershed**

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

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

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

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



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

## **THE STORY: THE LAKE WHATCOM LANDSCAPE PLANNING PROCESS**

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### **EVENTS LEADING UP TO THE PLAN**

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

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

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

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

exchange was completed in 1993, doubling the DNR's land ownership in the watershed to about 15,000 acres.<sup>32</sup>

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

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

## **THE COMMUNITY GETS INVOLVED**

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

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

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

We thought if they knew about what happened before, why are they doing it now. We started asking questions. We both must have been crazy to think we could take on the state. We were not geologists. It just seemed like common sense to do something about it. We wrote up a petition to see if we could

generate interest, to see if people would support us. We left about 15 pages with space for signatures on each side [at the Valley Market]. We came back after three days and it was full front and back. I think we had about 350 people. We were shocked. We are both working moms. We thought we were crazy to continue but we got possessed with it. The floodgates were open whether we wanted it or not. People started coming to us once they knew we were involved.<sup>37</sup>

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

**Figure 8-3: Sudden Valley Marina Beach Park**



Source: Photograph by Matt Stout

The meeting, which drew over 300 people and was reportedly the biggest meeting ever at the County Courthouse, provided an opportunity for Berg and Marrom to present their petition to the Commissioner.<sup>39</sup> The petition, which had around 5,000 signatures, called for an end to clear-cutting in the Lake Whatcom watershed, to protect public safety and water quality. Despite the raucous crowd, Commissioner Belcher explained that the law required the DNR to manage state trust land to generate revenue for trust beneficiaries. To stop logging the area would violate this responsibility. She challenged the community to raise the money to buy the land if they wanted to stop timber harvesting in the watershed. According to those in

attendance, her message did not make Belcher a friend of many residents of Bellingham, but it did serve as a call to action for those who wanted land use change in the watershed.<sup>40</sup>

### **LEGISLATIVE ACTION TAKEN**

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

The original version of the bill Spanel sponsored, Senate Bill 5536, required a review of and report on the adequacy of DNR management plans for state forest lands within municipal watersheds across the state. The bill included a moratorium on logging while the study occurred. The bill was referred to the Natural Resources, Parks & Recreation Committee, where it passed. However, the bill met strong resistance from the timber lobby and the DNR in the Senate Ways and Means Committee. These groups were concerned the bill would result in a loss of revenue to trust beneficiaries.<sup>43</sup> As a compromise, the bill was scaled back to apply only to the Lake Whatcom watershed. The bill passed unanimously in the House and Senate and became law on July 25, 1999.<sup>44</sup>

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

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

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



Marrom and other supporters of the bill began drafting a second bill to require implementation of the Study Committee’s recommendations and completion of the Landscape Plan.

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

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

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

The second bill became law on March 29, 2000, and required the DNR to complete the Lake Whatcom Landscape Plan by June 30, 2001, a 15 month timeframe (see Appendix, Exhibit 6).<sup>49</sup> The law stated that “the department shall establish an interjurisdictional committee for the development of the Landscape Plan, to review the site-specific activities and make recommendations.”<sup>50</sup> Membership of the new interjurisdictional committee was not specified in the bill but it required the committee to include two members of the public. Committee membership and its authority relative to the DNR would later become two highly contentious issues.

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

**THE LAKE WHATCOM INTERJURISDICTIONAL COMMITTEE IS CREATED**

The Lake Whatcom interjurisdictional committee (herein called the Committee) commenced its work on August 1, 2000, four months after the legislation had passed, leaving just eleven months to complete the plan.<sup>51</sup> The initial Committee consisted of representatives from the



same groups that participated in the 1999 Study Committee: Whatcom County; Water District 10; the city of Bellingham; Washington State Departments of Health, Ecology and Fish and Wildlife; the Lummi Tribe and two private citizens. The only difference in the make-up of the Committee compared to the make-up of the Study Committee, other than the actual people who represented each group, was that the second Committee only required two members of the public as opposed to the three that were required under the first bill. Commissioner Belcher had the discretion to appoint additional members and choose which representatives from the public would sit on the Committee. The state agencies and local authorities had discretion over who they would appoint to the Committee. Committee membership is shown above.

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

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

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

To ensure transparency, the Committee's meetings were open to the public, and local reporters and legislators regularly attended. In addition, meeting minutes and materials were distributed to all interested parties. The Committee also instituted a "No Surprises Rule"

which ensured internal transparency by prohibiting members from leaking information to the press before coming to the group with that information. On several occasions, the group took walks together through some of the planning sites to raise awareness of why they were at the table. Finally, Tom Edwards, Jr., the Lummi Nation representative, started off each meeting with a traditional Lummi song and prayer, an event remembered fondly by Committee members.

## **DIVERSE OBJECTIVES COME TO THE SURFACE**

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

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

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

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

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

## **THE PLANNING PROCESS IS SLOWER THAN EXPECTED**

Despite establishing fairly robust ground rules, the Committee got off to a slow start. First, questions had been raised about the Committee's role in relation to the DNR. The issue played out in debate over whether DNR representatives were intended by the legislation to be members of the Committee or whether the Committee was to be strictly advisory to the DNR. Some Committee members argued that if DNR representatives were members of the Committee, then consensus reached by the group would carry more weight, because additional rounds of agency approval would be unnecessary. However, DNR officials felt they would be ceding some of their decision-making authority by becoming a full fledged member of the Committee and viewed it as inconsistent with the legislation.

Considerable debate also occurred over the weighting of importance among the group's fiduciary, social and environmental objectives. Wallace maintained that strategies that failed to provide enough income for the trust were unacceptable.<sup>61</sup> However, some members of the Committee felt that all options should be kept on the table to allow for the most creative solutions to be found.<sup>62</sup> The DNR insisted that not only did the Landscape Plan have to make money for the trust but that it also had to be consistent with DNR's Forest Resource Plan, DNR's Habitat Conservation Plan, Forest Practices Rules and the law passed in 2000.<sup>63</sup>

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

## **A NEW COMMISSIONER IS ELECTED AND AN IMPASSE ENSUES**

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

As to the Lake Whatcom Landscape Planning Process, Commissioner Sutherland was concerned about the precedent a watershed plan specific to Lake Whatcom could set for the rest of the state.<sup>69</sup> A plan that restricted logging activities would reduce income for trust beneficiaries, and other counties in Washington could seek similar plans for their watersheds, further reducing trust income. Committee members argued that municipal watersheds,

whether in Bellingham or elsewhere, should receive special consideration because of the importance of safe drinking water.

Under Commissioner Sutherland, the DNR made several decisions that impacted the planning process. One of Commissioner Sutherland's first decisions was to send Jack Hulsey, the DNR's Regions Operations Manager from Olympia, to Committee meetings. Hulsey reflected the new Commissioner's style in the way he conducted himself at meetings with the group. According to Richard Rodriguez, the Department of Health representative, "He was hard-nosed. He was predisposed to the [DNR] mindset."<sup>70</sup>

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

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

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

Meanwhile, in an effort to head off further criticism of existing forest practices and additional restrictions on logging in the Lake Whatcom watershed, Commissioner Sutherland

requested formal opinions from the heads of the Departments of Health and Ecology about the degree to which the DNR's forestry practices contributed to pollution in Lake Whatcom. His letter also asked these agencies whether additional water protection measures on state forest lands were necessary, beyond those provided in existing state forest land rules and regulations. Both Departments responded that state forest land activity contributed to only a small percentage of the pollution in Lake Whatcom compared to amount attributed to residential development. Both Departments also concurred that existing state forest land rules and practices including the provisions of the 2000 Lake Whatcom bill were sufficient to protect water quality.<sup>78</sup> These responses by the DOH and DOE focused the Committee's energy on the issue of public safety and other issues contained in the legislation, such as creating a sustained yield harvest plan for the area and incorporating new scientific information into the planning process.

### **OUTSIDE HELP IS SOUGHT**

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

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

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

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

On the heels of these disagreements over decision-making authority and whether to initiate an EIS, the group collectively decided to explore professional third party facilitation to assist in negotiating preferred management strategies for the watershed. The group also realized that growing tension made it more difficult for Steve Hood to serve as the facilitator in his role as Chair of the Committee and to represent the interests of the Department of Ecology. In addition, the DNR's tight control of the process, with Hulsey's participation, was viewed by some with increased concern.<sup>81</sup> Some felt that with the DNR controlling the preparation of

reports (especially on the financial impacts of the alternative management strategies), the dissemination of information and the preparation of the agenda, decision-making power had been shifted further away from the Committee.

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

### **ALTERNATIVES NEGOTIATED**

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

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

**Figure 8-4: Alternative Management Strategies**

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

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

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

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

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

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

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

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

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

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

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

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

Several aspects of the Board approval process and the resolution left Committee members upset. First, several of the Committee members were angry with how the DNR presented the Landscape Plan to the Board of Natural Resources. According to one Committee member, not all members of the Committee were asked to participate, and the DNR was said to have



talked mostly about the loss of revenue to the trust that would occur from implementing the plan.<sup>93</sup> Second, some Committee members were upset about how the Board resolved the issue surrounding the Implementation Committee. A majority of the Committee had wanted the Implementation Committee to have veto power, but the Board did not grant the Implementation Committee this authority.

In addition, according to a Committee member, the DNR made a change to the plan concerning how members of the Implementation Committee would be chosen without the Committee's input. The Committee believed when it delivered its consensus recommendation that the county, city and water district would each be allowed to appoint a member of the Implementation Committee and that the DNR would be allowed to appoint two members. Referring back to the original language of the bill, the DNR insisted that it would be able to pick who from the county, city and water district would be put on the Committee. The Commissioner asked each group to nominate two individuals. Once submitted, he would pick one from each set of nominations. The DNR emphasized that it wanted technical experts on the Committee. Commissioner Sutherland commented: "If we were going to take advice, we wanted it from experts."<sup>94</sup> In the end, the Committee felt that the process for determining membership was fair, but that it was not the process to which they had agreed.

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

## **RECENT DEVELOPMENTS**

Despite these concerns expressed by the Board, the DNR began implementing the plan. In its first implementation report, the DNR reported completing a Road Maintenance and Abandonment Implementation Plan, well before the 2016 deadline required by state forest practice law. In addition, the DNR is currently planning its first timber sale since the moratorium on logging began in 1998. The sale was approved by the Implementation Committee.

In January 2005, a lawsuit was filed by neighboring Skagit County and the Mount Baker School District in Lake Whatcom County challenging the legality of the plan. The lawsuit alleges that the legislation and the DNR's Landscape Plan resulted in benefits for the local community at the expense of trust beneficiaries. In the previously decided case, *County of Skamania v. State*, the court found that the legislature could not enact laws that benefited the local economy and the timber industry at the expense of trust beneficiaries.<sup>97</sup> As of April 2006, the lawsuit is still pending.

## **THE ANALYSIS: THE LAKE WHATCOM LANDSCAPE PLANNING PROCESS**

This section identifies and discusses the benefits, costs, challenges, facilitating factors and lessons learned associated with the Lake Whatcom Landscape Planning Process. This analysis is based on stakeholder observations and reflections, as well as the researchers' external evaluation.

The analysis begins with an in-depth look at whether the Lake Whatcom Landscape Planning Process was collaborative based on the breadth of stakeholders represented, the transparency of the process and the level of influence participants had over the outcome.

Next, the benefits and costs of the process are examined. The main benefits of the process included more protective watershed management standards, greater trust and respect, shared expertise and better informed decisions, improved relationships, local support for the landscape plan and an unintended benefit: cultural resources protection. The costs involved planning costs, a reduction in trust revenue compared to the "no action" alternative, a drain on peoples' time and personal and emotional costs.

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

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

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

### **WAS THE LAKE WHATCOM LANDSCAPE PLANNING PROCESS COLLABORATIVE?**

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

Despite occasions of conflict and disagreements over certain issues, especially over decision-making authority, the process was collaborative in terms of breadth of stakeholders, transparency and the level of influence participants had over the outcome. After

consideration of these factors and participants' own view about the process, it is evident that the process was collaborative.

### **Attitude of the DNR towards Collaboration**

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

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

### **A Legal Mandate to Collaborate**

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

### **Participant Views on the Degree of Collaboration**

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

to proposals.”<sup>105</sup> Despite these concerns, most of those involved in the case felt it was collaborative. Mary Dumas, one of the facilitators, noted:

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

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

**Breadth of Stakeholders:** Several Committee members and the DNR acknowledged that industry representation was missing from the Committee. Today, the DNR feels strongly that the Committee was not fully representational.<sup>108</sup> In hindsight, current DNR officials felt that the group should have had representation from forest industry, local economic interests and local school districts; however, most of the debate focuses on whether commercial forestry interests should have had a seat at the table.<sup>109</sup> Wallace noted: “From a definition standpoint, it did not meet the collaborative test for representation, not as a self-contained committee. Industry was missing, as well as more community members, homeowner groups and recreational groups, such as hikers and horseback riders. Nobody on the Committee was representing their interests.”<sup>110</sup>

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

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

one member remarked when asked about the rule that “people were surprised by the DNR at times.”<sup>113</sup>

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

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

## **BENEFITS**

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

### **More Protective Watershed Management Standards**

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

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

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

Some questioned to what extent the sustained yield harvest plan achieved an improvement in forestry practices. Soicher commented: “There are two levels of it: 1) where to log and where not to log and 2) how to log. We answered the first question pretty well, but the plan still calls for sixty-year rotations and even-age harvest management [clear-cutting] ... I wouldn’t consider it long-term sustainable forestry.”<sup>119</sup> Despite some remaining disagreement by Committee members over the success of the plan, the city of Bellingham welcomed the plan with enthusiasm.<sup>120</sup>

### **Greater Trust and Respect**

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

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

However, the DNR recognized that restoring trust was not something that would happen overnight or without consistent behavior in the future. Wallace stated: “There is still a lot of mistrust and skepticism by some of the members about what the department will do now,

what our motives are.”<sup>124</sup> Other Committee members expressed similar feelings. Rodriguez commented: “There was mistrust about DNR following through with the recommendation in the final document.”<sup>125</sup>

### **Shared Expertise and More Informed Decisions**

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

Representatives from the Departments of Health, Ecology and Fish and Wildlife each brought their specific knowledge and expertise to the planning process, while the local authorities and citizens, including the tribes, brought local knowledge and an understanding of the needs of the local community. One Committee member later stated that there was “a good team of experts on the Committee.”<sup>128</sup> Alan Soicher, the public representative, was a geologist with forest management experience and an education in geological engineering and water quality. Soicher quickly earned respect among group members because of his technical knowledge of forestry issues.<sup>129</sup> Richard Rodriguez, the Department of Health’s representative, said that Soicher “provided the counter points to the DNR forestry specialists. Without him the Committee would have been at a loss in terms of getting another interpretation of forestry practices.”<sup>130</sup>

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

### **Improved Relationships**

Most Committee members agreed that relationships among the participants in the process developed for the better, despite very different viewpoints about appropriate management of the watershed. Rodriguez commented that during a collaborative process, “you develop personal relationships whether you like each other or not.”<sup>133</sup> Similarly, Clare Fogelson, who represented the city of Bellingham, remarked that the process “builds this odd sense of camaraderie with people you would never do anything else with. If you come in and you

speak to the issues and you are trustworthy, there is a certain amount of cache that gets built up.”<sup>134</sup>

The DNR believed its relations with other state agencies and local governments improved, especially with the Department of Ecology and the Lummi Nation. Edwards agreed, noting that in the past there had been miscommunications between the DNR and the Lummi Nation, but that now the relationship is stronger.<sup>135</sup> He credited the Lake Whatcom Landscape Plan planning process for the improved relationship.<sup>136</sup>

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

### **Local Support for The Landscape Plan**

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

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

Citizens have to step up too and accept that logging around the lake is not only a reality, but also a preferred land use. Despite the years of work and public discussion about this plan, when the chainsaws start and the logging



trucks begin rolling, one can almost predict there will be members of this community up in arms about it. Our wonderful county is far from immune from "not-in-my-backyardism." But everyone in this county should back the careful logging plans that were ironed out over four hard years for the Lake Whatcom Watershed. It's frankly quite nice to see so much public hard work finally pay off in a way that should be beneficial to the community.<sup>143</sup>

### **An Unintended Benefit: Cultural Resources Protection**

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

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

For me the most significant element that came out was the tribal involvement as a government entity. There was a totally new element introduced: the cultural resources. Spots for ceremonies and purity bathing were identified. They did not have to tell us exactly where they were. Instead the entire area would come out of the mix. The tribal participation was very unique. The status quo is that tribes review timber sales. This made a recognition of tribal resources more prominent than usual.<sup>144</sup>

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

### **Other Benefits**

The most common success discussed was that the group was able to bring the Landscape Plan to completion without anyone leaving the table. Edwards commented, "We came up with good recommendations and we stuck together."<sup>146</sup> Not only was the plan completed but the group reached consensus on all but one issue in its recommendations to the DNR. Dumas noted: "The recommendation that they delivered had consensus on all major points. That was one of their big accomplishments."<sup>147</sup> The Committee believed that success came not only from reaching consensus but also from how it was reached. Success included understanding one another's viewpoints. Senator Spanel, who attended several of the meetings, observed:

“Successes came in their discussions when they would understand each others viewpoints.”<sup>148</sup> Others felt that the group’s dedication and willingness to compromise made it a success. According to Rodriguez, “the group was willing to learn new information and they were committed enough to make the effort to be prepared for every meeting. I’d say that is a prerequisite of an effective group. They have to be willing to compromise. They cannot be intransigent in their positions. A major victory was getting a plan with consensus.”<sup>149</sup>

## **COSTS**

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

### **Planning Costs**

The DNR reported that preparing the EIS and the Lake Whatcom Management Plan cost the agency approximately \$800,000.<sup>150</sup> This figure does not include costs incurred by Committee members, such as salaries for members from other state agencies and local authorities and wages given up by voluntary members. While an estimate has not been calculated to account for costs incurred by the Committee, one could calculate a rough estimate of the costs of the time spent by Committee members as follows. The Committee met 37 times, not including the public hearings they attended. Assuming an average of ten hours per meeting (five hours of preparation and five hours of actual meeting time - some meetings lasted all day and were convened during work hours) and that all nine members of the Committee were in attendance at every meeting, the process required 3,330 hours of the Committee’s time. Assuming a billing rate of \$120 per hour for state and city employees (an estimate provided by a state agency employee for the state agency staff level represented at Committee meetings) and \$50 per hour for public citizens (case writer estimate), the planning process costs approximately \$350,000 in salary opportunity costs. Combined with the DNR’s planning costs of \$800,000, total expenditures for the planning process were approximately \$1.2 million.

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

## **Reduced Timber Revenue**

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

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

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

## **Time**

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

## **Personal and Emotional Costs**

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

There was a time when I had to walk out of a meeting. The DNR staff, an upper staff member, treated me with disrespect. That is a slap in the face not only to me but to Lummi Nation. I said [the petroglyphs] were there. [The DNR staff member] said they were not there. The DNR laws are that we don't have to show them exactly where cultural resources are located, but this time we did. They said, "Okay, we saw it." We said, "Don't let anyone else know." Everyone agreed we should put the road through the corner of a wetland to save a petroglyph that was about 4,000 years old. There were only two people

at Lummi and two people at DNR who knew about those petroglyphs. By the time we got back, those petroglyphs were chiseled out. There was a historical mask in a cave too that we showed them. It was also stolen. Our relationship was pretty shaken with them.<sup>160</sup>

## **BENEFITS VERSUS COSTS**

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

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

## **CHALLENGES AND RESPONSES**

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

### **Decision-making Authority of the Committee Disputed**

A dispute over the decision-making authority of the Committee lingered during the early years of the process, slowing its progress. There was disagreement from the beginning over whether DNR was a member of the Committee or whether the Committee was advisory to the DNR. The issue pertained to who had the authority to develop the Landscape Plan. While the Committee initially conducted its work without resolving this question, the issue reached a boiling point when the DNR decided to conduct an Environmental Impact Statement to obtain additional scientific information and broader public input. Some members of the

group felt that the DNR's decision to conduct an EIS was an attempt to weaken the influence of the Committee. In response to this challenge, the group decided to seek an opinion from the Attorney General, as to what the Committee's role was. The Attorney General responded that the Committee was advisory and that the DNR had decision-making authority.

### **Mistrust between the Committee and the DNR**

Mistrust between the Committee and the DNR led to problematic attitudes of parties towards each other. The mistrust stemmed from the DNR's history in the watershed. Local citizens felt some hostility towards the DNR for not fulfilling its original promise to complete a Landscape Plan for the watershed after taking over ownership from the Trillium Corporation. Hostilities culminated in 1998 when the DNR began road construction above Sudden Valley. Because the DNR was required by law to participate in the collaborative planning process, the historic mistrust carried over to the negotiating table. While the lead DNR official, Bill Wallace, was respected by the group members and known for his high degree of professionalism, some viewed him as representing the old line of professional DNR foresters "who think they are the only ones who ought to be making decisions about forest practices."<sup>164</sup> At the same time, the DNR may have viewed the Committee with some degree of suspicion or resentment, considering that the Committee was formed without the DNR's input to serve as a quasi watch-dog group over DNR planning activities. The DNR had also been put on the defensive by the moratorium on logging activities and the threat of further legislation.

Although the early proceedings seemed headed in the right direction, the lack of trust became apparent again following the DNR's decision to conduct an Environmental Impact Statement. Some members of the Committee felt the EIS was the DNR's way of exerting its control over the process and diluting the influence of the Committee by putting its recommendations on equal footing with public comments. Also, the Committee and DNR appeared even more suspicious of one another when the debate over peer review of assessment reports broke out. Looking back, Alan Soicher, one of the public members on the Committee, commented, "Had it happened [peer review], maybe some of the provisions for stream buffers may have been questioned for inconsistency with best available science. The standards for stream buffers would have been higher. Peer review likely would have caught that."<sup>165</sup>

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

### **The Influence of Contentious State and Local Politics**

A challenge noted by Wallace and several others was the political nature of the whole process. Those involved with the process at the time of the 1999 legislation accused the DNR of delaying its report to the legislature in order to prevent a second bill from being passed before the end of the 2000 legislative session.<sup>167</sup> Also, when the legislation was being passed,

timber interests in the House inserted an amendment at the last minute that almost killed the 2000 legislation and resulted in some of the disagreement over the role of the Committee.<sup>168</sup>

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

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

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

Local politics also had a detrimental affect on the process. Part of the dispute over appointments to the Implementation Committee involved Dan McShane, a member of the Committee and a County Council member for Lake Whatcom County. When he was not chosen by the Commissioner to be a part of the Implementation Committee, some accused the DNR of political bias, because McShane’s wife, Lisa McShane, is a staff member of Conservation Northwest. Conservation Northwest, formerly known as the Northwest Ecosystem Alliance, is a local environmental group that had taken an interest in the Lake Whatcom process and had been active in supporting Commissioner Sutherland’s opponent in the past election.<sup>173</sup> Conservation Northwest also provided financial support to Linda Marrom, one of the public members of the Committee. All of these interrelationships and political ties may have had made political divisions more distinct in Committee negotiations with the DNR. Finally, Ted W. Anderson, a member of the Board of Natural Resources, is one of the three County Commissioners from Skagit County responsible for the lawsuit against the Lake Whatcom Landscape Plan, although by the time he began his term on the Board the plan had already been approved.

### **Time Delay and Impasses**

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

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

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

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

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

I think for a lot of the impasses, like slope stability or buffers and what kind of limitations you put on future logging, the solution was to defer the issue to the [Implementation Committee] with the understanding that they would have the final voice about whether the cut went ahead. I think this is noteworthy. I think it actually worked out during this first round of implementation this year.<sup>176</sup>

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

Finally, as relationships evolved, the group was able to help each other find ways to move past emotional disagreements. Rodriguez noted that: "When things got really heated and we'd have breaks ... because of the personal involvement you could have a direct conversation with someone about how they were behaving. People would reflect and you

could see a change of behavior when we reconvened.”<sup>179</sup> Edwards also noted that because of relationships he had built, he returned to negotiations after leaving the table. He recalled: “There were times when I walked out. Friends on the Committee would come out and tell me to come back.”<sup>180</sup>

## **FACILITATING FACTORS**

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

### **Legal Incentives to Proceed**

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

### **Financial Incentives to Proceed**

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

### **Clear Sense of Purpose Aligned with Organizational Goals**

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

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



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

### **Commitment by Local Participants**

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

### **Professional Facilitation**

Several Committee members commented that the facilitators did an excellent job keeping the group on task and committed to following through. Fogelsong talked about how the facilitators' work included "setting up the agenda, setting up the room, taking agenda comments, taking minutes and being in charge of the minutes."<sup>186</sup> He continued, saying that the facilitators were always "making sure there was a flow of communication, making sure no one could hide and not participate and, conversely, that no one dominated discussion, preventing other people from talking" and about how the facilitators had a way of "fading into the background but always being present."<sup>187</sup> Dumas reflected on the issues facing the Committee when she joined the process as facilitator: "When they realized that the DNR would not be a member of the Committee, it was important for them to ask themselves what they could achieve if they did come to a consensus."<sup>188</sup> Conversely, the facilitators pressed the group about "what it would mean if they did not come to an agreement."<sup>189</sup>

## **LESSONS LEARNED**

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

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

Although an agreement had been reached on how forest industry concerns would be incorporated into the Committee's planning efforts, in retrospect the Committee's

recommendations would have been stronger in the long run had industry been represented on the Committee. On this point Senator Spanel commented:

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

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

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

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

The process' ill-conceived initial deadline and the subsequent missing of that deadline hurt Committee members' expectations about the process and contributed to process fatigue. According to the 2000 legislation, the Lake Whatcom Landscape Plan was supposed to be completed by June 2001. This gave the Committee only 15 months to form and develop their recommendations. As it turned out, this deadline did not allow adequate time for the Committee to complete their work. When either developing or deciding whether or not to participate in a collaborative planning process it is important to take a realistic look at how long it might take and anticipate room for delays along the way. By addressing the issue of time commitment up front you not only set a timeframe for when things will happen, but also give participants an accurate perception of what they are agreeing to do. Soicher noted: "If I knew it would drag on this long I would not have been able to agree to participate. The legislation intentionally set a tight time frame, which is what we expected it would take."<sup>194</sup>

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

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

While the process stalled at times, participants believed that these ground rules helped keep the process moving forward by overcoming disagreements.

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

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

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

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

If a collaborative process is required by a legal mandate, make sure roles and decision-making authority are clear. The membership of the Committee was not clearly defined in the 2000 legislation. It was assumed that it would be the same as for the Study Committee, resulting from the 1999 legislation. The process for setting up the Implementation Committee was also not clearly defined, nor was the decision-making authority. Senator Spanel commented when looking back at the legislation, it could have had “better clarification, no loose ends like the IJC [Implementation Committee] and better definitions in there.”<sup>196</sup> Alan Soicher commented, “[you need] clarity in the relationship, going further than that, be really clear about whether it is going to be collaborative or whether you are going to have one group making recommendations and another group making decisions.”<sup>197</sup>

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

Collaborative processes, such as the Lake Whatcom Landscape Planning Process, bring together people with different areas of expertise. There is a tendency for groups to defer decision making related to a particular skill or knowledge set to the group member with expertise in that area. While it is efficient to make use of an expert’s skill and knowledge, providing that member with too much control or discretion over the decision or the

preparation of data for that decision could lead to suspicion by other members of the group about the objectiveness of the expert's analysis.

To avoid the perception of bias, the group and the expert at hand should share ownership of expert-based decision making throughout the process. This procedure will build buy-in for the group's decision related to this area of expertise. For example, in the this case, some members of the group felt that the DNR was controlling the financial analysis of the impact of the plan alternative's on the generation of future revenue in the watershed.<sup>198</sup> While the DNR possessed expertise in preparing the financial models necessary to conduct this analysis, some members of the group considered it biased because of their lack of participation in conducting the analysis.

## **ACKNOWLEDGEMENTS**

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Harriet Spanel  
Doug Sutherland  
Bill Wallace

## **CHAPTER 9**

### **THE MESA DEL SOL PLANNING PROCESS: Partnering with the Beneficiary and Private Sector for Large-scale Urban Development**



Mesa del Sol, Albuquerque, New Mexico

Photograph by Emily Kelly

**Case Study by Drew Vankat  
Researched and Edited by Drew Vankat and Emily Kelly**

## INTRODUCTION

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The largest undeveloped parcel of land in any North American city sits just five minutes southeast of downtown Albuquerque, New Mexico. A wide-open desert scrubland home only to a few ranchers, an isolated concert venue and a drag racing track, Mesa del Sol is hardly glamorous. Yet it borders Kirtland Air Force Base, the top-secret Sandia National Laboratories, Albuquerque International Sunport Airport and the ever-growing city of Albuquerque whose sprawl now extends west across the Rio Grande River. Major transportation corridors run nearby, but not through the property. It is 12,900 acres of largely unfulfilled development potential, largely out of the public's mind.

Though the State Land Office (SLO) first became interested in developing this property over twenty years ago, only recently have they secured a legitimate developer and promises of the necessary infrastructure upgrades necessary to connect Mesa del Sol with New Mexico's largest city. The complex, often turbulent process leading to this stage was the struggle and signature of four Commissioners of Public Lands. Without an official working group or formal collaboration, Mesa del Sol is unlike the other cases researched in this report. The hallmark of the process is a series of informal collaborative strategies focusing on relationship building and open communication, instituted by commissioners with a sincere desire to increase community involvement in state trust lands issues. The process was not without its challenges, though. At times, relationships between the SLO and beneficiary, the University of New Mexico (UNM), became estranged, as when UNM sued Commissioner Jim Baca to block Mesa del Sol's sale at its original auction in 1987. The SLO spent years erasing the negative press surrounding the lawsuit and building a collaborative foundation that would carry the project forward when important political interests aligned in its favor.

Political interests have also played a significant role in delaying the Mesa del Sol project. Their influence often overwhelmed supporters of Mesa del Sol, forcing the project to take a back seat to other developments elsewhere. As several participants noted, success largely depended on the "political stars" aligning, meaning the Mayor, City Council, UNM and other influential parties. There also was considerable disagreement over the physical nature of the development itself: at least four master plans have been written. The SLO worked hard to form collaborative relationships with all interested parties, even succeeding in addressing the needs of its neighbors with hidden interests, particularly the Isleta Pueblo and Kirtland Air Force Base.

Without a collaborative process, the land likely would have been sold at auction in small sections to individual developers, promoting urban sprawl and placing overwhelming demands on municipal services and infrastructure. Regarding the lengthy collaborative process, current Commissioner of Public Lands Patrick Lyons freely admits, "I wouldn't have done it that way." Rather, Lyons would have left the planning process to the local community, significantly reducing the SLO's role and investment in the process.<sup>1</sup> But instead, this case illustrates the gambles of progressive Commissioners of Public Lands invested in collaboration, green development and long-term beneficiary revenue, investments that appear to have paid off. Today, a public-private partnership will develop Mesa del Sol at no net cost to the city of Albuquerque and in accordance with the city's comprehensive

Planned Communities Criteria, requiring principles of mixed-use, high-density development and open space.

## **KEY THEMES**

This case illustrates the importance of three factors. First, progressive leadership is seen as a key component in complicated urban development of state trust land. Many participants cited the SLO's creativity as a primary reason why this complex, lengthy development project looks certain to become a reality. By embracing a new management paradigm of informal collaboration and public outreach, the SLO attracted a national developer with the resources to develop Mesa del Sol and maximize long-term revenue to the trust. The commissioners most intimately tied to Mesa del Sol, Jim Baca and later Ray Powell, have exhibited a strong desire to involve stakeholders and other interested parties to create a development in which the community can take pride. Despite this community involvement, commissioners have neither neglected nor violated their constitutional mandate; rather most participants believe collaboration led to increased revenues for the beneficiary.

Second, community involvement emerges as a significant factor in maintaining interest in the fate of a project that often times appeared out of the SLO's control. Mesa del Sol's crucial role in the development in greater Albuquerque attracted interest from a variety of community members, including powerful political interests the SLO often had little or no ability to align. This case illustrates the complexity of development on state trust lands in or near metropolitan areas and the necessary ability to achieve increased stakeholder and community commitment. As in many development projects, addressing and satisfying competing political interests was a formidable challenge and figured prominently delaying Mesa del Sol.

Finally, this case exemplifies the power of a public-private partnership in state trust land development, as a credible private sector partner was a boon to the process. Forest City Covington, LLC (FCC) is repeatedly commended by interviewees and major parties involved for its experience, resources, and strong community vision. As Tim Callahan, an SLO planner notes, "When Forest City came to town, that was *the* defining moment."<sup>2</sup>

## **CONTEXT FOR COLLABORATION**

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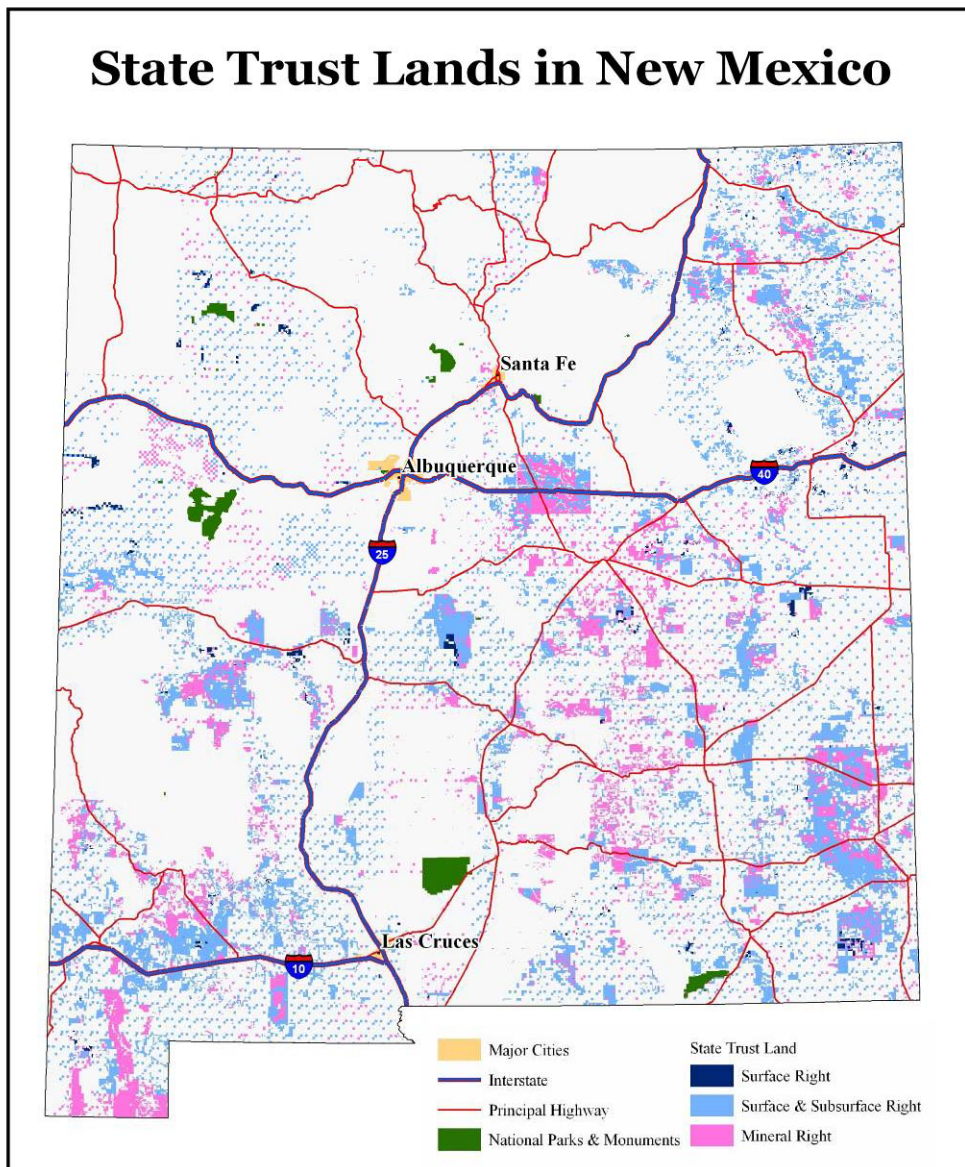
### **ESTABLISHMENT OF STATE TRUST LANDS IN NEW MEXICO**

Prior to its induction into the United States, the territory of New Mexico was provided state trust lands as sections 16 and 36 in each township in 1898. Under 1899 legislation the State Land Office (SLO) was created and the first Commissioner of Public Lands appointed to administer state trust lands. Later, New Mexico's Enabling Act, passed in 1909, set aside township sections 2 and 32 as additional state trust lands (Figure 9-1). The Enabling Act also confirmed the Land Grant Permanent Fund that holds all allocated lands in trust to the public school system and other state institutions. All of this was completed prior to New Mexico's statehood in 1912.



Since New Mexico was one of the last states to be given state trust lands, the restrictions imposed on these lands by the Enabling Act are much more rigid than in other states that had already abused and sold much of their trust land assets. Such restrictions guide the SLO's planning process today, dictating the manner in which the SLO may conduct business and what concessions they may accept in negotiations.

Figure 9-1: State Trust Lands in New Mexico



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

## **HISTORY AND CULTURE OF THE SLO**

The Commissioner of Public Lands is the head of the SLO and is an elected state official. The commissioner is advised by the Office of General Council and the State Land Trusts Advisory Board. Ultimately, however, the commissioner is entrusted with the “control, jurisdiction, care, and custody of all trust lands” by the New Mexico State Constitution which provides him with final decision-making power.<sup>3</sup> While leadership changes, key members of staff are often retained by the next administration, which was true in the Mesa del Sol Planning Process. This continuity is essential to maintaining organizational momentum and knowledge required for success in such complex and long-term projects.

Originally distributed in a checkerboard pattern across the state, New Mexico’s trust lands have been somewhat consolidated as a result of land exchanges with public and private institutions. The SLO’s portfolio now includes some large coherent tracts of state trust land as a result of exchanges, particularly outside of Albuquerque in Mesa del Sol and in the southeastern portion of the state. These larger tracts allow for more consistent land use in an area and as well as master planned developments in urban settings like Mesa del Sol.

## **MANAGEMENT CHANGES AND THE FOCUS OF THE SLO**

Within the past couple of decades, land development and leasing opportunities have been given increasing attention in the SLO. The SLO’s Planning and Development Workgroup recently identified 30,000 acres of state trust land with current development potential, having acquired strategic parcels in the mid-20th century in anticipation of urban growth.<sup>4</sup> As with Mesa del Sol, many of these lands are now in metropolitan areas and are ripe for development.

While commissioners are not bound to the decisions and policies of former administrations, Commissioner Lyons has continued many of the efforts of his predecessors, land development being one of those efforts. Mesa del Sol in particular has been a major project of the administration and is a reflection of the growing value of land development in the SLO portfolio.

## **THE STORY: THE MESA DEL SOL PLANNING PROCESS**

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Despite its close proximity, Mesa del Sol was fairly isolated from Albuquerque for most of its existence under SLO ownership (Figure 9-2). As a result, through much of the twentieth century the land was leased solely to a handful of ranchers for grazing. In 1963, seeking a remote venue, the Albuquerque National Dragway obtained a 160-acre lease from the SLO to operate an automobile drag racing strip on Mesa del Sol. The Dragway has operated on consecutive five-year leases continuously with the exception of a two-year period from 2000 to 2002 when Commissioner Powell cancelled the company’s lease. As in much of the West, Albuquerque began a period of rapid growth in the 1970s that continues today. This growth began to spur debates over the direction of urban growth and where it would be most suitable.

SLO Planner Tim Callahan stated that potential development of Mesa del Sol has been discussed for several decades.<sup>5</sup> As beneficiary of the parcel, the University of New Mexico (UNM) envisioned Mesa del Sol as a long-term future source of revenue, but never developed a concrete plan. As debate over Albuquerque's growth grew in the 1970s, the SLO began to explore the possibility of developing Mesa del Sol. Credit for the specific plan to develop the site is generally given to Jim Baca (Commissioner of Public Lands from 1982 to 1986 and from 1990 to 1992), though a 1970s pamphlet promoting the development potential of the site was mentioned by one interviewee.<sup>6</sup> As SLO Planner Tim Callahan described, "Jim was a very progressive type of a Land Commissioner. There's no doubt about that. It was not business as usual."<sup>7</sup>

As opposed to his predecessors, Baca wanted to wean the SLO from its reliance on resource extraction and explore the possibility of residential and commercial development on state trust lands. He also believed the SLO should become more accountable to the public in general, through collaboration and an eye towards conservation. Blair Brown and Susan Gorman of the Sierra Club agreed, saying Baca "believed that there needed to be more transparency in state lands operations."<sup>8</sup> The SLO under Baca began to recognize that resource extraction on SLO lands must someday end and took a long-term approach to generating revenue. Brown and Gorman credit Baca as the first commissioner to open the doors to environmental groups and their concerns.<sup>9</sup>

With increased urban growth and additional development pressures in recent decades, trust lands such as Mesa del Sol have become more valuable as potential sites for development and conservation alike. Recent administrations in the SLO have focused on these lands. Former Commissioner Jim Baca, for instance, was intent on selling land directly to the private sector in development projects such as Mesa del Sol to produce what he saw as the greatest revenue for the trust.<sup>10</sup> His successor, Ray Powell, also saw the importance of future land sales and development and continued this legacy. Powell later created the Commercial Leasing Division at the SLO, dedicated to land sales, leases and development. Powell also shifted the SLO's land development practice towards the public-private partnership model.<sup>11</sup> These two commissioners conceived of the Mesa del Sol vision and provided the infrastructure within the SLO to make it possible.

In his first term, Baca publicly introduced a plan for developing Mesa del Sol. Realizing Mesa del Sol as an integral cog in Albuquerque's growing population and economy, the SLO hired a local firm to draft a master plan. The plan was written in consultation with outside

**Figure 9-2: Mesa del Sol**



Source: "Community Master Plan" June 2005, Forest City Covington New Mexico, LLC, 15.

parties, including representatives of the Sierra Club, though there is some disagreement between UNM and Baca over whether Baca adequately shared his vision with UNM, the beneficiary of the revenue generated from this parcel of state trust land. As Baca's plans progressed, UNM became more concerned because they felt that they had not been involved in the process, had no control over the outcome and disapproved of the events to date. Under Baca's original plan, the SLO master plan would guide development once title to the land was sold at auction to a private developer. Baca is generally praised for his direct nature and intense focus. As Kim Murphy, former SLO Planner and Director of Real Estate at UNM, stated, "I give [Baca] a lot of credit for having the vision to start this project. I think he's very politically astute, but he also can be very abrasive and turn a lot of people off."<sup>12</sup> Baca was close to the UNM President, a relationship that facilitated progress on the SLO's plans. However, his relationship with the UNM Board of Regents was decidedly unproductive.<sup>13</sup> This dynamic emerged from the responses towards the results of the SLO's first auction.

In early 1987, with less than one year remaining in his term, Commissioner Baca put 5,200 undeveloped acres of Mesa del Sol up for auction. In preparation for the auction, Baca worked with the city of Albuquerque, the Sierra Club, the UNM and others to design the master plan for development. The auction attracted only one bidder, Bellamah Community Development, Inc., a New Mexico-based regional developer. Bellamah won the right to develop that section of Mesa del Sol in accordance with the SLO master plan. At the time, the land was not annexed into the city and did not prove an extensive plan for development that was needed. UNM Director of Real Estate Kim Murphy explained that Baca's auction served as a wake-up call for the University, prompting them to become attuned to the immense revenue potential associated with Mesa del Sol and to become interested in taking a more proactive role in planning its development.<sup>14</sup> In response to the auction, the UNM Board of Regents believed that a single bidder represented below-market compensation for the Mesa del Sol property and requested that Commissioner Baca not accept the bid. Baca refused to accommodate their requests, and the Regents filed a lawsuit, the settlement of which required Bellamah to give a larger percentage of the sale of each parcel to UNM. Their investment was no longer certain, Bellamah lost interest in Mesa del Sol and rescinded its offer. Had Bellamah in fact gone through with the purchase, it would have forever changed the history of Mesa del Sol, as the company declared bankruptcy in 1989 and would have lost the land to unknown parties.

Bill Humphries replaced Baca as commissioner later in 1987 and inherited freshly-damaged relationships with UNM resulting from the lawsuit over the auction. Public perception of Mesa del Sol was also reeling from the litigation, and many people felt the land never would be developed due to the contentious atmosphere surrounding it. At the same time, the rapid growth on Albuquerque's west side was creating increased congestion, sprawling land use and pressure on city services. Responsible urban planning would have all but required the city to build on Mesa del Sol.

While few Mesa del Sol Planning Process participants recognized the influence of Humphries' term, one participant said Humphries continued the vision of developing Mesa del Sol.<sup>15</sup> Unfortunately, his term coincided with a downturn in the local economy and a lack of interest from Albuquerque, two factors that hampered progress. Tim Callahan recalled that

he and then SLO planner Kim Murphy (now Director of Real Estate at UNM) devoted time to the project during Humphries' time in office and created a new master plan.<sup>16</sup> Most of the work was done in house and it was several years until others acknowledged that the SLO instituted a true collaborative planning process.

When Baca won election for his second term as commissioner in early 1991, he intended to revive his campaign for developing Mesa del Sol, but scarcely had time to settle into his office before being nominated the following year as Director of the U.S. Bureau of Land Management. New Mexico Governor Bruce King appointed Ray Powell, his Special Assistant on Environment, Health and Natural Resources to finish Baca's term. In addition to his experience in natural resources, Powell is a professional veterinarian and, like Baca, comes from a politically prominent New Mexico family.

Powell completed the remaining two and a half years of Baca's term and was then elected to two consecutive terms in his own right, serving more than ten years as commissioner. In Powell's own words, a major policy focus for his administration was a "different way to approach things," where trust lands were not sold at raw land values, but instead leased to a developer who could make improvements to raise their value.<sup>17</sup> To achieve this goal, Powell created a Commercial Leasing Division at the SLO, which was comprised of architects, planners and others who embodied Powell's belief that "the land office had been looked at as a solitary unit," but now would actively "become an integral player in the bigger picture" of New Mexico's economic development, a strategy which meant partnering with other entities.<sup>18</sup> "That's what we tried to do with every project," he stated, "have that inclusiveness, go seek [the community] out at the beginning of the process, talk to them before they heard about the project from someone else."<sup>19</sup>

Consequently, the process of developing Mesa del Sol became a primary focus of the SLO during Powell's tenure. Whereas Baca planned to sell Mesa del Sol at auction, Powell's administration aimed to lease the property and develop it in conjunction with a private company before selling parcels at an amount above their raw value. As Powell said, he wanted the SLO to be the "architects" of the deal and "really decide what was going to happen on that land."<sup>20</sup> But to make the Mesa del Sol property an attractive investment to a private developer, Powell had to erase the negative stigma resulting from the lawsuit and create more investment certainty for the potential developer.

In order to do so, the SLO instituted a series of informal collaborative outreach measures that became the hallmark of the development process. Powell's desire was to involve people and gather their input as early as possible. He explained, "my philosophical standpoint is to be as inclusive as you can on the front end and include as many people as you can in the discussion, and you're going to end up with a much better product and not end up with lawsuits."<sup>21</sup> Powell also wanted the SLO to "get involved and help make [Mesa del Sol] something important for their community."<sup>22</sup> Rather than convene a formal working group, Powell pursued collaboration by opening the SLO's doors to the public and visiting, along with his staff, various community meetings to talk with concerned parties and stakeholders such as the Sierra Club, neighborhood associations, business associations and others. Of the collaborative process, Powell said, "we were there from the beginning and people were very anxious about what we were going to do because this hadn't been done before. At the end of

the meetings they were right there with us—that was their project.”<sup>23</sup> His collaborative strategy helped increase community buy-in and quell the fears of neighboring entities including UNM Board of Regents, who represented the University in negotiations with the SLO.

The results of the SLO’s collaborative efforts manifested themselves in various aspects of the process. SLO Planners Harry Relkin and Tom Leatherwood drafted additional master plans for the parcel, incorporating environmentally responsible “new urbanism” designs and suggestions from the local Sierra Club chapter. Powell and his staff reached out to Bernalillo County to build their enthusiasm for the project, resulting in a 624-acre lease for a concert amphitheater, completed in 1997, and a regional recreational park that is still under construction. As Tim Callahan describes the amphitheater and park, “[The SLO] thought that would be a ... catalyst to get things moving. You’d have a public-private enterprise.” Not only did the lease improve relations with the County, Callahan explains, but it also provided the general public with a reason to visit Mesa del Sol, restoring its image in the public’s conscience: “I think it put Mesa del Sol more on the map,” Callahan concludes.<sup>24</sup>

Powell also involved Mesa del Sol’s neighbor to the east, the Kirtland Air Force Base (and specifically Sandia National Laboratories, which is housed on the Base), in the collaborative process. Because of the secretive nature of Sandia Lab’s work harboring and developing national security secrets, understanding their interests was a difficult task. Powell’s proposal to create a buffer of open space, La Semilla, that insulates Sandia Labs and Kirtland AFB from any future development was a creative solution that resulted directly from active involvement of outside parties in the planning process. As Callahan remembered, “Talk about working with stakeholders, that was one we really went out, over, maybe overboard to make sure that [Kirtland AFB] is benefiting.” Without a collaborative approach by the SLO, the development could have stalled or fallen victim under the influence of the military’s immense political power. Callahan acknowledged this was one of SLO’s motives for collaboration: “The military guys can do what they want to do anyway.”<sup>25</sup>

While the SLO’s collaborative efforts were successful in many aspects, the SLO faced numerous challenges and complexities in bringing together a diverse set of interests. In particular, the agency had difficulty with political forces beyond their control. Albuquerque’s population explosion caused the city to sprawl westward, across the Rio Grande to distances nearly 15 to 20 miles from downtown. By all accounts, Mesa del Sol, with its close proximity to the center of Albuquerque and the airport, would have been a more desirable location for this growth. Unfortunately for the SLO, though, west side growth was promoted strongly by private development interests in powerful positions. Interviewees cited the Mayor, banks, members of the UNM Regents and other city officials as having a financial interest in seeing Albuquerque develop to the west, rather than in Mesa del Sol to the southeast.<sup>26</sup>

In some respects, the story of Mesa del Sol is as much about politics as collaboration. Harry Relkin, former SLO Assistant Commissioner of Commercial Resources and current consultant to FCC, explained that the complexity of Mesa del Sol means “projects like this are a political process.”<sup>27</sup> Kim Murphy elaborated:

Oftentimes the political agendas of the participants clash or don't align, so it can either facilitate or hinder the progress of a project. The additional complication is that Mesa del Sol is a key development opportunity within the city of Albuquerque and so in order to move the project forward you have to have the support of the Council and the Mayor and those are also political people.<sup>28</sup>

The SLO constantly has looked for windows of opportunity when political forces aligned in Mesa del Sol's favor. For example, when Powell and the SLO decided to apply to annex Mesa del Sol into the city of Albuquerque, it should have legitimized the SLO's master plan for development and created an avenue for building relationships with the city. Near the same time, SLO Planner Harry Relking decided to apply Mesa del Sol for approval under Albuquerque's Planned Community Criteria, a set of rules governing the layout of large developments. These actions should have showed that the SLO was determined to make Mesa del Sol a responsible contribution to Albuquerque's growth by subjecting it to the same planning criteria as private developments. Instead, the Mayor of Albuquerque, Martin Chavez, catered to west side development interests and stalled Mesa del Sol. Tim Callahan believed that "annexation was probably the worst thing we could have done because the Mayor said, 'Ok, I'm in control: nothing's going to happen.' And that's what did happen. Nothing happened for four years."<sup>29</sup>

Although politics certainly influenced when the development of Mesa del Sol could or could not proceed, the SLO's informal collaborative processes were the guiding force that determined whether it happened at all. Throughout the 1990s and continuing to the present, the SLO was meeting with neighborhood organizations, non-profits and other organizations to share ideas, gather input and build enthusiasm for the project. Powell said, "My philosophical standpoint is to be as inclusive as you can on the front end and include as many people as you can in the discussion."<sup>30</sup> Sierra Club volunteers Susan Gorman and Blair Brown who participated in the process since 1997, stated that they were very impressed with the outreach conducted by Powell and his staff. They expressed that they feel that Powell "feels working together is how you get stuff done." He has "always been open, we know him to be very pro-environment but at the same time knows it's got to work for everybody."<sup>31</sup>

Meanwhile, when the Bernalillo County's Journal Pavilion amphitheater opened in Mesa del Sol in 1997, the Dragway began to lose some of the isolation that made Mesa del Sol such an attractive venue for automobile racing. Bill Elliott, Communications Director for the Albuquerque National Dragway, said he "[did] everything I [could] to maintain a positive open working relationship with [the amphitheater]," but that it did not always work out. Ensuing disagreements with the amphitheater over noise and degradation in relationships with the SLO resulted in Powell suspending the Albuquerque National Dragway's lease in 2000. The closure, officially stated to stem from rent payment discrepancies, was spurred by several years of antagonistic relationships between the Dragway and Powell. The Dragway also believed Powell's pro-environment stance left no room for an automobile drag racing venue at Mesa del Sol. Elliott believed the Powell administration had already decided the Dragway's fate: "In the back of their mind, they were thinking, 'You know what, we need to get rid of this thing.'"<sup>32</sup> This experience was the only instance where Powell's informal collaborative tactics clearly produced an adversarial outcome and failed to secure buy-in for



further development of Mesa del Sol. After being elected as Commissioner of Public Lands in 2002, Patrick Lyons fulfilled his campaign promise to reopen the Dragway. Elliott said the Dragway is still worried about their long-term future: “It’s a little touchy subject and ... who knows what’s going to happen. I know we don’t have problems with Patrick Lyons but the election is next year and he’s only got four more years beyond that and then who knows who were dealing with.”<sup>33</sup>

Powell intended to conduct another auction for a significant portion of Mesa del Sol before the end of his second term. Feeling that he had successfully erased most uncertainties surrounding the property, he offered Mesa del Sol to potential bidders in 2001. The successful bidder would be able to lease the land and develop it according to the city’s Planned Community Criteria and SLO guidance. Three companies submitted bids and former SLO Planner Chris Hyer remembered, “They were all very highly scrutinized; and it wasn’t just, ‘Who is going to give us the best bang for the buck.’ It was, ‘Let’s go out and visit every one of their projects and see what they’ve done’ ... we want this to be a viable development.”<sup>34</sup> Forest City Covington, LLC was chosen as the new developer. FCC is a large, national company with a long history of progressive urban development and redevelopment, including the former Stapleton Airport site in Denver, Colorado. The lease contract for Mesa del Sol was signed on December 30, 2002, the final day of Powell’s administration. From a business perspective as well as a collaborative community relations perspective, the importance of FCC was underscored by many people involved in the process. Many participants saw the addition of this well-reputed company as an important factor in Mesa del Sol’s current success.

Patrick Lyons was elected commissioner in 2002 by a slim margin of approximately 8,000 votes.<sup>35</sup> Although the commissioner enjoys nearly complete autonomy, because FCC had already signed the lease contract, it would have been more difficult for Lyons to abandon the Mesa del Sol project. As a result, but also because Lyons reported that “We’re supportive of

**Figure 9-3: Campaign Sign at the Albuquerque National Dragway**



Source: Photograph by Emily Kelly

it ... we’d like to see it happen,” Lyons continued work on Mesa del Sol, including working with members of Congress to secure funding for the University Boulevard extension that provides better access to Mesa del Sol. But Lyons differed from Powell in his belief about planning: “We just feel like we ought to let the local communities do it.”<sup>36</sup> Correspondingly, he turned over most of the daily planning responsibilities and the community outreach to FCC. Lyons believed FCC



has sustained a positive working relationship with the public and stakeholders. He describes FCC's approach as such: "It's 'Here's our plan, here's how the plan is, and if you don't like it let us know.'"<sup>37</sup> Blair Brown and Susan Gorman of the Sierra Club agree, saying FCC is "very professional and seem to be willing to talk with us as equals" and appreciate the fact that little of the Sierra Club's time is required, a bonus for volunteers.<sup>38</sup>

The last major physical hurdle to developing Mesa del Sol was recently cleared through the work of Lyons' administration and several federal elected officials. Work on the \$25 million University Boulevard extension began on September 30, 2005.<sup>39</sup>

Lyons also changed the SLO's relationship with the Dragway (Figure 9-3). Shortly after Lyons' narrow victory in the election. Bill Elliott, Communications Director for the Dragway said, "I called him up the next day and I told him, 'Patrick, congratulations and I want you to know there's exactly 8,000 drag racers in the state of New Mexico.'"<sup>40</sup> Lyons reciprocated by reissuing the Dragway's five-year lease. For its part, the Dragway still harbors fears that it will not be included in Mesa del Sol's future. They will again campaign heavily for Lyons in 2006, but understand there is no long-term guarantee concerning their lease. FCC's lease may even include a clause for them to exercise an option to take out the Dragway.<sup>41</sup> Since FCC has taken over daily management of the Mesa del Sol process, Baca expressed that it will be "interesting to see if the collaboration keeps happening."<sup>42</sup> Despite the Dragway's concerns, the pattern of informal collaboration appears to be the preferred method of community outreach for the future as well. FCC held meetings with several community groups and even flown others, including members of the Sierra Club, to Denver to view other FCC projects.<sup>43</sup> Whether or not the Dragway's relationship with FCC blossoms remains to be seen. Bob Labatte, owner of the Dragway said, so far "our relationship with Forest City, I would say, has been good."<sup>44</sup>

## **THE ANALYSIS: THE MESA DEL SOL PLANNING PROCESS**

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### **LEVEL OF COLLABORATION**

Our research team identified three axes for measuring the level of collaboration in each case. They include breadth of stakeholder participation, degree of transparency and degree of influence on decision-making. Each element by itself contributes to a productive, inclusive process, but a mix of all three factors brings the interrelationship of each into play and produces a truly collaborative process. Mesa del Sol incorporates all of these elements.

**Breadth of Stakeholders:** The number and variety of parties mentioned in our interviews illustrates the breadth of stakeholder involvement. Highly collaborative processes often are grounded in the input and involvement of most or all interested parties or stakeholders. By including multiple voices, solutions are more likely to be successfully implemented and have greater chance of future compliance and reduced risk of opposition or litigation. People and organizations consulted or involved in the Mesa del Sol process include: UNM (several departments, the Board of Regents, Real Estate Office, administration, and others), city of Albuquerque (Planning, Economic Development, City Council), Greater Albuquerque

Chamber of Commerce, Bernalillo County, Isleta Pueblo, Kirtland Air Force Base (and the non-profit Kirtland Partnership), Department of Energy (Sandia National Laboratories), Sierra Club, 1000 Friends of New Mexico and neighborhood groups (South Valley and Mountain View Neighborhood Associations). As discussed above, most groups feel their involvement has been beneficial. It appears that all relevant, interested parties were invited to submit input during the process. The SLO did a commendable job of opening its doors to each and every interest and actively visiting with the community to solicit public comment.

**Degree of Transparency:** The Mesa del Sol Planning Process also displays a fair amount of transparency, facilitating a clear understanding of all available information in the decision-making process and the means by which decisions were made. Specifically, transparency requires that meetings, agreements and decisions be open to all participants, thereby maintaining the credibility of the process. Throughout his tenure, Ray Powell made transparency a cornerstone of his business strategy. He clearly saw the benefits of involving parties from the onset when he said, “That’s what we tried to do with every project – have that inclusiveness, go seek them out at the beginning of the process, talk to them before they heard about the project from someone else.”<sup>45</sup> Jim Baca also endeavored to this end, but his style seemed allowed the private sector to take more responsibility for dealing with stakeholders.<sup>46</sup> As representatives from the Sierra Club put it, Baca “believed there needed to be more transparency in state lands operations, so he kind of opened the doors and Ray Powell took over and welcomed us all in.”<sup>47</sup>

Today, with a contracted developer in FCC, Patrick Lyons puts more onus on the private sector to handle the daily communications responsibilities. Still, the Dragway has been very pleased with Lyons’ open-mindedness and ability to listen to interested parties.<sup>48</sup> We believe that Mesa del Sol has been quite successful in respecting the requirements of transparency in a successful collaborative process. Had communication between Baca and the UNM Regents been better, the process might have unfolded differently; although it is difficult to tell. There exists a possibility the 1987 auction might never have happened, as the two parties may have chosen a collaborative approach and delayed sale and lease of Mesa del Sol for several years.

**Degree of Influence on Decision Making:** The informal nature of the SLO’s collaboration meant that interested parties provided tacit approval of Mesa del Sol, rather than a binding vote in a formal decision-making venue. Therefore, it is more difficult to evaluate the level of influence in decision making among parties. By distributing decision-making power more evenly, collaborative processes build investment and ownership in the outcome while reducing dissent. This distribution of decision-making power results in greater adherence to solutions. In New Mexico, the constitutional mandate defining state trust lands management precludes the possibility of complete equality in decision-making authority, although decision-making power may be shared to some extent. Tim Callahan, who has worked for the SLO for 23 years, admitted that, “I’m probably a little biased in that I don’t see other stakeholders [other than the beneficiary, UNM].” Nonetheless, he added, “We invite [parties] in ... because we want input as to what is out there, but we just don’t want to relinquish the control and let them drive [the decisions].”<sup>49</sup> Ray Powell added, although “the concept [behind Mesa del Sol] is to do things so that you’re part of the community,” the SLO always remembered, “the school kids are the bottom line.”<sup>50</sup>

By using informal collaboration to gain support from one party at a time, the SLO slowly built momentum for Mesa del Sol, using previous voices of approval to influence future negotiating. The general idea of environmentally-friendly development came from Commissioners Baca and Powell,<sup>51</sup> though they solicited ideas from the Sierra Club to some extent.<sup>52</sup> The SLO could then use the Sierra Club's approval to leverage other groups' support. Likewise, the Isleta Pueblo had concerns over the possibility of Albuquerque mandating a golf course on Mesa del Sol, because of an unusual city ordinance requiring a course for every development of a certain magnitude. By convincing the city that no golf course was necessary, the SLO could placate the Isleta's fears of losing golfers from their course and allow them to come closer to giving tacit approval of Mesa del Sol. Finally, the La Semilla buffer, though necessary to implement new urbanism densities in Mesa del Sol, responded to the military's particular needs. Callahan observed, "They want to do what they want to do. And the military guys can do what they want to do anyway."<sup>53</sup> Again, satisfying the desires of interested parties, be it the local Sierra Club or U.S. Air Force and Department of Energy, helped the SLO toward its vision and gain additional support for Mesa del Sol. Whether or not each interested party has legal decision-making authority, it is important to gauge their interests and concerns before moving forward with a decision.

The SLO's decision-making authority has also troubled some participants, particularly the Dragway representatives, who believed strongly that the commissioner should be more accountable to its stakeholders and lessees.<sup>54</sup> Similarly, UNM, as the beneficiary, felt early on that Baca did not allow adequate influence given their fiduciary relationship. As the process progressed, Kim Murphy cited problems when "political agendas of the participants did not align," perhaps pointing to instances where the University and SLO did not see eye to eye on a decision and power struggles erupted.<sup>55</sup> Others, like representatives from the Sierra Club, have been largely pleased with how the SLO has listened to their suggestions, though they, too believed "it would probably be nice if there were something more like a NEPA process" to make the input process easier and more comfortable for non-profit groups.<sup>56</sup> In all, the level of decision-making influence has been fairly moderate, and it was perceived by many to be much higher than in most of the SLO's more traditional trust land leases or sales.

## **BENEFITS OF THE PROCESS**

The informal collaborative process surrounding Mesa del Sol's development produced many benefits for a variety of stakeholders and interested parties. Because of its size and strategic location, Mesa del Sol is a showcase trust land parcel serving as a model for future development projects. While this case highlights one particular type of collaboration, the benefits readily translate to other projects, helping outside parties understand the advantages of partnering with the SLO and in turn improving future SLO policies and practices.

### **Awareness of Trust Lands and Community Buy-In**

One of the single most important benefits of this process was the increased community buy-in that resulted from involving a broad constituency. Through their involvement, the constituency developed heightened awareness of trust land, its existence, purpose and

management, throughout the greater Albuquerque area. The informal collaboration begun by Baca and Humphries and accelerated during the Powell administration was a successful strategy for fostering community awareness and involvement in state trust lands issues and brought the SLO to the forefront of discussion of planned development in Albuquerque. Powell's goal was for collaboration to develop joint ownership by helping "get [stakeholders] involved and help make it something important for their community."<sup>57</sup> Both Powell and his staff went to numerous community events to share their ideas about Mesa del Sol, and it was Powell who first contacted the Dragway to solicit their involvement. Former SLO planner Kim Murphy personally represented the SLO at business luncheons and neighborhood meetings during the Humphries administration, trying to drum up support for Mesa del Sol. He expressed that increased awareness and community buy-in could be intimately tied together: "Maybe the misperception about what the [state trust] lands are for actually provides the vehicle to broaden the constituency base ... Once constituencies are brought into the the polical process, then they can be aligned and useful in the developments of projects that maybe they can support." He has been pleased with the level of community buy-in in this specific process, explaining that it built "further interest in development."<sup>58</sup>

### **Advancing a Public-Private Partnership Model**

The SLO also benefited from its collaborative partnership with FCC, helping advance and refine the public-private partnership model for state trust land management in New Mexico. Powell explained the great benefits in this model:

I was really interested and am really interested in that private-public partnership where you take that real entrepreneurial spirit and the creativity in the private sector and you match it with the responsibility and public benefit of the land office. You match the two together and it's a powerful combination.<sup>59</sup>

Though the SLO had some previous experience with public-private partnerships, working collaboratively with FCC helped the SLO realize greater potential from its commercial operations. In addition, many involved in the process agreed that acquiring a partner of FCC's stature, a national developer with extensive capital and resources, was imperative to developing such an immense area. Jerry King said of FCC, "They really sit down with all the groups" and have been a key benefit to the Mesa del Sol process.<sup>60</sup> Learning from the Mesa del Sol Planning Process, Lyons said the SLO will collaborate with private sector partners and the community to design a master plan for an upcoming project in Las Cruces, but giving the developers even more responsibility and therefore decreasing the SLO's time investment in the process.<sup>61</sup>

### **Revenue from Leases and Sales**

Another benefit of a public-private sector partnership is the potential for increased return on leases and sales. In describing a collaborative partnership, Powell said, "You can help the developer succeed, and the more the developer succeeds, the more the school kids succeed."<sup>62</sup> In New Mexico, the SLO cannot invest any money into improving the land,

meaning that parcels have traditionally been sold at their raw, undeveloped values. With Mesa del Sol's complex, creative leasing structure, FCC leases the land, invests in improvements and the beneficiary receives a percentage of the profit from sales of the improved land. Collaboration therefore has great monetary benefits for the trust. Through a land swap with the SLO, UNM increased its ownership of Mesa del Sol to 3,480 acres, 3,000 of which will be sold to FCC for the first stage of development. FCC will eventually sell some lands and lease others.

In an example, at its raw, unimproved values, land in Mesa del Sol might be worth approximately \$3,000 per acre. FCC will prepare the land for resale through investments in infrastructure and other improvements, creating more value. When the land is sold or leased, the SLO is guaranteed the \$3,000 or so of raw land value, plus approximately 14 percent of the additional value above \$3,000. For its work, FCC receives approximately 86 percent of the sale price over \$3,000. Thus, FCC and the SLO have an incentive to create as much value as possible at Mesa del Sol. As the beneficiary and partial land owner of Mesa del Sol, UNM will also receive a percentage of FCC's net profits, by one account possibly 15 percent.<sup>63</sup>

The SLO's collaborative community outreach helped guide the style of development FCC will implement. A former SLO planner, Tom Leatherwood, created what Callahan described as a "very, very impressive master plan" with "every bell and whistle" of new urbanism design. He expressed that Leatherwood's plan served as a model for FCC's current plan, written by the progressive planning firm Calthorpe Associates.<sup>64</sup> Having a series of SLO master plans, greatly influenced by the community, in place for Mesa del Sol became a tangible benefit when FCC could use their ideas and concepts as the backbone for its development vision and master plan. Had the SLO disposed of the Mesa del Sol property in the traditional manner, at auction without guidance for development, the beneficiary would have received only the raw value of the land and other parties, notably Kirtland AFB, would not have had the same ability to provide input and would have been more likely to protest. The collaborative process of working with outside groups and hiring a competent private sector partner with a strong history of community collaboration increased revenue and avoided additional time and money consuming conflicts.

## **Employment and Urban Form**

The city of Albuquerque and surrounding community will likely benefit from increased employment and improved urban form stemming from the development of Mesa del Sol. FCC anticipates 13,000 direct jobs and 22,000 indirect jobs will be created by 2020.<sup>65</sup> In response, the city and community have become more involved in the process, recognizing the positive impact it will have on urban growth. In addition to employment opportunities, the development provides an enticing alternative to runaway west side sprawl and its associated infrastructure costs. Results of the SLO's collaborative approach, particularly new urbanism, are improving urban form across the city. As Powell explains, other developments in Albuquerque "are now mimicking what we were doing because they see that it's attractive to people and it steals the knife from just more sprawl."<sup>66</sup>

Chris Hyer, Planner for the city of Albuquerque and former SLO Planner, agrees that Mesa del Sol will benefit Albuquerque's urban form:

The west side of Albuquerque has a lot of problems ... typically it hasn't developed the way it should have. All of the employment is on the east side, all of the housing is on the west side. Outside of the city is where the development is happening and it is not the most quality development. So Mesa del Sol is happening. I think it's very good. It's exactly what the city needs.<sup>67</sup>

These improvements to urban form are a key benefit of Mesa del Sol's collaborative process, particularly in the negotiations between the SLO, Kirtland AFB and Sandia National Labs that resulted in the La Semilla open space. La Semilla, a one-mile by four-mile area along the east side of Mesa del Sol, will provide a buffer zone between Sandia National Laboratories and future development. Sandia Labs, part of Kirtland Air Force Base and run by the Department of Energy (DOE) harbor top-secret military secrets and were originally concerned about the proximity of potential development on Mesa del Sol. By addressing Kirtland's concerns over its operations within Sandia Labs, Tim Callahan believed La Semilla is one instance where "we really went out, over, maybe overboard to make sure that the base is benefiting." He acknowledges that the military often has the political muscle to get what they want, but also says Ray Powell and Harry Relkin did a commendable job coming up with the buffer idea.<sup>68</sup> Further, through the creation of the buffer zone the SLO was able to take the development rights from La Semilla and transfer them to other portions of Mesa del Sol, increasing the permitted number and density of lots to allow for 'new urbanism' densities and ultimately increase profits.

New urbanism relies on open space to increase development density, reduce the overall development footprint, bring people and buildings closer together and reduce dependence on motorized transportation. Inclusion of the La Semilla buffer into the new urbanist design format helps Mesa del Sol meet Albuquerque's progressive Planned Communities Criteria, discussed below. To Relkin, collaborating with the DOE to structure a lease on the La Semilla buffer was a good solution to the "'highest and best use' requirement of the Land Office."<sup>69</sup> For the DOE, working collaboratively with the SLO solved two problems. First, by bringing Mesa del Sol one step closer to fruition, the DOE assured itself of potential employee residences and commercial and industrial partners. Second, the La Semilla buffer avoided a potentially lengthy, costly and crippling political and legal battle over Mesa del Sol. The La Semilla collaboration has proven to be a tremendous benefit for the SLO and DOE.

### **Increased Community Relationships and Input**

Likewise, the informal collaborative process allowed local business interests and the Greater Albuquerque Chamber of Commerce (GACC) to become involved at the ground level, building support and forming community relationships to promote Mesa del Sol as a site for commercial and industrial enterprises. As GACC Vice President of Business Advocacy and Government Jacqueline Dubose Christensen states, a primary benefit of working with the GACC is that "we can bring a lot of pressure to bear on an issue" to local government and

are “sometimes able to play a role in bringing the various groups together to locate the issues.” For Mesa del Sol, GACC issued official position papers in support of the project and advocated and testified before city council.<sup>70</sup>

The Mesa del Sol Planning Process welcomed increased input from interested parties beyond the business community. In a traditional planning process, groups like the Sierra Club, 1000 Friends of New Mexico and even the neighboring Isleta Pueblo may not have been consulted. Informal collaboration allowed these parties to voice their concerns, provide input on solutions that could help them support the project. This effort did not go unnoticed by the parties. Blair Brown and Susan Gorman, Sierra Club volunteers, say of Ray Powell, “He feels working together is how you get stuff done.” They also add, “[The Sierra Club] helped reinforce what they wanted to do ... to know they had support out there in the community.”<sup>71</sup> The SLO incorporated some suggestions, but Ray Powell, Chris Hyer and Tim Callahan stressed that the SLO never lost sight of its constitutional obligation to the trust. As Hyer recounted, “We were stuck with the Enabling Act guiding us and we didn’t have a whole lot of latitude around it.”<sup>72</sup> Despite this, the SLO was able to solicit outside opinion, largely satisfy those groups’ desires, and remain loyal to its constitutional obligation.

## **PARTICIPANTS’ MEASURES OF SUCCESS**

### **State Land Office and University of New Mexico**

The broad set of interested parties resulted in diverse measures of success. As the beneficiary, UNM is interested in maximum revenue from the lease and sales of Mesa del Sol as well as a model development tied to their name showcasing “environmental resource issues and community development.”<sup>73</sup> SLO representatives consistently mentioned funding for school children as a direct measure of their success. The ability of informal collaboration to bring parties to a consensus also factored strongly in their perception of the process’ success. In addition, as commissioner, Ray Powell wanted Mesa del Sol to “set the standard for how you live in an arid environment.” In doing so, he believed it was possible to earn more money than business as usual would allow.<sup>74</sup> By their accounts, these parties have been satisfied with the outcome of this collaborative process.

### **Sierra Club**

Other parties such as the Sierra Club also measure success partly through the environmental impact of development.<sup>75</sup> Blair Brown and Susan Gorman, Sierra Club volunteers, stress that the Sierra Club is also very concerned with how the commissioner involves the public in decision making. The Sierra Club currently is deciding how to evaluate Mesa del Sol, an environmentally responsible greenfield development.

### **City of Albuquerque**

Defining success for the city is complex. By some measures, the city is most concerned that Mesa del Sol simply meet technical planning criteria, not necessarily that it exhibit collaborative characteristics. But economic and political measures are also important to

particular figures within the city, and Mesa del Sol scores well on those scales as well. Technically, any project is successful if it meets the requirements of the Planned Community Criteria. Mesa del Sol is currently under review by the Planning Commission, though no participants voiced concerns about its ability to meet the criteria. Economically, it must help bring economic activity to downtown while not drawing business away from other neighborhoods. Mesa del Sol will certainly draw business in Albuquerque closer to the center of the city, but at what expense to other areas is yet to be seen. On a political scale, Mesa del Sol has had to wait until west side development is largely complete. At this point in time, west side development interests in the city may be more open to considering Mesa del Sol as a viable, successful addition to the city. In general, it seems that Mesa del Sol is a benefit to the city, having been integrated into the development landscape through a collaborative process that satisfied stakeholders within Albuquerque and will comply fully with city planning requirements.

### **Adjacent Landowners**

Adjacent landowners' concerns were addressed effectively through informal collaboration, despite the hidden interests of the Isleta Pueblo and Kirtland AFB. La Semilla stands as a measure of success for Kirtland AFB. According to the concerns of the Isleta Pueblo, namely competition for their golf course, casino and water supply, it also appears that the collaborative process has placated any fears.

Harry Relkin stated that the DOE is very pleased with the SLO's outreach and collaboration that resulted in the La Semilla open space buffer, which will serve as an environmental education venue and cushion for military lands to the east.<sup>76</sup> Because the DOE must keep its secrets close, dissatisfaction would likely arise through political maneuvering to prevent development near Mesa del Sol's border, which has not occurred.

### **Albuquerque National Dragway**

The Dragway stands as the only party unhappy with the present status of Mesa del Sol. They were underwhelmed by their relationship with the Powell administration, citing unreturned calls and a general lack of respect for their business. Powell's suspension of their lease made them particularly nervous about investing in improvements for their race track and facilities. In contrast, their relationship with the Lyons administration has been very positive. It also appears they relate well to Lyons on a personal level. Dealings with FCC have been lukewarm, though the Dragway is hopeful regarding future collaboration with the company. As described by Dragway representatives, the Dragway's primary goal is to continue racing at a venue they have operated for more than forty years and without impact to any current or future neighbors.<sup>77</sup> They do not view the process as successful because they feel the SLO has largely ignored their concerns and they have been unable to sign any guarantees with FCC regarding their long-term future.

Overall, however, the Mesa del Sol process was perceived as a positive endeavor for the SLO. First, most community and local government representatives are pleased with the way the SLO has communicated with stakeholders and will maximize revenue for the beneficiary.



Second, environmental organizations are pleased with Mesa del Sol as an infill development with new urbanism characteristics and significant open space. Finally, the process has been a political success for the SLO as the two commissioners most actively promoting Mesa del Sol were elected to second terms.

To most participants, excluding the Dragway, the process also appears to have been fair. Though we were unable to discuss the drag racing issue with SLO employees, our perception is that honest efforts to reach out or be available to the community were made in most all cases, but for various reasons this particular relationship broke down.

## **COSTS OF THE PROCESS**

Costs associated with the Mesa del Sol Planning Process varied among the participants. In one example, Brown and Gorman, representing a non-profit organization with little or no experience working with the SLO, found their experience sometimes frustrating in that their organization lacks the resources necessary to address such a lengthy timeline and informal methods of public input.<sup>78</sup> In another, one former SLO employee, who was deeply involved in the technical aspects of developing the plan and guiding the process, was quick to cite increased demands on time as a primary cost.<sup>79</sup>

### **Increased Demands on Agency Time and Resources**

Increased staff resources resulted from the steep learning curve associated with the collaborative process to garner support for Mesa del Sol. The learning curve necessitated a “learn as you go” approach by the SLO and likely contributed to agency’s increased staff resource costs. Tim Callahan, long time SLO planner, expressed that the SLO’s inexperience with projects of Mesa del Sol’s physical magnitude led to extra staff costs associated with drafting four separate master plans.<sup>80</sup> The SLO financed several early in-house master plans through special legislative appropriations, but provided its own money for the plan written by SLO Planner Tom Leatherwood that would influence FCC’s own plan. In addition to the costs incurred writing the plans associated with the SLO, a partial plan was funded and drafted by UNM early in the process, but never made public.<sup>81</sup> While additional costs associated with drafting these plans were sizable, there are also benefits associated with the failed internal plans, described in the section above. In a traditional management scenario for state trust land in which a developer bought land at auction without prior collaborative efforts by the SLO, the developer would have been responsible for coordinating future collaboration with other entities. In this case, however, the SLO worked with other entities as well as the developer upfront, thus devoting additional SLO time and energy to the project.

Another significant cost resulting from the process was the considerable time spent during the technical planning stages. The SLO devoted time to convincing Albuquerque that the land should be annexed and working with Kirtland AFB and the DOE to design a lease for the La Semilla buffer.

Additional time was dedicated to the process of attracting and selecting a suitable developer. Because Commissioner Baca’s auction failed, the Powell administration took additional steps

to make Mesa del Sol an attractive project for a capable private sector partner. Time spent doing so would not have been necessary under Baca's original plan. As part of sweetening the deal for the prospective developer, Harry Relkin attempted to approve the Mesa del Sol site via the Albuquerque Planned Communities Criteria (PCC), a decision he admits likely cost the process one full year.<sup>82</sup> The PCC is a set of planning guidelines for all developments of a certain magnitude within the city of Albuquerque. They are designed to ensure that these developments come at no net expense to the city and integrate certain amounts of open space and other land use requirements. In the end, PCC approval was sought after FCC was selected as developer. To date, Mesa del Sol is the only development that has submitted an application for PCC approval.

## **CHALLENGES AND RESPONSES**

Looking back at the process and its challenges, FCC Consultant and former SLO Planner Harry Relkin succinctly noted, "It's been a pain in the ass."<sup>83</sup> This comment reflects the general sentiment of frustration over Mesa del Sol's lengthy and challenging history and hints at the many specific challenges that surfaced throughout the last two decades. Interviewees cited challenges ranging from power struggles and miscommunication between parties, to complex negotiations and trouble adjusting to a lengthy planning timeline.

### **Rigidity of the Trust Land Mandate**

The SLO no longer engages in outright sales of land as this is largely considered to be a breach of its mandate by limiting the trust's long-term viability. This policy was initiated in response to actions of a commissioner in the 1950s who sold nearly four million surface acres of trust land, some in questionable deals, creating a disparity between surface and subsurface holdings. Thus, lands are either exchanged or leased. This practice was an initial hurdle for the Mesa del Sol project as residential development on which people lease their property prohibits homeownership. The master plan and close relationship between the SLO and outside developer became essential to overcoming this obstacle to practical development.

### **Continuity of Stakeholders**

Active planning for Mesa del Sol spanned more than two decades, involving dozens of individuals. Changes in participants and representation have been inevitable but challenging. Tim Callahan, SLO Planner, explained:

You have presidents change at the University, Regents change at the University, Land Commissioners change, Mayors change, County Commissioners change. So all this makes for a moving target. So it's very, very difficult to get any really good consistency going, but we kept it going and pushed it and pushed it and pretty soon UNM was working closer and closer with us. We had more buy-in from them. I think more confidence with each other. And then finally the Mayor, this recent Mayor, finally saw some advantages. He knew he couldn't stop it.

The dynamic relationship between beneficiary and trust fluctuated between productive and disinterested or even contentious over the past two decades. Part of the challenge was rooted in the fact that new UNM Regents are appointed by each Governor, threatening continuity in the University's relationship with the SLO. The Regents have varied widely in their interest in the project. In addition, the memory of UNM's lawsuit has remained fresh and it has been imperative that the SLO avoid future litigation by devising a development plan that would satisfy the beneficiary.

Illustrating the challenge a change in Regents could bring, in 2003 the SLO signed a contract with UNM to exchange 1,500 acres the University owned elsewhere in the state for 1,500 acres of Mesa del Sol owned by the SLO. UNM would then outright sell its new Mesa del Sol acreage to FCC. Not believing this was a fair deal, Jerry King, Assistant Commissioner of Surface Resources, requested an additional 1,500 acres be included in the exchange and during negotiations a new set of Regents was appointed. As King says, "the old Regents, they just really didn't care" about the detail of the exchange. The new Regents, however, came in and said, "We really don't like this deal. If we're going to swap with Forest City we want to have certain percentages from them" and other specific details. King and the SLO were extremely worried that the increased demands by the new Regents would scare FCC from the entire project. "We thought Forest City was going to walk away," King explained.<sup>84</sup>

Changes in UNM leadership also impacted Jim Baca's ability to move forward with a collaborative process. There was concern from some stakeholders that Baca's combative instincts stalled progress and Tim Callahan believed that Baca's plans took a hit when the University President, with whom he was very close, left and Baca was forced to deal with a set of Regents who were more wary of his plans. Callahan explained the President's departure meant that "all of the sudden, Baca had no allies."<sup>85</sup> Baca's ability to effectively respond to this challenge was hampered by his strong personality that some people find abrasive.

### **Continuity of Agency, Private Partner and Community Interests**

Other parties identified changes in SLO staff as a challenge as well. For the Dragway's Owner Bob Labatte and Director of Public Relations Bill Elliott, staff changes were particularly frustrating. Many of Powell's staff with whom the Dragway originally worked have since left their jobs. Though the Dragway campaigned heavily for Patrick Lyons in 2002 and their hard work paid off when Lyons renewed their lease, they are reluctant to hedge bets on future improvements to their facility as they expect SLO staff and their lease may change when Lyons leaves office.

The Dragway also experienced frustrations with employee continuity at FCC, as the company's representatives have also recently changed. Bill Elliott, Communications Director at the Dragway, says, "We've sat in a couple of meetings with [FCC]. Some of the people have changed. Some that got in there we don't get along too well with."<sup>86</sup> In all, the Dragway feels it has been terribly challenging to work with partners whose representatives and philosophies constantly change, especially when the nature of their business requires periodic major investments in infrastructure. Elliott adds, "[Bob Labatte] has put a lot of blood, sweat,

tears and money into this [drag strip],” but cannot make major investments without a clearer assurance of the drag strip’s future.<sup>87</sup> They hope their relationship with FCC improve and claim to be more than willing to find a solution that includes the Dragway in Mesa del Sol’s future

In addition, parties with limited staff, financial resources and time have found it increasingly difficult to follow the process. This challenge was most acute for groups reliant upon volunteer labor and who have limitations relating to high turnover. The Sierra Club is an excellent example of a group very interested in the development of Mesa del Sol, yet unable to consistently devote the proper resources to evaluating plans and designs due to limited volunteer staff human resources. Brown and Gorman, Sierra Club volunteers, explained that their organization traditionally devotes most of its time to non-urban environmental issues. Even though they have support to focus on Mesa del Sol, many other staff and volunteers are focused elsewhere. Compounding this issue, the Sierra Club, like many non-profit organizations, must deal with a high rate of volunteer turnover, making it difficult to assign additional people long-term to Mesa del Sol. Their organization has found it “really hard to maintain continuity on a project that goes over a long, slow period like that.”<sup>88</sup> The solution for the Sierra Club was to assign two dedicated volunteers to monitor the process. This strategy was more effective when Ray Powell, a personal friend, was commissioner, though their relationship with FCC has been productive.

### **Continuity of Commissioners and Administration**

Commissioner discontinuity also challenged the process. Commissioners in New Mexico serve a maximum of two consecutive four-year terms, a relatively short length of time compared to the lifespan of the Mesa del Sol project. Each new Commissioner of Public Lands brings with him or her an entirely new sets of beliefs and policies. Participants in the Mesa del Sol Planning Process sometimes felt challenged to adapt to each new administration’s own set of ideals and policies. These changes were sometimes enough to derail projects begun in pervious administrations. When Powell began his first term, he wanted to institute more planning and collaboration into the SLO. This was a significant change from previous administrations, and he learned that “folks wanted [the old policies] to continue, including Mr. Baca.”<sup>89</sup>

The current commissioner, Patrick Lyons, has markedly different business philosophies from his predecessor Ray Powell. Lyons indicated he would not have chosen to spend agency resources on such an involved collaborative process for Mesa del Sol. Rather, he described his philosophy as, “I want to put it on the ground,” minimizing the SLO’s role in planning and placing the responsibility of collaboration and on the private developer.<sup>90</sup> Lyons, just like any commissioner, has the authority to implement his own business strategies, but for his part Lyons said, despite having gone through a process counter to his own style, “We’re supportive of [Mesa del Sol] ... We’d like to see it happen.”<sup>91</sup>

Continuing projects from previous administrations as Lyons did, is one method of addressing continuity, though there is no legal mandate to do so. Making the choice to honor such a precedent is much easier and compelling and can be more easily accomplished through more

formal means of collaboration than are displayed in this case. A formal collaborative strategy, including instituting a working group, could help a new commissioner better quantify and understand the investments in a particular project and bring weight to bear on the decision to continue the process.

The lawsuit and ensuing changes in SLO administrations, UNM Regents and others likely created some level of uncertainty in the private sector whether Mesa del Sol was a safe investment. It is difficult for a private developer to accept the risk of a project of this scale when relationships between the SLO and UNM fluctuate so often and characters change over the lengthy timeline. Collaboration appears to have succeeded in creating a process that was less affected by discontinuity and where trust in the community and private sector could be built. That FCC is devoting tens of millions of dollars over several decades is a credit to Powell and others at the SLO for their style of collaboration and the persistence they exhibited through many changes in participants. Whether or not the informal collaborative precedent set through Mesa del Sol will change the way the SLO conducts business, Powell said, “It has the opportunity to do and it depends on the leadership of the Land Office in the future because it is such an autonomous office.”<sup>92</sup>

### **Understanding the Commissioner’s Authority and Power**

Despite a focus on collaboration, the commissioner’s unchecked authority presented challenges for several parties, notably UNM and the Dragway, who prefer a more level playing field and a greater say in the outcome. UNM’s frustrations first came out in their lawsuit against Baca, but challenges also surfaced at other times. At one point earlier in the process, relationships deteriorated to the point where the SLO considered severing UNM’s ties to Mesa del Sol by exchanging the land for property owned by Bernalillo County. This consideration forced UNM to come in line with the SLO or risk losing this valuable property. The result was reestablishment of a clear hierarchy between SLO and beneficiary.<sup>93</sup>

Similarly, the Dragway struggled with the commissioner’s authority and autonomous nature. To the Dragway, Powell’s ability to let their lease expire was deeply troubling, especially because it was based on alleged unpaid portions of lease payments, charges the Dragway representatives emphatically deny. The Dragway expressed a desire to see an oversight board to temper the Commissioner of Public Lands’ decision-making power. Bill Elliott elaborates, “[The Commissioner] can’t tell the Governor [what to do]. The Governor can’t tell him. So if you stop to think about it, it’s a powerful position. And I don’t think many people recognize it.”<sup>94</sup> Powell addressed his view of the commissioner’s powerful authority in New Mexico, in saying, “In that autonomy is a real strength because you can take those risks, you can move forward. But also there’s real risk because you can head in a direction that really can be very deleterious and everybody else just kind of sits on the sideline”<sup>95</sup>

Working outside the process was an effective method for members to increase their influence. Though UNM’s official authority is limited, they have been adept at taking creative measures to stall or maneuver the process to further their interests. In 2004, the University sidestepped the SLO to deal privately with FCC to demand a higher percentage of profits from each UNM-owned parcel, creating frustration at the SLO that the deal would

sour the leasing structure on parcels the agency owned. In addition, UNM used political power to influence the city to stall development when not fully satisfied and generally caused frustrations when a new Board of Regents has shown little or no interest in developing Mesa del Sol according to the SLO's plans. These periodic attempts to stall progress outside the collaborative relationship presented a great challenge to the SLO, which was sometimes ill-prepared for such tactics and unable to retaliate against them. Once, the SLO reversed roles and leaked a plan to exchange its Mesa del Sol acreage with less valuable Bernalillo County lands. The exchange would have meant that UNM was no longer beneficiary for a large percentage of the lucrative Mesa del Sol parcel. While hardly collaborative, this tactic was successful in motivating the Regents to again engage in a working relationship with the SLO. Often, however, the SLO simply was forced to wait for opportunities where relationships with UNM were more productive, which usually meant the appointment of a new Board of Regents or the fulfillment of west side development investments some Regents held.

The Albuquerque National Dragway also used non-traditional methods to exert their power and cause unique challenges to the process. The Dragway has been operating on Mesa del Sol since 1963 on consecutive five-year leases. Though they are not opposed to the development, they believe their operation is consistent with the vision of Mesa del Sol and its planned adjacent industrial uses. In response to the termination of their lease by Commissioner Powell in 2000, the Dragway organized a campaign to prevent further development on Mesa del Sol. According to Tim Callahan, this campaign caused major headaches for the SLO and through garnering community support, came fairly close to succeeding.<sup>96</sup> The SLO was forced to divert resources to fight this campaign and prevent it from undoing years of collaborative work aimed at improving community relations.

### **The Challenge to Create and Maintain Personal Relationships**

Personal relationships formed throughout this process were a benefit to some and a great challenge to others. The most egregious example is the Dragway, which freely admits that Commissioner Powell originally asked if they would like to be incorporated in the planning process for Mesa del Sol, but view their relationship with Powell as a complete failure. Any possibility of collaboration was overshadowed by conflict in the personal relationship between Bill Elliott and Bob Labatte of the Dragway and Powell. Powell's termination of the lease represents a point of no turning back between the two parties. As Bill Elliott explained, "When they shut our drag strip down, they made some serious issues. And that was a personal vendetta between Ray Powell and [Bob Labatte]."<sup>97</sup> Reeling from this bad experience, the Dragway has since been forced to limit its long-term planning to the term of the commissioner in office

A less antagonistic example, but one that had a greater impact on the process, comes from the four years (1998 to 2001) when Jim Baca was Mayor of Albuquerque and Powell was commissioner. This would seem an ideal opportunity for building stronger collaboration and moving Mesa del Sol forward. However, differing personalities and visions of the SLO's role in collaboration and urban development resulted in an unexpected standstill. Powell says, "We kept working on things, but it wasn't particularly helpful" to have Baca in the Mayor's office. Baca believed Powell simply should sell sections of Mesa del Sol, counter to Powell's

desire to partner with the private sector. “It was just a very different philosophical viewpoint,” Powell believed.<sup>98</sup>

A lack of personal relationships unraveled progress while Martin Chavez was serving his first term as Mayor from 1993 to 1997. At that time, Mesa del Sol recently had been annexed and the SLO anticipated developing a strong relationship with the Mayor’s office and working closely with the city to speed approval from various planning requirements. Chavez, though, was coming off a term as State Senator representing Albuquerque’s west side (and its development interests) and was unreceptive to helping the SLO develop on the opposite side of town. What should have been an opportunity for progress unraveled under incompatible personal relationships. Again, the solution to this challenge was simply to wait for political offices and representation to shift such that a window of opportunity opened, sparking collaboration and continued progress.

### **Problems with Communication due to Organizational and Cultural Differences**

Several participants commented on the difficulties communicating with such a broad set of interested parties with diverse and often hidden interests. This difficulty was most evident in interactions with Kirtland AFB and Isleta Pueblo. Harry Relkin recalled frustrations with the intrinsically secretive nature of the military, explaining that it was often impossible to talk to the necessary people or get complete answers regarding their concerns over the project. The classified nature of certain base activities made it extremely challenging to understand how Mesa del Sol would negatively impact Kirtland AFB and how a collaborative approach could mitigate those impacts. Relationships with the Isleta Pueblo similarly presented a unique challenge. The Isleta Governor is the head political official and also responsible for dealing with outside parties. Often times, though, decision-making power is held by tribal members behind the scenes. Because the SLO was only permitted to speak with the Governor, it was difficult to truly understand the Isleta’s concerns. In addition, Indian pueblos often have explicit interests that propagate their public image and maintain other interests that are not available for public knowledge.

Despite these difficulties communicating with the Isleta, the SLO understood the Pueblo’s core issues to be fear of competition for the pueblo’s golf course, casino and water resources. Tim Callahan and Jacqueline Dubose Christensen both mentioned the golf course and casino issues as being necessary to resolve before the Isleta could accept development on Mesa del Sol. Jerry King, Jim Baca and Jacqueline Dubose Christensen also mentioned concessions or acknowledgements that were made to address Isleta concerns over water supply and quantity. Dubose Christensen stated that the Pueblo’s had “concerns because they’re south of us in terms of development and water.”<sup>99</sup> Baca said the newest development agreement would not drill for water within one mile of the Pueblo.<sup>100</sup> Working with the military and pueblo necessitated skillful, delicate negotiating that makes the other party less reluctant to speak about their concerns. Interpreting their concerns and addressing them is one of the unique and important challenges of the Mesa del Sol Planning Process.

Competing and hidden interests surfaced in other ways as well, often coupled with fierce political forces. Specifically, the west side development interests presented a powerful

political challenge to the Mesa del Sol Planning Process. Baca described how he was hampered by development interests early in the process, “If the business community were to get behind the Mesa del Sol project, it would make the life of the Land Commissioner much more simple.”<sup>101</sup> Baca’s struggle was compounded by the fact that the business community was represented by elected officials, thereby allowing private interests to guide their decisions on Albuquerque’s growth. Increasing the difficulty is the secretive nature of these interests. Chris Hyer explained, “You won’t find it printed in the paper ... like ‘I have major land holdings on the west side.’ There are issues like that that caused the path of Mesa del Sol to happen the way it happened.”<sup>102</sup> Jim Baca was more explicit, saying his work on Mesa del Sol “backfired because of a string of Mayors who favored west side development.”<sup>103</sup> Powell added, “The real dilemma was that a lot of the large private landowners saw [Mesa del Sol] as competition to their efforts and were not really pleased about us [developing Mesa del Sol].”<sup>104</sup> Communicating with these interests was extremely challenging, as Jim Baca observed, “The west side development interests represented were on the UNM Board of Regents, through the banks; just direct conflicts of interest.”<sup>105</sup> The solution was twofold. The SLO had to use the support of other parties garnered through informal collaboration to press political entities to support Mesa del Sol and also wait until these entities have other incentives to support the SLO (such as completed west side development projects).

## **FACILITATING FACTORS**

Mesa del Sol is unlike most of the other cases in this report in that it had no formal collaborative group that spearheaded the planning efforts. Collaboration on the project occurred solely through the SLO’s outreach efforts and can be characterized as a loose affiliation of relationships and partnerships with concerned parties and the beneficiary. Therefore, most factors facilitating success come not from a formal collaborative structure, but from business strategies and philosophies implemented by the SLO. These factors include informal collaboration, progressive leadership in the commissioner’s office, the SLO’s vision, the relationship between politics and time and intergovernmental cooperation.

### **A Broad Informal Collaborative Strategy**

While the Mesa del Sol Planning Process resulted in an extended timeline and an inability for some groups to devote the twenty plus years of their time and attention, the informal nature of collaboration was key to many parties’ participation. The SLO’s strategies appear successful in moving the process forward by achieving isolated pockets of support that grew into broad community buy-in.

This less formal structure was largely a benefit to the process, possibly functioning as the key factor that enticed parties with hidden interests to participate. For Kirtland AFB and the Isleta Pueblo, Mesa del Sol’s informal collaborative process may have been the only acceptable vehicle for collaboration.

For parties who were only interested in certain stages of the Mesa del Sol Planning Process, the SLO’s informal collaborative strategies were appropriately targeted. When the process was at a point in time where some parties had no desire to be involved, they had no need for



regularly scheduled meetings. In the place of such meetings, participation of parties in the planning process could be solicited when appropriate or relevant to that party through an open door policy at the SLO. As a result, neighborhood organizations and other interested parties were able to support Mesa del Sol without dramatically increasing demands on their time and resources.

The only party that expressed that an informal approach led to decreased collaboration is the Dragway. They feel their view has been continuously ignored throughout the process and they would have likely welcomed a formal venue to voice their concerns. Bill Elliott explained, “This is what was really strange. Ray Powell came to Bob [Labatte] and said, ‘How would you like to be a permanent part of Mesa del Sol?’” and the Dragway never heard back from Powell.<sup>106</sup>

### **Commitment to Building Personal Relationships**

Close relationships with individuals also fostered collaboration. The SLO’s informal collaboration was designed to develop relationships with stakeholders and other parties and placed a premium on bringing people together and building community investment to foster progress. At the very beginning of the process, Baca enjoyed a close relationship with the UNM President, whose trust allowed Baca to go forward with his ideas for developing Mesa del Sol. The true benefit of that relationship surfaced when the President left his position and Baca was forced to work with a Board of Regents who eventually sued him. Baca also collaborated closely with Brent Coggins, then President of the local Sierra Club chapter. Later, Ray Powell used his personal relationships with Sierra Club volunteers Blair Brown and Susan Gorman to convince them to weigh in on Mesa del Sol and evaluate (and eventually support) its environmental merits. Overall, Powell stated that “interactions with other people went very well. We built good relationships with other people and developed credibility.”<sup>107</sup>

### **Personal Commitment and Attitude of the Commissioner**

One of the most important facilitating factors was the commissioner’s personality. Because the position is so autonomous, the commissioner can set the stage for how business will be done during his term. With a focus on collaboration and community buy-in, Powell repeatedly sent his staff to visit with interested parties. As Jacqueline Dubose Christensen of the Albuquerque Chamber of Commerce remembered, Powell often went out to the community himself: “He put enormous time and resources into this notion of developing Mesa del Sol and he worked people to sell it. He was actively out there. He didn’t send his team; *he* went out to sell it.”<sup>108</sup> Without collaboration and an open relationship with the city, annexing the property and submitting it for planning approval, Mesa del Sol may have become yet another sprawling development. Because of the vision of Commissioners Baca, Humphries and Powell to design a process whereby the community and city could help influence the format of the final product, Mesa del Sol will be built at no net cost to Albuquerque.

## **An Enduring and Compelling Vision**

The importance of vision, from the commissioner and others involved in the process, emerged multiple times in interviews. At certain times, vision was necessary to keep Mesa del Sol a viable project. After UNM's lawsuit against Baca, Kim Murphy remembers spending time during Humphries' tenure "just trying to keep the vision alive for a few years until we could pick up the pieces and move along." Likewise, vision was necessary to focus on what Mesa del Sol would look like in the coming decades and, despite the long timeline, what it meant to the trust and beneficiary. Tim Callahan said UNM "already had visions of this being their endowment, their future endowment" before Baca approached them with his development plan.<sup>109</sup>

Vision is also commonly associated with the commissioner's office. Murphy gave Baca "a lot of credit for having the vision to start this project." Blair Brown and Susan Gorman of the Sierra Club said of Powell, "Without his vision none of this would have happened."<sup>110</sup> Powell himself defined the importance of vision in a few ways, one being an integral requirement for collaboration: "It's a matter of really having a vision, expressing that vision [and] getting people to subscribe to it because they contributed to it and it's part of their vision." Jacqueline Dubose Christensen praised Powell for his vision and his ability to translate his ideas to other parties and create a shared vision: "If there was any one individual that made a difference in this it was Ray [Powell's] commitment to it and his willingness to go out in the community and explain it and ask for help and not be shy about what he envisioned."<sup>111</sup>

Powell also knew his developer needed to share those views, something he found in FCC. He noted when FCC became interested, he had "finally found a master developer that had the deep pockets, had the vision."<sup>112</sup> Kim Murphy also praised FCC, saying he thinks Powell made "exactly the right choice in choosing a company with the vision in [CEO] Albert Rattner."<sup>113</sup> FCC's vision, prestige, professionalism and experience are all qualities cited by participants.

## **Electoral Politics and Political Windows of Opportunity**

Given the fact that the commissioner is an elected official, politics has guided this process and often been a determining factor in progress and delays. Kim Murphy stated that there is a "political overlay to most everything the Land Commissioner is doing. So is everything they're doing just politics or are they personal motivations and visions? The truth is, it's a mix. They're all political creatures," though personal philosophies and beliefs also guide their trust land management.<sup>114</sup> The commissioner's political nature places great importance of garnering the public's support. This political nature can promote accountability and constituent outreach in a collaborative way to the public.

Collaborative processes should be alert to changes in political will and periods of opportunity that provide a mechanism for overcoming delays. The Mesa del Sol Planning Process depended on the commissioner's ability to wait for political windows to open. The commissioner constantly interacted with other political actors and their agendas, specifically

parties with financial interests in west side development. These powerful actors have come and gone, representing various elected and appointed offices at various times throughout the process. As Dubose Christensen stated, success of the project hinged on “who’s in office. Timing is everything.”<sup>115</sup> The current Mayor of Albuquerque, Martin Chavez, also has ties to west side development, but he eventually gave in to the growing popular support to Mesa del Sol. As Tim Callahan explained, “He just eventually realized that Mesa del Sol was probably win-win.”<sup>116</sup> Chris Hyer stated that today, Mesa del Sol has reached a time where “politically you have the motivations behind it” and “it’s just an alignment of the stars” that is allowing the project to go forward.<sup>117</sup>

### **The Value of Intergovernmental Cooperation**

The SLO also was required to work with local and state government and national legislators to secure transportation access to Mesa del Sol. Funding for the University Boulevard extension was appropriated as the result of intense lobbying from the SLO, City, FCC and bipartisan support from federally elected officials. Tim Callahan explained, “We had Congressional support. Bipartisan. Domenici, and we had [Senator] Bingaman, [Representative] Heather Wilson bringing home the bacon on funding for the roads for the interchange.”<sup>118</sup> In a poor state with limited funding, it is seen as a major achievement that “they’ve already got the 8 million dollars for this thing ... that was surprising.”<sup>119</sup>

### **A Capable Private Sector Partner**

Many participants cited FCC’s capabilities in community relations and urban planning as key to facilitating progress. As a national company with decades of experience in large, complex, progressive urban development projects, FCC brought a level of technical know-how to Mesa del Sol that local companies could not match. In addition, their proven ability to work well with community interests made them a very attractive partner in the Mesa del Sol process. Kim Murphy remembered that attracting FCC “was a major, major accomplishment.”<sup>120</sup> Chris Hyer, former SLO Planner, claimed that because of FCC’s strong planning resources, “I think this is going to be one hell of a development. Rather than just having sprawling subdivision after sprawling subdivision, you’re going to have a real community.”<sup>121</sup>

### **LESSONS LEARNED**

The Mesa del Sol Planning Process was an enormous learning process for the SLO. The size of the land and complexity and duration of the process made it a unique challenge and opportunity. Participants cited both positive and negative lessons associated with the process. Interestingly, few groups had serious regrets. Often we heard of minor procedural lessons regarding technical planning matters, but these have little or no bearing on the collaborative process. Lessons learned relate to: government and community buy-in, private sector partnership and the essential role of time, politics and experience.

## **1. The importance of government and community buy-in in informal collaboration**

Mesa del Sol exemplifies the value of establishing buy-in from the community and other parties early in the process. Ray Powell and his former staff often spoke of the importance of building community support and involving them from the onset. Powell said, “We went and talked to people, sat at their kitchen tables, one on one ... everybody that worked for me.”<sup>122</sup> Even with ultimate authority over the final decision, many participants believe the SLO’s community outreach and involvement was more than adequate. Establishing buy-in from one group could be used to gain the support of another, eventually building into a coalition that swayed dissident political interests. Therefore, Tim Callahan explained, “We spent years bringing Mayors out there, City Councilmen out there, County Managers out there, Regents out there, Presidents of the University, all the Deans, and the School of Architecture, bring in the business.”<sup>123</sup> Jacqueline Dubose Christensen says the Greater Albuquerque Chamber of Commerce has been pleased:

I think that the initial effort was successful because of Ray Powell’s willingness to go out and work it ... if there was any one individual that made a difference in this it was Ray’s commitment to it and his willingness to go out in the community and explain it and ask for help and not be shy about what he envisioned.<sup>124</sup>

The importance of involving interested parties from the very beginning cannot be underestimated. This strategy ensured all groups were on the same page and reduced confusion and conflict as the process developed. Powell’s goal that stakeholders learn about Mesa del Sol from the SLO and not elsewhere was key to success and should function as a mantra for other collaborative processes.

## **2. A capable private sector partner is key to the process**

Second, many participants recognized the importance of a dynamic, powerful private sector partner. Traditionally, Jerry King explained, “It’s been really, really hard for New Mexico to attract [companies like] Forest City Covingtons.”<sup>125</sup> The necessity of a prestigious, competent partner related to selecting a developer capable of handling such a large and lengthy development and to ensuring the developer shares the SLO’s vision and works within the constraints of the trust land system. Just as several participants praised FCC’s vision, the company also was lauded for its ability to meet the preceding requirements. Chris Hyer said, “That’s the advantage of having a Forest City and its partners.”<sup>126</sup>

For its part, FCC seems well-prepared for the intricacies of developing on state trust lands. The company has a long history of collaborative community involvement in its development projects. The feeling among the public that Mesa del Sol was too contentious an area to be developed made it even more important that the private sector partner be capable of communicating with and involving the public in the planning process.

As with many other aspects of the case, Ray Powell’s involvement was essential for developing an intimate private sector partnership. Attracting a competent partner was a direct

outcome of the SLO's business policies, he said: "When you do neat stuff, you attract neat people." To make the relationship productive for everyone, Powell again brought up the notion of vision. He said he made "exactly the right choice in choosing a company with the vision in [CEO] Albert Rattner." Consequently, the private partner must be willing to work closely with the SLO and stakeholders and benefit the trust over the long-term. Powell remembered, "When I signed [FCC] on, I signed them on to do a first class development to benefit our community."<sup>127</sup>

### **3. Be prepared for extra time at the front end (and less at the tail end)**

A third lesson discussed at some length with regards to facilitating factors is recognizing that a collaborative process may require an extended timeline. This lesson was true for Mesa del Sol. Had Commissioner Baca's original auction succeeded in 1987, Mesa del Sol would have been much less collaborative, though years of work might have been saved. While the extended timeframe added significant challenges to on-going participation in the process from many interested parties, it also provided opportunities for ultimate political approval and for forward movement on the project.

State trust land departments should expect collaborative processes to require a longer timeline. To help streamline operations, Ray Powell sought to include parties at the beginning of the process, before large decisions had been made.<sup>128</sup> This strategy appeared to be the correct prescription, as the only lawsuit to date revolved around a breakdown in communication. The Mesa del Sol Planning Process supports the general idea that collaborative planning processes frontload time demands but reduce conflict and increase productivity in the end.

### **4. There is no strict formula for satisfying hidden political interests**

Politics also played an enormous role in delaying and then permitting Mesa del Sol to move forward. The Mesa del Sol Process illustrates that Land Commissioners and their staffs must be savvy with competing interests, especially when those players wield influence over the process or final outcome. Looking back, participants acknowledged that the political stars must align for a project of this magnitude and that the alignment becomes more difficult as the number of parties involved increases. The political parties of primary concern in Mesa del Sol were the SLO, Albuquerque Mayor, City Council and UNM Regents, each with their own interests and visions for growth and development in the Albuquerque region. Representation within these groups changed every few years, complicating negotiations surrounding Mesa del Sol. For example, Baca cited a string of Mayors who were interested in west side development, thereby stalling infrastructure or annexation approval of Mesa del Sol: "There were too many money interests and too many politics involved."<sup>129</sup>

### **5. Build experience in collaboration to streamline future processes**

Finally, the process may be slowed due to inexperience working with the peculiarities of other parties. Similarly, for the SLO working with the private sector requires some amount of adaptation. Current and former SLO planners Tim Callahan and Chris Hyer (who is now with

the city of Albuquerque) told us that all three bidders in 2001 were highly scrutinized, both for their contribution to the bottom line and their potential as partners invested in working with the community to make it a better place in which to live and do business.<sup>130</sup> This process may be a bit more tedious than simply selecting the highest bidder, but the payoff in terms of economic development, trust revenue and ultimate success of the project can be increased dramatically. Powell acknowledged that “some of this may be idealistic; we’ll see. But I think this is based on good sound business sense if you look at the big picture over the long period of time – and that’s what a trust is for.”<sup>131</sup>

These lessons provide clear guidance for future collaborative endeavors regarding development. Heading into the process Ray Powell said, “I told our folks right from the start: you’re going to make mistakes. I’m not going to come down on you as long as you’re honest, hard working [and] consult [with] me and the public. Let’s learn from what we did wrong.”<sup>132</sup> Other state land departments will also want to budget time for institutional learning as they embark on new, collaborative strategies.

## **ACKNOWLEDGEMENTS**

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

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Blair Brown	Chris Hyer	Ray Powell
Tim Callahan	Jerry King	Harry Relkin
Jacqueline DuBose Christensen	Bob Labatte	Robert Stranahan

## CHAPTER 10

### **THE SOUTHEAST NEW MEXICO WORKING GROUP: Precluding Endangered Species Listing by Integrating Conservation and Livelihoods**



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**Case Study by Emily Kelly  
Researched and Edited by Stephanie Bertaina and Emily Kelly**



## INTRODUCTION

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The turn of the century brought growing concern regarding the decreasing populations of the lesser prairie chicken, gaining publicity in the 1980s with significant population declines following a severe drought in the southwestern United States. In response, several agencies based in the Southwest attempted interstate conservation initiatives with little ultimate success. Eventually, the prairie chicken, as well as the sand dune lizard, another southwestern species experiencing population declines, became candidate species for listing under the Endangered Species Act (ESA). In an attempt to mitigate harm to prairie chickens and sand dune lizards in the state of New Mexico and prevent the need for federally-imposed restrictions on oil and gas and ranching land by ESA regulations, the Bureau of Land Management (BLM) initiated a Resource Management Plan (RMP) Amendment process that would update the land use and oil and gas leasing in prairie chicken and sand dune lizard habitat. It was within this context that the BLM, in cooperation with the New Mexico Department of Game and Fish (NMDGF), convened a stakeholder Working Group to inform the RMP Amendment Process and address prairie chicken and sand dune lizard conservation issues in the heart of New Mexico oil and gas country to create an overall conservation plan.

The Southeast New Mexico Working Group was formed in early 2003 to design a conservation plan for the lesser prairie chicken and sand dune lizard that would preclude the need for listing of the species under ESA while maintaining local livelihoods. Along with two outside facilitators, the group consisted of representatives from the BLM, the NMDGF, the State Land Office (SLO), USFWS, the ranching industry, the oil and gas industry and conservation organizations. The ultimate conservation plan, the “Conservation Strategy,” would address ranching and oil and gas practices in prairie chicken habitat while informing the BLM’s RMP Amendment.

Unlike the other agencies at the table, the RMP Amendment and the ESA would not have directly impacted the SLO. Yet, the SLO was a consistent and active participant in the Working Group. The SLO joined the Working Group in order to participate in the construction of the broader plan, understanding that changes to BLM land management would impact adjacent state trust lands due to their checkerboard pattern. Ultimately, the SLO felt that a conservation plan with consistent standards across all lands would lead to more effective leasing and fewer conflicts in the future.

From an initial meeting of approximately 80 individuals anticipating six to nine months of discussion emerged a two and a half year process involving 30 to 40 representatives of interested groups throughout the state. During this period of time, the group encountered a number of stumbling blocks to progress including delays due to a lack of data and mapping information, mistrust between group members and the overall length of the process. Ultimately in March 2005, the group faced a BLM deadline for consideration in the RMP Amendment Process. On the last day possible, the Working Group finalized the Conservation Strategy.

The collaborative process of the Southeast New Mexico Working Group draws attention to the need for adequate pre-process planning, including the collection of sound technical information and adequate maps to be available early in the process to inform timely decision making. It also highlights the importance of outside deadlines to catalyze decision making and compromise in the process. The Working Group also highlights how distrust and stereotypes between participants can be a major obstacle to progress but also can be overcome during the process. For the SLO, the Working Group provides an example of the leadership role the agency can assume given their expansive lands and expertise. More broadly, this case presents an alternative method for land management planning under the threat of ESA.

## **CONTEXT FOR COLLABORATION**

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The unique nature of New Mexico state trust land management as well as the political history of state trust lands provide necessary background to understanding the constraints as well as the capabilities and opportunities of the SLO and other agencies, groups and individuals to be involved in a collaborative process. This history is outlined in brief below.

### **FORMATION OF NEW MEXICO AND THE STATE LAND OFFICE (SLO)**

New Mexico became a U.S. territory in 1848<sup>1</sup> and in 1898<sup>2</sup> sections 16 and 36 in each township were set aside as state trust lands to be managed for maximum and perpetual revenue largely for the state's public school system.<sup>3</sup> In 1899 the State Legislature created the SLO and appointed the first Commissioner of Public Lands to administer state trust lands.<sup>4</sup> New Mexico's Enabling Act, passed in 1909, set aside township sections 2 and 32 as additional lands for state trust lands, making state trust lands a significant portion of the total land area of the state.<sup>5</sup> The Enabling Act also confirmed the Land Grant Permanent Fund that holds all allocated lands in trust to the public school system and other state institutions. Thus, state trust lands have a long history in New Mexico, being established well before New Mexico became a state in 1912.

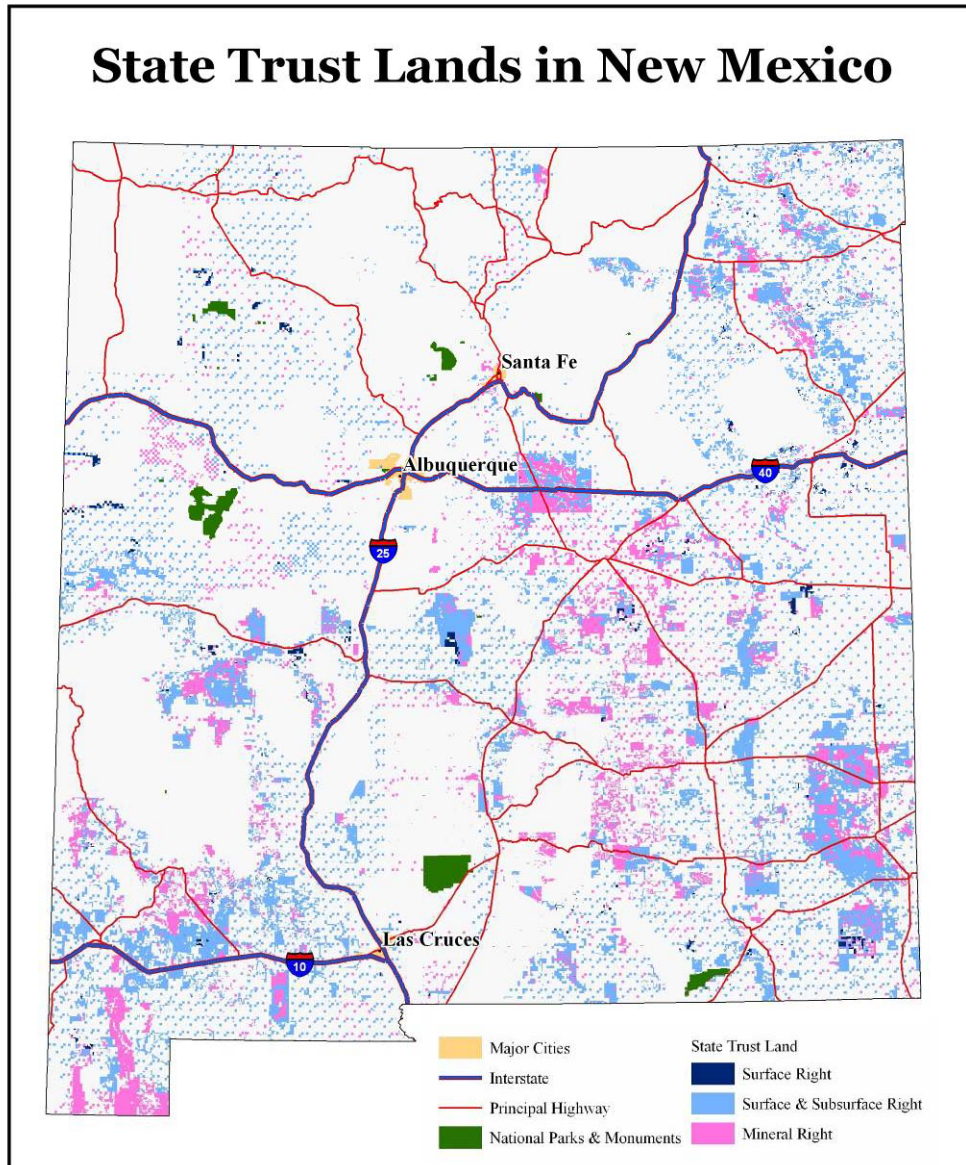
### **ORGANIZATION AND CULTURE OF THE SLO**

The Commissioner of Public Lands is the head of the SLO and is a state-elected official. The commissioner serves a maximum of two consecutive four-year terms. The major departments of the SLO include Commercial Resources, Surface Resources and Mineral Resources. The commissioner is advised by the Office of General Council and the State Land Trusts Advisory Board. Ultimately, however, the New Mexico State Constitution entrusts the Commissioner of Public Lands with the "control, jurisdiction, care and custody of all trust lands" and this provides him with final decision-making authority.<sup>6</sup>

The SLO manages 13 million subsurface acres and nine million surfaces acres of land.<sup>7</sup> Originally distributed in a checkerboard pattern across the state, New Mexico's trust lands have been somewhat consolidated in some areas as a result of land exchanges with public and private institutions, particularly in the southeastern portion of the state and outside of

Albuquerque (Figure 10-1). Throughout New Mexico, federal and private land holdings abut state trust lands, making cohesive management more challenging. This is particularly true in the checkerboard pattern regions.

**Figure 10-1: Map of New Mexico State Trust Lands**



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

## PAST MANAGEMENT

According to former Commissioner Jim Baca, the SLO historically allowed the interests of the mining and oil and gas industries to dictate SLO business, a practice typical of the

management of many western states' trust lands. These industries were often the only parties willing to bid on isolated New Mexico trust land parcels.<sup>8</sup> As a result, the SLO accepted bids from the extractive industry at the exclusion of others to satisfy constitutional revenue requirements. Baca mentioned that it has only been within the past several decades that the SLO has taken a more aggressive step toward active state trust land management. With recent increased pressures for urban development as well as open space, former Commissioner Baca believes it is beneficial for the SLO to include conservation interests in land management. He noted, "There are places that should be saved and should not be exploited."<sup>9</sup>

## **CHARACTERISTICS AND CONTRIBUTIONS OF STATE TRUST LANDS**

In 2004, SLO revenues provided approximately 15 percent of the state's \$2.2 billion pre K through 12 education budget.<sup>10</sup> New Mexico has significant oil and natural gas reserves and today those two resources account for 95 percent of the SLO's annual revenue, which is deposited into the Land Grant Permanent Fund.<sup>11</sup> Grazing leases also are common and are a significant part of the SLO's leasing constituency and culture but provide much smaller receipts. Reflecting this disparity, the SLO staff distribution is heavily tilted towards subsurface resource management.

Increased demand and high oil and natural gas prices have led the current commissioner, Patrick Lyons, to expand lucrative resource extraction leases. Royalties from oil, gas and minerals in fiscal year 2005 increased more than 25 percent over those in 2004. The most productive oil and gas trust lands lie in the southeastern portion of the state. In August 2005, the SLO joined the BLM to fight a lawsuit that hoped to restrict drilling in this area. New Mexico Governor Bill Richardson and Attorney General Patricia Madrid had filed a lawsuit against the BLM to challenge the agency's plan to allow drilling in part of Otero Mesa.

Different political philosophies and market conditions during past commissioners' terms have greatly influenced the direction of the SLO. Former Commissioner Ray Powell, a Democrat, was heavily involved in conservation and open space issues on state trust lands and had particularly good ties to the environmental community, though he did continue oil and gas exploration in the state. Currently, Republican Commissioner Lyons focuses on the present profitability of resource extraction and has good rapport with his oil and gas, minerals and grazing constituencies. His political affiliation and relationships with these industries added credibility to SLO involvement and his own actions regarding the Southeast New Mexico Working Group. The SLO may have played a very different role in the Working Group under a different commissioner.

## **SLO RELATIONSHIPS WITH OTHER ORGANIZATIONS**

Given the large expanse of state trust lands in New Mexico and limited SLO staff, historically the SLO has worked with other state and federal agencies including the NMDGF and the BLM on field research and land management.<sup>12</sup> Commissioner Lyons noted that he tries to work with other agencies consistently because he feels it makes land management easier.<sup>13</sup> This is particularly true in areas with checkerboard sections of state trust land.

Relationships with other agencies and organizations have been ongoing and while the nature of the Commissioner of Public Lands as an autonomous decision maker allows the commissioner to be independent of the decisions and policies of past commissioners, Commissioner Lyons continues to invest in their viability through continuing several of his predecessors' projects. The Southeast New Mexico Working Group, initiated during the Powell administration, is one of these projects.

## **CURRENT NEW MEXICO DEMOGRAPHICS AND POLITICS**

Currently, New Mexico is home to more than 1,800,000 residents, one quarter of whom live in the city of Albuquerque.<sup>14</sup> As a result, the state has a fairly low population density. New Mexico has a racially diverse demographic exemplified by large Native American and Hispanic populations. New Mexico is also one of the poorest states in the U.S., with an average per capita income of \$21,931.<sup>15</sup>

In contrast to some of its western neighbors, New Mexico currently has a strong Democratic Governor and Legislature. Commissioner Lyons is the highest-ranking Republican in the state's executive branch and is the first Republican to be elected to that position since Bill Humphries in 1987. From 1931 until Humphries' administration, all land commissioners were Democrats.<sup>16</sup>

## **THE STORY: THE SOUTHEAST NEW MEXICO WORKING GROUP**

Prior to the late 19th century, lesser prairie chicken populations were estimated in the hundreds of thousands and birds were found in Texas, Kansas, Oklahoma, Colorado and New Mexico on state, federal and private land. Bob Findling of The Nature Conservancy (TNC) noted, "Prairie chickens were sufficiently plentiful that many homesteaders relied upon them as a food source."<sup>17</sup> Since that time, however, prairie chicken populations have plummeted to three percent of their historical numbers in the state of New Mexico, and similar trends have occurred in the four other states comprising their range.<sup>18</sup>

Field research on prairie chicken ecology has indicated that there may be several causes of prairie chicken population decline. First, increased human development, encroachment and conversion of prairie to agriculture are cited by some as the most influential factors in population decline.<sup>19</sup> Such changes have a major effect on shinnery oak and sand sage-grassland communities in southeastern and east-central New Mexico, the prairie chicken's habitat. Further, associated infrastructure such as roads and power lines divide habitat and provide raptors with perches in open prairie previously inaccessible to them. Another contributing factor to prairie chicken population declines and fluctuations is drought. Many ranching families that have lived for generations on the land attest to the powerful influence of rain on prairie chicken populations, as increased rain provides more nest cover from predators.<sup>20</sup> There is a discrepancy between how conservationists and industry view these factors and their relative impact on prairie chicken populations.<sup>21</sup> This discrepancy became a point of contention in the Working Group process.

Declining prairie chicken populations meant the risk of state or federal “threatened” listing. For the BLM, listing could result in more restricted land management, fewer land leases, decreased lease revenues and many hours of paperwork. In the 1970s, in hopes of avoiding such consequences of further prairie chicken decline, the BLM worked in partnership with its ranching lessees to implement best management practices for protection of prairie chickens. Workshops to this effect largely involved ranchers and BLM staff in coordination with outside prairie chicken biologists.<sup>22</sup>

To form greater partnerships with other landowners and lessees, the BLM formed a multi-stakeholder group to address prairie chicken conservation in 1981. Persisting through the late 1990s, the so-called “Little Chicken Group” included members of the BLM, NMDGF, the SLO, ranchers and members of the oil and gas industry.<sup>23</sup> Despite its longevity, the Little Chicken Group made little progress in identifying and implementing conservation measures.<sup>24</sup>

Until 1996, the BLM continued to lease all its land with prairie chicken habitat. However, in 1996 the BLM made the decision to remove some land in prairie chicken habitat east of Roswell in southeastern New Mexico from oil and gas leasing in accordance with its mandate to prevent “irreversible commitment of resources” that would negatively impact the prairie chicken.<sup>25</sup> Biologist Roger Peterson noted that while most of the BLM’s birds were in that area, most of the birds’ habitat area was on other BLM land.<sup>26</sup> While the BLM made no additional removals, the 1996 removals marked the first major economic impact on the oil and gas and ranching industries on behalf of prairie chickens and represented a taste of what further species protection might cause.

Historically, the NMDGF has monitored and regulated prairie chicken populations as a game bird for hunting. According to the NMDGF’s mandate to protect and regulate game species, NMDGF Endangered Species Biologist Jim Bailey conducted a detailed study of prairie chicken populations after which the agency recommended the prairie chicken be listed as a “Species of Concern” in 1997 in response to falling populations.<sup>27</sup> Ultimately, however, the State Game Commission required the NMDGF to withdraw this recommendation.<sup>28</sup> While the NMDGF has continued to monitor prairie chicken numbers as well as the number of lek, or breeding, sites throughout the state, the agency has not listed the prairie chicken as threatened in New Mexico in its biennial review of state species under the New Mexico Wildlife Conservation Act. This inaction is despite the efforts by numerous conservation groups in New Mexico, including Forest Guardians who reenter the limelight in another five years at the start of the Southeast New Mexico Working Group.<sup>29</sup>

In 2000, a Five-State Working Group was convened to address prairie chicken populations across the full extent of the bird’s range. Both statewide and interstate working groups addressed prairie chicken conservation, yet bird populations persisted at low levels and none of the groups produced a conservation plan. While the NMDGF adopted its own agency-generated plan, this did not include input from the oil and gas industry, a point of contention when the plan conflicted with oil and gas leasing.

Amidst these diverse and troubled planning processes, the U.S. Fish and Wildlife Service (USFWS) named the prairie chicken a candidate for listing under the federal Endangered Species Act (ESA). Another species with a similar geographic range in New Mexico, the sand dune lizard, also was declared a candidate at a higher priority than the prairie chicken. Should either species be listed as endangered under ESA, the BLM and private landowners who leased federal land containing either species would face significant restrictions in land management. Listing would directly impact 1.2 million acres of BLM land and could indirectly affect 680,000 acres of state trust land.<sup>30</sup> The threat of listing provided increased urgency for conservation action. At this time, the BLM initiated a Resource Management Plan (RMP) Amendment process to address prairie chicken and sand dune lizard habitat management on BLM land. Under the 1976 Federal Lands Policy and Management Act (FLPMA), an RMP Amendment Process directs a periodic revision for BLM land management and incorporates public comment. In early 2002, the BLM decided to receive public comment through a multi-stakeholder working group, a decision that the Washington, D.C.-based Wildlife Management Institute (WMI) had encouraged as a means to use collaborative processes in more western land issues.<sup>31</sup>

### **THE WORKING GROUP IS CONVENED**

With the RMP Amendment Process getting underway, the Southeast New Mexico Working Group was soon to be a reality. The NMDGF and WMI officially convened the Working Group, as the BLM could not take the lead in what would serve as the RMP Amendment public comment period. Bill Dunn, at the time a predator and gamebird biologist at the NMDGF, recalled WMI's key role: "They saw the train wreck coming and they said, 'Here's an opportunity for us to avert this.'"<sup>32</sup>

Before the Working Group had its first official meeting with all parties, the NMDGF and WMI invited state agencies to meet in Santa Fe to gauge interest in participation. Jennifer Parody, a wildlife biologist at the SLO, attended the meeting and agreed to the SLO's participation in the formal group. While Parody had an interest in the group as a result of her background in wildlife ecology, the SLO also felt that participating in the group was an opportunity for the agency to provide input in the management of neighboring lands that would affect their own interests.

On December 9, 2002, the day after invitations for participation in this new group were mailed, a number of conservation organizations joined forces and submitted a 60-day notice-with-intention-to-file petition to address and adopt a lesser prairie chicken Area of Critical Environmental Concern (ACEC) with the BLM.<sup>33</sup> The signatories of the petition included, among others, Forest Guardians, the Center for Biological Conservation and Jim Bailey, a future member of the Working Group. The ACEC program, also outlined in the FLPMA legislation, allows the BLM to protect habitat of endangered or threatened species on BLM land. In this case, the petition requested that the BLM set aside significant portions of oil and gas and ranching lands as an ACEC for prairie chicken habitat. Once an ACEC petition is filed, the BLM must respond within sixty days, a process that would result in significant delays for the budding Working Group. Given the nature of the petition, its timing in alignment with the formation of the Working Group and the signatures on the petition, the

ACEC petition became one of the early controversies the Working Group dealt with at its inception.<sup>34</sup>

The first official meeting of the Working Group was held in Roswell in southern New Mexico. This meeting, open to any interested party or individual, had 80 people in attendance. Given such an unwieldy size, the group narrowed participation to several core representatives from each interest group. This core group was determined through election of representatives by each of the relevant agencies, the oil and gas industry, ranching interests, conservationists and hunters and sportsmen. Technical advisors also joined the group, though not necessarily at the outset. The final Working Group consisted of between 30 to 40 participants and two facilitators (Table 10-1). Hired by the BLM, professional facilitators Toby Herzlich, of the private company Toby Herzlich & Company, and Ric Richardson, Professor of Community and Regional Planning at the University of New Mexico, would guide the Working Group.

Participants had a variety of motivations for joining the Working Group. For the oil and gas and ranching industry, ESA's potential affect on the economic bottom line provided a major incentive to try to prevent listing.<sup>35</sup> Similarly, the SLO was concerned about the economic impact of listing a species. Commissioner Lyons noted, "If the prairie chicken was listed as endangered, there would be an economic fallout in New Mexico, a tremendous economic fallout. If you couldn't produce oil and gas down there, then you could lose millions and millions of dollars. Probably a couple hundred million dollars."<sup>36</sup>

For some, the Working Group provided the best means for creating a conservation plan that would be legitimate and effective in lieu of listing either of the species. Roger Peterson, originally a consulting scientist to the group with the New Mexico Natural History Institute and later a conservationist representing the Sierra Club, noted that he was motivated to participate in the Working Group in order to produce the best conservation plan possible for the bird. This motivation was not coupled with the goal of preventing listing under ESA, however. Peterson added, "I did not want to prevent their listing. I think they should be listed."<sup>37</sup> Peterson saw, however, that a process was being created to produce a conservation plan that would likely be implemented for the conservation of the species, listed or not, and felt compelled to make it as strong as possible.<sup>38</sup>

For other participants, incentives to participate were multifaceted. The desire to help the species often was coupled with the fear of federal regulation that would result should the prairie chicken or sand dune lizard be listed. Thus, there were both carrot and stick issues that contributed to individuals' participation. John Clemmons, a rancher located 60 miles northeast of Roswell, New Mexico, stated his reasons for joining the group as two-fold: "One is positive – the animals I like. One is negative – fear of disrupting our business."<sup>39</sup> For Bill Dunn of the NMDGF, preventing listing of the species was part of the agency's duty. He stated simply, "Listing under ESA – basically, it's a tacit admission that we didn't do our job."<sup>40</sup>



**Table 10-1: Key Working Group Participants**

<b>Participant</b>	<b>Agency/Company/Organization</b>	<b>Title</b>
<b>Agencies</b>		
Paul Sawyer	BLM Santa Fe Office	Director of Threatened and Endangered Species
Rand French	BLM Roswell Field Office	Wildlife Biologist
David Coss	SLO	Director of Field Operations
Jennifer Parody	SLO / USFWS*	Conservation Biologist
Shawn Knox	SLO+	Wildlife Biologist
Bill Dunn	NMDGF	Predator and Gamebird Biologist
Doug Lynn	Department of Energy WIPP site	
<b>Oil and Gas</b>		
Dan Girand	Mack Energy Corporation	Regulatory and Environmental Affairs
Jeff Harvard	Harvard Petroleum Company LLC	President
Chuck Moran	Yates Petroleum	Senior Landman
Raye Miller	Marbob Energy Corporation	Secretary and Treasurer
<b>Ranching</b>		
John Clemmons		Rancher
Lewis Derrick	New Mexico Cattle Growers and Eddy County	Rancher and Eddy County Commissioner, District 2
Bill Marley		Rancher
Mark Marley		Rancher
<b>Conservation</b>		
Jim Bailey		Biologist
Roger Peterson	New Mexico Natural History Institute / Sierra Club <sup>++</sup>	Ecologist
Tom Jervis	Audubon Council	Ecologist
Terry Riley	Wildlife Management Institute (WMI) / Theodore Roosevelt Conservation Partnership	Director of Conservation / Vice President of Policy
Bob Findling	The Nature Conservancy (TNC)	Director of Conservation Projects
<b>Scientific and Technical</b>		
Kristine Johnson	University of New Mexico Natural Heritage Program	Director
Dawn Davis	NMDGF	Lesser Prairie-Chicken Biologist
<b>Hunters and Sportsmen</b>		
<i>All representatives dropped out early on in the process.</i>		
<b>Facilitators</b>		
Toby Herzlich	Toby Herzlich & Company	Principal
Ric Richardson	University of New Mexico	Professor of Community and Regional Planning

\* One year into the process, Jennifer Parody changed jobs to work for the USFWS. She continued to participate in the Working Group under USFWS.

+ The SLO hired Shawn Knox after Jennifer Parody left. He joined the Working Group one year into the process.

<sup>++</sup> Roger Peterson originally signed into meetings as a representative of the New Mexico Natural History Institute as a member of the Scientific and Technical component of the group, but later chose to sign in under the Sierra Club when he felt that there were too few conservationists at the table.

In addition, facilitators Herzlich and Richardson also were eager to work with the group. Herzlich noted her enthusiasm for joining the process, citing her past positive professional interactions with Richardson and her desire to help find new and innovative ways to advance solutions to western land conflicts.<sup>41</sup> She commented:

I have seen the conflict and the controversies and the “stuckness” around western land issues very frequently. So it felt to me that if there was an opportunity to “unstick” some of those [western land] issues and give some of the people who are different forms of stakeholders an opportunity to be in relationships, work together, forms some kind of new ways of understanding together and maybe even solve this problem, then that would be an overall contribution and benefit to all the work that’s going on in the west around natural resource management.<sup>42</sup>

Despite participants’ high expectations for the process, parties recognized the process would be difficult. Herzlich and Richardson conducted one-on-one interviews with participants at the beginning of the process to build relationships with participants and to gauge their concerns, interests and fears regarding the Working Group.<sup>43</sup> From these interviews the facilitators gleaned several potential process obstacles. First, the positions of different parties were very far apart from one another. Second, while the oil and gas industry, ranchers and agencies had longstanding working relationships, they did not have extensive experience working with conservationists on management issues. According to facilitator Toby Herzlich, the greatest lack of familiarity existed between the conservationists and the other parties at the table.<sup>44</sup>

### **THE GROUP GETS ROLLING**

The group met predominantly in Roswell, New Mexico, within an hour’s drive of some ranchers like John Clemmons and Lewis Derrick and close to the headquarters of oil and gas companies like Mack Energy. For agency and conservation representatives, however, meeting in Roswell meant long traveling distances to meetings, an issue cited as a major challenge to participation for many conservationists as well as some less interested agency representatives. The group met approximately once a month, usually for two days at a time during the workweek. The timing of the meetings was therefore appropriate for those participants representing their employer such as agency and oil and gas members. However, for groups like hunters and sportsmen who were not participating as part of their jobs, attending meetings became an impossibility and they dropped out.<sup>45</sup>

While there was no explicit timeline for the group, most participants anticipated that six to nine months of two-day monthly meetings would be sufficient to complete the conservation plan and agreed to participate with this understanding. Both Herzlich and Richardson were wary of such a short timeline, being especially concerned that this would limit the ability to build relationships and trust in the group. However, they were hired to carry out meetings according to this timeframe.<sup>46</sup> As such, Herzlich and Richardson led the group in several “get to know you” meetings at the beginning of the process<sup>47</sup> before moving the group into “an

accelerated process of education and issue identification” regarding prairie chicken and sand dune lizard conservation.<sup>48</sup>

During one of these first meetings, the Working Group developed a guiding statement for the group that would encompass the common goal of all present. This goal, solidified in a formal statement, was:

To create a conservation strategy for the management of shinnery oak and sand sage-grassland communities in southeastern and east-central New Mexico, recommending a range of specific actions to enhance and secure populations of Lesser Prairie-Chickens and Sand Dune Lizards, so that federal or state listing of these species is not needed, while protecting other uses of the land.<sup>49</sup>

The Working Group would address major conservation issues affecting prairie chickens and sand dune lizards, particularly the impact of oil and gas development and ranching on species populations. The final products for the group were two-fold. The group would produce a stand-alone conservation plan, the “Conservation Strategy,” for implementation by the participants. In addition, certain chapters pertaining to oil and gas regulations also would be submitted to the BLM for possible inclusion in an RMP Amendment alternative.

The Working Group also developed a set of ground rules with help from the facilitators. Richardson recalled that such ground rules included the requirement that if a participant could not agree to an item up for discussion, he or she needed to propose an alternative that would represent the interests of the group.<sup>50</sup> Other rules, such as “respect one another” and “listen to each other” were also established.<sup>51</sup> Often, the ground rules were posted during meetings and Herzlich and Richardson always emphasized that the rules were a “working document” that could be revisited if the group desired.<sup>52</sup>

In addition, the group created a definition of consensus. Richardson noted that consensus does not equal overwhelming unanimity. Rather, the group agreed consensus had been achieved when the participants had offered alternatives that satisfied internal stakeholder interests as well as the interests of the other participants. Consensus also meant that the participants agreed that they collectively supported a decision because it was arrived at openly and fairly, and was the best solution for the group at the time. Richardson also noted that the group acknowledged that if there was no consensus on an issue or proposal, the pros and cons of the approach would be noted and the process would move forward. During the final days of approving the text of the Conservation Strategy, the group instituted a “thumbs-up, thumbs-down” policy in which only a thumbs-down would prevent agreement.<sup>53</sup>

In between meetings, the Coordinating Committee worked to develop future meeting agendas. The Coordinating Committee was comprised of a few members of the Working Group, including representatives from each of the key agencies involved, the oil and gas industry and ranching. A member of conservation was not on the Coordinating Committee because none of the representatives were available for these extra planning meetings. Both Herzlich and Richardson and the scientific writer, Scott Norris, were also members of the

Coordinating Committee. Norris, a professional writer, was brought on to be a neutral recorder of meeting proceedings and agreements. He compiled meeting notes and provided the group with a written version of agreements. This allowed the group to respond to a common document and avoided misinterpretations of agreements made in meetings.<sup>54</sup>

## TACKLING ISSUES

As the group began to delve into substantive issues regarding prairie chicken habitat, location of lek sites, where current populations existed and other such issues, major tensions between parties persisted. Part of this tension may have been due to the different reasons parties came to the table. While the group had a common vision statement, the oil and gas industry wanted to “prevent listing” while conservation wanted to “preclude the need for listing.” This was a subtle but important difference pointed out by several participants.<sup>55</sup>

In addition, many participants at the table did not trust each other and did not trust the motivations of others at the table. Bill Dunn of the NMDGF commented further on this point. He stated:

I can't tell you the number of times where they [oil and gas representatives] would say, “We're just trying to make a living out here.” I'd shoot back and say, “Look. This isn't a volunteer thing for us. We have a legislative mandate by law. We're not saving the chicken just because we want it. We're saving the chicken, we have to conserve the chicken, because the people of New Mexico said you will.” And that's a key thing.<sup>56</sup>

Understanding and trusting other participants' motivations and concerns was difficult for the Working Group as they moved ahead in discussing possible management strategies.

While the Working Group continued to have formal meetings, over the first six months the group hosted several “town hall” meetings at various locations in southeastern New Mexico in order to inform and involve as many ranchers and other individuals as possible.<sup>57</sup> During such events, Working Group participants sat as a panel at the front of the room facing the community and fielded questions, comments and concerns. In the dominantly ranching communities in southeastern New Mexico there was considerable skepticism with regards to the Working Group, particularly its conservation representatives. At one of these meetings in Portales, New Mexico approximately six months into the process, one individual in the community became irate and began to accuse Jim Bailey of trying to sabotage southeastern New Mexico through the ACEC. Jennifer Parody recalls:

[The community member] had the ACEC petition in his hand and somehow in his mind, [the Working Group was] the same as this ACEC. He got up and said, “Dr. Bailey, did you say that prairie chickens like water?” Every five seconds he's yelling, “Dr. Bailey! Where'd you get your degree?” He was so angry and so mean and we were all floored. This was the kind of thing that should be in a movie. And he was just ripping Jim apart for the ACEC and we

kept trying to say this isn't part of us. But there was nothing [we could say that calmed him down]. So then Bill Marley stands up and he says, "I just wanna say that I've worked with this man and I trust him and you need to show him some respect." He basically put this guy in his place and defended the conservationist. I just thought, "Oh my God! That was so great!" It was so awesome. "Look what we've accomplished!"<sup>58</sup>

This town-hall instance was one of the first illustrations of a long process in which participants began to build trust and respect for one another. Further relationships between participants in the Working Group developed through informal means. Bill Dunn of the NMDGF noted:

On some field trips, I've brought my bird dogs along, and they're a great way to kind of break the ice. And you can't help but talk your personal life when you're out to lunch standing in line. You say, "Hey, you got any kids?" The next time, maybe "How are your kids doing?" The more you get to know these people, the more time you spend with them, the more you get on a personal basis and so it breaks down from just "Dan Girand, oil and gas representative," to "Dan Girand the person, another fellow citizen in America, trying to make a living."<sup>59</sup>

Back in the formal meetings, the Working Group proceeded by addressing the two major industries in southeastern New Mexico: ranching and oil and gas. The group tackled issues related to ranching first.

The major threat of ranching to prairie chicken populations was loss of dried grasses (Figure 10-2). Roger Peterson noted, "Without livestock, dried grasses remain for years, serving to hide [prairie chicken] nests. With livestock, they do not."<sup>60</sup> To mitigate this harm, potential solutions suggested by agency and conservationists included seasonal removals of cattle from land with active leks or complete closings of some land to grazing. Ranchers were not completely opposed to such possibilities but stated simply that if they were asked to change their operations, they must receive financial compensation for any lost revenue.<sup>61</sup> Rancher and Eddy County Commissioner Lewis Derrick commented, "We'll go along with pilot projects [for conservation] as long as we can still pay the banker."<sup>62</sup> He added, "Wildlife doesn't keep jobs."<sup>63</sup> While there was some negotiation on this point, the Working Group agreed nine months into the process to establish some kind of compensation process if the implementation of the Conservation Strategy placed restrictions on ranching land that decreased revenue.

## PROGRESS STALLS WITH OIL AND GAS

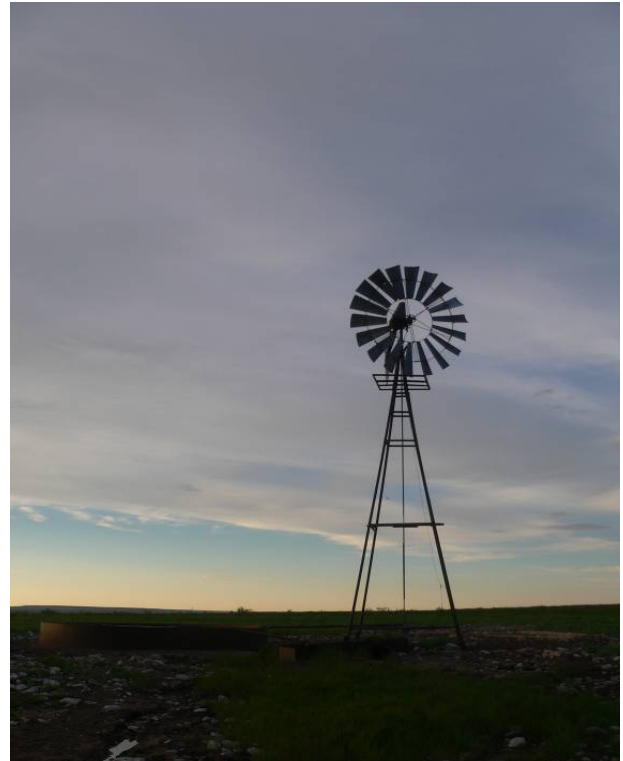
After success with ranching measures, the group moved on to issues surrounding oil and gas development, which would dominate the rest of the meetings. Jennifer Parody, at the time with the SLO, recalled, “We started in February [2004] and by September of that year we had come to an agreement on what to do about ranching. So the next year and a half was oil and gas. That’s all we did. Not surprisingly, that was the big nut to crack.”<sup>64</sup> Parody also highlighted differences in the perception of how to tackle the problem as an initial and on-going stumbling block to creating a plan for oil and gas. She commented:

We came up with a series of ways that could allow oil and gas to continue out on the land but protect prairie chickens. One way is take the actual lek sites off the table and just say for a mile and half around the lek, you can’t drill, period. You can’t lease. You can’t drill. Oil and gas had this other way, which was “Let us lease it all, but just won’t develop it.”<sup>65</sup>

In addition to a different perspective on appropriate management strategies to be incorporated in the Conservation Strategy, the Working Group also struggled with establishing criteria for what outside scientific information would be legitimate at the table. Such research would inform the strategies of the final Conservation Strategy. Tom Jervis of the New Mexico Audubon Council noted, “After substantial discussion, it was agreed that only published data could be used to justify positions in the [Working Group].”<sup>66</sup> Jervis continued that while the conservation representatives honored this decision fairly well, the oil and gas community did not.<sup>67</sup> Jeff Harvard of Harvard Petroleum commented that there was “a lot of frustration about anecdotal evidence on both sides.”<sup>68</sup> Harvard felt that agencies and conservationists, however, did not stick to the agreed-upon criterion of published studies.<sup>69</sup>

In addition, most participants attributed major delays at this point in the process to the lack of agreement on data regarding the impacts of oil and gas development on prairie chicken populations as well as a dearth of maps that identified prairie chicken lek sites. Oil and gas representatives maintained they were unconvinced of the negative affects of oil and gas development on prairie chickens.<sup>70</sup> In addition, considerable debate surrounded the size of a protective buffer for lek sites that would be off-limits to drilling. Bill Dunn noted, “More than 90 percent of lesser prairie chicken nests are within two miles of the lek on which the

Figure 10-2: Ranch in Southeastern New Mexico



Source: Photograph by Emily Kelly

females were bred.”<sup>71</sup> While conservationists and many agency representatives favored a two-mile radius around all leks to protect these nests, the group lacked maps of lek locations and areas of oil and gas leases in order to understand the impact of such distances on leasing. Thus, oil and gas reps resisted agreement on a buffer size. Ecologist and later conservation representative Roger Peterson noted, “There were meetings where we had scheduled ourselves to come to a decision and we failed to do so because of disagreements.” Facilitator Toby Herzlich cited additional frustration over interest groups backtracking on past agreements between meetings. She noted that discussion would start “looking like we were coming to an agreement, and then at the next meeting people from one stakeholder group or another would say, ‘No, start over.’”<sup>72</sup>

As time wore on and the group continued to miss agreement deadlines, the Working Group became increasingly frustrated over the amount of time the process was taking, now far exceeding its original six- to nine-month timeframe. In addition to the overall length of the process, each Working Group meeting was also a two-day all-day marathon that wearied group members. John Clemmons noted that what small progress was made during this period of time was a result of these long days. “Sometimes when it’s 4:30 in the afternoon or 5:00 or 5:30 and you’ve been there all day, you’re more likely to agree to something than you wouldn’t have in the morning because you’re tired. That’s just the mechanics of a group meeting.”<sup>73</sup> He added, “We wore each other down and we talked and rehashed and went over minute details over and over.”<sup>74</sup>

After considerable frustration attempting to formulate proposals on oil and gas regulations, the Working Group actively pursued mapping information. However, there were several large impediments to getting the necessary information to help move negotiations along. The primary problem was that many of the maps of leases in prairie chicken habitat were proprietary information and therefore could not be distributed to the Working Group. Yet without this information, the group could not move forward.

### **ONGOING ACTIVITY OUTSIDE THE WORKING GROUP**

In late 2003 during the lull in Working Group activity, Jennifer Parody and David Coss of the SLO were in constant dialogue with the Oil, Gas and Minerals Division (OGMD) of Mineral Resources at the SLO to confer on the Working Group’s on-going discussion regarding which lands could be leased and which could not. Finally, that division suggested it would be simpler to make a formal rule and remove an entire section of potential prairie chicken habitat from future leasing. Thus, in early 2004 Commissioner Lyons took the initiative to limit oil and gas drilling in some key areas of prairie chicken habitat by placing a moratorium on all new oil and gas leasing in a 119,000-acre area. This resulted in 54,000 acres of unleased protected land. The moratorium sent a strong signal to all participants of the Working Group that the SLO was willing to cooperate to make strides toward prairie chicken conservation. The moratorium will be up for renewal in 2006 at which time Lyons expects to confer with the oil and gas industry and reconsider which lands will remain undeveloped.

Also in early 2004, a ranch in southern Roosevelt County in eastern New Mexico came up for sale. The Nature Conservancy (TNC) had studied this area extensively and viewed it as essential to lesser prairie chicken recovery. In an effort to protect prairie chicken habitat before the Working Group could produce, much less implement, any conservation measures, TNC purchased the Creamer Ranch in September 2004. Bob Findling, Director of Conservation Projects at TNC in New Mexico and a member of the Working Group, handled the transaction. The ranch continues to be managed as a working cattle ranch with some changes in the grazing program in order to provide improved prairie chicken nesting cover. TNC feels the purchase of the ranch was an important step in prairie chicken conservation irrespective of the Working Group's success.<sup>75</sup>

### **MAPS BECOME AVAILABLE**

Recognizing that progress was stalled until the group could see maps of prairie chicken habitat and leks and leaseings, the SLO and NMDGF began to work on accumulating this information. The SLO set staff member Natalie Runyan, now Natalie Guilmet, to work on this information. Guilmet later came to meetings with maps that could be projected in front of the group during discussion. Using Geographic Information Systems (GIS), Guilmet could further show the group different scenarios of lek buffers and the impact on oil and gas leaseings. Such capabilities helped facilitate productive discussion on oil and gas issues. In the fall of 2004 the Director of the University of New Mexico Natural Heritage Program, Kristine Johnson, joined the group to continue working on creating technical maps. These maps involved the aggregation of data across the SLO, BLM and NMDGF for data on leases, prairie chicken populations and priority habitat.

Despite these added resources, however, the group continued to struggle with compromises for oil and gas measures as to the size of buffers surrounding leks that would be removed from leasing as well as the construction of roads and power lines that fragment chicken habitat and provide perches for raptors.<sup>76</sup> As such, the facilitators asked each major stakeholder group (oil and gas industry, conservationists and agencies) to come up with their own draft of a management plan. From these small stakeholder subgroups came three very different documents representing the ideal scenarios for the conservation plan for each of the groups. For instance, the oil and gas plan had lek radii off limits of one and a half miles while the conservationists had three-mile radii around leks.<sup>77</sup> To compare the differences in key points between plans, the group's writer Scott Norris created a matrix of the conservation plans. Major headings of the matrix included (1) modifications on leasing, (2) acceptable impact development, (3) size of lek buffer, (4) definition of active leks and (5) type of ongoing monitoring.<sup>78</sup>

Many members of the Working Group saw the matrix as a showcase of the differences in alternatives. Richardson noted that he was concerned that highlighting differences rather than similarities or overlap in approaches would have a polarizing effect on the negotiations.<sup>79</sup> According to one participant, Toby Herzlich attempted to use the matrix as an example of common themes, perhaps in an attempt to salvage a feeling of shared goals within the group.<sup>80</sup> However, many in the group felt the conservation plans that came out of the



stakeholder subgroups had not illuminated a common path towards a completed Conservation Strategy.

### **OIL AND GAS TECHNICAL SUBCOMMITTEE HAMMERS OUT DETAILS**

In late fall 2004, out of frustration for the lack of progress that resulted from the individual conservation plans, several members of the Working Group including Jennifer Parody, Dan Girand and Jim Bailey, decided to convene a small subcommittee to address issues

**Figure 10-3: Pumpjack in Southeastern New Mexico**



Source: Photograph by Emily Kelly

surrounding oil and gas provisions (Figure 10-3). Made up of one representative from five key stakeholder groups, the USFWS, BLM, SLO, oil and gas and conservation, the Oil and Gas Technical Subcommittee would attempt to hammer out the key elements of the oil and gas components of a conservation plan that were identified through the stakeholder-specific plans and the resulting matrix. The group would operate without either facilitator.

work effectively and for its recommendations to carry weight when brought in front of the entire Working Group, each member of the subcommittee was responsible for reporting the proceedings of the group to their constituencies and receiving feedback and support on these proceedings. Thus, in the subcommittee it was much easier for individuals to speak for the other members of their group. Jennifer Parody also noted that in the more intimate setting of the subcommittee, individuals were more frank with each other about what they thought could work for other participants of the larger Working Group.<sup>81</sup> By the end of the year, the subcommittee came up with compromised provisions that would be brought back to the larger Working Group for continued scrutiny and approval. According to Rand French, at the time a wildlife biologist at the BLM, “The subcommittees were a must.”<sup>82</sup> The subcommittees were a huge step forward in progress for the Working Group.

In order for the small technical subcommittee to

### **BLM RMP AMENDMENT DEADLINE CATALYZES PROGRESS**

Even with progress in the Oil and Gas Technical Subcommittee, the Working Group continued to struggle over details of oil and gas provisions. Soon after the Subcommittee returned to the group in the fall of 2004, however, the Working Group faced a new challenge:

New Mexico BLM Director Linda Rundell sent a message to the Working Group alerting them of the March 1st deadline for all RMP Amendment alternatives. This deadline was the BLM's financial and administrative deadline it had submitted to Washington, D.C. headquarters at the beginning of the process. On March 1st, all RMP Amendment alternatives would be submitted to the D.C. BLM office, and the funding for the facilitators of the Working Group would end. If the group were to provide input into the RMP Amendment Process, it would have to produce a document by March 1, 2005.

With additional details from the Oil and Gas Technical Subcommittee worked out and the increased pressure from the deadline now only six months away, progress in achieving agreements in the Working Group began to accelerate. Yet some members of the group commented that while there were more agreements made under this pressure, the substance of these agreements was too general and will prove ineffective in implementation. Given the time constraint, the group glossed over certain details regarding particularly contentious lands for oil and gas leasing to avoid lengthy and historically fruitless debates.<sup>83</sup> Rand French noted that one major point that remains ambiguous in the document is how to determine success in an area such that leasing is reopened. He commented, "We never came to final agreement. We did in terms of the document, but I'm not sure how it'll be implemented on the ground."<sup>84</sup>

For oil and gas participants, a major frustration during these final meetings was difference between the type of management strategies agencies and conservationists envisioned versus those preferred by industry. Dan Girand noted that other parties wanted to impose additional regulations on oil and gas companies while he and other industry representatives were interested in "doing something positive." He recalled telling the group, "You tell us what will work and we'll spend money on it. Tell us what to do. We'll raise chickens. What else can we do?"<sup>85</sup> Indeed, in the final Conservation Strategy did include a captive breeding site for prairie chickens on the Department of Energy's Waste Implementation Project Plant (WIPP) site near the New Mexico-Texas border. The purpose of the captive breeding facility would be to raise and reintroduce prairie chickens into areas where prairie chicken populations have been declining or eliminated. While many conservationists were opposed to the idea because similar efforts had failed in other areas, other saw it as a positive effort in by the oil and gas industry and it was ultimately incorporated in the final Conservation Strategy.<sup>86</sup>

The sand dune lizard, largely lost in debate throughout much of the Working Group's discussion, finally received the group's attention in the final push for the Conservation Strategy. While there was not considerable research available on sand dune lizard ecology, the science was much less controversial in the group. Thus, agreements for setting aside lizard habitat came fairly easily.

As a result of these hurried efforts, the Working Group produced its final document on March 1st. The Conservation Strategy was a mixture of extremely detailed concessions and generalized statements relating to general prairie chicken conservation, some of which were ironed out on March 1st itself. Jeff Harvard commented that the group "stumbled into" the document but indicated that it was representative of the Working Group as a whole. He added that the Conservation Strategy was a manifestation of "where we were at the time and

what we had. It's better than lots of us thought it would be. It is not nor should it be final."<sup>87</sup> Despite its nature as an evolving document for the stand-alone Conservation Strategy, however, the recommendations for the RMP Amendment were turned into the BLM as they existed.

## **FINAL CONSERVATION STRATEGY AND IMPLEMENTATION**

The Conservation Strategy is a stand-alone document for future implementation by the agencies, industries and organizations involved in the plan. Certain chapters of the Conservation Strategy were submitted to the BLM for possible inclusion in an RMP Amendment alternative. The document as a whole, however, is a roadmap for future conservation of the prairie chicken and sand dune lizard in southeastern New Mexico. For agencies, the Conservation Strategy includes further stipulations for leaving designated areas surrounding lek sites undeveloped and includes restrictions on power lines and roads in prairie chicken habitat. Under the Conservation Strategy, oil and gas companies will pursue oil pad reclamation as well as work with the DOE WIPP site on prairie chicken captive breeding. There are also provisions for best management practices for ranchers as well as an agreement for compensation for lost revenue for ranchers.

The Conservation Strategy has not yet been named the "preferred alternative" for the RMP Amendment Process, though it is considered likely.<sup>88</sup> Implementation of the Conservation Strategy outside of the RMP Amendment is still in the early stages. An Implementation Team, composed of members of the original Working Group, is still being formed and has yet to set its first meeting.

## **THE ANALYSIS: THE SOUTHEAST NEW MEXICO WORKING GROUP**

The following analysis of the Southeast New Mexico Working Group provides insight into the benefits, costs, challenges, facilitating factors and lessons learned from the process. This analysis is based on issues identified by Working Group participants, as well as those gleaned by the researchers.

Of the many benefits of the process, some include the creation of the Conservation Strategy, increased agency coordination and new and improved relationships. Parties also incurred significant costs through participation in the Working Group such as time and opportunity costs as well as risks to reputation. Major challenges throughout the process existed in the lack of available habitat and lease maps, obstructionists to progress and distrust and stereotyping of other participants, among other things.

There were a number of facilitating factors that helped the group overcome challenges. One of the most prominent of these factors was the clear RMP Amendment deadline. Other facilitating factors included the threat of regulatory action, small subcommittee work, institutional support, the involvement of the SLO and commissioner and facilitation.

Participants of the process had many words of wisdom for future collaborative endeavors. Such “lessons learned” include increase pre-planning prior to a process, establish a realistic timeframe, keep an open mind, keep management involved and updated and work in small groups to overcome impasses.

### **WAS THE SOUTHEAST NEW MEXICO WORKING GROUP COLLABORATIVE?**

Of the participants we interviewed, all parties felt the process was collaborative. Rancher John Clemmons noted that “it had to be [collaborative] or we wouldn’t have gone forward at all.”<sup>89</sup> Bill Dunn of NMDGF commented, “I think everybody gave a little and everybody got a little out of it. Overall, it’s a big positive. You can’t go into this asking them to give up everything without getting something in return. Collaborative is co-laboring. I think we were all there giving it our best.”<sup>90</sup> Conservationist Roger Peterson provided yet another take on collaboration, saying, “Collaboration involves a few fists in the ribs, too, but yes, [the process] was very collaborative.”<sup>91</sup> In defining collaboration, Bob Findling of TNC pointed to the structure of the final Conservation Strategy. He described the plan as being “a document that provided a list of management options which had been hammered out by a group of diverse stakeholders.”<sup>92</sup>

Participants of the Working Group highlighted issues surrounding the processes that touched on three major themes central to collaboration: (1) breadth of stakeholders, (2) degree of transparency and (3) degree of influence on decision making.

**Breadth of Stakeholders:** Overall, participants felt that the appropriate parties were at the table. While some members of the Working Group noted that they would have liked additional participation from the USFWS, DOE and NRCS, others felt that participation should have been more limited. Some of the representatives of the oil and gas industry, for instance, felt that some parties to the process should have been prevented from participating in the Working Group. Jeff Harvard explained, “You have your affected party and your affectee party which is essentially regulatory agencies ... You have your primary parties as your affected parties which is ranching and in this case oil and gas.”<sup>93</sup> While he noted that the environmental community was trying to give a voice to the species, the process was not threatening conservationists’ livelihoods. Thus, Harvard as well as Dan Girand of Mack Energy felt the conservationists should either not be given equal weight in the process or should not be invited to the table at all.<sup>94</sup> Girand commented, “And so as far as being involved in this process, I just don’t think [the conservationists] oughta be. And let ’em sue us because they’re gonna do it anyway.”<sup>95</sup>

While the representatives of the oil and gas industry and some ranchers emphasized this viewpoint, it was not widely shared among other participants. For instance, Rand French noted that had conservationists not been involved, they would have more aggressively pursued litigation and the Conservation Strategy would have been open to future challenges as to its legitimacy.<sup>96</sup> Therefore, all parties were necessary in the Working Group in order to achieve greater buy-in from all those who could later influence the ultimate conservation policies for the species in ways like litigation.

While the Working Group had good breadth of representation of different interests, there was not consistent magnitude of participation by all groups. Jim Bailey, for instance, was sometimes the sole representative of conservation interests as other conservationists had difficulty attending meetings several hours away.<sup>97</sup> While members of the group were pleased with Bailey's contributions and leadership, the success of this arrangement was largely due to Bailey's experience and personality. As such, in other collaborative processes a single representative may not have been as successful.

**Degree of Transparency:** The group had a fairly transparent process, making meeting notes and current drafts of conservation plans available via email after meetings. Communication within interest groups typically was high. Jim Bailey spent considerable time reporting to various conservation groups throughout the state and reporting their feedback to the Working Group.<sup>98</sup> Similarly, the ranchers were also very engaged in communication with their neighbors.<sup>99</sup> Despite this effort, however, there was still considerable backtracking on commitments and claims of ignorance as to new concessions.

The Oil and Gas Technical Committee, while only involving a handful of representatives, worked tirelessly to communicate with those representatives of the larger Working Group as well as outside constituencies to ensure they were able to negotiate fully and legitimately within the Subcommittee. Such a high level of transparency was rewarded when the Subcommittee came back to the larger Working Group with several acceptable options for the final Conservation Strategy.

**Degree of Influence on Decision Making:** The final Conservation Strategy may impact decision making and land management policy through two avenues. First, participants are hopeful that the Conservation Strategy will become the "preferred alternative" in the BLM RMP Amendment Process. While this is not guaranteed, BLM staff provided encouragement that the BLM would be particularly interested in what the group decided as through addressing the needs and concerns of all parties, the Working Group's conservation plan may be the most durable.

The Conservation Strategy is also a roadmap for land management and conservation for parties involved in the Working Group. In this sense, the Working Group created a document that could presumably shape land management practices of all involved in the process. While there was no official or binding signature process for the final Conservation Strategy, none of the members of the Working Group felt this would hinder the implementation of the plan. However, participants were skeptical others following through on the obligations outlined in the plan. Implementation has yet to begin.

**What Would Have Happened Without Collaboration?** While there is no way to know how the RMP Amendment Process and prairie chicken and sand dune lizard conservation would have proceeded without the Working Group, the BLM would likely have had a more traditional public input process involving letter-writing and public hearings. Meanwhile, the SLO would have likely had more of a reactive response to this problem than the proactive response exhibited by this case. A good example of this reactive response is the current lawsuit that the BLM and SLO are engaged in with the State of New Mexico regarding Otero

Mesa. Located in south-central New Mexico, Otero Mesa is home to several sensitive plant and animal species as well as rich natural gas reserves. The state sued the BLM to protect Otero Mesa, and the SLO has joined in support of the BLM.<sup>100</sup> Commissioner Lyons has declared that the Governor cannot prevent the SLO from leasing state trust land in Otero Mesa as it sees fit and that any attempt to do so puts the SLO in violation of its mandate. Had the prairie chicken or sand dune lizard been listed under the ESA and restrictions placed on BLM lands, similar lawsuits may have ensued.

## **BENEFITS OF THE PROCESS**

There were a number of benefits of participating in the Working Group, for individuals as well as for agencies and organizations. Some participants anticipated these benefits prior to becoming involved in the process, which influenced their decision to become involved. Other benefits were realized upon the completion of the process.

### **Ability to Provide Input**

Perhaps the most cited benefit of the Working Group was the chance to have input into the planning process and the final Conservation Strategy. Rancher John Clemmons articulated his “desire to represent my neighbors, my rancher friends, to make sure they had a voice in this process.”<sup>101</sup> Paul Sawyer of the BLM echoed this sentiment in the feedback the BLM received from its Washington, D.C. headquarters. He noted, “It was obvious that some of the [BLM] users weren’t happy and felt that perhaps they weren’t getting heard.”<sup>102</sup> Sawyer saw the Working Group as a forum through which these users could have a voice.

Equally significant to the benefit of being heard in the process was the cost of being excluded from the process or choosing not to participate. Lewis Derrick, a representative of ranching interests in the group, noted that if he not been involved in the collaborative process or if he had stopped attending meetings after discussion had moved on from ranching negotiations, he felt ranchers would have been “run over.”<sup>103</sup> Similarly, Bob Findling of TNC highlighted this when he suggested, “[The Working Group] was more a defensive response to a situation which, if you elected not to participate, you risked being shut out of the process. That was an additional motivation to play some role.”<sup>104</sup>

### **Gained Experience in Collaboration**

For many members of the Working Group the process also provided on-the-ground training in collaboration that they planned to apply in the future. This was particularly true for agency representatives. Jennifer Parody, who began working for the USFWS halfway through the Working Group process noted, “I learned a lot. It’s still what I do. My whole job is collaboration now.”<sup>105</sup> The USFWS, the BLM and the NMDGF indicated that collaborative planning was becoming more “business as usual” for state and federal decision making.<sup>106</sup> The Working Group experience therefore served as professional development in multi-stakeholder processes.

The Working Group also served as a case study for a broader national scale. Terry Riley, at the time with the national organization Wildlife Management Institute, saw the ability to learn from this process and extrapolate a “model” for collaboration that could be useful in other settings and other areas of the country.<sup>107</sup> When WMI encouraged the BLM to initiate a working group process, the organization was enthusiastic about analyzing this New Mexico case study to understand how collaboration could be used in other western land issues. Facilitator Toby Herzlich similarly cited the desire to contribute to a greater understanding of methods to tackle western natural resource conflicts.<sup>108</sup>

### **Less Costly**

Participants felt a major benefit of the Working Group was its less costly approach to land planning as compared to more traditional methods. Paul Sawyer of the BLM saw the Working Group as an alternative to time-intensive and difficult BLM processes for creating additional leasing stipulations on BLM land. He noted, “Frankly, the implementation of the stipulations is a very time-consuming, challenging process but then when you add additional controversy on top of that, things get bogged down.”<sup>109</sup> Given the controversies inherent in the issues surrounding prairie chicken and sand dune lizard conservation, the Working Group provided the BLM with what Sawyer perceived to be a more favorable approach.

The Working Group also provided an alternative to lawsuits. David Coss at the SLO, noted:

I think the agency people and the oil and gas people and the ranching interests and more and more of the environmental groups are thinking, “There’s gotta be a different way than just lawsuits to manage wildlife and to manage land.” I think we’re all kind of mentally and emotionally ready to try something different.<sup>110</sup>

Collaboration became the alternative to litigation for all Working Group members, many of whom had been involved in lawsuits over matters of conservation in the past.

### **Positive Public Relations for the SLO**

Participation in the Working Group was also a source of positive public relations for the SLO. Shawn Knox, a biologist at the SLO, cited this public relations as a major benefit of the Working Group, noting that the SLO would be “seen in a light that [the SLO] can develop their resources, support public schools and do it in a sustainable way.”<sup>111</sup> Thus, the Working Group provided a way for the public to see the SLO successfully maintain the long-term viability of the trust while still meeting its responsibility to the beneficiary. The high visibility of the group has contributed to the additional positive press for the SLO and Commissioner Lyons.

### **Greater Understanding and Trust**

In addition to some of the more tangible benefits associated with the process, the Working Group also helped many participants gain trust and a greater understanding for one another.

A major testament to increased trust and respect over the course of the two and a half year process was rancher Bill Marley's defense of conservationist Jim Bailey at one of the town-hall meetings. As mentioned in the case story, Parody took that instance to be a landmark for the group's accomplishment in coalescing.<sup>112</sup>

Many participants commented on the group education the process offered. Jim Bailey noted that the group helped people understand "where each of us were coming from and what issues were most important."<sup>113</sup> Regarding this greater understanding for each other, Rand French added, "You can never stop building relationships and educating people." He saw the Working Group as being a forum for this on-going education.

The process also increased individuals' understanding of substantive issues as well as the management and technical constraints placed on other participants. Bill Dunn felt that this increased understanding helped participants come to the table with better options for new management strategies. He commented that before the process, "I didn't realize how important of a component state lands were." Dunn continued:

There's a ton of stuff that I learned about the oil and gas industry that I didn't know before. I can go into [a meeting] with more intelligent recommendation that I would before. We have a plan, we're more knowledgeable about each other's needs and desires, and I think that we're going to break down the barriers of the "economy or ecology." The old thing about well, if we save this species, it will just hurt the economy. We have the opportunity to show that one doesn't have to preclude the other. We can have what I call a high quality of life.

Dunn further saw the increased understanding from the process transfer into larger issues that plagued the process, namely the perceived tension between economics and conservation. He felt the Working Group and the final Conservation Strategy were able to start to disprove this perception.

Jim Bailey also noted that the Working Group provided an education for the SLO and the commissioner. Whereas the prairie chicken previously had not been a high priority for the SLO, Bailey saw the Working Group raise the SLO's awareness significantly. In fact, Bailey felt that without the Working Group, it was unlikely the commissioner would have issued the leasing moratorium on trust lands with prairie chicken leks.<sup>114</sup>

### **Long-Term Relationships**

Participants often cited new relationships and their implications for future cooperation as a major long-term benefit of the process. New Mexico TNC Director of Conservation Projects Bob Findling noted, "[the Working Group] offered a good opportunity to get to know agency and industry staff and develop new relationships."<sup>115</sup> While Findling felt he had some previous familiarity with the other parties involved in the process, the Working Group allowed Findling and others to solidify these relationships and as well as get to know new individuals at the table. Some Working Group participants noted improved informal



relationships with one another. Bill Dunn of the NMDGF noted, “I’ve stopped by Jeff [Harvard]’s office on a number of days, just to say ‘Hi.’”<sup>116</sup>

Many participants suggested the relationships resulting from the Working Group would be useful not only for future collaborative efforts but also for more informal professional use. Paul Sawyer of the BLM noted that he felt the Working Group provided a “better vehicle to work collaboratively in the future.”<sup>117</sup>

For the SLO, the Working Group provided a group of individuals, agencies and companies that would now have a better understanding of the state trust land mandate and would therefore be easier for the SLO to work with in the future. Knox noted, “[The Working Group] created a better understanding of what [the SLO] can and cannot do. People are quick to point fingers but we’re not a multi-use agency. We’re not here for recreation. We’re here to make money.”<sup>118</sup> Knox continued that in his work now, after the Working Group, he is in constant contact with the BLM and NMDGF, relationships he felt were significantly developed as a result of the Working Group process.<sup>119</sup>

### **Structure for Coordination in the Future**

Many members of agencies in the Working Group noted that the Working Group was a response to a need for agencies to work across jurisdictional boundaries and to create more consistent land use plans across all types of land. Both the BLM and the SLO indicated that the process resulted in consistent policies that have ultimately helped facilitate management for all agencies involved.<sup>120</sup> Pat Lyons noted that coordinated management with other land users “makes land management so much easier.”<sup>121</sup>

For oil and gas companies, the Working Group and resulting Conservation Strategy helped outline future expectations for industry practice. Rand French was particularly interested in this aspect as he now works for Marbob Energy, having left the BLM after the completion of the Working Group. He considers the Conservation Strategy a success in that industry can foresee “where and how conservation actions are going to have most threat and how these can be minimized.”<sup>122</sup> The Conservation Strategy allows industry to better manage future conflicts with conservation action.

### **Conservation Strategy and Inclusion in the RMP Amendment Process**

Two of the major benefits of the process included completion of the final Conservation Strategy and the submission of the plan to the RMP Amendment Process. While the prairie chicken and sand dune lizard were not listed under ESA, participants placed less emphasis on this benefit compared to the conservation plan.

The perceived benefits of the Conservation Strategy were multifaceted. Several participants were particularly excited about the plan itself. Bill Dunn of the NMDGF commented, “Number one, we have a plan. Number two, what’s in the plan is an incredibly progressive.”<sup>123</sup> In addition, many participants noted that the Conservation Strategy would

serve as an important tool should there be litigation to list either species. John Clemmons explained:

I know BLM will go to the judge and say, “Look, we got agreement from all different aspects that are involved down there and they worked together for a long period of time. You’re not going to come up with anything smarter than what they came up with. So look and see what their conclusions are.” And I think they’ll buy that.<sup>124</sup>

The group also saw a major success in the Conservation Strategy being used as an alternative for the RMP Amendment. The BLM in particular considered the document a great success. The Working Group process reflected the BLM’s larger goal of increasing its use of collaborative planning on public lands and including public comment in the RMP Amendment Process.<sup>125</sup>

Despite many participants’ enthusiasm for the Conservation Strategy, some participants were only mildly pleased with the plan and nearly all participants reserved final judgment until the plan is implemented. John Clemmons noted, “I think, it’s just a sigh of relief more than an excitement that something is going to benefit you. Ok, you’re not going to harm us and we’ll all agree that you’re not going to harm us. And maybe the species will benefit anyway.”<sup>126</sup> Mack Energy representative Dan Girand echoed this sentiment. He stated, “We didn’t get the species listed, but I don’t think we helped it.”<sup>127</sup>

To Working Group participants, “success” was often accompanied by a caveat, often qualifying the meaning of success or commenting that the Conservation Strategy was only the first step in a long process towards conservation of the prairie chicken and sand dune lizard. Given the future implementation of the plan, TNC’s Bob Findling noted that beyond producing a document for the RMP Amendment, “I think it’s gonna take a while to determine if it was successful.”<sup>128</sup> Bill Dunn similarly commented:

What will be key is that we get this implemented and do it right and do it fairly. The proof in the pudding will be five years down the line, when people say, wait a minute, the chicken’s doing better, I made good profits this year, life is good. That’s going to be when we know this collaborative process worked. But, implementation is the absolute bottom line.<sup>129</sup>

## **COSTS OF THE PROCESS**

Each participant of the Working Group incurred costs over the two and a half year process. While some participants attempted to quantify some of these costs, it is difficult to know the true costs of the process and how those were balanced by the benefits of the process.

### **Financial and Opportunity Costs**

Members of the Working Group all highlighted similar costs to participating in the process. All participants cited the financial burden of the process being a major cost to participating in the Working Group either for themselves or for others. First, conservation and ranching

representatives participated in the Working Group at their own personal expense. For agency and oil and gas representatives, participation was a significant business and operational cost to the organization. The BLM also paid for the group's facilitators and meeting space.

Participants also commented that in addition to their explicit financial costs, engaging in the Working Group also took time away from other projects and was a strain on human resources. Shawn Knox of the SLO noted that by participating in the Working Group, "We were missing out on other opportunities. And that's a downfall." He added that he was spending about 50 percent of his time at the SLO on prairie chicken issues.<sup>130</sup> Ultimately, potential representatives on the Working Group from understaffed agencies such as the New Mexico office of the Natural Resources Conservation Service (NRCS) did not sustain participation in the Working Group.<sup>131</sup>

For some interest groups, costs had a major affect on participation in the group. Agency representatives and conservationists cited the financial cost to conservation representatives as a prohibitive factor in their on-going participation in the Working Group.<sup>132</sup> Indeed, this was a major factor in many conservation representatives dropping out of the group as time passed. Oil and gas representatives noted the significant financial costs their companies incurred as a result of their participation in the group, though did not cite these as a major problem for continued participation.<sup>133</sup>

### **Risks to Participation**

Some participants perceived risks associated with joining the Working Group. Bob Findling of TNC noted, "Regardless of what comes out of [the Working Group], if you participated, you risk criticism [from outside parties]."<sup>134</sup> This was a significant risk for TNC, reflected in their organizational policy that surrogates may not speak for the organization.<sup>135</sup>

The SLO also considered risks associated with participating as related to public perception of the organization and its mission. David Coss, Director of Field Operations at the SLO, voiced a concern that the SLO would be misconstrued as a "mini BLM." He continued:

We don't want to be confused with the Bureau of Land Management. I think that was one of our biggest issues of keeping our separateness of a state trust with trust responsibilities that is not a federal land management agency. We're in a different category. And we didn't want that to get blurred. The oil people and the ranchers know that. But the general public doesn't know that.<sup>136</sup>

Despite these risks, however, most members of the Working Group continued to participate throughout the two and a half year process.

### **CHALLENGES AND RESPONSES**

The Working Group faced significant challenges throughout its two and a half year tenure. Challenges ranged from lack of scientific data and adequate mapping of prairie chicken habitat to ingrained distrust and obstructionist tactics within the group. Both of these

challenges also contributed to the length of the process, which became a major stumbling block to participation and progress as the process continued. In addition, there were several key individuals or organizations that were not represented in the Working Group, a weakness in the process and in the final conservation document, as it does not reflect all available expertise. Finally, participants in the Working Group had mixed feelings on the effects of facilitation on the process.

### **Lack of Scientific Data and Mapping**

One of the challenges emphasized by all members of the Working Group was the lack of available maps and data on prairie chicken habitat, lek sites and associated restrictions that would be imposed by proposed conservation measures. Rand French, former biologist for the BLM and now at Marbob Energy, noted that the oil and gas industry representatives needed to see specific areas of possible restriction clearly delineated on a map in order to move forward with possible management options.<sup>137</sup> Without the appropriate mapping information, there was no way for the Working Group to see the impact of different buffer zones around lek sites or where “potential habitat” and “suitable habitat” were located.

Controversy over prairie chicken ecology also was a significant challenge for the Working Group. While the Group accepted the science regarding sand dune lizard habitat, prairie chicken ecology data provided intense debate. In addition, the group could not agree on the effects of development and other human activity on the birds. Dan Girand commented, “We [oil and gas representatives] are not convinced of our damage to prairie chickens.”<sup>138</sup> This became a major stumbling block for the group since members of the oil and gas industry resisted regulations and restrictions on their industries without clear evidence of the industry’s harm to prairie chickens.

The group attempted to overcome this challenge by obtaining maps for the areas in question as they pertained to oil and gas production, private leases, ranching and prairie chicken and lizard habitat. This process took longer than expected, however, due to the proprietary nature of much of the mapping data. In the end, the group produced maps that participants could view during meetings and could not be removed for individual use. Jeff Harvard of Harvard Petroleum commented that the maps “helped a lot of people to see and understand what we’re dealing with.”<sup>139</sup> Having the mapping information in front of the group created a shared understanding of the land in question for conservation and got the group rolling in negotiations for specific areas that had previously been impossible when done in more general terms.

### **Overcoming Controversies and Stereotyping**

The group also struggled with overcoming external controversies and their stereotypes of each other in order to work together more effectively. The greatest external controversy was the ACEC petition filed at the beginning of the process. Jim Bailey’s support of the ACEC petition was seen as an aggressive move to impose more restrictions on BLM land and thus impact both ranching and oil and gas industries. At the first meeting of the Working Group, several participants voiced their distrust of the environmental community at the table.<sup>140</sup>

Though it was agreed that the ACEC would be put on hold so that the Working Group could move forward, distrust in the group seemed pervasive. In addition to the ACEC, rancher and Eddy County Commissioner Lewis Derrick voiced concerns about others in the group from his past experience. He commented that a “Cattle Free by ’93” sign in the NMDGF office put him off to working collaboratively with NMDGF staff.<sup>141</sup>

While many participants stated that trust increased among participants through the process, others felt that stereotypes and mistrust remained. Dan Girand of Mack Energy felt some members of the Working Group labeled him as radical and therefore not a productive participant of the group. As a result, he felt certain members of the Working Group discounted his opinion. He commented, “Regulators and industry after a while tend to say, ‘Well that’s just old Dan. He’s a radical redneck.’”<sup>142</sup> Perceived alliances also fostered distrust in the group. John Clemmons commented that the general respect that developed between some members of the Working Group was misconstrued as coalition-building. He noted, “We [ranchers] were accused a little bit of the ranchers and the oil people siding against the various environmental groups which wasn’t necessarily true.”<sup>143</sup> While there was significant progress overcoming stereotypes and distrust for some, others felt these elements persisted, stalling progress.

In order to overcome the acute barriers of distrust and stereotyping present at the beginning of the process, facilitators Toby Herzlich and Ric Richardson involved the group in activities to increase shared understanding of issues and each other. Informal interactions on group field trips or at meals during meeting sessions also helped to increase trust among participants.<sup>144</sup> Bill Dunn recalled one particular instance that helped him get to know Mack Energy representative Dan Girand better:

The key thing there, talk about personal relationships, that day I had a flat tire on my bike so I had to bum a ride home, and Dan said, “I’ll take you home.” On the ride over to my house, number one he saw where I lived – middle class guy, you get to know a person. Secondly, on the way over, boy did we just have some good chit-chat, kind of a post-game analysis, it was really cool.<sup>145</sup>

In addition to informal means of getting to know other participants and forming positive relationships, the small group setting of the Oil and Gas Technical Subcommittee fostered trust for its members. This trust was largely a result of the candid nature of the meetings where participants conveyed their groups’ interests and stopped insisting on the positions they often defended in the larger group. Members of the Subcommittee appear to trust each other more than members of the larger Working Group.

By the end of the process, many in the Working Group felt they learned a lot from one another and had gained a greater understanding of each other’s interests. John Clemmons noted, “I think we all came away respecting each other’s point of view a lot more than we did going into it.”<sup>146</sup> However, other members of the Working Group retained strong distrust for others. Lewis Derrick was straightforward about his continued distrust of conservation interests. He stated, “As far as the environmental groups, I’ll make this statement: I will never trust ’em.”<sup>147</sup> Likewise, conservationist Tom Jervis of the Audubon Council stated, “I

heard nothing from the oil and gas folks that would lead me to believe that they would follow through with anything they promised, which was not much.”<sup>148</sup> Just as this distrust hampered progress in the Working Group, many participants fear it may hinder implementation of the group’s Conservation Strategy.

### **Perceived Presence of “Obstructionists”**

Another significant challenge to the process was the perceived presence of “obstructionists” in the process. No single interest group was uniformly considered to be obstructionists by all; rather each interest group considered the opposing interests to be obstructionists. Thus, conservationists identified the oil and gas industry representatives as stalling or blocking the process while members of the oil and gas industry considered the environmental community to be blocking the process.

From the conservationist perspective, Jim Bailey noted, “Some members of the oil and gas community seemed perhaps to be intentionally going around in circles.”<sup>149</sup> Oppositely, Jeff Harvard, President of Harvard Petroleum, noted, “The environmental community continually appears to pursue an obstructionist position rather than a solution-oriented [position], coming to the table to identify solutions.”<sup>150</sup> While Harvard did credit Jim Bailey for coming to meetings to “recognize, listen and come up with realistic solutions,” he felt that others of the environmental community did not respect this effort and allow the group to work.<sup>151</sup>

While both conservationists and oil and gas representatives placed the blame on one another, agency representatives understood both sides to take obstructionists positions at times. Bill Dunn of the NMDGF noted, “Oil and gas grandstanded some in the large group. Conservationists grandstanded some.”<sup>152</sup> Thus, both sides periodically employed techniques other than those Harvard referred to as “solution-oriented.”

The perception of obstructionists in the group may have resulted from the diametrically opposed viewpoints in the group from the start of the process. Participants were considered “so far apart” in their perspectives and interests at the outset of the Working Group.<sup>153</sup> Terry Riley of the Wildlife Management Institute felt that this resulted in parties being dissatisfied with the fact that they were forced to compromise too much.<sup>154</sup> Roger Peterson, initially representing the New Mexico Natural History Institute and the Sierra Club, noted that this resulted in “endless talk,” a contributing factor in the increased length of the process.<sup>155</sup>

During meetings, Herzlich and Richardson worked to prevent any one interest from dominating the discussion and attempted to block unfounded protests. However, some members of the group felt that this was largely ineffective.<sup>156</sup> Thus, obstructionist tactics persisted in the process until the pressure of the BLM deadline forced everyone in the group to move beyond such counterproductive strategies.

### **Length of the Process**

The initial short timeframe for the process and the ultimate extended length of the Working Group process presented several challenges to the group. First, while the facilitators

recognized that the initial timeframe for the process seemed unrealistic, they were hired to direct the group according to this constraint. Facilitator Toby Herzlich commented, however, that if she and Ric Richardson had been able to alter the timeframe, they would have structured the group much differently.<sup>157</sup> The facilitators had some time for participant interviews prior to the start of the process and Herzlich stressed that she and Richardson sought “opportunities to strengthen relationships, establish a shared knowledge base and build mutual understanding among the group.”<sup>158</sup> However, due to the short timeframe of the process, this was limited more than both facilitators would have liked.<sup>159</sup> Similarly, Paul Sawyer felt that the initial conception of a short process “colored how we went into the process in terms of how we got representation and how we framed the process so to speak.”<sup>160</sup> He considered the set-up of the Working Group to be a challenge later in the process.<sup>161</sup>

As the process continued to its eventual conclusion two and a half years later, its extended length posed new problems. As a result of the long timeframe, many participants noted that keeping people motivated to stay at the table was a major challenge at times. A contributing factor to the lengthy process timeframe was that participants did not adhere to past compromises on which the group had agreed in previous meetings. Especially as the process continued to drag on, the group stumbled into a period of extremely low productivity. This was largely due to backtracking on past commitments. Rand French, at the time a field biologist at the BLM, noted, “A lot of times we would take two steps forward at the end of the meeting but by the time we got to the next meeting, we were three steps back.” Backtracking caused frustration with the process and cost the group significant time.

Ultimately, the group dealt with the challenge of a lengthy process by adhering to the RMP Amendment deadline imposed by the BLM. However, there was concern among several participants that this deadline forced compromise that does not result in a viable conservation plan for future implementation. Particularly, many feel that the Conservation Strategy is too general to be effective. Jeff Harvard noted, “I don’t know if [the RMP deadline] was beneficial, it just brought a close to the process.”<sup>162</sup>

### **Lack of Participation and Representation of Some Groups**

Time, human resources and money, all listed as major costs of the process, were also indirect challenges as they limited the participation of some interest groups. Several members of the Working Group, for instance, noted that it would have been useful to have Brian Hansen of the USFWS be a more active participant as he could better relay the interests of the agency that would impose regulation under the Endangered Species Act. However, they noted that time constraints prevented him from doing so. Similarly, once the original representative from the NRCS retired, his successor came to one Working Group meeting and then stopped attending.<sup>163</sup> No other employees from the short-staffed agency replaced him. Many participants felt this was a significant loss given the possible contributions of the NRCS regarding the Farm Bill funding and ranching conservation.<sup>164</sup> In addition, a sportsmen representative had tried to participate in the group early on but had to terminate his participation given the timing of the meetings- weekdays during business hours. Thus, the timing and location of meetings played a role in the final composition of the Working Group

as both factors dictated the ability of different groups to participate. While the location of meetings in prairie chicken country was a conscious effort to ensure oil and gas and rancher participation, this resulted in greater exclusion of conservation and sportsmen interests based several hours north.<sup>165</sup>

Many Working Group participants felt that it was a weakness of the group to have Jim Bailey sometimes be the sole representative of conservation. Just as there were varied oil and gas interests within the larger community, Paul Sawyer noted that there were differing opinions within the environmental community as well. He noted that Bailey “was representing maybe six or seven groups which was difficult for him because they all have a little bit different perspective.”<sup>166</sup> Sawyer added, however, “[Bailey] did a good job trying to get back to his core group and get their feedback.”<sup>167</sup>

### **Facilitation**

The perception of the facilitators and their effectiveness in the Working Group was somewhat mixed. While some participants thought that the facilitators were effective in motivating the Working Group’s progress (discussed in the “Facilitating Factors” section below), some perceived that the facilitators increased the length of the process unnecessarily and were “counterproductive.”<sup>168</sup> Jeff Harvard commented to this effect. He noted:

I think that the facilitators extended this whole stakeholder process probably at least six months and probably a year longer than it should have been ... than it should have occurred if we would have been able to sit down and identify what we needed to accomplish, what we wanted.<sup>169</sup>

Harvard was further frustrated because he perceived that the facilitators treated members of the Working Group “like school kids.”<sup>170</sup>

Some felt frustration for the facilitators’ lack of enforcement of the Working Group’s ground rules, including that debate would only be acceptable on legitimate arguments. Jennifer Parody, at this point with the USFWS, noted, “They couldn’t sort through what was just rhetoric and what was actually legitimate debate so they treated everything like it was debate and debatable.”<sup>171</sup> Parody noted that this contributed both to the length of the process and to frustration within meetings. Tom Jervis of the New Mexico Audubon Council was similarly frustrated with what he saw as unconstructive discussion and stated simply that for the facilitators, “Process took precedence over results.”<sup>172</sup> Jervis felt that the final Conservation Strategy suffered as a result.

Paul Sawyer noted that the facilitators had limited knowledge about the biology and regulations that were at play in the process. He noted, however, that this was a flaw the organization team for the Working Group should have dealt with and did not fault of the facilitators.<sup>173</sup>

Some participants commented on perceived biases of either Herzlich or Richardson. While several oil and gas representatives insisted Herzlich was biased toward conservationists,



other participants felt that Richardson had biases toward the oil and gas industry.<sup>174</sup> Herzlich commented on how she and Richardson could play off each other in meetings to help advance the process. She said:

We could also do a little bit of good cop/bad cop where depending on which group we had an issue with that needed to have some work with offline, which came up a few times, if it felt like they would respond more easily with Ric [Richardson], then [he] would make the call. If it felt like they would respond more easily with me and more directly, then I would make the call. And there were also times in the meeting when one of us might be a little bit more fluid and the other could step in and really draw some lines about how it was time to come to a decision and what were they going to do.<sup>175</sup>

While some members of the Working Group may have misconstrued these actions to indicate bias in the facilitators, regardless, some participants commented that this perception represented a challenge for the group.

## **FACILITATING FACTORS**

### **A Clear Deadline**

The greatest factor in overcoming the challenges of the group and creating a final conservation plan appears to have been the BLM's deadline for input to be included in the RMP Amendment. Ultimately, members of the group cited this as the only reason the group started making significant headway on compromises for the Conservation Strategy. Shawn Knox recalled a typical conversation in the group in which group members said, "We have to make a decision. [The BLM is] going to publish this manual and there needs to be some recommendations from us. Do we want two years to go down the drain?" I heard that said a dozen times."<sup>176</sup> Thus, participants did not want to "lose" two years of meetings by not contributing to the RMP Amendment. The deadline added pressure to keep the Working Group moving along.

The RMP Amendment deadline also marked the end of BLM funding for the Working Group process. Knox continued, "The only thing that ultimately resulted in us finishing was a concrete deadline and the end of the money. I don't know that there is anything else that would push such disparate parties to agreement."<sup>177</sup> Rand French was confident that meetings would still be underway had it not been for the BLM deadline.<sup>178</sup>

### **The Threat of Regulatory Action**

Despite the lulls in Working Group progress and many participants' desire to leave, the threat of listing either the prairie chicken or the sand dune lizard under the Endangered Species Act (ESA) was significant enough to keep many people at the table. While David Coss felt it difficult to speculate what would have happened to the group in the absence of ESA, he felt confident that weariness for other options such as litigation kept people working collaboratively.<sup>179</sup> Similarly, Jennifer Parody noted that while there was considerable

uncertainty that either species would be listed given the small number of total species listed each year, the risk of ESA listing was too great to be ignored.<sup>180</sup>

Roger Peterson felt that the threat of ESA might similarly contribute to successful implementation of the Conservation Strategy. He noted, “If the document is not followed, Fish and Wildlife Service will say, ok, that’s it, we list [the species] and we take over. So that’s the stick behind it all.”<sup>181</sup> Several other Working Group participants agreed with this assertion.

### **Small Subcommittee Work**

Many participants credit the success in outlining oil and gas concessions to the Oil and Gas Technical Subcommittee. In this small group setting, individuals spoke candidly about their parties’ interests and motivations and made suggestions for how to create acceptable options.<sup>182</sup> Such candid discussion was in contrast to the “grandstanding” that occurred in the larger Working Group. Bill Dunn commented to this effect. He noted:

One of the problems of the large group is that people have a tendency to put up their defenses. Basically they can hide behind their group and they can get on the stage and spout the party line, whereas when you have it down to one person – and this subcommittee was just Dan Girand representing oil and gas, Jim Bailey representing conservation, and three of us from the agencies – there was more looking in the eye, less B.S. and more stating what's on your mind.<sup>183</sup>

The Subcommittee forced participants to deal with each other as individuals and less as members of opposing groups. Jennifer Parody was pleased with the Subcommittee’s ability to come up with important decisions that could later be brought back to the whole group for approval. She commented that the agreements made in that group became the core of the final Conservation Strategy.<sup>184</sup>

### **Institutional Support**

Several participants cited the institutional support of agencies as a major facilitating factor, particularly in getting the group off the ground. From a BLM perspective, Sawyer indicated that the support of BLM management and BLM headquarters in Washington, D.C. was essential to BLM’s successful participation in the Working Group. He added that both BLM and NMDGF management were behind the process. He commented on the essential role of management in all interest groups: “We recognized early on we needed that executive support, whether it’s in the private interests, oil and gas company, presidents or regional directors or the agency types. So that was a big plus.” While this support may have existed during the process, some members of the Working Group were frustrated with the lack of follow-up to the collaborative process by the USFWS and BLM field offices.<sup>185</sup>

## **Role of the SLO and the Commissioner**

Finally, members of the Working Group felt the SLO's participation was a major facilitating factor in the process. First, Pat Lyons's removal of some trust lands from oil and gas leasing had a major positive impact on the Working Group. For Bob Findling, this increased his trust in the long-term commitment of participants in the Working Group. He noted, "[Commissioner Lyons] committed to placing a multiyear freeze on any new oil and gas leasing in this area and that provided us with sufficient additional assurance that our expenditure [on the Creamer Ranch] would not be in vain."<sup>186</sup> He continued, "Pat Lyon's decision to commit to deferral or moratorium on new leasing in order to attempt to assist in recovery of the lesser prairie chicken was really a significant element of the whole process."<sup>187</sup> Paul Sawyer similarly said that the moratorium on new leasing "... was a monumental step forward. Huge step forward. If the [USFWS] was to evaluate a conservation strategy, that was a giant thing to do."<sup>188</sup> In addition to the sign of support that the moratorium offered the Working Group process, Commissioner Lyons's action must have also shaken the confidence of the oil and gas industry to some extent as they came to realize that conservation measures and the alternatives to collaboration could go contrary to their interests despite historical alliances.

Some members of the Working Group attribute Commissioner Lyons' actions to his role as an elected official, thus increasing accountability and awareness of prairie chicken conservation. Jim Bailey commented that Lyons's constituency extended to rural communities in New Mexico and as such, he must recognize their concerns. Bailey noted, "[Lyons] would like to be reelected, so he had to change his tune. And he rightfully recognized that none of us would benefit if this bird was federally listed. More stringent rules would hinder development on state trust lands."<sup>189</sup>

Participants also perceived Commissioner Lyons's good relationship with other interests as beneficial to the process. Lyons noted, "I've got a good working relationship with everybody."<sup>190</sup> Shawn Knox and David Coss concur that this was helpful in getting buy-in for the process from other stakeholders. Knox commented, "Because the Commissioner is a Republican ... he was at a better place to catalyze support of some of the industry that typically is Republican in nature, both the agricultural and oil and gas industries."<sup>191</sup> Knox mentioned that former Commissioner Ray Powell, who was "more left" in his politics, may have been a polarizing force instead of a catalyzing force in this respect.<sup>192</sup>

In addition to Commissioner Lyons' role, SLO staff members were highly praised by all members of the Working Group. Natalie Guilmet was lauded for her contribution to creating the maps necessary to start making decisions.<sup>193</sup> David Coss was recognized by many as a strong leader in the group for pushing things forward towards progress. Paul Sawyer noted that the SLO "played a very pivotal role in the [Working Group] and I was quite pleased. They were way up there in the forefront amongst the lead. People always talk about the unofficial or non-designated leaders – they were in that group."<sup>194</sup>

## **Facilitation**

Many participants felt the facilitators were an integral part of the group's progress. In particular, participants noted that facilitators Toby Herzlich and Ric Richardson kept the group on track, pushed for compromise and helped the Working Group overcome process challenges. Shawn Knox stated simply that without the facilitators, the Working Group "would be a waste of my time."<sup>195</sup>

Participants also noted that the facilitators helped the group recognize progress. Bill Dunn recalled a situation in which progress reports were especially helpful:

Toby [Herzlich] and Ric [Richardson] did a pretty good job at saying "This is what we've accomplished." There was a time when we were at an impasse with oil and gas late in the game ... where [participants] said, "This had been a waste of time. We haven't accomplished anything." But we had a whole slew of recommendations that everybody was giving the thumbs up on, and we were down to probably ten out of 90 or 100 recommendations. We were like, wow, we're almost there.<sup>196</sup>

Dunn continued that in this situation, Herzlich highlighted the group's progress, which lifted spirits and increased group momentum.<sup>197</sup>

While some of the oil and gas representatives felt that an agency facilitator would have been more appropriate to facilitate the process, Bill Dunn of the NMDGF felt that having third party, neutral facilitators was essential. "If I'd gotten up there, then okay, there's a slant toward wildlife. If Jeff Harvard got up there, a slant toward oil and gas. If John Clemmons, a slant toward ranching. With Toby [Herzlich] and Ric [Richardson], there was no slant. That's what's key about having a neutral facilitator."<sup>198</sup>

## **LESSONS LEARNED**

There were several key "lessons learned" that emerged from this case as advice offered by participants as well as recommendations identified by the researchers. These "lessons learned" are based on participants' experience in the Working Group with what worked well and what could have been improved.

### **1. Preparation is essential and will pay off later in the process.**

This case highlights two main areas that would have benefited from greater preparation prior to the process. First, Working Group participants who helped structure the process stressed the importance of detailed preparation prior to the first meeting. Paul Sawyer of the BLM referred to this step as "pre-thinking."<sup>199</sup> He and facilitator Toby Herzlich addressed the need for greater pre-thinking regarding the direction of the process as well as the format for the final document.<sup>200</sup> Facilitators should also be briefed on the major issues the group will discuss as well as the past history of these issues. Insufficient pre-thinking led to some lost time in the Working Group. For instance, participants floundered in discussion when they

were unsure of the vision for the final document. In addition, facilitators had to learn about the issues as they were brought up at the table.

In addition to process structure, the Working Group would have greatly benefited from having more available technical and scientific resources. As the group began to dig into actual land management policies, it was clear the participants needed to be able to visualize the impacts of these strategies. If the Working Group had science and technical information more readily available, the group could have moved onto management details more quickly.

## **2. Third party facilitators are helpful but must avoid the perception of bias.**

As several Working Group participants noted, the facilitators were major assets to the process as they helped direct discussion and kept track of successes and agreements. Toby Herzlich commented on the benefits of having two facilitators. She said:

[Dual facilitation] was very beneficial in a lot of ways ways. One, because it's a very complex project and Ric [Richardson] and I could think it through together and bring different perspectives to the understanding of what was going on, which is really important. Also, when it came time to do subcommittee working, when those needed to be facilitated we could work concurrently in that way.<sup>201</sup>

However, facilitation conflicts arose when members of the Working Group felt the facilitators were partial to opposing interests. Thus, it is essential that facilitators recognize the challenge of preventing perceptions of bias.

## **3. Working in small groups can help break down positions and help the group move towards constructive discussion.**

Several participants advised that future collaborative processes use small subcommittees to help move the larger group through impasses. The Working Group highlighted the Oil and Gas Technical Subcommittee as a major facilitating factor. Bill Dunn noted that in these groups it was appropriate to not have a facilitator but rather to let the parties hash-out issues on their own.<sup>202</sup> Subcommittees provide a forum for representatives to candidly discuss their interests and the interests of their broader constituency as opposed to spouting the party-line as is typical in larger groups. Participants of subcommittees also work in closer contact than within the larger group and are often more compelled to create viable options instead of simply blocking proposals. Thus, Subcommittees may be better equipped to hammer out detailed options than the larger group. These options should then be brought back to the larger group for approval.

## **4. Know what you're getting into and keep an open mind for new ideas.**

A key point that many members of the Working Group highlighted as essential to a successful collaborative process was for process participants to understand the commitment and energy required in collaboration. Jennifer Parody added that participants need to be

“really open-minded to new ways of solving the problem.”<sup>203</sup> She continued, highlighting the importance of “being really knowledgeable about where your bottom line is but being open about how to get there.”<sup>204</sup>

The Working Group spent significant time trying to create new options to meet the multiple interests at the table. For a long time this progress was hindered by the entrenched positions of some groups and the opposed approaches of interest groups to the problem. Had participants been “open-minded” as Parody suggests, the group would have been more efficient.

#### **5. Agency and organizational management should be involved and informed about the process.**

One of the strongest suggestions from Jeff Harvard, Dan Girand and Rand French was that participants at the table need greater contact with managers. For the Working Group, Rand French commented that not having managers at the table was a “flaw in the system.”<sup>205</sup> He continued that in order for participants to know how to best represent their agency or organization, they need to “get a stance on the political agendas that are there [in the organization] that staff don’t have.”<sup>206</sup>

To incorporate increased managerial involvement, French suggested that managers periodically sit-in on working group meetings to get a sense of what’s happening in the process. In addition, he noted that representatives at the table could have monthly leadership briefings to keep managers and other officials up-to-date.<sup>207</sup> In this way, Jeff Harvard noted, representatives at the table can make decisions with the approval of their organization. He stated, “It’s about having people [at the table] that understand what is needed and have the ability to accomplish the goals set out.”<sup>208</sup>

While some participants in the Working Group were pleased with the institutional support at the table, others were frustrated with the lack of managerial buy-in for the final Conservation Strategy. This lack of support for the final document may have been averted if managers had been more involved or better informed about the proceedings of the Working Group.

#### **6. Set a realistic timeframe and have a concrete deadline.**

Many participants cited the unrealistic timeframe as a future challenge to the process. As mentioned earlier, establishing an appropriate timeframe for the process would have provided time for increased relationship building at the outset of the process that may have helped alleviate future tensions. In addition, Working Group participants became extremely frustrated when the process exceeded six to nine months. This frustration, coupled with the lack of progress, contributed to increased tensions at the table. Thus, collaborative processes should strive to outline a reasonable amount of time for a process, taking into account the need to build interpersonal relationships between participants as well as time to discuss substantive issues.

A concrete deadline for the Working Group ultimately was the factor that brought closure to the process. As Shawn Knox of the SLO noted, “The only thing that ultimately resulted in us finishing was a concrete deadline and the end of the money.”<sup>209</sup> Facilitator Ric Richardson agreed. His advice to future collaborative processes was to bind the group to a regulatory frame with a set deadline. Absent that, he suggested creating a timeframe with certainty. He noted that with an open-ended set of negotiations, people tend to burn out and the group loses momentum.<sup>210</sup>

While there are benefits to establishing a realistic timeframe, there is a risk that some interest groups will not want to get involved in such a long process due to constrained resources. A firm deadline may help parties to plan to overcome this challenge.

## **ACKNOWLEDGEMENTS**

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Tom Jervis  
Shawn Knox

Patrick Lyons  
Jennifer Parody  
Roger Peterson  
Ric Richardson  
Terry Riley  
Paul Sawyer





## **CHAPTER 11**

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



Whitefish Lake, Whitefish, Montana

Photograph by Jessica Mitchell

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

## INTRODUCTION

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

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

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

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

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

## CONTEXT FOR COLLABORATION

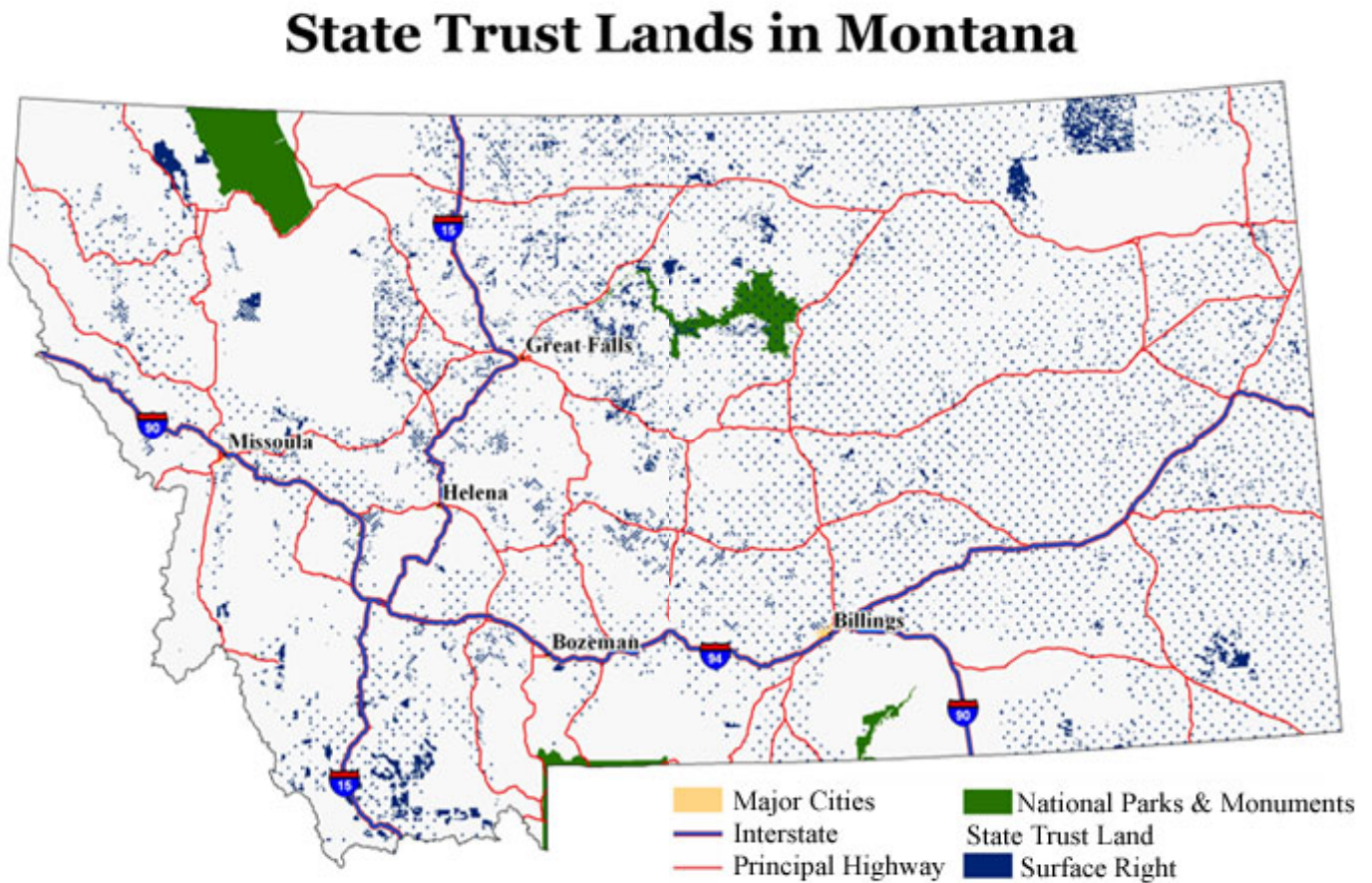
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Evaluating the Whitefish Neighborhood Planning Process as a collaborative planning effort on state trust lands requires an understanding of the context in which this process unfolded. This section provides a brief discussion of historical, legal and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

### MONTANA'S LAND GRANT

Montana was admitted to the Union through the Omnibus Enabling Act of 1889.<sup>2</sup> Upon admission, the federal government granted Montana sections 16 and 36 from each township “for the support of the common schools.”<sup>3</sup> This land grant totaled more than 5.1 million acres. In addition, the state received more than 600,000 acres for other educational and state institutions under the Enabling Act and subsequent legislation.<sup>4</sup> Combined, these land grants totaled more than 5.8 million acres.<sup>5</sup> Today, Montana holds more than five million acres of surface and 6.2 million acres of subsurface trust lands, constituting approximately 90 percent of its original land grants (Figure 11-1).<sup>6</sup>

Figure 11-1: State Trust Lands in Montana



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

## **THE OMNIBUS ENABLING ACT AND MONTANA CONSTITUTION**

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

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

## **LEGAL INTERPRETATIONS OF MONTANA’S TRUST RESPONSIBILITY**

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

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

## **TRUST LAND MANAGEMENT IN MONTANA**

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

The Montana Constitution provides that the State Land Board is to “direct, control lease, exchange and sell school lands.”<sup>17</sup> The State Land Board consists of Montana's five top elected officials: the Governor, Superintendent of Public Instruction, State Auditor, Secretary of State, and Attorney General.<sup>18</sup> The Governor serves as chair of the Board,<sup>19</sup> which is tasked with “secur[ing] the largest measure of legitimate and reasonable advantage to the state and provid[ing] for the long-term financial support of education.”<sup>20</sup>

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

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

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

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

When making management decisions on trust lands, the State Land Board and DNRC must consider the local policies of the jurisdiction in which a particular trust land parcel is located. These local policies may include zoning regulations, comprehensive plans and annexation rules. This obligation was clarified in early 2005 when the Montana legislature passed a “Good Neighbor Bill” – introduced by Representative (and former Whitefish City-County



Planning Board Chairman) Mike Jopek – which recognized that the State Land Board, and hence the DNRC, must keep local policies in mind when making trust land management decisions. This obligation is not absolute, however. Because the State Land Board cannot abdicate their constitutional authority, the Board must consider local policies only so long as doing so does not violate the constitution.<sup>30</sup>

## **MONTANA POLITICS**

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

In contrast to other communities in the Flathead Valley and the greater Flathead County, Whitefish tends to be a fairly liberal community. According to many process participants and stakeholders, these liberal leanings combined with political connections helped the Whitefish community gain State Land Board support for their interests.<sup>31</sup> During the Whitefish Neighborhood Planning Process, the State Land Board was Democratically-

### **State Board of Land Commissioners 2003-2004**

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

controlled. Prior to the 2004 elections, members of the State Land Board were: Governor Judy Martz (R), State Auditor John Morrison (D), Secretary of State Bob Brown (R), Superintendent of Public Instruction Linda McCulloch (D) and Attorney General Mike McGrath (D). All five members faced reelection in November 2004, just as the Whitefish Neighborhood Plan was being presented to the Board.<sup>32</sup> Following the elections, Governor Brian Schweitzer (D) and Secretary of State Brad Johnson (R) joined the State Land Board to replace Martz and Brown, respectively.<sup>33</sup> Both State Auditor Morrison and former Secretary of State Brown are native to Whitefish. Governor Schweitzer owned property in the Whitefish area during the planning process.

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

## **THE STORY: THE WHITEFISH NEIGHBORHOOD PLANNING PROCESS**

Situated near the sparkling waters of Whitefish Lake in the shadow of Big Mountain, is the town of Whitefish, Montana. Originally a railroad and logging community, Whitefish is viewed by many as a highly educated, fairly liberal community.<sup>34</sup> In recent years, Whitefish

**Figure 11-2: Glacier National Park**



Source: Photograph by Lisa Spalding

also has become known throughout the state for being strong-willed and wealthy.<sup>35</sup> This reputation has been fueled by the town's transformation into a resort destination thanks to its close proximity to Glacier National Park and its own spectacular scenery and recreational opportunities (Figure 2). As word of Whitefish has spread, the town has witnessed not only an increase in tourists, but also an influx of celebrities and other wealthy individuals who have purchased and gated off acres of scenic landscape to build expansive "trophy homes."<sup>36</sup> While Whitefish has successfully leveraged this

growth to fund a variety of community projects, the town currently is struggling with important issues like affordable housing and future demands for infrastructure. At the same time, Whitefish is trying to preserve the small-town feel and charm that have attracted so many visitors and new residents in recent years.<sup>37</sup>

## **PRECURSORS TO A NEIGHBORHOOD PLAN**

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

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

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



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

**DNRC Goals for Whitefish  
Neighborhood Planning Process**

1. Develop framework for assessing trust land uses
2. Address disparity between trust lands and adjoining private property
3. Educate local government and public about trust land management

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

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

### **WHITEFISH COMMUNITY CATCHES WIND OF NEIGHBORHOOD PLAN**

Before the DNRC arrived in Whitefish to hold its first public meeting, rumors were circulating and emotions were brewing about the potential Neighborhood Plan. One catalyst of this reaction was a letter that Whitefish community member Tyler Tourville received from the DNRC in February 2003. President of the Flathead Fat Tire Association, Tourville was approached by local DNRC staff in early 2003 about illegal extreme mountain biking that was occurring on Spencer Mountain, a locally-treasured parcel of trust land abutting Whitefish Lake (Figure 11-3). In an effort to work with the agency and continue recreating on the mountain, Tourville applied for a permit to legally construct, maintain and use bike trails on the mountain. In a brief letter, the DNRC denied Tourville's permit application, citing the impending neighborhood planning process. This process was news to Tourville and most of the Whitefish community. In a town of 6500 people,<sup>47</sup> word of the DNRC's plan spread quickly. Local interest groups like "Friends of Spencer Mountain," of which Tourville

was a member, took the lead in making telephone calls and sending out emails to generate interest in the process and underlying issues.<sup>48</sup> Whitefish Advisory Committee Chairman Alan Elm remembered receiving numerous emails from different groups and community members about the process prior to the DNRC’s first public meeting.<sup>49</sup>

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

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

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

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

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



Source: Photograph by Jessica Mitchell

## **THE NEIGHBORHOOD PLANNING PROCESS BEGINS**

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

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

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

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

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

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

### **THE CREATION OF AN ADVISORY COMMITTEE**

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

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

Over the next month, members of the Ad Hoc Committee met with DNRC planner David Greer and Unit Manager Greg Poncin to negotiate an Advisory Committee Charter (see Appendix, Exhibit 8).<sup>72</sup> The Charter outlined the roles and responsibilities of the five key

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

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

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

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

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

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

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

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

With these guidelines in mind, Mayor Feury and Commissioner Hall published a notice in the newspaper<sup>76</sup> and sent out an informational email<sup>77</sup> soliciting letters of interest. Despite being designated as a participant in the selection process, the DNRC, for unknown reasons, was not actively involved in this stage of the process.<sup>78</sup> Some members of the now-defunct Ad Hoc Committee also approached individual members of the Whitefish community whom they thought would be valuable Advisory Committee participants. Mayor Feury and Commissioner Hall received approximately 45 letters of interest. Using the charter guidelines and considering their own visions for an effective citizens group, they created a Committee of approximately 12 members and two alternates (Table 11-1).<sup>79</sup>

**Table 11-1: Whitefish Advisory Committee Membership**

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

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

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

## **THE NEIGHBORHOOD PLANNING PROCESS RESUMES**

The Advisory Committee held its first meeting in November 2003. Pursuant to the Advisory Committee Charter, Janet Cornish was retained to facilitate the Advisory Committee

meetings and draft the Neighborhood Plan. As facilitator, Cornish tried to pick up where she had left off in August and continue identifying community goals and objectives for the plan. At this first meeting, the group developed five “major goals” to guide their discussions. These goals were:

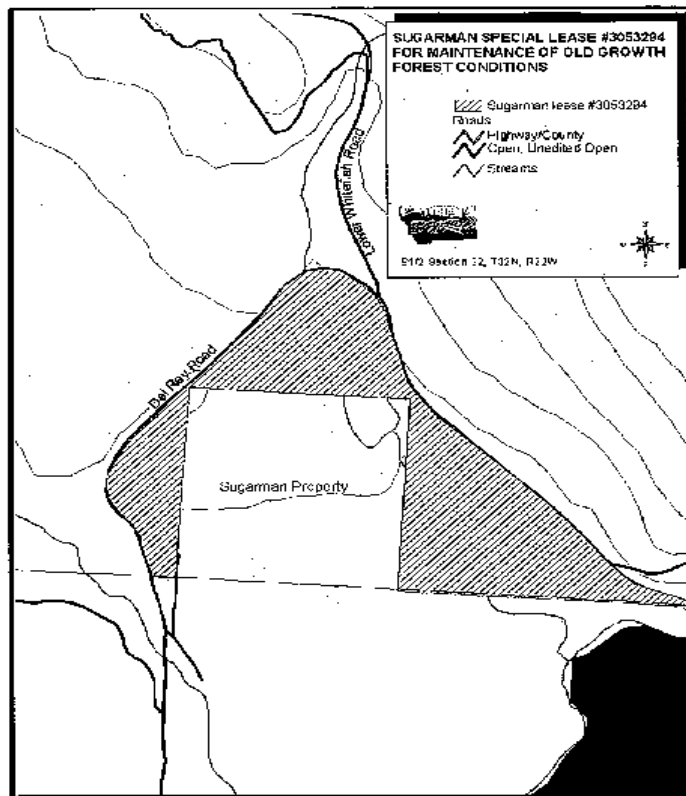
1. Balance traditional uses, including timber, on trust lands with new land use opportunities to produce revenue
2. Look at opportunities to increase revenue to the Trust
3. Protect the environment (wildlife corridors / habitat, watersheds, viewsheds) and reduce hazards associated with development
4. Provide for public access to and management of trust lands for recreation and other open space amenities
5. Integrate the Whitefish plan with local land use policy<sup>82</sup>

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

The DNRC responded to this outcry by explaining that it had only suspended new project proposals; this project had been in the works for years and thus was not subject to the agency moratorium. Indeed, Janet Cornish mentioned this deal – albeit without naming names – in her opening remarks at the first public meeting back in May 2003.<sup>87</sup> While this explanation did little to smooth the ruffled feathers within the Committee, Sugarman’s last minute decision to delay the land swap until completion of the Neighborhood Plan helped somewhat.<sup>88</sup>

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

**Figure 11-4: Map of Sugarman Land Swap**



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

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

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



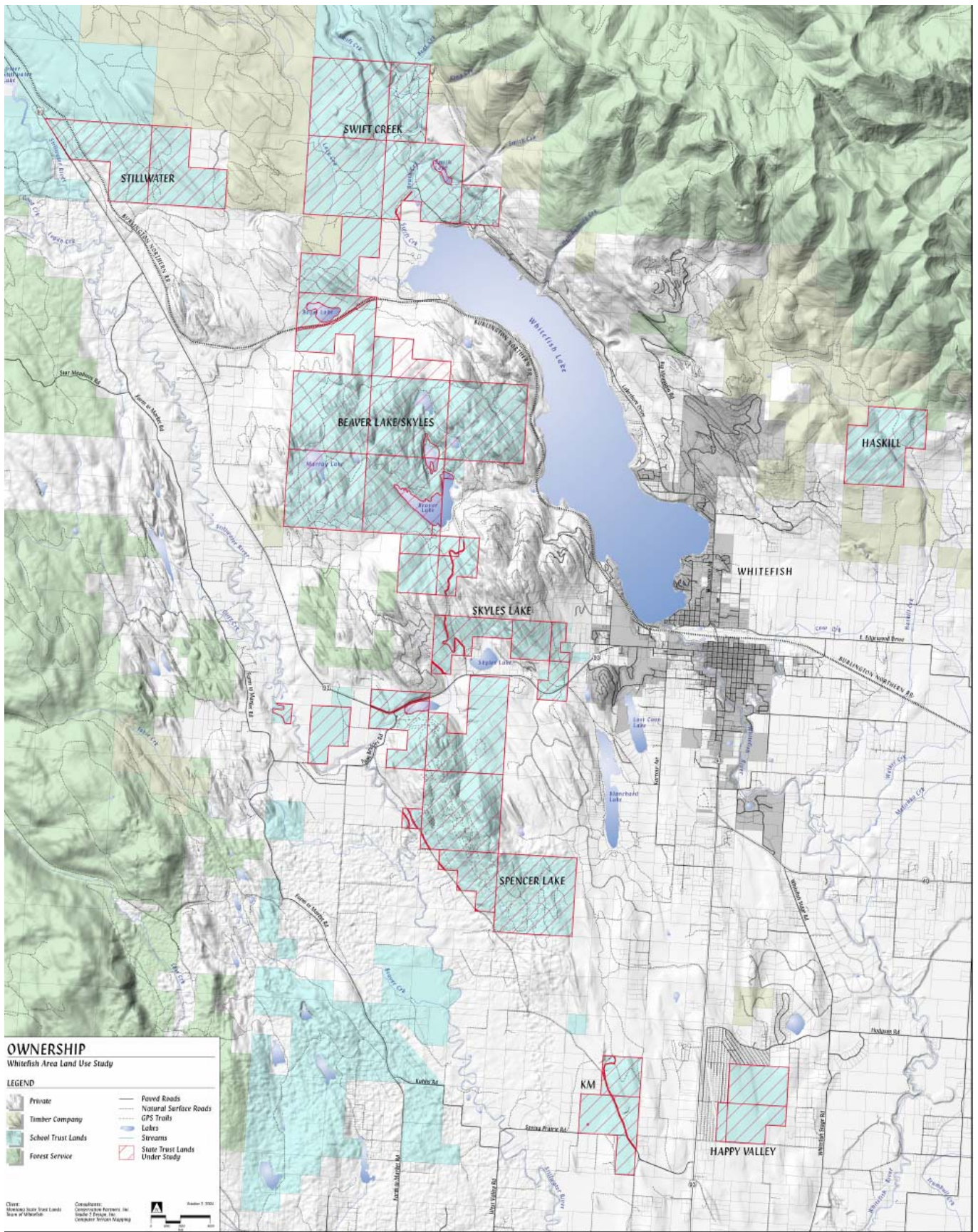
between the agency and the Committee persisted. A key source of contention was the specificity of the Neighborhood Plan. The DNRC desired a broader, landscape level approach, identifying opportunities for “sub-areas.” Most Committee members, on the other hand, wanted security and hence sought a more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

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

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

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

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



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

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

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

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

As the Advisory Committee increased its involvement in the planning process, Cornish began to realize that the project had radically transformed from the one she signed on to facilitate a year earlier. In Cornish’s opinion, it was inappropriate for the Committee to take

on a more substantive role in the planning process since the DNRC, not the community, was charged with managing trust lands. While she was willing to work in partnership with the Committee, she did not think that the Committee should have had a final say in the plan. Accordingly, in early spring, Cornish resigned from the Whitefish Neighborhood Planning Process.<sup>106</sup> Around this same time, DNRC Planner David Greer was promoted to a planning position in Helena. DNRC planner Lisa Horowitz replaced Greer as one of the two agency representatives on the Advisory Committee.<sup>107</sup> She also assumed Cornish's facilitation responsibilities and worked with Committee Chairman Alan Elm in running the meetings.

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

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

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

With Zeller on board, the Advisory Committee and DNRC were ready to start writing the Whitefish Neighborhood Plan. Zeller provided needed structure for the group, encouraging everyone to move forward with the plan in mind.<sup>113</sup> Yet, by the time Zeller arrived, some



“bad habits” already had developed within the Committee.<sup>114</sup> Early into the process a faction of the Advisory Committee formed what other participants and process stakeholders referred to as the “shadow group,” which held meetings about the planning process outside of the regular Committee sessions. According to Committee members and process stakeholders, those on the shadow group included local landowners Marshall Friedman, Jeff Gilman and Bick Smith and former Sonoran Institute representative Diane Conradi.<sup>115</sup> While this group was not formally acknowledged, the larger Committee was fully aware of its existence. In fact, one did not need to be a part of the shadow group to know what they were discussing. According to Whitefish Chamber of Commerce President Sheila Bowen, “they always had [their meetings] at the Great Northern or Coffee Traders. If you ever wanted to know anything that is happening in town, you just go and hang out at Coffee Traders around 10 am, or you go to the Great Northern at noon.”<sup>116</sup>

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

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

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

In addition to making important decisions outside of the full Committee, some members of this shadow group were accused of using inappropriate, even aggressive tactics to achieve their agenda. Janet Cornish recalled being contacted early in the process by a few people who wanted her to “pick a position against the DNRC or engage in activities outside the confines of [her] contract.”<sup>121</sup> Also, soon after Marty Zeller joined the process, some shadow group members attempted to “wine and dine him” to gain his support for their cause. When Zeller refused, this faction tried to discredit him, arguing that Zeller was inappropriately pushing the process in a pro-development direction. Finally, some shadow group members attempted to discredit Advisory Committee member and Whitefish Chamber of Commerce President

Sheila Bowen by telling her Chamber Board that she was not properly representing the Board's interests by advocating for more development than the Board wanted.<sup>122</sup>

In addition to these struggles with the shadow group, the neighborhood planning process suffered a setback in July 2004 when the Advisory Committee learned the DNRC was in talks with Plum Creek – one of the largest timberland owners in the country and the largest private landowner in Montana – to develop a reciprocal access agreement to provide access to trust lands, a portion of which were within the 13,000-acre study area.<sup>123</sup> As with the Sugarman land swap more than six months earlier, the Committee felt betrayed that the DNRC was making deals on property that they thought was temporarily off-limits.<sup>124</sup> Unlike the Sugarman deal, however, the DNRC reassured the Committee that while discussions between the agency and Plum Creek had ensued, the DNRC was waiting to continue work on the agreement until after the Neighborhood Plan was finished.<sup>125</sup>

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

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

The decision to implement Roberts Rules of Order upset some stakeholders outside of the Advisory Committee who began questioning some Committee members' true motives. The hard-line approach even forced State Land Board staffer Kathy Bramer to travel to Whitefish to remind the Committee that it had to work with the DNRC and that, regardless of what the

Committee thought, it was not guaranteed State Land Board approval of the Neighborhood Plan. The Committee did not “have the State Land Board in its pocket.”<sup>128</sup>

After this eventful Advisory Committee meeting, the group under Zeller’s leadership pushed to get the plan finished. The process had been dragging on months longer than anyone anticipated. With the upcoming November 2004 elections, the group also felt pressure to present a completed Neighborhood Plan to the State Land Board before any potential administration changes occurred. Their October 2004 deadline, articulated in the Top of the Mountain document, was chosen with the potential implications of these impending elections in mind.

### **APPROVAL AND IMPLEMENTATION OF THE NEIGHBORHOOD PLAN**

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

- Conservation easements
- Conservation development (an approach that involves limited development on a property such that open and productive qualities of land are protected)
- Public purchase of development rights or land
- Land exchanges
- Permitted recreational trail systems<sup>131</sup>

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

Once the Plan was finished, the Committee held a final public hearing on September 9, 2004, to provide the community with a final opportunity to comment on the document. To the Committee’s surprise and frustration, many citizens at the hearing seemed unfamiliar with what had become to them basic trust land issues. Thus, the group spent a portion of the meeting reviewing trust lands 101 again.<sup>133</sup> From the DNRC’s perspective, though, this public hearing was a tremendous success because the Committee members, not the agency, explained the legal mandate to the community. According to Unit Manager Greg Poncin,

“that’s about as rewarding as it gets. A year and a half ago, people didn’t even know what school trust land was. Now they’re defending it to their neighbors as a good thing.”<sup>134</sup>

On November 15, 2004, Bob Sandman, Committee Chairman Alan Elm, local residents Jeff Gilman and Marshall Friedman, and former Sonoran Institute representative Diane Conradi traveled to Helena to present the completed Plan to the State Land Board.

Also at the State Land Board meeting were some of the beneficiaries that the Advisory Committee had turned away from the process back in January. They voiced their concern with the Plan because a beneficiary representative was not on the Advisory Committee. They further worried that the Plan would not generate the revenue necessary to satisfy the State Land Board’s fiduciary obligations. A MonTrust representative also testified, raising several legal questions and requesting that the Plan not be adopted until answers were provided.

Despite these objections, the State Land Board unanimously approved the Whitefish Neighborhood Plan.

Subsequently, both the city of Whitefish and Flathead County approved the Plan, incorporating it into their growth policies.<sup>135</sup>

**Table 11-2: Whitefish Neighborhood Planning Process Timeline**

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

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

Recognizing that “the ball is in [their] court” to make the Plan happen, the Whitefish community has begun taking action.<sup>139</sup> Two informal groups have formed out of the Whitefish Advisory Committee – the Lewis and Clark Group and the Whitefish Community Open Lands Alliance (COLA) – to help implement the Plan. Members of COLA include Committee participants Marshall Friedman, Diane Conradi, Alan Elm and Mayor Feury. At the September 6, 2005 City Council meeting, the city announced that it would take the lead



in building a recreational trail on trust lands that would circle Whitefish Lake. Under this plan, the city of Whitefish would become the first party to submit an application to the DNRC under the Whitefish Neighborhood Plan.<sup>140</sup> With this at the forefront, COLA is working with Mike Goguen who wants to purchase large tracts of trust land in the Spencer Mountain and Beaver Lake areas to maintain as open space. Because of the community's feelings about the increasing privatization of Whitefish property, the group is treading lightly with this project. Since some of the property Goguen wants to preserve falls along the planned recreational trail, the group is hoping to portray this deal as a way to increase community access to these trust lands.<sup>141</sup>

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

### **THE ANALYSIS: THE WHITEFISH NEIGHBORHOOD PLANNING PROCESS**

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

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

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

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

### **WAS THE WHITEFISH NEIGHBORHOOD PLANNING PROCESS COLLABORATIVE?**

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

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

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

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

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

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

**Degree of Transparency:** The DNRC initiated the Whitefish Neighborhood Planning Process with the intention of holding a series of public meetings and smaller breakout groups

to gain the community's input and provide progress updates. The agency did not plan to involve the public in the actual drafting of the plan. Nor did the DNRC intend to inform the community of the private donations used to fund Janet Cornish's contract.<sup>148</sup> Consequently, during these early months of the process, the DNRC made substantive decisions behind closed doors thereby compromising the transparency of the planning effort.

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

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

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

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

## **BENEFITS OF THE PROCESS**

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

## **Development of Professional and Personal Relationships**

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

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

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

## **Mobilization of Stakeholders**

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

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

In addition to supplying creative implementation ideas, the Advisory Committee brought resources to the decision-making process that otherwise would not have been available to the DNRC. Committee members dedicated significant resources to help complete the Neighborhood Plan. They fundraised and paid for a significant portion of Marty Zeller’s contract. They also volunteered hours of personal time to this process. DNRC Unit Manager Greg Poncin acknowledged this time commitment: “It’s not that common that you find members of a community who are so passionate that they would dedicate hundreds, if not thousands, of hours of their time to something as specific as this with no compensation. The state of Montana owes them a huge debt of gratitude.” Furthermore, the agency benefited

from the interest, expertise and innovative ideas that Committee members brought to the table.<sup>156</sup> Assistant Attorney General Candace West speculated that Committee members “came up with management and funding ideas that the DNRC probably wouldn’t have thought of if they were doing the plan on their own.”<sup>157</sup>

### **Equal Allocation of Decision-Making Power**

By making the DNRC an Advisory Committee member rather than an entity separate from the Committee, the Whitefish Neighborhood Planning Process provided non-agency Committee members with not only a voice in the process, but equal decision-making power. This power dynamic enabled the Whitefish community to move beyond being a sounding board or a rubber stamp for the DNRC to become an active participant in the crafting of the Neighborhood Plan. As with the mobilization of stakeholders, discussed above, this change significantly benefited the community because it ensured that the plan would reflect local interests. Indeed, no one denies that the plan probably would have included more than four percent allowable development had the Advisory Committee not been involved in the planning process. The fact that the Whitefish Neighborhood Plan is not a regulatory document does not lessen the significance of this benefit because three levels of government – the state, county and city – have committed to using the plan to guide future land use decisions.<sup>158</sup>

### **Improved Relationships within the Community**

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

### **Enhanced Public Understanding of Trust Land Management**

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

## The Whitefish Neighborhood Plan

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

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

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

## Conservation Benefits

While there are members of the Advisory Committee and DNRC who are unhappy with the balance struck in the Neighborhood Plan between open space and development, they agree that the planning process produced conservation benefits.<sup>170</sup> Pursuant to the advisory Whitefish Neighborhood Plan, only four percent, or 520 acres, of the 13,000-acre area may be developed (Figure 11-6). The plan also makes use of such tools as conservation easements and land exchanges to limit the local impact of trust land development. By preserving open space, the plan also indirectly will protect habitat for a variety of wildlife including grizzly bear, lynx, moose and elk, as well as environmental quality, particularly the water quality of Whitefish Lake.

**Figure 11-6: Whitefish Lake and Surrounding Landscape**



Source: Photograph by Jessica Mitchell

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

## COSTS OF THE PROCESS

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

### Time Costs

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

meetings.<sup>173</sup> With bimonthly meetings for approximately nine months (November 2004 – August 2004), the time costs imposed by the Whitefish Neighborhood Planning Process thus were substantial.

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

### **Financial Costs**

In addition to time costs, the planning process imposed monetary expenses. While the DNRC did not pay for Janet Cornish's \$50,000 contract (because of the two private donations), her services nonetheless were financially expensive. Moreover, the DNRC had significant staff and resource costs as a result of this lengthy, labor-intensive process.<sup>177</sup> Committee members also faced financial costs. In addition to hosting a community cocktail party, many Committee members donated money to help pay for Marty Zeller's contract.<sup>178</sup>

### **Criticism and Emotional Costs**

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

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



## **CHALLENGES AND RESPONSES**

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

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

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

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

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

### **Montana's Bi-Level Trust Land Management Structure**

The Whitefish Neighborhood Planning Process also struggled to operate within Montana's bi-level trust land management structure. As discussed earlier, the State Land Board and DNRC share trust land management responsibilities. While the State Land Board has final

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

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

### **Mixed Messages from DNRC**

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

context of the PEIS. The fact that DNRC Planner David Greer was promoted from working on the Whitefish Neighborhood Plan to help complete the PEIS only added to the Committee's confusion and suspicion.<sup>194</sup>

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

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

### **Mutual Mistrust between the Advisory Committee and DNRC**

The DNRC's mixed messages perpetuated the Advisory Committee's fervent mistrust of the agency. From the outset of the process, many in the community viewed the DNRC as "the big bad wolf looming on the horizon."<sup>201</sup> According to Committee member Paul McKenzie, this suspicion "torpedoed the ability to do a good planning process. It took a lot of options away from the very beginning."<sup>202</sup> For example, the group spent many Committee meetings arguing over rumors and minute details like the order of policies instead of focusing on such substantive issues as the policies themselves. Whitefish Chamber of Commerce President

Sheila Bowen remembers spending hours debating the meaning of seemingly-benign words.<sup>203</sup> In addition, the Committee's mistrust of the DNRC hindered the group from coming to a consensus about important underlying issues like Montana's trust mandate. As mentioned, the DNRC's efforts to educate the Committee about trust land management were not well-received because the agency was viewed as biased and untrustworthy.

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

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

### **Mistrust within the Advisory Committee**

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

Time proved important to addressing the mistrust within the Advisory Committee. Group activities like the field trip to the local trust land sub-areas also probably helped the group overcome this challenge. Furthermore, the "Top of the Mountain" document, which focused on a common goal rather than individual efforts or ideas helped unite the Committee. While some Committee members remain suspicious of "imports" and "newbies," participants say that the group was able to get past labels and build trust within the Advisory Committee.<sup>207</sup> According to Committee member Paul McKenzie, "we had enough opportunities to discuss

our differing points of view that ... we realized that we weren't quite so far apart on these things."<sup>208</sup>

### **Identification of Interests and Hidden Agendas**

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

Committee members also struggled with hidden agenda issues. As discussed, many believed that the DNRC was not honestly portraying its interest in the 13,000 acres. The fact that the agency was not forthcoming with information about the area only perpetuated this belief.<sup>211</sup> Some Committee members questioned the true intentions of each other, as well. This issue arose not only with Marshall Friedman and Jeff Gilman, as explained by Poncin, but also with former Flathead County Superintendent Donna Maddux. According to Maddux, she assumed the responsibility of representing the beneficiaries' interests because the beneficiaries were not on the Committee.<sup>212</sup> But, several Committee members mentioned that it often was not clear during the process whether Maddux was representing the beneficiaries' interest in properly managing the trust or personal interests in land conservation.<sup>213</sup>

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

### **Inadequate Process Structure**

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

Neighborhood Plan document before it was presented to the State Land Board. In McKenzie's opinion, the process focused too much on minutia and not enough on the actual planning document.<sup>214</sup>

### **Problematic Facilitation**

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

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

### **Development of a "Shadow Group"**

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

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

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

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

### **Role of the General Public**

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

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

## **FACILITATING FACTORS**

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

### **DNRC Personnel Adjustments**

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

Increasing the involvement of TLMD Administrator Tom Schultz and Unit Managers Bob Sandman and Greg Poncin also helped the process persevere. Schultz may have attended only one Committee meeting, but several Committee members and process stakeholders have said that he was instrumental to the completion of the planning process. State Land Board staffer Kathy Bramer said that “he is about the most accommodating, least-offensive bureaucrat I have ever met ... he listens to people and he says ‘lemme see how we can get that done’ ... He always comes at it from ‘I can do that, I can make that happen.’”<sup>230</sup> Likewise, Sandman and Poncin helped dispel community misperceptions about DNRC intentions. With these local DRNC managers gaining real decision-making authority midway through the process, they also were able to fulfill agreements made with the Advisory Committee, which increased the Committee’s confidence in the agency and the process. Sandman was especially effective in building trust with the Committee, because “in a group setting, he can deliver a really good pep talk.”<sup>231</sup> Similar to Schultz, several Committee members have singled Sandman out as integral to the completion of the neighborhood planning process.

### **Leadership**

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



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

### **Community’s Decision-Making Power**

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

### **Marty Zeller**

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

### **Community’s Relationship with State Land Board and Individual Political Connections**

That said, the Whitefish community’s ongoing relationship with the State Land Board and individual political connections were important to this planning process. Without access to State Land Board members like State Auditor John Morrison, the community never may have been able to reroute the process and develop an Advisory Committee. The community’s

perceived influence at the State Land Board also came into play during the drafting of the Neighborhood Plan. Many Committee members felt comfortable severely limiting development of the 13,000 acres because they thought their political connections increased the likelihood of State Land Board approval. Indeed, despite restricting development to four percent of the study area, the bipartisan State Land Board unanimously approved the Whitefish Neighborhood Plan in November 2004. These political relationships remain important as the Whitefish community transitions into the implementation phase of the process. According to one Committee member:

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

### **Montana's Bi-Level Trust Land Management Structure**

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

### **The Whitefish Community**

Finally, the Whitefish community was a significant facilitating factor in this neighborhood planning process. As exemplified by the public outcry at the first DNRC public meeting back in May 2003, the citizens of Whitefish have a strong sense of community. According to Mayor Feury, "We are a community that does not like to take 'no' for an answer ... people here know that they can make a difference."<sup>240</sup> This dedication was apparent throughout the 18-month process, as Committee members and the public remained committed to drafting a Neighborhood Plan that would be good for their families and neighbors.

Ironically, the community's increasing affluence played an important role in the success of the planning process. Without the community's fundraising capabilities, it would have been difficult for the group to afford Marty Zeller. In addition, the Committee drafted the Neighborhood Plan with their wealthy neighbors in mind, assuming that they will provide resources to employ some of the more ambitious and untraditional tools in the plan. Some have said that this planning process and Neighborhood Plan could only happen in Whitefish because of its wealth. According to State Land Board staffer Kathy Bramer, local affluence enabled people to propose policies in the plan that they otherwise could not have proposed.<sup>241</sup> Mayor Feury viewed the situation as a "weird symbiotic relationship." While he admitted

that the plan leverages the community's increasing affluence, he also noted that there probably would not have been a need for a neighborhood plan in the first place if these residents had not started moving to Whitefish and driving up property values.<sup>242</sup>

## LESSONS LEARNED

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

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

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

Recognizing up front that an Advisory Committee is not appropriate for all agency decisions enables the DNRC to participate in such collaborative processes without worrying that they have completely abandoned more traditional decision-making procedures. That concern fueled much of the unrest within the DNRC when Schultz endorsed the Advisory Committee back in August 2003.<sup>244</sup> Assessing the appropriate level of community involvement at the outset of an agency decision-making endeavor also helps deal with the problem of forcing the DNRC into someone else's process, which inevitably generates frustration and mistrust. Several Committee members have said that if the DNRC had responded to community outcry about the public's involvement in the process by proposing an Advisory Committee, the group would have gained agency and community buy-in and mutual mistrust would have been less of a problem.<sup>245</sup>

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

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

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

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

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

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

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

If there is disagreement about the description and scope of the end product, as was the case in the Whitefish Neighborhood Planning Process, the advisory group and agency must resolve that difference of opinion before moving forward. The process also needs a clear timeline and deadline. TLMD Administrator Tom Schultz said that "collaboration without a timeline is doomed to fail."<sup>251</sup> According to Advisory Committee member Paul McKenzie, the Whitefish process lacked a timeline; it only had a deadline. Together, a timeline and deadline provide the process with structure, as well as an end goal.<sup>252</sup> Unit Manager Greg Poncin

emphasized, though, that the stakeholders not be in a hurry, since this type of process is time-consuming.<sup>253</sup>

To establish the proper foundation for the process, the agency and advisory group need to develop decision-making guidelines, as well. Deciding up front whether the group will vote on issues or require unanimous consensus can help prepare the group for important decisions like those that were made when the shadow group enacted Roberts Rules of Order in July 2004.<sup>254</sup> Likewise, establishing ground rules for participant conduct during and outside of the meetings can help prevent the formation of a shadow group in the first place. Finally, to avoid unproductive debates about minute details, Whitefish Chamber of Commerce President Sheila Bowen recommended drafting a glossary at the outset of the process to ensure a common understanding of important words and issues.<sup>255</sup>

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

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

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

Politics played a key role in the Whitefish Neighborhood Planning Process. As a body of elected officials, the State Land Board inevitably has to cater to its constituents. In the Whitefish case, many pointed to this reality as a reason why the Ad Hoc Committee gained access to State Auditor John Morrison and, in turn, the State Land Board to petition for decision-making power in the planning process.<sup>258</sup> In addition to legitimizing the community’s role in the planning process, this political access and perceived political support motivated a faction of the Advisory Committee to enact Roberts Rules of Order. Being more aware of this political access, as well as the potential manipulation of that access, perhaps could have prevented such a takeover. Indeed, after that event, the State Land Board and the DNRC made a concerted effort to present a more united front to prevent future strategic moves.<sup>259</sup>

While the bi-level trust land management structure and political nature of the State Land Board is not common to all states, politics will play a role in most, if not all, collaborative planning efforts on state trust lands. Trust land management raises constitutional and legislative issues which bring with them political considerations. Moreover, these planning

efforts often pose jurisdictional challenges as state and local governmental entities work to manage trust land parcels. Acknowledging the political context of these collaborative efforts and being aware of the effect politics can have on the process is thus important for all collaborative processes on state trust lands in order to prevent strategic manipulation of the politics to the detriment of the process.

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

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

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

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

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

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## **SECTION III: CROSS-CASE ANALYSIS**

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# CROSS-CASE ANALYSIS

## INTRODUCTION

This research project examined eight cases of collaborative planning on state trust lands in the American West. For each case, researchers conducted in-depth interviews with participants and developed case studies describing the events that occurred and analyzing the benefits, costs, challenges, facilitating factors and lessons that can be extrapolated from each collaborative planning experience.

Looking across these eight cases reveals several critical issues that influenced the dynamics of each collaborative process and ultimately affected its outcome. The common themes affecting the processes include:

- Elements for motivating and maintaining participation
- How groups dealt with legal constraints
- The influence of agency structure and politics
- The effects of the collaborative process design
- How issues of leadership and interpersonal dynamics affected processes
- How groups obtained and incorporated scientific information in the process

Understanding the unique nature of state trust lands and the challenges and opportunities that arise when diverse parties work together, it is not surprising to see similar themes among the cases. However, each case is unique in how these issues played out and how the collaborative group managed them.

The following chapters explore how each of these themes affected the collaborative processes and their final outcomes. The purpose of the cross case analysis is to draw out the common lessons from the cases to inform future efforts to pursue collaborative strategies on state trust lands. From these lessons we can identify best management practices for collaborative planning and a set of broader policy recommendations to further enable effective collaborative efforts on state trust lands in the future. The discussion of these best management practices and policy recommendations follows the cross case analysis in Chapters 21 and 22.



## CHAPTER 12

### WHAT MAKES A PLANNING PROCESS COLLABORATIVE?

To measure the degree to which the eight cases were collaborative, the research team identified three central characteristics of collaboration: breadth of stakeholders, transparency of the process and shared influence on decision making. The collaborative processes examined in this report each contain elements of these characteristics. This chapter explores the three characteristics of collaboration, comparing and analyzing the presence and importance of each in the cases.

#### **DEFINING COLLABORATION**

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Scholars of collaboration define collaboration in a variety of ways, but all share the common theme of people working together to achieve a goal. Gray describes collaboration as “The pooling of appreciations and/or tangible resources ... by two or more stakeholders ... to solve a set of problems which neither can solve individually.”<sup>1</sup> Other scholars emphasize the element of shared authority by describing collaboration as “a joint decision-making approach to problem resolution where power is shared and stakeholders take collective responsibility for their actions and subsequent outcomes from those outcomes.”<sup>2</sup>

Drawing on these and other definitions in the literature, the research team developed the following definition of collaboration to inform our research on collaborative planning processes on state trust land:

Collaboration is a process whereby individuals or organizations, often with widely varied interests, work together to share knowledge and resources to achieve mutually beneficial goals.

From this definition, the research team identified major characteristics of collaboration as:

- Breadth of stakeholders
- Transparency of the process
- Shared influence in decision making

Breadth of stakeholders refers to the meaningful involvement of a diverse set of stakeholders such that all key interests are represented. Effective collaborative processes also require transparent communication among participants in the process, through meetings, agreements and decisions. Collaboration also calls for at least some degree of influence on decision making for all participants. Influence differs from authority. Agencies alone must exercise their statutory obligation to make management choices, but other parties can be given power to influence these choices through involvement in a meaningful problem solving process that measurably changes the outcome to all parties' satisfaction.

This chapter explores these three characteristics of collaboration, as found in each of the eight cases, and the effect that each had on different aspects of the process.

## BREADTH OF STAKEHOLDERS

Finding an effective balance of interests is important for the success of collaborative processes. Having too few interests represented may make implementation of the final decision more challenging because of an inadequate amount of support built within the group. However, sometimes having too many interests represented can overwhelm the process and make it less effective. In the Castle Valley Planning Process, Castle Valley Mayor Bruce Keeler noted the importance of this balance: “You’ve got to know that your collaborative group is representative of the overall community, because you could go through all the collaborative efforts you want, but if the group representing the community is not accepted, then it’s all for nothing.”<sup>3</sup>

Representation, or “breadth of stakeholders,” varied across the cases (Table 12-1). The breadth of stakeholders involved in each of the eight cases was evaluated according to the following scale:

- **Low:** Too many or too few interests were represented. Several interested parties either chose not to participate in the collaborative planning process or were actively excluded. The progress of the process was significantly affected.
- **Medium:** One or two parties were under- or over-represented. One or two interested parties did not or could not participate in the collaborative planning process. The progress of the process was minimally affected.
- **High:** There was a balance of interests represented in the process. No important parties were precluded from participating in the collaborative planning process. The process did not suffer from problems relating to representation.

**Table 12-1: Breadth of Stakeholders**

CASE	Breadth of Stakeholders
Castle Valley Planning Process	Medium –
Elliott State Forest Planning Process	Medium
Emerald Mountain Planning Process	Medium –
Houghton Area Master Plan Process	High
Lake Whatcom Landscape Planning Process	Medium
Mesa del Sol Planning Process	Medium +
Southeast New Mexico Working Group	Medium +
Whitefish Neighborhood Planning Process	Medium

The Houghton Area Master Planning Process is a clear example of a process with a broad and inclusive breadth of stakeholders. All of the participants interviewed thought the City of Tucson’s Department of Urban Planning and Design did a good job identifying the range of

interests to be included in the process and that the Citizens Review Committee had balanced representation from among these interests.

In contrast, the limited breadth of stakeholders represented in the Emerald Mountain Partnership created some challenges for the planning process. At the outset of the Emerald Mountain planning process, a diverse set of representatives from grazing, recreation, wildlife and open space interests worked together to try to come up with ways to enable the State Land Board to achieve revenue from Emerald Mountain without development. However, when the solution of a large-scale land exchange became the focus of the Emerald Mountain Partnership's (the Partnership) planning efforts in 2002, the group neglected to reach out beyond the Steamboat Springs community to bring county-based stakeholders into the Partnership's membership. Yet the project's scope had shifted from a city conservation effort to a county-wide land exchange. The Partnership had attempted to create this balance in their original bylaws by establishing two appointed membership positions for both the Routt County Commissioners and the Steamboat Springs City Council. However, the County appointees in 2002 happened to be residents of Steamboat Springs. This narrow geographic representation made some county residents resent the Steamboat Springs-based group selling off Bureau of Land Management land to create a "playground" in their backyard. Had the county had clearer representation on the Partnership, it is unclear whether they would have selected the land exchange at all, or perhaps have designed it to be less controversial to surrounding communities.

### **Participant Selection**

One factor that influences representation is the way that participants are selected and recruited to be involved. In the eight cases, participants were chosen in a variety of ways: using a pre-determined set of criteria to make up the group, recruiting participants based on potential interest, providing an open invitation to join the group and allowing membership to evolve throughout the process (Table 12-2).

Among the eight cases, the ways that participants were selected varied greatly between processes. The Lake Whatcom Landscape Planning Process was the only case where the make-up of the group was pre-defined, as the process was legislatively created. Five cases had a structured recruitment process to fill seats at the table, though the final make-up was not completely pre-defined. This left room for permitting interested parties to join the process, but also gave the state trust land agency the power to permit or deny some interested parties. Leaders of the Elliott State Forest Planning Process were explicit in selecting only parties with an economic interest in the forest's management. The Department of State Lands and Oregon Department of Forestry recruited several state forest and wildlife experts, a county government official, and later, a local beneficiary representative. Though they could not participate directly in Steering Committee meetings, the public, environmental and timber lobbying groups could give input on the process during public meetings and submit comments on all of the draft management plans.

**Table 12-2: When and How Participants Were Chosen to be Involved**

<b>CASE</b>	<b>Group make-up defined at the outset by the state or beneficiary</b>	<b>Final make-up not completely pre-determined; Members recruited</b>	<b>Open invitation; Final make-up not at all pre-determined</b>	<b>Evolved as process went along</b>
<b>Castle Valley Planning Process</b>				✓
<b>Elliott State Forest Planning Process</b>		✓		✓
<b>Emerald Mountain Planning Process</b>		✓		✓
<b>Houghton Area Master Plan Process</b>		✓		
<b>Lake Whatcom Landscape Planning Process</b>	✓			
<b>Mesa del Sol Planning Process</b>			✓	
<b>Southeast New Mexico Working Group</b>		✓		
<b>Whitefish Neighborhood Planning Process</b>		✓	✓	

Two of the cases included an open invitation to participation in the collaborative effort, and there was no pre-defined group structure. For example, in the Mesa del Sol Planning Process, the State Land Office worked closely with the beneficiary on the development of the plan, but welcomed the participation and input of other interested groups. In the Whitefish Neighborhood Planning Process, newspaper and email advertisements were used to solicit participants from the community for the Advisory Committee. Mayor Andy Feury and Flathead County Commissioner Gary Hall, the two community leaders tasked with determining Committee membership, received approximately 45 responses to these advertisements. The Whitefish Advisory Committee Charter, which was jointly developed by several community members and the Montana Department of Natural Resources and Conservation, outlined the Advisory Committee’s purpose and listed an initial set of interest groups who should be represented. Using this Charter as a guide, Mayor Feury and Commissioner Hall selected approximately 12 members and two alternates to sit on the Advisory Committee.

This final group did not include representatives of the trust land beneficiaries, motorized vehicle users, or Whitefish lakeshore residents. It remains to be seen if the absence of the latter two groups resulted in a flawed plan, however conflict already has arisen over

motorized vehicle use on the planned recreational trail around Whitefish Lake.<sup>4</sup> In contrast, the exclusion of a beneficiary representative from the planning process fueled existing tension and mistrust between the DNRC and the Advisory Committee during the planning process. Once the Whitefish Neighborhood Plan was complete, beneficiary groups lobbied the State Land Board to reject it and these groups may pose future challenges for the Plan through lobbying efforts or litigation.

Three of the eight cases began with one set of representatives and concluded with a different set. The Emerald Mountain Planning Process invited a mix of community interests to participate in an informal Core Group at the outset, which then evolved over several years. This eventually resulted in the formation of the Emerald Mountain Partnership (the Partnership), a 501(c) (3) organization that included a Board of Directors with appointees from both the city of Steamboat Springs and Routt County, and a set of additional community members elected by those representatives. The Partnership also had an Advisory Council composed of non-voting parties with “a land ownership interest who would benefit from Emerald Mountain,” or possessed knowledge or expertise helpful to the process.<sup>5</sup> The segregation of those with vested interests in the Emerald Mountain parcel into the Advisory Council disillusioned one stakeholder who had been involved with the planning process from the beginning. Rancher Jim Stanko describes how the shift left him disenfranchised: “When it comes down to actually making the decision, or coming up with something, I don’t have a say in it.”<sup>6</sup> Perhaps the decision to distinguish between the two classes of stakeholders was necessary to maintain credibility, as was legally advised; however, it is unclear whether that benefit outweighed the cost of losing the participation and endorsement of such a critical stakeholder. Also, as mentioned above, Routt County representation in the Partnership eroded over time, leaving an organization comprised only of Steamboat Springs residents. This narrowing of stakeholder representation fueled the controversy and opposition that erupted when the Partnership proposed a land exchange, which benefited the City at the cost of other areas in Routt County.

### **Beneficiary Involvement**

Trust beneficiaries receive revenue from state trust land activities and therefore have an interest in trust land management decisions. Whether beneficiaries are formally organized and how they are involved in state trust land agency decisions varies from state to state. For example, in many states, beneficiaries organize via the Children’s Land Alliance Supporting Schools (CLASS), a group that actively engages state trust land agencies regarding land management. In states like Arizona, however, beneficiaries are not formally organized. Trust beneficiaries were involved in the eight cases of collaborative planning in a variety of ways (Table 12-3).



**Table 12-3: Beneficiary Involvement**

<b>CASE</b>	<b>Group participant</b>	<b>Consulted/ informed of group's progress, but not at the table</b>	<b>Not involved</b>
<b>Castle Valley Planning Process</b>		✓	
<b>Elliott State Forest Planning Process</b>	✓		
<b>Emerald Mountain Planning Process</b>			✓
<b>Houghton Area Master Plan Process</b>			✓
<b>Lake Whatcom Landscape Planning Process</b>	✓		
<b>Mesa del Sol Planning Process</b>	✓		
<b>Southeast New Mexico Working Group</b>			✓
<b>Whitefish Neighborhood Planning Process</b>			✓

In three cases, representatives from beneficiary groups were directly involved in the collaborative group. The Steering Committee in the Elliott State Forest Planning Process did not originally include a beneficiary representative. However, three years into the planning process the Oregon Department of State Lands decided to bring a beneficiary representative into the Steering Committee to share their perspective. This move to include beneficiaries in the Elliott State Forest decision-making process was part of a state-wide movement in which the beneficiaries are becoming increasingly active in Common School Land management. While beneficiaries were not involved directly in the Castle Valley Planning Process, the Utah School and Institutional Trust Lands Administration (SITLA) Director and staff met regularly with Margaret Bird, the Beneficiary Representative for the Utah State Office of Education and one of the directors of the Children’s Land Alliance Supporting Schools (CLASS).<sup>7</sup> This close contact helped ensure that SITLA honored the beneficiaries’ interests throughout the planning process.

There are different perceptions of how beneficiary involvement in collaborative planning efforts affected the outcome. For example, Chuck Bennett, Director of Government Relations for the Confederation of Oregon School Administrators, a state-wide beneficiary lobbying group, mentioned the importance of “literally showing up at the meeting where the discussion is occurring ... We have gotten more money because we have gotten more involved.”<sup>8</sup> In the Mesa del Sol Planning Process, the beneficiary, the University of New Mexico, became involved when they sued the state over an auction they believed to have sold state trust land for below market values. The University’s lawsuit spurred close collaboration with the state, resulting in a revenue-maximizing development plan sensitive to community interests.

In four cases, the beneficiary was not involved, which also affected the outcome of the process in a variety of ways. In the Whitefish Neighborhood Planning Process, for example, the Advisory Committee explicitly voted to exclude the beneficiary from the process. Some parties felt that the beneficiary's interests already were represented on the Committee because the group included the former superintendent of Flathead County schools, as well as the Department of Natural Resources and Conservation (DNRC). However, some people argued otherwise. In the end, beneficiary representatives spoke out against the Neighborhood Plan and requested that the State Land Board not approve it, believing the Plan may not generate the necessary revenue to satisfy the DNRC's fiduciary responsibility. Though the State Land Board approved the Plan, it appears that active beneficiary involvement may have helped avoid the suspicions and discontent that arose when the beneficiary was excluded.

Sometimes the beneficiary may not be directly involved in the planning process but can still influence the outcome. For example, in the Castle Valley Planning Process, the beneficiary did not actively participate, but nevertheless influenced the trust land agency's position and actions through conversations outside the formal process. Additionally, in some states like Arizona, there are instances where there is no organized beneficiary group to get involved in the process. However, in the case of the Houghton Area Master Plan Process, this did not appear to have a deleterious effect on the potential revenue for the beneficiaries.

## **TRANSPARENCY**

Transparency fosters trust and positive relationships among group members, and in some cases figured prominently in the success of a collaborative process. Increasing access to information for outside parties, the public and between group members promotes transparency. Transparency can also be built into the structure of a process. For example, the Lake Whatcom Landscape Planning Process incorporated a ground rule that permitted dissenting voices to draft a report detailing their opposition to a proposed decision. This strategy encouraged consensus on all decisions and made it explicitly known why a party or parties disagreed with the majority.

The eight cases of collaborative planning explored in this report varied as to how transparent they were (Table 12-4). The level of transparency in each of the cases was evaluated using the following definitions:

- **Low:** Little information was shared among group participants. It was difficult or even impossible for the public to obtain information on the process. It was not unusual for actions to be taken without the entire group's knowledge.
- **Medium:** Most information was shared among group participants. Some effort was made to ensure public access to group information. Some actions may have been taken without the entire group's knowledge.
- **High:** All or nearly all information was shared among group participants. Public access to group information was not a problem or was even encouraged. The group

rarely, if ever, encountered problems with actions being taken without the entire group’s knowledge.

**Table 12-4: Level of Transparency**

<b>CASE</b>	<b>Level of Transparency</b>
<b>Castle Valley Planning Process</b>	Medium –
<b>Elliott State Forest Planning Process</b>	Inside = High; Outside = Medium
<b>Emerald Mountain Planning Process</b>	High
<b>Houghton Area Master Plan Process</b>	Medium
<b>Lake Whatcom Landscape Planning Process</b>	High
<b>Mesa del Sol Planning Process</b>	Medium +
<b>Southeast New Mexico Working Group</b>	Medium +
<b>Whitefish Neighborhood Planning Process</b>	Medium

The variation in the degree of transparency in the processes is evidenced by the contrast between the Castle Valley Planning Process and the Emerald Mountain Planning Process. For the Castle Valley Planning Process, the level of transparency varied over the course of the project. While members of the Castle Rock Collaboration (CRC) tended to share information freely, the decision-making processes of participating organization such as the town of Castle Valley’s Planning and Zoning Commission were not always clear to other members of the group. Also, the CRC minimally shared information and progress with the Castle Valley community, which contributed to the disintegration of the planning process as it continued. In contrast, the Emerald Mountain Planning Process was highly transparent. To inform and include the public, the Emerald Mountain Partnership (the Partnership) advertised meetings in the paper, posted agendas, minutes, documents and plans on their website and allowed the public to attend and participate in all meetings. The Partnership also held public meetings in Steamboat Springs and several other towns in the county, joined by the State Land Board (SLB) and eventually the Bureau of Land Management, to gather input and share ideas, educate people about the land exchange and solicit public comment. The process was also highly transparent among the different and organizations and individuals involved. Between the Partnership and the SLB, former Director Charles Bedford described the process as “a constant stream of communication.”<sup>9</sup>

**Availability of Information**

Making information available to the public can alleviate feelings of mistrust. When outside groups and the general public enjoyed a high level of access to the collaborative process, less public scrutiny and controversy were evident. Groups accomplished public involvement through a variety of methods (Table 12-5). For example, opening meetings to the public can enable the public to understand how and why decisions were made. The Lake Whatcom Landscape Planning Process allowed the public and media to attend committee meetings, resulting in several press articles and a high sense of transparency.

**Table 12-5: Methods for Involving Parties Outside the Process**

CASE	Info open to public	Public comment welcomed	Meetings open to public/ media	Newsletters/ websites/ other media	Tours of planning area	Open houses/ Townhall meetings
Castle Valley Planning Process		✓	✓ (some meetings, not all)	✓		✓
Elliott State Forest Planning Process	✓	✓	✓	✓	✓	✓
Emerald Mountain Planning Process	✓	✓	✓	✓	✓	✓
Houghton Area Master Plan Process	✓	✓				
Lake Whatcom Landscape Planning Process		✓	✓		✓	✓
Mesa del Sol Planning Process	✓	✓		✓	✓	✓
Southeast New Mexico Working Group			✓ (some meetings, not all)			✓
Whitefish Neighborhood Planning Process	✓	✓	✓	✓	✓	✓

Five of the eight cases distributed information via newsletters, the Internet, or other public information outlets. Because the Castle Valley Planning Process group struggled with making its activities known to the general public, one resident published information in a local newspaper column, the Moab *Times-Independent*, entitled “The Castle Valley Comments.” This method of sharing information helped residents not involved in the process to better understand what was happening.

Without a formal working group, the Mesa del Sol Planning Process relied heavily on a series of informal collaborative strategies. These strategies included an “open-door” policy instituted by Commissioner Ray Powell, permitting the public to come to the New Mexico State Land Office (SLO) and ask questions at any time. The SLO also attended many neighborhood meetings to promote and explain Mesa del Sol. These strategies were

successful in overcoming a widespread negative attitude in Albuquerque surrounding the Mesa del Sol project.

By touring areas under study, facilitators helped the public build a connection to the land. In five cases, the public was invited to tour the affected state trust lands. In the Elliott State Forest Planning Process, the Oregon Department of Forestry led several tours of rare species habitat for members of the Steering Committee and public. This trip allowed the Steering Committee and others to make a visual connection between the planning process and the land. Likewise, members of the Lake Whatcom Landscape Planning Process took periodic walks of the planning sites, which appeared to increase group awareness of the issues affecting the land.

Insufficient transparency can sometimes cause problems, which can require restructuring a process. For example, the Whitefish Neighborhood Planning Process originally did not include an Advisory Committee. Instead, the Department of Natural Resources and Conservation (DNRC) initiated a series of public meetings and smaller focus groups to obtain public input. Consequently, while the DNRC solicited the public's feedback on the neighborhood plan, decision making took place essentially behind closed doors. This approach upset Whitefish community members who petitioned the Montana State Board of Land Commissioners to create a more transparent process. The result of their efforts was a chartered Advisory Committee that gave the community and other stakeholders a formal seat at the table and thereby ensured that they would be involved in decision making.

### **Sharing Information Within the Group**

Making information available to each member of the process by sharing scientific data, distributing meetings notes and being forthright with agreements and alliances can foster trust within a collaborative group. Though all eight cases made efforts to openly share information within the group, processes suffered when this rule was not followed. This disregard resulted in strained relationships and spurred the formation of coalitions within the larger group, resulting in varying degrees of mistrust. In the Whitefish Neighborhood Planning Process, for example, several Advisory Committee members formed an outside "shadow group" that met and made important decisions outside of the Advisory Committee. This faction created mistrust throughout the process and impaired progress.

On the flip side, effective internal group transparency can foster better relationships and enable progress. The Lake Whatcom Landscape Planning Process Committee instituted a "No Surprises" rule prohibiting the release of information to the media before it was shared among all group members. The Committee also shared meeting minutes and other informational material among its members. These practices were aimed at ensuring that Committee members learned of information and decisions together at the table rather than indirectly through the press. This high level of communication within the Committee helped build trust among its members. As one participant noted, "There was more mutual understanding, respect and to some degree trust" after the planning process.<sup>10</sup>

## SHARED INFLUENCE ON DECISION MAKING

Collaborative processes take a different approach to decision making than traditional, top-down approaches in that they assume a certain amount of joint decision making.<sup>11</sup> This decision-making power describes a party’s ability to influence the final decision on an issue. It is important to clarify that the term “decision-making power” is different from “decision-making authority,” or the ability to make the final decision. State trust land agencies cannot, nor should they abdicate their decision-making authority to outside parties. However, other parties can have a chance to influence decision making to create mutually satisfactory outcomes.

The eight cases of collaborative planning explored in this report had varying degrees of influence on decision making (Table 12-6). This influence could affect decisions within the group as well as outside policy and implementation of management strategies. The degree of influence on decision making in each of the cases was evaluated using the following definitions:

- **Low:** Decision-making influence was concentrated among one or few parties. The working group as a whole felt it had little or no influence on decision making.
- **Medium:** Decision-making influence was shared to an extent, but was still somewhat concentrated. Some in the working group felt they did not have adequate influence on decision making.
- **High:** Decision-making influence was shared to the maximum amount possible. The working group felt it had adequate influence on decision making.

**Table 12-6: Influence on Decision Making**

CASE	Shared Influence on Decision-Making
Castle Valley Planning Process	Medium +
Elliott State Forest Planning Process	Low (Decision-making influence was diffused)
Emerald Mountain Planning Process	Medium
Houghton Area Master Plan Process	Medium
Lake Whatcom Landscape Planning Process	Medium
Mesa del Sol Planning Process	High
Southeast New Mexico Working Group	Medium +
Whitefish Neighborhood Planning Process	High

The Whitefish Neighborhood Planning Process’s Advisory Committee had a large amount of influence on decision making. Members of the Committee shared decision-making power with the Montana Department of Natural Resources and Conservation in crafting the Whitefish Area Neighborhood Plan, since both were participants at the table. This plan, which defines future uses for area trust lands and provides a framework for reviewing and evaluating future land use proposals, has been approved by the Montana State Board of Land

Commissioners, city of Whitefish and Flathead County. In contrast, the Elliott State Forest Planning Process afforded the Steering Committee and Core Planning Team members with a low level of decision-making influence. Due to the fact that multiple agencies were at the table and working within the confines of the federal Habitat Conservation Plan (HCP) process, the Planning Process had to occur within a highly bureaucratic environment. Both plans had to be approved by separate Boards and the HCP had to also be signed off on by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. As the plan moved through these multiple rounds of consideration, the Committee had to work within an increasingly restricted space and ultimately had a diffused degree of influence on the decision-making process.

### **Influence on Group Decision Making**

Seven of the eight cases were rated to have a medium or better level of shared influence on decision making within the collaborative group. This degree of influence was most often accomplished by establishing a set of rules or guidelines to ensure that most or all parties had an adequate say in decision making. State trust land agencies did not give up their ultimate decision-making authority, but rather allowed management strategies to be shaped by participant input.

One method to promote shared decision making within a collaborative group was a consensus rule. For example, for its final conservation plan, the Southeast New Mexico Working Group conducted decision making with a simple “thumbs up or down” approach. One “thumbs down” could block the process, a rule that gave all parties a significant amount of influence on the final decision.

Shared influence on decision making was also possible without a formal working group. In the Mesa del Sol Planning Process the New Mexico State Land Office met with the community to listen to concerned parties and made honest attempts to incorporate their suggestions where feasible. As a result of this informal collaborative strategy, several community-suggested design elements were incorporated into the final development plan, including a large open space buffer adjacent Sandia National Laboratories, water wells located away from the Isleta Pueblo and new urbanism design. By and large, this approach was successful in creating an atmosphere where most parties felt they had adequate opportunity to influence the development plan.

### **Influence on Agency Decision Making and Implementation**

Collaborative processes can also impact agency management policy decisions. While agencies must retain decision-making authority, other parties can be given power to influence policy choices to all parties’ satisfaction. How the parties are able to influence the process is also dependent on how agencies participate. In seven of the eight cases the collaborative groups played an advisory role for the state trust land agencies. The Southeast New Mexico Working Group was the exception because the State Land Office (SLO) was a participant in a process convened to solicit options for a Bureau of Land Management Resource Management Plan Amendment Process. However, the SLO was not bound by the decisions

made in the Working Group but rather worked to create broader land management strategies and better coordination among agencies at the table. The Working Group approved its final conservation plan and is hopeful for its successful implementation.

Unclear or misinterpreted levels of influence on decision making can be problematic in collaborative processes. In such cases, interactions became tense and participants felt confused and frustrated about their roles in the process. This dynamic required additional time spent addressing these issues and sometimes negatively affected relationships among participants. For example, in the Lake Whatcom Landscape Planning Process there was disagreement between the Lake Whatcom Interjurisdictional Committee and the Department of Natural Resources (DNR) over how the Committee's decision-making authority should be interpreted from the legislation requiring the collaborative effort. The issue centered over whether the DNR was a member of the Committee and thus shared decision-making authority among all participants, or whether the Committee was advisory to the DNR. After prolonged disagreement on the interpretation, the group asked for an official interpretation of the Committee's decision-making authority from the Washington Attorney General's Office. In officially clarifying the Committee's decision-making authority, the Attorney General's Office decided that the Committee was advisory to the DNR.<sup>12</sup> Until this decision was made a year and a half into the process, the group's progress had been considerably slowed.

The Houghton Area Master Plan (HAMP) Process highlights a slightly different aspect of the importance of having decision-making authority clearly defined in a collaborative process. It was clear that the Citizens Review Committee (CRC) for the HAMP and the City of Tucson were working in an advisory capacity to the Arizona State Land Department. However, some members of the CRC felt unclear as to how their suggestions on the HAMP were influencing the city's final decisions on the plan.<sup>13</sup> This lack of clear communication, and some participants' perceptions that their input was not influencing the final product, led to attrition within the Committee.

## **IMPACT OF THE DEGREE OF COLLABORATION ON THE PROCESS**

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While several of the cases in this report exhibit a high level of breadth of stakeholders, transparency or influence on decision making, none of them ranked consistently "high" in all of these areas. Similarly, no case was rated as "low" for all elements. As the three elements of collaboration define a multi-faceted collaborative "space," each case in this report occupied a different region of this space. Thus, directly ranking or comparing processes as a whole is not possible. For instance, while the Emerald Mountain Partnership did not have a particularly broad stakeholder membership in relation to the scope of the issues it addressed, the Emerald Mountain Partnership had a medium degree of influence on decision making and the planning process was highly transparent. Many other collaborative efforts, such as the Elliott State Forest Planning Process, had broader stakeholder representation but less influence on decision making. The Elliott State Forest Planning Process further differed from other processes in its distinction between the high degree of transparency among group members and the low degree of transparency for those outside the group. Therefore, each case illuminates different elements of collaboration through the diverse and dynamic nature



of these processes. Overall, as is evidenced in later chapters, the three characteristics of collaboration shape the successes and obstacles groups faced throughout the process.

## CHAPTER 13

### WHAT MOTIVATES AND SUSTAINS A COLLABORATIVE PLANNING PROCESS?

Collaboration is one of many decision-making models used to address natural resource management issues. There are a number of reasons the parties involved in the eight cases of collaborative planning on state trust land discussed in this report chose collaboration over other decision-making models. These cases also provide a range of reasons why the collaborative model was sustained throughout the decision-making process. The following topics inform what motivates and sustains a collaborative process:

- Factors that motivate a collaborative decision-making model
- Reasons parties join a collaborative effort
- Barriers to collaboration
- Factors that sustain collaboration
- Reasons collaborative efforts conclude

#### FACTORS THAT MOTIVATE A COLLABORATIVE DECISION-MAKING MODEL

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Scholars of collaborative processes have identified many reasons why parties choose a collaborative model as a method of decision-making. In some cases, collaboration is chosen because parties have become frustrated with the process and outcome of traditional decision-making models, or have exhausted other options for making progress on resolving an issue.<sup>1</sup> In other cases, individuals and groups turn to collaboration because of the inclusive forum these processes create in which a range of interested parties can come together to work through issues together.<sup>2</sup> In addition, parties often choose collaboration because of a shared sense of threat or a sense of place expressed as concern for the future of an area.<sup>3</sup> Common goals, previous relationships between individuals involved in an issue and public pressure can also motivate the creation of a collaborative process.<sup>4</sup> The nature of the collaborative model also offers the potential for parties to share resources and expertise.<sup>5</sup>

The parties involved in the eight cases explored in this report chose a collaborative model of decision making for a range of reasons. These included a sense of a shared threat, a sense of place, a set of common goals and public pressure (Table 13-1).

**Table 13-1: Factors that Motivated Collaboration**

CASE	Sense of Threat	Sense of Place	Common Goals	Public Pressure
Castle Valley Planning Process	✓	✓		✓
Elliott State Forest Planning Process	✓		✓	
Emerald Mountain Planning Process	✓	✓		
Houghton Area Master Plan Process			✓	✓
Lake Whatcom Landscape Planning Process	✓			✓
Mesa del Sol Planning Process			✓	
Southeast New Mexico Working Group	✓		✓	
Whitefish Neighborhood Planning Process	✓	✓		✓

**SENSE OF A COMMON THREAT**

The sense of a common threat can be a powerful motivating factor in collaborative processes. A common response to a perceived threat is to join together with others to address it. In six of the eight cases a collaborative planning process was convened in response to a sense of a threat. These threats included the potential of increased development in an area valued by local residents for scenic beauty, recreational opportunities or more traditional land uses like ranching; the perception that certain land management practices had the potential to negatively affect public safety; and the potential for restricted use and revenue production activities on state trust land because of the implications of potential endangered species issues.

Following a sale of trust land by Utah’s School and Institutional Trust Lands Administration (SITLA) at the base of Parriott Mesa, a prominent natural feature in the desert surrounding Castle Valley, Utah, residents felt threatened by the possibility that more trust land in the area might be sold. Residents were concerned about the possibility of increased development in the area as a result of this and potential future sales. In response to this perceived threat, a series of events unfolded into the creation of the collaborative Castle Valley Planning Process. The community of Castle Valley reacted in two ways: a citizen group called the

Castle Rock Collaboration (CRC) formed to address concerns surrounding the land sale and the town of Castle Valley expressed interest in rezoning trust land within the boundaries of Castle Valley to much lower density which would discourage development of the land if it were sold in the future.<sup>6</sup> SITLA expressed concern about the potential rezoning and recommended that the community and town engage with SITLA in a collaborative planning process instead of pursuing the rezoning effort. CRC members had similarly considered a collaborative planning process. Thus, the town, members of CRC and SITLA agreed to engage in the collaborative Castle Valley Planning Process that worked to explore options for further development and conservation in Castle Valley. According to John Andrews, Associate Director of Administration for SITLA, “It made more sense to talk than fight.”<sup>7</sup>

Road widening actions taken by the Washington Department of Natural Resources (DNR) in preparation for a timber sale near Lake Whatcom in Bellingham, Washington drew the attention of local community members living around the lake. Because of a destructive landslide in 1983 that many in the community perceived to have been exacerbated by decades-old logging practices in the area, community members felt that the DNR’s intended logging would threaten both their safety and the water quality of Lake Whatcom. In response to this threat, two residents, with the support of hundreds of others in the community, decided to try to work with state legislators to change the forest policy laws in their area. Their efforts ultimately resulted in a bill mandating that the DNR create a collaborative committee for the development of a landscape management plan for the area.<sup>8</sup>

The Montana Department of Natural Resources and Conservation (DNRC) responded to increased development inquiries in Whitefish by initiating a neighborhood planning process. The purpose of the process was threefold: to develop a way to assess potential trust land uses in the area; to address the zoning, infrastructure and public services disparities between trust land and adjoining private property; and to educate local government and members of the public about state trust lands. Some community members felt that the potential development would threaten the traditional timber uses of the land and limit or destroy recreational access to this trust land area. Motivated by these perceived threats, community members persuaded the Montana State Board of Land Commissioners to charter a Whitefish School Trust Lands Advisory Committee to work collaboratively with the DNRC on a neighborhood plan for the area.

In response to rising real estate prices in Steamboat Springs, Colorado, the Colorado State Land Board (SLB) began to consider the possibility of selling a large parcel of state trust land in the area - which happened to comprise a large portion of scenic Emerald Mountain- for development purposes. The area traditionally had been used for grazing and appreciated for its open space and some residents of Steamboat Springs, concerned about increased development already occurring in the area, felt that the potential development of Emerald Mountain further threatened the community’s agricultural heritage and scenic views. Many also valued the area as open space and for the recreational opportunities it could provide, however recreation was prohibited on all Colorado state trust lands. In response to these concerns, the community and the SLB began a collaborative process to develop options for conserving the land and collecting the market value of the parcel for the trust.

Both the Elliott State Forest Planning Process and the Southeast New Mexico Working Group cases are examples of a collaborative process convened to alleviate the threats of a wildlife species being listed as federally threatened or endangered species. There would be significant negative financial repercussions for the state trust land management agencies were this listing to occur. In the case of the Elliott State Forest Planning Process the two agencies that manage the forest, the Oregon Departments of State Lands and Forestry, decided to convene a collaborative planning process to draft a multi-species Habitat Conservation Plan (HCP) for the area. Instead of revising the existing HCP, the agencies decided that developing a plan that included species that might become listed as endangered or threatened would provide them with more long term management certainty. In New Mexico, the State Land Office, the New Mexico Department of Game and Fish, the Bureau of Land Management, conservationists and many in the oil and gas and ranching communities recognized that there was a threat of “tremendous economic fallout” should the prairie chicken and sand dune lizard be listed under the Endangered Species Act,<sup>9</sup> coupled with an opportunity for conservation. In response to this threat and in pursuit of this opportunity, these interests convened to address prairie chicken and sand dune lizard conservation in southeast New Mexico.

## **SENSE OF PLACE**

A sense of place can be a very important element in why collaborative efforts begin. The term is often used to refer to the connection that humans have with their natural surroundings. Places which “display three primary characteristics: a landscape setting, a set of associated activities, and a significance to people.”<sup>10</sup> In three of the eight cases community members’ sense of place played a major role in the initiation of the collaborative planning process. In each of these cases local residents appreciated the state trust land in their community for its beauty, the activities it supported and the meaning its present and future condition held for them.

The residents of Steamboat Springs, Colorado involved in the Emerald Mountain Planning Process were concerned about preserving Routt County’s agricultural heritage and open space. They valued the state trust land on Emerald Mountain for its scenic beauty, rangeland, wildlife habitat and the potential recreational opportunities it could provide. Many felt that the possible sale and development of this land would threaten these elements of the area they cherished. Residents’ mutual concern for the fate of the Emerald Mountain parcel inspired them to begin meeting together to brainstorm potential solutions that could meet the needs of grazing lessees, recreators and adjacent landowners – user groups who had at times been in conflict with one another. This mutual concern and a sense of place was one of the factors that initiated the collaborative Emerald Mountain Planning Process.

The sense of place felt by members of Whitefish, Montana for the state trust land in their area was very similar to that of the residents of Steamboat Springs, Colorado. The beauty, recreational opportunities and traditional timber uses of the land were significant for residents in the Whitefish area. Their interest in conserving the land and in preserving this connection with the landscape was one of the major reasons why the community lobbied the

State Land Board for the creation of an Advisory Committee and hence a more inclusive process.

The small town of Castle Valley, Utah is surrounded by vast amounts of strikingly beautiful open space. Many of the town's residents describe themselves as "urban runaways" or "renegades" and have a sense of place that comes from the solitude and natural beauty offered by such a landscape.<sup>11</sup> The potential for increased development in the area, highlighted by the sale of trust land at the edge of town, motivated many residents to come together to seek a collaborative solution to deal with issues that would negatively affect their sense of place.

## **COMMON GOALS**

The presence of a shared goal or goals also can be a strong motivating factor in the initiation of collaborative processes. Just as people band together in the face of a threat, it is equally natural for people working toward a common goal to seek each other out. In four of the eight cases the recognition and pursuit of a common goal was also a major factor in the creation of the collaborative planning effort.

As part of a comprehensive growth strategy, the City of Tucson's Department of Urban Planning and Design decided to develop the Houghton Area Master Plan in order to guide the development of a large, mostly undeveloped area on the southeast edge of town. The city recognized that its goal of developing the area was shared by that of the majority landowner in the area, the Arizona State Land Department, and that many local residents also had an interest in helping define how the land could be developed. The city's creation of the Citizen's Review Committee provided a collaborative forum within which all interested parties could explore this common goal together.

The common goal pursued in the Mesa del Sol Planning Process was to develop a plan for a large tract of state trust land on the outskirts of Albuquerque, New Mexico that minimized sprawl and maximized revenue for the State Land Office (SLO). Although there was no formal collaborative process followed by the three New Mexico SLO Commissioners who were most involved in the development of the plan, they did pursue an ongoing effort to solicit and encourage input from interested parties.

The overarching reason for the initiation of both the Southeast New Mexico Working Group and the Elliott State Forest Planning Process was to create a plan to help provide long-term management and revenue generation certainty from the uses of the land. In both cases potential restrictions related to federally threatened or endangered species were creating a sense of land management uncertainty for various parties. In both cases the collaborative processes were initiated because of a shared goal to eliminate potential management restrictions by developing plans that either attempted to prevent the need for listing of a species, as with the Southeast New Mexico Working Group, or to mitigate the effects of such an occurrence, as in the Elliott State Forest Planning Process.

## **PUBLIC PRESSURE**

Collaborative processes also are often initiated as the result of public pressure to do so. In four of the eight cases the public's interest in being involved in a decision-making process concerning state trust land led to the initiation of a collaborative planning process.

In the case of the Houghton Area Master Plan Process, the City of Tucson's Department of Urban Planning and Design convened a collaborative planning process in part as a response to two sources of public pressure. One was a more general sense of pressure to use a collaborative model because of the way the city perceived the community expected to be engaged.<sup>12</sup> The other source of pressure was residents of the southeastern part of town. Council Member Shirley Scott who represents Ward Four, of which the Houghton Road area is a part, had previously convened a citizen-based collaborative group to address planning concerns in the area. The existence of this group and the citizen interest it represented also affected the city's decision to initiate a collaborative planning process.

The Lake Whatcom Landscape Planning Process was a direct result of public and political pressure on the Department of Natural Resources (DNR) to convene a collaborative group to address planning issues on state trust land in the Lake Whatcom watershed. Two citizens in particular worked with state legislators to have their concerns, and those of hundreds of other area residents, heard and addressed. The result of their efforts was a bill requiring the DNR to initiate a collaborative process to develop a management plan for the area.

In an effort to become more involved in a neighborhood plan for 13,000 acres of state trust lands in the Whitefish, Montana area, residents of Whitefish lobbied the State Land Board to convene a stakeholders group to work collaboratively with the Department of Natural Resources and Conservation (DNRC). In response, the State Land Board chartered the Whitefish School Trust Lands Advisory Committee as a venue for interested stakeholders to participate in the decision-making process with the DNRC.

## **REASONS PARTIES JOIN A COLLABORATIVE EFFORT**

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Participants in collaborative processes have an interest in the outcome of the process and are motivated to join by different reasons. An analysis of the eight cases reveals a number of reasons why participants in those collaborative planning processes got involved (Table 13-2). These reasons include having a financial stake in the outcome and a personal interest or professional interest in the outcome.

**Table 13-2: Reasons Parties Chose to Join the Collaborative Process**

<b>CASE</b>	<b>Financial Stake</b>	<b>Professional Interest</b>	<b>Personal Interest</b>
<b>Castle Valley Planning Process</b>		✓	✓
<b>Elliott State Forest Planning Process</b>	✓	✓	
<b>Emerald Mountain Planning Process</b>	✓	✓	✓
<b>Houghton Area Master Plan Process</b>		✓	✓
<b>Lake Whatcom Landscape Planning Process</b>		✓	✓
<b>Mesa del Sol Planning Process</b>	✓	✓	
<b>Southeast New Mexico Working Group</b>	✓	✓	
<b>Whitefish Neighborhood Planning Process</b>		✓	✓

**FINANCIAL STAKE**

Although the subject of all eight of the cases examined in this report was state trust land, the state trust land agencies were not the only parties at the table with a financial stake in the outcome of the process. In four of the eight cases, interested parties joined the collaborative process because of an interest in helping shape a decision that would affect them financially.

Many of the ranchers and oil and gas industry professionals involved in the Southeast New Mexico Working group joined the effort to develop a conservation plan for the prairie chicken and sand dune lizard out of concern for how their livelihoods could be negatively affected if the two species were listed as endangered. Were the species to be listed, oil and gas drilling and grazing activities would be greatly restricted and revenues from these activities would fall. Similarly, in Steamboat Spring, Colorado, longtime state trust land grazing lessee Jim Stanko also had a financial stake in the outcome of the collaborative Emerald Mountain Planning Process. Had the area been developed, he would have lost access to a significant amount of land his family had ranched for three generations. Additionally, a trust beneficiary representative joined both the Elliott State Forest Planning Process and the Mesa del Sol Planning Process because of the direct financial effect decisions involving management of state trust land have on the revenue generated for the trust.

**PROFESSIONAL INTEREST**

The inclusive nature of the collaborative decision-making model encourages parties with an interest in the benefits of the process and the outcome to get involved. In all of the eight cases there were participants who joined the collaborative process because of a professional



interest in the benefits of the process or the outcome. Many of them represented a constituency of people involved in conservation, resource regulation, resource extraction, recreation, planning or development.

Joining the collaborative effort provided a way to give their professional interests a voice in the decision-making process and to have their concerns addressed. For example, Bill McCourt, a representative from the city of Bellingham and a water quality specialist, got involved in the Lake Whatcom Landscape Planning Process out of an interest in aligning Department of Natural Resources forest practices with water quality initiatives for Lake Whatcom he'd worked on in the past.<sup>13</sup>

Many participants also joined a collaborative process because being involved would give them the opportunity to further inform their professional work. For example, Linda Morales, an urban planning consultant in Tucson, Arizona had a professional interest in being involved in the Houghton Area Master Plan Process because knowing what kinds of planning were being discussed in the area helped her provide reliable information about the process to her clients.<sup>14</sup>

### **PERSONAL INTEREST**

In five of the eight cases participants joined the collaborative processes because of a personal interest in either the area that would be affected by the decision, or how the decision would affect them personally. All of the cases that were initiated because of a perceived threat to community members' sense of place – the Castle Valley Planning Process, the Emerald Mountain Planning Process and the Whitefish Neighborhood Planning Process – included participants with a personal interest in how the outcome would affect the undeveloped nature of the state trust land in the future. In addition, urban planning consultant Linda Morales noted that in addition to her professional interest in being involved in the Houghton Area Master Plan Process, she also had a personal interest in being involved in how Tucson developed because of the attachment she felt to the city as her home.<sup>15</sup> In the Lake Whatcom Landscape Planning Process the reason Linda Marrom, one of the citizen representatives on the committee, got involved was because of the perception that state trust land management activities in the area had the potential to endanger her safety and those of her neighbors.<sup>16</sup>

### **BARRIERS TO COLLABORATION**

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Barriers to collaboration can be either reasons parties could not join a collaborative effort, or reasons they discontinued their participation in a collaborative effort. As Yaffee notes, barriers to collaboration can fall within four main categories including attitudes about the process, particular process elements, technical factors and the institutional context in which the collaborative effort occurs.<sup>17</sup> Some participants in all eight cases examined in this report experienced different kinds of barriers to participating or continuing to participate in the collaborative planning efforts (Table 13-3). The reasons fall under this basic framework and include interpersonal differences like personality conflicts or feelings of alienation from the group, the perception of an ineffective process, limited financial resources or time,

conflicting goals, restrictions of the process structure such as a limited group size and professional changes like a group member’s retirement or change in job.

### INTERPERSONAL ISSUES

Interpersonal barriers to continued collaboration were mentioned in only one of the eight cases in this report. Steamboat Springs, Colorado rancher Jim Stanko decided to leave the Emerald Mountain Planning Process after losing his lease on state trust land in the area as part of a land exchange with the Bureau of Land Management. Once his connection with the land being discussed by the group was severed, he felt alienated from the group.

**Table 13-3: Barriers to Collaboration**

CASE	Interpersonal Issues	Ineffective Process	Limited Resources	Conflicting Goals	Process Structure Restrictions	Professional Changes
Castle Valley Planning Process				✓		
Elliott State Forest Planning Process					✓	✓
Emerald Mountain Planning Process	✓			✓	✓	✓
Houghton Area Master Plan Process		✓				✓
Lake Whatcom Landscape Planning Process					✓	✓
Mesa del Sol Planning Process			✓			✓
Southeast New Mexico Working Group		✓	✓			✓
Whitefish Neighborhood Planning Process				✓	✓	✓

## **INEFFECTIVE PROCESS**

In two of the eight cases there was some attrition from the collaborative group because of frustrations with the process itself. One of the participants representing environmental interests on the Southeast New Mexico Working Group eventually left the group out of frustration over the length of time the process was taking and his perception of “endless talk”.<sup>18</sup> A number of Citizens Review Committee participants left the Houghton Area Master Plan Process out of frustration over the length of time the process was taking and the perception that their input was not being valued.<sup>19</sup>

## **LIMITED RESOURCES**

Some participants in the Mesa del Sol Planning Process and the Southeast New Mexico Working Group had to leave the collaborative process because of a lack of adequate resources. For example, in the Mesa del Sol Planning Process, the length of the process made it difficult for the Sierra Club and other environmental groups to maintain a steady level of participation because of the limited staff resources the group could devote to involvement. Also, some parties interested in the Southeast New Mexico Working Group were unable to participate because meetings were held during the workweek for usually two days in a row, which was not a convenient time for those who were not professionally involved in the group and for those who had to travel great distances to the meeting locations.<sup>20</sup>

## **CONFLICTING GOALS**

Participants in three of the eight cases decided to leave the collaborative process after realizing that they had either a conflict of interest or difference of vision with the rest of the group. The representatives from the town of Castle Valley withdrew from the Castle Valley Planning Process in their formal capacity because of a perception that they had legal conflict of interest in being there. This conflict stemmed from the fact that while the town was in the process of updating its land use ordinances, it did not want to be involved in collaboratively developing a plan with School and Institutional Trust Lands Administration, a landowner and potential developer.<sup>21</sup> Steamboat Springs resident Bob Enever left the Emerald Mountain Planning Process because of his realization that the group was not ready to discuss the kinds of development options he was skilled in and interested in exploring for the area and he felt that his continued participation would not be useful.<sup>22</sup> Janet Cornish, the original facilitator in the Whitefish Neighborhood Planning Process, left the group after realizing that over the course of a year the project had changed significantly from the one she had originally agreed to facilitate. Not comfortable with the role of increased decision-making power that the Advisory Committee had assumed, Cornish resigned from the process.<sup>23</sup>

## **PROCESS STRUCTURE RESTRICTIONS**

Four of the eight cases exhibited barriers to collaboration related to process structure restrictions. For example, there were more people interested in participating in the Whitefish Neighborhood Planning Process than allowed for under the Advisory Committee Charter. As a result, not all people originally interested in participating were able to do so.<sup>24</sup>

Representatives from the forestry industry were not represented in the Lake Whatcom Landscape Planning because of a decision by the Department of Natural Resources (DNR) not include them.<sup>25</sup> It was assumed that the DNR would be able to adequately represent their interests during the process, but in hindsight the DNR felt the forestry industry should have had a more formal presence at the table.<sup>26</sup> Those involved in convening the Elliott State Forest Planning Process decided to limit the representation on the Steering Committee to participants who had a financial interest in the way the Forest was managed. However, this made some interested parties who did not have a financial stake in the outcome feel left out of the process.<sup>27</sup> Some participants in the Emerald Mountain Planning Process felt that the group's policy allowing the City and County to elect representatives, who then selected other members, inadvertently led to an under-representation of county interests and a barrier to their formal participation.<sup>28</sup>

### **PROFESSIONAL CHANGES**

In seven of the eight cases participants in the collaborative efforts had to leave the process because of a change in their professional capacity that no longer allowed for their continued participation. Some participants in the Elliott State Forest Planning Process, the Emerald Mountain Planning Process, the Houghton Area Master Plan Process, the Lake Whatcom Landscape Planning Process, the Southeast New Mexico Working Group and the Whitefish Neighborhood Planning Process left the process either because they took a new job or job transfer that did not allow for or require their participation or they retired from professional life.

### **FACTORS THAT SUSTAIN COLLABORATION**

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Many of the reasons parties either initiate or join a collaborative process are the same reasons they continue to participate until a conclusion is reached. There are, however, a few additional factors that can arise during a collaborative process that motivate people to continue participating (Table 13-4). These factors include the presence of a leader or a committed personality who inspired others to continue, the amount of time and effort already invested in the process, the lack of attractive alternatives if the collaboration failed and financial incentives on the part of the state trust land agency.

**Table 13-4: Factors that Sustained Collaboration**

<b>CASE</b>	<b>Leadership</b>	<b>Investment in process</b>	<b>Lack of attractive alternatives</b>	<b>Financial Incentives</b>
<b>Castle Valley Planning Process</b>	✓	✓	✓	✓
<b>Elliott State Forest Planning Process</b>		✓	✓	✓
<b>Emerald Mountain Planning Process</b>	✓	✓	✓	✓
<b>Houghton Area Master Plan Process</b>		✓	✓	✓
<b>Lake Whatcom Landscape Planning Process</b>	✓	✓	✓	✓
<b>Mesa del Sol Planning Process</b>	✓	✓	✓	✓
<b>Southeast New Mexico Working Group</b>		✓	✓	✓
<b>Whitefish Neighborhood Planning Process</b>	✓	✓	✓	✓

**LEADERSHIP**

Leaders can be officially recognized or they may emerge informally from among collaborative process group members, as further discussed in Chapter 18. For example, the Whitefish Neighborhood Planning Process had several different kinds of leaders that helped maintain the collaborative process. The combination of the committed Department of Natural Resources and Conservation officials and staff involved in the project, an effective facilitator and Advisory Committee Chairman kept the process moving toward consensus on a plan that was well-received by most involved. Commissioner Ray Powell’s vision of how the Mesa del Sol area in Albuquerque, New Mexico could be developed in a comprehensive way and his commitment to obtaining community buy-in for the development kept the project alive over the many years in which it unfolded.<sup>29</sup> Bellingham, Washington resident Linda Marrom’s commitment to and emotional investment in the Lake Whatcom Landscape Planning Process was recognized by some participants as inspiring others to stay at the table to reach consensus.<sup>30</sup> Many participants in the Emerald Mountain Planning Process noted that Emerald Mountain Partnership Chairman, Ben Beall’s commitment and dedication to the process and persistence of participation helped the group achieve its goals.<sup>31</sup> In the Castle Valley Planning Process participants recognized that the leadership, dedication and stamina of the representatives from the School and Institutional Trust Land Agency and Utah Open Lands and the process facilitator sustained the collaborative process.<sup>32</sup>

## **INVESTMENT IN PROCESS**

All eight of the cases were sustained to some degree by participants' commitment to seeing the process through to some level of completion after investing personal and professional time and often significant amounts of work into the process. Shawn Knox, a participant in the Southeast New Mexico Working Group, noted that a common question among group members was "Do we want two years to go down the drain?"<sup>33</sup>

## **LACK OF ATTRACTIVE ALTERNATIVES**

Participants in all eight of the cases mentioned that another reason they persisted through the process was because of the unattractiveness of the potential alternate outcomes that could result without a collaborative process. For example, in the four cases that involved potential development on state trust land, there was concern that without the process either unchecked or unplanned development would occur. The threat of having the prairie chicken and sand dune lizard listed as threatened species, and the subsequent restrictions imposed by the Endangered Species Act, motivated many members of the Southeast New Mexico Working Group to continue participating in the collaborative process to develop a conservation plan for the species.<sup>34</sup> Similarly, participants in the Elliott State Forest Planning Process recognized that should new species in the area become listed as endangered there would be even more significant restrictions on their logging activities without a comprehensive Habitat Conservation Plan in place. The Washington Department of Natural Resources (DNR) recognized that if it did not continue to participate in the Lake Whatcom Landscape Planning Process it faced both the possibility of additional legislation requiring it to continue and lawsuits challenging its actions in the watershed. For Linda Marrom, one of the citizen participants in the process, the unattractive alternative to collaboration was having DNR activities in the area that she felt threatened her continued safety. Also, Castle Valley residents recognized that the alternative to participating in the Castle Valley Planning Process may have been to have increased development in their community. In light of this unfavorable alternative, many residents persisted in the process. Similarly, School and Institutional Trust Lands Administration (SITLA) perceived that community outrage in response to agency actions was not preferable. Therefore, SITLA's engagement with the community in a collaborative planning effort served as a much-preferred alternative.

## **FINANCIAL INCENTIVES**

In all eight cases the state trust land agency had a certain amount of financial incentive to continue participating in the collaborative planning processes. For example, in the Castle Valley Planning Process, the Emerald Mountain Planning Process, the Lake Whatcom Landscape Planning Process and the Whitefish Neighborhood Planning Process, the state trust land agency involved had to temporarily either suspend or keep static some kind of revenue generating management activity or exploration of development options while the concerns about those activities or a change in activity were addressed through the collaborative process. The state trust land agencies had an incentive to continue participating in the collaborative efforts in order to either continue or modify their management activities without continued resistance from the communities. The financial incentives for continued

state trust land agency personnel in the Southeast New Mexico Working Group involved the potential for financial loss were wildlife species in the area listed under the Endangered Species Act. For state trust land agency personnel involved in the Elliott State Forest Planning Process, both the potential for financial loss were additional species in the area listed in the area without a mitigation plan in place and the opportunity to increase harvest levels through the plan provided incentive to sustain the collaborative process. In the Houghton Area Master Plan Process and the Mesa del Sol Planning Process, the financial incentive for state trust land agency personnel to stay involved in the collaborative process included the potential for an increase in revenue for the trust if the areas were planned for development in a comprehensive way.

## **REASONS COLLABORATIVE PROCESSES CONCLUDE**

There are two main reasons that the processes in the eight cases concluded (Table 13-5). The first reason was that the goals of the process were achieved and the second was the imposition of an external deadline on the process.

**Table 13-5: Factors that Bring Collaborative Processes to a Close**

<b>CASE</b>	<b>Goals of Process Achieved</b>	<b>Externally Imposed Deadline</b>
<b>Castle Valley Planning Process</b>	✓	
<b>Elliott State Forest Planning Process *</b>		
<b>Emerald Mountain Planning Process *</b>		
<b>Houghton Area Master Plan Process</b>	✓	
<b>Lake Whatcom Landscape Planning Process</b>	✓	
<b>Mesa del Sol Planning Process</b>	✓	
<b>Southeast New Mexico Working Group</b>		✓
<b>Whitefish Neighborhood Planning Process</b>	✓	

\* Process not yet concluded

### **ACHIEVED GOAL**

In six of the eight cases, the collaborative process was concluded because the group achieved the goal they were working toward together. For the Houghton Area Master Plan Process, the Lake Whatcom Landscape Planning Process and the Whitefish Neighborhood Planning Process this meant the completion of a land use plan for the area in question.

The creation of an option for an exchange of state trust land with Bureau of Land Management land will potentially satisfy the goals of the Emerald Mountain Planning Process and the Castle Valley Planning Process pending the success of the transactions. For the Mesa del Sol Planning Process the goal of the process was achieved when a private company signed a lease to develop the area consistent with guidelines developed through the collaborative process.

## **EXTERNAL DEADLINE**

With the involvement of the Bureau of Land Management (BLM) in the processes surrounding the protection of threatened species, the Southeast New Mexico Working Group concluded because of an external BLM deadline that forced the parties to come up with a final agreement. While many feel the goals of the process were also met in the end, others felt that the external deadline sped up the decision-making process such that the final plan will not be durable.<sup>35</sup> Regardless, Rand French of the BLM was confident that meetings would still be underway had it not been for the deadline.<sup>36</sup>





## CHAPTER 14

### WHAT ARE THE BENEFITS AND COSTS OF COLLABORATIVE PLANNING?

This chapter identifies the main benefits and costs of collaboration observed in the eight cases. A survey of the literature on collaborative planning identifies five major categories of benefits: (1) better communication, (2) improved group dynamics and relationships, (3) greater resource sharing, (4) increased adaptability and (5) more effective outcomes.<sup>1</sup> On the other hand, scholars of collaborative planning acknowledge that there are costs associated with engaging in collaboration. The main costs identified in the literature include extra time, staffing costs, financial costs for volunteer participants and environmental costs.<sup>2</sup>

The benefits and costs examined in this chapter are described in the unique context of state trust land management and from the viewpoint of the participants involved. Looking at the benefits and costs in this light allows one to identify those outcomes that are most relevant and common to state trust land issues. In addition, given that this report aims to inform and assist state trust land agencies, several of the outcomes are framed by the interests of state trust land managers.

The benefits and costs discussed in this chapter often were seen in several of the cases. Some of the benefits and costs were witnessed in only one or two of the cases, yet they provided good examples of outcomes in the context of those cases. For example, better coordination between federal and state agencies is an outcome that can only be observed in cases involving those agencies. Regardless of frequency, for each benefit and cost noted, evidence of how collaborative planning contributed to that outcome is presented.

Of the several benefits identified across the eight cases, two distinct categories emerged: primary and secondary. Primary benefits are those that were directly related to the project's goals and relate to *outcomes* of the process. These included:

- An increase in the value of the trust, as a result of actual or expected increases in revenues or in the value of the land parcel, or reductions in management costs
- An improvement in the natural environment in terms of habitat protection and environmental quality
- An improvement in the urban environment in terms of provisions for infrastructure, density, mixed-use development and open space
- A higher quality solution in terms of durability, creativity, and incorporation of science and the knowledge of a wide range of experts

Secondary benefits are those that were not set as goals but are seen nonetheless as *process* benefits by the researchers and the participants. Often secondary benefits support primary benefits but are still important in their own right. For example, in several cases collaborative planning helped build relationships. These relationships not only helped groups achieve

desired outcomes, but they are also expected to be beneficial in future collaborations. The secondary benefits identified across the cases included:

- New and improved relationships
- Greater understanding and public awareness of state trust lands
- An increase in institutional capacity of state land offices and other government entities
- Positive public relations during and as a result of the process
- Successful models of land management for other areas of land in the west
- Better state and federal agency coordination

The costs encountered in the cases fell into the following categories:

- A reduction in the value of the trust asset
- A loss of environmental protection
- Direct costs, arising from conducting the process
- Opportunity costs, defined as the activities of value that groups or individuals gave up by participating in the process
- Personal and emotional costs
- Bad public relations

An overview of each of the categories of benefits and costs and the cases in which they were observed is presented in Table 14-1.

**Table 14-1: Benefits and Costs**

	CASE STUDIES							Total	Percent	
	Castle Valley	Elliott	Emerald Mtn	HAMP	Mesa del Sol	Lake Whatcom	SE New Mexico			White-fish
<b>PRIMARY BENEFITS</b>										
<b>Increased Value of the Trust</b>	✓	✓*	✓*	✓*	✓	✓	✓		7	88%
by reducing business risk for future developers	✓*	n.a.	n.a.	✓*	✓	n.a.	n.a.		3	75%
by facilitating closing the deal	✓		✓*			✓			3	38%
by establishing adjacent open space	✓	n.a.			✓	n.a.	n.a.		2	40%
by meeting laws and extraction goals more effectively	n.a.	✓*	n.a.	n.a.	n.a.	✓	✓		3	75%
by including beneficiary groups in the process		✓*			✓				2	25%
<b>Improved the Natural Environment</b>	✓	✓*	✓			✓	✓	✓	6	75%
by protecting wildlife habitat	✓	✓*	✓				✓	✓	5	63%
by improving environmental quality	✓					✓		✓	3	38%
<b>Improved the Urban Environment</b>	✓*	n.a.		✓*	✓	n.a.	n.a.	✓	4	80%
by planning for infrastructure and municipal services	✓	n.a.		✓	✓	n.a.	n.a.	✓	4	80%
by increasing development density		n.a.		✓	✓	n.a.	n.a.		2	40%
by requiring mixed use		n.a.		✓	✓	n.a.	n.a.		2	40%
by establishing open space	✓	n.a.		✓	✓	n.a.	n.a.	✓	4	80%
<b>Produced Higher Quality Solutions</b>	✓	✓*	✓	✓	✓	✓	✓	✓	8	100%
by producing an innovative solution	✓		✓	✓	✓	✓	✓	✓	7	88%
by producing a more informed solution	✓			✓		✓	✓	✓	5	63%
by producing a longer lasting solution		✓*	✓*		✓	✓		✓	5	63%
<b>Other Primary Benefits</b>										
Improved Public Safety						✓			1	13%
Protected Cultural Heritage/Resources			✓			✓			2	25%
Provided Access to Recreation	✓		✓					✓	3	38%
<b>SECONDARY BENEFITS</b>										
<b>Created New and Improved Relationships</b>	✓	✓	✓	✓	✓	✓	✓	✓	8	100%
<b>Educated Public About State Trust Lands</b>	✓	✓	✓	✓	✓	✓	✓	✓	8	100%
<b>Increased Institutional Capacity</b>	✓			✓	✓		✓		4	50%
<b>Resulted in Positive Public Relations</b>	✓				✓	✓	✓	✓	5	63%
<b>Provided Successful Model of Land Management</b>	✓	✓			✓		✓		4	50%
<b>Improved State and Federal Agency Coordination</b>		✓	✓		n.a.	n.a.	✓		3	50%
<b>COSTS</b>										
<b>Reduced the Value of the Trust</b>						✓			1	13%
<b>Reduced Environmental Protection</b>		✓*							1	13%
<b>Brought About Direct Planning Costs</b>	✓	✓	✓	✓	✓	✓	✓	✓	8	100%
<b>Brought About Opportunity Costs of Time Spent</b>	✓	✓	✓	✓	✓	✓	✓	✓	8	100%
<b>Brought About Emotional/Personal Costs</b>	✓	✓	✓	✓		✓		✓	6	75%
<b>Brought About Bad Publicity</b>			✓			✓		✓	3	38%

✓ = outcome noted by interviewee  
 ✓\* = outcome noted by interviewee but with contingency (i.e., Emerald Mountain and Castle Valley contingent on land exchange, Elliot and HAMP contingent on approval of plan developed by collaborative group)  
 n.a. = not applicable

## **PRIMARY BENEFITS**

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This section discusses the common primary benefits observed across the eight cases. While all of the benefits in this section may likely result in an increase in the value of the trust, those that were identified by participants directly of having this effect are discussed first. The outcomes that led to an improvement in the natural or urban environment are discussed next and the ways in which collaborative planning led to higher quality solutions conclude this section.

### **INCREASED THE VALUE OF THE TRUST**

In six of the eight cases, the state trust land agency reported that the process increased the value of the trust for beneficiaries by creating higher revenues from the land parcel at hand, increasing the market value of the land parcel or reducing management costs of the property. Most often, collaborative planning contributed to the increase in value by reducing conflict over pending sales and by creating broad community support for future urban development or natural resource extraction activities on the land. Reduced conflict and broader stakeholder support are benefits of collaboration that are consistently found in the literature on collaborative planning.<sup>3</sup>

### **Reduced Business Risk for Future Developers**

In three of the four cases that involved future residential or commercial development, the Castle Valley Planning Process, the Houghton Area Master Plan Process and the Mesa del Sol Planning Process, state trust land officials claimed that the value of the trust land under their management increased because the collaborative planning process helped create land use plans that reduced uncertainty over future restrictions on development. Uncertainties for future owners arise over questions about future zoning restrictions, about the provisioning of infrastructure such as water and sewer and about the likelihood of community opposition to the development. Strong community opposition may scare away buyers because of the potential for legal actions against the buyer or seller or for a damaged reputation of the buyer, who often intends to do more business in the community.

While traditional urban planning can address zoning and infrastructure issues, collaborative planning is effective at building community support for development activities and often reduces conflicts that may be hindering productive urban planning. In the Castle Valley Planning Process, for example, Ric McBrier, the School and Institutional Trust Lands Administration (SITLA) manager responsible for urban development activities in Utah, observed that future developers will benefit from community support and a completed development plan. Although the development plan in the Castle Valley Planning Process was never finalized, McBrier commented, “The plan will probably still create value for the trust in the exchange with the federal government because there has been planning done for the property.”<sup>4</sup> SITLA’s initial parcel sale in Castle Valley resulted in community opposition. SITLA later worked with the Castle Rock Collaboration, a community group, which led to the development of a planning contract for the area and a potential land exchange with the Bureau of Land Management. Similarly, the Arizona State Land Department (ASLD)

participated with numerous stakeholders in the Houghton Area Master Plan (HAMP) Process for a large parcel of undeveloped land near Tucson, Arizona. The process reduced uncertainty over how state trust land may be developed by establishing a consensus based land use plan that the ASLD can choose to follow when it begins disposing of property in the area. Finally, in New Mexico, where the State Land Office (SLO) is forbidden by law to make leasehold improvements, the Mesa del Sol collaborative project fostered a public-private partnership between the SLO and a private developer. The partnership has made investments in planning that resulted in a master plan and development vision for 12,900 acres of land near Albuquerque, New Mexico, the state's largest city. SLO managers believe that because of this investment in planning and the attractiveness of the new urbanism development chosen, the land will yield higher revenue from future land leases and sales. A former New Mexico Land Commissioner noted that with the collaborative partnership, "you can help the developer succeed, and the more the developer succeeds, the more the school kids succeed."<sup>5</sup>

### **Facilitated Closing the Deal by Reducing Conflict**

By quelling local opposition to land sales, collaborative planning can help state land agencies close deals that otherwise would be too politically controversial. In three of the eight cases, state trust land managers credited collaborative planning with the successful closing of controversial land deals. For example, in the Emerald Mountain Planning Process, the development company interested in the State Land Board (SLB) parcel near Steamboat Springs, Colorado retracted its \$17 million offer upon learning of the community's opposition to development on Emerald Mountain and of the Emerald Mountain Partnership's bid on the parcel to come up with a way to preserve the land. However, the SLB now has community support for a land exchange with the BLM at the current market value. In the Castle Valley case, Utah's School and Institutional Trust Lands Administration (SITLA) ultimately received support from the community for the sale of two parcels of land by entering into a negotiated land sale with a conservation-oriented land trust, Utah Open Lands. SITLA's first land sale at the base of Parriott Mesa in Castle Valley had angered the community.

Reducing conflict and building community support also helped facilitate the closing of natural resource based transactions. Near the city of Bellingham, Washington, the Department of Natural Resources (DNR) reported that it received approval from a local review committee for the DNR's first timber sale in the Lake Whatcom watershed since legislation halted timber activity in the area in 1999. The timber sale approval came after the Board of Natural Resources approved a Landscape Plan that had been four years in the making by DNR officials and an advisory group of state and local officials, tribes and public citizens. Upon completion of the plan, the editorial board of the Bellingham Herald wrote, "Citizens have to step up too and accept that logging around the lake is not only a reality, but also a preferred land use ... everyone in this county should back the careful logging plans that were ironed out over four hard years for the Lake Whatcom Watershed."<sup>6</sup> This type of community support represented a major shift in attitude towards the DNR and its activities in the watershed compared to the public firestorm that was set off by logging activity in watershed six years earlier.

## **Increased Land Value by Establishing Adjacent Open Space**

In two cases, the state trust land office reported that the value of its real estate holdings in one area increased because open space adjacent to the parcel was established as a result of the collaborative planning effort. Many land buyers pay a premium for property bordering or nearby protected land because of scenic, recreational and habit values. Because collaborative planning processes often engage experts in land planning and locals that understand the value of open space in their communities, more opportunities are identified for setting aside conservation lands. In the Castle Valley Planning Process case, state trust land officials reported that its remaining trust land had increased in value because it is now borders conserved land. In the Mesa del Sol Planning Process, the planning team established a buffer of open space around Sandia Labs and Kirtland AFB. The establishment of this protected area allowed the planners to increase development densities on the rest of the land, permitting more structures and therefore more revenue for beneficiaries.

## **Met Regulations and Extraction Goals More Effectively**

Often collaborative planning can help state trust land departments achieve compliance with environmental regulations and extraction goals more effectively by engaging experts in environmental policy. In the Elliott State Forest Planning Process, where timber harvesting benefits the Common School Fund, initial compliance with the Endangered Species Act resulted in a drastic reduction of timber revenues. However, by working in a collaborative process with multiple stakeholders including officials from the U.S. Fish and Wildlife Service and National Marine Fisheries Service, the Oregon Division of State Lands and the Oregon Department of Forestry were able to develop a Habitat Conservation Plan (HCP) that will more effectively comply with the law and generate higher revenues for the public school system. If the HCP is approved, it is expected to increase the value of the state forest land by as much as \$100 million or 35% over the current value of the land. Similarly, the Landscape Plan for the Lake Whatcom watershed brought the Department of Natural Resources into compliance with legislation passed to protect water quality and public safety, while allowing the area to be harvested for timber revenue. While the annual harvest has been reduced significantly compared to pre-legislation levels, it represents an improvement over the moratorium on logging that had been in place since 1999.

In some cases, a collaborative planning effort can mobilize the resources necessary to help state trust land owners achieve preemptive, voluntary compliance with environmental laws, allowing agencies to better meet their resource extraction goals. In New Mexico, the State Land Office developed a management plan with the help of federal and state agencies and representatives from industry and environmental groups, which is expected to prevent the listing of the lesser prairie chicken and sand dune lizard under the Endangered Species Act. One official estimated that the bird's listing alone would have cost the trust hundreds of millions of dollars if it had prohibited all oil and gas production in the area. Similarly, state land managers of the Elliott State Forest hope that their proposed Habitat Conservation Plan (HCP) will help shield them from the listing of any new endangered species by protecting habitat for species other than just the spotted owl and marbled murrelet for which the HCP was required.

## **Increased Revenue because Beneficiary Groups have Greater Say in the Process**

Because collaborative processes seek to include all who have a stake in the process, beneficiary representatives are frequently invited to join a collaborative process. By participating and making their voices heard on behalf of the public school systems, beneficiaries can more effectively align the outcome with their goals. A lobbyist for the Confederation of Oregon School Administrators (COSA) who was involved in selecting the beneficiary representative to participate in the Elliott State Forest Planning Process stated that by having beneficiaries “show up at the meeting where the discussion is occurring... [beneficiaries] have gotten more money because [they] have gotten more involved.”<sup>7</sup> Rick Howell, Superintendent of the South Coast Educational Service District, a member of COSA, was chosen to be the “man on the ground” representative for the beneficiaries.<sup>8</sup> The process also included a local county commissioner who advocated strongly for increased revenue because his county was a beneficiary of the trust. In the Mesa del Sol Planning Process, the University of New Mexico, the primary beneficiary to the land under consideration, worked with the SLO after an initial auction failed to produce acceptable offers for the land. The beneficiaries involvement helped guide the planning process that resulted in the public-private partnership that is believed to have significantly increased the value of the land by making investments in land use planning for the area.

## **IMPROVED THE NATURAL ENVIRONMENT**

In five of the eight cases, participants reported positive environmental outcomes in terms of greater protection of wildlife habitat and higher environmental quality. A collaborative process helps achieve improved environmental protection because, in many cases, environmental advocates are asked to join the process, and because the process harnesses the expertise of scientists who are best equipped to identify opportunities for environmental improvement.<sup>9</sup> In some cases, an environmental improvement is achieved because a compromise is forged. The compromise represents an improvement over the “do nothing” alternative that persists because the conflict is held up by litigation or political conflict.<sup>10</sup> The different ways positive environmental outcomes were achieved are described below.

### **Protected Wildlife Habitat**

In five of the cases, wildlife habitat was protected as a result of the collaborative process. In the Castle Valley Planning Process, critical wildlife habitat for the la sal mule deer was established when Utah’s School and Institutional Trust Lands Administration entered into a negotiated sale with a conservation buyer as a result of the planning process. Similarly, in the Emerald Mountain Planning Process, elk calving grounds on Emerald Mountain are likely to be protected if the land exchange between the BLM and the State Land Board is completed. In the Elliott State Forest Planning Process, the Department of Forestry and Division of State Lands partnered with local and federal officials to develop a Habitat Conservation Plan (HCP) that will help protect habitat for the threatened northern spotted owl and marbled murrelet. However, an environmental group involved in the process felt that the proposed HCP would actually provide less protection of wildlife habitat in the forest. Similarly, an alternative for a Bureau of Land Management (BLM) Resource Management Plan (RMP)



Amendment for a large area of land in Southeast New Mexico was developed through the Southeast New Mexico Working Group that included representatives of the BLM, the New Mexico Department of Game and Fish, the State Land Office (SLO), USFWS, the ranching industry, the oil and gas industry, and conservation organizations. The RMP Amendment will help protect habitat for the lesser prairie chicken and sand dune lizard to prevent their listing under the Endangered Species Act. In the Houghton Area Master Plan Process, Mesa del Sol Planning Process and the Whitefish Neighborhood Planning Process, three cases that dealt with urban development, wildlife habitat was protected through the potential establishment of open space.

### **Improved Environmental Quality**

In some of the cases, the collaborative process ushered in improvements in the quality of air, land or water by reducing pollution. For example, the Lake Whatcom Landscape Plan included management strategies to improve water quality. Specifically, by establishing stream buffers and a road abandonment plan and by eliminating fertilizers, herbicides and harvesting on unstable slopes, the plan will result in fewer non-point source pollutants, improving the quality of drinking water for the city of Bellingham. The Landscape Plan was devised by Department of Natural Resource foresters who collaborated with other state agencies, local officials and representatives from the public. In the Castle Valley Planning Process, the development plan negotiated between the community and School and Institutional Trust Lands Administration (SITLA) is expected to protect the Castle Valley aquifer, the town's main source of drinking water, by reducing development density on the remaining state trust land in the area. While the town and SITLA never signed the agreement, future owners of the land are expected to abide by the recommendations in the water analysis done for the area. Improvements in environmental quality were also achieved in cases that established open space and in those that resulted in forms of new urbanism that reduce pollution. These types of improvements in the urban environment are discussed below.

### **IMPROVED THE URBAN ENVIRONMENT**

In all of the cases that included an urban planning element, participants reported that the collaborative process contributed to the development of a land use plan that would bring about an improvement in urban form. For the purposes of this analysis, improved urban form was achieved when the land use plan included better planning for infrastructure and municipal services, increased development density, mixed use objectives and areas of open space.

### **Better Planning for Infrastructure and Municipal Services**

In four of the cases, participants reported better planning for infrastructure and municipal services. For example, in the Castle Valley Planning Process, the development contract negotiated by the Castle Rock Collaboration and the School and Institutional Trust Lands Administration reduced the number of potential development units on the trust land from approximately 884 to 207 without decreasing the value of the land. This reduction in development units addressed concerns identified by a study that revealed that the town's

aquifer would not be able to support the original number of planned home sites. Although the development plan was never officially signed, the U.S. Bureau of Land Management is expected to benefit from the development plan and the natural resources and water analysis. Better planning for infrastructure was also identified as a benefit in the Houghton Area Master Plan and Mesa del Sol processes. In the Whitefish Neighborhood Planning Process, the Department of Natural Resources and Conservation was able to address the disparity between trust lands and adjoining private property regarding zoning, infrastructure and other public services by securing entitlements for trust lands that were comparable to those of neighboring land.

### **Increased Development Density**

While reducing development density in certain areas was important in the Castle Valley process because of water constraints, the planners in the Mesa del Sol Planning Process included an increase in development density in their land use plans.<sup>11</sup> Increased development density reduces urban sprawl and makes cities more livable by keeping commercial areas, work places and residential areas in closer proximity to one another. In contrast, in the Whitefish Neighborhood Planning Process, the Neighborhood Plan preserves the Flathead County zoning density of one home per 20 acres, which may hinder more environmentally-friendly development.<sup>12</sup>

### **Required Mixed Use Development**

In both Houghton Area Master Plan Process and the Mesa del Sol Planning Process, land use plans emerged that had provisions for mixed use development. Mixed use is one of the tenets of new urbanism that holds that residential and commercial properties should be mixed together instead of in separate parts of town. Mixed use reduces car trips and puts work and shopping closer to home. In the Mesa del Sol case, a planner for the city of Albuquerque and former State Land Office employee, compared previous development to mixed use, saying:

The West Side of Albuquerque has a lot of problems ... typically it hasn't developed the way it should have. All of the employment is on the east side; all of the housing is on the west side. Outside of the city is where the development is happening and it is not the most quality development. So Mesa del Sol is happening. I think it's very good. It's exactly what the city needs.<sup>13</sup>

### **Established Open Space**

Four of the cases, the Whitefish Neighborhood Planning Process, the Mesa del Sol Planning Process, the Emerald Mountain Planning Process and the Houghton Area Master Process developed land use plans that provided for areas of open space. In some cases, such as the Whitefish Planning Process, open space was large continuous tracts of land. In others, such as the Houghton Area Master Plan Process, open space was areas set aside for city parks in an urban area. As discussed above, open space may increase the value of surrounding land. Residents near conserved lands enjoy scenic views, access to recreation if permitted and wildlife viewing. For example, in the Whitefish Neighborhood Planning Process, the

Neighborhood Plan aims to preserve 96 percent of the 13,000-acre area for open space and recreation. The Plan also makes use of such tools as conservation easements and land exchanges to limit the local impact of trust land development. However, four percent of the land remains available for development and this is expected to enable the Department of Natural Resources and Conservation to meet its fiduciary responsibility.

## **HIGHER QUALITY SOLUTIONS**

Overall, many of the participants in the eight cases felt that the agreement reached was more innovative, more informed or more durable than anything that could have been developed by a single party. Generally speaking, these characteristics speak to the superior quality of the solution achieved. Examples of creative, well informed and durable solutions are discussed below.

### **Produced an Innovative Solution**

In seven of the eight cases, interviewees reported that collaborative planning brought about an innovative or creative solution. Collaborative planning fosters creativity by providing a “forum for dialogue” that encourages new ideas that meet the needs of multiple stakeholders.<sup>14</sup> Such a venue existed in the Emerald Mountain Planning Process. The Emerald Mountain Partnership had been struggling to come up with solutions to conserve a parcel of state trust land near the town of Steamboat Springs in a way that provided adequate revenue for the State Land Board (SLB). At the same time, the SLB knew that a land sale to a traditional developer would be difficult considering the town’s desire to protect the land for agricultural uses, recreation and wildlife habitat. A local U.S. Bureau of Land Management (BLM) official suggested that the SLB consider a land exchange with the BLM. The land exchange ultimately became the SLB’s and the community’s preferred outcome. It represented a unique solution because it involved hundreds of parcels of BLM land around Routt County and multiple stakeholders and met the SLB’s need to dispose of the parcel at market value. The land exchange also met the BLM’s desire to streamline the management of its land holdings in Routt County and the interests of the Partnership to preserve open space, agriculture and recreational access on the parcel. Without the collaborative process, an auction process would have virtually eliminated the possibility of a land exchange because of the extensive time required to put a land exchange together.

Similarly, the Castle Valley Planning Process ultimately resulted in a proposal for a land exchange that provided a unique solution that could satisfy the interests of all stakeholders involved. The Whitefish Neighborhood Planning Process was considered innovative by many participants for its creative agreement that allows the community to come up with ways to generate revenues from the trust land over a 20-year period. According to Department of Natural Resources and Conservation Unit Manager Bob Sandman, this timeline structure is one of the reasons why the Neighborhood Plan is “revolutionary.”<sup>15</sup>

The Lake Whatcom Landscape Planning Process demonstrated creativity because it helped find a solution to an issue that had not been raised by the architects of the planning process. During one of the advisory Committee’s meetings, a representative of the Lummi Nation, a

local tribe, noted the need to protect resources in the watershed that were important to the tribe's culture, history and spiritual activities. The group later devised strategies to help protect the cultural resources identified in the watershed. One of the members of the process concluded that this aspect of the process was unique, saying:

For me the most significant element that came out was the tribal involvement as a government entity. There was a total new element introduced: the cultural resources. Spots for ceremonies and purity bathing were identified. They did not have to tell us exactly where they were. Instead the entire area would come out of the mix. The tribal participation was very unique. The status quo is that tribes review timber sales. This made a recognition of tribal resources more prominent than usual.<sup>16</sup>

### **Produced a More Informed Solution**

In five of the eight cases studies participants believed that the product of their work was better informed because the process brought additional information and resources to the process. This additional information provided for better decision. In *Collaboration: A Guide for Environmental Advocates*, Dukes and Firehock found that collaboration brings together sufficient resources to accomplish what cannot be accomplished by any one single party or smaller coalition.<sup>17</sup>

The Houghton Area Master Plan Process benefited from two outside studies that provided market acceptance and readiness research, and the process was better informed by having professional developers and planners on the Citizen's Review Committee. In the Castle Valley Planning Process, several different types of financial resources were brought in to pay for the activities. The most noteworthy was perhaps the utilization of funds from the Utah Division of Wildlife Resources to help pay for the la sal mule deer critical range habitat. In the Southeast New Mexico Working Group, the State Land Office and other participants were able to work together effectively on land use planning as a result of sharing information regarding leased areas and locations of prairie chicken habitat.

In the Lake Whatcom case, in a report to the legislature, the Department of Natural Resources (DNR) stated that the process brought forth "the best available information to make forest management decisions."<sup>18</sup> Bill Wallace, the DNR's Norwest Regional Manager, said, "there was a lot of information shared. We learned from each other ... as we got input, ultimately, the recommendations from the Committee were as informed as they could be over this period of time."<sup>19</sup>

In the Whitefish Neighborhood Planning Process, the Advisory Committee brought financial resources, time and expertise to the decision-making process, which otherwise may not have been available to the Department of Natural Resources and Conservation (DNRC). One of the main contributions of Committee members was the dedication of time to completing the Neighborhood Plan. Montana DNRC Unit Manager Greg Poncin recognized this time commitment: "It's not that common that you find members of a community who are so passionate that they would dedicate hundreds, if not thousands, of hours of their time to

something as specific as this with no compensation. The state of Montana owes them a huge debt of gratitude.”<sup>20</sup>

### **Produced a Longer Lasting Solution**

Because collaborative planning helps create buy-in from stakeholders, the processes can produce more durable solutions. Land use decisions that are made unilaterally in areas where many people feel they have a stake in the outcome are often challenged by interest groups after the fact. By giving stakeholders a chance to participate, collaborative planning creates ownership in the process.<sup>21</sup> In addition, by helping achieve solutions that meet the interests of multiple-parties, collaborative planning helps create buy-in to the outcome.<sup>22</sup> Ownership in the process is also achieved because the experience tends to empower the community.

In the eight cases, many of these benefits were evident. For example, the Whitefish Neighborhood Planning Process has mobilized stakeholders. Before the process, land conservation was a peripheral issue, but today at least two interests groups have emerged that are focused on implementation of the Neighborhood Plan. In the Elliott State Forest Planning Process, having more stakeholders represented in the Steering Committee and Core Planning Team benefited the process by increasing the level of buy-in from all parties involved. One participant observed, “there is more buy-in from stakeholders. This is particularly true, I believe, of Coos County and the local school superintendent ... we have their support in a ‘bottom line’ in our negotiations.”<sup>23</sup> Participants in the Elliott State Forest Planning Process also believe that by including representatives from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service in the planning process, the draft Habitat Conservation Plan stands a better chance of being approved.

### **Other Primary Benefits**

In addition to habitat protection and improved environmental quality, other primary benefits included the designation of recreational areas, increased public safety and the protection of cultural and archeological resources. In the Castle Valley Planning Process, the School and Institutional Trust Lands Administration (SITLA) worked with the community to protect land at the base of Castleton Tower, which provided recreational access to a popular climbing venue. Through the Castleton Tower Preservation Initiative, which was initiated as a result of the Planning Process, the land at the base of the Tower was purchased for conservation and recreational access. In the Whitefish Neighborhood Planning Process, one of the main motivations for the process was threatened recreational access. After the completion of the Neighborhood Plan, one of the first implementation efforts has been to create a recreation trail that circles Whitefish Lake.

In Steamboat Springs, Colorado, the Emerald Mountain Partnership developed a management plan for the Emerald Mountain state trust land parcel, which includes recreational areas and protection of the town’s ranching heritage. This plan is now one of four alternatives the Bureau of Land Management (BLM) is considering in their Environmental Assessment for the parcel. As part of the proposed land exchange, the BLM will amend its Resource Management Plan for the area to include the Emerald Mountain

parcel and adopt a multiple-use management plan, which would include recreational access for mountain bikers, hikers and cross-country skiers, as well as wildlife management and some grazing. The new recreational access on Emerald Mountain may reduce the environmental impact on other undeveloped areas in the surrounding region. The community's plan, if adopted, would also include recommendations regarding the preservation of ranching on the land to preserve Routt County's ranching heritage, a feature that is unique among the many mountain resort towns in the Rockies. Cultural resource protection also resulted from the Landscape Plan for Lake Whatcom, where strategies to protect tribal petroglyphs, sacred bathing areas and burial sites were established. In addition, the Landscape Plan included management strategies that would improve public safety by reducing the risk of land slides near residential areas.

## **SECONDARY BENEFITS**

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Many of the cases resulted in secondary benefits. Secondary benefits are those that were not set as goals by process participants but were recognized nonetheless as *process* benefits by the participants and the researchers. The secondary benefits identified in the cases and discussed in this section include new and improved relationships, greater understanding and public awareness of state trust lands, an increase in institutional capacity of state land offices and other government entities, positive public relations during and as a result of the process, successful models of land management for other areas of land in the west and better state and federal agency coordination.

### **NEW AND IMPROVED RELATIONSHIPS**

In all of the cases, participants reported that they established new relationships and/or improved existing relationships. This outcome is consistent with findings in the literature on collaborative planning. In *Making Collaboration Work*, Wondolleck and Yaffee argue that collaboration can enable parties to build new and improved relationships.<sup>24</sup> Good personal relationships benefit a process by increasing trust, building respect, facilitating professional interaction and creating a more productive atmosphere, all of which help groups achieve their primary objectives. Relationships are established or improved because of the time spent together, which allows for people to talk through their differences.

In the Castle Valley Planning Process, personal and professional relationships were noted between the community and the School and Institutional Trust Lands Administration (SITLA). The trust land official involved commented, "The opportunity to get to know communities, to engage the communities and to make a difference in the communities is a large part of what has kept me working [at SITLA]."<sup>25</sup> Relationships helped achieve creative solutions, according to the group's facilitator who said that the process "has produced a lot of relationships that led to some creative deals that made things happen that wouldn't have happened otherwise."<sup>26</sup> In the Southeast New Mexico Working Group, it was observed that relationships built greater trust and understanding. During an open meeting in southeast New Mexico, one rancher, who had previously voiced his mistrust of conservation interest at the

table, reprimanded a community member for disrespecting the group's major conservation representative.

By building relationships, collaborative processes help lay the ground work for working together in the future. In the Whitefish Neighborhood Planning Process, Advisory Committee members predicted that their relationships with local Department of Natural Resources and Conservation staff will facilitate implementation of the Neighborhood Plan. Similarly, in the Houghton Area Master Plan Process, officials from the Arizona State Land Department (ASLD) and the City of Tucson noted that the experience of working together during the Houghton Area Master Plan Process will make future interactions much easier. In addition to land in the Houghton Road area, the ASLD also owns a significant amount of land to the south of Tucson. The working relationships established during the Houghton Area Master Plan Process will likely help if and when the ASLD decides to develop or sell any of that land. The ASLD also recently opened a Southern Arizona office in Tucson. Their presence in the area should also help facilitate the development of working relationships.

### **GREATER UNDERSTANDING AND PUBLIC AWARENESS OF STATE TRUST LANDS**

In all of the cases, participants noted that the process contributed to greater understanding and public awareness of state trust lands. Many participants learned for the first time during these processes what trust lands are, how they came into existence and how and for whom they are managed. In the Castle Valley Planning Process, participants observed that the community learned about the School and Institutional Trust Lands Administration's (SITLA) mandate to generate revenue for the beneficiaries and generally about the nature of trust lands in Utah. SITLA's Director, Kevin Carter, noted that those who "were involved in the collaboration certainly understand who we [SITLA] are better."<sup>27</sup> As a result, parties understood each other in a more meaningful way, which allowed for better collaboration because by understanding the needs and interests of each party, one is more willing to engage in productive discussions.

According to the State Land Board official responsible for the Steamboat Springs region, the Emerald Mountain Planning Process increased the visibility of both the agency and the state trust lands themselves. The process specifically educated the public about the obligation of the state trust land offices to manage their land holdings to generate income for trust beneficiaries. According to State Land Board Northwest District Manager Beverly Rave, "I think that whole community has a much better understanding of what state trust lands are, and why we have to manage those lands in the manner in which we do. There were more public meetings about Emerald Mountain than any other property the State Land Board owns in Colorado."<sup>28</sup>

Likewise, in the Whitefish Neighborhood Planning Process, it was noted that the process enhanced understanding of trust land management. Although not everyone agreed with the interpretation of the state trust land mandate, everyone learned to recognize that state trust lands are different from national parks and other multi-use lands. According to State Land Board staffer Kathy Bramer, "everybody who has been engaged in [this process] now fundamentally understands that state trust lands are not parks. There is a mandate that they

operate within and we're not trying to be mean and we're not trying to be greedy. It is what the law requires."<sup>29</sup>

In some cases, local participants involved in the collaboration, in addition to the state trust land officials, took on the responsibility of educating the community about the legal obligations associated with state trust land management. This situation occurred in the Emerald Mountain Planning Process when the Partnership informed the community about how trust lands worked in Colorado. According to State Land Board Northwest District Manager Beverly Rave, the majority of public outreach was accomplished by the Emerald Mountain Partnership, "They wanted to make sure people were really informed about what it was they were trying to accomplish, and at the same time, make it clear to people what *our* mission was. What our expectations had to be for that property."<sup>30</sup> Also, the publicity itself of the conflict around Emerald Mountain meant that people statewide were learning about trust lands. In the Whitefish Neighborhood Planning Process, members of the Advisory Committee explained the trust obligation to their neighbors at the final public hearing.

### **INCREASED INSTITUTIONAL CAPACITY**

In four of the eight cases, participants reported that going through the process helped build institutional capacity for the organizations they represented. Collaborative planning builds institutional capacity because for some participants it requires them to develop new skills. For example, participants in the Southeast New Mexico Working Group noted that they are now better trained in multi-stakeholder collaborative processes, which will enable them to more effectively participate in similar processes in the future.

Other institutions build capacity because they engage in a planning process that is unfamiliar to them but the process becomes important to carrying out future duties. The Castle Valley Planning Process illustrates this secondary benefit because without the impetus of the collaborative planning process, the town of Castle Valley would not have been forced to go through a zoning process. During the process, the town increased the sophistication of their land use ordinances and their general procedures for addressing development. In the Houghton Area Master Plan Process, the City of Tucson became more able to tackle development challenges that involve large tracks of undeveloped land. In the Mesa del Sol Planning Process, the State Land Office (SLO) gained experience in establishing public-private partnerships and a partner to turn to in the future, Forest City Covington, LLC, who entered into the deal with the SLO.

### **RESULTED IN POSITIVE PUBLIC RELATIONS**

Some processes benefit participants and organizations involved because they result in positive public relations. For state trust land agencies, good public relations from a collaborative planning process may serve as a good example of community involvement and can create goodwill with the community. Utah's School and Institutional Trust Lands Administration (SITLA) described the Castle Valley Planning Process as an example of superior community involvement in their 10th Anniversary Report and several of their annual reports. In the Southeast New Mexico Working Group, the process was a source of positive



public relations for the State Land Office (SLO) because it demonstrated that they can generate income for schools in a sustainable way. Shawn Knox, a biologist at the SLO, cited this as a major benefit of the working group, noting that the SLO would be “seen in a light that [the SLO] can develop their resources, support public schools, and do it in a sustainable way.”<sup>31</sup>

While the Lake Whatcom Planning Process was turbulent at times, the local Department of Natural Resources (DNR) official earned praise from several members of the Committee for his professionalism and dedication to the process. In addition, by the end of the process, the editorial board of the Bellingham Herald argued for strong support of the DNR’s Landscape Plan, representing a major shift in public opinion from the beginning of the process.

### **PROVIDED SUCCESSFUL MODEL OF LAND MANAGEMENT**

In the Castle Valley, Southeast New Mexico Working Group and Mesa del Sol cases, participants involved believed the processes could provide a successful model of land management for other western land issues. In the Southeast New Mexico Working Group, facilitator Toby Herlzich noted, “If there’s a way to help ‘unstick’ some of those [western land] issues and work together to find new understanding and solve the problem, then that would be an overall contribution to all the work in the west on natural resources.”<sup>32</sup> Learning from the Mesa del Sol Planning Process, Ray Powell, the former Commissioner of the State Land Office (SLO), hopes Mesa del Sol will “set the standard for how you live in an arid environment, while making a whole lot more for the school kids.”<sup>33</sup> The current Commissioner says the agency will collaborate with private sector partners and the community to design a master plan for an upcoming project in Las Cruces, but will give the developers even more responsibility to decrease the SLO’s time investment in the process.<sup>34</sup>

### **IMPROVED STATE AND FEDERAL AGENCY COORDINATION**

In three of the four cases involving federal agencies, participants reported that going through the process has improved coordination between their agency and the federal agency involved. The Southeast New Mexico Working Group created consistent policies in response to a need for agencies to work across jurisdictional boundaries and to create more consistent land use plans across all types of land. Both the Bureau of Land Management (BLM) and the New Mexico State Land Office indicated that the process resulted in consistent policies that have ultimately facilitated management for all agencies involved. The participants in the Elliot State Forest Planning Process believed that they will be able to work with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service more effectively in the future because they included them in their habitat conservation planning process.

### **COSTS**

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The literature on collaboration reveals several costs, including time, staff costs, financial costs, and environmental costs. In *Making Collaboration Work: Lessons from Innovation in Natural Resource Management*, Wondolleck and Yaffee found that agencies, nonprofit

organizations and volunteers endure significant time costs when participating in collaborative processes.<sup>35</sup> Agencies and organizations also face financial costs in the form of staff salaries.<sup>36</sup> Some environmental groups oppose collaborative processes because they view the processes as being environmentally costly. To these critics, collaboration turns legal and regulatory standards into “bargaining chips.”<sup>37</sup> They also argue that collaborative processes emphasize local economic and social values at the expense of natural resources, giving a “small group of private individuals undue influence over public goods.”<sup>38</sup>

In this study’s cases of collaboration involving state trust lands participants identified a number of costs. These costs include direct planning costs, opportunity costs due to time spent devoted to the process and, in some cases, costs arising from poor public relations, emotional and personal costs and a loss to either trust value or environmental protection.

### **REDUCED THE VALUE OF TRUST ASSETS**

In the Lake Whatcom Landscape Planning Process, the Department of Natural Resources (DNR) estimated that because of logging restrictions in the Landscape Plan, the area will generate about half the revenue that would have been generated without the plan. The plan’s requirements beyond current rules and regulations resulted in an increase in land taken out of commercial forest management, causing a reduction of 35 percent in the planning area’s asset value based on future earnings from logging.<sup>39</sup> The Final Environmental Impact Statement reported lost revenue to trust beneficiaries as follows:

The projected revenues generated through implementation of the FEIS Preferred Alternative would be significantly lower than those estimated for the No Action Alternative. For the entire 200-year modeled planning period it is estimated that revenues under the Preferred Alternative would total \$177,210,000, a reduction of \$160,182,000 from the anticipated revenues of \$337,392,000 under the No Action Alternative.<sup>40</sup>

Critics of the DNR’s analysis noted that the financial estimates of the loss of revenue varied widely during the process and that a base case for comparison that more accurately reflected the current situation should have been chosen. That is, the base case for comparison could have been the *no logging* alternative that was in effect due to the moratorium on logging rather than the No Action Alternative that represented the logging practices that resulted in the moratorium on logging. Had a *no logging* base case been applied, the harvesting activity resulting from the Landscape Plan would have been described as an increase of \$177 million to the trust rather than a \$160 million loss.

### **LOSS OF ENVIRONMENTAL PROTECTION**

Environmental groups involved in the Elliott State Forest Planning Process have stated that the Oregon Department of State Lands and the Oregon Department of Forestry have proposed a Habitat Conservation Plan (HCP) that will in fact reduce habitat protection for the spotted owl and marbled murrelet. Many of the challenges faced by the Steering Committee and Core Planning Team highlight some of the faults of HCP process and HCPs themselves

as effective means of protecting threatened species. In 1998, a survey of spotted owls conducted on the Elliott State Forest revealed that the number of owls remaining had fallen from 69 in 1993 to 23 in 1998, which was much lower than the number of owls that should have remained given the number of owl takes permitted in the incidental take permit in the HCP.<sup>41</sup>

## **DIRECT PLANNING COSTS**

All of the processes examined in this study incurred direct planning costs. In many cases, the most significant direct planning costs derived from wages for participants who participated on behalf of government agencies or private companies and were therefore being paid for their time involved in the process. Public citizens that volunteered in the process often gave up wages (discussed below as opportunity costs). Other direct planning costs included those incurred to hold group and public meetings and to facilitate the exchange of information for items such as printing materials. Planning costs also included the costs of facilitation services and expert studies.

Of the eight cases, cost data was best documented in the Lake Whatcom Landscape Planning Process. The Washington Department of Natural Resources (DNR) reported that preparing the Environmental Impact Statement and the Lake Whatcom Management Plan cost the agency approximately \$800,000.<sup>42</sup> This estimate does not include wages for participants on the payroll of other state agencies or local governments. According to DNR officials, the costs incurred by the DNR will be borne by all state trust land beneficiaries. The \$800,000 was deducted from the DNR's general management account, which means that all beneficiaries, not just those whose trust land is contained in the planning area, incur the plan's development costs.<sup>43</sup> While cost figures were not available for the Elliott State Forest Process, state trust land officials also noted that the costs of the process would be borne by beneficiaries statewide.

According to estimates obtained by researchers, the Castle Valley Planning Process cost the town of Castle Valley significantly, the School and Institutional Trust Land Administration more than \$100,000, and Utah Open Lands \$50,000 per year in salary and other expenses. In addition, some personal costs were not reimbursed. Prior to the planning process' formal beginning, several community members from Castle Valley personally paid for much of the pre-planning activities, such as initial maps, without being reimbursed.<sup>44</sup> However, some costs of the process were offset by grants from Sonoran Institute, Patagonia and Tides Foundation. Finally, in the Emerald Mountain Planning Process, the Partnership paid for a planning lease with the State Land Board that cost \$28,000 and raised money to pay for advertising, consulting fees for survey data, a land appraisal, website hosting and postage.

## **OPPORTUNITY COSTS ARISING FROM TIME SPENT DEVOTED TO THE PROCESS**

Opportunity costs include anything of value that was given up by participating in the process. For members of the public who participated on a voluntary basis, the largest opportunity costs included foregone wages. As many of the processes consumed a great deal of the participants' time, opportunity costs should not be underestimated. In addition to time spent

in actual meetings, significant time is spent preparing and traveling for meetings. In the Lake Whatcom Landscape Planning Process, the Committee met 37 times, not including the public hearings they attended. Assuming an average of ten hours per meeting (five hours of preparation and five hours of actual meeting time – some meetings lasted all day and were convened during work hours) and that all nine members of the Committee were in attendance at every meeting, the process required 3,330 hours of the Committee’s time. In the Castle Valley Planning Process, travel time was required for meetings that were held in Castle Valley, Salt Lake City, Boulder and Denver. In the same process, Castle Rock Collaboration board members met once or twice a month for a period of two or three years during the planning process, during which board members opened their houses to hold the meetings.<sup>45</sup> The time devoted to organize was estimated by the group’s organizers to be at least 20 hours per week throughout the process and often much more.<sup>46</sup> Finally, one member of the Emerald Mountain Partnership estimated that the process consumed 1,500 hours of his time over 12 years, which detracted from time for family, recreation and relaxation.

### **EMOTIONAL AND/OR PERSONAL COSTS**

In six of the eight cases, participants noted that they suffered emotional distress or personal costs arising from time away from family and leisure and from stress or damaged relationships. In the Lake Whatcom Planning Process, the process was emotionally and personally draining for several participants. The Department of Natural Resources official responsible commented, “You’ve got folks that are yelling at you from all directions. It’s tough on staff.”<sup>47</sup> He added that the process took an “enormous personal toll on staff, me included.”<sup>48</sup> Similarly, in the Whitefish Neighborhood Planning Process, Department of Natural Resources and Conservation Trust Lands Management Division Administrator Tom Schultz faced internal strife from agency staff who did not agree with his decision to endorse the community’s proposal for a Committee. In the Emerald Mountain Planning Process, a rancher reported losing time devoted to family and leisure activity and felt his relationship with the city of Steamboat Springs was severely damaged. In the Houghton Area Master Plan Process, one of the participants mentioned members gave up personal time and time with family.

In some cases relationships were damaged. In the Castle Valley Planning Process, “There were some friendships at least strained and maybe in some instances ruined or severely stressed ...and that’s not a success.”<sup>49</sup> Another participant echoed this saying, “You get personally involved. It can be emotional, and it can be draining, and you make friends, you lose friends.”<sup>50</sup> In the Whitefish Neighborhood Planning Process, Advisory Committee member and Whitefish Chamber of Commerce President Sheila Bowen’s job was jeopardized by controversy surrounding the planning process.

### **BAD PUBLIC RELATIONS**

In the Whitefish Neighborhood Planning Process, the Department of Natural Resources and Conservation (DNRC) experienced some bad publicity and damage to its reputation because of its involvement in the planning effort. Whitefish community members and trust beneficiaries criticized the DNRC during the process for its approach to neighborhood

planning. Administrator Tom Schultz recalls the local newspaper, *The Whitefish Pilot*, having a lot of “heartburn” about the roles of the Advisory Committee and the general public in the process. Indeed, Schultz wrote several editorials defending the agency’s approach before and after the formation of the Advisory Committee.

In the Emerald Mountain Planning Process, by appearing to support a controversial land exchange, the Division of Wildlife (DOW) was criticized by opponents of the deal. The situation also put a magnifying glass on those agency employees who were involved with the process. Libbie Miller remembers,

We might have taken some hard knocks from the opposition, being perceived as a supporter. People wanted to know “How could we possibly be supporting this, particularly since losing these lands is going to hurt the economy of our local towns through the loss of hunting!” There are probably some people who feel a little bit negative about the Division or myself, with our position on the exchange.<sup>51</sup>

While participants remember the DOW receiving criticism for supporting the exchange, they also recall DOW under fire for raising concerns about the exchange at one Partnership meeting. The process exposed possible conflicts of interests because the Department of Natural Resources houses both the DOW, whose mission is to protect wildlife, and the State Land Board, whose mission is to generate revenue. This conflict, along with other land use issues and controversies occurring around that time, prompted the DOW to redesign their inter-agency land use commenting procedures.

## **COMPARING BENEFITS TO COSTS**

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A discussion of the benefits and costs naturally leads to the question: how do the benefits and costs compare? Do the benefits outweigh the costs? Are the costs greater than the benefits? There are at least two reasons why such a comparison is difficult in this report. First, at the aggregate level looking across the eight cases, a comparison of cost and benefits would be ill-advised because net benefits at the aggregate level would not justify an individual process that resulted in net costs. Second, even at the individual case level, comparing the benefits to the costs is not possible without first putting benefits and costs into a common unit, such as dollars, which would allow one to arrive at the net present value of the process as a whole to society. While several methods exist in the field of economics to value benefits of non-market goods, the scope of this study did not include an economic valuation of each of the benefits and costs discussed.\* In addition, the valuation of many of the secondary benefits discussed, such as improved relationships, may not be possible at all.

Despite the absence of valuation data for each benefit and cost, the data collected during the case study interviews suggests that had such a valuation for each case been conducted, the benefits would outweigh the costs in most cases. The fact that the number of benefits

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\* The most common economic techniques for valuing non-market goods and non-use values of natural resources include contingent valuation, hedonic pricing, travel costs and option valuation.

identified in each case greatly outnumbered the number of costs identified by interviewees suggests that benefits outweigh costs. For example, in the Castle Valley Planning Process, the researchers identified ten categories of benefits compared to three categories of costs. Five of the benefits identified were considered primary benefits, including an increase in the value of the trust, an improvement in the natural environment, an improvement in the urban environment, a higher quality solution and the establishment of recreational access. While not related to the participants' original goals, five additional secondary benefits were identified, including new and improved relationships, public education about state trust lands, increased institutional capacity of the Castle Valley town government, positive public relations for the state trust land agency and a successful model of land management for other land use processes. Table 14-1 shows that for all of the cases of collaborative planning on state trust land in this report, the number of benefits identified in each case by interviewees far outnumbered the number of costs identified.

The participants' views about whether the process as a whole was successful and whether they would be willing to participate in a collaborative process again in the future further suggest that the benefits outweighed the costs in most cases. Both inquiries were included in the set of interview questions asked of all participants. The first question, "Was the process successful?" zeroes in on whether the participant thought the benefits outweighed the costs of the process overall. The second question, "Would you collaborate again in the future?" which included the follow-up question, "Was this a value-added activity?" focuses on whether the benefits outweighed the costs for the individual.<sup>†</sup>

Eighty percent of interviewees (or 71 out of 89) believed the process was successful when asked directly whether they thought the process was successful or whether they would collaborate again in the future. Twenty-eight of the 117 interviewees did not answer either of these questions and several of the participants in the ongoing processes conditioned their answers on implementation of the final outcome. Table 14-2 shows the responses to these interview questions summed up for each case study and the sums as a percent of the total interviewees who responded.

**Table 14-2: Weighing Benefits and Costs: Responses to Interview Questions #4 and #4F**

Response to Interview Question #4 "Was the Process Successful?" or Interview Question #4F "Would you Collaborate Again in the Future?"	CASE STUDIES								Total
	Castle Valley	Elliott	Emerald Mtn	HAMP	Mesa del Sol	Lake Whatcom	SE New Mexico	White-fish	
Affirmative	10	9	9	11	5	4	15	8	71
Negative	2	1	0	0	0	1	1	0	5
Mixed Response	3	1	2	0	1	2	0	4	13
<b>Total Interviewees Who Responded</b>	<b>15</b>	<b>11</b>	<b>11</b>	<b>11</b>	<b>6</b>	<b>7</b>	<b>16</b>	<b>12</b>	<b>89</b>
<b>Total Interviewees Who Did Not Respond</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>5</b>	<b>8</b>	<b>6</b>	<b>2</b>	<b>5</b>	<b>28</b>
<b>Total Interviewees</b>	<b>15</b>	<b>11</b>	<b>13</b>	<b>16</b>	<b>14</b>	<b>13</b>	<b>18</b>	<b>17</b>	<b>117</b>
Affirmative	67%	82%	82%	100%	83%	57%	94%	67%	80%
Negative	13%	9%	0%	0%	0%	14%	6%	0%	6%
Mixed Response	20%	9%	18%	0%	17%	29%	0%	33%	15%
<b>Total Interviewees Who Responded</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

<sup>†</sup> The full list of interview questions can be found in Exhibit 1 in the Appendix to this report.

At the individual case level, the majority of participants in each case believed the process was successful when asked directly whether they thought the process was successful or whether they would collaborate again in the future. The majorities ranged from 57 percent of those who answered the questions in the Lake Whatcom Landscape Planning Process to 100 percent of those who answered the questions in the Houghton Area Master Plan Process. Despite the qualitative and quantitative evidence identified in this report that shows that collaborative planning on state trust lands appears to result in overall net benefits, a full benefits-costs analysis by an economist of these, or other, cases is an important opportunity for further study.

## CHAPTER 15

### HOW DO INTERNAL AND EXTERNAL LEGAL CONSTRAINTS INFLUENCE A COLLABORATIVE PLANNING PROCESS?

A study of collaborative planning on state trust lands is not complete without examining how the law affects both the collaborative process and its outcome. Because state trust land managers must adhere to a constitutional mandate, all collaborative planning efforts on state trust lands inevitably must operate within a legally-defined space. In addition to these “internal” legal constraints, collaborative planning on state trust lands must occur within “external” legal boundaries because trust land management implicates larger land management and natural resource issues. These external legal boundaries include a range of federal, state and local laws and policies.

Both agency and non-agency representatives must consider legal issues when engaging in collaboration. Agency representatives must find a way to collaborate within their existing legal framework and educate other participants about the decision space in which the process may occur. Non-agency participants, in turn, must accept and become comfortable with the leeway provided. According to the Bureau of Land Management and Sonoran Institute *Desktop Reference Guide to Collaborative, Community-Based Planning*, this acclimation process can be challenging for all parties because of the important, but subtle difference between decision-making responsibility and power, which should be shared by all participants, and decision-making authority which an agency legally cannot abdicate. “There is a fine line between empowering the group and making sure that the [legal] sideboards are clearly specified.”<sup>1</sup>

The eight cases of collaborative planning on state trust lands examined in this report reveal how internal and external legal constraints vary across states, posing challenges for some while serving as key facilitating factors for others (Table 15-1). This chapter will explore the following themes that emerge from an analysis of the eight cases:

- The effect of preexisting legal constraints on the collaborative process and outcome
- The effect of discovering legal issues during collaboration on the process and outcome
- The strategic use of the law to influence the process and outcome
- The legal flexibility of state trust land management



**Table 15-1: Legal Constraints that Affected the Collaborative Process / Outcome across the Eight Cases**

	Castle Valley	Elliott State Forest	Emerald Mountain	HAMP	Lake Whatcom	Mesa del Sol	SE NM Working Group	Whitefish	Total
<b>Trust Mandate</b>	✓	✓	✓	✓	✓	✓	✓	✓	8
<b>State Constitution*</b>			✓						1
<b>Clean Water Act</b>					✓				1
<b>Endangered Species Act**</b>		✓					✓		2
<b>Federal Lands Policy &amp; Management Act**</b>	✓		✓				✓		3
<b>Internal Revenue Code</b>	✓		✓						2
<b>Safe Drinking Water Act</b>	✓								1
<b>State Regulation / Legislation</b>	✓				✓			✓	3
<b>Legal Contract***</b>			✓						1
<b>Agency / Attorney General Opinion</b>					✓				1
<b>Courts (Litigation)</b>					✓	✓	✓		3

\* Other than trust mandate

\*\* And corresponding regulations

\*\*\* E.g., Memorandum of Agreement

## **EFFECT OF PREEXISTING LEGAL CONSTRAINTS ON PROCESS AND OUTCOME**

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All collaborative planning efforts, regardless of focus, must operate within certain preexisting legal constraints. Some of these legal issues are known to the participants upon engaging in a collaborative process, whereas others are discovered along the way. This first section explores the effect the former situation can have on the collaborative process and outcome, as exemplified by the cases.

### **INTERNAL LEGAL CONSTRAINTS**

Collaborative planning on state trust lands must take place within the confines of a state’s trust mandate. As discussed in Chapter 3, this legal mandate varies in substance and clarity

across states as a consequence of history, as well as agency and court interpretation.<sup>2</sup> While the cases do not provide enough data to explore the intricacies of constitutional language across states, they highlight how the existence of a legal mandate influences the process and outcome. The cases also shed light on how variations in mandate clarity and flexibility affect the collaboration.

### **Effect of Trust Mandate on Process**

The presence of a legal mandate can play a role in determining participant involvement in a collaborative process. In the Elliott State Forest Planning Process in Oregon, the mandate was a factor in limiting membership composition of the Steering Committee, as neither the Bureau of Land Management nor the U.S. Forest Service was invited to participate on the Steering Committee, despite having a stake in the process. This decision was justified on the ground that their federal mandates were too different from the State Land Board's mandate. Oregon Department of Forestry Southern Area Director Dan Shults explained:

We consciously did not include the federal land management agencies. The constitutional mandate for the Elliott State Forest is far different from the mission on federal lands in Oregon. We felt that there would be little value added to the process and likely an increase in the time it would take to develop the plan ....<sup>3</sup>

In the Mesa del Sol Planning Process in New Mexico, the mandate also was a factor in determining participant involvement. While the Mesa del Sol case did not involve a formal collaborative working group, it involved a number of specific parties, including the University of New Mexico (UNM). A beneficiary of the Mesa del Sol trust lands, UNM perceived that they had a right to be involved in the planning process because of the trust mandate. In fact, the University Board of Regents sued Commissioner of Public Lands Jim Baca early in the process to block the sale of Mesa del Sol property, claiming the sale did not generate enough revenue for the trust. Following that lawsuit, UNM became an active participant with the State Land Office throughout the 20-year planning process.

A state's legal mandate also can determine the stakeholder group's level of decision-making power. Unlike decision-making authority, which a trust land manager cannot legally relinquish, decision-making power can and should be shared with non-agency participants. Perhaps paradoxically, the trust mandate can facilitate this allocation of power, providing a stakeholder group with a means to gain influence over trust land management decisions. For example, in the Emerald Mountain Planning Process in Colorado, the trust land mandate became an important facilitating factor. It has been said that the Partnership was able to successfully influence State Land Board decision making because it embraced the legal constraints imposed by the mandate. Instead of resisting the Board's legal interpretation, the Emerald Mountain Partnership embraced it and focused on helping the Board achieve its goal of revenue generation. The Partnership recognized the Board's need to only accept a trust land proposal if and when it could achieve market value, and no less.<sup>4</sup>

Likewise, in the Castle Valley Planning Process in Utah, the trust mandate was a source of power for the Castle Rock Collaboration (CRC). Pursuant to Utah's trust mandate, the School and Institutional Trust Lands Administration (SITLA) must obtain "fair market value" for trust land parcels. At first, the CRC viewed this legal obligation as a significant obstacle because the group equated revenue generation with development, which was contrary to CRC goals. However, with the realization that SITLA could satisfy its mandate without pursuing development in the area, the CRC was able to identify conservation initiatives that served both parties' interests and hence increased the likelihood of SITLA approval.<sup>5</sup>

While the trust mandate can empower a stakeholder group, it also can create a division between the trust land agency and other stakeholders. This rift can perpetuate mistrust and hinder progress. Participants in four of the eight cases recounted struggling with this dynamic. In the Houghton Area Master Plan (HAMP) Process in Arizona, for instance, the Arizona State Land Department (ASLD) reportedly was unable to make certain concessions because of its mandate. This limitation frustrated many members of the Citizens Review Committee who viewed the ASLD as distancing itself from the group and collaborative process.<sup>6</sup> Similarly, the Whitefish Neighborhood Planning Process in Montana struggled to bridge the gap between the Department of Natural Resources and Conservation (DNRC) and the Whitefish School Trust Lands Advisory Committee. This disconnect emerged because of disagreement about mandate interpretation. As discussed further below, the DNRC and Advisory Committee endlessly debated the correct interpretation of the agency's constitutional obligations. Unable to develop a common understanding, the Committee and DNRC remained at odds for much of the planning effort, to the detriment of the collaborative process.<sup>7</sup> The Lake Whatcom Landscape Planning Process in Washington and the Emerald Mountain Planning Process were two additional cases that encountered this challenge at some point.

### **Effect of Mandate Clarity on Process**

The cases of collaborative planning on state trust lands reveal that trust mandates vary in clarity across states. Comparing the Whitefish Neighborhood Planning Process with the HAMP Process illustrates how this variation can influence collaboration.

Mandate clarity can determine the level of agency involvement in the collaborative process and thereby affect the working relationship between a trust land agency and stakeholders. The HAMP Process is a case that struggled to foster a high degree of collaboration between these two groups. Along with New Mexico, Arizona has the most restrictive trust mandate in the continental United States; the New Mexico-Arizona Enabling Act is the only one to explicitly require that the land granted be held "in trust." As discussed in Chapter 3, this language imposes a specific legal responsibility, known as a fiduciary duty, on the state to manage the land for the "beneficiaries" of the land grant and thus limits the state's management discretion.<sup>8</sup> This unequivocal obligation limited the Arizona State Land Department's (ASLD) ability to work collaboratively with the Citizens Review Committee (CRC) and other stakeholders in the HAMP process. The most obvious consequence was the ASLD's decision to distance itself from the collaborative group and participate in a resource

capacity, instead of as a CRC member. According to ASLD Planning Section Manager Gordon Taylor, serving as a resource helped ensure that the agency would not be held to a final outcome that it legally or philosophically could not support:

We get involved with committees, but it's as a resource person. We've found that if we get put onto a committee ... we're listed as one of the people who has supported [the final document] even though we may be in objection to certain elements of it ... by virtue of our association with the committee then there's ... tacitly the buy-in ... and that could conceivably be used by the community to leverage the Department on various land issues.<sup>9</sup>

This limited agency willingness to commit frustrated and confused CRC participants. CRC member Phil Swaim noted that it was “difficult with the State Land Department sort of sitting back and saying we'll wait and see what you come up with and see if we support it or not.”<sup>10</sup>

In contrast, the Whitefish Neighborhood Planning Process created an Advisory Committee that included the Department of Natural Resources and Conservation (DNRC) as another group member. This greater level of agency participation may be attributable to the fact that Montana's legal mandate was perceived as more ambiguous than Arizona's trust obligation and hence gave the agency more leeway to join stakeholders at a decision-making table. Pursuant to Montana's Constitution, the state has a fiduciary duty to trust land beneficiaries, as well as a responsibility to “maintain and improve a clean and healthful environment in Montana for present and future generations.”<sup>11</sup> These dual constitutional obligations have led many Whitefish participants and stakeholders to view the fiduciary duty created by Montana's trust mandate as less clear-cut than those of other states.

By determining the level of agency involvement in a process, mandate clarity also can influence the allocation of decision-making power. In the Whitefish case, Advisory Committee members became equal decision makers with the DNRC because they were sitting at the same negotiating table. Citizens Review Committee (CRC) members in the HAMP case, on the other hand, struggled throughout the process to determine how much influence they had over the Arizona State Land Department's (ASLD) final decision because the agency distanced itself from the rest of the group.<sup>12</sup>

Variation in mandate clarity can shape the collaborative process by influencing the public's understanding and acceptance of the trust mandate. Without a solid grasp of the mandate, a collaborative process often must dedicate considerable time to educating process participants and outside stakeholders about the legal constraints inherent in trust land management. This education process takes away time and focus from substantive issues. The Whitefish Neighborhood Planning Process exemplifies that challenge. During that collaborative process, the DNRC's dual constitutional obligations fueled an ongoing debate over whether the state had to maximize short-term revenue production, or adopt a more long-term management approach that protected its natural assets. Indeed, the DNRC and Advisory Committee spent hours debating the merits of the parties' legal arguments because some believed there was room for interpretation. These discussions took up meeting time that

could have been spent discussing substantive planning issues. They also prolonged the process.<sup>13</sup> Alternatively, the HAMP Process did not have to dedicate much time to stakeholder education. All interviewed participants had a clear understanding of Arizona's trust mandate and accepted the legal limitations within which they were working. This difference could be attributed to the perceived clarity of Arizona's mandate. Citizens Review Committee members did not have the legal space to push against the Arizona State Land Department's (ASLD) interpretation. Accordingly, after minimal education by the ASLD, it did not become an issue.

### **Effect of Mandate Flexibility on Process and Outcome**

In addition to mandate clarity, variation in mandate flexibility across states can influence the collaborative process. Comparing the Castle Valley Planning Process with the HAMP Process illustrates this effect.

The cases show that mandate flexibility can influence group dynamics. In the Castle Valley Planning Process, the flexibility inherent in Utah's mandate helped the Castle Rock Collaboration (CRC) and School and Institutional Trust Lands Administration (SITLA) overcome mistrust and build a productive working relationship. While Utah's mandate requires SITLA obtain "fair market value" for trust land parcels, as discussed earlier, it nevertheless places few restrictions in the minimum sale or lease price of trust lands, in comparison to other Western states. This flexibility enabled SITLA to engage in a negotiated trust land sale, offering parcels to the Castle Valley community for purchase for conservation purposes. This offer demonstrated SITLA's openness to engaging in conservation transactions with the community and consequently helped the parties build trust. According to CRC leader Laura Kamala:

I see all the conservation initiatives we did with SITLA as part of the process, because it was key in our growing relationship with them, in proving that there was a conservation market here for SITLA, and it's viable. We could show up with the money and do what we said we were going to do, even with a better record than a lot of the developers they were working with at the time.<sup>14</sup>

On the other hand, the HAMP Process struggled a bit with group dynamics. Unlike Utah, Arizona's trust mandate explicitly requires that the land only be sold or leased "to the highest and best bidder at a public auction" for no less than its appraised value.<sup>15</sup> This provision has been legally interpreted to limit the Arizona State Land Department's (ASLD) flexibility, prohibiting the agency from privately negotiating the terms of a sale or lease with a potential buyer, even if the purchaser is a city.<sup>16</sup> Such rigidity frustrated members of the Citizens Review Committee (CRC) who viewed the ASLD as a difficult partner to work with at times.<sup>17</sup>

The flexibility of a trust mandate also can determine what options are available to the group. For the Castle Valley Planning Process, the Utah mandate's flexibility enabled the Castle Rock Collaboration and SITLA to explore creative ways, like a conservation sale, to achieve

both the revenue needs of SITLA and the open space interests of the community. The Citizens Review Committee in the HAMP Process did not enjoy the same creative freedom because of the strict legal obligations in the Arizona trust mandate.

### **Effect of Trust Mandate on Outcome**

As the above contrast between the Castle Valley Planning Process and HAMP Process demonstrates, a state's trust mandate can influence the outcome of collaborative planning. Three additional cases illustrate how this legal constraint can play a role in determining the substance of a final product. For example, in the Whitefish Neighborhood Planning Process, perceived ambiguity surrounding the state's mandate provided the Whitefish Advisory Committee with the latitude to push for more trust land conservation. In the end, the Whitefish Neighborhood Plan allowed for development on only four percent of the 13,000-acre area.<sup>18</sup> On the other hand, the Emerald Mountain Planning Process and Elliott State Forest Planning Process had to be more sensitive to their trust land agencies' revenue generation obligations, tailoring their final plans to explicitly meet revenue goals. Indeed, the Steamboat Springs community spent years developing various proposals for Emerald Mountain in hopes of generating the necessary revenue to receive State Land Board approval before finally suggesting a BLM land exchange.<sup>19</sup>

### **EXTERNAL LEGAL CONSTRAINTS**

Because state trust land management involves larger land management and natural resource issues, collaborative planning on state trust lands must occur within "external" legal constraints, in addition to the boundaries delineated by the trust mandate.

### **Effect on Collaborative Process**

Several of the major federal environmental and natural resource laws come into play in the examples of collaborative planning on state trust lands examined in this report. Indeed, in the Elliott State Forest Planning Process and Southeast New Mexico Working Group, federal law played as significant a legal role as the trust mandate. The Endangered Species Act (ESA) was the impetus for a collaborative planning process in both cases: the Elliott Steering Committee was formed to develop a Habitat Conservation Plan (HCP) for the federally-listed spotted owl, marbled murrelet and Coho salmon while the Southeast New Mexico Working Group was formed to create a Resource Management Plan (RMP) Amendment for the BLM and a conservation plan to prevent the need to federally list the lesser prairie chicken and sand dune lizard. Both collaborative processes consequently had to address ESA constraints.

An external legal sideboard like the ESA can be challenging for a collaborative process, which has to adapt to additional timelines and constraints imposed by the federal law. For instance, in the Elliott State Forest Planning Process, compliance with the HCP regulations prolonged and complicated the collaborative effort. The group had to take the time to ensure that officials at each decision-making level retained their authority to assess the process. According to John Lilly, Assistant Director for Policy and Planning at the Department for State Lands:

The Elliott is a different creature because you are trying to get a federal permit at the same time so you have to sequence all this stuff out. How do you leave decision space for the policymaker – that is the Land Board – in a way that doesn't lock them down before the USFWS has tipped their hand as to what they will accept as an HCP? You've got to leave all that decision space mushy so that you're not taking away your policymaker's prerogatives.<sup>20</sup>

While federal law can pose a challenge for some collaborative processes, it can serve as a key facilitating factor for others like the Southeast New Mexico Working Group. In that process, the threat of either the prairie chicken or the sand dune lizard being federally listed kept many people at the negotiating table, despite different agendas and difficult issues. According to State Land Office and later U.S. Fish and Wildlife Service wildlife biologist Jennifer Parody, the risk of ESA listing was too great to be ignored.<sup>21</sup> This distinction between the effect of the ESA in the Elliott State Forest Planning Process and Southeast New Mexico Working Group may be attributable to the fact that the species were already listed in the former case, whereas federal regulation was still uncertain in the latter case. As such, the Southeast New Mexico Working Group had more flexibility than the Elliott Steering Committee in determining the extent of the ESA legal constraints, which became a significant motivation.

In addition to the ESA, other federal laws can determine the working space in which collaborative planning occurs and can affect the process and outcome. These external constraints include: (1) the Clean Water Act, as seen in the Lake Whatcom Landscape Planning Process, (2) the National Environmental Policy Act (NEPA), as seen in the Elliott State Forest Planning Process and (3) the Federal Lands Policy and Management Act, as seen in the Southeast New Mexico Working Group, Castle Valley Planning Process and Emerald Mountain Planning Process.

Often, external legal constraints can hinder collaboration by imposing requirements that must be fulfilled concurrently with the collaborative process. This situation can lead to inconsistent messages and generate mistrust among participants. In the cases studied for this report, this challenge emerged in the context of state law. Both the Whitefish Neighborhood Planning Process and Lake Whatcom Landscape Planning Process struggled with the simultaneous development of an Environmental Impact Statement (EIS) pursuant to the Montana Environmental Policy Act and State Environmental Policy Act, respectively. In the Whitefish case, these parallel processes resulted in mixed messages from the Department of Natural Resources and Conservation, which fostered confusion and perpetuated mistrust between the Advisory Committee and agency.<sup>22</sup> Likewise, participants in the Lake Whatcom case were suspicious of the EIS process, viewing it as a stall tactic or an attempt to weaken the influence of the Interjurisdictional Committee because it was initiated late in the process and after a new, more conservative Commissioner was elected.<sup>23</sup> It also has been said, however, that the Lake Whatcom Landscape Planning Process benefited from an increased degree of transparency because the EIS required public meetings and comment.<sup>24</sup>

## **Effect on Outcome**

External legal issues can affect the outcome of a collaborative process by constraining implementation. For example, Montana law provides that neighborhood plans are to be advisory tools for the Department of Natural Resources and Conservation and State Land Board rather than regulatory documents.<sup>25</sup> Similarly, in Arizona, the Arizona State Land Department is not legally obligated to implement the HAMP or require that state trust land buyers act within the Plan's parameters.<sup>26</sup> These legal constraints not only hindered the process in the Whitefish and HAMP cases by limiting the public's decision-making power, but also raise questions about the future implementation of the planning documents. In both cases, many participants remain in wait-and-see mode, watching how implementation efforts unfold in the future.<sup>27</sup>

## **EFFECT OF DISCOVERING LEGAL ISSUES DURING COLLABORATION**

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Legal constraints may exist at the outset of a collaborative process, but that does not guarantee that participants are aware of them. The Castle Valley Planning Process exemplifies how collaboration can be affected by discovering preexisting legal sideboards during the process.

The town of Castle Valley engaged in collaborative planning with the Utah School and Institutional Trust Lands Administration (SITLA) without understanding the legal space in which the process could unfold. Specifically, at the beginning of the process the town was unaware that Utah law requires all local governments to (1) approve planning activities prior to initiating development and (2) maintain updated ordinances.<sup>28</sup> Upon learning of these pertinent preexisting constraints, the town grew concerned about potential conflicts of interest and shifted its focus to what it considered more pressing obligations. The town consequently distanced itself from the collaborative process and ultimately refused to sign the final planning agreement.

## **EFFECT ON PROCESS**

Discovering legal constraints while engaged in collaboration can hinder the process. As was the case in the Castle Valley Planning Process, this discovery can force an important stakeholder to abruptly restrict its involvement, which can hurt group dynamics. According to Castle Rock Collaboration (CRC) member Dave Erley, once the town distanced itself from the collaborative process, the atmosphere "became much more tense and sometimes adversarial."<sup>29</sup> The town's relationships with the community and SITLA also suffered. Some questioned the town's good faith, while others viewed the ordinance revisions with skepticism, seeing them as a stalling technique more than a necessity.<sup>30</sup> Furthermore, communications between the town and SITLA broke down, as the agency believed that the town breached its commitment to collaboration by making the agency go through the new ordinance process.<sup>31</sup>



The mid-process discovery of legal issues can reveal complexities that require reevaluation and even revision of agreements and products. This review involves time and resources and can jeopardize certainty. For example, in the Castle Valley case the town learned late in the process that its records for proving the town's water rights were deficient and hence not in compliance with Utah law. This realization complicated the planning process because the CRC and SITLA had been developing a planning contract assuming that a developer could use the town's water. The emergence of this new legal constraint left less room for that assumption.<sup>32</sup> Moreover, the town's realization that the U.S. Environmental Protection Agency had designated Castle Valley's aquifer as a "sole source aquifer" pursuant to the Safe Drinking Water Act forced late revision of parts of the plan.<sup>33</sup>

### **EFFECT ON OUTCOME**

Discovering legal constraints during the collaborative process can influence the final outcome by forcing the group to reevaluate how to achieve its desired end result. This reassessment can result in a comparable, if not better, final outcome. Yet, by choosing a new path midway through the process, the group may also have to sacrifice certainty. These outcome tradeoffs emerged in the Castle Valley Planning Process. As mentioned, the town of Castle Valley declined to sign the planning contract with SITLA upon learning that it was not in the town's best legal interest to participate in the collaborative effort.<sup>34</sup> The CRC consequently had to look to other options to achieve its trust land conservation goal, ultimately pursuing a land exchange with the BLM. While this avenue may help the group achieve its objective, the future remains unclear. Securing a signed planning contract between the town and SITLA, on the other hand, would have provided all parties with greater certainty.

### **STRATEGIC USE OF THE LAW TO AFFECT THE PROCESS AND OUTCOME**

While the law can pose significant challenges to a collaborative process, the cases reveal that in some situations legal constraints can serve as a key facilitating factor (Table 15-2). Many of the cases consequently involved a strategic use of the law to initiate or influence the process, define issues, create options or shape the final outcome.

**Table 15-2: Strategic Use of the Law across the Eight Cases**

	Castle Valley	Elliott State Forest	Emerald Mountain	HAMP	Lake Whatcom	Mesa del Sol	SE NM Working Group	Whitefish	Total
<b>Initiate Process</b>					✓				1
<b>Influence Process: 501(c)(3)</b>	✓		✓						2
<b>Influence Process: MOA</b>			✓						1
<b>Influence Process: Legislative Change</b>	✓		✓						2
<b>Influence Process: Legal Action</b>					✓	✓	✓		3
<b>Define Issues</b>					✓				1
<b>Create Options</b>	✓		✓						1
<b>Shape / Realize Outcome</b>				✓	✓			✓	3

**INITIATING THE PROCESS**

Stakeholders can use the law to define a space for collaborative planning to take place. The Lake Whatcom Landscape Planning Process exemplifies this tactical approach. Unlike the other seven cases examined in this report, the Lake Whatcom Process arose in response to a state legislative mandate for which concerned community members lobbied. The law that created the Lake Whatcom Landscape Planning Process required the Department of Natural Resources (DNR) to collaborate with a stakeholder group. The legislation also specified minimum stakeholder involvement.<sup>35</sup> These legal constraints thus enabled alarmed residents and other stakeholders to participate with the trust land agency in the review of DNR forest management plans within the Lake Whatcom watershed.

Some have questioned, however, whether the Lake Whatcom Landscape Planning Process truly was collaborative because of its legislative mandate. According to Bellingham, Washington representative Bill McCourt, “it wasn’t a group getting together because they all had a common interest. DNR had a gun to their head.”<sup>36</sup> The legislative mandate has also been attributed to perpetual mistrust between the DNR and other stakeholders. Yet, these challenges are not unique to the legal circumstances surrounding the Lake Whatcom case. During the Whitefish Neighborhood Planning Process, many within the Department of Natural Resources and Conservation similarly felt forced into the collaborative effort as Whitefish residents petitioned the State Land Board for a more inclusive process. Indeed,

Advisory Committee facilitator Janet Cornish has resisted calling the Whitefish process collaborative because she felt that the agency was “strong-armed” out of its role by the Whitefish community.<sup>37</sup> Moreover, as discussed in Chapter 19, mistrust between trust land agencies and the public characterized many of the cases examined in this report.

It thus remains unclear from the cases whether a legislatively-mandated collaborative process is a contradiction in terms, or if it simply provides another avenue to collaboratively manage trust lands.

## **INFLUENCING THE PROCESS**

There are a variety of ways in which stakeholders can strategically employ the law to influence a collaborative process. The legal mechanisms used in the cases to sway the process included: (1) incorporation as an Internal Revenue Code (IRC) § 501(c) (3) organization, (2) drafting a Memorandum of Agreement, (3) legislative change and (4) litigation.

Incorporation as an IRC § 501(c) (3) “charitable organization” secures a group tax-exempt status and enables the group to accept contributions in exchange for tax deductions.<sup>38</sup> The legal personality acquired through incorporation enables groups to fundraise and thereby gain influence over the decision-making process. Both the Emerald Mountain Partnership and the Castle Rock Collaboration (CRC) secured 501(c) (3) benefits during the Emerald Mountain Planning Process and Castle Valley Planning Process, respectively. The Emerald Mountain Partnership independently incorporated as a charitable organization, whereas the CRC became a branch of the nonprofit group Utah Open Lands to use their 501(c) (3) status. With this fundraising capability, both the Partnership and CRC were able to build some support for their respective efforts. Incorporation as or partnership with a 501(c) (3) organization also probably enabled them to gain some influence over the decision-making process because revenue generation was a key objective in both cases.<sup>39</sup> This incorporation also likely enabled the Partnership to enter into contracts such as the Memorandum of Agreement while avoiding any personal liability for individual participants.

Developing a Memorandum of Agreement (MOA) is another way stakeholders can tactically use the law to influence collaborative planning. While not necessarily a formal legal constraint, an MOA is a contractual agreement within which a collaborative process must operate. This instrument can increase the credibility of a party not only because of its contractual nature, but also because it allows for the drafting of a very specific agreement. In the Emerald Mountain Planning Process, the Emerald Mountain Partnership used an MOA to influence the planning effort. Specifically, the Partnership submitted a detailed MOA that provided that the Partnership would purchase the trust land parcel at market value within five years based on a current appraisal. Bidding on the parcel with an MOA was a key facilitating factor for the Emerald Mountain process. It greatly increased the Partnership’s influence on decision making by demonstrating to the State Land Board that the group was a serious bidder. The MOA also bought the group time to consider various options and strategies.

Legislative change is a third legal strategy to influence the collaborative process. The Emerald Mountain Planning Process illustrates this approach, as Colorado Governor Roy Romer proposed and was able to pass a ballot initiative to amend the state constitution. “Amendment 16” requires the State Land Board to work with local governments and comply with local land use regulations and plans. By creating a Stewardship Trust, the amendment was misunderstood by some to provide the Partnership with a way to protect trust land parcels in perpetuity. While this perception was mistaken (because the Stewardship Trust in fact holds land parcels for eventual sale), Amendment 16 and its focus on cooperation with local communities nonetheless helped foster collaboration between the Partnership and State Land Board.<sup>40</sup>

Likewise, the town of Castle Valley considered legislative change just prior to the initiation of the Castle Valley Planning Process. Fearing that the trust lands within its municipal limits would be sold and developed, the town proposed amending its zoning ordinance to rezone trust land parcels from one unit per five acres to one unit per 40 acres, which would decrease the allowable density and thereby stymie additional development.<sup>41</sup> This legislative proposal troubled the Utah School and Institutional Trust Lands Administration (SITLA), which had legal objections to the lack of notice provided, as well as the town’s authority to engage in trust land rezoning. SITLA also saw the amendment as contrary to the spirit of the pending collaborative process.<sup>42</sup> Despite this negative reaction, the proposal probably helped motivate the town and SITLA to ultimately come together to collaborate on the proper management of the local trust lands.

Finally, stakeholders can strategically influence the collaborative process by threatening or carrying out legal action. Potential or actual litigation can benefit the process by motivating parties to stay at the table and even realizing substantive objectives. Yet, it also can pose significant challenges, straining relationships and jeopardizing the durability of the group. The Lake Whatcom Landscape Planning Process exemplifies the tradeoffs associated with legal action. In an effort to force the Board of Natural Resources’ approval of the final Landscape Plan, Interjurisdictional Committee members threatened to sue the agency. Likewise, the city of Bellingham, Whatcom County and the water district filed a lawsuit to force the Board to adopt the plan. While the lawsuit eventually was dropped because the Board soon approved the plan, this legal recourse motivated the Department of Natural Resources (DNR) to stick with and complete the planning process. On the other hand, the threat of lawsuits also put the DNR on the defensive and perpetuated mistrust between the agency and other stakeholders.

Concurrent with the inception of the Southeast New Mexico Working Group, several environmental groups similarly threatened legal action (in the form of a 60 day notice-with-intention to file Area of Critical Environmental Concern petition) with the BLM. Similar to the Lake Whatcom legal action, the environmental groups agreed to drop the petition until the Working Group had time to work out a plan. While it brought trust land and prairie chicken management issues more to the forefront of agencies’ agendas, this notice also left feelings of animosity and mistrust in its wake.

Litigation also played a role in the Mesa del Sol Planning Process, as briefly mentioned earlier. Seeking higher compensation from the early auction of Mesa del Sol property, the University of New Mexico Board of Regents sued Commissioner of Public Lands Jim Baca to block the sale. This strategic use of the law gained the Board a greater percentage of the sale. Moreover, this legal action motivated the State Land Office (SLO) to devise a final development plan that would satisfy the beneficiary. However, the litigation also posed significant challenges for the collaborative process moving forward. It strained relationships, generated negative press for the SLO and created a level of uncertainty within the private sector as to whether Mesa del Sol was a safe investment.

## **DEFINING THE ISSUES**

Collaborative planning participants can turn to the law to define issues and thereby enable the process to move forward. The Lake Whatcom Landscape Planning Process illustrates this use of legal constraints. In an effort to prevent further criticism of forest practices and additional logging restrictions in the Lake Whatcom watershed, Commissioner of Public Lands Doug Sutherland sought formal opinions from the Department of Health and Department of Ecology regarding the degree to which Department of Natural Resources (DNR) forestry practices contributed to pollution in the lake. The opinions affirmed the sufficiency of existing state forest rules, including the provisions of the 2000 Lake Whatcom bill, and thereby provided the certainty necessary to focus the Interjurisdictional Committee's energy on other pertinent issues.

Similarly, the citizen members of the Interjurisdictional Committee sought legal clarification via an Attorney General opinion when the group became bogged down in a debate over the appropriate relationship between the DNR and Committee. The opinion held that the Committee was to have an advisory role, which clarified the process boundaries and enabled the group to focus on more substantive issues.<sup>43</sup>

## **CREATING OPTIONS**

A fourth trend that emerges from the cases concerns using the law to create options. Ironically, introducing new legal constraints can provide stakeholders with the flexibility to realize their trust land management goals. Both the Castle Valley Planning Process and Emerald Mountain Planning Process used this tactic by initiating a land exchange with the BLM. These potential land exchanges forced the Castle Valley Planning Process group and Emerald Mountain Partnership to work within the boundaries of a federal land agency's mandate, as well as the Federal Lands Policy and Management Act and corresponding regulations, which guide BLM land exchanges.<sup>44</sup> For the Castle Rock Collaboration (CRC) and School and Institutional Trust Lands Administration, the land exchange provided a way to complete the planning effort, since the town of Castle Valley had distanced itself from the original planning contract. Many predict that this proposal will enable all participants to achieve their original goals, as explained by CRC leader Laura Kamala: "I'm very grateful that everything we did evolved into this wonderful opportunity for the land exchange ... that it went in that direction."<sup>45</sup>

Whereas the CRC pursued the BLM land exchange on its own initiative, a local BLM employee first suggested the option to the Emerald Mountain Partnership. Nevertheless, upon learning of this option, the Partnership proactively petitioned the State Land Board for its “blessing.”<sup>46</sup> This land exchange proposal and accompanying legal constraints triggered fervent opposition from some residents outside of Steamboat Springs who did not want to lose nearby BLM lands. Most participants, however, share the enthusiasm of Castle Valley participants – they think the exchange will be a creative way to achieve both the multiple-use management vision for the Emerald Mountain parcel and State Land Board’s revenue goals.<sup>47</sup>

## **SHAPING OR REALIZING THE OUTCOME**

Finally, participants in collaborative planning on state trust lands often create or need to create legal constraints to shape or realize the outcome. For example, legal action continues in the Lake Whatcom case, as Skagit County and the Mount Baker School District filed suit against the Department of Natural Resources (DNR) challenging the legality of the Lake Whatcom Landscape Plan. The pending lawsuit alleges that the original state legislation, which mandated the formation of the Interjurisdictional Committee, as well as the DNR’s Landscape Plan, benefited the local community at the expense of trust beneficiaries elsewhere in the state. Time will tell whether the development of these additional legal constraints will influence the final outcome of the planning process. For now, the DNR is moving forward with implementation of the Landscape Plan, enjoys greater community support than before and had its first timber sale approved since the 1999 legislation.

Unlike the Lake Whatcom Landscape Planning Process where litigation threatens future implementation, new legal boundaries need to be defined to realize both the Whitefish Neighborhood Plan and the HAMP. For the Whitefish Neighborhood Plan, a legislative change is needed to explicitly allow the Department of Natural Resources and Conservation (DNRC) to issue conservation easements to third parties like private property owners. Such an amendment is necessary because conservation easements are a key tool identified in the Neighborhood Plan to help the community and DNRC conserve local trust land parcels while still generating money for the trust.<sup>48</sup> Currently, many argue that state law limits conservation easements to agreements between the DNRC and the Department of Fish, Wildlife and Parks, as well as two specified nonprofits.<sup>49</sup> The DNRC pushed for this legislation in April 2005, but the bill failed to gain the necessary support. The agency plans to push for similar legislation in the future.<sup>50</sup>

Likewise, to implement the HAMP, the City of Tucson must amend its Land Use Code to establish a Planned Community District zone. This new zoning classification would allow for the implementation of the new planning concepts identified in the HAMP. The City expects to present the new zoning classification to the Mayor and City Council in the spring of 2006 for approval.<sup>51</sup>

## LEGAL FLEXIBILITY OF STATE TRUST LAND MANAGEMENT

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As explored in the previous sections, collaborative planning on state trust lands inevitably implicates a variety of legal issues. Several case study participants mentioned, however, that collaboration is actually easier in the state trust land context than other natural resource contexts because trust land agencies are afforded greater legal flexibility than other state and federal agencies. Indeed, other studies of collaborative environmental problem-solving have found that laws like the Federal Advisory Committee Act (FACA) and the National Environmental Policy Act (NEPA) tend to be inflexible, emphasizing agency control and locking agency and non-agency participants into set methods of participation. These legal constraints consequently can hinder the creativity necessary for collaboration.<sup>52</sup> Moreover, they can limit who is invited to participate in the process, as was seen in the Elliott State Forest Planning Process in the context of the Endangered Species Act.

For example, former Colorado Land Commissioner and Emerald Mountain Planning Process participant Charles Bedford has said that his agency had much more flexibility than federal agencies in choosing to collaborate with local communities: “State governments have so much more flexibility and leeway, even within the fiduciary mandate. I mean, every time you convene a group on the federal level, you have to go through the FACA process, which ... makes for a very stiff kind of meeting.”<sup>53</sup> Utah School and Institutional Trust Lands Administration (SITLA) Assistant Director of Planning and Development and Castle Valley Planning Process participant Ric McBrier agreed and said that SITLA “absolutely” is more flexible and able to collaborate more easily with local communities than federal agencies.<sup>54</sup> According to McBrier, “if a professional manager [at SITLA] can see that [a collaborative approach] is in the beneficiaries’ best interest ... then theoretically we should be free to do it.”<sup>55</sup>

On the other hand, some participants of the Mesa del Sol process sought additional legal structure, like a NEPA process, to make the public input process easier and more comfortable for public interest groups.<sup>56</sup> This desire for more clearly defined legal boundaries and organization could stem from the fact that the Mesa del Sol case did not involve an official working group or formal collaborative process.

## CHAPTER 16

### HOW DO AGENCY STRUCTURE, CULTURE AND POLITICS INFLUENCE A COLLABORATIVE PLANNING PROCESS?

State trust land agencies are unique among local, state and federal agencies because of their mandate and fiduciary responsibility. Despite the similarities in mandates and responsibilities across the seven Western states examined in this report, the institutional structure of trust land agencies in each state is different. While diversity is one commonality across agencies, the effect of institutional structure, culture and politics on collaborative processes that have occurred within the trust land agency environments share many similarities.

The institutional structure of trust land agencies can also create avenues for access by communities and other interest groups that in many cases has served to initiate a collaborative process. Similarly, institutional culture can also create an unreceptive environment to collaboration or an inviting one. While agency culture is not easy to identify nor pin down, the history, institutional structure and an identity inextricably tied to the trust mandate inform the ways in which the trust land agency interacts with and responds to communities and other agencies. The seven trust land agencies examined in this report demonstrate some level of cultural adaptation to engage in collaborative processes.

While the institutional structure and agency culture can be accounted for and the process can be molded to work within agency constraints, the effects of politics is difficult to quantify and account for. According to Souder and Fairfax, “we have been unable to demonstrate – or even to suggest enticingly – that whether the land commissioner is elected or appointed is tied to a discernable pattern of policy outcomes or priorities.”<sup>1</sup> Through their research, Souder and Fairfax found that the political context of trust land management suggests that the political structure and setting of state decisions does not significantly influence the outcomes.<sup>2</sup> Meaning, whether or not the commissioner is elected or appointed or the composition of the Land Board does not affect policy or management outcomes. This conclusion can also be applied to collaborative planning, because in its essence collaborative planning still comes down to an agency decision, albeit one with a more stakeholder input. In addition to the examples from the cases and Souder and Fairfax’s findings it is apparent that state trust land agency structure and culture can easily be adapted to participate in collaborative planning.

The eight cases of collaborative planning on state trust land analyzed in this report demonstrate how state trust land institutional structure, culture, and political factors can affect collaborative planning processes. This chapter will elucidate the following themes that emerge from an analysis of the eight cases:

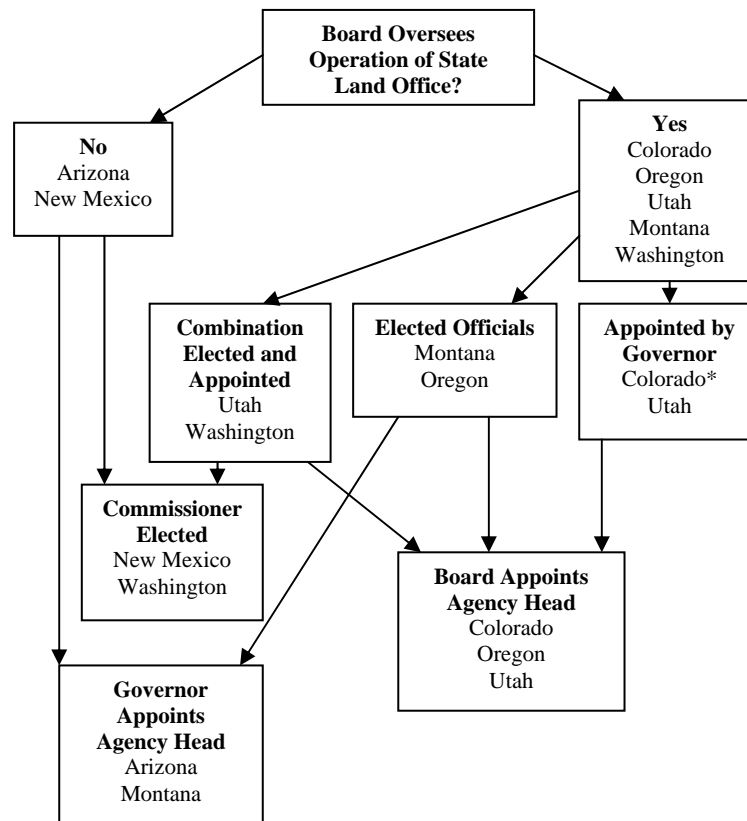
- The effect of institutional structure on a collaborative process
- The effect of state trust land agency culture on the process and outcome
- The effect of politics on process and outcomes



## EFFECTS OF INSTITUTIONAL STRUCTURE ON COLLABORATIVE PROCESS

There is wide variation in how state trust land agencies are organized. Souder and Fairfax described three administrative patterns into which all western trust land agencies fall: (1) the state land office is totally independent of other agencies; (2) the state land office is independent but is administratively overseen by a larger agency; or (3) the state land office is functionally integrated into another agency, sharing facilities and staff.<sup>3</sup> New Mexico, Utah and Arizona are examples of the first category, with their highly autonomous land agencies. The Washington Department of Natural Resources (DNR), who manages state trust land at the behest of the State Land Board, falls into the third category. The models developed by Souder and Fairfax are a useful framework for understanding the basic differences in institutional structures found within the seven states examined in this report (Figure 16-1).

**Figure 16-1: Institutional Relationships in State Land Office Organization**



**Note:** The organization of Colorado's state land office changed per Amendment 16 in 1995.  
 Source: Adapted from Jon A. Souder and Sally K. Fairfax, *State Trust Lands: History, Management, & Sustainable Use* (Lawrence, KS: University Press of Kansas, 1996), 41.

Though Souder and Fairfax have not been able to conclusively relate patterns of management decisions to particular institutional arrangements on a broad scale, the institutional make-up of the seven trust land agencies examined in this report suggest that collaborative planning

processes are affected by the individual agency structure.<sup>4</sup> The primary ways in which institutional structure affected the collaborative processes examined herein were access to the State Land Board, changes in agency structure, and term limits for elected officials.

### **ACCESS TO THE STATE LAND BOARD**

Montana's bi-level agency structure directly influenced the Whitefish Neighborhood Planning Process because it afforded community members access to the Montana State Board of Land Commissioners (State Land Board), thereby initiating the collaborative process. In Montana, the State Land Board is made up of the state's five top elected officials: Governor (chair), Superintendent of Public Instruction, State Auditor, Secretary of State, and Attorney General. While the State Land Board provides oversight and has ultimate authority on trust land management, the Department of Natural Resources and Conservation (DNRC) is responsible for day-to-day management.<sup>5</sup> In the Whitefish Neighborhood Planning Process, a group of Whitefish community members formed an "Ad Hoc Committee" during the beginning months of the DNRC's planning process to petition the State Land Board and express their concerns about the process. Participants have attributed the State Land Board's support for the community to a number of reasons, including personal ties to the Whitefish area, similar liberal political leanings and the political inevitability of having to cater towards their constituents' interests. Because the State Land Board fulfilled the community's request and chartered an Advisory Committee, the DNRC was forced to adopt a process outside the realm of what they initially had envisioned. The DNRC also lost some of its decision-making power, because the agency was forced to give up exclusive control of the process and become an Advisory Committee member.<sup>6</sup> Not surprisingly, this change caused tension between agency staff and the community.<sup>7</sup>

The trust land agency institutional structure in Washington is unique from other states examined in this research project because the agency is integrated into another agency – the Department of Natural Resources (DNR). The superstructure is such that the State Legislature acts as trustee by enacting laws that protect trust assets while the DNR serves as trust manager. The DNR management activities are controlled by the Board of Natural Resources, which sets overall policy objectives. The 6-member board consists of: Commissioner of Public Lands, Governor or governor's designee, Superintendent of Public Instruction, Dean of University of Washington College of Forest Resources, Dean of Washington State University College of Agriculture and Home Economics, a County Commissioner from a county that contains Forest Board trust land. The Commissioner appoints the Supervisor and both run day-to-day management of the trust. The Board's involvement is confined mainly to approval of land transactions.<sup>8</sup> Despite the fact that the DNR acts as trust manager for the Board, it has less autonomy within the Washington institutional structure.

With the State Legislature acting as trustee, the Washington trust land institutional structure is accessible to constituents and interest groups. Prior to the establishment of the formal Lake Whatcom Landscape Planning Process Bellingham-area residents Linda Marrom and Jamie Berg, concerned about logging above their homes, contacted their local state legislators. Senator Harriet Spanel was responsive to the issues raised by Berg and Marrom and

eventually sponsored the State Senate bill that mandated the Lake Whatcom Landscape Planning Process. The legislative mandate created an underlying tension within the collaborative process between the DNR and community representatives that was highlighted when Doug Sutherland was elected Commissioner, replacing Jennifer Belcher, the previous Commissioner who was more supportive of the process. Richard Rodriguez, the Department of Health representative on the Lake Whatcom DNR Landscape Planning Committee, noted that “it would not have happened in my mind if there was not a legislative mandate to do it.”<sup>9</sup> Bill McCourt, the city of Bellingham’s representative, put it more frankly, “It wasn’t a group getting together because they all had a common interest. DNR had a gun to their head.”<sup>10</sup> The DNR viewed membership in the Committee as ceding some of its decision making authority, something it wished to avoid, and felt relinquishing decision-making authority was inconsistent with the language in the bill passed in 2000. While not stated explicitly, it appeared there were negative feelings created by the legislative mandate that affected the collaborative process by creating an atmosphere of mistrust between the Committee and DNR. This in turn led could have contributed to the dispute over decision making authority of the Committee. However, despite these challenges, the process did have several benefits including shared expertise, more informed decisions, local support for the Landscape Plan, more protective resource management strategies and greater local acceptance of DNR activities.

Oregon’s Department of State Lands (DSL) operates under a similar management structure as Washington, albeit with a simpler hierarchical superstructure. The State Land Board (SLB) oversees and sets the direction of policy and management for Oregon trust lands. It is comprised of the three highest executive elected officials in the state, the Governor, Secretary of State and State Treasurer. The DSL is responsible for day-to-day management of trust lands; however the department contracts with the Oregon Department of Forestry (ODF) to manage forest lands. The DSL agency head, the Director, is appointed by the SLB. Because of the bi-level structure of the DSL and Land Board, both the Elliott Forest Management Plan (FMP) and Habitat Conservation Plan (HCP) must go through two levels of approval once it is completed by the staff at the ODF – one for DSL approval and the second for Land Board approval. With the Land Board composed of elected officials with a bevy of other responsibilities, the members have a limited amount of time they can spend on trust land issues. Steve Thomas, Assistant State Forester and member of the Steering Committee, sums up his feelings:

The Land Board is made of people you just don’t get at meetings to talk about things. When at official board meetings you get an hour, it’s like manna from heaven, and it’s like nirvana. Usually you get 10 minutes. Typically you end up talking to them through their assistants.<sup>11</sup>

While the final decision-makers are less accessible because of their other duties, in the past they have been supportive of DSL management style. Despite the assurance of past support, the Steering Committee has decided to be conservative in increasing the timber harvest on the forest to ensure that the HCP will be approved by the federal government and at the same time leaving room for the Land Board to make policy decisions. Since this process is still

unfolding it is difficult to ascertain how the bi-level structure will affect the process until it is complete, or rather until the final versions of both the FMP and HCP go before the SLB.

### **CHANGE IN INSTITUTIONAL STRUCTURE**

The institutional structure of Colorado's trust land agency was altered during the Emerald Mountain Planning Process, ushering in a new agency that was designed to be more receptive to community input. At the outset of the collaborative process the State Land Board (SLB) was comprised of three full-time salaried commissioners appointed by the governor. This SLB was characterized as being reactionary and planned for short term. It operated under the Department of Natural Resources (DNR) with six district offices throughout the state. Post Amendment 16, the structure of the SLB was transformed, replacing the traditional structure with a five-member volunteer board that had broader geographical representation, expertise, and constituencies. The SLB maintains some restrictions on collaboration in that it cannot legally provide an indirect benefit to parties who are not formal beneficiaries.<sup>12</sup> However, according to Beverly Rave, the northwest representative for the SLB, once this constraint is factored into the process the agency has "plenty of flexibility within that."<sup>13</sup> The hierarchical structure of the Colorado SLB proved to be a frustration for members of the Emerald Mountain Partnership Advisory Council. Beverly Rave, a representative of the SLB, had to frequently consult the Denver office on issues that came up during the process, such as extending the Memorandum of Agreement.<sup>14</sup> Despite these frustrations, having Rave as a regional representative for the SLB made it more possible to have a viable local solution. Furthermore it enabled and empowered the process because, as a local representative Rave served as an important liaison to improve communication between the Emerald Mountain Partnership and the SLB.

### **TERM LIMITATIONS**

Similar to Arizona and Utah, the New Mexico State Land Office (SLO) enjoys a fair amount of self-determination. The elected Commissioner of Public Lands has final "unchecked" decision-making authority - unchecked meaning no board oversight and an independent agency.<sup>15</sup> The Commissioner is advised by the Office of the General Council and the State Land Trusts. According to the Enabling Act, the Commissioner can only serve a maximum of two consecutive four year terms. This has been a limiting factor in the Mesa del Sol collaborative process because Commissioners Baca and Powell were not able to see this process through during their tenures in office, thus Powell had to hand over Mesa to the current Commissioner, Patrick Lyons. Changes in administration caused the process to be delayed on numerous occasions. In addition to delays the uncertainty of the interests and political agendas of the incoming Commissioners in the future were also apparent in the Mesa del Sol Planning Process. Bill Elliott Communications Director for the Albuquerque National Dragway located on Mesa del Sol was worried about the Dragway's long-term future: "It's a little touchy subject and ... who knows what's going to happen. I know we don't have problems with Patrick Lyons but the election is next year and he's only got four more years beyond that and then who knows who were dealing with."<sup>16</sup>

## HOW AGENCY CULTURE AFFECTS COLLABORATION

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State trust land agency culture is informed by the interpretation of the constitutional mandate, fiduciary responsibility, agency history, state history and politics, and types of land managed. This amalgam of historical, political and economic responsibilities creates the context in which trust land agencies operate on a day-to-day basis. The context often determines how the trust land agency interacts with other agencies and the public. These interactions have changed remarkably since the 1960s and early 1970s when pivotal legislation on state and federal levels refocused managers' attention on their trust obligations to the beneficiary. Prior to this point, trust land programs, as described by Souder and Fairfax, were, "rather cozy undertakings directed primarily at meeting the needs of the lessees."<sup>17</sup> Other trends and strategies have also emerged to affect the general culture of trust land agencies; these include but are not limited to attention from the environmental community advocating resource protection and recreational access; urban expansion; and perhaps most importantly the economic growth and social climate of the western United States.

In addition to affecting the relationships an agencies has with those outside of it, institutional culture is also the lens through which trust land agencies see the world. Therefore, it can have a significant impact on a collaborative planning process. Institutional culture can be an impediment or a facilitating factor to engaging in a collaborative process. According to Culp et al, on a broader level, state trust land managers share many of the same barriers to collaboration as public agencies including resource constraints and institutional norms that prevent or discourage them from engaging in collaborative processes.<sup>18</sup> Some observers have noted that agencies have a significant amount of bureaucratic inertia and resist change, making it difficult to engage in nontraditional types of processes.<sup>19</sup> According to Wondolleck and Yaffee, working within a pre-existing institutional framework can affect organizational structure and norms in the sense that participation in collaborative processes often requires organizations and institutions to reexamine and revise their traditional management styles.<sup>20</sup>

The amorphous nature of culture does not lend itself to be easily defined nor its affects easily observed. That being said, the influence of agency culture on collaborative efforts observed in the eight cases ran the gamut from direct to indirect affects. The cases where culture influenced the process drew on themes including: (1) concern about abdicating all or part of decision-making power as a result of being part of a collaborative process; (2) uncertainty about accepting help from outside sources; (3) trust land agency interaction with communities and other agencies; (4) perception of trust land agencies; and (5) integration of collaboration within trust land agency operating procedures

Dealing with institutional challenges and culture can pose one of the more significant barriers for trust land agencies to engage in collaborative processes. Wondolleck and Yaffee state that, rather than abandoning traditional styles altogether, groups can work to find balance between collaboration and traditional management style.<sup>21</sup> For instance, agencies can take advantage of their expertise to retain ultimate decision-making authority, but do so in a way that is conducive to collaboration. Because participants typically face limited resources, agency expertise is often welcomed by the process group.<sup>22</sup> The perceived inability for state trust land management agencies to make concessions – bound by mandate – not necessarily a

limiting factor but a challenge nonetheless. For example the Colorado State Land Board (SLB) cannot legally provide indirect benefits to parties who are not formal beneficiaries. What ever solution reached has to be in the best interest of the trust. While this was frustrating for some participants once this limitation was acknowledged it ceased to become a limiting factor to the forward movement of the process. Additionally, the change in the SLB structure as a result of Amendment 16 required the new SLB to comply with local land use regulations and plans. This further opened the door for collaborative work with the local communities and the new regional representation also facilitates collaboration as well.

## **AUTONOMY TO COLLABORATE**

While bureaucratic barriers to collaboration do exist, all of the trust land agencies featured in this research project have demonstrated an ability to adapt their agency's mandate to engage in collaborative planning. The most challenging aspect of the adaptations has been working within the confines of their constitutional mandate and allowing outside parties to contribute to a planning process that normally would occur solely inside the agency. Utah's School and Institutional Trust Lands Administration (SITLA) is a notable example of this adaptation. By all accounts SITLA is more flexible and able to collaborate with communities, more so than federal government agencies, for example. SITLA is afforded this level of flexibility because the Utah State Legislature set up the rules governing it to allow the agency a significant amount of autonomy. Because of its freedom and clarity of mandate, SITLA is often described by Assistant Director of Planning and Development, Ric McBrier, as a "quasi-private" agency.<sup>23</sup> The agency is self-funded and experiences the full support of the Utah State Legislature. In many respects SITLA has the most freedom, compared to the other trust land agencies discussed, to engage in a collaborative effort, albeit contingent on the support of the State Land Board. McBrier stated that SITLA is "absolutely" more flexible and able to collaborate with local communities than federal agencies.<sup>24</sup> McBrier went on to state that, "If a professional manager [at SITLA] can see that [a collaborative approach] is in the beneficiaries' best interest, and how do you figure that out without probing into it, then theoretically we should be free to do it."<sup>25</sup> However, that being said, SITLA and McBrier also have the freedom to walk away from the process if they feel that the process is no longer in the best interest of the trust. SITLA Director Kevin Carter described the unilateral power held by SITLA: "If it's too much hassle to deal with the local community, I'll just sell the land and walk away from it. It's always a valid question, 'Is what I could potentially get out of a collaborative process worth the effort?'"<sup>26</sup> SITLA's culture, in many ways grounded in their autonomy as an agency, was a key ingredient to the agency's participation in the Castle Valley Planning Process.

## **STRATEGIC COLLABORATION**

The Arizona State Land Department (ASLD) has a somewhat similar structure to SITLA, in that the ASLD can act autonomously or they can work with outside interests in a collaborative process. However the culture of the agency has been informed by a different context, history and leadership. The ASLD had historically focused on natural resource management, however as a result of The Urban Lands Act, Growing Smarter and Growing Smarter Plus Legislation, The Arizona Preservation Initiative, and the location of trust land

in developing urban areas has made the agency more focused on urban growth issues, real estate sales, and land use planning. Despite the shift in focus, the ASLD had frequently worked with local communities and agencies on management issues, often serving in a resource role. According to Commissioner Mark Winkleman, he was:

Personally always a proponent of trying to work with people and accomplish something. While we can sit back and say, “Well, we’re the state and we’re not going to listen to your plan and if you don’t like our plan we’re going to take our ball and go home,” that really doesn’t further our mission of generating revenue.<sup>27</sup>

The culture of the agency enabled the Land Commissioner to make that decision on the level of agency participation and the capacity of the interaction with local communities. The Houghton Area Master Plan (HAMP) Process differed slightly from other cases examined in this report because the Process was convened by the City of Tucson and as the major landowner in the area, the ASLD was invited to participate on the Citizens Review Committee (CRC). The HAMP Process was perceived as the City’s project rather than ASLD’s project. Additionally, the ASLD believed that in order to engage in collaborative planning it must also make sure it was protecting its interests and potential benefits for the trust, requiring it to find a balance between participating and maintaining its authority. As stated by the ASLD’s Gordon Taylor:

We’ve found that if we get put on a committee, like a general planning committee ... and then they craft their document and we’re listed as one of the people that supported it – even though we may object to certain elements of it – by virtue of our association ... there’s tacitly the buy in ... and that could be conceivably used by the community to leverage the Department on various land issues.<sup>28</sup>

Adds Commissioner Winkleman, “The challenge for us is accepting help and accomplishing something, but not having somebody undermine our goals and satisfy their own to the detriment of the beneficiaries and us ... that is the tension that always goes with these processes.”<sup>29</sup> The desire to be cautious and strategic about who they partnered with was evident in the fact that the ASLD chose to participate advisory role throughout the HAMP process. This decision was also derived from the agency’s efforts to balance maintaining authority and asking for help. Commissioner Winkleman further elaborated on the ASLD’s efforts to strategically balance these elements when engaging in a collaborative planning process:

We don’t have enough people and we don’t have the money to do an adequate job. One of the things I’ve stressed since I’ve been here is we’re going to accept the help and embrace the help as much as we can ... but if someone can truly help us, let them help us because we can’t adequately help ourselves ... so the challenge for us is accepting help and accomplishing something, but not having somebody undermine our goals and satisfy their own to the detriment of the beneficiaries and us.<sup>30</sup>

Having the ASLD participating in an advisory role was also a source of frustration for the CRC members because it created uncertainty whether or not the ASLD would use the HAMP as a guide since they were under no legal obligation to follow it. The strategy employed by the ASLD about receiving help in development and land use planning in addition not maintaining the role as the absolute decision-maker has colored the way the agency had participated in the HAMP Process.

The culture of the City of Tucson also played a role in the formation and CRC representation in the HAMP Process. The City of Tucson decided to employ a collaborative process largely because the existing culture of the city is such that residents expect to be engaged. The City has maintained a long tradition of involving broad segments of representation from the community in land use and urban planning processes. Albert Elias, Director of Tucson's Department of Urban Planning and Design stated that public involvement and collaboration is "the expectation of the community and the expectation of our elected officials."<sup>31</sup>

### **PERCEPTION OF AGENCY**

For an agency with a clear mandate and strong sense of identity participating in a collaborative process can sometimes create a feeling that the trust land agency is losing a degree control in how they are perceived by the public at-large. While participating in the Southeast New Mexico Working Group, New Mexico's State Land Office (SLO) considered the risks associated with participating as related to public perception of the organization and its mission. David Coss, Director of Field Operations at the SLO, voiced a concern that the SLO would be misconstrued as a "mini BLM." He continued:

We don't want to be confused with the Bureau of Land Management. I think that was one of our biggest issues of keeping our separateness of a state trust with trust responsibilities that is not a federal land management agency. We're in a different category. And we didn't want that to get blurred. The oil people and the ranchers know that. But the general public doesn't know that.<sup>32</sup>

The concerns expressed by Coss were largely alleviated by the end of the process. However, clearly the culture of the agency is deeply rooted in desire to be seen as a distinct entity and not as a smaller part of a larger land management agency. Though this concern could exist when a trust land agency or other city, county, state or federal agency engages in a collaborative process, the experience of the SLO in the Southeast New Mexico Working Group indicates that this fear can be assuaged through education within the process as to the role of the agency.

### **PRE-EXISTING INCORPORATION OF COLLABORATION**

The culture of the Oregon's Department of State Lands (DSL) has evolved in the past six years to more actively involve a wider array of stakeholders in Common School Land management. The impetus for this shift was derived from Director of State Lands Ann



Hanus' desire to increase beneficiary involvement in DSL activities and to allow them to provide input on land and revenue management. For example, she organized a large group of representatives from the Oregon teacher's union, school administrators and Parent Teacher Associations and other education interest groups to become involved in Children's Land Alliance Supporting Schools (CLASS), a west wide beneficiary organization. The wider array of stakeholders invited to participate in the Elliott State Forest Planning Process, outside of traditional agency personnel, also demonstrate the agencies shift to a more inclusive management style. The nontraditional stakeholders that participated in the Planning Process Steering Committee included Coos County Commissioner John Griffith and the Superintendent of the South Coast Educational Service District, Rick Howell. Griffith served as a representative of local area County Commissioners while Howell represented the beneficiaries.

In addition to the Elliott Planning Process, in the last six years the DSL has used collaboration more widely to manage other types of land. For example, the Rangeland Advisory Committees invite beneficiary representatives, environmentalists, ranchers and scientists in determining the best long term management plans for rangeland leasing. This decision also highlights the increasing inclusion of outside interest groups in state-wide Common School Land management.

#### **HOW CHANGING CULTURE DURING COLLABORATION AFFECTS THE PROCESS**

Once a trust land agency becomes involved in a collaborative planning process, its culture often adapts to allow it to further engage in the process and to facilitate a better outcome. Change can result from dealing with process challenges, that once overcome shape the manner in which the agency interacts with the public and other agencies in the future.

The overhaul of the Colorado State Land Board (SLB) as a result of Amendment 16 also fostered the development of an institutional culture that better able to interact with regional communities. The amendment required the SLB to comply with local land use regulations and created a Board with a broader geographical representation.<sup>33</sup> The new culture of the SLB was one of many factors that allowed it to issue the five-year planning lease and the Memorandum of Agreement (MOA) to the Emerald Mountain Partnership. The MOA and the lease gave the group legitimacy and an incentive to see the process through. The MOA specified that the Partnership would purchase the Emerald Mountain parcel at market value within five years, based on a current appraisal. With the MOA in place, the SLB could not consider any other offers for the parcel for the term of the agreement. While this empowered the Partnership and bound the SLB for a period of time, there was also a balancing act at play. Charles Bedford, former Land Commissioner, stated that:

The risk was creating expectations that the plan – whatever plan they came up with – was going to be accepted ... You have to balance it because they have to believe that something that they are doing is going to be meaningful, and it's going to impact the decision-making process.<sup>34</sup>

Bedford also acknowledged that giving the community an opportunity to develop a plan for trust land management also requires a certain amount of faith from the SLB. He added, “You have to in your heart believe that what they’re going to come up with is going to be something you can work with.”<sup>35</sup>

The mindset shift within the Department of Natural Resources and Conservation (DNRC), as non-traditional uses of land were becoming more common in Montana, resulted in mixed messages from the DNRC during the Whitefish Neighborhood Planning Process. The disconnect between the local DNRC and the Helena DNRC staff created multiple sources of agency inconsistency that contributed to confusion among the Advisory Committee regarding the agency’s intentions and effectiveness. As a result, the Committee members felt that the DNRC was not engaging in an honest process.<sup>36</sup> In an effort to remedy the situation, the DNRC made some personnel adjustments to ensure that the staff involved in the process was of a similar mindset and could convey a more consistent message. The change improved DNRC involvement in the Planning Process and resulted in greater access to information for the Advisory Committee. According to Alan Elm, Chairman of the Advisory Committee, meetings with DNRC Trust Lands Management Division Administrator, Tom Schultz, enabled him to dispel his concerns that DNRC staff in Helena was manipulating the process.<sup>37</sup> The personnel changes within the DNRC went a long way in dispelling the mistrust that had built up between the agency and the Advisory Committee.

## **HOW POLITICS AFFECT COLLABORATIVE PROCESSES**

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Political factors can be brought into a collaborative process when participants are elected officials. For example, politics can affect collaborative processes in any number of ways. Politics can be the initiator of a collaborative process, as in the case of the Lake Whatcom Landscape Planning Process, or politics can pose significant barriers to the process as seen in the Mesa del Sol Planning Process. Politics are related to agency structure in that the institutional structure can allow for either increased or fewer avenues for collaboration or dissent. The involvement of elected officials can also lend a sense of legitimacy and accountability to the process and they can levy resources. The affect of politics varies from case to case. It is not something that can be accounted for or planned for in future collaborations. Those looking at engaging in collaborative processes should be aware that politics can serve as both a facilitating factor and an impediment to the process.

The way in which state trust land agencies fit into the broader framework of state politics can influence the collaborative planning process, both directly and indirectly. Souder and Fairfax state that, “the relative power of the land office in state policy decisions compared to other state agencies is important. Total independence, while it allows focus on trust goals, may weaken the trustee politically.”<sup>38</sup> Though it is arguable whether or not the near 20-year delay of the Mesa del Sol Planning Process was the result of State Land Office (SLO) being unable to influence policy decisions outside its traditional realm of land management, the series of Commissioners that attempted to get the development through Albuquerque city government were limited by the city’s approval of the plan. The SLO also had to deal with obstructions put in place by the University of New Mexico (UNM) Board of Regents, who was seeking

greater profits from the development plan. The Mesa del Sol parcel is located on the Southeast side of Albuquerque, the opposite side of the city where many political leaders in the city and the State Legislature have development interests.

### **USING POLITICS TO GAIN INFLUENCE OVER DECISION-MAKING**

Agency structure and politics can allow avenues for constituents to gain influence over decision making. This influence can serve as the impetus for the creation of the collaborative process or it can broaden the scope of the process to include a wider array of stakeholder representation.

Trust land agencies with elected Land Commissioners and Land Boards can make a collaborative process more subject to local, regional and state-wide politics than agencies in which the Commissioner is appointed, for example. Elected Commissioners and Land Boards have a dual obligation to best serve the interests of the trust and constituents. Collaborative processes can be managed with those obligations in mind, with the added benefit of likely producing good public relations between the trust land agency and the public. However, the Commissioner's responsibility to his or her constituency can make collaborative processes more political, as the Commissioner attempts to balance public interests than can impede a collaborative process. Conversely, the State Land Boards often have less direct political accountability with respect to the management of the trust. In the case of the Whitefish Neighborhood Planning Process, the fact that most of the elected members of the Montana State Land Board shared the same political affiliation as many local residents created the perception that the Whitefish community consequently was able to garner significant support for their interests. Because the structure of the State Land Board is inextricably tied politics, it compromised the effectiveness of the DNRC, which struggled to maintain its authority while serving on the Advisory Committee. Other committee members were able to use the schism between the two entities to get more of their interests heard during the process.<sup>39</sup> The State Land Board and DNRC eventually recognized that this disconnect hindered the effectiveness of the planning process. They were able to overcome the challenges inherent in this bi-level management structure by committing to work as a united front to ensure that the State Land Board did not put the agency in a compromising position.

Though New Mexico Land Commissioner Lyons enjoys nearly complete autonomy within the State Land Office (SLO), as an elected Commissioner he also has a responsibility to his constituents. For example, after narrowly winning his election in 2002, Bill Elliott, Communications Director from the Dragway that leases a section of the Mesa del Sol parcel, made a call to Lyons the day after his victory. Lyons had been declared victorious by a margin of 8,000 votes and the Dragway had strongly supported his campaign. Elliott remembers what he said during the conversation, "Patrick, congratulations and I want you to know that there's exactly 8,000 drag racers in the state of New Mexico."<sup>40</sup> Soon after taking office, Lyons, re-issued the Dragway's five-year lease.<sup>41</sup> While the managers of the Dragway still harbor fears that it will not be included in the development of Mesa del Sol, it and other drag racing interests have vowed to campaign heavily for the re-election of Commissioner Lyons in 2006.<sup>42</sup> Therefore, in many cases constituent interests and access to politicians can put issues on the table that might have otherwise been discarded. For example, having a

dragway on the same block of land as a multiple-use planned community is not something one would typically see in other urban development projects.

One of the prime motivations for Commissioner Lyons to become engaged in the Southeast New Mexico Working Group was to look out for his constituents' interests in addition to the interests of the trust. Arguably chief among these interests was preventing economic fallout for oil and gas leasing were the lesser prairie chicken listed as a federally threatened species. States Commissioner Lyons:

If the prairie chicken was listed as endangered, there would be an economic fallout in NM, a tremendous economic fallout. If you couldn't produce oil and gas down there, then you could lose millions and millions of dollars. Probably a couple hundred million dollars.<sup>43</sup>

It is likely that the protection of habitat for the lesser prairie chicken would not have an important priority for Lyons and the SLO had it not had such large potential impact on oil and gas leasing. Lyons also recognized that it was in the interest of the trust to have consistent land management across different agencies' land to make future management easier. He also had to recognize and be responsive to the needs of rural communities in New Mexico and how they would be affected if the prairie chicken was listed as a federally threatened species.<sup>44</sup> The issues at play within the Working Group were highly political thus allowing unlikely outcomes such as the conservation of potentially threatened species to occur along with those serving more traditional oil and gas industry interests.

### **USING POLITICS TO IMPEDE THE COLLABORATIVE PROCESS**

Politics and by extent, politicians, can use their influence, access to resources and legitimacy to hinder a collaborative process. Impediments can occur for a number of reasons, primarily when the process represents interests that are diametrically opposed to politician's interests, or because the politician perceives the process as a threat to his or her power.

The succession of Commissioners that pushed the Mesa del Sol Planning Process along were continually subject to the need to balance constituency interests and play politics. While the New Mexico Commissioner is sometimes considered as powerful as the Governor for example, his or her power only resides within the confines of trust land management. Additionally, the Commissioner is also susceptible, as any elected official is, to the approval of his or her constituents and the ability to garner public support for State Land Office (SLO) projects. The SLO was also vulnerable to the political pressures exerted by the University of New Mexico (UNM) despite the fact that they were technically outside of the process. The UNM had little authority to design the details of the Mesa del Sol development. However, they were successful in putting up roadblocks to stall or maneuver the process to further their beneficiary interests of gaining a higher percentage of the profits from the development. The UNM used political power to influence the city of Albuquerque to stall development on the Mesa del Sol parcel when they were not fully satisfied with the plan. These tactics served to both stall and prolong the process outside of the collaborative relationship and sometimes created a significant amount of mistrust between the UNM Board of Regents and the SLO.

The SLO was forced to wait for times in which relationships with the UNM Board of Regents was more productive to continue the Mesa del Sol Planning Process.<sup>45</sup>

The Mesa del Sol Planning Process was also susceptible to local government political interests. When the land was annexed to the city of Albuquerque, the forward momentum of the collaborative process depended in part on the support of local area politicians. This highly political environment forced the SLO and a series of Land Commissioners to rely on “political windows of opportunity.”<sup>46</sup> However there were many “closed windows” and barriers along the way. One such barrier was Albuquerque Mayor Martin Chavez who stalled the annexation of Mesa del Sol because he saw it as competition for west-side development interests. Chavez had also just come off a term serving as State Senator for Albuquerque’s west side and their development interests and was suspected to have personal investments in west side development.<sup>47</sup>

Elections can affect the way a trust land agency is managed, and as a result affect a collaborative planning process. The November 2000 election of Doug Sutherland as Commissioner of Public Lands had a deleterious effect on the Lake Whatcom Landscape Planning Process. Many committee participants acknowledged that that with Commissioner Sutherland’s arrival, the DNR returned to its more traditional, timber production and focused policies.<sup>48</sup> It was also noted that there was a philosophical difference between the management styles and priorities of the two commissioners. The previous Commissioner, Jennifer Belcher was remembered as a strong environmentalist. Commissioner Sutherland, on the other hand, was noted for his strong record of fiscal management.<sup>49</sup> This change in philosophies resulted greater participation from DNR employees from the Olympia office, who by some accounts were predisposed to the new Commissioner’s mindset.<sup>50</sup> Ultimately, outside facilitation team was called in to regain balance in meetings. Later on many thought that the Commissioner stalled the approval of the FEIS because he did not want to approve the plan.

Local politics can impact a collaborative process because they can exacerbate problems between people and interests that exist already. The Castle Valley Planning Process is a case in point. The local politics in the small town of Castle Valley were highly contentious before the planning process; however, the uncertainties surrounding the role and responsibilities of the town government and the Planning and Zoning Commission created a schism that ultimately broke down the process. The town’s role as a government entity was not well established, creating obstacles to the process as well as confusion. For example, Mayor Bruce Keeler was involved with the Castle Rock Collaboration (CRC) at the beginning of the process, but was eventually advised to separate himself from the organization and planning process less he compromise his role as an elected official of the town. Additionally, the members of the Planning and Zoning Commission felt that they could not incorporate the work that had been done during the planning process into the new town ordinances. This feeling was derived from at least one individual who felt that the CRC did not represent the entire town and that SITLA was acting disingenuously within the scope of the process. In this case, local politics were one of the elements that caused the collaborative process to derail.

## **POLITICS AS A FACILITATING FACTOR TO COLLABORATION**

Politics also can help move along a collaborative process. This facilitation can come in the form of a committed political leader or one who can use his or her party affiliation to garner support from interests that would not normally participate. Political support for a collaborative process can move the process forward in a more expedient manner. It also draws attention to the process, create legitimacy and accountability and allow for things to occur that might not have otherwise.

Politicians can lend legitimacy to a collaborative process simply by participating and being able to bridge a divide between diametrically opposed stakeholder groups. They can also provide resources and a greater sense of accountability to a process. Routt County Commissioner, Ben Beall, was able to lend his legitimacy as a political and well-respected figure to the Emerald Mountain Planning Process. Beall had spearheaded the local Emerald Mountain planning effort from its inception and immediately following the formalization of the process, he was elected chairman of the Emerald Mountain Partnership. The Steamboat Springs City Council also lent legitimacy to the process by participating in the Partnership. In addition to creating legitimacy within the process, the Partnership was able to leverage a greater sense of accountability and high level political support in the proposed land exchange with the Bureau of Land Management (BLM). A local BLM staffer had broached the idea with the Partnership that they explore a land exchange with the agency. This was a turning point in the process because the exchange would meet the interests of both the local community and the Colorado State Land Board. When the land exchange was being considered by the legislature, the members of the Partnership met with Governor Owens and state senators to get letters of support and ultimately garnered extensive political support for the land exchange.

The Lake Whatcom Landscape Planning Process, while it had its share of political roadblocks, duly benefited from committed political leader State Senator Harriet Spanel. Senator Spanel spearheaded the passage of the legislation that mandated the process after being approached by the Bellingham community members. Her motivation in playing such an active role was to be responsive to her constituents and a broader concern for environmental issues. Senator Spanel's district includes Lake Whatcom and she has long been involved in issues pertaining to natural resources, and had served as a member of several natural resource and environment-related committees. She was interested in these issues before she was approached by Linda Marrom and Jamie Berg to support the legislation that eventually mandated the collaborative process. Senator Spanel sponsored Bill 5536 and was able to pass its scaled back version (including only the Lake Whatcom area) with unanimous support on July 25, 1999.<sup>51</sup>

The Mesa del Sol process also benefited from a committed politician. Former Commissioner Ray Powell worked diligently to get the lease for the Mesa del Sol development in place as a legacy to his tenure as Commissioner. The lease for Mesa del Sol was signed on the last day of his term in office. This was a critical moment in the process because the incoming Commissioner, Patrick Lyons, said he would not have used a single private sector partner - Forest City Covington (FCC) LLP - or as much state-organized collaboration with other

stakeholders. Because the FCC had already signed the lease contract, it was more attractive for Commissioner Lyons to continue the Mesa del Sol project.<sup>52</sup>

Commissioners in New Mexico serve a maximum of two consecutive four-year terms, thus each new commissioner can enter office with an entirely new set of beliefs and policies.<sup>53</sup> This lack of continuity can disable a collaborative process. It was fortunate that Commissioner Lyons was willing to continue with the process. Powell was successfully able to set the stage such that the Mesa del Sol development was able to continue. The Mesa del Sol Planning Process was defined by the both Commissioners' ability to persevere and utilize key political windows of opportunity.

### **HOW DID INSTITUTIONAL STRUCTURE AND POLITICS AFFECT PROCESS OUTCOMES?**

Clearly, the institutional structure of the state trust land agencies and politics affected the collaborative planning processes. Souder and Fairfax also note that the trust mandate is not an "antidote to political reality: the trust mandate does not insulate trust managers from political pressure or prevent them from making politically expedient responses to such pressure."<sup>54</sup> The affect of the combination of both structure and politics can be seen in the outcomes of these processes. In general, the outcomes ended up being more "creative" than typical agency land management decisions. For example, perceived political support from the State Land Board empowered the Whitefish Advisory Committee to push for only four percent development in the final Neighborhood Plan. Had the Department of Natural Resources and Conservation completed the Plan alone or had more control over its substance, it is likely that they would have included more development than is currently proposed in the Plan. Similarly, the Southeast New Mexico Working Group was able to remove some state trust lands from oil and gas leasing as a result of Commissioner Lyon's ability to catalyze support from the oil and gas industries, which normally would not have supported such an endeavor.

Conversely, politics and institutional structure served to delay other collaborative processes. The Mesa del Sol Planning Process has already taken more than 20 years to complete. This can also be attributed to the fact that the process was largely informal; however much of the delays were the result of political moves to stall the plan. The Lake Whatcom Planning Process also experience delays. These occurred when the DNR decided to conduct an Environmental Impact Statement that the Committee members felt was unnecessary. The process was also dependant on state legislation to implement the process.

## CHAPTER 17

### HOW IS A COLLABORATIVE PLANNING PROCESS STRUCTURED TO BE EFFECTIVE?

The collaborative planning literature reveals that a process should be designed and managed well. The eight cases explored in this report each reveal important lessons about process structure and provide examples of both effective and ineffective process structure planning.

Creating an effective process structure is important to increasing the group's sense of ownership over the process and key to ensuring that individual stakeholder goals are met through the process. Bill Wallace, the Northwest Regional Manager of the Washington Department of Natural Resources, participated in the Lake Whatcom Landscape Planning Process. Wallace commented that it is important to "get some of the key stakeholders together to decide what the process should be, so that there is some ownership of what the process will be."<sup>1</sup>

Asking questions about the group's objectives, timeframe and methods of representation is a crucial step in setting up any collaborative process. Wallace recommended that any collaborative planning group ask themselves, "What kind of outcome do we want? What kind of a timeframe do we want? Who should be represented on the committee? What are some processes that we have some experience with?"<sup>2</sup>

Several structural elements emerge as important components to consider when deciding on the structure of a collaborative process including how the process is organized and structured, how the process deals with decision making and how the process is managed. All of these important structural elements are considered in the following analysis, using examples found in the eight cases in this report. These elements include:

How the process is *organized and structured*:

- Creating an initial process design
- Dealing with issues of representation and participation
- Defining stakeholders' roles and responsibilities
- Organizing subcommittees or task forces

How the process deals with *decision making*:

- Establishing ground rules
- Establishing decision rules

How the process is *managed*:

- Agreeing upon and setting objectives



- Setting timelines and deadlines
- Building understanding among process participants
- Deciding whether to have open or closed meetings
- Addressing hidden agendas and attrition
- Dealing with external state or federal processes

## **HOW THE PROCESS IS ORGANIZED AND STRUCTURED**

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### **INITIAL PROCESS DESIGN**

There is no one-size-fits-all approach to organizing a successful structure for a collaborative planning process. Instead, the design of the process should be tailored to the specific context in which it exists. Some successful structural elements that can be helpful to collaborative planning processes include creating a charter, bylaws and a leadership structure and incorporating as or partnering with a 501(c) (3) non-profit organization. However, sometimes collaborative planning processes benefit from being more informal, with little formal design or structure involved.

Some collaborative planning processes may benefit from writing a formal charter at the outset of the process. For instance, in the Lake Whatcom Landscape Planning Process, the Interjurisdictional Committee that worked directly on the planning efforts was directed by a Committee Charter written by Department of Natural Resources (DNR) Commissioner Jennifer Belcher. Though brief, the Charter specified the group’s activities and role in the Lake Whatcom Landscape Planning Process and guided the Interjurisdictional Committee as it engaged in planning. The Charter also summarized the legislature’s recommendations for the Landscape Plan, broadly defined interactions between the Washington DNR and the Committee and gave the planning group direction so that it could move forward effectively in dealing with substantive issues.

The Whitefish Neighborhood Planning Process also benefited from the development of an Advisory Committee Charter. Montana Department of Natural Resources and Conservation (DNRC) Planner David Greer and Unit Manager Greg Poncin and members of the Whitefish “Ad Hoc Committee” authored the Advisory Committee Charter, which described how members of the planning group would be selected, provided a timeline for the planning process and outlined the roles and responsibilities of the five major stakeholders in the case. In particular, the Charter indicated that the DNRC would direct the neighborhood planning process but would cooperate with the Advisory Committee in the formulation of the plan. DNRC Trust Land Management Division Administrator Tom Schultz described the importance of having a charter in the Whitefish Neighborhood Planning Process. “The Charter was a way to legitimize the process, identify roles and responsibilities and identify the end product that we wanted.”<sup>3</sup> Although the charters in the Lake Whatcom and Whitefish processes were not exhaustive in describing every detail of the process, they still provided well-specified guidelines that directed the process in a beneficial way by guiding planning participants’ activities and providing clarity to the process.

Other collaborative planning processes create bylaws or a formal leadership structure to guide interactions among process participants. In the Emerald Mountain Planning Process, the Emerald Mountain Partnership initially created a seven-member Board of Directors (which could be adjusted to between five and fifteen members) to lead the organization and developed a set of bylaws and a strategic plan to govern its activities. These structural elements provided organization for the process. The Interjurisdictional Committee in the Lake Whatcom Landscape Planning Process also created a formal leadership structure in which an elected Chair would develop the agenda and guide the Committee in its planning activities. In both cases, having bylaws and a formal leadership structure from the outset of the process increased the efficiency of planning efforts.

Some collaborative groups decide to incorporate as or partner with 501(c) (3) non-profit organizations in order to gain credibility and legitimacy, to create a vehicle for raising funds with tax incentives and to set up an effective structure. The Emerald Mountain Partnership took this approach. The Partnership resulted from efforts by the Steamboat Springs community to influence trust land decisions in the area. Having 501(c) (3) status enabled the group to gain legitimacy with the city of Steamboat Springs, Routt County and the State Land Board; to receive tax-deductible donations to fund their planning and outreach efforts and possibly fund the purchase of the Emerald Mountain land parcel; to establish legal liability protection and to open a small business bank account to keep track of expenses and make payments on behalf of the Partnership.

The Castle Rock Collaboration (CRC) partnered with a 501(c) (3) organization in the Castle Valley Planning Process in southeastern Utah. In this case, CRC decided that it needed to engage in fundraising to purchase land at the base of Parriott Mesa and Castleton Tower. In order to do so, CRC became a branch of Utah Open Lands, a land trust with 501(c) (3) status. While CRC did not itself incorporate as a 501(c) (3) non-profit, its activities were funneled through Utah Open Lands that did have non-profit status.

While many collaborative efforts benefit from having a formal structure from the outset, some processes are more successful when the structure is more informal. For example, in the Mesa del Sol Planning Process, the New Mexico State Land Office (SLO) instituted an informal method of collaboration whereby they reached out to various stakeholders at different periods of time with an open door policy for receiving feedback on the Mesa del Sol plan. Because of the prolonged timeframe for the Mesa del Sol process and the inherently confidential nature of information from the Kirtland Air Force Base and the Isleta Pueblo whose land abutted the Mesa del Sol property, the informal process proved to be an asset. Without being constrained by a set of procedures for the process, the SLO garnered community involvement in the Mesa del Sol plan in a non-intimidating way and built support for the project among the various stakeholder groups.

Despite the success of the informal method of Mesa del Sol planning, some stakeholders such as the Dragway representatives would have welcomed a more formal venue for their concerns. Dragway representatives often felt that they were often ignored in the process. Having a more formal structure may have provided them with a more assured method of

interaction with the SLO rather than depending on informal conversations with the SLO Commissioner.

## **REPRESENTATION AND PARTICIPATION**

Representation and levels of participation in a collaborative planning process can greatly influence the success of the process. These factors include:

- How participants are selected
- How group size is managed
- How the stakeholder groups' interests and individuals' interests are balanced

### **Selecting Participants**

Careful participant selection appears to be important to ensure adequate representation and participation in a collaborative process. When members of a collaborative process are appointed, who appoints them can influence the process. In the Lake Whatcom Landscape Planning Process Interjurisdictional Committee, the Department of Natural Resources (DNR) Commissioner appointed the public representatives and other members as needed, while state agencies and local authorities were given discretion regarding who they would appoint to the Committee. This appointment scenario worked well for the Interjurisdictional Committee, but appointing members for the Implementation Committee was more controversial. It was not clear whether the DNR would appoint Implementation Committee members from nominees made by the county, city and water district or if the county, city and water district would appoint their own members. This confusion led to controversy that could have been avoided if the appointment method for the Implementation Committee had been clearly specified from the beginning.

Some collaborative planning processes employ a self-selection method of representation where potential participants in a collaborative process identify themselves and choose to participate rather than being appointed. However, self-selection may still benefit from knowledgeable guidance. For example, in the Whitefish Neighborhood Planning Process, Mayor Andy Feury and Flathead County Commissioner Gary Hall were responsible for selecting participants for the Whitefish School Trust Lands Advisory Committee in a manner that was as self-selecting as possible. The public perceived Mayor Feury and Commissioner Hall as impartial and thus trusted them to help select the participants. To do so, Mayor Feury and Commissioner Hall published a notice in the newspaper and sent out emails soliciting letters of interest. However, due to the fact that the Committee's Charter limited participation to 20 individuals, Mayor Feury and Commissioner Hall used Charter guidelines and their own visions for an effective citizens group to narrow the pool of 45 respondents to approximately 15.

Some collaborative processes distinguish between categories of representation. Such a scenario can prove problematic if the distinctions are not agreed upon by all participants and made clear. Again, the Whitefish Neighborhood Planning Process illustrates this point. In the beginning, there was a separation between regular and alternate members of the Advisory

Committee. Although the membership structure was used to limit the size and increase the efficiency of the group, participant distinctions were never clarified to the Committee as a whole. Since many of the more outspoken members of the group were alternates, the Committee spent valuable time debating who should be at the table rather than discussing substantive issues. Eventually, the group disposed of the distinction between regular and alternate membership, which allowed the group to transition into dealing with substantive issues.

At the beginning of a collaborative planning process, it is a good idea to clarify whether representatives will act on behalf of themselves or the interests of a stakeholder group. Typically, clarifying that participants will represent a stakeholder group rather than their personal interests results in clearer communication among participants. In both the Mesa del Sol Planning Process and the Southeast New Mexico Working Group, representation based on defined stakeholder groups facilitated discussion of the issues. For example, the Southeast New Mexico Working Group was comprised of four stakeholder groups: relevant agencies, the oil and gas industry, ranching interests and conservationists. Because the process structure made these stakeholder groups very apparent from the outset, it was clear to all participants that everyone would act on behalf of the interests of their stakeholder group.

Despite the potential benefits of identifying stakeholder groups rather than individual interests, sometimes those with a personal stake in the issue are more likely to persist in the process. In the Emerald Mountain Planning Process, for example, participants with direct, personal interests in the outcome tended to be more invested in the process. In this case, it seemed that participants whose livelihoods were tied to the parcel of trust land in question were more likely to persevere in the process than those who merely had a tangential interest in using it. Therefore, having a personal stake in a collaborative process may be a facilitating factor.

### **Managing Group Size**

Managing the size of a collaborative group is a difficult but essential task, because group size influences the range of stakeholders that can be involved and how productive discussions will be. Because of the dynamic nature of many collaborative processes, representation may need to expand after the original members are selected. For example, the Emerald Mountain Partnership was designed with a seven-member Board of Directors. However, due to high level of interest and commitment of old and new members, the Board was expanded to include a greater number of stakeholders. Having flexibility written into their bylaws to add new members proved to be effective for the Partnership.

However, too large of a group may be cumbersome and should be winnowed down. As such, a collaborative group may need to narrow itself to a feasible size. Nearly 80 individuals attended the first meeting of the Southeast New Mexico Working Group. Because the sheer size of the group proved too formidable, the group narrowed its range of participants to 30 to 40 members by identifying groups of stakeholder interests and having those groups elect representatives to participate in the collaborative group. This method of winnowing group

size was effective because all interested stakeholders were able to participate in selecting the final membership of the Working Group.

Another way of reducing the number of participants is to follow the group's charter, if available. In deciding on the representation of the Whitefish School Trust Lands Advisory Committee, Mayor Feury and Commissioner Hall used the guidelines provided in the Committee's Charter to determine who should and should not participate. Having a solid foundation for making decisions regarding representation can help narrow a group's size and provide justification for membership selection decisions.

### **Balancing Stakeholder Groups' Interests and Individuals' Interests**

Spending time at the beginning of a collaborative planning process identifying and involving all pertinent stakeholders is a good way to help increase the likelihood of success. For example, in the Mesa del Sol Planning Process, the New Mexico State Land Office (SLO) was effective in ensuring that all interests were represented in their decisions related to the planning effort. The SLO also actively visited the community to gain public input in the process. The SLO's effectiveness in identifying and reaching out to all relevant stakeholder groups increased the breadth and meaningful involvement of stakeholder groups, most of whom feel that their involvement has been beneficial.

Sometimes stakeholder groups are intentionally left out of the process, which may be strategic but can lead to problems later down the road. The Elliott State Forest Planning Process provides a clear illustration of this point. According to Committee members, participation in the group's Steering Committee was limited to those with a key interest in the financial outcome of the Elliott State Forest. This criterion precluded involvement from timber interests or environmental groups. In fact, timber and environmental interests and adjacent landowners including the Bureau of Land Management, the U.S. Forest Service and Weyerhaeuser were intentionally excluded from the Steering Committee because the planning group did not perceive that they had a key interest in the forest's management. Because there was an intentional imbalance of stakeholders in the Steering Committee, an "us-versus-them" dynamic emerged between the Committee and environmental groups. Comments from the environmental community, and to some extent from timber interests, were discounted due to the perception that they were extremist viewpoints. Participants from the Committee and environmental and timber interests conceded that the lack of involvement from the environmental and timber communities was a shortcoming of the process.

In order to maintain the appropriate balance of stakeholders' interests, a collaborative group should consider the timing and location of meetings. Southeast New Mexico Working Group meetings were primarily held once a month for two days at a time during the work week and were located in southeastern New Mexico. While this location was convenient for many of the ranching and oil and gas industry representatives who worked or lived in the area, it was less convenient for agency representatives and conservationists from the northern part of the state. Holding the meetings for two days at a time during the work week was acceptable for those participating as a function of their jobs, but for others such as conservationists who were participating on their own personal time and funding, having meetings during the work

week prohibited consistent involvement. Because of these limitations, the conservationist stakeholder group often was represented by only one participant and sportsmen were not represented at all. The lack of balance of conservation interests and the absence of sportsmen interests proved a shortcoming in the process, as the full range of perspectives was not consistently shared with the Working Group.

Process participants often realize that certain stakeholders or stakeholder groups are not adequately represented during the process or after its completion. For example, in the Lake Whatcom Landscape Planning Process, the Department of Natural Resources realized that several stakeholder groups should have been included only after the process was completed. These interests included the timber industry, local school districts, homeowner groups and recreational groups. It is often more effective to try to identify and include all stakeholder groups from the beginning of a collaborative planning process. However, this task is very difficult and requires careful planning for process structure.

## **ROLES AND RESPONSIBILITIES**

At the beginning of a collaborative planning process, it is essential for participants to clearly define the roles and responsibilities of all stakeholders involved. Often, a clear definition of the participants' roles and responsibilities requires a formal discussion of the issue at the beginning of the process. In other contexts, stakeholders' roles and responsibilities must be revisited and revised along the way. In most cases, however, it is essential that the issue of roles and responsibilities be addressed explicitly within the process structure to avoid future complications in the process.

When roles and responsibilities are well-defined, participants have a sense of clear division of labor among participants, feel as though they are having an impact on the process and avoid unnecessary replication of work. The Elliott State Forest Planning Process provides an example of a process with clearly defined roles. The Steering Committee in this case unambiguously designated participants' roles and responsibilities within its structure by appointing a Chair and a Project Leader who would lead the process and specifically describing the role that each individual participant would play. The Elliott State Forest Planning Process also made a clear distinction between the policy function the Steering Committee would fill and the scientific function the Core Planning Team would fill. Having such well-structured roles in the process increased the efficiency of the process, but also provided some constraints on its flexibility. However, the tradeoff between efficiency and flexibility was worth it from the participants' perspectives.

When there is confusion regarding various stakeholders' roles, the process can become difficult. The Castle Valley Planning Process provides an example of a case where the roles of process participants were ill-defined from the beginning. In this case, the collaborative process emerged quickly from a sense of perceived crisis, because the School and Institutional Trust Lands Administration sold trust land at the base of a beloved red rock mesa in Castle Valley. As a result of the process' quick start, the roles of the town government of Castle Valley and the citizens who comprised the Castle Rock Collaboration group were not distinctly separated. The failure of the process to separate these stakeholders'

roles led to confusion and eventually a stalemate in the process when the town pursued mechanisms outside of the collaborative process to achieve their goals.

The Houghton Area Master Plan (HAMP) Process provides another example of a collaborative process without clear definition of stakeholder responsibilities. In this case, process participants did not clearly define the roles of the three main parties involved: the City of Tucson, the Arizona State Land Department (ASLD) and the Citizens Review Committee (CRC). As a result, it was unclear what degree of influence the HAMP would have on the ASLD as it made land management decisions in the area. Also, some CRC members felt at times that they merely represented a “rubber stamp” of approval on the plan, rather than being able to provide meaningful input to the city on the plan’s outcome.<sup>4</sup>

Often, discussions surrounding stakeholders’ roles in the process deal with the issue of decision-making authority, particularly when addressing the role of the trust land agency in determining the outcome of the process. In most cases, trust land agencies have the ultimate authority over the outcome of collaborative planning processes addressing state trust land. Because of this fact, the roles and responsibilities of the state trust land agency in relation to the rest of the collaborative group should be clarified early on in order to avoid miscommunication and the development of mistrust.

In the HAMP Process, the City of Tucson made the final decision on the content of the plan, but the Arizona State Land Department (ASLD) had the ultimate authority over deciding how its land in the Houghton Area would be developed. The ASLD is not required to implement the HAMP, but an ASLD representative attended CRC meetings in order to serve as a resource on ASLD-related issues that arose during the development of the plan. The ASLD representative made clear to the committee from the outset how the agency’s mandate informed its land use decisions and limitations. Although the agency attempted to make this role clear, some CRC members expressed frustration at the uncertainty at the end of the process due to not knowing if the plan would ultimately be implemented by the ASLD.

In some cases, the trust land agency is a member of the stakeholder group, and in other cases the collaborative group is advisory to the trust land agency. This distinction is important to make when dealing with roles and responsibilities surrounding decision-making authority. The role of the respective trust land agencies in the Lake Whatcom Landscape Planning Process and the Whitefish Neighborhood Planning Process provide an interesting contrast in this regard.

In the Lake Whatcom Landscape Planning Process, the role of the Interjurisdictional Committee and its relationship to the Department of Natural Resources (DNR), the trust land management agency, was not clear. Some participants felt that the DNR should be a member of the Committee thus precluding further authorization of the plan once the Committee agreed to it. However, other participants including DNR representatives who did not want to cede decision-making power felt that the Committee was advisory to the DNR and believed that was what the original legislation that mandated the process intended. The Committee eventually sought the Attorney General’s opinion on the issue. The Attorney General determined that the Committee was advisory to the DNR, thus clarifying the relationship

between the Committee and the DNR. Prior to the Attorney General's decision, the collaborative process was stymied by arguments over roles and responsibilities. After having the issue decided for them by an outside arbiter, process participants were able to proceed with the drafting of the Landscape Plan, a year and a half after the process began.

By contrast, in the Whitefish Neighborhood Planning Process, the Department of Natural Resources and Conservation (DNRC) was a member of the Advisory Committee rather than an outside entity. This membership composition increased the non-agency participants' relative level of decision-making power in crafting the neighborhood plan, despite the fact that the plan was technically an advisory rather than a regulatory document. Having the DNRC at the table with the rest of the Advisory Committee members enabled the Whitefish community to move past being a sounding board for ideas to become an active participant in the creation of the neighborhood plan.

### **SUBCOMMITTEES AND TASK FORCES**

The use of subcommittees or task forces can facilitate or undermine a collaborative planning process, depending on who initiates the subcommittee or task force, when it is initiated, its level of perceived legitimacy and its effect on the process. Processes employed a variety of different subcommittees and task forces that assumed different roles in the process (Table 17-1).

The Tucson Department of Urban Planning and Design successfully used citizen committees in the HAMP Process. To facilitate an effective process structure, the city created a Citizens Review Committee (CRC) and a Technical Advisory Team (TAT) at the beginning of the HAMP Planning Process. The CRC provided a public participation element to the plan and created a mechanism for feedback from the public. The TAT advised the city on the technical aspects of providing services to future development within the HAMP. The TAT and the CRC dealt with different elements of the planning process in a way that allowed for effective division of labor and provided areas of specialization that fostered progress. Both the TAT and the CRC communicated their findings to city representatives who then combined both sources of information into their decision making.

The Elliott State Forest Planning Process also employed a bi-level structure comprised of a Steering Committee and a Core Planning Team. The Steering Committee guided the overall process of drafting the Habitat Conservation Plan (HCP) and Forest Management Plan (FMP), articulated overarching policy issues and involved stakeholders at the policy level. The Core Planning Team dealt with the technical components of the planning efforts such as assembling the scientific data to support the resulting HCP and FMP. Process participants Jim Young and Mike Schnee served as liaisons between the two groups. Having a structure where liaisons bridged the Steering Committee's focus on policy issues and the Core Planning Team's emphasis on scientific issues facilitated effective communication throughout the planning process.



**Table 17-1: Type and Role of Subcommittees and Task Forces**

<b>CASE</b>	<b>Type of Subcommittee/Task Force</b>	<b>Role of Subcommittee/Task Force</b>
<b>Castle Valley Planning Process</b>	<ul style="list-style-type: none"> <li>• Planning Process Steering Committee</li> </ul>	→ Guided the overall planning process
<b>Elliott State Forest Planning Process</b>	<ul style="list-style-type: none"> <li>• Steering Committee</li> <li>• Core Planning Team</li> </ul>	→ Focused on policy applications of the process → Focused on the scientific/technical aspects of the process
<b>Emerald Mountain Planning Process</b>	<ul style="list-style-type: none"> <li>• Management Plan Subcommittee</li> <li>• Parcel Subcommittee</li> </ul>	→ Developed a “community management plan” for the Emerald Mountain Parcel, which serves as one of four alternatives that the BLM is considering in their Environmental Assessment → Developed the parcel selection criteria to determine which parcels would be eligible for inclusion in the exchange, and who would be eligible to acquire them
<b>Houghton Area Master Plan Process</b>	<ul style="list-style-type: none"> <li>• Citizens Review Committee (CRC)</li> <li>• Technical Advisory Team (TAT)</li> </ul>	→ Focused on public participation aspects of the process → Focused on the scientific/ technical aspects of the process
<b>Lake Whatcom Landscape Planning Process</b>	<ul style="list-style-type: none"> <li>• Facilitator Selection Subcommittee</li> </ul>	→ Drew up a Request for Proposal and reviewed applications from professional facilitators
<b>Mesa del Sol Planning Process</b>	---	---
<b>Southeast New Mexico Working Group</b>	<ul style="list-style-type: none"> <li>• Oil and Gas Recommendation Stakeholder Groups</li> <li>• Oil and Gas Technical Subcommittee</li> </ul>	→ Focused on developing oil and gas technical solutions → Focused on developing oil and gas technical solutions, more successfully than the Oil and Gas Recommendation Stakeholder Groups
<b>Whitefish Neighborhood Planning Process</b>	<ul style="list-style-type: none"> <li>• Task Forces</li> <li>• “Shadow Group”</li> </ul>	→ Researched issues such as wildlife, fire, economics, land use, recreation and water → Group that emerged due to ineffective process structure, frustrated the process

While subcommittees can be used to efficiently divide labor and create ownership in a collaborative planning process, sometimes this approach can be problematic. The Southeast New Mexico Working Group is an example of a collaborative group that included subcommittees that improved group interactions and ones that did not. During the Working Group’s efforts to draft a plan for managing lesser prairie chicken habitat, difficulty emerged surrounding the details of oil and gas development requirements. The Working Group’s facilitators suggested that participants break into stakeholder-specific subcommittees to independently come up with a draft management plan. The three stakeholder groups included one for the oil and gas industry, one for conservationists and one for agencies. Not

surprisingly, each of the groups came up with very different draft plans that only highlighted differences between the stakeholder groups rather than illustrating areas of commonality.

Despite the somewhat unsuccessful nature of the small subcommittee exercise, an Oil and Gas Technical Subcommittee later emerged to address the same difficulties surrounding oil and gas technical stipulations. The Subcommittee included one representative from each of the main stakeholder groups and used the major issues that were drawn from the small subcommittees' recommendations. The Subcommittee was successful in reaching compromises and crafting creative solutions for addressing the oil and gas elements of the draft management plan. Each representative of the Subcommittee was responsible for ensuring that the remainder of his or her constituents was in agreement with the compromises that the Subcommittee made, which resulted in greater transparency in the process and more cohesiveness in the Working Group as a whole. The intimate setting provided by the Subcommittee enabled participants to share their interests freely and to create trust that was needed to make progress on the issue. This Subcommittee differed from the three stakeholder groups because it included representatives from the range of stakeholder groups, whereas the three stakeholder groups were each comprised of members from the same stakeholder group.

Sometimes, illegitimate or destructive subcommittees result from ineffective process structure. For instance, as a result of ineffective process design that created and perpetuated mistrust, a "shadow group" surfaced in the Whitefish Neighborhood Planning Process that compromised the collaborative nature of the process. Several Advisory Committee members noticed the shadow group developing behind the scenes; however, the Advisory Committee never formally acknowledged the shadow group. As a result, the faction was able to meet separately from the planning process and made decisions without the full involvement of the Advisory Committee. These *ex parte* conversations limited the breadth of stakeholders involved in the process, the transparency of the process and the group's overall influence over decision making.

## **HOW THE PROCESS DEALS WITH DECISION MAKING**

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### **GROUND RULES**

Instituting a set of agreed-upon and legitimate ground rules at the beginning of a collaborative process is another way to articulate the group's common objectives and goals. Developing and sticking to ground rules also defines the process structure in which the group will function and sets forth standards of interaction among participants. Recalling ground rules when the group gets off track can also help bring participants back to productive discussion.

Formal ground rules can help provide the foundation for a collaborative planning process. The Elliott State Forest Planning Process illustrates the importance and effectiveness of well-defined ground rules. In this planning process, the participants jointly discussed and agreed upon ground rules, which were originally called "planning principles" and then "guiding principles" (Table 17-2). The guiding principles were essential in articulating the forest

vision, management goals and monitoring assumptions inherent in the process. They also recognized various requirements to which the process had to adhere such as Endangered Species Act requirements, the State Land Board’s mandate to provide revenue for the Common School Fund and the Board of Forestry’s statutory responsibilities. Process participants referred to the guiding principles as “the compass that guides our navigation,” and the Core Planning Team often referred to the guiding principles as decision-making criteria.<sup>5</sup> Overall, the guiding principles gave the Elliott State Forest Planning Process goals, objectives and direction that participants referenced throughout the process, particularly when making difficult decisions.

**Table 17-2: Elliott State Forest Planning Process Guiding Principles**

<b>Elliott State Forest Planning Process Guiding Principles</b>
<ul style="list-style-type: none"> <li>• The plan will recognize that the goal for the Common School Forest Lands is the maximization of revenue to the Common School Fund over the long term. The goal for the BOF lands is to secure the greatest permanent value to the citizens of Oregon by providing healthy, productive and sustainable forest ecosystems, that over time and across the landscape provide a full range of social, economic and environmental benefits to the people of Oregon.</li> </ul>
<ul style="list-style-type: none"> <li>• The plan will be developed within the context of the Elliott State Forest as a managed forest.</li> </ul>
<ul style="list-style-type: none"> <li>• The plan will recognize that the forest is intended to be an important contributor to timber supply for present and future generations.</li> </ul>
<ul style="list-style-type: none"> <li>• The plan will be a comprehensive, integrated forest management plan taking into account a wide range of forest values.</li> </ul>
<ul style="list-style-type: none"> <li>• Lands will be identified and managed for long-term revenue production while providing for a sustained contribution to biological capability and social values. The plan will recognize that there will be trade-offs between revenue producing activities and non-revenue producing activities.</li> </ul>
<ul style="list-style-type: none"> <li>• The plan will examine opportunities to achieve goals through cooperative efforts with other agencies, user groups or organizations.</li> </ul>
<ul style="list-style-type: none"> <li>• The plan will be developed through a collaborative and cooperative process involving the State Land Board, the BOF, the public, local and tribal governments and other resource management agencies including the federal services.</li> </ul>
<ul style="list-style-type: none"> <li>• The plan will be goal-driven.</li> </ul>
<ul style="list-style-type: none"> <li>• The plan will view the Elliott State Forest in both a local and regional context.</li> </ul>
<ul style="list-style-type: none"> <li>• The plan will consider the overall biological diversity of state forest lands, including the variety of life and accompanying ecological processes.</li> </ul>
<ul style="list-style-type: none"> <li>• The forest will be managed to meet the state and federal Endangered Species Acts (ESA) while fulfilling the State Land Board’s responsibilities under the Oregon Constitution and the BOF’s statutory responsibilities.</li> </ul>

Source: “Purpose, Planning and History: Executive Summary,” *Draft Elliott State Forest Management Plan*, August 2005, Oregon Department of Forestry, available at <http://www.oregon.gov/ODF/index.shtml>.

Often, having a collaborative group work on ground rules together at the beginning of the process can be a good way to build trust and a common understanding of the process constraints. In the Castle Valley Planning Process, one of the first activities in which the group engaged was the formation of ground rules, or principles for success. The planning

group jointly worked on the principles, which went through multiple iterations until the group reached consensus on the content of the principles (Table 17-3). The principles addressed the participants’ divergent interests and emphasized that they were not mutually exclusive. They also guided the process, set forth standards for group member interactions and established outcomes by which success in the process could be measured, all of which helped to establish trust among participants.

**Table 17-3: Castle Valley Planning Process Principles for Success**

<b>Castle Valley Planning Process Principles for Success</b>	
<b>1. Open and Collaborative Process.</b>	The aim of this planning process is to define both a conservation and real estate product for the parcel of Utah School Trust Lands (the “Trust”) identified on the attached map. This process should meet the primary objectives of the Town, the Trust and the Castle Rock Collaboration (CRC). All parties recognize that they are starting with very different objectives but that the risks of not exploring creative alternatives in a collaborative fashion far outweigh the consequences of typical disposition and conventional development of these properties. In order to arrive at an acceptable plan, all parties must be willing to openly explore alternatives without commitment to preconceived solutions. There is mutual risk taking. All parties desire to maximize benefits and minimize potential losses through this joint planning process. All parties enter this process with constructive, open and flexible attitudes.
<b>2. State Trust Objectives.</b>	The primary objective of the Trust is to realize an economic return from the disposition/use of these lands for the benefit of the state school trust, which is comparable to the fair value of these lands at the time of disposition. In addition, the Trust desires to explore strategies that add value to its properties, including timing or phasing approaches and to work cooperatively with the Town of Castle Valley and CRC so that the conservation and real estate products produce public benefits far greater than simple disposition of these properties.
<b>3. Castle Valley Community Objectives.</b>	The primary objective of the Town of Castle Valley and CRC is to see that the lands that have important conservation values on the Trust properties are protected to retain those characteristics for the benefit of the Town and County residents, the State of Utah and the national and international visitors who annually experience the valley. When the Town, CRC and their partners acquire lands, or interests in lands, in order to protect conservation values, they expect to pay fair value for these interests. In the event that neither the Town, CRC or their partners are able to acquire lands for conservation purposes, and to the extent that real estate development is indicated on these properties in order to generate economic value for the Trust, new development should respond to the preferences and interests of the Town and CRC so that the development both fits in the landscape and responds to input from the local community.
<b>4. Conservation and Development Opportunities, Constraints and Strategies.</b>	All of the Trust parcels should be analyzed for their conservation and development potential and value. The objective of this exercise is to define those parcels that have high conservation values, high opportunities for development or a mix of conservation and development products that are appropriate for these areas but also strategies to achieve the Trust’s financial objectives and the Town’s and CRC’s community objectives. A full range of creative conservation and development options should be considered.

**Castle Valley Planning Process  
Principles for Success Continued**

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| <p><b>5. Real Estate Products.</b> In defining the types of potential real estate products, preferences shall be given to those kinds of development which fit in and blend with the natural landscape, which meet the Town identified needs, which meet economic objectives and which minimize the amount and area of disturbance. The Town, CRC and the Trust desire that the development product be accessible to a diverse range of potential buyers. In exploring alternative real estate products, a diversity of locations and product types should be considered. The Town expects that new development will pay its own way, that the Town will not be subsidizing the costs of new development and that the pace of development will occur at a rate that does not overwhelm Town services. The Town, CRC and the Trust will have to identify the types of development which are desirable from their different perspectives.</p>  |
| <p><b>6. Conservation and Development Plan and Time Table.</b> The ultimate plan should identify the conservation and development program for each of the Trust parcels. In this fashion, the parties will have the assurance that the maximum allowable level of development for each of the parcels has been defined. In addition, the planning process should explore the concept of developing a time frame for disposition of the parcels. This time frame would identify the minimum amount of time prior to the development or marketing of each of the parcels. No parcel would be disposed of prior to the date identified in the proposed timetable. The objective of this time table concept is twofold: (i) to give the Town of Castle Valley, CRC and their partners reasonable time to develop alternative acquisition or protection strategies which might lessen the impact of development or lead to greater conservation benefit and; (ii) to identify a set time frame for the Trust which would allow reasonable disposal of the individual parcels, with the assurance that the Town will support such development. In conjunction with the time table, the planning process should explore the strategies and structures for granting the Town, CRC and their conservation partners, the opportunity to acquire certain lands or interests in lands.</p> |
| <p><b>7. Valuation.</b> The Trust will ascertain through analysis or appraisal that the plan developed through this process has comparable value to open market disposition, minus any retained interests. This valuation should occur throughout the planning process so that they process may respond creatively to information generated through these analyses. The valuation process should be done in a manner that enhances the credibility of the conservation and development products.</p>   |
| <p><b>8. Implementation.</b> The Town, CRC and the Trust understand that various agreements will need to be approved by the governing boards of the implementing parties. All parties agree to a good faith commitment to seek any reasonable means to achieve the stated objectives of the parties.</p>   |

Source: "Castle Valley Planning Study: Principles or Criteria for Success," Castle Rock Collaboration <http://www.castlerockcollaboration.org/initiative.html> (website not currently available).

Despite the benefits of agreeing upon a set of formal ground rules, when the collaborative planning group does not stick to its ground rules, the process can become increasingly lengthy and frustrating for participants. For example, several participants in the Southeast New Mexico Working Group felt that the group did not adhere to its ground rules. In particular, some participants recognized that the ground rule that "debate would only be acceptable on legitimate arguments" was often disregarded and that all comments were treated as acceptable debate. According to these participants, the process took more time and became very frustrating.

As with many elements of process structure, the context of the collaborative planning process will determine which types of ground rules are appropriate. However, some collaborative processes have used particularly effective ground rules that may be useful in many contexts.

The “No Surprises Rule,” the “Cooling Off Period” and majority and minority reports were ground rules that facilitated progress in the Lake Whatcom Landscape Planning Process. The “No Surprises Rule” prohibited members from leaking new information to the press before providing that information to the group. This ground rule was mostly effective in increasing transparency and communication among group members and limiting potentially damaging press leaks. To handle issues where the participants did not reach consensus, the Committee enacted a “Cooling Off Period.” According to the “Cooling Off Period,” the group would table discussion on a controversial issue for one week, at which time the participants would vote on the issue again. A majority report and minority report were required to document points of disagreement. The minority report writing requirement discouraged anything but substantive disagreements. By creating this requirement, the group hoped to encourage only constructive dissent instead of disagreement for the sake of disagreeing. In this way, the “Cooling Off Period” allowed participants to reassess their interests and priorities and enabled the group to make substantial strides in their discussions.<sup>6</sup>

## **DECISION RULES**

When the collaborative planning group jointly decides on a formal set of decision-making rules that define how the group will make decisions, confusing and frustrating decisions can become easier to handle. As discussed earlier, the guiding principles for the Elliott State Forest Planning Process provided a decision rule for the group. Members of the Core Planning Team revisited the principles throughout the process in order to ensure that they made decisions that were consistent with the agreements and constraints that were identified at the beginning of the process. Without having firm guiding principles that laid out a decision-making process, the group might have had more difficulty making challenging decisions.

### **Defining a Decision Rule**

When a group fails to decide upon a decision rule from the outset, the process and participants can suffer. The Whitefish Neighborhood Planning Process illustrates what can happen when a collaborative group fails to establish a formal decision-making process. While Janet Cornish, the original facilitator for the Whitefish School Trust Lands Advisory Committee, created a formal discussion structure for the group (e.g., by developing group goals and objectives), she never facilitated the creation of a decision-making structure. As a result, the group never discussed how to make decisions going forward. Instead, they quickly transitioned into talks about the substantive issues.

As a result of the Committee’s failure to create a decision rule, shadow group members had the flexibility to enact “Roberts Rules of Order” in an Advisory Committee meeting. A method of making motions for majority voting, Roberts Rules of Order allowed the shadow group to call for several votes to protect various parcels of trust land within the 13,000-acre study area. Because the Committee had not considered making a decision rule, there was no procedure to address the proposed decision-making approach. While the proposal received enough votes to pass, they were not unanimously supported. As such, the decisions did not necessarily represent all stakeholders’ interests.

## **Consensus**

Consensus, if used as a decision rule in a collaborative planning process, should be clearly defined and agreed upon by all participants before engaging in discussion surrounding substantive issues. The concept of consensus often means different things to different people. Some participants may believe consensus requires unanimity, merely a majority or the greatest number of participants in agreement as possible. Because of these potentially varying perceptions, a collaborative planning group should explicitly address the issue at the beginning of the process. In at least four of the eight cases in this report, the issue of consensus was addressed in some way. For example, the Interjurisdictional Committee in the Lake Whatcom Landscape Planning Process defined consensus as 100 percent in favor and developed ground rules about how it would reach consensus and deal with non-consensus situations. These ground rules, discussed above, included the “Cooling Off Period” and the majority and minority reports that were required if consensus was not reached.

The HAMP Process and the Elliott State Forest Planning Process decided to make decisions based on a definition of consensus that required a majority in agreement; yet both processes allowed for exceptions to the consensus agreement. In the HAMP Process, votes could occur on specific elements of proposals rather than a consensus-based decision on the entire proposal. In the Elliott State Forest Planning Process, the Steering Committee and the Core Planning Team typically made decisions based on consensus but would defer to the ultimate authority of the Chairman when consensus could not be reached. In these cases, having a decision rule for consensus allowed for flexibility in the process structure that fostered progress in the group and enabled the group to address conflicts and make decisions more efficiently.

On the other hand, the Whitefish Neighborhood Planning Process did not make a decision rule about consensus. As discussed above, because the group did not establish a clear decision rule or decision-making process, it was not clear how decisions would be made by the group. Had the participants agreed to a definition of consensus and a decision rule, the shadow group might not have been able to periodically derail the process.

## **Voting**

Specifying voting procedures prior to engaging in substantive discussions is also helpful. Like the issue of consensus, voting procedures are often defined in a decision rule. Typically, a collaborative planning group will benefit from creating a decision rule that describes whether and how voting will be used in the process.

Voting can become acrimonious if voting rights are given to some, but not to all of the participants. For example, participants in the Emerald Mountain Planning Process established a clear voting procedure at the outset in their bylaws, which made a distinction between the Board of Directors and the Advisory Group, which was comprised of individuals who may have a personal stake in the management or disposition of the Emerald Mountain land parcel. While members of both groups could participate in discussions, only the Board of Directors

members had voting privileges. While some participants saw this decision-making design as a way to increase stakeholder involvement without bogging down decision making, many Advisory Group members were frustrated with not having a vote in group decisions. The voting decision became problematic and resulted in feelings of alienation for some stakeholders.

When voting procedures are not clearly defined and agreed upon by everyone involved in the process, votes also can be used to manipulate outcomes. The use of Roberts Rules of Order by the shadow group in the Whitefish Neighborhood Planning Process exemplifies a consequence of unclear voting procedures. Because the Advisory Committee did not specify a decision rule for voting at the beginning of the process, the shadow group was able to initiate voting on an issue to their strategic advantage. In this case, participants lacked a formal voting mechanism to evaluate the shadow group's proposals.

### **Minority Reports and Decision Matrices**

In addition to having a firmly established decision rule, there are many other ways to creatively overcome the challenges inherent in making tough decisions in a collaborative setting. Among these are using minority reports and decision matrices. The use of minority reports or statements can help address the concerns of those with dissenting opinions and can encourage obstructionists to reconsider their level of dissatisfaction with a proposal. Both the HAMP Process and the Lake Whatcom Landscape Planning Process used reports to document minority opinions and encourage the group to come to a decision. In the Lake Whatcom Landscape Planning Process, the group required minority and majority reports when consensus could not be reached.

The minority report requirement occasionally served to dissuade individuals from opposing an issue because of the effort it entailed. Often, participants who did not strongly oppose would change their vote and live with a decision. Steve Hood, the representative from the Department of Ecology, described the effect of the rule:

When it came down to a vote where we knew we wouldn't have consensus, we knew someone would have to write the minority report opinion. If no one was willing to represent the minority, then why bother taking the vote if you are not going to put your minority opinion in there. If you don't care enough to state why you are against it, why can't you just say you can live with it? People would often say, "I guess I could."<sup>7</sup>

A decision matrix that goes through multiple iterations also can assist a collaborative planning group in making sense of a complex decision. The Core Planning Team in the Elliott State Forest Planning Process developed such a Decision Matrix to guide the team's decision about which forest model to use in their plan. In the Decision Matrix scenario, each member individually ranked eight possible models on a scale of one to five. The average of the rankings was presented to the Steering Committee, who revised the Decision Matrix accordingly. The Core Planning Team then re-ranked the models on the revised Matrix according to how well they met the goals and objectives of the planning process.



## HOW THE PROCESS IS MANAGED

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### OBJECTIVES

Having well-defined objectives from the outset of a collaborative planning process can help guide the process and increase participants' chances of successfully achieving those objectives. Objectives can take the form of a mission or vision statement, guiding principles, shared goals or a shared understanding of the problem and the reason for jointly working on that problem.

In the Lake Whatcom Landscape Planning Process, the individual stakeholders involved had very different goals. However, the Department of Natural Resources official involved claimed that the group was able to agree that a mutually acceptable solution would be one that balanced three central objectives: (1) fiduciary – revenue generation for trust beneficiaries, (2) social – public safety and (3) environmental – water quality. Having agreed on these three shared objectives was particularly helpful in moving the process forward.

Prior to working on a management plan for lesser prairie chicken and sand dune lizard habitat in southeastern New Mexico, the Southeast New Mexico Working Group jointly developed a guiding statement. The guiding statement was:

To create a conservation strategy for the management of shinnery oak and sand sage-grassland communities in southeastern and east-central New Mexico, recommending a range of specific actions to enhance and secure populations of Lesser Prairie-Chickens and Sand Dune Lizards, so that federal or state listing of these species is not needed, while protecting other uses of the land.

The statement was specific and kept all stakeholders focused on the same overarching goal throughout the process; yet it still acknowledged the complexity of the issue and took into account the stakeholders' divergent individual goals. Often, if all participants jointly articulate the goals of a planning process, group members are more likely to perceive the goals as legitimate, to have ownership over them and to use them for problem-solving during the process.

A collaborative effort may also suffer from the lack of clear goals and objectives. The HAMP Process illustrates what can occur when clear objectives are not articulated at the beginning and throughout a collaborative planning process. Citizens Review Committee (CRC) members became frustrated when they realized that the City of Tucson lacked a clear vision for the HAMP process. CRC member Ken Abrahams expressed his discontent with the fact that the city did not clearly define its goals from the outset of the planning process. "They ought to just sit down and figure out what they want to do and then start from there."<sup>8</sup>

## **TIMELINES AND DEADLINES**

The role of timelines and deadlines in a collaborative planning process is very important. Timelines provide the ongoing structure and goals during the process and deadlines provide the end goal for the process, marking its completion. However, setting and sticking to realistic timelines and deadlines are very difficult tasks for participants of a collaborative process. Prolonged timelines can result in participant frustration and group attrition.

Sometimes collaborative planning processes do not set realistic timelines and occasionally do not set them at all. For example, in the Castle Valley Planning Process, participants did not set exact timelines or a deadline for the process. As a result, the process continued for several years, and only ended when the funds for paying the facilitator ran out, which became an imposed but not planned deadline.

Even when collaborative planning groups set timelines, it can be difficult to stick to them. None of the cases in this project that set strict deadlines were able to complete the process by those original deadlines. For example, the HAMP Process was projected to last one year but lasted for two years; the Southeast New Mexico Working Group extended their original six to nine month timeframe to two and a half years; and the Whitefish Neighborhood Planning Process that was slated to last one year grew to 18 months. Although collaborative planning processes vary to the extent that they are able to finish close to their original deadline, the trend is that such processes typically take longer than participants originally expect. In light of the fact that collaborative planning processes typically exceed their original timelines, many participants recognize the importance and difficulty of choosing and sticking to realistic deadlines. Participants of the Southeast New Mexico Working Group acknowledged the need for realistic deadlines in order to avoid attrition and maintain process momentum, especially in time-consuming processes. On the other hand, the group also recognized that had an accurate timeframe been given at the outset, many participants may have been unwilling to participate in such a lengthy process. That said, the Whitefish Neighborhood Planning Process participants stressed the need for clear deadlines, as well as a comprehensive timeline to ensure enough time for substantive issues and prevent the collaborative process from becoming mired in details.

Given the fact that collaborative planning groups rarely achieve their own self-imposed, internal deadlines, some groups have turned to external deadlines provided by others outside the collaborative process to regain momentum and finish the process. In fact, in many cases external deadlines can be as or more effective than internal timelines in moving a collaborative planning process forward. For the Southeast New Mexico Working Group, an external deadline provided the necessary impetus to come to agreement. The Bureau of Land Management deadline for alternatives to be considered in the Resource Management Plan (RMP) Amendment was the catalyst that increased stakeholders' willingness to compromise, as the Working Group's goal was to have their recommendations included in the RMP Amendment process. Without this deadline, many participants felt that the process would have continued for an extended period of time.

Despite their effectiveness in accelerating a slow process, external deadlines can prove to be a double-edged sword. Some participants in the Southeast New Mexico Working Group indicated that while they are glad the Working Group developed a conservation plan prior to the RMP Amendment deadline, they are concerned that the quality of the plan was compromised to meet the deadline. In particular, participants are concerned that the concessions made by stakeholders during the final push for agreement might not be durable or truly effective in conserving lesser prairie chickens and sand dune lizards, which was the original intent of the plan. For example, oil and gas industry representative and Southeast New Mexico Working Group participant Dan Girand stated, “We didn’t get the species listed, but I don’t think we helped it.”<sup>9</sup>

When a collaborative planning group sets contractually binding deadlines, the group may be more likely to adhere to those deadlines. The Emerald Mountain Planning Process is an example of an effective, contractually binding deadline that facilitated progress in the process. In this planning process, the State Land Board and the Emerald Mountain Partnership agreed to a five-year planning lease and a Memorandum of Agreement (MOA) that gave the Partnership legitimacy, illustrated a sense of commitment to the process and provided a defined window of opportunity during which a range of strategies could be explored. Due to the protracted nature of the federal land exchange process, this deadline had to be revised via an amended MOA that added one year to the agreement and set a new deadline of March 15, 2006. The contractually binding nature of the deadline, although a balancing act between multiple interests, was particularly effective in this case.

Although prolonged timelines and revised deadlines may lead to frustration and participant attrition, occasionally they can allow for better outcomes. For example, the prolonged timeframe for the Mesa del Sol Planning Process, which has lasted for more than two decades, was a key facilitating factor that enabled the appropriate political climate for approval. If the timeframe had been truncated and a decision made earlier, the outcome may not have been as positive.

Regardless of whether a prolonged timeframe is a hindrance or facilitating factor for success, those entering into a collaborative planning process should be willing and able to devote a large amount of time to the process.

#### **ACTIVITIES THAT BUILD UNDERSTANDING**

Collaborative planning groups build understanding in several ways, such as engaging in team-building activities, taking joint field trips, sharing informal time together and engaging in joint fact-finding. Such activities can help increase the effectiveness of group communications, uncover hidden agendas and provide an overarching sense of group identity.

Some groups engage in team-building exercises in order to build participants’ communication skills, personal relationships, trust and shared knowledge. For example, in the Southeast New Mexico Working Group, the group’s facilitators led the participants in team-building exercises at the outset of the process in order to build a sense of cooperation

among participants. Although the facilitators wished that more time was spent on team-building, what little team-building occurred was helpful in forming a coherent group identity.

In collaborative planning processes involving decisions about state trust land, field trips to the area of interest can be helpful for developing a common understanding among all process participants. In at least four of the cases, collaborative planning groups took joint field trips to state trust land areas. In the HAMP Process, for example, the City of Tucson organized a field trip to the Houghton Road area to encourage a shared understanding of the land. Similar site visits were taken in the Emerald Mountain Planning Process, the Castle Valley Planning Process, the Lake Whatcom Landscape Planning Process and the Whitefish Neighborhood Planning Process.

Other periods of informal interactions also helped facilitate group solidarity and growing understanding. For instance, participants in the Southeast New Mexico Working Group routinely engaged in informal interactions such as carpooling to meetings and interacting between meeting sessions. These less formal activities were essential for developing relationships between participants, encouraging participants to take the perspective of their fellow group members and building understanding of the various stakeholders' constraints and capacities.

Engaging in joint fact-finding often helps increase trust, communication and understanding among collaborative planning process participants. Joint fact-finding was a key component of the Castle Valley Planning Process. One of the first activities in which the planning group engaged was examining a series of maps created by the facilitator that illustrated the natural resources and development potential of Castle Valley. Jointly working from the same fact base helped the group to develop a coherent, shared understanding of the resources and limitations of the land in Castle Valley. By developing a shared information base, the planning group built understanding about the issues they were jointly addressing. Joint information sharing was also a key component in the Southeast New Mexico Working Group. A lack of scientific data and mapping for prairie chicken habitat limited the process early on. However, once the group was able to produce maps that participants could view during meetings, the process benefited. Exploring scientific data through a set of shared maps helped to create joint understanding of the land and provided an impetus for negotiations.

## **PUBLIC MEETINGS AND MEDIA INVOLVEMENT**

Often, a collaborative planning group will hold a combination of meetings that are open to the general public and those that only include the process participants. In fact, at least five out of the eight cases had a combination of open and closed meetings. Open and closed meetings serve different purposes in a collaborative process and can have positive and negative effects, depending on the context of the process.

Holding open, public meetings is a way to gather information from the community, to get buy-in from the community and to convey conclusions and decisions reached through the collaborative process. For example, in the Castle Valley Planning Process, the planning group held an initial charrette in the community of Castle Valley to gather community input

on the range of issues being discussed in the planning group. The planning group also held open houses in Castle Valley that were open to the public. During the first open house, the facilitators presented a series of maps and overlay data illustrating the natural features of the Valley as well as preliminary development options based on the data. After compiling community input and convening a series of closed meetings with only planning process participants present, the facilitators held a second open house in which a more final plan was presented to the community for feedback. The open, public meetings were particularly effective in helping the planning group ascertain public opinion and create community buy-in for the decisions, increasing chances that the decisions would be implemented with less resistance.

Despite the many benefits of holding open meetings, this level of public involvement can have negative effects as well, such as providing an opportunity for dissenters to disrupt a collaborative process in an unproductive way. The Emerald Mountain Planning Process illustrates this point. In this case, the Emerald Mountain Partnership held semi-monthly meetings that were advertised regularly in the local newspaper and the Partnership's website and open to the public. Although the meetings were effective at helping the collaborative group gather public input and increase the transparency of the process, they also provided an avenue for disruption. In particular, a dissenting group called Citizens to Save Our Public Lands often attended the meetings to challenge the Partnership's land exchange proposal. While they did not oppose protecting Emerald Mountain, they disagreed with selling public lands in other towns to achieve this goal. Colorado Division of Wildlife District Wildlife Manager Libbie Miller thought the Partnership was ill-prepared to work with this conflicting perspective. "[The Partnership] might have done a better job handling these [concerns], if we had thought how we were going to address them ahead of time."<sup>10</sup>

Open meetings can also be frustrating if participation levels are lower than expected, despite conscientious public outreach. Several of the cases illustrated the fact that despite intentional efforts to include the public, sometimes public outreach proved ineffective. This challenge was particularly salient in the Elliott State Forest Planning Process, where the planning group's public meetings rarely were well-attended. Both the Steering Committee and the Core Planning Team worked tirelessly to involve the public by publishing and mailing an informational newsletter, holding public meetings and forest tours and posting information on the Oregon Department of Forestry website where individuals could submit comments.

Despite the planning groups' efforts to include public input, members of the general public often struggled to find accurate and timely information on the website, and it was not always clear whether the public's involvement influenced the process. Some participants indicated that the top-down nature of the public input process might have prohibited meaningful involvement from some sectors of the public. This example highlights both the difficulty and importance of reaching out the public in a collaborative process. A collaborative process should be structured in a way to encourage public involvement.

While open meetings can provide many benefits, closed meetings that include only the process stakeholders also can provide productive opportunities for candor about substantive issues and allow the group to make substantial progress in decision making. Having a group of consistent participants who develop relationships, shared understanding of the issues and

ownership over the process can foster progress in a collaborative process. The Castle Valley Planning Process provides an example of the importance of having closed meetings. In this case, the planning group was able to make significant strides toward addressing substantive issues and finding areas for compromise when the group met separately from the general community. Having a small group of stakeholders working together can foster trust and build shared understanding among participants and can allow for greater risk-taking, creativity and compromise because participants do not fear public backlash.

#### **ATTRITION AND HIDDEN AGENDAS AND INTERESTS**

Attrition can occur because of a long process with extended timelines, frustration with the process, financial constraints or staff turnover. Attrition and other changes in participation can have a negative effect on a collaborative process as it can decrease the effectiveness of the process because communication is lost, trust is diminished and forged relationships are no longer available. At least four of the eight cases faced attrition.

The Mesa del Sol Planning Process spanned more than two decades, and as such it provides an example of discontinuity of stakeholder involvement. Throughout the long process, leadership of stakeholder groups changed significantly, which made communication difficult at points and occasionally stalled the collaborative process. Similar problems with participant attrition occurred in the HAMP Process and the Elliott State Forest Planning Process. The attrition experienced in these cases was due in part to staff turnover throughout a prolonged process timeline. Some participants dropped out in frustration during the research phase of the HAMP Process because it took longer than expected.

Sometimes participants drop out of a process because of financial, as well as time constraints. The Southeast New Mexico Working Group illustrates how these kinds of constraints can result in attrition and can decrease stakeholder representation. Because of the financial and time commitments required for participation in the Working Group meetings, many stakeholder representatives had to significantly reduce their participation levels or drop out entirely. Stakeholder groups that faced such constraints included conservationists, sportsmen and agencies such as the U.S. Fish and Wildlife Service, the Department of Energy and the Natural Resources Conservation Service. Participants of the Working Group recognized that without these perspectives, the group lost valuable insights into potential solutions to the problem at hand.

As illustrated in the Southeast New Mexico Working Group, attrition can result in an imbalance of stakeholder interests represented in the group. The Emerald Mountain Planning Process is another instance where attrition caused the collaborative process to suffer. Although Routt County interests were originally included in the discussions, the process lost formal representation from the County along the way. As a result, county-based opposition to the collaborative group's land exchange proposal emerged, posing a challenge to the intended process outcome.

Because of the reality and difficulties that attrition can cause, a collaborative process should be structured to deal with such attrition. A process should address the issue of potential

attrition from the outset and decide as a group what method will be used to deal with the issue if and as it emerges. For example, a collaborative group could come up with a contingency plan for substituting a stakeholder representative if one can no longer attend the meetings. Also, comprehensive meeting notes should be given to any and all new participants to ensure a common base of information.

Hidden agendas and interests can be present in any collaborative planning process. In order to ensure that such hidden interests and agendas do not stifle progress, a collaborative process should be structured to deal effectively with unspoken interests.

Sometimes hidden agendas are a byproduct of stakeholders' legal constraints or personal characteristics. For example, in the Mesa del Sol Planning Process, the New Mexico State Land Office (SLO) found it difficult to understand the true interests of the Kirtland Air Force Base (Sandia National Laboratories) because of the confidentiality of military information and national security concerns. The SLO also had a hard time interpreting the underlying interests of the Isleta Pueblo because SLO representatives were only authorized to speak with the Isleta Governor, who is the head political official but not necessarily the most influential decision maker among tribal members. The inherently secretive nature of the Kirtland Air Force Base and Isleta Pueblo stakeholders made obtaining feedback regarding concerns about the Mesa del Sol plan very difficult. In cases such as these, a collaborative process should have a process for making decisions in the absence of complete information.

Occasionally, ineffective process structure also can foster hidden agendas that may strain a collaborative process. The Whitefish Neighborhood Planning Process provides an illustration of process structure that ineffectively dealt with stakeholders' hidden interests. Janet Cornish, the original facilitator for the Whitefish School Trust Lands Advisory Committee, believed that some community stakeholders masked their "Not in My Backyard" attitudes with concern for open space protection. Some committee members similarly questioned each others' true interests. Because the Committee never forthrightly attempted to clarify the interests that each of its members represented, mistrust grew within the group. Although regular meetings and interactions ameliorated this mistrust somewhat, participants may have been better served by identifying their true interests at the beginning of the process.

## **INTERACTION WITH OTHER STATE OR FEDERAL PROCESSES**

Collaborative planning processes often interact with other state or federal processes that can influence the collaborative process structure in both positive and negative ways. Simultaneous state and federal processes can help initiate and motivate the formation of a budding collaborative planning process, provide necessary external deadlines and create options for problem solving. However, they can also provide a set of strict regulations and requirements that can hinder creative thinking, decrease public involvement and frustrate process participants.

A collaborative process may be initiated because of a state or federal process that requires action. For example, the impetus for the creation of the Southeast New Mexico Working Group stemmed from the U.S. Fish and Wildlife Service's decision to designate the lesser

prairie chicken and the sand dune lizard as candidates for federal listing as threatened species under the Endangered Species Act. Without the fear induced by the risk of federal regulation on the threatened species' habitats, the collaborative group might not have coalesced.

State or federal processes can also help motivate a process that has reached a stalemate. The Emerald Mountain Planning Process provides an illustration of the motivating force of federal processes. In this case, the Emerald Mountain Partnership's Board of Directors struggled for the first two years of its existence to acquire adequate funding or find a conservation buyer for the Emerald Mountain state trust land parcel. However, in time the opportunity of a land exchange with the Bureau of Land Management (BLM) enabled the group to move past a period that some described as "floundering."<sup>11</sup>

Mandatory compliance with outside state or federal processes can provide the needed incentives for a collaborative planning group to meet deadlines. The BLM Resource Management Plan Amendment process provided the necessary deadlines for the Southeast New Mexico Working Group. Since the Working Group wanted their conservation strategy to be included in the Amendment process, they were forced to comply with the external deadline provided by the federal process. This deadline allowed the group to finish a long, protracted debate and come up with a cohesive conservation strategy.

Sometimes looking to other state or federal processes can enable a collaborative group to invent options to achieve their interests, particularly when the group has reached impasse. In the Castle Valley Planning Process, a federally legislated land exchange with the BLM enabled the process to move past a stalemate. When the planning group could not agree to the planning process contract, looking to a land exchange option offered another path for the participants to achieve their goals.

Despite some of the benefits of having an outside process to motivate, provide deadlines or create options in a collaborative effort, the strict regulations and requirements they entail can hinder creative thinking among process participants. For example, the U.S. Fish and Wildlife Service Habitat Conservation Plan (HCP) process bound the Elliott State Forest Planning Process within an institutional framework inherent in the federal planning process. This limitation posed challenges in being able to think creatively about the process and outcomes.

Members of the general public who are interested in a collaborative planning process may be deterred due to the unwieldy nature of some state and federal planning process documentation. In the Elliott State Forest Planning Process, the general public did not have the time or ability to read through the cumbersome HCP planning documents, a factor that limited public involvement, and according to some, the success of the process.

The rigid structure of state and federal planning processes can also frustrate process participants and create distrust in some cases. In the Lake Whatcom Landscape Planning Process, the Department of Natural Resource's decision to initiate an Environmental Impact Statement in compliance with the State Environmental Policy Act was perceived by some participants to be a stall tactic or the manifestation of a power struggle. This situation highlights the fact that when a collaborative process dovetails with other state or federal



processes, the limitations of those processes and legal reasons for initiating them must be made clear to all participants of the collaborative process.

## CHAPTER 18

### WHAT IS THE ROLE OF LEADERSHIP AND FACILITATION IN A COLLABORATIVE PLANNING PROCESS?

Leaders and facilitators guided each of the eight collaborative planning processes on state trust lands examined in this report. While in some cases a single individual fulfilled both leadership and facilitation roles, these two functions assist a group in different ways. Facilitators can either emerge from within a group or be hired externally to impartially assist the group in running meetings, communicating and making decisions. Leaders serve in both formal and informal roles to guide, inspire, or represent others. Most simply, leaders are those that others follow.

This chapter will explore how different kinds of facilitators and leaders impacted the collaborative processes in which they served. This section explores the following the facilitation and leadership issues:

- Dynamics of third-party and internal facilitators
- Sources and impacts of facilitator neutrality
- How different facilitation techniques helped or impeded the process
- Key benefits and challenges of facilitation in collaborative planning.
- Role of official leaders
- Role of unofficial leaders
- Role of agency and municipal leaders
- Transitions in official leadership

#### **FACILITATION**

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Facilitators help collaborative groups organize a process and navigate through conflict. In some cases, third party facilitators are brought in as neutral, non-partisan mediators. In others, individuals from within the collaborative group or state trust land management agency staff may fill the facilitation role. Regardless, facilitators can fill an important organizational role for any group by setting agendas, maintaining the momentum of meetings and helping the group clarify and focus on issues.<sup>1</sup> But they also fill a conciliation role, mediating between conflicting opinions, personalities and political dynamics to enable the group to make progress towards an agreement.<sup>2</sup> While facilitators are not a panacea that will ensure a group's success, effective facilitators can help groups overcome barriers and make progress toward their goals.

According to mediation scholar Chris Moore, mediators and facilitators can take on a variety of general roles within a group to help parties resolve the conflict that brought them to the

table. These roles can include opening communication channels by initiating or facilitating communication, drawing out quiet parties and keeping dominant voices in check. These individuals also lead the process forward by providing a procedure and procedural tools and can train participants in how to effectively represent their interests. They can also help the group explore problems, often by enabling participants to examine a problem from different viewpoints, assisting in defining issues and interests and looking for mutually satisfactory outcomes.<sup>3</sup> In some cases, facilitators can legitimize the process and its outcomes by imparting fairness and neutrality. Finally, in many situations facilitators can help expand resources to provide procedural assistance to parties or link them with outside resources or experts, with the aim of enlarging the overall range of options.<sup>4</sup>

The eight cases of collaborative planning on state trust lands examined in this report reveal important lessons about how different kinds of facilitation affect a collaborative process. This section explores the following the facilitation issues:

- Dynamics of third-party and internal facilitators
- Sources and impacts of facilitator neutrality
- How different facilitation techniques helped or impeded the process
- Key benefits and challenges of facilitation in collaborative planning.

**Table 18-1: Number and Types of Facilitators Employed at Different Stages in Collaborative Planning Cases**

<b>CASE</b>	<b>Third-party (#)</b>	<b>Agency or Municipality staff</b>	<b>Chairperson</b>	<b>Hired third-party later in process to replace agency staffer or chairperson</b>
<b>Castle Valley Planning Process</b>	1			
<b>Houghton Area Master Planning Process</b>	1	1		✓
<b>Elliot State Forest Planning Process</b>			1	
<b>Emerald Mountain Planning Process</b>			1	
<b>Lake Whatcom Landscape Planning Process</b>	2		1	✓
<b>Mesa del Sol Planning Process</b>				
<b>Southeast New Mexico Working Group</b>	2			
<b>Whitefish Neighborhood Planning Process</b>	2 (successive)	1	1 (co-facilitated with DNRC)	✓

## **TYPES OF FACILITATORS**

Of the eight cases researched, five used professional facilitators from outside the group at some point in the process while five used group members to fill this role at some time (Table 18-1). As these numbers imply, many cases employed multiple facilitators at different times in the process.

The distinction between internal and third-party facilitators is critical, because individuals in these roles have differing responsibilities and expectations placed upon them by the group. Third-party facilitators have no authoritative decision-making power, but help participants educate each other on the issues and reconcile their competing interests.<sup>5</sup> These neutral parties help ensure that a consensus decision can be reached, especially in conflicts with interpersonal tension and widespread distrust. For example, some members of the Southeast New Mexico Working Group felt that professional facilitators were essential for their planning process. New Mexico Department of Fish Game staffer Bill Dunn describes, “if I’d gotten up there, then okay, there’s a slant toward wildlife. If Jeff Harvard got up there, a slant towards oil and gas. If John Clemmons, a slant toward ranching. With [third-party facilitators] Toby and Ric, there was no slant. That’s what’s key about having a neutral facilitator.”<sup>6</sup>

In three of the cases examined in this report, effective facilitators emerged from within the collaborative group, itself. These group members were able to look past their own interests and serve in a more neutral role to help their peers make progress toward a joint decision or plan. While these individuals are clearly not impartial, they can play an effective facilitation role if all others in the group perceive them as legitimate and fair conveners.<sup>7</sup> For example, soon after the Advisory Committee formed in the Whitefish Neighborhood Planning Process, the Committee elected local realtor and Committee member Alan Elm to chair the group. For a while, Elm and professional facilitator Janet Cornish ran the Committee meetings. When Cornish left the process, the Department of Natural Resources and Conservation assigned planner Lisa Horowitz to staff the project.<sup>8</sup> Together, Horowitz and Elm facilitated the Committee meetings, while Committee member and Whitefish Chamber of Commerce President Sheila Bowen picked up meeting coordination tasks such as setting up venues and overseeing meeting minutes.<sup>9</sup> Emerging naturally from the group, these facilitators were more effective than Cornish because their fellow Advisory Committee members perceived them as relatively impartial and fair.

## **NEUTRALITY**

One of the most critical issues influencing the effectiveness of facilitators, especially when they are third parties, is that the group perceives them as neutral, with no predisposition towards certain outcomes. Even if the chosen facilitator feels he or she is unbiased, participants may feel differently. Several underlying elements affect whether a facilitator appears neutral. First, a facilitator who is an employee of one of the interested parties, or contracted by an interested party, can be assumed by participants to be partial to that group’s interests. In many of the cases examined, facilitators appeared more legitimate when they

were hired and paid jointly by diverse interests, rather than directly contracted and paid through an agency or a donor.

In the Whitefish Neighborhood Planning Process, the Advisory Committee felt that because facilitator Janet Cornish had been hired by the Montana Department of Natural Resources and Conservation (DNRC) to run their neighborhood planning process, she was biased towards their interests. Furthermore, the fact that the DNRC declined to reveal its source of funding for the process raised suspicions among community members. These suspicions were confirmed when the group discovered that the funds were donated by two local private landowners and Cornish lost all credibility in the eyes of participants. In the Castle Valley Planning Process, participants trusted facilitator Marty Zeller's guidance of the process because he was jointly hired and paid by all stakeholder groups. However, when one stakeholder group, the School and Institutional Trust Lands Administration (SITLA), contracted him as a consultant on other concurrent projects, community members began to question whether his other standing arrangements with SITLA created a conflict of interest. These concerns increased when Zeller's costs for the Castle Valley process exceeded the original bid amount by \$6,000 and SITLA covered these additional expenses despite a prior agreement that SITLA and the community would split Zeller's contract. This extra financial contribution from the state trust land agency made some community members feel that Zeller was "taking a side."<sup>10</sup> In contrast, in the Lake Whatcom Landscape Planning Process, the Washington Department of Natural Resources paid for the facilitation services after the members of the Advisory Committee jointly searched for and selected their preferred facilitation team.

How a facilitator was selected also impacted his or her perceived neutrality. If several parties worked together to jointly find and decide on a third party facilitator, they likely perceived him or her as credible and trustworthy. In the Lake Whatcom Landscape Planning Process, the Committee spent months debating what their level of decision-making authority should be. Responding to this tension and anticipating challenging negotiations ahead, the group decided to search for a third-party facilitator. Hiring a facilitator helped alleviate concerns that the Department of Natural Resources (DNR) had too much control over meetings and allowed the Chairperson to devote more time to representing his organization's interests.<sup>11</sup> Once the DNR and the Committee agreed on a facilitation team, Committee members found that the group's relationships and efficiency improved. As mentioned above, while the DNR funded the facilitators, the joint selection process seems to have provided adequate credibility to the team.

How a facilitator operated also determined whether he or she was perceived as neutral. Third parties must be constantly aware of how their words and actions might be perceived to the diverse parties in the group. In the Southeast New Mexico Working Group, both of the two facilitators were accused of having biases toward either the oil and gas industry and the ranchers or the conservationists. While the facilitators noted that they would occasionally play off one another to help expedite the process, both the conservationists and the oil and gas industry representatives construed these tactics as preferential treatment for the opposing interests.<sup>12</sup> For some members of the Working Group, perceived biases made it difficult for them to fully trust these third parties.

## FACILITATION TECHNIQUES

Facilitators employ different intervention strategies to help manage collaborative processes. Several variables influence the kinds of interventions they use: the level of conflict, the capability of participants to resolve their own differences, power balances, procedures in place, the complexity of the issues at hand and the expressed facilitation needs of the group.<sup>13</sup> In addition, the stage at which a facilitator enters a process determines the strategies they use to help the group. If a facilitator enters a process early on and the emotional intensity is low, the group may need different kinds of assistance than if parties have become more polarized and tensions are high.<sup>14</sup>

Some facilitators meet with the individual interests prior to the first group meeting to learn more about the issues, interests and personalities at play in the conflict. In the Southeast New Mexico Working Group, Toby Herzlich and Ric Richardson conducted private interviews with each participant to understand their concerns, interests and fears about the collaborative process in hopes of increasing their credibility as facilitators and of the process itself. These early interviews also contributed to the facilitators' greater understanding of the issues the working group would address as neither facilitator had significant prior knowledge about the problem at stake.

When a facilitator perceives that some members of the group are not contributing to the discussion, he or she can draw out quiet voices to ensure their interests and ideas are heard. This function helps ensure all members contribute to a final agreement by enabling individuals who are shy, uncomfortable interrupting, or feel outnumbered to share their point of view and help move the process forward. Not only does this additional participation increase the range of ideas and options on the table, it also helps ensure the durability of any final agreement reached because all participants played a hand in crafting the solution. In the Lake Whatcom Landscape Planning Process, the facilitators work included always, "making sure there was a flow of communication, making sure no one could hide and not participate and, conversely, that no one dominated discussion, preventing other people from talking."<sup>15</sup> Similarly, in the Whitefish Neighborhood Planning Process, where a few dominant voices often monopolized the Advisory Committee discussions, Marty Zeller effectively drew quieter parties into the group discussion, enabling everyone to express their perspective at some point.<sup>16</sup>

While some groups need facilitators to run highly organized meetings to help structure the discussion, others need more freedom to let the group develop its own dynamic and energy. In the Houghton Area Master Planning (HAMP) Process, facilitator Freda Johnson followed the City of Tucson's instructions and ran "an amazingly structured meeting" that always "got out on time," but in doing so would cut short discussions that some members of the group felt were necessary to fuel the creative process.<sup>17</sup> This strategy was therefore a stumbling block to the group, even though it perhaps could have been useful at a later stage or with different participants.

Some facilitators were effective at reminding individuals of what would happen if they did not reach agreement. In the Lake Whatcom Landscape Planning Process facilitator Mary Dumas used this strategy to remind participants why they were involved in the collaborative process in the first place. This technique was especially useful given the situation after the Attorney General rendered his opinion that the Committee was advisory in nature and therefore did not have decision-making authority, which may have caused some participants to consider leaving the table. According to Dumas, the question of “what it would mean if they did not come to an agreement” helped individuals remember what their alternatives were to a collaborative decision and motivated them to persevere with the process.

## **BENEFITS OF FACILITATION**

Facilitation can be extremely beneficial to a collaborative process. Such benefits include finding common ground from which the group can create options and find solutions, designing and directing meetings for effective communication and keeping participants at the table to ensure parties continue to work towards a durable final product.

When coming to the table, diverse interest groups often struggle to identify common goals. Facilitators can help stakeholders discover common ground on which to focus their planning efforts and construct shared principles for success. The Castle Valley Planning Process planning group developed a set of shared principles that acknowledged participants’ diverse interests, but established that these interests were not mutually exclusive. According to Facilitator Marty Zeller:

The principles basically were an exercise at the beginning of the process to get [the participants] to start talking to each other, to define some areas of common ground and to create an initial focus for the planning effort. [The principles] got them engaged constructively as opposed to destructively in the process.<sup>18</sup>

This process encouraged members of the fledgling collaborative group to interact constructively with each other, abandon preconceived notions and open their minds to new ideas.<sup>19</sup>

Facilitators can design and direct meetings to be venues for open and productive communication. In the Lake Whatcom Landscape Planning Process, the facilitators enabled such communication by organizing agendas, meeting venues and minutes. Some members of the Southeast New Mexico Working Group felt that Toby Herzlich and Ric Richardson created highly effective meetings by keeping the group on track and encouraging compromises.<sup>20</sup>

Effective facilitators also keep participants at the table by reminding them of why they chose to pursue a collaborative solution. In the Whitefish Neighborhood Planning Process, Marty Zeller worked to reign in group members who held meetings about the planning process outside of the regular Advisory Committee sessions. Zeller also helped convince Committee members that calling on political favors would not create a long-term durable solution.<sup>21</sup>

Facilitators can also contribute knowledge to a collaborative process. Montana's Department of Natural Resources and Conservation staff involved in the Whitefish Neighborhood Planning Process found that facilitator Marty Zeller's understanding of state trust land mandates and legal constraints enabled him to articulate the agency's interests to the group. Due to Zeller's background knowledge as well as his neutral status in the group, the stakeholders were more receptive to his trust land explanations than they had been when the agency was expressing them.<sup>22</sup>

## CHALLENGES OF FACILITATION

Some participants felt that facilitation increased the length of a process. Jeff Harvard of the Southeast New Mexico Working Group felt that stakeholders could have identified their own set of goals and developed a conservation plan more efficiently without professional facilitation. He described the facilitation as "counterproductive," dragging out a process that was "probably a year longer than it should have been."<sup>23</sup>

In one case, a facilitator focused so much on emphasizing common ground that group members felt unable to negotiate about key differences. The facilitators of the Southeast New Mexico Working Group asked the oil and gas representatives, conservationists and the agency representatives to each come up with their own proposals for the conservation plan. The science writer in the group, Scott Noris, then created a matrix of their three proposals to "lay them side-by-side" so the group could see the major issues and differences each highlighted.<sup>24</sup> Several participants recalled large differences between these texts but recalled that facilitator Toby Herzlich insisted that the group only focus on the commonalities. According to participant Jennifer Parody, Herzlich felt that "by highlighting the differences, we were just highlighting our disagreements and that we needed to focus on what was common. And in my opinion, that prevented us from getting to the meat of the problem and actually hashing out solutions. When we finally sat down and talked about our differences in the small group, that's when we made progress."<sup>25</sup> The group ultimately took the major categories of issues highlighted in the matrix and convened a small working group of one representative from each major stakeholder group to hammer out a plausible agreement for all parties. Neither facilitator was present for these subcommittee meetings.

In a few cases, uninformed facilitators impeded a process. Participants found that facilitators need to familiarize themselves with the issues at play in a conflict prior to the first meeting. Some of the Castle Valley Planning Process's town government officials wondered why facilitator Marty Zeller had not been aware that the planning process had to be implemented through town ordinances via the town Planning and Zoning Commission.<sup>26</sup> A participant in the Southeast New Mexico Working Group noted that their facilitators had inadequate understanding of prairie chicken biology and the regulatory constraints under which the committee was operating.<sup>27</sup> However, some participants would argue that these issues were not the responsibility of the facilitator, but were the domain of those who set up the collaborative process.<sup>28</sup>



Participants rely on facilitators to sort out rhetoric from legitimate debate. Jennifer Parody of the U.S. Fish and Wildlife Service noted that while the Southeast New Mexico Working Group had established a ground rule that debate was only acceptable on legitimate arguments, the facilitators “treated everything like it was debatable.”<sup>29</sup> She continued:

So when people would say things like, “There’s no science to show that” or “Prairie chickens like oil pads” or something, I wanted the facilitators to call bullshit and say “we’ve covered this ground, can we just agree on the basic biological data and agree that there are some things that should just not be on the table.” I thought we wasted a lot of time because they wouldn’t sort through what was just rhetoric and what was actually legitimate debate.<sup>30</sup>

This inability to enforce a key ground rule extended the length of the planning process and added to frustrations within meetings.

## **LEADERSHIP**

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Leadership can take many forms in collaborative processes. Some efforts are mobilized by a single, charismatic leader.<sup>31</sup> In other cases, dedicated individuals step forward later in the process to help maintain energy and commitment.<sup>32</sup> Many groups chose to elect an official leader to serve as a chairperson, while others are led by a designated agency official. The literature on collaboration reveals that regardless of the structure of a collaborative process, certain dedicated and energetic individuals tend to stand out as leaders.

According to Wondolleck and Yaffee, effective collaborative efforts often have one or two participants who enthusiastically model a “we’re all in this together” attitude that breaks through adversarial dynamics and sets a tone for the rest of the group.<sup>33</sup> In some cases, this individual is an agency official who may be taking a dramatic step away from conventional agency approaches.<sup>34</sup> In others, it is the “movers and shakers” in the community who catalyze a joint-problem solving effort and garner community support for taking a collaborative approach to a problem.<sup>35</sup> These “local champions” can be dedicated community members, elected officials, project leaders or landowners who rally activity and drive the process forward.<sup>36</sup>

Participants in the eight cases of collaborative planning on state trust lands identified many different qualities and functions of “leaders:” those who were deeply committed to the process, motivated others, kept the group focused on its objective, or provided new ideas that galvanized support for the process from both within and outside the group. Laura Kamala, a participant in the Castle Valley Planning Process emphasized the importance of strong leadership in this way, “You have to have some leaders that really care, to the point where they’re willing to go through hell and keep showing up. That’s the only way you can have success, ultimately.”<sup>37</sup> Overall, the mosaic of leadership functions was filled by a number of notable individuals who served the process in different ways. These leaders fill both formal and informal roles in the group and lead both by making deliberate choices and influencing others more subtly.

## OFFICIAL LEADERS

Four of the eight collaborative processes involved planning groups that elected a chairperson to lead the process and meetings. Chairpersons were chosen for a variety of reasons, including legitimacy, committee experience, interest and dedication. In the Elliot State Forest Planning Process, the Oregon Department of Forestry (ODF) Director of the Southern Area district was chosen as chair. As the most senior ODF official in charge of the Elliot State Forest, he was at the top of the chain of command and thus an obvious choice for Chairperson. In the Whitefish Neighborhood Planning Process, the Advisory Committee selected local realtor and Committee member Alan Elm to chair the group not only for his several years of experience as Vice Chairman of the City/County Planning Board, but also for his interest in helping the group expedite their work.<sup>38</sup> Similarly, in the Emerald Mountain Planning Process, Ben Beall was elected Chair of the Emerald Mountain Partnership because he had already been leading the process since its inception as a County Commissioner. Ultimately, it was Beall's dedication to protect Emerald Mountain that pushed this project to completion. In Lake Whatcom, Steve Hood was elected chair because group members perceived him as being capable of keeping the group on track and, most likely, because he had experience working on environmental issues pertaining to Lake Whatcom as a staff member of the Department of Ecology.

The roles of chairpersons varied, but ranged from facilitating meetings, reaching out to the media, representing the group to trust land management agencies, or even making final decisions when consensus could not be reached. Because these individuals were elected by process participants, they were trusted to wield their extra power responsibly and represent group interests fairly. In all cases, most participants felt that their elected chairpersons fulfilled these expectations.

A particularly critical function of official leaders was to help stakeholders with opposing views at the table and smooth interpersonal dynamics. This function was especially critical when, in the Whitefish Neighborhood Planning Process, some individuals jeopardized Chamber of Commerce President Sheila Bowen's job by telling the Chamber's Board of Directors that Bowen was misrepresenting their development interests in the process. Participants in the Whitefish case credited Chairman Alan Elm with calming the waters when trying situations like these arose and persuading Committee members to stick with the process despite personal challenges.<sup>39</sup>

Official leaders also tended to serve as a bridge between multiple parties, maintaining critical communication flows and fostering relationships outside of meetings. Often, the chairperson in the Emerald Mountain Planning Process, Chairman Ben Beall served as the primary liaison with the State Land Board.<sup>40</sup> Charles Bedford observed that when Beall met with him about the Partnership's progress, he was "very respectful of others involved" when there was still significant dissent within the Partnership, clarifying when someone was "still holding out."<sup>41</sup>

Similarly, chairpersons also reached out to the broader community to galvanize political and financial support via partnerships, fundraising opportunities and the media. The Castle Valley Planning Process's Dave Erley spearheaded many fundraising efforts and engaged the outdoor industry and climbing community. Through his outreach to the climbing community, Erley garnered advertisements in big climbing magazines like *Rock and Ice*. The Castle Valley cause also got the attention of world-renowned climbers who gave talks about the need to preserve Castleton Tower. This publicity brought the issue into the mainstream climbing community, and fueled further fundraising.

In some cases, chairpersons were chosen based on an individual's track record of persistence and determination that had already driven the process forward over several years. This perseverance was key in the Emerald Mountain Planning Process, where Chairman Ben Beall painstakingly cultivated the planning process and individually liaised between the community and the State Land Board for twelve years. According to many, Beall "is just driven and he does not give up."<sup>42</sup>

### **UNOFFICIAL LEADERS**

Many individuals who did not serve in formal leadership positions often played key, unofficial leadership roles. In many cases, these participants were recognized as having facilitated important progress or offered creative solutions and resources. In the Lake Whatcom Landscape Planning Process, Linda Marrom's emotional commitment and passion for the project helped the group push through the process.<sup>43</sup> The city of Bellingham's Bill McCourt observed that that citizens such as Marrom are better positioned to affect change than agency insiders:

I worked for 31 years for the city of Bellingham, and I have watched how things work within the agencies. For the most part, we seem to work to protect the status quo. We do not do a very good job with leadership. We really owe most of what happens in situations like this to people like Linda Marrom and Jamie Berg, people that are on the outside of the organization who somehow get this idea burning in their mind that they are willing to do what it takes and stick it out and challenge the professionals and the status quo. It's amazing how much impact they can have. They are the ones that affect change. The rest of us are just protecting our turf.<sup>44</sup>

In the Southeast New Mexico Working Group, Mack Energy Corporation's Dan Girand played a key role in Oil and Gas Technical Subcommittee by finding opportunities for his oil and gas industry constituents to make compromises. By understanding the perspective of oil and gas representatives and proactively identifying opportunities for mutual concessions as well as options that were not feasible, Girand helped this group hammer out the key oil and gas components of a conservation plan. In the same case, participants noted that retired biologist Jim Bailey brought a wide range of creative options to the table and was extremely reasonable and thoughtful in his comments and ideas. As the sole representative conservation interests, Bailey's experience, personality and creativity earned him the respect of his peers.

Unofficial leaders were motivated by fervent emotional commitment to the cause, or naturally strong personalities. The Lake Whatcom Landscape Planning Process' Linda Marrom was passionately committed to the process because any additional landslides put her house and family at risk. At the same time, because she was the first to rally public support, along with her neighbor Jamie Berg, others viewed her as the community's leader in the process; therefore she naturally filled this role and met their expectations.

Some group members were particularly influential in ways that both facilitated progress and rallied others around them. However, in the Whitefish Neighborhood Planning Process, this kind of leadership sacrificed group input. Advisory Committee member Marshall Friedman's innovative suggestions motivated others into action and his enthusiasm and commitment helped the group craft a plan that satisfied most Committee members. Advisory Committee Chairman Alan Elm has credited Friedman and others who had more "extreme" positions with being able to bring the group to a middle ground: "by being way over there, they did help us meet in the middle."<sup>45</sup> Yet, his involvement in the "shadow group's" ex parte conversations hindered the process from fairly incorporating diverse input.

#### **AGENCY AND MUNICIPAL LEADERS**

Agency and municipal leaders often assumed active leadership roles that created, supported, or promoted the collaborative planning processes. In some cases, however, the mere presence of these officials enhanced the credibility of the process and support for it.

Agency leaders assumed a unique role in the collaborative planning cases. Often, one or a few leaders within an agency set the tone of the agency's response to a conflict and designed its role in the collaborative process. In the Whitefish Neighborhood Planning Process, the Department of Natural Resources and Conservation (DNRC) Trust Lands Management Division Administrator Tom Shultz was instrumental to completion of the process. Schultz coached his DNRC staffers through their work with the Whitefish Advisory Committee and worked hard within his agency to enable staff to respond to the local community's interests, a relatively new role for the agency.<sup>46</sup> New Mexico Commissioner of Public Lands, Patrick Lyons sent a powerful agency message to the Southeast New Mexico Working Group by removing a portion of trust lands in prairie chicken habitat from oil and gas leasing. This act also gave the Working Group a large portion of trust land now off-limits to leasing with which to work into their overall conservation scheme. Given the autonomy of the State Land Office (SLO), this was a symbolic and purely voluntary act by Lyons that assured the Working Group that the SLO supported the Working Group's goals.<sup>47</sup>

Several of the collaborative planning processes researched in this study were catalyzed by one or two proactive individuals who tried a new approach to planning. Indeed, Wondolleck and Yaffee have found that many effective collaborative resource management partnerships have been initiated by a few entrepreneurial individuals who saw joint problem-solving as a desirable alternative to traditional, adversarial approaches to resolving conflict.<sup>48</sup> In the Castle Valley Planning Process, Mayor Bruce Keeler initiated a conversation with Utah's School and Institutional Trust Lands Administration Assistant Director Ric McBrier about working together to find a "win-win" solution instead of pursuing further rezoning, litigation

and land sales. This initial contact and other early conversations between McBrier and Castle Valley resident Brooke Williams led both groups to drop their activities and convene a joint planning effort for trust land in Castle Valley.<sup>49</sup> The Lake Whatcom Landscape Planning Process's Bill Wallace, the Northwest Regional Manager for the Washington Department of Natural Resources, is another example of an agency leader, especially because of his commitment to the process during two different commissioners. Despite having a new Commissioner that was less supportive of the process, Wallace adapted to the new commissioner's style and never faulted in the face of the Committee, even when group members believed the new Commissioner did not support the plan the group was developing. One member of the Committee commented, "Bill Wallace was terrific. Overall, I am impressed with the DNR."<sup>50</sup>

Participants also noted that effective leaders created and reinforced an overarching vision for the project. In New Mexico, many participants of the Mesa del Sol Planning Process credited former Commissioner Ray Powell with creating and marketing the vision for the project. Powell had an ability to translate his ideas to other parties to fuel a collaborative process around a shared vision.<sup>51</sup> As he describes it, "At the end of the meetings they were right there with us. That was *their* project."<sup>52</sup> This shared vision helped keep parties involved in the collaborative process and facilitated progress in planning.

In several cases, agency leaders also espoused the collaborative planning process early on. In the Mesa del Sol Planning Process, Commissioner Ray Powell chose to open the New Mexico State Land Office's (SLO) doors to the public and personally visited with neighborhood groups, businesses and other stakeholders in the process to bring them on-board with the planned development. Because the Commissioner himself went to meet stakeholders, these meetings helped to build trust and respect between the SLO and the community in ways that may not have occurred without Powell's commitment and involvement. In the Castle Valley Planning Process, School and Institutional Trust Lands Administration (SITLA) Assistant Director Ric McBrier championed the collaborative process and represented the process to the SITLA Board of Trustees. The agency had never undertaken a similar process and McBrier's willingness to work with the community enabled new relationships and trust to be built.

Agency leaders dispelled misperceptions about government plans and activities and built a foundation of trust with the stakeholders. The Department of Natural Resources and Conservation's (DNRC) Unit Manager Bob Sandman assumed this role during the Whitefish Neighborhood Planning Process. After a previous staff member had inspired mistrust among community members by failing to share information, Sandman took a more active role in the process to prove the agency's willingness to provide real answers to the Committee's questions and concerns. His willingness to collaborate and his inspiring and energetic "pep talk[s]" in Committee meetings bolstered community confidence in the DNRC.<sup>53</sup> At the same time, the DNRC's Trust Land Management Division Administrator Tom Schultz became more involved in the planning process by making himself more accessible to Committee members to ensure they had access to all necessary information. This new approach helped dispel the community's impression that the agency was an inconsistent, "many-headed beast"<sup>54</sup> or "the big bad wolf looming on the horizon."<sup>55</sup> The increased involvement and

openness of both Bob Sandman and Tom Schultz improved the transparency of agency activities and helped dismiss conspiracy theories about the DNRC's intentions.

In some situations, the mere presence and involvement of public officials boosted the legitimacy of a convened group, making both participants and outside parties take the process more seriously, and perhaps more amenable the outcome. In the Lake Whatcom Landscape Planning Process, the presence of elected officials "elevated the stature" of the Committee, making participants feel that the process was "being taken seriously." This increased legitimacy in turn boosted participants' own level of emotional commitment to the process and kept them at the table working together.<sup>56</sup>

Agency officials, especially those who were elected to their offices, also catalyzed support of parties who may have otherwise been skeptical of a collaborative process. Many participants in the Southeast New Mexico Working Group laud Commissioner Patrick Lyons' ability to gain support and buy-in from other stakeholders. As a Republican in a high-level government position, Lyons was "at a better place to catalyze support of some of the industry that typically is Republican in nature, both the agricultural and oil and gas industries."<sup>57</sup>

#### **TRANSITIONS IN OFFICIAL LEADERSHIP**

Leadership transitions can either enhance or impede collaborative efforts, depending on the context. In some cases, changes in process leaders hindered progress by causing the group to lose momentum and commitment. In the Houghton Area Master Planning (HAMP) Process, the city's project leader retired only a few months into the process. Michael Wyneken, the new planner assigned to lead the Citizen's Review Committee (CRC) and manage the process felt that the project "got dumped" on him and was frustrated by having to work within the parameters set by the previous manager.<sup>58</sup> This change in leadership, combined with delays, lack of data and confusion over the various parties' roles in the process, caused CRC attendance and participation to decline.<sup>59</sup>

In the Mesa del Sol Planning Process, changeover in State Land Commissioners required participants to adapt to new policies and visions for the process. In some cases, the different beliefs of a new Commissioner derailed projects begun in previous administrations. When Commissioner Ray Powell began his first term, he experienced some backlash when he tried to institute more planning and collaboration into the State Land Office's land management activities. According to Powell, "folks wanted [the old policies] to continue, including Mr. Baca."<sup>60</sup> Conversely, when Commissioner Patrick Lyons came into office, he chose to continue Powell's collaborative strategy for Mesa del Sol even though he has a markedly different business philosophy. While Lyons may prefer to minimize the State Land Office's role and require the private developer to manage the collaborative process, he chose to honor the precedent already set and continue to invest agency resources into the collaborative process. According to Commissioner Lyons, "We're supportive of [Mesa del Sol] ... We'd like to see it happen."<sup>61</sup>



## CHAPTER 19

### HOW DO INTERPERSONAL AND POWER DYNAMICS INFLUENCE A COLLABORATIVE PLANNING PROCESS?

Each of the eight cases examined in this report illustrate how relationships, trust and the power shared among participants of a collaborative process can affect the dynamics of a process and influence its outcome. This chapter focuses on the following five main aspects of interpersonal relationships in collaborative processes:

- How relationships between parties influence the collaborative process
- How the collaborative process influences relationships among parties
- How relationships influence future interactions among parties
- Elements that give parties power
- How distribution of power affects the collaborative process

The very nature of collaborative processes indicates that many participants enter a process with preexisting relationships with other parties. Preexisting relationships may result from living in the same community, sharing interests, competing for resources, or other interactions. Such relationships are not static, however, and throughout the collaborative process they continue to change as participants work together, create a shared understanding of problems and solutions and ultimately create a final plan. Along the way, positive relationships serve to facilitate progress while poor relationships often hinder it. The relationships of process participants with outside parties can also influence the process direction and efficiency.

While relationships have a significant impact on a collaborative process, there are many ways in which the process itself also influences relationships. Process structure can have a large impact on relationships from the outset of the process. Process structure elements like ground rules, group principles, subcommittees, methods of addressing problems and the timeframe for the process can all be influential. As these elements change, whether through membership or influence changes, so too do relationships. In addition, there are more informal ways through which relationships are changed. These can include group hikes, song and prayer activities and informal meetings at local gathering places. All of these methods for altering relationships can be used strategically in the process to help foster positive relationships that will facilitate progress towards ultimate group agreement (Table 19-1).



**Table 19-1: Relationships across the Eight Cases and Actions for Improvement**

<b>CASE</b>	<b>Beginning</b>	<b>Relationship-Building Actions</b>	<b>End</b>
<b>Castle Valley Planning Process</b>	Community distrusted state land agency	—————▶ Developing principles of success; group hikes	Better working relationships, particularly for CRC members and SITLA
<b>Houghton Area Master Plan Process</b>	City Department of Urban Planning and Design engaged community in process	—————▶ Group field trip*	Working relationships; increased City and ASLD communication
<b>Elliott State Forest Planning Process</b>	Participants shared a common goal	—————▶ Laid issues on the table and talked them through, tours of the forest, felt comfortable airing grievances	Better understanding of the Habitat Conservation Plan process; more buy-in to the management plans
<b>Emerald Mountain Planning Process</b>	Conflict between different stakeholders (recreators, ranchers, development interests and SLB)	—————▶ Political support via letter-writing; subcommittee meetings increased mutual respect; newspaper editorials	Personal friendships developed; working relationships were established or increased
<b>Mesa del Sol Planning Process</b>	Beneficiary sued SLO	—————▶ Beneficiary brought into process; personal meetings with neighborhood groups, city, businesses, elected officials	Strong working relationships among participants; Private-Public partnership with developer leading the process forward
<b>Lake Whatcom Landscape Planning Process</b>	Community and tribes distrust DNR	—————▶ Forest walks; tribal song and prayer before meetings	Trust between community and DNR eroded when it appeared that the Board would not approve the Landscape plan
<b>Southeast New Mexico Working Group</b>	Mistrust among oil and gas, ranchers, & conservationists; Agencies had worked together some	—————▶ Long hours working together; ate meals together; carpooled	Working relationships for agencies; improved/new working relationships; increased understanding of other perspectives; apprehension about implementation and follow-through
<b>Whitefish Neighborhood Planning Process</b>	Community mistrust of state land agency; Community connections to State Land Board officials	—————▶ Met at informal gathering places outside of process; lunch meetings; change in personnel	Improved relationships within the community

\* While this was a group-building exercise in the process, none of the HAMP interviewees for his report attended the field trip. Therefore, they could not comment on its possible contribution to relationship-building.

Relationships created during participation in collaborative processes can also influence the parties' ability to implement the final plan or to work together in other capacities. Participants in the eight cases examined in this report also commonly mentioned that the positive relationships formed during the collaborative processes was a major benefit of the process.

Finally, the cooperative nature of collaborative processes also assumes a certain amount of power sharing.<sup>1</sup> The power that participants in collaborative processes have to influence each other and the outcome, whether real or perceived is a complex variable. The eight cases of collaborative planning on state trust land revealed a number of interesting examples of how a process is affected by who has power and why they have that power, as well as how groups work to reduce power imbalances among participants.

## **RELATIONSHIPS INFLUENCE THE PROCESS**

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Relationships among collaborative process participants and relationships between participants and outside parties can significantly affect collaborative processes. For instance, internal group relationships can help initiate a collaborative process, bring in additional membership, change the path of planning, help the group overcome impasses or create those impasses, improve understanding and motivate members to continue to participate. Meanwhile, relationships of participants with outside parties can facilitate or stifle processes, influence participants' actions within the group and create options through partnerships. Interpersonal relationships surrounding collaborative processes thus have a large impact on the direction of the process.

### **RELATIONSHIPS AMONG GROUP PARTICIPANTS**

Many collaborative processes are bred out of existing relationships among parties, be those positive or negative. In the cases examined in this report, relationships played a role in the very issue or conflict that necessitated the collaborative process.

Good working relationships among parties can lead to the formation of a collaborative process. The Houghton Area Master Plan (HAMP) Process illustrates how preexisting working relationships between the City of Tucson and Tucson residents helped initiate a collaborative process. Recognizing and respecting the community's desire and expectation to be engaged in planning processes, the City of Tucson's Department of Urban Planning and Design invited neighborhood groups from the Houghton Road area and local land use planning and development professions to join the newly formed Citizen's Review Committee to provide input on the HAMP.

Strong positive relationships and a sense of community also acted as a catalyst for the Castle Valley Planning Process and the Whitefish Neighborhood Planning Process. In the Castle Valley, Utah, an informal community phone tree provided a mechanism for increasing residents' awareness of the School and Institutional Trust Lands Administration's (SITLA) pending land development plans. This awareness prompted members to form the Castle Rock

Collaboration as a forum in which to engage SITLA collaboratively. Similarly, in Whitefish, Montana, some members of the Whitefish School Trust Lands Advisory Committee had connections to the Montana State Board of Land Commissioners. These connections helped them secure more decision-making power in the Department of Natural Resources and Conservation's neighborhood planning process.

Despite many of the positive relationships that helped launch collaborative processes, according to Wondolleck and Yaffee, conflict, particularly protracted conflict, often provides the impetus for collaborative processes. With this conflict frequently comes a lack of trust due to stereotypes and experiences during past interactions, which can breed poor relationships between incoming process participants.<sup>2</sup>

In many of the cases of collaborative planning examined in this report, community members entered the collaborative processes with a significant mistrust of the state trust land agency. In the Castle Valley Planning Process, the town of Castle Valley distrusted the School and Institutional Trust Lands Administration (SITLA) based on their previous negative perceptions of SITLA's sale of land at the base of Parriott Mesa. In the Lake Whatcom Landscape Planning Process, the community distrusted the Washington Department of Natural Resources because many in the community attributed the destructive effects of a landslide in 1986 to the agency's forest management practices in the area. In the Mesa del Sol Planning Process, the beneficiary, the University of New Mexico, distrusted the New Mexico State Land Office, because it had previously sued the agency over its attempts to make a land deal of which the University disapproved.

The Whitefish Neighborhood Planning Process also illustrates how such rooted mistrust impacts the collaborative process. The Whitefish community's initial mistrust arose out of its fear that the Montana Department of Natural Resources and Conservation (DNRC) would develop the Whitefish trust lands as they had in nearby Kalispell, Montana a few years earlier. This fear was compounded by the community's inherent mistrust of the government. Facilitator Janet Cornish noted that the community was "preset to believe that [the DNRC was] there to screw them. Plain and simple."<sup>3</sup> This mistrust motivated citizens of Whitefish to lobby the State Land Board to modify the DNRC's public meeting decision-making approach to make it more collaborative and thereby give the community more influence on decision making.

When poor relationships mired in distrust persist, they can bog down the process and inhibit progress. Deeply rooted stereotypes and distrust held by the stakeholders was a major cause of these poor relationships in the cases examined. While it is common for people to associate others with particular characteristics, this tendency "polarizes participants, setting up us-versus-them dynamics that undermine the desire to collaborate."<sup>4</sup> Moreover, stereotypes and the resulting polarized dynamic remain a threat to the collaborative process even if the stakeholders decide to collaborate. These misperceptions tend to result in emotional name calling sessions rather than productive meetings. Mistrust and stakeholder stereotypes create an atmosphere of hostility and suspicion.<sup>5</sup> According to Wondolleck and Yaffee, a lack of trust can stall and even destroy a collaborative process by promoting and perpetuating

suspicion about others' motives, methods, and data.<sup>6</sup> This situation occurred in many of the cases examined in this report.

The Castle Valley Planning Process exemplifies how poor initial relationships between organizations and communities can influence a process in this way. In this case, the town of Castle Valley distrusted the School and Institutional Trust Lands Administration (SITLA) because they perceived that the agency had failed to work effectively with communities in the past. As the Chair of the citizens group, Castle Rock Collaboration (CRC), Laura Kamala noted, "There was a basic distrust of SITLA. That was a big problem and a baseline that we started from."<sup>7</sup> As the process moved forward, the town continued to hear about other communities' negative experiences, which further contributed to this distrust. Castle Valley Mayor Bruce Keeler noted that communities asked him, "What are you dealing with [SITLA] for? You can't trust them. You can't do business with them. They're going to screw you in the end."<sup>8</sup> Such statements helped to exacerbate the town's mistrust for SITLA, which slowed the ability of the CRC and SITLA to work effectively together at the start of the process.

Problematic stereotyping was certainly embedded in the Southeast New Mexico Working Group, particularly for representatives of conservation and the oil and gas industry. Oil and gas industry representative Dan Girand recalls that he felt that the group sometimes marginalized his opinion based on such stereotyping. He recalled, "Regulators and industry after a while tend to say, 'Well that's just old Dan. He's a radical redneck.'"<sup>9</sup> This stereotyping made it difficult for group members to feel respected and heard.

Much like the stereotypical conflict between oil and gas and conservation, the Elliott State Forest Planning Process involved stereotyping between logging and conservation interests. In this process, two bird species, the spotted owl and marbled murrelet, became famous in the early 1990s when they were listed as federally threatened species. These species became figureheads in the ideological war between the timber industry and environmentalists, a conflict that is based on the perception of fundamentally different value systems and contributed to the mistrust and stereotyping that surrounded these groups in the Elliott process. In addition, the environmentalists did not trust the Steering Committee to push for strong enough species protection. Again, this mistrust surrounded the group throughout the process.

Where positive relationships existed, such improved relationships in the group helped facilitate greater progress towards ultimately developing durable solutions. For instance, good working relationships helped groups get through impasses. In the Elliott State Forest Planning Process, participant Steve Denney noted that by knowing the other members of the group well, the Steering Committee was a "relaxed bunch." He added that committee participants were "comfortable enough to joke with each other and jab each other in a good manner."<sup>10</sup> The relaxed nature of the group fostered by strong relationships allowed for the Steering Committee to prevent impasses and work efficiently.

Strong personal relationships in collaborative groups also provided an incentive for members to continue to participate in the process. For instance, in the Emerald Mountain Planning

Process, participant Libbie Miller of the Colorado Department of Wildlife was particularly enthusiastic about the process because of the relationships she was able to foster and later benefit from in her work. She noted:

As an enforcement officer, I think the more interaction you are able to have with your community the better. People see you in a different light and they see the agency in a different light. When you interact on a different level instead of just strictly writing tickets to people or taking them to jail, you have a whole different kind of involvement.<sup>11</sup>

For Miller, these new relationships increased the value of her involvement in the Emerald Mountain Partnership. She commented further:

It was a huge benefit for me, because I got to meet a lot of people who I would not necessarily. It is likely I would have gotten to meet them over time. However, when you work with somebody on a monthly basis, you certainly develop professional relationships that you wouldn't get in any other scenarios.<sup>12</sup>

In some cases the collaborative planning process helped increase participants' respect for one another as they gained a greater understanding of the issues with which different interest groups grappled. This dynamic was especially important in the cases examined in this report because of the state trust land mandate. When participants came to understand the state land agency's legal constraints, they had a greater appreciation for agency motivations and respect for their point of view. For instance, in the Whitefish Neighborhood Planning Process, there was significant disagreement at the beginning of the process regarding the trust land management capabilities of the Montana Department of Natural Resources and Conservation (DNRC). Through an extended education process, however, many members of the Advisory Committee came to accept the DNRC's interpretation of the mandate and even educated their fellow neighbors about the constraints inherent in trust land management at a later public meeting. In this way, such improved relationships and understanding can also serve as positive public relations for participants and the process.

## **RELATIONSHIPS WITH OUTSIDE PARTIES**

In addition to the ongoing relationships of participants within collaborative processes, a number of relationships existed outside of a group's core membership that had significant impacts on the process and its members. For state trust land agencies, the agency's relationship with the trust beneficiary sometimes influenced how the agency could do business and how it felt it could participate in collaborative processes. In the Mesa del Sol Planning Process, the relationship between the New Mexico State Land Office (SLO) and the beneficiary, UNM impacted the process early on. While Commissioner Baca was close to the UNM president, a relationship that facilitated progress for the SLO's land development and auction plans, Baca's relationship with the UNM Board of Regents was decidedly unproductive.<sup>13</sup> Thus, when Baca pushed for the first auction of the Mesa del Sol property, UNM sued the SLO and greatly delayed future collaborative planning. While UNM could be

considered an “outside” party to the process prior to this interaction, the lawsuit resulted in UNM becoming an active party in the Mesa del Sol Process and essentially joining the collaborative process.

Relationships formed via partnerships between collaborative groups and outside organizations often increased the group’s capacity and broadened their range of possible solutions. For the Elliott State Forest Planning Process, the U.S. Fish and Wildlife Service and National Marine Fisheries Service offered helpful partnerships to the collaborative process, sharing information and answering questions for the group about species habitat requirements and creating buy-in with federal agencies. One participant noted, “Another [way to deal with endangered species] is to develop an HCP where you work with the services, in this case [U.S.] Fish and Wildlife, to come up with a method on the ground that will both protect the owls and improve your ability to continue your activities there.”<sup>14</sup>

Similarly, in the Emerald Mountain Planning Process, pursuing a joint solution with the Bureau of Land Management (BLM) provided options for the process to continue to move forward in an otherwise plodding effort. In the Emerald Mountain case, work through the State Land Board and the BLM led to a federal land exchange process. If successful, this exchange will respond to the local need for a multiple-use management approach on the parcel and generate roughly \$17.2 million, the full market value of the land.

While many of these outside relationships facilitated the ability for groups to make progress towards a solution, groups did not always respond positively to outside input. In the Elliott State Forest Planning Process, the Steering Committee was unresponsive to critical public comment originating from environmentalists. This was largely due to the fact that the environmentalists’ comments were seen as extreme view points when compared to the mild criticism from timber interests. As a result, the perception of an “us” versus “them” dynamic arose between the Steering Committee and the environmental groups.

## **THE PROCESS INFLUENCES RELATIONSHIPS**

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Just as relationships among different parties in, and peripheral to, a collaborative process influence the process, so too do collaborative processes affect the relationships. One of the greatest relationship outcomes of collaborative processes cited in literature is typically increased trust among participants. In A Desktop Reference Guide to Collaboration and Community-based Planning, the Bureau of Land Management (BLM) and the Sonoran Institute found that collaboration led to increased trust between BLM land managers and the public.<sup>15</sup> In addition, Yaffee et al. found that trust can decrease adversarial relationships, enabling stakeholders to jointly address and solve conflicts.<sup>16</sup>

## **HOW COLLABORATIVE PROCESSES IMPACTED RELATIONSHIPS AMONG GROUP PARTICIPANTS**

There are a number of ways by which collaborative processes can improve relationships among group members. As examined in the cases investigated in this report, there are two

main categories of methods for improved relationships: collaborative structure and activities. Also, while relationships often improved over the course of the collaborative process, in some instances, the process increased tension in relationships.

## **Collaborative Structure**

The structure of the collaborative process can have immediate and long-term impacts on group members' relationships. Often, elements of structure are established at the outset of the process. These include ground rules, means for participant interaction, methods by which the group will deal with problems, unique elements to meetings and the sheer time of the process. In addition, some structural elements can inadvertently serve to sour relationships among participants, particularly when roles are not clearly defined and when participants do not feel heard and feel incapable of influencing the process. Finally, when structural elements change, they also affect participant relationships.

Ground rules establish methods of interacting and provide an outline for a collaborative process that impacts relationships between members. When participants enter a collaborative process with preexisting tensions and distrust, establishing a set of ground rules can help govern and guide their interactions to foster healthy working relationships.

For the Lake Whatcom Landscape Planning Process, such ground rules proved to be a valuable tool in facilitating the collaborative process. Whatcom ground rules included: respect each other and "no surprises" in issues pertaining to the group. The Lake Whatcom Process also had structured field trips to the land to help create a shared understanding of the problem.

The Castle Valley Planning Process similarly established guiding principles for success with the help of facilitator Marty Zeller. The principles outlined ground rules for participant interactions and established goals that served as benchmarks to help the group measure success. These principles for success helped to address participants' different interests as well as tackle the significant distrust between the community and the School and Institutional Trust Lands Administration that plagued the group from the outset.<sup>17</sup> Zeller noted:

The principles basically were an exercise at the beginning of the process to get [the participants] to start talking to each other, to define some areas of common ground and to create an initial focus for the planning effort. [The principles] got them engaged constructively as opposed to destructively in the process.<sup>18</sup>

The Whitefish Neighborhood Planning Process formalized a common goal for the group through the "Top of the Mountain" document. Having common goals in a single document helped the group focus on the process effort as opposed to individual ideas. This focus helped unite the Advisory Committee, which struggled early on with mutual mistrust between the Montana Department of Natural Resources and Conservation and the Whitefish community.<sup>19</sup>

The means by which input from different group members was solicited could also help foster relationships in processes. In the Mesa del Sol Planning Process, Commissioner Ray Powell's personal meetings with Mesa del Sol neighbors, municipalities, and potential partners helped foster a sense of ownership for the project within the community and was a sign of Powell's commitment to the process. As Jacqueline Dubose Christensen of the Albuquerque Chamber of Commerce commented, Powell often went out to the community himself. She added, "He put enormous time and resources into this notion of developing Mesa del Sol and he worked people to sell it. He was actively out there. He didn't send his team; *he* went out to sell it."<sup>20</sup>

The structure of the Elliott State Forest Planning Process helped maintain good relationships by dealing with conflict in the group immediately and upfront. One participant commented that whenever issues came up that created conflict, the group would lay the issue on the table and work it through until the problem was solved. For the Elliott process, this method may have helped prevent major issues from festering and creating further conflict.

In addition, some processes included particularly structural elements unique to the process situation that also helped foster positive relationships among participants. For the Lake Whatcom Landscape Planning Process, each meeting began with a tribal song and prayer, a result of the Lummi Nation's participation in the process. Process participant and member of the Lummi Nation Tom Edwards recalled:

When we first started a meeting, we started with a prayer and a song. That really cleaned out the atmosphere of our meetings. Each meeting I went to there they asked me to open up with a prayer and a song. That just cleans out the air. Before I wasn't doing that the atmosphere was just heavy in there. People arguing this way and that way. I stood up and said, "Can I sing a song and offer a prayer?" They said "yeah" and boom, it just cleans up the air. Everyone felt good about that, even the [Department of Natural Resources] folks.<sup>21</sup>

Finally, the amount of time allotted for a collaborative process can help to eventually foster positive relationships. For the Whitefish Neighborhood Planning Process, time ultimately helped the group address its underlying mistrust as participants continued to work together and build a shared understanding. Committee member Paul McKenzie notes, "We had enough opportunities to discuss our differing points of view that . . . we realized that we weren't quite so far apart on these things."<sup>22</sup>

While many elements help to improve relationships, some aspects of process structure can undermine relationships. In some cases, these strained relationships arose due to either unclear roles in the process, or because decision-making power was unevenly distributed in the group or in subgroups. For the Houghton Area Master Plan Process, members of the Citizen's Review Committee (CRC) were frustrated by the advisory role they played for the City of Tucson. Many felt they had taken on a role in which "it felt like we were there just to kind of rubber stamp."<sup>23</sup> Frustration and resulting strained relationships occurred throughout



the plan development process because CRC and city representatives had different perceptions and expectations of the CRC's responsibilities.

In the Emerald Mountain Planning Process, which involved both the Emerald Mountain Partnership Board of Directors and the Advisory Council, similar troubles regarding participant role definition created tension and alienated some stakeholders. When the Partnership formed, individuals who had played major roles in the earlier Core Group planning process, but had vested interests in the Emerald Mountain parcel, were relegated to having non-voting status in the Advisory Committee. This change in roles was seen as a demotion by some participants and created frustration and distrust of the Partnership. Advisory member and rancher Jim Stanko commented on this feeling of alienation:

You're told you can't be part of it anymore because you've got a conflict of interest, and a person that's trying to get a bicycle trail through the thing is appointed, and they don't have a conflict of interest? ... Now it's the Partnership off doing something and the rest of us may or may not know what they are doing, even though I'm supposed to be on the Advisory Group.<sup>24</sup>

In some processes, unofficial subgroups also contributed to problematic relationships. In the Whitefish Neighborhood Planning Process, a "shadow group" comprised of a subset of Advisory Committee members and stakeholders met outside regular Committee meetings to discuss substantive issues related to the process. Through this group, shadow group members worked to influence the proceedings of the official Advisory Committee. These ex parte conversations, and the eventual end-run in which the group instituted Roberts Rules of Order to remove trust land parcels from development talks, inspired mistrust and resentment among many other Advisory Committee members who felt frustrated and ultimately betrayed by the side-dealings and lack of transparency of outside proceedings.

Just as structure has a large impact on relationships, changes in this structure also influence participants' relationships with one another. The continuity of the membership of a collaborative process can alter the relationships and interpersonal dynamics of those involved in the process. For the Mesa del Sol Planning Process, this change in membership was primarily felt after the election of new Commissioners of Public Lands. Over the last two decades, this project has seen four different land commissioners, each with a slightly different vision for the development and each with different assets and liabilities in their approach to working with the community and stakeholders. The three most prominent commissioners, Jim Baca, Ray Powell, and current Commissioner Patrick Lyons, have each altered the relationships within the process significantly. Under Jim Baca, the University of New Mexico (UNM) Board of Regents sued the State Land Office (SLO) over what UNM perceived to be a poor land deal resulting in UNM's significant distrust for the SLO and motivating the university regents to become more involved in the planning process. In contrast, Ray Powell's proactive approach to meeting with stakeholders and involving them in the planning process helped foster trust and positive relationships with interested parties. Most recently, Patrick Lyons has regained the trust and support of the Albuquerque National Dragway who had felt marginalized by the Powell administration. However, the Dragway is nervous about the future of its lease on the Mesa del Sol parcel when a new land

commissioner is elected and the dynamics of the SLO and its relationships change once again.

### **Group Activities**

Informal experiences and group activities can also significantly influence group relationships as individuals get to know one another personally, not based on stereotypes.

Informal activities like hikes helped to improve group relationships. In the Castle Valley Planning Process, a hiking experience for Castle Rock Collaboration (CRC) leader Dave Erley with CRC member Eddie Morandi, School and Institutional Trust Lands Administration Assistant Director Ric McBrier and McBrier's wife and dog helped these individuals with different interests get to know one another away from the table. The experience fostered trust and friendship.<sup>25</sup> According to McBrier, hiking trips and other such shared activities outside the planning process helped create long-lasting positive relationships.<sup>26</sup>

For the Southeast New Mexico Working Group, member relationships also benefited from informal interactions. Working Group participant Bill Dunn of the New Mexico Department of Game and Fish recalled that carpooling to meetings with oil and gas representatives allowed him to get to know other members of the group as people. This helped increase a sense of trust and cooperation within the group.

### **HOW COLLABORATIVE PROCESSES IMPACTED RELATIONSHIPS WITH OUTSIDE PARTIES**

One of the most cited methods for building and maintaining positive relationships between collaborative groups and outside parties was through communication and process transparency. The Emerald Mountain Planning Process incorporated semi-monthly meetings that were open to the public in its collaborative process structure, and also held larger public meetings to present projects, provide information and gather input. In these ways, the group maintained relationships with the larger community. The Partnership also posted agendas, meeting minutes and planning documents on a website for community perusal. Due to such outreach by the Emerald Mountain Partnership (and the planning groups that preceded it), and the State Land Board (SLB), former State Land Board Director Charles Bedford describes the process as "a constant stream of communication."<sup>27</sup> This communication kept the public informed about the activities and goals of the collaborative process while allowing outside groups a voice. Communication helped address opposition to the process and maintained working relationships between the Partnership and SLB and outside communities.

The Castle Valley Planning Process provides an example of the dangers of failing to effectively reach out to the greater community. Despite diligent attempts at community outreach, the process' lack of transparency may have contributed to the breakdown of the planning process over the long-term. Castle Rock Committee (CRC) member Cris Coffey recognized that CRC's efforts to communicate with the broader community were not always successful. She noted, "We tried hard to keep the community abreast of what was going on.

And some people had a vast interest in what we were doing, and others, I don't know that they really realized what was going on. And I think that's often the case in communities like this."<sup>28</sup> Thus, despite CRC's attempts at outreach, the community remained unaware of the activities of the collaborative process.

## **RELATIONSHIPS INFLUENCE FUTURE INTERACTIONS**

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Relationships established during a collaborative process lay a foundation for future cooperative work among participants. In fact, researchers McKinney and Field found that relationships are often considered a valuable outcome of collaborative processes, and that often participants noted that working relationships and quality of the process were more important than the tangible process outcomes.<sup>29</sup>

The benefit of collaborative process participant relationships is often two-fold. First, good relationships between participants often indicate greater dedication to the implementation of the resulting process plan. Second, strong working relationships and even friendships among participants can be useful tools in future conflicts or simply daily work. Thus, the relationships formed in collaborative processes extend beyond the life of the process to influence future interactions among participants.

## **FACILITATING IMPLEMENTATION OF PROCESS PLAN**

For the Whitefish Neighborhood Planning Process, the Mesa del Sol Planning Process and the Southeast New Mexico Working Group, strong working relationships will be essential to meet the challenges of implementation of groups' resulting plans. Particularly for the Mesa del Sol Planning Process, positive relationships among stakeholders are necessary for the ultimate success of the development and its long-term viability. At this point, commercial buy-in from the Chamber of Commerce, local businesses and developer Forest City Covington are essential for the long-term planning of the development. However, the Mesa del Sol development also relies on the continued support of its neighbors including Kirtland Air Force Base, the Isleta Pueblos and the City Council and mayor, any combination of whom could potentially knock the development off course and spoil decades of planning and increasing cooperation.

For the Whitefish Neighborhood Planning Process, the Montana Department of Natural Resources and Conservation and the city of Whitefish already are working together to implement the Neighborhood Plan, starting with a recreation trail that will encircle Whitefish Lake. Many participants have said that the professional relationship that fuels this implementation is possible only because of the process.

## **IMPACTING FUTURE INTERACTION AND CONFLICT**

Not only will the relationships formed in the collaborative processes be useful in implementing the group's final plan, they may also be beneficial in future work collaboration and in dealing with future conflicts. For members of the Castle Valley Planning Process, such

business relationships have already been integrated into participants' work. In particular, the School and Institutional Trust Lands Administration (SITLA) has worked more effectively with other organizations and communities because of the relationships and increased understanding of the trust land mandate that occurred during the collaborative process. SITLA Director Kevin Carter noted:

Some of the people that were involved in the collaboration certainly understand who we are better, they understand what our respective mandates, tasks and obligations are, and as a result of that, some of those individuals have been very helpful in unrelated activities that we've done. There was certainly an education process and some bridge-building that went on there.<sup>30</sup>

Members of the Whitefish Neighborhood Planning Process noted that improved relationships resulting from the process also had a major benefit for the Whitefish community. Whitefish Chamber of Commerce President Sheila Bowen noted that these benefits ranged from hugs on the street to greater public involvement in community activities like City Council and local planning meetings.<sup>31</sup> Several Committee members commented that "the community is better off because we went through this process."<sup>32</sup>

For the participants of the Emerald Mountain Planning Process, participants consider the strong relationships that resulted from the process to be a long-term benefit that will hopefully preempt future conflicts. Former State Land Board Director Charles Bedford noted that such relationships will likely also speed the process along in the future:

Because you develop these relationships early on, so that essentially you never have to go through these processes anymore. You do this in more of an informal, ongoing fashion, this sort of ongoing collaborative process. Sometimes you'll still have conflicts come up. But if you have the same guy that lives there for 10 to 15 years, that's passionate about this place, that has to go to the same supermarket as the enviro goes to, and has a personality that allows for kind of problem-solving, then you've really created an incredibly powerful vehicle for going forward.<sup>33</sup>

Professional relationships also developed through these collaborative processes that will continue to connect the parties involved. Rand French, a biologist for the BLM in the Southeast New Mexico working group, is now a wildlife biologist for one of the oil companies involved in the Working Group. This switch may aid in the implementation of the conservation plan, as French's professional training may be integrated into the needs of the oil company and help them better meet their environmental obligations through the Working Group's conservation plan and beyond.

The Arizona State Land Department (ASLD) and the City of Tucson are similarly looking forward to improved relations as a result of the HAMP Process. ASLD Commissioner Mark Winkleman noted the historical significance of the relationship forged between the City of Tucson and the ASLD. He said, "It showed that we could sit down with city staff and work cooperatively ... this is a much better position for us to be in with the City of Tucson than the

Land Department has ever been in before.”<sup>34</sup> Winkleman also noted that such relationships will improve the professional interactions between the two entities in the future.

## **ELEMENTS THAT GIVE PARTIES POWER**

In all of the eight cases, there was a perceived power imbalance within the collaborative group with some participants seemingly having more power than others. In some instances this power seemed static, while in others the power varied depending on the situation. Participants in the eight cases reported that having access to resources that others did not, personal demeanor, representing an interest that held symbolic value for the group, having veto power over decisions and using the media to express interests and draw attention to the process influence the perceived or real balance of power within the collaborative group (Table 19-2).

**Table 19-2: Elements that Give Parties Power**

<b>CASE</b>	<b>Resources</b>	<b>Personality</b>	<b>Symbolism</b>	<b>Veto power</b>	<b>Media</b>
<b>Castle Valley Planning Process</b>		✓		✓	
<b>Elliott State Forest Planning Process</b>				✓	
<b>Emerald Mountain Planning Process</b>		✓	✓	✓	✓
<b>Houghton Area Master Plan Process</b>		✓		✓	
<b>Lake Whatcom Landscape Planning Process</b>	✓	✓			✓
<b>Mesa del Sol Planning Process</b>		✓			✓
<b>Southeast New Mexico Working Group</b>		✓		✓	
<b>Whitefish Neighborhood Planning Process</b>	✓	✓			

Access to financial and political resources was a significant source of power for some participants in the Whitefish Neighborhood Planning Process. According to Department of Natural Resources and Conservation Unit Manager Greg Poncin, “quite a few community members had these State Land Board members on their speed-dial. They had a very good working relationship.”<sup>35</sup> In particular, members of the “shadow group,” a subset of the Advisory Committee, felt empowered throughout the process because they believed they had political support for their ideas and the ability to influence these connections. Indeed, shadow group members felt comfortable significantly limiting development of the 13,000-acre area because they thought their political connections increased the likelihood of State Land Board approval. In the Lake Whatcom Landscape Planning Process some participants were perceived to have power because they had particular expertise or knowledge. For example, the Department of Natural Resources (DNR) controlled the financial models of the timber harvesting in the area and some participants thought this gave them an advantage.

In seven of the eight cases participants accrued power because of their personalities. Often, this accrual of power resulted from having a dominant personality, being perceived as being level headed, or through demonstrating leadership qualities. For example, some participants in the Lake Whatcom Landscape Planning Process noted that citizen representative Linda Marrom’s dedicated personality and emotional investment in the process made her a powerful figure in the process. In the Mesa del Sol Planning Process some participants noted that Commissioner Powell’s open personality made groups responsive to working with him. One of the biggest motivating factors for the creation of the Emerald Mountain Planning Process was the community’s sense of place and attachment to the agricultural heritage and pastoral landscape of Steamboat Springs. This sense of place gave participants representing these interests power in the process and imbued them with a degree of symbolism. For example, some participants saw rancher and long-time Emerald Mountain grazing lessee Jim Stanko as a powerful representative for the agricultural values they hoped to preserve in the community. Stanko provided a critical voice for farmland in the overall debate over the future planning of Steamboat Springs.

Routt County is unique, and Steamboat Springs is unique from the standpoint that while we do have tourism and skiing, agriculture is still a really important part of the community here. We value that and want to keep that. So, it was good to have somebody like Jim in there saying “hey, we can’t let this type of stuff go.”<sup>36</sup>

In five of the eight cases, state trust land agency representatives participants had increased power because of their ability to veto options within the group. Because the agencies were the managers of the land being addressed in the planning process they were able to use their decision-making authority to influence decisions made by the group. For example, in the Houghton Area Master Plan Process, Greg Keller a planner from the Arizona State Land Department (ASLD) who attended Citizen’s Review Committee meetings was able to say whether or not certain options or ideas meshed with the ASLD’s management mandate. State Land Board Northwest District Manager Beverly Rave exercised similar power in the

Emerald Mountain Planning Process and was able to reject or dissuade proposals or ideas from the Committee if they didn't meet acceptable levels of revenue generation.

Participants in both the Lake Whatcom Landscape Planning Process and the Mesa del Sol Planning Process were able to use the media to obtain power. In the Lake Whatcom Landscape Planning Process some participants would go to the press to express views or issues before they had been discussed or resolved in the context of the collaborative process despite a group agreement that discouraged this behavior. The visibility that this brought to their issues gave some participants more power. Representatives from the Albuquerque National Dragway on the Mesa del Sol parcel used the media as a way to both express and garner support for Patrick Lyons during his election campaign. Commissioner Powell, who preceded Commissioner Lyons had not renewed the Dragway's lease because of what some perceived as an incompatibility between what Commissioner Powell envisioned for the area and what the Dragway did. Commissioner Lyons made a campaign promise to reopen the Dragway and the Dragway responded by mobilizing its resources to support his campaign. In the Emerald Mountain Planning Process the position of supporters of conserving the agricultural, wildlife and recreational values of the land was increased by the significant amount of media attention paid to the area during Governor Romer's campaign to pass Amendment 16 which would allow for more flexible land management strategies that could include conservation.

## **HOW DISTRIBUTION OF POWER AFFECTS THE PROCESS**

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Much research has been done on reducing power imbalances in collaborative processes to increase the potential for a successful outcome. Barb Cestero notes that reducing power imbalances among stakeholders in a collaborative effort can ensure a "level playing field" on which to interact.<sup>37</sup> Wondolleck and Yaffee observe that more balanced power between participants in a collaborative process can create joint ownership of both the process and the outcome for all involved.<sup>38</sup>

Reducing power imbalances entails giving stakeholders a higher degree of influence in the process decision making, and using decision rules such as consensus to build trust, commitment and equality.<sup>39</sup> According to some practitioners, rotating leadership or facilitation roles can improve the distribution of power within the group.<sup>40</sup> Closely related to the dispersion of power is the importance of a mutual recognition that the individuals and organizations involved in a collaborative process are interdependent.<sup>41</sup> Recognizing interdependency can be achieved through developing group objectives or problem statements.

Reducing power imbalances among participants in a collaborative effort can lead to greater satisfaction with the outcome of the process. In some of the cases highlighted in this report power was distributed in a more balanced way among members of the advisory groups than in others. Unbalanced power distribution can lead to tension and conflict. However, in some cases, unequal power can both motivate and challenge a collaborative process.

One of the ways these groups achieved an even distribution of power was to make decisions by consensus. Using this decision-making model created an equal investment among group members and allowed each interest an equal voice in expressing their opinions to the group and affecting the outcome of the process.

In some instances, there was unequal power between members of the advisory group, or between the advisory group and other involved entities like cities. In most cases this did not ultimately hinder the group from developing a plan, except in the Castle Valley Planning Process where participants reached a stalemate prior to the possibility of a land exchange between the Bureau of Land Management and the School and Institutional Trust Lands Administration (SITLA) as a method of conserving the land. However, in the Castle Valley case the imbalance of power also motivated and challenged the process. For example, the fact that SITLA possessed the majority of the power in the process enabled their participation and made it a more attractive option. This imbalance proved challenging for members of the Castle Rock Collaboration, but not crippling.

Additionally, in the Whitefish Neighborhood Planning Process there was originally confusion about the allocation of power between regular and alternate members of the Advisory Committee. Time spent discussing this membership distinction distracted the group and took time away from working on a plan. As a solution, the group ultimately decided to make all participants regular members. Similarly, some members of the Citizen's Review Committee (CRC) in advising the City of Tucson on the Houghton Area Master Plan thought that there was unequal power between the CRC and the city. This perception caused some CRC members to become frustrated because it was unclear to them how their recommendations were being incorporated and used by the city. This lack of clarity also led them to question the importance of their involvement and could have contributed to some of the group attrition.

The emergence of a "shadow group" during the Whitefish Neighborhood Planning Process significantly affected the balance of power in that process. The shadow group was able to make important decisions concerning the Neighborhood Plan without the input of the rest of the group. Official process leaders like consultant Marty Zeller tried to reduce this power imbalance by meeting with members of the shadow group individually and dissuading them from making decisions outside of the larger collaborative group forum. Likewise, State Land Board staffer Kathy Bramer attempted to address the perceived power imbalance between the Advisory Committee and Department of Natural Resources and Conservation (DNRC). This imbalance emerged because of the political access and financial resources, identified above, and led some Committee members to believe that they did not really have to work with the DNRC. To address this power imbalance, Bramer traveled to Whitefish to remind Advisory Committee members that they did not "have the State Land Board in its pocket" and that they needed to work with the DNRC."<sup>42</sup>





## CHAPTER 20

### HOW DO COLLABORATIVE PLANNING PROCESSES INCORPORATE SCIENTIFIC INFORMATION?

Land management decision making often requires collecting, analyzing, interpreting, and communicating complex scientific information about environmental quality, land use and wildlife populations and habitats. For seven of the eight cases of collaborative processes in this report, scientific information acted both as a major catalyst to the process and, in its absence, a major hindrance. This highlights the important role of scientific and technical information in collaborative processes and its importance to decision making.

Several points regarding the role of scientific and technical information in the collaborative processes examined in this report stand out (Table 20-1):

- The role of scientific and technical information in the process
- Ways of obtaining scientific and technical information
- The impact of scientific and technical information on the structure and function of the process
- The impact of process dynamics on the collection and use of scientific and technical information

#### **THE ROLE OF SCIENCE IN THE PROCESS**

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Processes differed in the roles they assigned to scientific and technical information. For some cases, there was a clear mandate for science to be incorporated into the process, and indeed, the process was structured in such a way to maximize scientific input. In other processes, science and technical information were not explicit components at the outset, though they often became integral to the process later on.

In some processes, participants recognize science as a major tool to inform policy and decision making. This was the case in the Elliott State Forest Planning Process. Here, with the approval of the Department of State Lands, the Oregon Department of Forestry created a Steering Committee to direct the scientific and policy inquiry necessary for the Habitat Conservation Plan (HCP) process. The HCP would then ultimately inform the overarching Forest Management Plan (FMP). Working in parallel with the Steering Committee was the Core Planning Team, a “technical planning group” that was responsible for assembling the science supporting both plans.<sup>1</sup> Within the group, there was also formal recognition of the necessity of science. One of the “Guiding Principles” for the group was: “The plan will consider the overall biological diversity of state forest lands, including the variety of life and accompanying ecological processes.”<sup>2</sup>

**Table 20-1: Sources and Uses of Science**

<b>CASE</b>	<b>Source of Science</b>	<b>Use of Science</b>
<b>Castle Valley Planning Process</b>	Group fact-finding- hydrology and GIS	Created maps to understand natural resources and features and explore development alternatives
<b>Houghton Area Master Plan Process</b>	Separate Committee- Technical Advisory Team (TAT)	Informed the city of Tucson on technical information regarding land development; separate from community collaborative group
<b>Elliott State Forest Planning Process</b>	Subcommittee- Core Planning Team	Was responsible for assembling science supporting the Forest Management Plan (FMP) and the Habitat Conservation Plan (HCP)
<b>Emerald Mountain Planning Process</b>	Outside expertise- Bureau of Land Management (BLM) Internal expertise- Colorado Division of Wildlife	Conducted Environmental Assessment (EA) to select a management plan for the parcel as part of a land exchange between the BLM and the Colorado State Land Board
<b>Mesa del Sol Planning Process</b>	NA	NA
<b>Lake Whatcom Landscape Planning Process</b>	Internal expertise- Department of Natural Resources (DNR) Outside expertise- Department of Health; Department of Ecology	Helped participants understand impacts of DNR forestry practices to inform the Lake Whatcom Management Plan
<b>Southeast New Mexico Working Group</b>	Internal expertise- GIS mapping Outside expertise- prairie chicken and sand dune lizard ecology	Helped participants understand the location of prairie chicken and sand dune lizard habitat in relation to oil and gas leases and ranches
<b>Whitefish Neighborhood Planning Process</b>	Task forces- wildlife habitat, floodplains and fire history Outside expertise- GIS	Helped participants understand the development and conservation potentials of land

In some cases, there was not a defined role for scientific and technical information until participants recognized that such information was necessary. For example, participants in the Southeast New Mexico Working Group did not realize the urgent need for mapping, habitat data and leasing information until they began to struggle to make decisions without this information. Once the group started discussing what lands would be off-limits to oil and gas leasing, they realized how integral adequate maps of currently leased areas and prairie chicken habitat would be.

For some groups, opposing expectations for scientific and technical information caused problems in the process. In the Whitefish Neighborhood Planning Process, the Department of Natural Resources and Conservation (DNRC) resisted paying to acquire new scientific information regarding wildlife habitat, floodplains and fire history because the agency felt such detailed information was not necessary for a more general, “landscape level” neighborhood plan. Meanwhile, the group envisioned a much more specific plan and thus considered the information integral. Ultimately, the Advisory Committee collected

information on its own and the DNRC's lack of cooperation fueled the community's mistrust of the agency.

## **SOURCES OF SCIENCE AND TECHNICAL INFORMATION**

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Ways that scientific and technical information were collected and assembled greatly influenced processes and decisions. In some cases, the group generated the necessary science through group fact finding and internal expertise, which promoted positive relationships and a sense of ownership for the information. In other cases, information was sought from outside experts in hope of finding unbiased information which drew on expertise the group did not have. These different methods of collecting information influenced the direction of the processes.

### **GROUP-GENERATED SCIENTIFIC INFORMATION**

In several cases, participants organized needed information from within the collaborative group. Joint fact-finding, in which a collaborative group works together to collect and analyze data, can generate specialized information while simultaneously building understanding, trust and support. In the Castle Valley Planning Process, for example, joint fact-finding provided the necessary mapping information on environmental constraints and development potential in the area and facilitated improved group dynamics. Facilitator Marty Zeller recalled that this joint fact-finding effort helped the group overcome emotional barriers to progress and recognize what would be practical options to explore in the collaborative process. He noted:

The biggest challenge was just getting people to sit down and interact and trust each other so they could discuss some options ... I think that having people sitting down and interacting in an organized fashion, having everyone sitting at a table looking at maps together with the same information, helped build a level of trust about what was really going on with the land and what the options really were. That was probably the first key thing. The inventory and analysis of the site conditions helped both parties realize what you could do and what was probably not desirable to do.<sup>3</sup>

Thus, group fact-finding resulted in a shared understanding of the area and a greater understanding of possible policy decisions. Participants in the Castle Valley Planning Process consider the group fact-finding exercise a technical success as well as a factor that facilitated future productive discussion on land management.

In other cases, certain members of the collaborative group had expertise to produce necessary information. For example, in the Southeast New Mexico Working Group, the New Mexico State Land Office (SLO) produced mapping information on the location of oil and gas leases as well as prairie chicken habitat and breeding sites. Prior to this effort, the group struggled to make decisions on what lands to keep off limits to oil and gas without maps – a frustrating

and fruitless effort. By coming up with the necessary data and resulting maps, the SLO was seen as a leader in the Working Group process.

Where expertise or information was unavailable, groups sometimes established task forces to gather necessary information. For the Advisory Committee in the Whitefish Neighborhood Planning Process, the group formed task forces to research wildlife habitat, floodplains and fire history after the Department of Natural Resources and Conservation resisted funding the research.

In addition to these methods for obtaining science from within the group, some collaborative processes developed formal means for collecting scientific and technical information. This type of data gathering was prominent in the Elliott State Forest Planning Process and the Lake Whatcom Landscape Planning Process in which both used state and federally structured methods for data collection and analysis. For the Elliott group, a formal means to collect and analyze data was in the form of the U.S. Fish and Wildlife Service's Habitat Conservation Plan (HCP) process in which the group required science to inform the conservation of the spotted owl and marbled murrelet. In the Lake Whatcom Landscape Planning Process, under the State Environmental Protection Act, data collection and analysis was directed by an Environmental Impact Statement.

## **OUTSIDE EXPERTISE**

Collaborative processes often brought in outside expertise. Outside experts contribute to the process in a number of ways, including bringing in knowledge unavailable to the group, increasing legitimacy of the information at hand and adding credibility to the process. Wondolleck and Yaffee note that information from outside experts is less likely to be perceived as biased.<sup>4</sup>

Some groups seek third-party expertise to contribute to current group knowledge. For example, in the Whitefish Neighborhood Planning Process, the Advisory Committee sought third-party expertise to supplement information collected by its task forces. The Committee independently sought help from a Whitefish resident for geographic information system data and mapping. As a result, the group was able to gain a better understanding of the 13,000-acre Whitefish study area than they could have achieved alone.

Groups sometimes seek external review of group research to add legitimacy to such information in the group. In the Lake Whatcom Landscape Planning Process, in addition to the Environmental Impact Statement that was conducted "in house" at the Department of Natural Resources (DNR), Commissioner Doug Sutherland also solicited formal opinions from the heads of the Departments of Health and Ecology about the degree to which the DNR's forestry practices contributed to pollution in Lake Whatcom. By doing so, Sutherland broadened the scientific input that would contribute to future recommendations for the Lake Whatcom Management Plan outside of his own agency. In addition, the external conclusions that forestry practices were minimal compared to residential impacts helped reign in efforts by the Committee to further restrict logging activities.

In addition to increasing legitimacy within the group, outside expertise can increase legitimacy of information for those outside the process. For example, in the Castle Valley Planning Process, third party information helped increase legitimacy with the community. The planning group held two open houses with the community during which time Conservation Partners, Inc., a third party organization, presented a series of maps and overlay data illustrating the various land use issues in the community. Conservation Partners also presented the group's preliminary development options based on available hydrology and land use data and sought community input and reactions to the recommendations.<sup>5</sup>

Given the importance of the decisions made at the table, process participants sometimes felt that information from outside experts would decrease the risk of biased information and thus result in more objective information on which to base decision making. To ensure the legitimacy of information brought to the table, groups sometimes created criteria by which information would be acceptable to influence discussion. For example, in the Southeast New Mexico Working Group, participants agreed that only peer-reviewed science would provide an acceptable basis for policy decisions. This criterion was a reaction to the large amounts of anecdotal evidence regarding prairie chicken biology that many felt was infused with emotion and personal interests. Instead, the group invited prairie chicken biologists to inform the group on current research.

A lack of criteria for acceptable information can lead to problems in a collaborative process. For example, during the Lake Whatcom Landscape Planning Process, disagreements over expert review resulted in delays and mistrust between public members of the Interjurisdictional Committee and the Department of Natural Resources (DNR). While the Committee agreed to have the DNR conduct and pay for the Environmental Impact Statement (EIS), the group wanted to have a say over who would conduct peer review of the EIS in order for the scientific assessment documents to be rigorous and legitimate. While the outside peer review did not occur, outside technical review would have helped mitigate the potential for bias in the EIS, which relied heavily on DNR scientific assessments. Wondolleck and Yaffee note that outside technical reviews have become an increasing practice in collaborative processes that helps check the technical validity of science on which decisions are made.<sup>6</sup>

## **THE IMPACT OF SCIENCE ON THE PROCESS**

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Scientific and technical information can influence a collaborative process in several ways. As seen in the cases in this report, science can inform decisions, but it also can drain resources and delay the process due to uncertainty or the proprietary nature of some information. Information can also be used strategically, allowing some group members to take advantage of scientific uncertainty of information to stall the process.

### **DECISION MAKING**

Most frequently, processes used science as a tool for decision making. Wondolleck and Yaffee note that science can help groups by bounding the zone of possible decisions

available.<sup>7</sup> Science also allows for groups to have a “fair playing field” outside of values and interests on which fair choices could be made.<sup>8</sup> Understanding the realm of realistic available possibilities to the group as well as providing a fair principle on which to judge these possibilities can facilitate group decisions and agreement.

Groups often use scientific and technical information to illustrate the outcomes of different land management strategies. In the Elliott State Forest Planning Process, participants saw modeling as a particularly helpful tool in the planning process. Through modeling, the Steering Committee saw the results of multiple management regime scenarios to help them make decisions on the preferred management strategy for the Elliott Forest. Assistant Director for Policy and Planning at the Department of State Lands John Lilly noted, “Once you can present to a policy maker a chart that on one page they can see what the harvest levels would be under various management regimes, then you have a very powerful tool to help them make informed decisions.”<sup>9</sup>

Technical information and mapping can also help create a shared understanding of the issues facing the group. For the Southeast New Mexico Working Group, mapping and details of prairie chicken biology were helpful for the group to gain a shared understanding of lands that could be potentially off-limits to oil and gas leasing. Previous to the maps, the group did not understand those areas could be under consideration and those that were off the table. Given this shared understanding, the group could then move forward with more specific land use policies.

Some of the collaborative processes in this report suffered significant delays while awaiting the development of needed science and technical information before moving forward. For example, in the Elliott State Forest Planning Process, the time it took to aggregate the sheer volume of information for land surveys and watershed analysis slowed the progress of the Steering Committee, adding several years before the group could move forward.

Since some collaborative planning processes work in conjunction with other processes, delay in these concurrent processes can contribute to the collaborative process delay as well. This was the case in the Emerald Mountain Planning Process that currently awaits approval of a Bureau of Land Management (BLM) land exchange. The land exchange, in return, continues to await the results of appraisals of BLM and Emerald Mountain land as well as an Environmental Assessment (EA) before the agencies may move forward with the land exchange process. The Emerald Mountain Partnership developed a management plan for the Emerald Mountain parcel and submitted it to the BLM as one of four alternatives under consideration in the EA.

For some processes, confusion can arise and delay the process when it is unclear how information gathered outside of the collaborative process will affect data collection directed through the collaborative process. In the Lake Whatcom Landscape Planning Process, there was uncertainty over how a scientific process required under the Clean Water Act would affect the collaborative process already underway for Department of Natural Resources (DNR) state forest lands in the watershed. When the Committee and DNR learned that the Department of Ecology would be conducting a Total Maximum Daily Load study for the

lake, there were questions about whether the Committee should wait until the study was completed before completing its plan. This uncertainty was one of the factors that resulted in the DNR missing its June 2001 deadline to complete the Lake Whatcom Landscape Plan.

Finally, in some processes, the delay caused by obtaining science and technical information was a strategic move on the part of one or more of the parties. For example, in the Lake Whatcom Planning Process case, certain members of the Interjurisdictional Committee felt that the Department of Natural Resource's (DNR) decision to conduct an Environmental Impact Statement (EIS) was a stalling tactic used to delay the Committee's progress and resist their influence in the process. Interjurisdictional Committee members felt the decision to conduct an EIS was a strategy for shifting the power balance in the planning process away from the Committee. Committee member and long-time advocate controlling DNR logging practices in the watershed, Linda Marrom commented, "[The DNR] decided to do an EIS. That threw everything off. They were running the whole process. It was so political."<sup>10</sup> In this case, a Committee member perceived science as serving a strategic purpose, increasing distrust of the DNR and further straining relationships.

### **SCIENTIFIC UNCERTAINTY AND PROPRIETARY INFORMATION**

While science and technical information can be powerful in informing decisions, it can also complicate decision making due to uncertainty or restricted information. Uncertainty often is connected to the perceived legitimacy of the information involved. In the Elliott State Forest Planning Process, the Steering Committee had significant concerns regarding the validity of the scientific information presented by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Oregon Department of Forestry Southern Oregon Area Director Dan Shults noted, "You'd think good science is something everyone agrees on, but there's a very fine line between what is scientifically proven and what scientific opinion is."<sup>11</sup> In the Elliott case, this distinction was especially relevant given that the research on spotted owls, marbled murrelets, and salmon only goes back about fifteen years.

Scientific uncertainty can also make information vulnerable to criticism and contribute to further process delays. For example, in the Southeast New Mexico Working Group scientific uncertainty was problematic because it left the door open to criticism of information that was unpopular with different members of the group. Despite the fact that the Working Group had previously agreed on peer-review as a criterion for legitimacy, when such science threatened oil and gas leases, the oil and gas industry criticized it. As a result, the process was delayed by further discussion of additional science needed to inform the process.

Proprietary information can also provide an obstacle in utilizing scientific and technical information in collaborative processes. In the cases examined in this report, proprietary information could be quite rich and therefore valuable to processes but was also restricted in its use by its very nature. For example, proprietary information regarding oil and gas and grazing leases played a key role in the Southeast New Mexico Working Group by stalling the process and later facilitating its progress. When the group realized it needed to see where land was currently in use as compared to where ideal prairie chicken and sand dune lizard habitat existed in order to make a decision on future leasing policies, it became clear that all



of this information was proprietary to the Bureau of Land Management and the State Land Office (SLO). As a result, the agencies were reluctant to release any of this information to a single party. Finally, the SLO took on the mapping role and the issue of propriety was solved by prohibiting dissemination of mapping materials beyond Working Group members and by only allowing members to view the information during meetings.

### **THE COST OF SCIENTIFIC INFORMATION**

Regardless of the benefits of scientific and technical information in informing decision making, gathering and using scientific information also requires significant resources from the group including time, money, and staff hours. For the Elliott State Forest Planning Process, these costs were compounded by the fact that the multiple different pieces involved in getting a federal permit as well as completing the Habitat Conservation Plan (HCP) had to be done in a specific sequence. John Lilly noted:

We've always said that if the price of the HCP is too high, we won't get one. How do you know if it's too high, until you walk that road with the scoping, the draft [Environmental Impact Statement], the plan to present on the HCP to find out whether or not it's going to be something that is acceptable to [U.S. Fish and Wildlife Service] and [the National Marine Fisheries Service] and we can decided to go back to the board and say, "Board, we think this is worth the effort."<sup>12</sup>

### **STRUCTURE**

As groups began to collect and process science, the structure of the process often was changed to accommodate this need. Many groups charged a science or technical committee with assessing the validity and application of available and relevant science as well as advising the policy arm of the collaborative process. This sort of division of labor may facilitate the progress of both the technical group and the main working group by eliminating the burden of processing technical information for the main working group while allowing the technical subgroup to concentrate solely on such tasks.

For some processes, separate groups created to handle technical information were not offshoots of the citizen group but rather informed the final decision maker. For example, in the Houghton Area Master Plan Process, the Technical Advisory Team (TAT) addressed technical aspects of providing services for any future development in the area covered by the Plan.<sup>13</sup> The TAT, as the name suggests, was more technical in nature and did not contain the citizen element of the Citizens Review Committee (CRC). While the TAT and CRC had intermittent communication, they did not meet together. The TAT was considered by many in the Houghton Area Master Plan Process to be integral to the process overall but they were peripheral to the interactions of the CRC.

## **IMPACT OF THE PROCESS ON SCIENCE**

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While science clearly affected collaborative processes in a variety of ways, processes in turn can affect the science. Such impact may be through the type of information collected or how that information is collected. Often, scientific and technical information are affected by the politics of a collaborative process. For example, in the Lake Whatcom Planning Process, strained relationships and mistrust between the Interjurisdictional Committee and the Department of Natural Resources (DNR) influenced how the Environmental Impact Statement would be conducted. Because the Committee wished for peer review, the DNR decided to conduct a Preliminary Draft EIS to allow the public to comment on the scientific assessments that had been prepared by DNR staff.<sup>14</sup> Thus, the relationships and dynamics of the group process impacted scientific inquiry.



## **SECTION IV: IMPROVING THE PRACTICE OF COLLABORATIVE PLANNING**

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## CHAPTER 21

### BEST MANAGEMENT PRACTICES

The eight cases demonstrate that collaborative planning on state trust land is occurring in communities across the West in response to a variety of land management issues and in the face of a range of constraints. These examples of collaboration provide valuable data about the benefits, costs and challenges of this type of land management approach. Moreover, they highlight factors that are instrumental in facilitating a collaborative process, as well as general lessons learned from practical experience.

From these rich cases emerges a set of “best management practices” for collaborative planning on state trust land. Essentially, this list serves as a comprehensive summary of ideas for state trust land managers and other stakeholders interested in creating and/or guiding a collaborative process within the unique context of state trust land management. The chapter outlines best management practices with respect to:

- Setting the groundwork for a collaborative process
- Determining membership composition of a collaborative group
- Tailoring the process to the participants
- Creating a decision-making structure
- Effectively managing the people and the process
- Dealing with information or lack thereof during collaboration
- Implementing the outcome

#### SETTING THE GROUNDWORK

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- ✓ **Define “collaboration” before initiating a collaborative process to create a common understanding about the nature and mechanics of the endeavor.** “Collaboration” evokes different meanings for different people. Drafting a common definition prior to beginning collaborative planning will help people understand what the process should and should not entail. Breadth of stakeholders, degree of process transparency and degree of influence on decision making are useful starting points for synthesizing a definition of collaboration. Include this definition with the other information distributed about the impending process.
- ✓ **Identify preexisting internal and external legal constraints before beginning a collaborative process.** Some of these legal issues, like the trust land mandate, may be obvious. However, other legal constraints may be unclear. With trust land management issues and stakeholders in mind, one should survey federal, state and local law to determine which regulations will apply to the collaborative planning process. An assessment of how those laws will affect the process is also helpful.

- ✓ **Determine whether other, potentially-related legal processes are ongoing and determine whether a collaborative planning process can occur concurrently.** A review of preexisting legal sideboards will provide clues as to whether another, potentially-related legal process like an Environmental Impact Statement process, zoning ordinance review or lawsuit is ongoing or may occur during the collaborative process. Whether a collaborative process can take place simultaneously should be determined on a case-by-case basis.
- ✓ **Take advantage of various legal options when crafting and engaging in a collaborative process.** Strategies such as incorporation as an Internal Revenue Code §501(c)(3) “charitable organization” and drafting a Memorandum of Agreement can increase a collaborative group’s fundraising capabilities, its ability to enter into legal agreements with other entities and potentially its influence over decision making.
- ✓ **Recognize that collaborative processes take time and skills and allocate resources accordingly.** Collaboration is often a time-intensive endeavor and can require a variety of process management skills, in addition to scientific, technical and even legal expertise. These demands should be acknowledged up front so that the necessary financial and staff resources can be acquired to sustain the process.
- ✓ **Collaborate in good faith.** Successful collaborative planning requires that stakeholders participate fairly and honestly. A stakeholder should not participate in a collaborative process knowing at the outset that he or she will leave the table to pursue legal action or other contrary efforts. Likewise, a stakeholder should understand and be candid about what he or she can and cannot agree to during discussions.

## **DETERMINING MEMBERSHIP COMPOSITION**

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- ✓ **Ensure that the person or persons responsible for selecting collaborative group members is perceived as legitimate and unbiased.** Before beginning the selection process, consider how those responsible for identifying and choosing participants are perceived by various stakeholders. This assessment may be simply internal reflection, or may require inquiry into outside perceptions.
- ✓ **Identify all “stakeholders” and involve those who are interested in participating and are legally-appropriate; however, limit membership to a manageable size.** Stakeholders include individuals with a financial stake (e.g., beneficiaries, adjacent landowners and current lessees), legal jurisdiction (e.g. federal and state agencies, county, city, tribes and water districts), or expressed interest (e.g. environmental, recreation and industry groups). To assess these stakeholders’ interest in the process given the time commitment and other considerations, make inquiries via mail or other communication. Those stakeholders who express a willingness to participate should be given an opportunity to do so.

A review of preexisting legal constraints like the trust land mandate will help identify which stakeholders should be invited to participate in the collaborative process. If these legally-appropriate stakeholders do not want to participate or cannot do so, then the group should consider how to best work with them to ensure that their legally-significant interests are considered during the process. A review of legal issues also may identify stakeholders who should not participate in the collaborative process because of conflicting legal obligations.

Participation does not necessarily require a seat at the decision-making table. Interests may need to be consolidated if the number of stakeholders is unmanageably high or if the number of interests represented is unbalanced.

- ✓ **Involve the trust land decision makers in the collaborative process and work to gain support from all levels of the decision-making hierarchy.** Involving decision makers creates buy-in and thereby increases the likelihood that the final agreement will be approved and implemented. While it is preferred that the ultimate decision makers have a seat at the table, it is not mandatory. Interaction via frequent updates from the group and presentations from the state land agency may be sufficient to engage the decision maker in the process. Furthermore, communication about the benefits of collaboration and, specifically, the group's progress can help build support at all hierarchical levels.
- ✓ **Confirm that the representatives chosen to participate in the collaborative process are accepted and trusted by their respective stakeholder groups.** If a participant selected represents a larger interest group, communicate with that group to verify that the individual has their support, as well as the authority to speak for them.
- ✓ **Anticipate and prepare for potential challenges to membership composition.** The collaborative group should have a concrete rationale for why each member was selected to participate in the process, as well as why certain people or interests were not selected. The group also should brainstorm how to respond if excluded individuals or groups challenge the process down the road.
- ✓ **Be prepared to adjust membership composition as the collaborative process progresses to account for additional interests, process changes or attrition.** Because of potential challenges to membership composition, group size may need to expand to accommodate additional interests after the process begins. Process changes that increase or decrease the range of stakeholders also may necessitate a reassessment of participants to ensure that the correct stakeholders are involved. Additionally, because collaboration can be time-consuming, attrition may occur. The group should anticipate this possibility and create a plan for replacing a stakeholder representative.

## **TAILORING THE PROCESS TO THE PARTICIPANTS**

- ✓ **Identify process objectives at the outset of collaborative planning.** Well-defined goals can help guide the process and increase the participants' chances of successfully realizing



those goals. Objectives can take the form of a mission or vision statement, guiding principles or shared goals.

- ✓ **Clearly define interests, roles and responsibilities for each stakeholder involved in the process.** Group members should be candid about the interests they represent in the collaborative process. Are they representing personal interests or the interests of a particular stakeholder group? The group should explicitly share this information at an initial meeting. Likewise, early in the process the group should determine roles and responsibilities for each participant. These duties may include a chairperson and/or secretary.
- ✓ **Create ground rules as a group to guide and facilitate interactions among participants during the process.** Ground rules will vary depending on the stakeholders involved and issues under review in the collaborative process. A group can use ground rules to encourage productive behavior like common courtesy, candor and listening with an open mind. Ground rules also can discourage destructive behavior by prohibiting activities like side meetings and allowing for cooling off periods.
- ✓ **Set and adhere to a timeline and deadlines, recognizing that collaborative processes often require more time than initially thought.** Because of the variety of stakeholders and complexity of issues involved, collaboration tends to be a lengthy endeavor. The group should recognize this reality and set a realistic timeline to guide the process, as well as feasible deadlines to motivate periodic decision making and provide an end goal.
- ✓ **Consider the timing and location of meetings to accommodate different participants' schedules and needs.** The group should find a location that minimizes total travel time of the participants or rotate locations to accommodate for unequal travel requirements. The group also should consider participants' professional and personal schedules when choosing a meeting time to ensure greater turnout and hence input at each meeting.
- ✓ **Determine whether and how to share planning costs among participants and keep track of these costs as the collaborative process progresses.** The group should agree at the outset of a collaborative process whether to distribute planning costs among participants. These costs may include copying, telephone and travel expenses. If the group decides to share these costs, then the group must determine how to do so. Possible agreements may include having the "lead" agency pay a larger portion of process costs or determining payment based upon which stakeholder(s) ultimately own the product produced. To keep track of planning costs, participants should save receipts and keep track of time spent outside of meetings on preparation and other process-related activities.

## CREATING A DECISION-MAKING STRUCTURE

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- ✓ **Develop and agree upon a clearly-defined decision rule at the outset of the collaborative process that will guide group decision making.** This rule or set of rules should explain how the group will make decisions during the collaborative process. Will the group vote on issues? If so, will the group require majority approval or unanimity? If the decision rule requires “consensus,” be sure to clearly define that term since it evokes different meanings for different people.
- ✓ **Specify voting procedures if the group decides upon that decision-making approach.** If voting is used in the collaborative process, then the group must decide how to allocate voting privileges among members. A process benefits from having equal voting rights. However, if a process requires that only certain members be allowed to vote, then the group should make that decision jointly.
- ✓ **Consider using minority reports or decision matrices to make difficult decisions.** A minority report enables those group members who disagree with the majority on an issue to document their opinions. This approach often is used when consensus cannot be achieved. Allowing the group to only document substantive differences encourages constructive dissent instead of disagreement for the sake of disagreeing. Likewise, decision matrices can assist a group in making sense of a complex decision. A decision matrix identifies a range of decision options and then enables the group to rank and re-rank them to meet the goals of the collaborative process.
- ✓ **Clarify how decision-making power is shared between the collaborative group and trust land decision makers.** The state trust land decision makers cannot abdicate their decision-making authority, however they can share decision-making power. This division of power should be explained and accepted from the outset of the collaborative process so that group members and the ultimate decision makers understand their respective roles. A group charter is one way to clarify this sharing of power.

## MANAGING THE PEOPLE AND THE PROCESS

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- ✓ **Consider hiring a professional, neutral and knowledgeable facilitator to help manage group dynamics and guide the collaborative process.** A trained facilitator can help the group identify interests and build common ground, in addition to providing structure to meetings.

Facilitation is most effective when the group perceives it as neutral, with no predisposition towards specific parties or outcomes. To achieve impartiality, the group should not select a facilitator who is affiliated with one of the interested parties. Finding and agreeing upon facilitator as a group may increase the facilitator’s credibility and trustworthiness in the process. Likewise, the group should pay for the facilitator as a group or from diverse contributions.

When researching facilitators, the group should consider the scientific, technical and legal issues involved. The group should look for a facilitator with background knowledge and relevant past experience. However, if facilitator can quickly familiarize himself or herself with the issues at play, then knowledge and experience may be less of a determining factor.

- ✓ **Encourage stakeholders to assume formal and informal leadership roles to help manage group dynamics, galvanize public support and guide the collaborative process.** Agency managers, public officials and informal community leaders often assume or are elected to a formal leadership position in the group. Formal leadership may include a group chairperson, spokesperson or meeting coordinator to help facilitate meetings, reach out to media, represent the group to the trust land agency and/or make final decisions when agreement cannot be reached. In addition to formal leadership, the group should encourage members to assume informal leadership roles to provide the energy and commitment needed to keep members involved in the process and working towards an end goal.
- ✓ **Encourage relationship building through formal and informal activities to help the collaborative group overcome stereotypes and foster trust and cooperation.** Formal group activities like site visits and other field trips can help participants build new relationships or mend old ones. Likewise, informal interactions such as carpooling and group lunches can help participants get to know each other better as individuals, rather than representatives of particular interests.
- ✓ **Identify and challenge hidden agendas and interests as early as possible to ensure transparency and avoid stifling progress.** The group should structure the collaborative process in a way that enables participants to openly discuss their interests. Setting aside meeting time at the outset of the process to share interests and objectives and instituting a ground rule that discourages hidden agendas may help a group overcome this challenge.
- ✓ **Communicate frequently with the ultimate trust land decision makers if they do not have a seat at the table.** In addition to providing trust land decision makers with frequent updates (which may be their chosen level of involvement in the process), the group periodically should check in with the decision makers to ensure that the process is on track and still has the support of the trust land agency. Meetings between the agency and either the entire group or selected group spokespeople are an effective forum for this interaction.
- ✓ **Update the public periodically about the collaborative process and encourage public comment to gain additional perspectives and public buy-in.** To ensure open communication with the public, the group can open its meetings to the public and/or hold specific public hearings on particular issues. Whichever approach is chosen, the group should advertise these opportunities in the press. The group also should consider inviting the press to these meetings to ensure wide dissemination of information about the collaborative process. Publishing and distributing a newsletter and creating an informative website are additional ways that a group can share information with the

public. Finally, to facilitate public input, the group can create an email address to which comments can be sent.

## **DEALING WITH INFORMATION OR LACK THEREOF**

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- ✓ **Reserve meeting time throughout the collaborative process to learn about the trust land mandate and other legal and technical constraints surrounding trust land management.** Many stakeholders involved in collaboration on state trust lands are unfamiliar with the particular constraints surrounding this type of land management. Presentations by the trust land agency and other informed groups can educate participants about the unique nature of state trust lands. Because these issues are at the core of the planning process, this education effort should continue throughout the process to ensure group understanding and acceptance.
- ✓ **Determine from the outset what scientific information is necessary to make informed decisions and work to acquire those resources before moving forward with the process.** Before exploring substantive issues, the group should identify what issues are in question, what the group needs to know, and what sources the group will accept as legitimate information to move forward. From this assessment, the group should determine what resources it needs to begin making decisions. These resources may include watershed maps, fire history documents and species data.
- ✓ **Recognize that scientific information is not a panacea, but rather a tool to assist people and policy-makers.** While the group should determine upfront what scientific information is needed to make decisions, it also should recognize science's limits. Tools like scientific modeling are only as good as the information applied to it.
- ✓ **Use subcommittees or task forces to take advantage of stakeholder knowledge and efficiently research scientific and technical issues for the larger group.** Dividing into smaller subcommittees or task forces enables the group to capitalize on stakeholder expertise and efficiently tackle a variety of scientific and technical issues. Alternatively, creating subcommittees or task forces that are separate from the collaborative group and serve in an advisory role enables the group to benefit from an even wider knowledge pool.
- ✓ **Hire professionals to help the group process information and develop a feasible final product.** While group members provide a variety of skills and resources, few, if any, may have the expertise necessary to turn ideas into a final product or conduct specialized analyses. Trained professionals like planners, economists, scientists and consultants can fill that void. For example, many groups attempt benefit-cost analyses, but few are equipped with the economic skills needed to value non-market outcomes.
- ✓ **Request legal or policy clarification from the state attorney general or agency officials when needed to move the collaborative process forward.** A process may become mired in disagreement about legal or policy issues such as the proper relationship

between the collaborative group and a state agency or the environmental impacts of a proposed action. An attorney general opinion or formal agency opinion can provide the group with the certainty necessary to move onto other issues.

## **IMPLEMENTING THE OUTCOME**

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- ✓ **Create measures of success in the final agreement to facilitate implementation.** Features like an implementation committee and milestones can provide a group with the structure and incentives necessary to ensure implementation of the final agreement. A subset of the collaborative group can form an implementation committee upon ending the collaborative process. Another option is to include milestones that measure implementation success in the final document.
- ✓ **Create a final product that satisfies the trust mandate requirements to increase the likelihood of implementation.** The mandate can be a significant source of power for the collaborative group. Helping the trust land agency realize its legal obligations increases the likelihood that the agency will implement the final product and hence helps ensure the group's success. Strategies may include identifying revenue generation as a measure of success in the final product or including tools that allow the agency to achieve revenue goals.
- ✓ **Use the relationships established and knowledge acquired during the collaborative process when implementing the final decision.** The collaborative process should be a valuable resource for those executing the final decision. Professional and personal connections, as well as familiarity with the underlying issues can help transition from theoretical ideas to action.

## CHAPTER 22

### RECOMMENDATIONS: Overcoming Barriers to Collaborative Planning on State Trust Lands

The purpose of this final chapter is to address the broader context of challenges that affect collaboration on state trust land, providing bigger-picture and often longer-term recommendations to overcome the barriers inherent in this management approach. Informed by the eight cases, these recommendations identify areas for change for agencies and other groups affected by trust land management decisions. The chapter outlines recommendations dealing with:

- Resources
- Knowledge and Skills
- Organizational Structure
- Organizational Culture
- Policy
- Law

The chapter also suggests a need for continued dialogue and learning among agencies, as well as suggestions for future research. Each set of recommendations is preceded by a summary of the pertinent barriers to provide a context for the need for change.

#### RESOURCES

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##### BARRIERS TO COLLABORATION

Collaborative planning often demands significant staff and financial commitments, as the process relies on regular meetings in addition to outside research and work and is often lengthy. Since state trust land agencies are already engaged in a variety of time-consuming activities, they often cannot provide the resources needed to ensure consistent participation in collaborative planning. Other groups face similar, if not greater, resource constraints and often cannot commit a representative to participate regularly in the process. This challenge can dissuade agencies and other groups from joining a collaborative process, or it can make their participation less effective.

Once at the table, parties face additional resource challenges. One of the most significant of these challenges is the need for trained facilitators. Lack of funding may prevent the group from hiring a facilitator or force one party to pay for the facilitator. Both of these options can result in ineffective processes due to insufficient group leadership or the perception of bias as a result of one group paying the facilitator's salary.

## RECOMMENDATIONS

Recommendation	State Trust Land Agency	Other*
Recognize that collaboration will entail significant time and money and ensure that adequate resources can be allocated or found before starting a process	✓	✓
Incorporate costs of collaborative planning into traditional project accounting	✓	
Find funding to hire third party facilitators	✓	✓

\* Encompasses other federal and state agencies, municipalities, community organizations, industry, conservation groups and other parties that are affected by trust land management decisions.

### **1. Recognize that collaboration will entail significant time and money and ensure that adequate resources can be allocated or found before starting a process.**

One way state trust land agencies and other stakeholders can overcome resource allocation barriers is to allocate appropriate staff and funding for collaborative processes before engaging in the process. Adequate allocation of these resources will prevent the disruptions that plague collaboration through inconsistent representation by part-time staff. This approach may require that staff workloads be adjusted upon starting a process. Funding for collaborative activities may come from agency or organizational resources or from outside organizations, such as philanthropic organizations, corporate foundations or area donors. For example, the Sonoran Institute's Resources for Community Collaboration program, funded by the Hewlett Foundation, made small grants for collaborative groups in previous years.

### **2. Incorporate the costs of collaborative planning into traditional project accounting.**

Another way for state trust land agencies to deal with the challenge of limited resources is to incorporate the costs associated with collaboration into the bottom line of management. As this research shows, collaborative planning often can result in greater revenue for the trust as well as increased efficiencies associated with a more durable solution and greater likelihood of implementation. Thus, it makes sense to incorporate both costs and benefits associated with this approach into project accounting.

### **3. Find outside funding to hire third party facilitators.**

Outside funding for or provision of a facilitator can help avoid the perceived bias that may emerge when a stakeholder involved in the collaborative process pays or appoints the facilitator. Consequently, trust land agencies should seek outside funding to pay for facilitators when starting a collaborative process.

## **KNOWLEDGE AND SKILLS**

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### **BARRIERS TO COLLABORATION**

Participants in collaborative planning on state trust lands also may be constrained by limited information and skills. Without an understanding of state trust lands and the necessary skills for collaborative planning, a process can suffer because time that otherwise could be spent on substantive issues must be spent on education, research and trial and error in creating feasible management options. Lack of understanding and skills also can fuel disagreements over the interpretation of key issues like the trust mandate and environmental costs, which can hurt group dynamics.

Members of the public often are unfamiliar with state trust lands, and hence are unaware of the unique constraints involved in their management. Likewise, other organizations can be unfamiliar with land management policies relevant to trust land and inexperienced with collaborative planning.

State trust land agencies may not be equipped with the expertise necessary to fully engage in collaboration or may be too short-staffed to commit personnel to these processes. Frequently, agencies lack the technical and communications staff to help engage partners, stakeholders and the public. Agencies also typically do not have employees trained in group process management and negotiation skills, both of which are essential to effective collaborative planning. Finally, agencies often do not have economists on staff who are needed to quantify the benefits and costs of different planning processes to enable the agency to make informed choices about whether to pursue collaborative planning.

### **RECOMMENDATIONS**

<b>Recommendation</b>	<b>State Trust Land Agency</b>	<b>Other*</b>
Ensure the public is brought up to speed on state trust land mandates and other aspects of land management at the outset of a process	✓	
Educate staff and members about state trust land management to understand how this type of land differs from others		✓
Expand agency communications capacity	✓	
Provide multiple opportunities for training in collaboration and hire personnel with collaboration experience	✓	✓
Assign technical staff to participate in processes or make technical staff available for consultation	✓	✓
Access economics expertise to evaluate the costs and benefits of collaboration	✓	✓

\* Encompasses other federal and state agencies, municipalities, community organizations, industry, conservation groups and other parties that are affected by trust land management decisions.



#### **4. Ensure the public is brought up to speed on state trust land mandates and other aspects of land management at the outset of a process**

Members of the general public rarely are aware of state trust land and how it differs from federally-owned public land. Consequently, the public does not understand the constraints under which trust land agencies function. This unfamiliarity can pose a significant challenge to collaboration, as the group must spend time during the process on education about state trust land management and may struggle with different, conflicting interpretations of constraints and consequences. Without an understanding of trust lands, the public also may be uninterested in engaging in a collaborative process, instead preferring more adversarial and potentially-costly approaches like litigation.

To overcome this barrier, state trust land agencies can engage in two different levels of public education. First, passive education such as posting signs that designate trust land boundaries and describe the purpose of state trust lands can help educate the public, identifying the state trust land agency as a neighbor and member of the community. Similarly, developing informative websites detailing land activities and agency involvement can help educate the public and reduce the “surprise factor” in collaboration when participants realize the true constraints imposed on trust land management. Second, once at the table, agencies should inform participants about the trust mandate and the agency’s legal and policy constraints to ensure participants understand the boundaries within which they can create options for creative solutions.

#### **5. Educate staff and members about state trust land management to understand how this type of land differs from others.**

To work effectively in a collaborative process involving state trust lands, other organizations also must take responsibility for learning about state trust lands and the legal and policy issues associated with trust land management. Resources for this education include the trust land agencies themselves, as well as several nonprofit organizations that focus on state trust lands, such as the Children’s Land Alliance Supporting Schools (CLASS)<sup>1</sup> and the Sonoran Institute.<sup>2</sup> There is also growing literature on state trust lands, which organizations can turn to for information. Looking forward, organizations also should seek out employees who have expertise in state trust land issues. Developing this understanding within organizations and other groups will familiarize potential stakeholders with the management and legal constraints within which collaborative processes on state trust lands must occur.

#### **6. Expand agency communications capacity.**

To develop a better public understanding of state trust land management and contribute to the education efforts in the previous recommendations, state trust land agencies should hire staff with communications expertise. Communications expertise can help a state trust land agency develop user-friendly internet and printed materials that include engaging descriptions of trust land resources and collaborative processes. Using photographs and even interactive activities can help in engaging the public.

**7. Provide multiple opportunities for training in collaboration and hire personnel with collaboration experience.**

State trust land agencies and other groups should develop or access programs that teach staff and members collaborative planning skills, including effective communication, active listening and negotiation. This training can be accomplished in two ways. First, agencies and organizations can train staff by sending people to outside workshops, hiring professionals to hold internal seminars or distributing informational materials. Second, once parties arrive at the table, training for the entire working group can be used to help begin the collaborative process. By learning how to collaborate in the working group setting, the training may also contribute to increasing understanding of the process and relationship-building among participants. Finally, trust land agencies and other groups should look for collaboration experience when hiring new personnel.

**8. Assign technical staff to participate in collaborative processes or make technical staff available for consultation to ensure needed expertise during the process.**

Expertise in mapping and geographic information systems, geology, forestry, hydrology and wildlife biology is important for collaborative planning on state trust lands to succeed, but often is in limited supply. Consequently, processes frequently must scramble to secure the funds and time needed to acquire this technical knowledge. Choosing state trust land agency and organizational representatives to sit at the table who possess this expertise or making technical staff available for consultation during the collaborative planning process can help overcome this barrier.

**9. Access economics expertise to evaluate the costs and benefits of collaboration.**

State trust land agencies and other groups rarely have the expertise to compare the costs and benefits of collaboration with a more traditional land management approach. If benefits and costs are considered, benefits frequently are estimated conservatively and focus only on near-term gain. This analysis often discourages agencies and other stakeholders from participating in collaborative planning. Accessing economics expertise to conduct a formal benefit-cost analysis of the true value of collaboration in a particular situation can help all parties to make informed decisions about whether collaborative planning is appropriate to pursue their interests in a state trust land issue. In order to ensure that all values of collaborative processes are incorporated, agencies should investigate use of total asset management (TAM) to inform the benefit-cost analysis. TAM involves managing all the resources of a trust with an overall strategy to optimize the entire trust portfolio for short-term and long-term gains.

## **ORGANIZATIONAL STRUCTURE**

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### **BARRIERS TO COLLABORATION**

Because collaboration is new to state trust land managers, the traditional way that agencies are organized may be problematic for encouraging more collaborative relationships. For instance, the case studies in this report suggest that many state trust land agencies are sometimes not in touch with the local communities that live around state trust lands. Within agencies, sometimes limited communication between different agency departments may be problematic. In both cases, lack of communication can prevent a shared understand of problems between communities and agencies, as well as limit the ability to create innovative options and leverage community and agency resources. Finally, lack of communication between individuals at the table and their constituencies can make a collaborative process less transparent and may result in disagreements within groups as to their commitment to agreements made during a collaborative process.

### **RECOMMENDATIONS**

<b>Recommendation</b>	<b>State Trust Land Agency</b>	<b>Other*</b>
Consider creating regional offices	✓	
Improve communication within state trust land agency	✓	
Improve communications between individuals participating in the collaborative process and his or her constituency	✓	✓

\* Encompasses other federal and state agencies, municipalities, community organizations, industry, conservation groups and other parties that are affected by trust land management decisions.

#### **10. Consider creating regional state trust land agency offices.**

Many state trust land agencies lack regional or local offices dispersed throughout their states. This organizational structure results in a significant geographic distance between the agency and trust land stakeholders, and also often a philosophical divergence regarding trust land management. These tense relationships infiltrate trust land management, both in collaborative planning and more traditional approaches, and can pose management and even legal problems for the agency. In the context of collaboration, the absence of regional agency offices can hinder a community groups' ability to access trust land information and can limit the agency's understanding of local issues.

To overcome this structural barrier, some state trust land agencies should consider staffing regional offices throughout the state. Three state agencies that already model this structure are Colorado's State Land Board, Montana's Department of Natural Resources and Conservation and New Mexico's State Land Office. In Montana, having regional offices gave Department of Natural Resources and Conservation the ability to hold lunch meetings and other sessions with participants of the collaborative planning process in the town of

Whitefish. Such meetings would have been difficult had the agency been operating solely out of its Helena location four hours away. This structural change would ensure that communities have local agency representatives to whom they can turn with trust land questions. This change also can improve the relationship between the state trust land agency and local communities by developing an understanding of each other's concerns and a shared sense of place.

#### **11. Improve communication within state trust land agencies.**

To develop management solutions, state trust land agency departments must work together to brainstorm ideas, identify ways to share resources and understand each other's financial and technical limitations. Arranging offices in ways that facilitate communication between departments and establishing inter-departmental meetings that specifically address the needs of collaborative processes can establish better communication between departments. They can also provide mechanisms for brainstorming ways to leverage agency resources from various departments to develop creative options to bring to the table. Instituting intra-agency teamwork as a common practice would draw more staff expertise into a collaborative process without having to assign additional representatives to the process. In this way, the agency can use all of its resources and expertise to facilitate innovative solutions to problems identified in the collaborative process. For example, communication between departments in the New Mexico State Land Office (SLO) resulted in Commissioner Lyons placing a moratorium on new oil and gas leases near prairie chicken breeding habitat in southeastern New Mexico. The moratorium helped participants of the Southeast New Mexico Working Group recognize the SLO's commitment to precluding the need for listing of the lesser prairie chicken on the Endangered Species List. Many participants cited the SLO's commitment and leadership role as a major facilitating factor in the process.

#### **12. Improve communications between individuals participating in the collaborative process and his or her constituency.**

Collaborative planning on state trust lands can suffer if representatives of agencies, organizations and other groups involved in the effort do not periodically and consistently report back to their offices and constituencies. This structural challenge can result in disagreement within the organization about the final plan and, in turn, create an instable or even invalid outcome. To overcome this barrier, all organizations should work to facilitate communication between representatives involved in the collaborative process, the organization and its broader constituency. Updates via periodic meetings, newsletters, email and websites can ensure this dialogue.

## **ORGANIZATIONAL CULTURE**

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### **BARRIERS TO COLLABORATION**

The prevailing philosophies and attitudes within agencies and other groups often deter or hinder participation in collaborative efforts. Many of these organizations resist involvement

in collaboration because it is seen as outside their realm of standard practice, an abdication of authority and tacit acceptance of outside agendas. Rarely do organizations have incentives that encourage creative thinking and staff participation in collaborative planning. If agencies choose to engage in collaboration, they often view their appropriate role as an observer instead of an active participant, which works to the detriment of the process. State trust land agencies and other parties also tend to focus exclusively on the economic, near-term benefits of land use planning and consequently do not appreciate the long-term gains, and specifically the conservation benefits, that can come from a collaborative approach. Finally, as communities continue to expand closer to state trust land, agencies find themselves ill-prepared to respond to these new situations.

## RECOMMENDATIONS

Recommendation	State Trust Land Agency	Other*
Work to establish collaboration as a standard practice	✓	
Recognize that decision-making <i>power</i> can and should be shared, while decision-making <i>authority</i> must be retained	✓	✓
Recognize that participation does not necessitate acceptance of others' agendas	✓	✓
Create incentives to collaborate	✓	
Celebrate institutional involvement in collaboration	✓	
Embrace a participant role instead of being an observer	✓	
Acknowledge and incorporate non-economic resource values associated with state trust land	✓	✓
Find ways to incorporate new business paradigms	✓	

\* Encompasses other federal and state agencies, municipalities, community organizations, industry, conservation groups and other parties that are affected by trust land management decisions.

### 13. Work to establish collaboration as a standard agency practice for appropriate situations.

State trust land agencies are often comfortable with their traditional decision-making and management methods and consequently resist engaging in or pursuing collaboration. However, collaborative processes suffer because state trust land agencies are irreplaceable stakeholders in decision making. To overcome this barrier and encourage collaborative planning when appropriate, state trust land agencies should establish collaboration as a standard practice and find ways to assess effective performance. Sending clear messages to staff that collaborative planning is a legitimate land management approach in appropriate situations and revising agency policies and missions to explicitly recognize collaborative planning as a legitimate option are ways to realize this recommendation.

**14. Recognize that decision-making *power* can and should be shared, while decision-making *authority* must be retained.**

A key reason why state trust land agencies resist collaborative planning is a fear that participation requires abdication of decision-making authority. As the literature on collaboration explains, there is a subtle but important distinction between decision-making *authority*, which an agency cannot and should not relinquish, and decision-making *power*, which should be shared with other participants in the process. All organizations affected by trust land management decisions need to understand this distinction. Explicitly acknowledging this distinction in agency and organizational policies on collaboration can help develop this common understanding as can guidance on how to manage it during a process. With greater clarity and guidance, state trust land agencies can feel more comfortable engaging in collaboration because they know they retain final authority over trust land management. Likewise, organizations and other stakeholders can feel more comfortable participating because they know they have an influential voice in the decision-making process.

**15. Recognize that participation in collaboration and even leveraging other parties' resources does not necessitate acceptance of those parties' agendas.**

State trust land agencies also resist collaborative planning out of concern that collaboration requires acceptance of other participants' agendas. These agencies consequently can lose important resources that outside parties can provide. To overcome this challenge, state trust land agencies should recognize that neither participation in collaboration nor leveraging other participants' resources means that they accept those parties' agendas. However, given that this can be a real perception for all parties at the table, ground rules formed at the outset and formal external statements made during the process should clarify that being at the table, individual parties do not necessarily support other groups' individual interests but rather agree to look for shared interests through the collaborative process.

**16. Create incentives to encourage staff to engage in collaboration.**

Agencies and organizations rarely have incentives that encourage staff participation in collaborative planning. Without institutional encouragement, employees shy away from these approaches, despite their potential to produce better results for all involved. To encourage staff participation in collaboration, state trust land agencies and organizations should create incentives such as adding participation in collaborative planning as a criterion in performance evaluations and creating awards for those employees who demonstrate effective participation in collaborative planning.

**17. Celebrate institutional involvement in collaboration.**

State trust land agencies and organizations should celebrate their involvement in collaboration by posting stories and photographs of collaborative processes in the office and on the institution's website and developing a newsletter to inform others of this participation.

Internal and public recognition may result in not only an improved working environment, but also a better relationship between the agency or organization and community.

**18. Embrace a participant role in the collaborative process instead of being an observer.**

If state trust land agencies choose to engage in collaboration, they sometimes do so from afar. This detached involvement can result from agency fear that participation requires abdication of decision-making authority, as discussed above. Agencies also tend to prefer this level of involvement because it does not require them to work outside their “comfort zone.” When agencies merely observe meetings or receive meeting minutes instead of attending, they are limited in their ability to shape the process and help others create options that work within state trust land constraints. Consequently, the collaborative process may produce a product that is not relevant to or implementable on state trust lands. On the other hand, when agencies assume a participant role, they actively partake in meetings, engage others in dialogue about the agencies’ needs and concerns for options and help create durable agreements.

Instituting agency policies that call for active participation can help overcome this challenge. Explicitly recognizing the benefits associated with full participation, as well as the problems created by assuming an observer role, can help realize this recommendation.

**19. Acknowledge and incorporate non-economic resource values associated with state trust land.**

Some state trust land agencies and other parties tend to focus exclusively on the economic, near-term benefits of trust land management and consequently do not appreciate the longer-term gains, like conservation, that can be realized through a collaborative approach. Consequently, agencies and other groups not only avoid collaboration, but lose valuable opportunities to generate more value for trust lands. This exclusive focus on economic value also can create tense, even adversarial relationships between agencies and other parties which prefer a longer-term approach. This tension can hinder or prevent collaborative planning.

Incorporating valuation that includes non-economic outcomes, like ecosystem services and conservation, can create greater long-term value for the trust. Indeed, conservation outcomes not only can create long-term trust value, but also generate short-term monetary gain if allowed in conjunction with permitted public recreation. This approach can provide state trust land agencies with an understanding of their total asset value. Furthermore, incorporating non-economic resource values acknowledges “outside” interests in state trust land and may encourage other parties to be involved in conflict resolution. To realize this recommendation, state trust land agencies should recognize conservation outcomes in reports of state trust land activities and planning, sending a message to those in the agency that there is value to such outcomes. For example, Colorado’s State Land Board is already making strides towards incorporating conservation values into its trust management. Amendment 16 changed Colorado’s constitutional mandate to create a Stewardship Trust that set aside 295,000 to 300,000 acres for uses that protect beauty, natural values, open space and wildlife

habitat. The amendment also directed that agricultural leases promote sound land management practices and natural resources be managed in a way that conserves their long-term value.

## **20. Find ways to incorporate new business paradigms.**

With growing communities and development pressures around state trust lands, new areas of business have emerged, predominantly in the commercial and development sector. Agencies should remain open to new business models with these opportunities which in essence create new potential for partnerships and options for innovative solutions in collaborative planning. One way to successfully integrate new sectors of business into agencies is to create a new division within the agency. In New Mexico, for example, the State Land Office created the Division of Commercial Development to take advantage of development opportunities and allow the SLO to become a more active partner and player in commercial properties. The SLO's commitment to commercial development was central to the Mesa del Sol Planning Process.

## **POLICY**

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### **BARRIERS TO COLLABORATION**

There are two main types of policy barriers to collaboration on state trust lands. First, there are barriers to agency involvement in collaborative processes. Because collaborative planning is a relatively new land management approach for state trust land agencies, few have in place specific programs or policies to guide the structure and process of collaborative projects. Agencies also can be unfamiliar with how collaboration fits into traditional federal planning processes. In addition, agencies typically lack methods to monitor implementation of collaborative planning outcomes to assess their success.

The second type of policy barriers are those that limit the effectiveness of collaboration by limiting the problem-solving and management approaches of trust land agencies. Such barriers include the lack of agency programs to take advantage of non-traditional or "unconventional" trust values identified through collaboration, such as recreation, conservation and ecosystem services. Agencies often do not use total asset management tools or evaluate ecosystem services when making management decisions, limiting the options they are willing to pursue when they come to the table.



## RECOMMENDATIONS

Recommendation	State Trust Land Agency	Other*
Adopt the Best Management Practices and guidelines outlined in this report	✓	✓
Create methods for monitoring implementation of collaborative outcomes	✓	✓
Incorporate collaboration into traditional federal land management processes	✓	✓ (federal agency)
Create policies that increase the range of agency management techniques so that the benefits of collaborative processes are more likely to be realized	✓	

\* Encompasses other federal and state agencies, municipalities, community organizations, industry, conservation groups and other parties that engage in collaborative processes on state trust lands.

### **21. Adopt the Best Management Practices and guidelines for collaboration outlined in this report.**

From the collective wisdom of the participants in the eight cases emerged a set of Best Management Practices (BMPs) contained in Chapter 21. These BMPs provide practical guidance for framing and managing a collaborative process and can set organizational policy for engaging in collaboration. The BMPs are designed to help agencies and others interested in collaboration develop an effective process. Agencies and other organizations should take advantage of these “lessons learned” and work to adopt the BMPs in their organizational policies.

### **22. Create methods for monitoring implementation of collaborative outcomes**

Upon the completion of many of the collaborative processes studied in this report, participants noted that ultimate success hinges on implementation. Most felt confident that the plan will be implemented, yet few agencies have methods in place for monitoring and thereby ensuring effective implementation. If collaborative outcomes are not successfully implemented, agency and non-agency participants will feel dissatisfied and resist engaging in future collaborative endeavors. Failure to implement an outcome also can result in lost value to the trust. Agencies and organizations therefore should create programs for monitoring implementation. Inclusion of specific criteria and benchmarks to gauge the success of the implementation effort can be effective.

### **23. Incorporate collaboration into traditional federal land management processes.**

Many state trust land agencies work with federal agencies in managing trust land and, as such, periodically engage in federal processes such as the Bureau of Land Management Resource Management Plan Amendment process and National Environmental Policy Act Environmental Impact Statement process. Because of the newness of collaboration, both state

trust land and federal agencies typically are unfamiliar with how collaboration fits into these traditional federal processes. This unfamiliarity can hinder collaborative planning on state trust lands because state and federal agencies are unsure whether the processes are compatible. To overcome this barrier, state and federal agencies should work together to develop ways in which collaboration can fit into traditional federal planning processes. These entities should utilize the institutional knowledge of agencies like the Bureau of Land Management, which has already embraced collaborative planning as a viable land management alternative. Another way to accomplish this recommendation is to allow collaborative processes to set the “preferred” alternative for federal plans and amendments.

**24. Create policies that increase the range of agency management techniques so that the benefits of collaborative processes are more likely to be realized.**

For collaboration to be most effective, state trust land agencies need to be able to provide options for new management strategies. Broadening the range of management techniques allows for greater room to achieve mutual gains for parties at the table. Such new techniques could take advantage of “unconventional” land values such as conservation, ecosystem services and recreation and include (1) incorporating total asset management tools and evaluating ecosystem services in management decisions and (2) developing a public recreational permitting system to generate revenue from the public’s use of state trust land. Total asset management involves restructuring economic valuation of land by managing all the resources of a trust, traditional and non-traditional, with an overall strategy to optimize the entire trust portfolio for short-term and long-term gains. As for recreational permitting systems, such a program could produce revenue from the use of state trust lands, as well as generate public interest in and ownership of state trust land issues, thereby reducing the potential for conflict in the future. While several state trust land agencies like the Montana Department of Natural Resources and Conservation currently have recreational permitting systems in place, these programs can be unorganized and understaffed. Moreover, many agencies lack such programs altogether. To more fully benefit from collaborative planning on state trust lands, agencies should develop or improve public recreational permitting systems to generate revenue from the public’s use of these lands.

## **LAW**

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### **BARRIERS TO COLLABORATION**

Collaborative planning on state trust lands encounters a variety of legal challenges. Because of the constitutional mandate, collaborative planning inevitably must operate within a set of legally defined constraints, which can pose barriers to collaboration. State trust land agencies often interpret their mandates to require maximization of revenue for designated beneficiaries and thus disregard the value of other non-monetary outcomes. Indeed, judicial holdings frequently require this interpretation. This strict reading of the trust mandate can hinder collaborative planning on state trust land because it limits creative problem-solving and opportunities for mutual gains, which are important features of this decision-making approach.

The trust mandate also can stand as a barrier to collaboration because it often requires specific procedures for disposing of state trust land to maximize revenue. Typically, although not uniformly, states must sell the land to the highest bidder at public auction. This requirement again limits state trust land agencies' flexibility in collaborating with other parties. Moreover, the trust mandate can hinder collaboration by preventing agencies from working with local municipalities and abiding by local legal constraints.

## RECOMMENDATIONS

Recommendation	State Trust Land Agency	Other*
Recognize conservation benefits in mandate	✓	✓
Allow state trust land agencies to engage in negotiated land sales	✓	✓
Encourage state trust land agencies to consider local land use policies	✓	✓
Encourage state trust land agencies to work with local governments on land use planning.	✓	✓

\* Encompasses other federal and state agencies, municipalities, community organizations, industry, conservation groups and other parties that engage in collaborative processes on state trust lands.

### 25. Recognize conservation benefits in the trust mandate.

Many trust mandates do not identify conservation benefits as a measure of land value and hence this element is not acknowledged as part of the state trust land agency's fiduciary duty to beneficiaries. Instead, these mandates often focus exclusively on maximization of revenue. This focus can hinder the creative thinking needed for collaboration. To overcome this barrier, the value of conservation should be explicitly recognized in the trust mandate. An obvious, yet potentially controversial, way to achieve this change is through amending the state constitution and/or state regulations. For those states whose law already requires state trust land agencies to both maximize revenue and consider longer-term environmental consequences, the legislative change could explicitly call for a balancing of these dual obligations. Obtaining express written consent from the beneficiaries to consider conservation outcomes in management decisions is another option.

### 26. Allow state trust land agencies to engage in negotiated land sales.

Another way to help state trust land agencies participate in collaborative planning is by legally allowing agencies to engage in more flexible land transactions like negotiated land sales. Being able to consider transactions other than public auctions enables agencies to make the trade-offs sometimes needed to successfully collaborate with other parties. This recommendation recognizes that the short-term gain of a land sale at auction may not be optimal for the long-term value of the trust as a whole. In addition, allowing negotiated land sales to organizations such as land trusts allows communities to achieve their conservation

goals while ensuring that agencies satisfy their fiduciary responsibility to their beneficiaries. Legal change through regulatory and/or constitutional amendments again can secure this flexibility.

**27. Encourage state trust land agencies to consider local land use policies.**

While some state trust land agencies confer with local governments on trust land issues, they do not necessarily abide by local land use laws and policies when making a final decision. Indeed, some state trust land agencies interpret their legal obligations to trump local law and thereby grant them, for example, “super zoning authority.” This interpretation can hinder collaboration again by straining relationships between localities and state trust land agencies. It also can compromise the effectiveness of final land management products because local concerns (as articulated through local law) are not fully considered. To overcome this challenge, state trust land agencies should strive to abide by local land use laws and policies for trust land planning that falls within that locality’s jurisdiction. Realizing this recommendation also will increase the potential for future positive working relationships between localities and state trust land agencies

**28. Encourage state trust land agencies to work with local governments on land use planning that falls within that locality’s jurisdiction.**

Because the trust mandate explicitly identifies the state (and via delegation, the state trust land agency) as the trustee of these lands, the agency often interprets its fiduciary duty to the beneficiaries as superior to other parties’ interests. Consequently, agencies often do not consult or work with local governments when making trust land management decisions, despite the fact that these lands are within local jurisdictions. This philosophy can pose a barrier to collaboration because state agencies do not think they need to fully cooperate with local governments. Even if the agency and municipality enter into a collaborative arrangement, the process can suffer from differing expectations and tense relationships. To overcome this challenge, state trust land agencies should strive to work with local governments on trust land planning that falls within that locality’s jurisdiction. State and local legislative change can help ensure that both parties come to the table with compatible expectations while still protecting agencies’ responsibility to the trust beneficiary.

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**CONTINUED DIALOGUE AND LEARNING**

**BARRIERS TO COLLABORATION**

Ongoing learning and dialogue are vital to effective collaborative planning on state trust lands. Even as state trust land agencies and other organizations continue to build institutional knowledge regarding best management practices for collaborative processes, there are few opportunities for sharing this knowledge with others. The Western States Land Commissioners Association (WSLCA) Conference traditionally has provided a venue for this sort of discussion, however it does not explicitly draw out collaborative experiences and few are shared formally. Furthermore, identifying trust land management issues that are

appropriate for collaborative planning is difficult with limited communication between state trust land agencies and other organizations. Most interaction currently relies on informal or personal contacts.

**RECOMMENDATIONS**

Recommendation	State Trust Land Agency	Other*
Focus more explicitly on collaborative planning at the WSLCA Conference	✓	
Hold an annual or biannual state trust land agency meeting	✓	
Create a forum for non-agency interested and affected parties to discuss trust land issues		✓

\* Encompasses other federal and state agencies, municipalities, community organizations, industry, conservation groups and other parties that engage in collaborative processes on state trust lands.

**29. Focus more explicitly on collaborative planning at the WSLCA Conference.**

The Western States Land Commissioners Association (WSLCA) Conference convenes state trust land agencies from across the West to share information about trust land management experiences and hear from experts in the field. This meeting provides agencies with a great sense of community and is a tremendous information resource. The conference thus provides a good opportunity for agencies to discuss collaborative planning as an alternative to more traditional trust land management. This discussion could be accomplished in a variety of ways. For example, collaborative activities could be included in the state “roll call,” which is held at the beginning of each conference and highlights major events and transactions occurring in each state over the past year. States also could prepare brief summaries of their collaborative efforts, noting the strengths and weaknesses of the process, the costs and benefits and any lessons learned. Holding sessions within the conference that specifically address collaboration on state trust lands is another way agencies can discuss how this land management approach fits with their responsibilities as trustees.

**30. Hold an annual or biannual state trust land agency meeting.**

In addition to engaging in information sharing across states, state trust land agencies should facilitate formal discussions closer to home. Holding annual or biannual meetings would enable the agency to meet with interested and affected parties, including community and organization leaders, to discuss state-specific trust land management issues from a variety of perspectives. These meetings could use the WSLCA Conference as a model and incorporate such activities as a “roll call” of recent agency and non-agency trust land activities. By providing a venue for discussion and information sharing, meetings would help foster stakeholder relationships and identify overlapping interests. Including collaborative planning as a topic for discussion also would enable agencies and other interested and affected parties

to openly discuss the pros and cons of that land management approach and even brainstorm about future collaborative opportunities.

### **31. Create a forum for non-agency stakeholders to discuss state trust land issues.**

Interested and affected parties such as local communities and stakeholder organizations also can benefit from creating a forum to discuss state trust land issues, including collaborative planning. Group meetings are one way to facilitate this discussion. Some of this discussion could be in existing forums like the Land Trust Alliance annual Rally. Creating a non-profit organization like the Children's Land Alliance Supporting Schools (CLASS) is another way for non-agency parties to discuss important issues. These types of venues would enable such parties to learn more about the intricacies inherent in state trust land management and strategize about how to best work with state trust land agencies' constraints to create mutual gain.

## **FUTURE RESEARCH**

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### **BARRIERS TO COLLABORATION**

This study of collaborative planning on state trust lands was conducted because the State Trust Lands Research Roundtable identified collaboration as a growing, but relatively unstudied, trend in trust land management. This report fills part of the void by identifying the range of issues involved in collaborative planning on state trust lands and compiling a set of lessons and best management practices. Yet, more research is needed to help inform more effective processes.

Currently, one of the largest handicaps to understanding the true costs and benefits of collaboration is the lack of calculations corresponding to the process and outcome. The benefit-cost analyses that currently exist do not incorporate other trust land values, including ecosystem services. An additional deficiency in research on collaborative planning on state trust lands is a close comparison between collaborative planning and traditional trust land management. Finally, while this report provides a valuable collection of best management practices distilled from the eight cases, more subtle lessons should be developed by closely following ongoing processes.

## RECOMMENDATIONS

Recommendation	State Trust Land Agency	Other*
Conduct benefit-cost analyses of collaborative planning	✓	
Examine current research in valuing ecosystem services	✓	
Research use of total asset management on state trust lands and how it fits into collaboration	✓	
Conduct research that explicitly compares collaborative processes to traditional management situations	✓	✓
Conduct real-time research on collaborative processes	✓	✓

\* Encompasses other federal and state agencies, municipalities, community organizations, industry, conservation groups and other parties that engage in collaborative processes on state trust lands.

### **32. Conduct benefit-cost analyses of collaborative planning on state trust lands.**

State trust land agencies need a clear understanding of the costs and benefits of collaborative planning to make an informed decision about whether to engage in that land management approach. Currently, few agencies have this benefit-cost analysis. Agencies therefore should hire economists and/or trained researchers to conduct more precise benefit-cost analyses on collaborative planning. Costs incurred during collaboration tend to be more traditional line-items, including hours spent in the process, number of staff dedicated to the process and direct costs (e.g. planning and research) of the project. Conversely, the benefits of collaborative planning may be more difficult to quantify, as they may include avoidance of lawsuits, improved long-term professional and personal relationships and protection of natural resources.

### **33. Examine current research in valuing ecosystem services and apply it to state trust land management, including collaborative planning.**

There is growing literature on the monetary valuation of ecosystem services such as clean water, clean air, pest control and pollination. A review of this research and possible additional study into the true value of ecosystem services would help inform benefit-cost analyses of collaborative planning and thereby help state trust land agencies determine when this land management approach is appropriate.

### **34. Research the use of total asset management on state trust lands and how it fits into collaboration.**

Total asset management (TAM) is a new method of management that recognizes all assets of an agency and manages them as one portfolio. In the State Trust Lands Research and Policy Analysis Roundtable<sup>3</sup> convened by the Lincoln Institute of Land Policy and the Sonoran Institute in 2004, TAM was identified as an important concept to develop as applied to state

trust lands. Organizations like the Sonoran Institute currently are conducting ongoing research on TAM, described as “a holistic and strategic approach to the management of trust resources which optimizes management of the total trust portfolio to achieve sustainable, short-term and long-term revenue goals.”<sup>4</sup> TAM allows for a broader view of state trust land assets to incorporate and balance short-term and long-term revenue. However, TAM on state trust lands is still relatively new and additional research is needed on its application to state trust lands, as well as how agencies can incorporate TAM into collaborative processes.

**35. Conduct research that explicitly compares collaborative processes to traditional management situations.**

To provide state trust land agencies with the best understanding of when to engage in collaborative planning, research is needed that explicitly compares collaboration to traditional trust land management. This research may be included in a larger benefit-cost analysis, as discussed above. Conducting a series of case studies that focuses on this comparison is another research option.

**36. Conduct real-time research on collaborative processes.**

While this report attempted to capture the various issues underlying collaborative planning on state trust land and produce a practical list of best management practices, the research was limited by interviewees’ fading or selective memories. Many of the interviews conducted for this research took place months after the collaborative process ended. Naturally, participants forgot some of the more subtle factors that helped facilitate the process. While documents like meeting notes and project materials can help capture this knowledge, conducting real-time research is a better option. Researching collaborative planning as it is ongoing would produce a more detailed and potentially more accurate understanding of the issues encountered during the process and the strategies needed to deal with them.





## **APPENDIX**

**Exhibit 1:** Interview Questions

**Exhibit 2:** Sample Follow-Up Letter

**Exhibit 3:** Informed Consent Form

**Exhibit 4:** Photographs of the Town of Castle Valley

**Exhibit 5:** Full Text of Senate Bill 5536

**Exhibit 6:** Full Text of Engrosed Second Senate Bill 6731

**Exhibit 7:** The Lake Whatcom Landscape Plan Charter

**Exhibit 8:** Whitefish Neighborhood Plan Charter



# Exhibit 1

## Interview Questions

- 1. Could you please tell us a bit about how you were involved with this process?**
  - a. How long were you involved?
  - b. At what point in the process did you join? Initiator? Invited?
  - c. What issues did you weigh before joining? Risks and benefits?
  - d. Did you feel like this process was collaborative?
  - e. Have you been involved in a collaborative planning process before?
  
- 2. Could you please tell us about how this situation unfolded?**
  - a. How would similar projects normally be undertaken?
  
- 3. Why did you / your organization participate? (*benefits*)**
  - a. What did you hope to accomplish?
  - b. What were some of the positive outcomes of the process? Anything unexpected? (ex: resource sharing, relationships, more effective and stable outcomes, common ownership and shared understanding of the issue(s), more informed decision making etc.)
  - c. What was the quality of the relationships that developed? (face to face? Phone or email? Friendships?)
  - d. How did relationships within the group evolve over time? Predictions for future?
  - e. How were discussions structured? (formal bargaining, open discussion, etc.) How were decisions made? (consensus, majority vote, by a facilitator, etc.)
  - f. How did you feel about the effectiveness of the facilitator? About the structure of the process?
  
- 4. Was the process successful?**
  - a. Were your goals achieved? (SLB/school: trust revenue goals met?)
  - b. Were other stakeholders satisfied?
  - c. What made it successful (or what elements were successful)? (*facilitating factors*)
  - d. What made it unsuccessful (or what elements were unsuccessful)?
  - e. Was this a fair process? (Did it feel inclusive or exclusive? Was your voice heard?)
  - f. Would you collaborate again in the future? (Was this a “value-added” activity?)
  - g. What would the outcome have been under “normal” circumstances?
  - h. What did the group do well?
  
- 5. What were the costs associated with participating?**
  - a. Increased demands on resources, time, staff?
  - b. Unsatisfactory outcomes?
  - c. Anything else you/your org sacrificed by participating?

## **Exhibit 1 (cont.)**

### Interview Questions

#### **6. What were the challenges of collaborating?**

*(Note: allow the person to brainstorm their own list of challenges, but bring a back-up list in case they don't. Also, ask individuals about the critical challenges others mentioned in their interviews.)*

- a. Challenges group encountered? (*brainstorm list*)
  - b. Did you reach an impasse or stall? (Did anyone threaten to leave, or give ultimatums? How was this resolved?)
  - c. Challenges you/your organization encountered? (*brainstorm list*)
  - d. Challenges unique to state trust land?
  - e. Did you / the group receive outside criticisms? Response?
- 7. How did you overcome these challenges?**
- a. Group challenges (*pick from their list*)
  - b. You / your organization's challenges (*pick from their list*)
- 8. How did you feel about your involvement?** (excited, tired, silenced, frustrated?)
- a. Was this a productive use of your time?
- 9. How did your organization feel about your involvement?**
- a. Support or encouragement? Suspicion? (colleagues, superiors) Did this fit in with the culture of your organization?
  - b. Is your organization structured to be able to do this? Process consistent with mission and goals? How different? How reconciled?
  - c. Any legal restrictions, or regulatory constraints?
- 10. What advice do you have for others considering a similar collaborative planning process on state trust lands?**
- a. What is critical to success? Essential elements?
  - b. Anything the group should have done differently?
- 11. Is collaborative planning on state trust lands different from using the approach to address other public lands issues?**
- a. What kinds of issues is collaboration useful in resolving, and what kinds is it not?
  - b. What challenges face STL management in the future? How to address?
- 12. Anything else to share? Is there something else you think I should be asking participants? Anyone else we should talk to?**

## **Exhibit 1 (cont.)**

### Interview Questions

#### **Informational Questions**

*Ask these to first one or two interviewees to confirm logistics of process. Possibly confirm with others, or take note of (and then probe about) responses that offer conflicting information.*

1. Who was involved?
2. What happened?
3. How did this process get started?
4. Of participants, who played important roles in the process? Who were leaders? Obstructionists?
5. Who were the dominant voices?
6. Anyone you would like to have participated, but didn't? Anyone refused? Excluded?
7. Common goals identified? How?
8. Initial vision statement? How developed? (copy?)
9. How did group set agenda? Priorities?
10. What was decision-making process? (consensus, majority, etc.)
11. Ground rules established?
12. Leadership structure? How determined?
13. Professional moderator?
14. Plans for future work together?

## Exhibit 2

### Sample Follow-Up Letter

Dear **[Interviewee Name]**,

On behalf of our research team, I would like to thank you for agreeing to be interviewed as part of our research project on state trust land management. I am following up in order to give you more information on the project and to explain the interview process. As we discussed by **[email/phone]**, the interview is scheduled for **[date/time]** and I will **[come to your office at address/call you at interviewee's telephone number]**.

The interview should take approximately one hour. If necessary, I may contact you a second time for further information or clarification. With your consent, the interview will be recorded to ensure the accuracy of our research. In addition, please let us know if there are other people you believe may be interested in sharing their experiences.

Our research team of eight students formed in March 2005 at the University of Michigan School of Natural Resources and Environment to investigate collaborative planning on state trust land. Under the guidance of Steven L. Yaffee, the Theodore Roosevelt Professor of Ecosystem Management and Director of the Ecosystem Management Initiative at the University of Michigan, our team will prepare a series of case studies in seven western states of recent planning processes in which state trust land departments collaborated with stakeholder groups in the planning and management of specific trust-owned land. Through in-depth interviews, our research team will seek to answer a set of research questions concerning the challenges, benefits, costs and outcomes of collaborative planning on state trust lands. The goal of the project is to identify the advantages and disadvantages of engaging in collaborative planning in state trust land management and to define a set of best management practices for these processes.

Should you have questions regarding your role as a participant in research, please contact:

Institutional Review Board  
1040 Fleming Building  
503 Thompson Street  
Ann Arbor, MI 48109  
734-936-0933; email: [irbhsbs@umich.edu](mailto:irbhsbs@umich.edu)

Thank you in advance for your participation! I look forward to speaking with you about **[city/location's]** trust land planning process. If you have any questions, I can be reached at the contact information below.

Best Regards,

**[Researcher's Name and Contact Information]**

## **Exhibit 3**

### Informed Consent Form

#### **Purpose of this Interview:**

This interview is being conducted as part of a project exploring the use of collaboration in decision making regarding state trust land. As a participant in the interviewing process, you will help the research team learn more about the process of collaboration in a specific case regarding state trust land. The information given below is intended to clarify your role in the interview process. If you have any additional questions, please ask us, the researchers.

#### **Voluntary Nature of Participation:**

Your participation in this project is entirely voluntary. You may ask questions before, during, or after the interview. You may choose to participate or not, skip any questions you choose not to answer, or withdraw at any time, without any consequences to you. The only foreseeable risk to your participation in this interview is a breach of confidentiality, should you wish to have your comments remain confidential. However, all possible measures will be taken to ensure that confidentiality is protected. Should you have any questions regarding your participation in the interview, you may feel free to contact a member of the research team or the University of Michigan Institutional Review Board, whose contact information can be found at the end of this document. Benefits of your participation in this interview include your contribution to the body of knowledge regarding collaborative decision making on state trust land.

#### **Content of the Interview:**

Questions regarding your participation in or knowledge about the collaborative effort in question will be asked during the interview, which is expected to last approximately one (1) hour. Should we need additional clarification regarding your comments, we would like to request permission to contact you again in the future.

#### **Confidentiality of Information Collected:**

With your permission, we would like to use audio recording devices during the interview to ensure accuracy of the discussion. If, for any reason, you do not wish to be recorded, audio recording devices will not be used, and you may still participate in the interview, if you so choose. Direct quotations used for this project will be submitted to you for your review to ensure accuracy. You may refuse to be quoted by name in association with all or part of your commentary.

We will keep confidential the notes, recordings, and transcripts from your interview to the extent provided by federal, state and local law. The recordings of this interview will be erased and/or destroyed after two (2) years of the interview date.



**Exhibit 3 (cont.)**  
Informed Consent Form

**Documentation of this Consent:**

One copy of this document will be kept together with our research records on this project. You will receive a second copy to keep.

**Contact Information:**

Researchers:

[NAME]

[ADDRESS]

[PHONE]

[EMAIL]

Should you have any questions regarding your rights as a participant in research, please contact:

Institutional Review Board  
Kate Keever  
540 East Liberty Street, Suite 202  
Ann Arbor, MI 48104-2210  
734-936-0933  
email: irbhsbs@umich.edu

**Consent of the Participant:**

I understand the meaning of this information. Ms. / Mr. \_\_\_\_\_ and Ms. / Mr. \_\_\_\_\_ (names of group members conducting interview) have offered to answer any questions I may have concerning the project.

I hereby consent to participate in the project.

*(Get verbal consent)*

## Exhibit 4

### Photographs of the Town of Castle Valley



Entrance to the town of Castle Valley with Bulletin Board and Mail Boxes, Porcupine Rim beyond (photograph by Eirin Krane)



Signs posted at town entrance (photograph by Eirin Krane)



Castle Valley Drive, the only paved road in town; Eagle's Nest, Jello Mountain and Colorado River Corridor beyond (photograph by Eirin Krane)



Sign posted in town, Castleton Tower far right (photograph by Eirin Krane)



Castle Valley Drive sign in front of Castleton Tower (photograph by Stephanie Bertaina)



Round Mountain, surrounded by school trust lands (photograph by Stephanie Bertaina)

## **Exhibit 5**

Full Text of Senate Bill 5536

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

LAKE WHATCOM MUNICIPAL WATERSHED--PILOT PROJECT ON WATER  
QUALITY

EFFECTIVE DATE: 7/25/99

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

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

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

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

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

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

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

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

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SECOND SUBSTITUTE SENATE BILL 5536

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AS AMENDED BY THE HOUSE

Passed Legislature - 1999 Regular Session

State of Washington      56th Legislature      1999 Regular Session

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

Read first time 03/08/1999.

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

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

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

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

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

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

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

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

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

Passed the Senate April 22, 1999.

Passed the House April 16, 1999.

Approved by the Governor May 10, 1999.

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

## Exhibit 6

Full Text of Engrossed Second Substitute Senate Bill 6731

FRANK CHOPP

Speaker of the

House of Representatives

Approved March 29, 2000 FILED

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

GARY LOCKE

Governor of the State of Washington Secretary of State

State of Washington

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ENGROSSED SECOND SUBSTITUTE SENATE BILL 6731

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AS AMENDED BY THE HOUSE

Passed Legislature - 2000 Regular Session

State of Washington 56th Legislature 2000 Regular Session

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

Read first time 02/08/2000.

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

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

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

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

(2) Harvest and road construction upon potentially unstable slopes shall be carefully regulated;

### **Exhibit 6 (cont.)**

#### Full Text of Engrosed Second Senate Bill 6731

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

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

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

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

Passed the Senate March 7, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 29, 2000.

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

## **Exhibit 7**

### **The Lake Whatcom Landscape Plan Charter**

#### **Lake Whatcom Landscape Plan**

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

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

#### **Lake Whatcom Inter-jurisdictional Committee Charter**

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

JENNIFER M. BELCHER  
Commissioner of Public Lands

August 1, 2000



## Exhibit 8

### Whitefish Neighborhood Plan Charter



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

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

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

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

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

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

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

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

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

## **Exhibit 8 (cont.)**

### Whitefish Neighborhood Plan Charter

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

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

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

#### **ROLES AND RESPONSIBILITIES**

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

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

## **Exhibit 8 (cont.)**

### **Whitefish Neighborhood Plan Charter**

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

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

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

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

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

## **Exhibit 8 (cont.)**

### Whitefish Neighborhood Plan Charter

#### Beneficiaries

Recreationists, such as hunters, anglers, mountain bikers, equestrians, hikers, boaters, skiers, and motorized vehicle users

Existing lease holders

Business and industry groups

Service providers, such as police and fire

Members of the Public at large and/or representatives of neighborhood/area associations

Representatives of local governing bodies

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

#### **The Committee will:**

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

## **Exhibit 8 (cont.)**

### Whitefish Neighborhood Plan Charter

#### **TIMEFRAMES**

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

#### **FINANCIAL**

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

Source: Montana Department of Natural Resources and Conservation  
([http://dnrc.mt.gov/trust/Whitefish\\_neighborhood\\_plan/](http://dnrc.mt.gov/trust/Whitefish_neighborhood_plan/))

## ENDNOTES

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### CHAPTER 2

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<sup>1</sup> Jon A. Souder and Sally K. Fairfax, *State Trust Lands: History, Management, & Sustainable Use* (Lawrence, KS: University Press of Kansas, 1996), 1.

<sup>2</sup> *Ibid.*, 15.

<sup>3</sup> Peter W. Culp, Diane B. Conradi and Cynthia C. Tuell *Trust Lands in the American West: A Legal Overview and Policy Assessment*. A Policy Assessment Report of the Lincoln Institute of Land Policy / Sonoran Institute Joint Venture on State Trust Lands, 2005, 1.

<sup>4</sup> “Trust Lands: A Land Legacy for the American West,” Sonoran Institute and Lincoln Institute for Land Policy, <http://www.trustlands.org>.

<sup>5</sup> Andy Laurenzi, “State Trust Lands: Balancing Public Value and Fiduciary Responsibility,” *Land Lines* 16:3 (July 2004), available at <http://www.lincolnst.edu/pups/pub-detail.asp?id=911>.

<sup>6</sup> Jon Souder and Sally Fairfax, “The State Trust Lands,” [www.ti.org/statetrusts.html](http://www.ti.org/statetrusts.html).

<sup>7</sup> *Ibid.*

<sup>8</sup> Culp, Conradi and Tuell.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> The General Land Ordinance of 1785, reprinted in 28 Journals of the Continental Congress 375 (Jon Fitzpatrick, Ed. 1933), cited in Culp, Conradi and Tuell, 7.

<sup>15</sup> Culp, Conradi and Tuell.

<sup>16</sup> See Northwest Ordinance, reprinted in 32 Journals of the Continental Congress 334 (1934), cited in *Ibid.*

<sup>17</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*, 19.

<sup>18</sup> Culp, Conradi and Tuell, 7.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*, 8.

<sup>21</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*, 19.

<sup>22</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*.

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- <sup>23</sup> Culp, Conradi and Tuell.
- <sup>24</sup> Ibid.
- <sup>25</sup> Ibid.
- <sup>26</sup> Ibid.
- <sup>27</sup> Ibid.
- <sup>28</sup> Souder and Fairfax, “The State Trust Lands.”
- <sup>29</sup> Laurenzi, “State Trust Lands: Balancing Public Value and Fiduciary Responsibility.”
- <sup>30</sup> Culp, Conradi and Tuell, 1; Souder and Fairfax, “The State Trust Lands.”
- <sup>31</sup> Ibid.
- <sup>32</sup> Arizona State Land Department Annual Report 2003-2004, <http://www.land.state.az.us>, (preface and pg. 2); Charles E. Bedford, *The “New” Colorado State Land Board*, 78 Denv. U.L. Rev. 347, 347 (2001); Montana Department of Natural Resources and Conservation, <http://dnrc.mt.gov>; Oregon Department of State Lands, <http://www.oregon.gov/DSL/index.shtml>; Souder and Fairfax, “The State Trust Lands”; Culp, Conradi and Tuell.
- <sup>33</sup> Culp, Conradi and Tuell, 17.
- <sup>34</sup> Culp, Conradi and Tuell.
- <sup>35</sup> *Ervien v. U.S.*, 251 U.S. 41 (1919).
- <sup>36</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*, 2.
- <sup>37</sup> Sally K. Fairfax et al., *The School Trust Lands: A Fresh Look at Conventional Wisdom*, 22 *Envtl. L.* 797, 821 (1992).
- <sup>38</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*, 31-32.
- <sup>39</sup> Souder and Fairfax, “The State Trust Lands.”
- <sup>40</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*, 54; Souder and Fairfax, “The State Trust Lands.”
- <sup>41</sup> Souder and Fairfax, “The State Trust Lands”; Trust Lands: A Land Legacy for the American West, The Sonoran Institute & Lincoln Institute for Land Policy, <http://www.trustland.org>.
- <sup>42</sup> Souder and Fairfax, “The State Trust Lands.”
- <sup>43</sup> Ray Rasker et al., *Prosperity in the Twenty-First Century West* (Sonoran Institute, 2004), cited in Culp, Conradi and Tuell.
- <sup>44</sup> Culp, Conradi and Tuell.
- <sup>45</sup> Ibid.
- <sup>46</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*, 236.

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<sup>47</sup> “Legal Context,” Draft Elliott State Forest Habitat Conservation Plan, August 2005, Oregon Department of Forestry; “Constitution of Oregon: 2003 Version,” Oregon State Legislature, <http://www.leg.state.or.us/orcons/>.

<sup>48</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*, 254.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid., 270.

<sup>51</sup> “Habitat Conservation Plans: Section 10 of the Endangered Species Act,” U.S. Fish and Wildlife Service, <http://www.fws.gov/endangered/hcp/>.

<sup>52</sup> Souder and Fairfax, *State Trust Lands: History, Management & Sustainable Use*, 274.

<sup>53</sup> Colo. State Bd. of Land Comm’rs v. Colo. Mined Land Reclamation Bd., 809 P.2d 974 (Colo. 1991).

<sup>54</sup> Nat’l Parks & Conservation Ass’n v. Bd. of State Lands, 869 P.2d 909 (Utah 1993).

## CHAPTER 4

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<sup>1</sup> Town of Castle Valley, Utah, <http://www.castlevalleyutah.com/>; Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT; Cris Coffey (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>2</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>3</sup> Peter W. Culp, Diane B. Conradi and Cynthia C. Tuell *Trust Lands in the American West: A Legal Overview and Policy Assessment*. A Policy Assessment Report of the Lincoln Institute of Land Policy / Sonoran Institute Joint Venture on State Trust Lands, 2005, 134.

<sup>4</sup> Ibid.; State of Utah School and Institutional Trust Lands Administration, *10<sup>th</sup> Anniversary Report* (School and Institutional Trust Lands Administration, 2004), 29.

<sup>5</sup> State of Utah School and Institutional Trust Lands Administration, *10<sup>th</sup> Anniversary Report* (School and Institutional Trust Lands Administration, 2004), 29.

<sup>6</sup> “What Are Trust Lands?” School and Institutional Trust Lands Administration, <http://www.utahtrustlands.com/about/?pageID=2>.

<sup>7</sup> Other beneficiaries include the Reservoir Fund, Utah State University, University of Utah, School of Mines, Miners Hospital, Normal School (Teacher’s College), School for the Deaf, Public Buildings, State Hospital, School for the Blind and the Youth Development Center. State of Utah School and Institutional Trust Lands Administration. *10<sup>th</sup> Anniversary Report*. (School and Institutional Trust Lands Administration, 2004), 31.

<sup>8</sup> Culp, Conradi and Tuell, 140; Margaret Bird (Beneficiary Representative, State of Utah Office of Education), personal communication [email] with Stephanie Bertaina, March 24, 2006.

<sup>9</sup> Ibid.

<sup>10</sup> Ric McBrier (Assistant Director of Planning and Development, SITLA), personal communication [phone] with Stephanie Bertaina, February 28, 2006.



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<sup>11</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT; John Andrews (Associate Director of Administration, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, School and Institutional Trust Lands Administration Office, Salt Lake City, UT.

<sup>12</sup> SITLA was created through the enactment of Utah Code Title 53-C; State of Utah School and Institutional Trust Lands Administration, *10<sup>th</sup> Anniversary Report* (School and Institutional Trust Lands Administration, 2004), 7.

<sup>13</sup> State of Utah School and Institutional Trust Lands Administration. *10<sup>th</sup> Anniversary Report*. (School and Institutional Trust Lands Administration, 2004), 7, 3.

<sup>14</sup> *Ibid.*, 7.

<sup>15</sup> John Andrews (Associate Director of Administration, SITLA), personal communication [email] with Stephanie Bertaina, February 27, 2006.

<sup>16</sup> Culp, Conradi and Tuell, 135.

<sup>17</sup> “Surface Management,” School and Institutional Trust Lands Administration, <http://www.utahtrustlands.com/surface/>.

<sup>18</sup> “Minerals,” School and Institutional Trust Lands Administration, <http://www.utahtrustlands.com/minerals/>.

<sup>19</sup> “Development,” School and Institutional Trust Lands Administration, <http://www.utahtrustlands.com/development/>.

<sup>20</sup> State of Utah School and Institutional Trust Lands Administration, *10<sup>th</sup> Anniversary Report* (School and Institutional Trust Lands Administration, 2004), 16; Ric McBrier (Assistant Director of Planning and Development, SITLA), personal communication [phone] with Stephanie Bertaina, February 28, 2006.

<sup>21</sup> Ric McBrier (Assistant Director of Planning and Development, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 15, 2005, SITLA, Salt Lake City, UT.

<sup>22</sup> Culp, Conradi and Tuell, 135; “FAQ,” *School and Institutional Trust Lands Administration*, <http://www.utahtrustlands.com/about/?pageID=5>.

<sup>23</sup> Culp, Conradi and Tuell, 135; Ric McBrier (Assistant Director of Planning and Development, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 15, 2005, SITLA, Salt Lake City, UT.

<sup>24</sup> Kevin Carter (Director, SITLA), interview by Stephanie Bertaina and Eirin Krane, July 26, 2005, Western States Land Commissioners Association Summer Conference, Great Divide Lodge, Breckenridge, CO.

<sup>25</sup> Margaret Bird (Beneficiary Representative, State of Utah Office of Education), interview by Stephanie Bertaina and Eirin Krane, August 15, 2005, State of Utah Office of Education, Salt Lake City, UT.

<sup>26</sup> *Ibid.*; “About Class: Purpose.” Children’s Land Alliance Supporting Schools, <http://www.childrenslandalliance.com/about.php#>.

<sup>27</sup> Margaret Bird (Beneficiary Representative, State of Utah Office of Education), interview by Stephanie Bertaina and Eirin Krane, August 15, 2005, State of Utah Office of Education, Salt Lake City, UT.

<sup>28</sup> “Castleton Tower Preservation Initiative,” Castle Rock Collaboration, <http://www.castlerockcollaboration.org/initiative.html> (website not currently available); Kevin Carter (Director,

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SITLA), interview by Stephanie Bertaina and Eirin Krane, July 26, 2005, Western States Land Commissioners Association Summer Conference, Great Divide Lodge, Breckenridge, CO.

<sup>29</sup> “Castleton Tower Preservation Initiative,” Castle Rock Collaboration, <http://www.castlerockcollaboration.org/initiative.html> (website not currently available); Wendy Fisher (Executive Director, Utah Open Lands), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, Utah Open Lands Office, Salt Lake City, UT.

<sup>30</sup> John Andrews (Associate Director of Administration, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, School and Institutional Trust Lands Administration Office, Salt Lake City, UT.

<sup>31</sup> Ric McBrier. “Memorandum to the Board of Trustees regarding Castle Valley Agreements.” *School and Institutional Trust Lands Administration*. June 14, 2002.

<sup>32</sup> Cris Coffey (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>33</sup> Karen Nelson (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>34</sup> Cris Coffey (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>35</sup> Margaret Bird (Beneficiary Representative, State of Utah Office of Education), personal communication [mail] with Stephanie Bertaina, February 24, 2006.

<sup>36</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), personal communication [email] with Stephanie Bertaina, January 2, 2006.

<sup>37</sup> Ibid.

<sup>38</sup> John Andrews (Associate Director of Administration, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, School and Institutional Trust Lands Administration Office, Salt Lake City, UT; Wendy Fisher (Executive Director, Utah Open Lands), personal communication [email] with Stephanie Bertaina, December 16, 2005; John Andrews, “Memo to the Planning and Zoning Commission regarding Proposed Rezoning of Unsubdivided School Trust Lands within Castle Valley Town Boundaries,” August, 11, 1999.

<sup>39</sup> Ric McBrier, “Memorandum to the Board of Trustees regarding Sale of Parcel E – Castle Valley,” School and Institutional Trust Lands Administration, May 29, 2003.

<sup>40</sup> John Andrews (Associate Director of Administration, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, School and Institutional Trust Lands Administration Office, Salt Lake City, UT; John Andrews, “Memo to the Planning and Zoning Commission regarding Proposed Rezoning of Unsubdivided School Trust Lands within Castle Valley Town Boundaries,” August, 11, 1999.

<sup>41</sup> John Andrews (Associate Director of Administration, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, School and Institutional Trust Lands Administration Office, Salt Lake City, UT.

<sup>42</sup> Cris Coffey (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>43</sup> Ric McBrier (Assistant Director of Planning and Development, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 15, 2005, SITLA, Salt Lake City, UT.

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<sup>44</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), interview by Stephanie Bertaina and Eirin Krane, October 12, 2005,.

<sup>45</sup> Wendy Fisher (Executive Director, Utah Open Lands), personal communication [mail] with Stephanie Bertaina, February 16, 2006.

<sup>46</sup> Wendy Fisher (Executive Director, Utah Open Lands), personal communication [email] with Stephanie Bertaina, December 16, 2005.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT; Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT; Marty Zeller (President, Conservation Partners), telephone interview by Stephanie Bertaina and Eirin Krane, September 28, 2005; Dave Erley (Southeastern Field Agent, Utah Open Lands), personal communication [email] with Stephanie Bertaina, January 2, 2006.

<sup>50</sup> Marty Zeller (President, Conservation Partners), telephone interview by Stephanie Bertaina and Eirin Krane, September 28, 2005

<sup>51</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>52</sup> Ibid.

<sup>53</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>54</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), telephone interview by Stephanie Bertaina and Eirin Krane, October 12, 2005.

<sup>55</sup> Ibid.

<sup>56</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>57</sup> Marty Zeller (President, Conservation Partners), telephone interview by Stephanie Bertaina and Eirin Krane, September 28, 2005.

<sup>58</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>59</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>60</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

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<sup>63</sup> Ric McBrier (Assistant Director of Planning and Development, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 15, 2005, SITLA, Salt Lake City, UT.

<sup>64</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>65</sup> Karen Nelson (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>66</sup> Cris Coffey (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>67</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), personal communication [mail] with Stephanie Bertaina, February 24, 2006.

<sup>68</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>69</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.; Marty Zeller (President, Conservation Partners), personal communication [mail] with Stephanie, Bertaina February 24, 2006.

<sup>72</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>73</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>74</sup> Ibid.; Catherine Howells (Water Agent, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>75</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>76</sup> Ibid.

<sup>77</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), personal communication [email] with Stephanie Bertaina, January 2, 2006.

<sup>78</sup> Ric McBrier, "Memorandum to the Board of Trustees regarding Castle Valley Agreements," School and Institutional Trust Lands Administration, June 14, 2002; Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>79</sup> Ric McBrier, "Memorandum to the Board of Trustees regarding Castle Valley Agreements," School and Institutional Trust Lands Administration, June 14, 2002.

<sup>80</sup> Wendy Fisher (Executive Director, Utah Open Lands), personal communication [email] with Stephanie Bertaina, December 16, 2005.

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<sup>81</sup> Wendy Fisher (Executive Director, Utah Open Lands), personal communication [mail] with Stephanie Bertaina, February 16, 2006.

<sup>82</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>83</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), telephone interview by Stephanie Bertaina and Eirin Krane, October 12, 2005; Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT; Richard Schwartz (Member of Planning and Zoning Commission, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>84</sup> Cris Coffey (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>85</sup> “The Climber’s Route,” *Castle Rock Collaboration Website*, <http://www.castlerockcollaboration.org.html> (website not currently available).

<sup>86</sup> Wendy Fisher (Executive Director, Utah Open Lands), personal communication [email] with Stephanie Bertaina, December 16, 2005.

<sup>87</sup> Wendy Fisher (Executive Director, Utah Open Lands), personal communication [mail] with Stephanie Bertaina, February 16, 2006.

<sup>88</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>89</sup> *Ibid.*; Catherine Howells (Water Agent, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT; Jerry Bidinger (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 17, 2005, Castle Valley, UT; Karen Nelson (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

Members of the Planning and Zoning Commission during the planning process included Catherine Howells (who was elected Chair of the Planning and Zoning Commission during the planning process), Brooke Williams, Richard Schwartz, Carl Anderson and Rick Lamb. The Town Council, which is composed of five members including the mayor who is one voting member, was comprised of Jerry Bidinger (starting in 2003 until the present), Karen Nelson, Bruce Keeler (mayor), Mark Anderson, Darr Hatch and Robert Ryan during the process.

<sup>90</sup> Catherine Howells (Water Agent, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>91</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>92</sup> Jerry Bidinger (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 17, 2005, Castle Valley, UT; Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>93</sup> Jerry Bidinger (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 17, 2005, Castle Valley, UT.

<sup>94</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT; Richard Schwartz (Member of Planning and Zoning

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Commission, Town of Castle Valley), personal communication [email] with Stephanie Bertaina, February 22, 2006.

<sup>95</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>96</sup> Catherine Howells (Water Agent, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>97</sup> Ibid.

<sup>98</sup> Karen Nelson (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>99</sup> Jerry Bidinger (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 17, 2005, Castle Valley, UT.

<sup>100</sup> John Andrews (Associate Director of Administration, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, School and Institutional Trust Lands Administration Office, Salt Lake City, UT.

<sup>101</sup> Richard Schwartz (Member of Planning and Zoning Commission, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>102</sup> Ibid.

<sup>103</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), telephone interview by Stephanie Bertaina and Eirin Krane, October 12, 2005.

<sup>104</sup> Marty Zeller (President, Conservation Partners), telephone interview by Stephanie Bertaina and Eirin Krane, September 28, 2005.

<sup>105</sup> Karen Nelson (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>106</sup> Catherine Howells (Water Agent, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT; Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>107</sup> Jerry Bidinger (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 17, 2005, Castle Valley, UT.

<sup>108</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>109</sup> Bruce Keeler (Mayor, Town of Castle Valley), personal communication [email] with Stephanie Bertaina, February 27, 2006.

<sup>110</sup> Ibid.

<sup>111</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>112</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), telephone interview by Stephanie Bertaina and Eirin Krane, October 12, 2005.

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<sup>113</sup> Jerry Bidinger (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 17, 2005, Castle Valley, UT.

<sup>114</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>115</sup> Ibid.

<sup>116</sup> Richard Schwartz (Member of Planning and Zoning Commission, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>117</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), personal communication [mail] with Stephanie Bertaina, February 24, 2006.

<sup>118</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>119</sup> Richard Schwartz (Member of Planning and Zoning Commission, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>120</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), personal communication [mail] with Stephanie Bertaina, February 24, 2006.

<sup>121</sup> Bruce Keeler (Mayor, Town of Castle Valley), personal communication [email] with Stephanie Bertaina, February 27, 2006.

<sup>122</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>123</sup> Catherine Howells (Water Agent, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>124</sup> Bruce Keeler (Mayor, Town of Castle Valley), personal communication [email] with Stephanie Bertaina, February 27, 2006.

<sup>125</sup> Catherine Howells (Water Agent, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>126</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), interview by Stephanie Bertaina and Eirin Krane, October 12, 2005.

<sup>127</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>128</sup> Ibid.

<sup>129</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), telephone interview by Stephanie Bertaina and Eirin Krane, October 12, 2005.

<sup>130</sup> Catherine Howells (Water Agent, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>131</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), personal communication [mail] with Stephanie Bertaina, February 24, 2006.

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<sup>132</sup> Catherine Howells (Water Agent, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>133</sup> Karen Nelson (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>134</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT; Marty Zeller (President, Conservation Partners), telephone interview by Stephanie Bertaina and Eirin Krane, September 28, 2005; Dave Erley (Southeastern Field Agent, Utah Open Lands), personal communication [email] with Stephanie Bertaina, January 2, 2006.

<sup>135</sup> Margaret Bird (Beneficiary Representative, State of Utah Office of Education), interview by Stephanie Bertaina and Eirin Krane, August 15, 2005, State of Utah Office of Education, Salt Lake City, UT.

<sup>136</sup> "Land Conservation Accomplishments," Utah Open Lands, <http://www.utahopenlands.org/accomplishments.html>.; Wendy Fisher (Executive Director, Utah Open Lands), personal communication [email] with Stephanie Bertaina, December 16, 2005.

<sup>137</sup> Wendy Fisher (Executive Director, Utah Open Lands), personal communication [email] with Stephanie Bertaina, December 16, 2005.

<sup>138</sup> John Andrews (Associate Director of Administration, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, School and Institutional Trust Lands Administration Office, Salt Lake City, UT.

<sup>139</sup> SITLA's third attempt at a land exchange involving the San Rafael Swell was unsuccessful due to controversy regarding land value appraisals. Culp, Conradi and Tuell, 144.; John Andrews (Associate Director of Administration, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, School and Institutional Trust Lands Administration Office, Salt Lake City, UT.

<sup>140</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>141</sup> John Andrews (Associate Director of Administration, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, School and Institutional Trust Lands Administration Office, Salt Lake City, UT; S. Con. Res. 4, 2005 Leg., Gen. Sess. (Utah, 2005).

<sup>142</sup> John Andrews (Associate Director of Administration, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, School and Institutional Trust Lands Administration Office, Salt Lake City, UT; S. Con. Res. 4, 2005 Leg., Gen. Sess. (Utah, 2005).

<sup>143</sup> The Utah Recreational Land Exchange Act of 2005 was introduced by Representative Chris Cannon (R-UT-3) in the House of Representatives (H.R.2069) and by Senator Robert Bennett (R-UT) in the Senate (S.1135). "Bill Summary and Status: H.R.2069," THOMAS, available at <http://thomas.loc.gov/>; "Bill Summary and Status: S.1135," Thomas, available at <http://thomas.loc.gov/>.

<sup>144</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>145</sup> Marty Zeller (President, Conservation Partners), telephone interview by Stephanie Bertaina and Eirin Krane, September 28, 2005.

<sup>146</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), telephone interview by Stephanie Bertaina and Eirin Krane, October 12, 2005.



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<sup>147</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>148</sup> John Andrews (Associate Director of Administration, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, School and Institutional Trust Lands Administration Office, Salt Lake City, UT.

<sup>149</sup> Richard Schwartz (Member of Planning and Zoning Commission, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>150</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>151</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), personal communication [mail] with Stephanie Bertaina, February 24, 2006.

<sup>152</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), telephone interview by Stephanie Bertaina and Eirin Krane, October 12, 2005.

<sup>153</sup> Ric McBrier (Assistant Director of Planning and Development, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 15, 2005, SITLA, Salt Lake City, UT.

<sup>154</sup> Wendy Fisher (Executive Director, Utah Open Lands), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, Utah Open Lands Office, Salt Lake City, UT.

<sup>155</sup> Karen Nelson (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>156</sup> Richard Schwartz (Member of Planning and Zoning Commission, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>157</sup> Jerry Bidinger (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 17, 2005, Castle Valley, UT.

<sup>158</sup> Marty Zeller (President, Conservation Partners), telephone interview by Stephanie Bertaina and Eirin Krane, September 28, 2005.

<sup>159</sup> Kevin Carter (Director, SITLA), interview by Stephanie Bertaina and Eirin Krane, July 26, 2005, Western States Land Commissioners Association Summer Conference, Great Divide Lodge, Breckenridge, CO.

<sup>160</sup> Catherine Howells (Water Agent, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>161</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>162</sup> Karen Nelson (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>163</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), personal communication [mail] with Stephanie Bertaina, February 24, 2006.

<sup>164</sup> Jerry Bidinger (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 17, 2005, Castle Valley, UT.

<sup>165</sup> Ibid.

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<sup>166</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>167</sup> Cris Coffey (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>168</sup> Jerry Bidinger (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 17, 2005, Castle Valley, UT.

<sup>169</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>170</sup> Ibid.

<sup>171</sup> Kevin Carter (Director, SITLA), interview by Stephanie Bertaina and Eirin Krane, July 26, 2005, Western States Land Commissioners Association Summer Conference, Great Divide Lodge, Breckenridge, CO.

<sup>172</sup> Jerry Bidinger (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 17, 2005, Castle Valley, UT.

<sup>173</sup> Cris Coffey (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>174</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>175</sup> Marty Zeller (President, Conservation Partners), telephone interview by Stephanie Bertaina and Eirin Krane, September 28, 2005.

<sup>176</sup> Ibid.

<sup>177</sup> Ric McBrier, "Memorandum to the Board of Trustees regarding Castle Valley Agreements," School and Institutional Trust Lands Administration, June 14, 2002; Marty Zeller (President, Conservation Partners), personal communication [mail] with Stephanie, Bertaina February 24, 2006.

<sup>178</sup> Catherine Howells (Water Agent, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>179</sup> Ric McBrier (Assistant Director of Planning and Development, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 15, 2005, SITLA, Salt Lake City, UT.

<sup>180</sup> Ibid.

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

<sup>183</sup> John Andrews (Associate Director of Administration, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, School and Institutional Trust Lands Administration Office, Salt Lake City, UT.

<sup>184</sup> Marty Zeller (President, Conservation Partners), telephone interview by Stephanie Bertaina and Eirin Krane, September 28, 2005.

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<sup>185</sup> Jerry Bidinger (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 17, 2005, Castle Valley, UT.

<sup>186</sup> Wendy Fisher (Executive Director, Utah Open Lands), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, Utah Open Lands Office, Salt Lake City, UT.

<sup>187</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), telephone interview by Stephanie Bertaina and Eirin Krane, October 12, 2005.

<sup>188</sup> Wendy Fisher (Executive Director, Utah Open Lands), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, Utah Open Lands Office, Salt Lake City, UT.

<sup>189</sup> Karen Nelson (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>190</sup> Ibid.

<sup>191</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>192</sup> Catherine Howells (Water Agent, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>193</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>194</sup> Cris Coffey (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>195</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>196</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

<sup>199</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), telephone interview by Stephanie Bertaina and Eirin Krane, October 12, 2005; Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT; Jason Keith (Policy Director, Access Fund), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Moab, UT.

<sup>200</sup> Marty Zeller (President, Conservation Partners), telephone interview by Stephanie Bertaina and Eirin Krane, September 28, 2005.

<sup>201</sup> Marty Zeller (President, Conservation Partners), personal communication [mail] with Stephanie, Bertaina February 24, 2006.

<sup>202</sup> John Andrews (Associate Director of Administration, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, School and Institutional Trust Lands Administration Office, Salt Lake City, UT.

<sup>203</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), personal communication [email] with Stephanie Bertaina, January 2, 2006.

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- <sup>204</sup> Ibid.
- <sup>205</sup> Ibid.
- <sup>206</sup> Ibid.
- <sup>207</sup> Ibid.
- <sup>208</sup> Ibid.
- <sup>209</sup> Marty Zeller (President, Conservation Partners), telephone interview by Stephanie Bertaina and Eirin Krane, September 28, 2005.
- <sup>210</sup> Wendy Fisher (Executive Director, Utah Open Lands), personal communication [email] with Stephanie Bertaina, December 16, 2005.
- <sup>211</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), personal communication [email] with Stephanie Bertaina, January 2, 2006.
- <sup>212</sup> Ibid.
- <sup>213</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), telephone interview by Stephanie Bertaina and Eirin Krane, October 12, 2005; Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.
- <sup>214</sup> Richard Schwartz (Member of Planning and Zoning Commission, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley Community Center, Castle Valley, UT.
- <sup>215</sup> Ric McBrier (Assistant Director of Planning and Development, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 15, 2005, SITLA, Salt Lake City, UT.
- <sup>216</sup> Wendy Fisher (Executive Director, Utah Open Lands), personal communication [email] with Stephanie Bertaina, December 16, 2005.
- <sup>217</sup> Ibid.
- <sup>218</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.
- <sup>219</sup> Wendy Fisher (Executive Director, Utah Open Lands), personal communication [email] with Stephanie Bertaina, December 16, 2005.
- <sup>220</sup> Ric McBrier (Assistant Director of Planning and Development, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 15, 2005, SITLA, Salt Lake City, UT.
- <sup>221</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), personal communication [email] with Stephanie Bertaina, January 2, 2006; Wendy Fisher (Executive Director, Utah Open Lands), personal communication [mail] with Stephanie Bertaina, February 16, 2006.
- <sup>222</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), personal communication [email] with Stephanie Bertaina, January 2, 2006.
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- <sup>225</sup> Jason Keith (Policy Director, Access Fund), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Moab, UT.
- <sup>226</sup> Wendy Fisher (Executive Director, Utah Open Lands), personal communication [mail] with Stephanie Bertaina, February 16, 2006.
- <sup>227</sup> Richard Schwartz (Member of Planning and Zoning Commission, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley Community Center, Castle Valley, UT.
- <sup>228</sup> Wendy Fisher (Executive Director, Utah Open Lands), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, Utah Open Lands Office, Salt Lake City, UT.
- <sup>229</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), telephone interview by Stephanie Bertaina and Eirin Krane, October 12, 2005.
- <sup>230</sup> Margaret Bird (Beneficiary Representative, State of Utah Office of Education), interview by Stephanie Bertaina and Eirin Krane, August 15, 2005, State of Utah Office of Education, Salt Lake City, UT.
- <sup>231</sup> Marty Zeller (President, Conservation Partners), telephone interview by Stephanie Bertaina and Eirin Krane, September 28, 2005.
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- <sup>233</sup> Marty Zeller (President, Conservation Partners), telephone interview by Stephanie Bertaina and Eirin Krane, September 28, 2005.
- <sup>234</sup> John Andrews (Associate Director of Administration, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 16, 2005, School and Institutional Trust Lands Administration Office, Salt Lake City, UT.
- <sup>235</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.
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- <sup>237</sup> Ric McBrier (Assistant Director of Planning and Development, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 15, 2005, SITLA, Salt Lake City, UT.
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<sup>243</sup> Cris Coffey (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

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<sup>245</sup> Cris Coffey (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

<sup>246</sup> Ibid.

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<sup>251</sup> Ibid.

<sup>252</sup> Ibid.

<sup>253</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

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<sup>256</sup> Marty Zeller (President, Conservation Partners), telephone interview by Stephanie Bertaina and Eirin Krane, September 28, 2005.

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- <sup>261</sup> Catherine Howells (Water Agent, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.
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<sup>293</sup> Ibid.

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<sup>299</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

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<sup>304</sup> Cris Coffey (Resident, Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley, UT.

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<sup>308</sup> Ibid.

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<sup>310</sup> Ibid.

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## CHAPTER 5

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<sup>1</sup> “Executive Summary,” *Draft Elliott State Forest Management Plan*, August 2005, Oregon Department of Forestry, available at <http://www.oregon.gov/ODF/index.shtml>.

<sup>2</sup> A complete list of acronyms can be found at the end of this case study.

<sup>3</sup> “Purpose, Planning and History: Executive Summary,” *Draft Elliott State Forest Management Plan*, August 2005, Oregon Department of Forestry, available at <http://www.oregon.gov/ODF/index.shtml>.

<sup>4</sup> At the time this research was gathered the Coho salmon was listed as threatened. However on January 17, 2006 the USFWS issues a ruling that all naturally spawned populations of Coho salmon in Oregon costal streams south of the Columbia River and north of Cape Blanco as well as artificial populations were no longer warranted listing as threatened species. The report is written from the perspective that the Coho salmon is still listed as threatened. For more information see: <http://www.nwr.noaa.gov/ESA-Salmon-Listings/Salmon-Populations/Coho/COORC.cfm>.

<sup>5</sup> The term “Common School Forest Land” is the designation for state trust lands in Oregon specific to forests. Other land types are generally referred to as Common School Lands.

<sup>6</sup> *Elliott State Forest Management Plan and Habitat Conservation Plan Revision*, October 7, 2005, Oregon Department of Forestry.

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<sup>7</sup> “Legal Context,” *Draft Elliott State Forest Habitat Conservation Plan*, August 2005, Oregon Department of Forestry, available at <http://www.oregon.gov/ODF/index.shtml>; “Constitution of Oregon: 2003 Version,” <http://www.leg.state.or.us/orcons/>.

<sup>8</sup> “Purpose, History and Planning,” *Elliott State Forest Management Plan Final 2006 Version*, Oregon Department of Forestry, [http://egov.oregon.gov/ODF/STATE\\_FORESTS/docs/ESF/Elliott\\_FMP/FMP\\_1.1\\_clean.pdf](http://egov.oregon.gov/ODF/STATE_FORESTS/docs/ESF/Elliott_FMP/FMP_1.1_clean.pdf).

<sup>9</sup> “Appendix J – Legal and Policy Mandates,” *Elliott State Forest Habitat Conservation Plan*, Oregon Department of Forestry, [http://www.oregon.gov/ODF/STATE\\_FORESTS/docs/management/hcp/J\\_legal.pdf](http://www.oregon.gov/ODF/STATE_FORESTS/docs/management/hcp/J_legal.pdf).

<sup>10</sup> 46 Or. Op. Att’y Gen. 468 (1992).

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> John Lilly (Asset Manager, DSL) personal communication [email] with Eirin Krane, March 22, 2006; 46 Or. Op. Att’y Gen. 468 (1992).

<sup>14</sup> 46 Or. Op. Att’y Gen. 468 (1992).

<sup>15</sup> “Appendix J – Legal and Policy Mandates,” *Elliott State Forest Habitat Conservation Plan*, Oregon Department of Forestry, [http://www.oregon.gov/ODF/STATE\\_FORESTS/docs/management/hcp/J\\_legal.pdf](http://www.oregon.gov/ODF/STATE_FORESTS/docs/management/hcp/J_legal.pdf).

<sup>16</sup> In the early 1990s, scientists discovered a cancer-fighting chemical extracted from the Pacific yew tree found in many northwest forests.

<sup>17</sup> 46 Or. Op. Att’y Gen. 468 (1992).

<sup>18</sup> “Legal Context,” *Draft Elliott State Forest Habitat Conservation Plan*, August 2005, Oregon Department of Forestry, available at <http://www.oregon.gov/ODF/index.shtml>.

<sup>19</sup> “Background and Summary,” *Elliott State Forest Management Plan and Habitat Conservation Plan Update*, November 21, 2005, Oregon Department of Forestry.

<sup>20</sup> “Legal Context,” *Draft Elliott State Forest Habitat Conservation Plan*, August 2005, Oregon Department of Forestry, available at <http://www.oregon.gov/ODF/index.shtml>.

<sup>21</sup> See Endangered Species Act § 2(a)(5)(b), cited in *Ibid.*

<sup>22</sup> See Endangered Species Act § 10(a)(1)(B), cited in “Legal Context,” *Draft Elliott State Forest Habitat Conservation Plan*, August 2005, Oregon Department of Forestry, available at <http://www.oregon.gov/ODF/index.shtml>.

<sup>23</sup> *Ibid.*

<sup>24</sup> “Appendix J – Legal and Policy Mandates,” *Elliott State Forest Habitat Conservation Plan*, Oregon Department of Forestry, [http://www.oregon.gov/ODF/STATE\\_FORESTS/docs/management/hcp/J\\_legal.pdf](http://www.oregon.gov/ODF/STATE_FORESTS/docs/management/hcp/J_legal.pdf).

<sup>25</sup> See ORS 530.050, cited in “Appendix D – Legal and Policy Mandates,” *Elliott State Forest Management Plan*, 2006, Oregon Department of Forestry, [http://www.oregon.gov/ODF/STATE\\_FORESTS/docs/ESF/Elliott\\_FMP/FMP\\_D\\_clean.pdf](http://www.oregon.gov/ODF/STATE_FORESTS/docs/ESF/Elliott_FMP/FMP_D_clean.pdf).

<sup>26</sup> *Ibid.*

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<sup>27</sup> See ORS 527.630(1), cited in *Ibid.*

<sup>28</sup> Branches and other residue left on a forest floor after the cutting of timber.

<sup>29</sup> “Legal Context,” *Draft Elliott State Forest Habitat Conservation Plan*, August 2005, Oregon Department of Forestry, available at <http://www.oregon.gov/ODF/index.shtml>.

<sup>30</sup> Steven L. Yaffee, *The Wisdom of the Spotted Owl* (Washington, D.C.: Island Press, 1994).

<sup>31</sup> “The spotted owl prevails,” *Time*, May 15, 1989, 39.

<sup>32</sup> Ted Gulp, “Owl vs. Man: In the Northwest’s Battle over Logging Jobs are at Stake, but so are Irreplaceable Ancient Forests,” *Time*, June 25, 1990, 56(8).

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> Michael Lemonick, “Showdown in the Treetops: Conservation Activists Stage High Altitude Sit-in To Save the Ancient Forests,” *Time*, August 28, 1989, 58(2).

<sup>36</sup> Ted Gulp, “Owl vs. Man: In the Northwest’s Battle over Logging Jobs are at Stake, but so are Irreplaceable Ancient Forests,” *Time*, June 25, 1990, 56(8); “Environment’s Little Big Bird,” *Time*, April 16, 1990, 21.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> Peter Sleeth “How many jobs you say?” *The Oregonian*, May 21, 1995.

<sup>40</sup> “Study Shows Timber Income Important to Southwest Oregon,” *Expectations*, January 2002, Oregon Department of Forestry.

<sup>41</sup> “About the Agency,” Department of State Lands, [www.oregon.gov/DSL/adminoverview.shtml](http://www.oregon.gov/DSL/adminoverview.shtml).

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> “Elliott Became the First Oregon State Forest in 1930,” *Expectations*, September 2002, Oregon Department of Forestry.

<sup>48</sup> “About the Agency,” Department of State Lands, [www.oregon.gov/DSL/adminoverview.shtml](http://www.oregon.gov/DSL/adminoverview.shtml).

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

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<sup>52</sup> From this point on in the report, the acronym DSL will refer to the Department of State Lands unless otherwise noted.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> “About the Common School Fund,” Department of State Lands, <http://www.oregon.gov/DSL/DO/aboutcsf.shtml>.

<sup>56</sup> John Lilly (Assistant Director for Policy and Planning, Department of State Lands), interview by Eirin Krane and Drew Vankat, August 22, 2005, DSL, Salem, OR.

<sup>57</sup> “About the Agency,” Department of State Lands, [www.oregon.gov/DSL/adminoverview.shtml](http://www.oregon.gov/DSL/adminoverview.shtml).

<sup>58</sup> “Protecting Oregon’s Natural and Fiscal Resources,” Oregon Department of State Lands Brochure, April 2005.

<sup>59</sup> “Property Management Activities,” Department of State Lands, <http://www.oregon.gov/DSL>.

<sup>60</sup> “Protecting Oregon’s Natural and Fiscal Resources,” Oregon Department of State Lands Brochure, April 2005.

<sup>61</sup> “Property Management Activities,” Department of State Lands, <http://www.oregon.gov/DSL>.

<sup>62</sup> John Lilly (Assistant Director Wetlands & Waterways Conservation Division, DSL), personal communication [mail] with Eirin Krane, February 28, 2006.

<sup>63</sup> “Purpose, Planning and History: Executive Summary,” *Draft Elliott State Forest Management Plan*, August 2005, Oregon Department of Forestry, available at <http://www.oregon.gov/ODF/index.shtml>.

<sup>64</sup> “Oregon Department of State Lands: Protecting Oregon’s Natural and Fiscal Resources,” Oregon Department of State Lands Brochure, April 2005.

<sup>65</sup> “Purpose, Planning and History: Executive Summary,” *Draft Elliott State Forest Management Plan*, August 2005, Oregon Department of Forestry, available at <http://www.oregon.gov/ODF/index.shtml>.

<sup>66</sup> “Appendix J – Legal and Policy Mandates,” *Elliott State Forest Habitat Conservation Plan*, Oregon Department of Forestry, [http://www.oregon.gov/ODF/STATE\\_FORESTS/docs/management/hcp/J\\_legal.pdf](http://www.oregon.gov/ODF/STATE_FORESTS/docs/management/hcp/J_legal.pdf).

<sup>67</sup> Francis Eatherington (Forest Monitor, Umpqua Watersheds, Inc.) interview by Eirin Krane and Drew Vankat, August 25, 2005, Umpqua Watersheds, Inc, Roseburg, OR.

<sup>68</sup> A board foot is equivalent to 144 cubic inches of wood.

<sup>69</sup> In 2003, the agency was re-named the Department of State Lands

<sup>70</sup> “Executive Summary,” *Elliott State Forest Management Plan Final 2006 Version*, Oregon Department of Forestry.

<sup>71</sup> *Elliott State Forest Forest Management Plan and Habitat Conservation Plan Update*, Oregon Department of Forestry, November 21, 2005.

<sup>72</sup> Ibid.

<sup>73</sup> Dan Shults (Southern Oregon Area Director, Southern Oregon Area, Oregon Department of Forestry), interview by Eirin Krane and Drew Vankat, August 24, 2005, ODF, Roseburg, OR.

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<sup>74</sup> Ibid.

<sup>75</sup> “Purpose, Planning and History: Executive Summary,” *Draft Elliott State Forest Management Plan*, August 2005, Oregon Department of Forestry, available at <http://www.oregon.gov/ODF/index.shtml>.

<sup>76</sup> Dan Shults (Southern Oregon Area Director, Southern Oregon Area, Oregon Department of Forestry), interview by Eirin Krane and Drew Vankat, August 24, 2005, ODF, Roseburg, OR.

<sup>77</sup> Dan Shults (Southern Oregon Area Director, Southern Oregon Area, Oregon Department of Forestry), personal communication [mail] with Eirin Krane, February 8, 2006.

<sup>78</sup> Dan Shults (Southern Oregon Area Director, Southern Oregon Area, Oregon Department of Forestry), interview by Eirin Krane and Drew Vankat, August 24, 2005, ODF, Roseburg, OR.

<sup>79</sup> “Planning Starts Again to Take Broad Look at Elliott State Forest Resources,” *Expectations*, Oregon Department of Forestry, May 2001.

<sup>80</sup> “Legal Context,” *Draft Elliott State Forest Habitat Conservation Plan*, August 2005, Oregon Department of Forestry, available at <http://www.oregon.gov/ODF/index.shtml>.

<sup>81</sup> “Habitat Conservation Plans: Section 10 of the Endangered Species Act,” U.S. Fish and Wildlife Service, <http://www.fws.gov/endangered/hcp/>.

<sup>82</sup> Ibid.

<sup>83</sup> “Legal Context,” *Draft Elliott State Forest Habitat Conservation Plan*, August 2005, Oregon Department of Forestry, available at <http://www.oregon.gov/ODF/index.shtml>.

<sup>84</sup> “Habitat Conservation Plans: Section 10 of the Endangered Species Act,” U.S. Fish and Wildlife Service, <http://www.fws.gov/endangered/hcp/>.

<sup>85</sup> Ibid.

<sup>86</sup> *Project Plan: Elliott State Forest Management Plan and Habitat Conservation Plan Revision*, Oregon Department of Forestry.

<sup>87</sup> “Purpose, Planning and History: Executive Summary,” *Draft Elliott State Forest Management Plan*, August 2005, Oregon Department of Forestry, available at <http://www.oregon.gov/ODF/index.shtml>.

<sup>88</sup> Dan Shults (Southern Oregon Area Director, Southern Oregon Area, Oregon Department of Forestry), interview by Eirin Krane and Drew Vankat, August 24, 2005, ODF, Roseburg, OR.

<sup>89</sup> “Understanding the Forest: Planning and Resources,” *Elliott State Forest Management Plan Final 2006 Version*, Oregon Department of Forestry, [http://egov.oregon.gov/ODF/STATE\\_FORESTS/docs/ESF/Elliott\\_FMP/FMP\\_2.1\\_clean.pdf](http://egov.oregon.gov/ODF/STATE_FORESTS/docs/ESF/Elliott_FMP/FMP_2.1_clean.pdf).

<sup>90</sup> “Species profile for Coho salmon,” U.S. Fish and Wildlife Service, [http://ecos.fws.gov/species\\_profile/servlet/gov.doi.species\\_profile.servlets.SpeciesProfile?spcode=E08A](http://ecos.fws.gov/species_profile/servlet/gov.doi.species_profile.servlets.SpeciesProfile?spcode=E08A).

<sup>91</sup> Jim Young (Coos District Forester, Oregon Department of Forestry), personal communication [telephone] with Eirin Krane, January 11, 2006.

<sup>92</sup> *Elliott State Forest Forest Management Plan and Habitat Conservation Plan Update*, November 21, 2005, Oregon Department of Forestry.

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<sup>93</sup> Dan Shults (Southern Oregon Area Director, Southern Oregon Area, Oregon Department of Forestry), interview by Eirin Krane and Drew Vankat, August 24, 2005, ODF, Roseburg, OR.

<sup>94</sup> “Planning Starts Again to Take Broad Look at Elliott State Forest Resources,” *Expectations*, May 2001, Oregon Department of Forestry; Jim Young (Coos District Forester, Oregon Department of Forestry), personal communication [telephone] with Eirin Krane, January 11, 2006

<sup>95</sup> See H.R. Rep. No. 97-835 (1982) and 50 Fed. Reg. 39681-39691, cited in “Legal Context,” *Draft Elliott State Forest Habitat Conservation Plan*, August 2005, Oregon Department of Forestry, available at <http://www.oregon.gov/ODF/index.shtml>.

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## CHAPTER 6

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- <sup>39</sup> Beverly Rave (Northwest District Manager, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, August 5, 2005, Denver, CO.
- <sup>40</sup> Charles D. Foster, "Draft Planning Report: Emerald Mountain, Routt County, Colorado." Prepared for the State Board of Land Commissioners, October 31, 1995, 18.
- <sup>41</sup> Ibid., 22; Beverly Rave (Northwest District Manager, Colorado State Land Board), personal communication with Lisa Spalding.



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- <sup>42</sup> Beverly Rave (Northwest District Manager, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, August 5, 2005, Denver, CO.
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- <sup>46</sup> Beverly Rave (Northwest District Manager, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, August 5, 2005, Denver, CO.
- <sup>47</sup> Ben Beall, "History of the Conservation Efforts of Emerald Mountain and Surrounding Lands," White Paper, 2-3.
- <sup>48</sup> Bedford, 348-51; Heather Abel, "State Lands: Money isn't Everything," *High Country News*, June 24, 1996, [http://www.hcn.org/servlets/hcn.Article?article\\_id=1942](http://www.hcn.org/servlets/hcn.Article?article_id=1942).
- <sup>49</sup> Bedford, 350.
- <sup>50</sup> *Ibid.*
- <sup>51</sup> Jim Stanko (Rancher), interview by Lisa Spalding and Matt Stout, August 3, 2005, Steamboat Springs, CO.
- <sup>52</sup> Charles Bedford (former Director, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, July 26, 2005, Great Divide Lodge, Breckenridge, CO.
- <sup>53</sup> *Branson School Dist. RE-82 v. Romer*, 161 F.3d 619 (10<sup>th</sup> Cir. 1998).
- <sup>54</sup> Charles Bedford (former Director, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, July 26, 2005, Great Divide Lodge, Breckenridge, CO.
- <sup>55</sup> Peter W. Culp, Diane B. Conradi and Cynthia C. Tuell *Trust Lands in the American West: A Legal Overview and Policy Assessment*. A Policy Assessment Report of the Lincoln Institute of Land Policy / Sonoran Institute Joint Venture on State Trust Lands, 2005, 73.; Colo. Const. Art. 9 §§ 3, 9, and 10.
- <sup>56</sup> Beverly Rave (Northwest District Manager, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, August 5, 2005, Denver, CO.
- <sup>57</sup> Colo. Const. Art. 9 §§ 3, 9, and 10.
- <sup>58</sup> The photos show Governor Romer actually pointing to Howelson Hill and portions of Emerald Mountain owned by private individuals and the city of Steamboat Springs. The state trust land parcel is actually on the opposite side of the mountain, and is not visible from the downtown area, including the Community College campus where he was standing. These photos illustrate the general lack of community awareness about which portion of the mountain were actually state-owned.
- <sup>59</sup> Susan Otis (Executive Director, Yampa Valley Land Trust), interview by Lisa Spalding and Matt Stout, August 3, 2005, Yampa Valley Land Trust Office, Steamboat Springs, CO..
- <sup>60</sup> Jim Stanko (Rancher), interview by Lisa Spalding and Matt Stout, August 3, 2005, Steamboat Springs, CO.
- <sup>61</sup> Beverly Rave (Northwest District Manager, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, August 5, 2005, Denver, CO.

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<sup>62</sup> Ben Beall, “History of the Conservation Efforts of Emerald Mountain and Surrounding Lands,” White Paper, 5.

<sup>63</sup> Ibid.

<sup>64</sup> Ben Beall (Chairman, Emerald Mountain Partnership), interview by Lisa Spalding and Matt Stout, August 2, 2005, Steamboat Springs, CO.

<sup>65</sup> Ibid.

<sup>66</sup> Later resigned and was replaced by Bud Romberg, Routt County appointee.

<sup>67</sup> Later resigned and joined Advisory Committee. His position on the Board was replaced by Paul Sachs, citizen.

<sup>68</sup> Replaced Bob Enever when he resigned. Sally Wither was later replaced by Les Liman, businessman and City Council appointee. When Les Limon resigned, the City replaced him with Gretchen Sehler, Routt County Riders.

<sup>69</sup> Was joined by Valerie Masiello of the Colorado DOW when Libby Miller was transferred to a different wildlife area.

<sup>70</sup> Beverly Rave (Northwest District Manager, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, August 5, 2005, Denver, CO.

<sup>71</sup> Ibid.

<sup>72</sup> “Emerald Mountain Partnership Exchange Selection Guidelines,” March 17, 2003, Emerald Mountain Partnership, available at <http://www.emeraldmountain.org/>.

<sup>73</sup> Emerald Mountain Project Memorandum of Agreement, August 8, 2000, available at <http://www.emeraldmountain.org/>.

<sup>74</sup> Ben Beall, “History of the Conservation Efforts of Emerald Mountain and Surrounding Lands,” White Paper, 6.

<sup>75</sup> Gary E. Salazar, “Emerald Mountain group changes its direction,” *Steamboat Pilot*, October 9, 2001.

<sup>76</sup> Ben Beall (Chairman, Emerald Mountain Partnership), interview by Lisa Spalding and Matt Stout, August 2, 2005, Steamboat Springs, CO.

<sup>77</sup> Ben Beall, “History of the Conservation Efforts of Emerald Mountain and Surrounding Lands,” White Paper, 6.

<sup>78</sup> Susan Otis (Executive Director, Yampa Valley Land Trust), interview by Lisa Spalding and Matt Stout, August 3, 2005, Yampa Valley Land Trust Office, Steamboat Springs, CO.

<sup>79</sup> Jim Stanko (Rancher), interview by Lisa Spalding and Matt Stout, August 3, 2005, Steamboat Springs, CO; Ben Beall (Chairman, Emerald Mountain Partnership), interview by Lisa Spalding and Matt Stout, August 2, 2005, Steamboat Springs, CO.

<sup>80</sup> Ibid.

<sup>81</sup> Emerald Mountain Partnership Meeting Minutes, February 4, 2002, available at <http://www.emeraldmountain.org/>

<sup>82</sup> Tim Wohlgenant (Western Land Group), telephone interview by Lisa Spalding and Matt Stout, August 25, 2005.

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<sup>83</sup> Susan Otis (Executive Director, Yampa Valley Land Trust), interview by Lisa Spalding and Matt Stout, August 3, 2005, Yampa Valley Land Trust Office, Steamboat Springs, CO.

<sup>84</sup> Ibid.

<sup>85</sup> Tim Wohlgenant (Western Land Group), telephone interview by Lisa Spalding and Matt Stout, August 25, 2005.

<sup>86</sup> Ibid.

<sup>87</sup> “Emerald Mountain Land Exchange Proposal: A proposal for the exchange of land and monies between the Bureau of Land Management, the Colorado State Land Board, and private entities,” February 2004, Emerald Mountain Partnership, available at [www.emeraldmountain.org](http://www.emeraldmountain.org).

<sup>88</sup> Paul Strong (Steamboat Springs City Council), interview by Lisa Spalding and Matt Stout, August 2, 2005, Steamboat Springs, CO.

<sup>89</sup> Libbie Miller (District Wildlife Manger, Colorado Division of Wildlife), interview by Lisa Spalding and Matt Stout, August 3, 2005, Colorado Division of Wildlife Area 10 Office, Steamboat Springs, CO.

<sup>90</sup> Second Amendment to Emerald Mountain Project Memorandum of Agreement, January 21, 2004, available at [www.emeraldmountain.org](http://www.emeraldmountain.org).

<sup>91</sup> Dwayne Johnson (Bureau of Land Management Little Snake Field Office), interview by Lisa Spalding and Matt Stout, August 1, 2005, Bureau of Land Management Little Snake Field Office, Craig, CO.

<sup>92</sup> Tim Wohlgenant (Western Land Group), telephone interview by Lisa Spalding and Matt Stout, August 25, 2005.

<sup>93</sup> Dwayne Johnson (Bureau of Land Management Little Snake Field Office), interview by Lisa Spalding and Matt Stout, August 1, 2005, Bureau of Land Management Little Snake Field Office, Craig, CO.

<sup>94</sup> Martha Drake (Chris) Young (Psychologist), interview by Lisa Spalding and Matt Stout, August 3, 2005, Steamboat Springs, CO.

<sup>95</sup> Susan Otis (Executive Director, Yampa Valley Land Trust), interview by Lisa Spalding and Matt Stout, August 3, 2005, Yampa Valley Land Trust Office, Steamboat Springs, CO.

<sup>96</sup> Paul Strong (Steamboat Springs City Council), interview by Lisa Spalding and Matt Stout, August 2, 2005, Steamboat Springs, CO.

<sup>97</sup> Beverly Rave (Northwest District Manager, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, August 5, 2005, Denver, CO.

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<sup>99</sup> Ibid.

<sup>100</sup> Beverly Rave (Northwest District Manager, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, August 5, 2005, Denver, CO.

<sup>101</sup> Charles Bedford (former Director, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, July 26, 2005, Great Divide Lodge, Breckenridge, CO.

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<sup>102</sup> Beverly Rave (Northwest District Manager, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, August 5, 2005, Denver, CO.

<sup>103</sup> Ibid.

<sup>104</sup> Jim McBrayer (Bureau of Land Management Little Snake Field Office), interview by Lisa Spalding and Matt Stout, August 1, 2005, Bureau of Land Management Little Snake Field Office, Craig, CO.

<sup>105</sup> Charles Bedford (former Director, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, July 26, 2005, Great Divide Lodge, Breckenridge, CO.

<sup>106</sup> Ibid.

<sup>107</sup> Beverly Rave (Northwest District Manager, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, August 5, 2005, Denver, CO.

<sup>108</sup> Ibid.

<sup>109</sup> Ben Beall (Chairman, Emerald Mountain Partnership), interview by Lisa Spalding and Matt Stout, August 2, 2005, Steamboat Springs, CO.

<sup>110</sup> Libbie Miller (District Wildlife Manger, Colorado Division of Wildlife), interview by Lisa Spalding and Matt Stout, August 3, 2005, Colorado Division of Wildlife Area 10 Office, Steamboat Springs, CO.

<sup>111</sup> Ibid.

<sup>112</sup> Martha Drake (Chris) Young (Psychologist), interview by Lisa Spalding and Matt Stout, August 3, 2005, Steamboat Springs, CO.

<sup>113</sup> Joanne Stanko (Rancher), interview by Lisa Spalding and Matt Stout, August 3, 2005, Steamboat Springs, CO.

<sup>114</sup> Charles Bedford (former Director, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, July 26, 2005, Great Divide Lodge, Breckenridge, CO.

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<sup>118</sup> Ibid.

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<sup>120</sup> Charles Bedford (former Director, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, July 26, 2005, Great Divide Lodge, Breckenridge, CO.

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<sup>122</sup> Ben Beall, "History of the Conservation Efforts of Emerald Mountain and Surrounding Lands," White Paper, 3.

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<sup>125</sup> Arthur Kane, "Public-land swaps reveal firm's clout. Some question fees, fairness." *The Denver Post*, November 7, 2003.

<sup>126</sup> Martha Drake (Chris) Young (Psychologist), interview by Lisa Spalding and Matt Stout, August 3, 2005, Steamboat Springs, CO..

<sup>127</sup> Beverly Rave (Northwest District Manager, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, August 5, 2005, Denver, CO.

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<sup>131</sup> Ibid.

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<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

<sup>139</sup> Susan Otis (Executive Director, Yampa Valley Land Trust), interview by Lisa Spalding and Matt Stout, August 3, 2005, Yampa Valley Land Trust Office, Steamboat Springs, CO.

<sup>140</sup> Dwayne Johnson (Bureau of Land Management Little Snake Field Office), interview by Lisa Spalding and Matt Stout, August 1, 2005, Bureau of Land Management Little Snake Field Office, Craig, CO.

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<sup>142</sup> Ben Beall (Chairman, Emerald Mountain Partnership), interview by Lisa Spalding and Matt Stout, August 2, 2005, Steamboat Springs, CO.

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## CHAPTER 7

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<sup>3</sup> NM-Ariz. Enabling Act, 36 Stat. 557, § 24 (1910).

<sup>4</sup> “State Trust Land at a Glance,” 2003, Arizona State Trust Land Department, <http://www.land.state.az.us/news/2002/ataglance.htm>.

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<sup>7</sup> Culp, Conradi and Tuell, 62.

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<sup>10</sup> Ariz. Const. Art. X.

<sup>11</sup> Culp, Conradi and Tuell, 63.

<sup>12</sup> Ariz. State Land Dep’t v. Superior Court In and For Cochise, 633 P.2d 330 (Ariz. 1981); city of Sierra Vista v. Babbitt, 633 P.2d 333 (Ariz. 1981); Fain Land & Cattle Co. v. Hassell, 790 P.2d 242 (Ariz. 1990); Lassen v. Ariz. ex rel. Ariz. State Highway Dep’t, 385 U.S. 458 (1967)

<sup>13</sup> “State Land Department Historical Overview,” Arizona State Land Department, <http://www.land.state.az.us/history.htm>.

<sup>14</sup> “Arizona State Land Department Organizational Chart,” Arizona State Land Department, <http://www.land.state.az.us/divisions/OrgChart.pdf>.

<sup>15</sup> Ariz. Rev. Stat. §§ 37-214, 37-215 (2006).

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<sup>20</sup> Mark Winkleman (Commissioner, Arizona State Trust Land Department), interview by Alden Boetsch and Jessica Mitchell, August 2, 2005, Phoenix, AZ.



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<sup>21</sup> “2005 State and County QuickFacts: Arizona,” U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/04000.html>.

<sup>22</sup> The Urban Lands Act is codified at Ariz. Rev. Stat. §§ 37-331, 37-331.01, 37-332, 37-335.01, 37-336 and 37-338 (2006).

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<sup>24</sup> Ariz. Rev. Stat. § 37-331.03 (2006).

<sup>25</sup> *Ibid.*

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<sup>29</sup> “State Land Department Programs: Arizona Preserve Initiative Program,” Arizona State Land Department, <http://www.land.state.az.us/programs/operations/api.htm>.

<sup>30</sup> Ariz. Rev. Stat. § 37-281 *et seq.* (2006).

<sup>31</sup> Ariz. Rev. Stat. § 37-316 (2006).

<sup>32</sup> *Ibid.*

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<sup>34</sup> Michael Wyneken (Principal Planner, city of Tucson, Department of Urban Planning and Design), interview by Alden Boetsch and Jessica Mitchell, August 4, 2005, Tucson, AZ.

<sup>35</sup> Albert Elias (Director, city of Tucson, Department of Urban Planning and Design), interview by Alden Boetsch and Jessica Mitchell, August 4, 2005, Tucson, AZ.

<sup>36</sup> Ron Ruziska (Director, Southern Arizona Office, Arizona State Land Department), interview by Alden Boetsch and Jessica Mitchell, August 5, 2005, Tucson, AZ.

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<sup>38</sup> Andy Laurenzi (Director, State Trust Lands Program, Sonoran Institute), interview by Alden Boetsch and Jessica Mitchell, August 1, 2005, Tucson, AZ.

<sup>39</sup> Ariz. Rev. Stat. § 37-331.03(A)(3) (2006).

<sup>40</sup> Ariz. Rev. Stat. § 11-821(A) (2006).

<sup>41</sup> Mark Winkleman (Commissioner, Arizona State Trust Land Department) interview by Alden Boetsch and Jessica Mitchell, August 2, 2005, Phoenix, AZ.

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<sup>42</sup> Greg Keller (Project Manager, Planning Section, Real Estate Division, Arizona State Land Department), interview by Alden Boetsch and Jessica Mitchell, August 2, 2005, Phoenix, AZ.

<sup>43</sup> Ibid.

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<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> “Welcome to Northern Pima County, Arizona!” Northern Pima County Chamber of Commerce, 2003, <http://www.the-chamber.com/welcome.htm>.

<sup>49</sup> Tucson’s population grew from 405,390 people in 1990 to an estimated 512,023 people in 2004. U.S. Census Bureau, available at <http://www.census.gov/>.

<sup>50</sup> “city of Tucson, Arizona: City Strategic Plan, Fiscal Years 2005 and 2006,” city of Tucson, 3, <http://www.tucsonaz.gov/pdf/finalcsp2.pdf>.

<sup>51</sup> Ibid, 1.

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<sup>54</sup> “Future Community is Now,” *Arizona Daily Star*, April 17, 1999, The Principles of New Urbanism, [www.newurbanism.org](http://www.newurbanism.org).

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<sup>58</sup> “Asset Management Division,” Arizona State Land Department, <http://www.land.state.az.us/programs/realestate/sections/techsupport.htm#planning>.

<sup>59</sup> “State Land Department Awards Planning Contract to Tucson Consortium: Growing Smarter Legislation Begins to Take Effect,” Diamond Ventures, Inc. Press Release, September 23, 1999, [http://www.diamondventures.com/pr\\_092399.htm](http://www.diamondventures.com/pr_092399.htm).

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<sup>70</sup> Shirley Scott (Councilmember, Ward Four, city of Tucson), telephone interview by Alden Boetsch and Jessica Mitchell, August 30, 2005.

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<sup>78</sup> Houghton Area Master Plan Citizens Review Committee Meeting Summary, August 12, 2003.

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<sup>87</sup> *Houghton Area Master Plan*, city of Tucson Department of Urban Planning and Design, <http://www.tucsonaz.gov/planning/plans/all/hamp.pdf>, 3.

<sup>88</sup> "Response to Questions and Requests from March 11, 2003 Citizens Review Committee Meeting," city of Tucson Department of Urban Planning and Design.

<sup>89</sup> Houghton Area Master Plan Citizens Review Committee Meeting Summary, March 11, 2003.

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<sup>113</sup> Ibid, 7.

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## CHAPTER 8

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

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

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

<sup>25</sup> “State Lands: Lake Whatcom History,” Conservation Northwest, [http://www.conservationnw.org/Statelands/lakewhatcom\\_history.html](http://www.conservationnw.org/Statelands/lakewhatcom_history.html).

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

<sup>27</sup> Clare Fogelson (Environmental Resources Manager, city of Bellingham), interview by Alden Boetsch and Matt Stout, August 8, 2005, City Hall, Bellingham, WA.

<sup>28</sup> “Causes of Water Quality Problems,” Lake Whatcom Management Program, <http://lakewhatcom.wsu.edu/pdfs/Quality.pdf>.

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

<sup>30</sup> Bill McCourt (General Manager, Lummi Tribal Water and Sewer District), interview by Alden Boetsch and Matt Stout, August 8, 2005, Lummi Tribal Water and Sewer District, Lummi Nation, WA.

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

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<sup>40</sup> Ibid.

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<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> ESSB. 6731, 2000 Leg., 56th Sess. (Wash. 2000).

<sup>50</sup> Ibid.

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

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

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

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

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

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## CHAPTER 9

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## CHAPTER 10

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<sup>1</sup> 1848 – Under the Treaty of Guadalupe Hidalgo

<sup>2</sup> 1898 – Under the Ferguson Act

<sup>3</sup> New Mexico State Land Office Pamphlet (on file with author).

<sup>4</sup> Through the approval of the Ferguson Act.

<sup>5</sup> The current nine million surface acres of state trust land equals 11.6 percent of total land in the state. Strategic land swaps have also resulted in state trust lands often being valuable land.

<sup>6</sup> New Mexico State Land Office Pamphlet (on file with author).

<sup>7</sup> This disparity is the result of surface acreage that was sold outright in the 1950s by a past commissioner, a practice considered in violation of the trust's long-term fiduciary viability and thus responsibility. Rather, state trust lands may be exchanged with other lands of equal or greater value.

<sup>8</sup> Jim Baca (Former Commissioner of Public Lands, New Mexico State Land Office), interview by Emily Kelly and Drew Vankat, August 16, 2005, Albuquerque, NM.

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<sup>10</sup> "Where States Rank," Education Week, Editorial Projects in Education Inc., available at <http://www.edweek.org/rc/index.html>.

<sup>11</sup> *New Mexico State Land Office 2004 Annual Report*, p. 12, available at <http://www.nmstatelands.org/>.

<sup>12</sup> Patrick H. Lyons (Commissioner of Public Lands, New Mexico State Land Office), interview by Stephanie Bertaina and Emily Kelly, July 25, 2005, Western States Land Commissioners Association

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<sup>16</sup> New Mexico State Land Office Pamphlet (on file with author).

<sup>17</sup> Bob Findling (Director of Conservation Projects, The Nature Conservancy), interview by Stephanie Bertaina and Emily Kelly, August 24, 2005, TNC, Santa Fe, NM.

<sup>18</sup> “Milnesand Prairie Preserve,” The Nature Conservancy, <http://nature.org/wherework/northamerica/states/newmexico/preserves/art14597.html>; “Lesser Prairie-Chicken,” Audobon <http://audubon2.org/webapp/watchlist/viewSpecies.jsp?id=122>; “Lesser Prairie-Chicken,” Patuxent Wildlife Research Center- Migratory Bird Research, <http://www.mbr-pwrc.usgs.gov/bbs/grass/a3070.htm>.

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<sup>23</sup> David Coss (Director of Field Operations, New Mexico State Land Office), interview by Stephanie Bertaina and Emily Kelly, August 22, 2005, SLO, Santa Fe, NM.

<sup>24</sup> Ibid.

<sup>25</sup> Rand French (Biologist, Marbob Energy), interview by Stephanie Bertaina and Emily Kelly, August 26, 2005, Mack Energy Corporation, Roswell, NM; Roger Peterson (Ecologist, New Mexico Natural History Institute and Sierra Club) personal correspondence with Emily Kelly, February 27, 2006.

<sup>26</sup> Roger Peterson (Ecologist, New Mexico Natural History Institute and Sierra Club) personal correspondence with Emily Kelly, February 27, 2006.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Staci Matlock, “State recommends no new species be placed on endangered list,” *The New Mexican*, July 25, 2004.

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- <sup>32</sup> Bill Dunn (Predator and Gamebird Biologist, New Mexico Department of Game and Fish) interview by Stephanie Bertaina and Emily Kelly, August 23, 2005, Frontier Restaurant, Albuquerque, NM.
- <sup>33</sup> Rand French (Biologist, Marbob Energy), interview by Stephanie Bertaina and Emily Kelly, August 26, 2005, Mack Energy Corporation, Roswell, NM.
- <sup>34</sup> *Ibid.*; Roger Peterson (Ecologist, New Mexico Natural History Institute and Sierra Club) personal correspondence with Emily Kelly, February 27, 2006.
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- <sup>38</sup> *Ibid.*
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- <sup>40</sup> Bill Dunn (Predator and Gamebird Biologist, New Mexico Department of Game and Fish) interview by Stephanie Bertaina and Emily Kelly, August 23, 2005, Frontier Restaurant, Albuquerque, NM.
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<sup>58</sup> Ibid.

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- <sup>111</sup> Shawn Knox (Wildlife biologist, New Mexico State Land Office), interview by Stephanie Bertaina and Emily Kelly, August 22, 2005, SLO, Santa Fe, NM.
- <sup>112</sup> Jennifer Parody, (Conservation Biologist, US Fish and Wildlife Service), interview by Stephanie Bertaina and Emily Kelly, August 22, 2005, RB Winnings, Albuquerque, NM.
- <sup>113</sup> Jim Bailey (Biologist), telephone interview by Stephanie Bertaina and Emily Kelly, November 13, 2005.
- <sup>114</sup> Ibid.
- <sup>115</sup> Bob Findling (Director of Conservation Projects, The Nature Conservancy), correspondence with Emily Kelly, February 28, 2006.
- <sup>116</sup> Bill Dunn (Predator and Gamebird Biologist, New Mexico Department of Game and Fish) interview by Stephanie Bertaina and Emily Kelly, August 23, 2005, Frontier Restaurant, Albuquerque, NM.
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- <sup>119</sup> Ibid.
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- <sup>121</sup> Patrick H. Lyons (Commissioner of Public Lands, New Mexico State Land Office), interview by Stephanie Bertaina and Emily Kelly, July 25, 2005, Western States Land Commissioners Association Conference, Breckenridge, CO.
- <sup>122</sup> Rand French (Biologist, Marbob Energy), interview by Stephanie Bertaina and Emily Kelly, August 26, 2005, Mack Energy Corporation, Roswell, NM.
- <sup>123</sup> Bill Dunn (Predator and Gamebird Biologist, New Mexico Department of Game and Fish) interview by Stephanie Bertaina and Emily Kelly, August 23, 2005, Frontier Restaurant, Albuquerque, NM.
- <sup>124</sup> John Clemmons (Rancher), interview by Stephanie Bertaina and Emily Kelly, August 25, 2005, Kenna, NM.
- <sup>125</sup> Paul Sawyer (Director of Threatened and Endangered Species, Bureau of Land Management), interview by Stephanie Bertaina and Emily Kelly, August 24, 2005, BLM, Santa Fe, NM.
- <sup>126</sup> John Clemmons (Rancher), interview by Stephanie Bertaina and Emily Kelly, August 25, 2005, Kenna, NM.
- <sup>127</sup> Dan Girand (Regulatory and Environmental Affairs, Mack Energy Corporation), interview by Stephanie Bertaina and Emily Kelly, August 26, 2005, Mack Energy Corporation, Roswell, NM.
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- <sup>130</sup> Shawn Knox (Wildlife biologist, New Mexico State Land Office), interview by Stephanie Bertaina and Emily Kelly, August 22, 2005, SLO, Santa Fe, NM.
- <sup>131</sup> Roger Peterson (Ecologist, New Mexico Natural History Institute and Sierra Club) personal correspondence with Emily Kelly, February 27, 2006.
- <sup>132</sup> Jennifer Parody, (Conservation Biologist, US Fish and Wildlife Service), interview by Stephanie Bertaina and Emily Kelly, August 22, 2005, RB Winnings, Albuquerque, NM.
- <sup>133</sup> Dan Girand (Regulatory and Environmental Affairs, Mack Energy Corporation), interview by Stephanie Bertaina and Emily Kelly, August 26, 2005, Mack Energy Corporation, Roswell, NM; Jeff Harvard (President, Harvard Petroleum), interview by Stephanie Bertaina and Emily Kelly, August 26, 2005, Mack Energy Corporation, Roswell, NM.
- <sup>134</sup> Bob Findling (Director of Conservation Projects, The Nature Conservancy), interview by Stephanie Bertaina and Emily Kelly, August 24, 2005, TNC, Santa Fe, NM.
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- <sup>140</sup> Jennifer Parody, (Conservation Biologist, US Fish and Wildlife Service), interview by Stephanie Bertaina and Emily Kelly, August 22, 2005, RB Winnings, Albuquerque, NM.
- <sup>141</sup> Lewis Derrick (Rancher and County Commissioner, Eddy County), interview by Stephanie Bertaina and Emily Kelly, August 26, 2005, Mack Energy Corporation, Roswell, NM.
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- <sup>148</sup> Tom Jervis (President, New Mexico Audubon Council), interview by Stephanie Bertaina and Emily Kelly, August 24, 2005, New Mexico Audubon, Santa Fe, NM.
- <sup>149</sup> Jim Bailey (Biologist), telephone interview by Stephanie Bertaina and Emily Kelly, November 13, 2005.
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- <sup>151</sup> Ibid.
- <sup>152</sup> Bill Dunn (Predator and Gamebird Biologist, New Mexico Department of Game and Fish) interview by Stephanie Bertaina and Emily Kelly, August 23, 2005, Frontier Restaurant, Albuquerque, NM.
- <sup>153</sup> Roger Peterson (Ecologist, New Mexico Natural History Institute and Sierra Club) interview by Stephanie Bertaina and Emily Kelly, August 22, 2005, Santa Fe, NM; Terry Riley (Vice President of Policy, Theodore Roosevelt Conservation Partnership), interview by Stephanie Bertaina and Emily Kelly, August 25, 2005, Albuquerque, NM.
- <sup>154</sup> Terry Riley (Vice President of Policy, Theodore Roosevelt Conservation Partnership), interview by Stephanie Bertaina and Emily Kelly, August 25, 2005, Albuquerque, NM.
- <sup>155</sup> Roger Peterson (Ecologist, New Mexico Natural History Institute and Sierra Club) interview by Stephanie Bertaina and Emily Kelly, August 22, 2005, Santa Fe, NM.
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- <sup>157</sup> Toby Herzlich (Principal, Toby Herzlich & Company), telephone interview by Stephanie Bertaina and Emily Kelly, October 28, 2005.
- <sup>158</sup> Ibid.
- <sup>159</sup> Ibid.

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<sup>160</sup> Paul Sawyer (Director of Threatened and Endangered Species, Bureau of Land Management), interview by Stephanie Bertaina and Emily Kelly, August 24, 2005, BLM, Santa Fe, NM.

<sup>161</sup> Ibid.

<sup>162</sup> Jeff Harvard (President, Harvard Petroleum), interview by Stephanie Bertaina and Emily Kelly, August 26, 2005, Mack Energy Corporation, Roswell, NM.

<sup>163</sup> Roger Peterson (Ecologist, New Mexico Natural History Institute and Sierra Club) correspondence with Emily Kelly, February 27, 2006.

<sup>164</sup> Jim Bailey (Biologist), interview by Stephanie Bertaina and Emily Kelly, November 13, 2005, telephone interview; Terry Riley (Vice President of Policy, Theodore Roosevelt Conservation Partnership), interview by Stephanie Bertaina and Emily Kelly, August 25, 2005. Albuquerque, NM.

<sup>165</sup> Toby Herzlich (Principal, Toby Herzlich & Company), telephone interview by Stephanie Bertaina and Emily Kelly, October 28, 2005.

<sup>166</sup> Paul Sawyer (Director of Threatened and Endangered Species, Bureau of Land Management), interview by Stephanie Bertaina and Emily Kelly, August 24, 2005, BLM, Santa Fe, NM.

<sup>167</sup> Ibid.

<sup>168</sup> Dan Girand (Regulatory and Environmental Affairs, Mack Energy Corporation), interview by Stephanie Bertaina and Emily Kelly, August 26, 2005, Mack Energy Corporation, Roswell, NM.

<sup>169</sup> Jeff Harvard (President, Harvard Petroleum), interview by Stephanie Bertaina and Emily Kelly, August 26, 2005, Mack Energy Corporation, Roswell, NM.

<sup>170</sup> Ibid.

<sup>171</sup> Jennifer Parody, (Conservation Biologist, US Fish and Wildlife Service), interview by Stephanie Bertaina and Emily Kelly, August 22, 2005, RB Winnings, Albuquerque, NM.

<sup>172</sup> Tom Jervis (President, New Mexico Audubon Council), interview by Stephanie Bertaina and Emily Kelly, August 24, 2005, New Mexico Audubon, Santa Fe, NM.

<sup>173</sup> Paul Sawyer (Director of Threatened and Endangered Species, Bureau of Land Management), interview by Stephanie Bertaina and Emily Kelly, August 24, 2005, BLM, Santa Fe, NM.

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<sup>175</sup> Toby Herzlich (Principal, Toby Herzlich & Company), telephone interview by Stephanie Bertaina and Emily Kelly, October 28, 2005.

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<sup>177</sup> Ibid.

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- <sup>178</sup> Rand French (Biologist, Marbob Energy), interview by Stephanie Bertaina and Emily Kelly, August 26, 2005, Mack Energy Corporation, Roswell, NM.
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- <sup>188</sup> Paul Sawyer (Director of Threatened and Endangered Species, Bureau of Land Management), interview by Stephanie Bertaina and Emily Kelly, August 24, 2005, BLM, Santa Fe, NM.
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- <sup>192</sup> Ibid.
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<sup>196</sup> Bill Dunn (Predator and Gamebird Biologist, New Mexico Department of Game and Fish) interview by Stephanie Bertaina and Emily Kelly, August 23, 2005, Frontier Restaurant, Albuquerque, NM.

<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

<sup>199</sup> Paul Sawyer (Director of Threatened and Endangered Species, Bureau of Land Management), interview by Stephanie Bertaina and Emily Kelly, August 24, 2005, BLM, Santa Fe, NM.

<sup>200</sup> Toby Herzlich (Principal, Toby Herzlich & Company), telephone interview by Stephanie Bertaina and Emily Kelly, October 28, 2005; Paul Sawyer (Director of Threatened and Endangered Species, Bureau of Land Management), interview by Stephanie Bertaina and Emily Kelly, August 24, 2005, BLM, Santa Fe, NM.

<sup>201</sup> Toby Herzlich (Principal, Toby Herzlich & Company), telephone interview by Stephanie Bertaina and Emily Kelly, October 28, 2005.

<sup>202</sup> Bill Dunn (Predator and Gamebird Biologist, New Mexico Department of Game and Fish) interview by Stephanie Bertaina and Emily Kelly, August 23, 2005, Frontier Restaurant, Albuquerque, NM.

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<sup>204</sup> Ibid.

<sup>205</sup> Rand French (Biologist, Marbob Energy), interview by Stephanie Bertaina and Emily Kelly, August 26, 2005, Mack Energy Corporation, Roswell, NM.

<sup>206</sup> Ibid.

<sup>207</sup> Ibid.

<sup>208</sup> Jeff Harvard (President, Harvard Petroleum), interview by Stephanie Bertaina and Emily Kelly, August 26, 2005, Mack Energy Corporation, Roswell, NM.

<sup>209</sup> Shawn Knox (Wildlife biologist, New Mexico State Land Office), interview by Stephanie Bertaina and Emily Kelly, August 22, 2005, SLO, Santa Fe, NM.

<sup>210</sup> Ric Richardson, (Professor, University of New Mexico), interview by Stephanie Bertaina and Emily Kelly, August 23, 2005, Flying Star Restaurant, Albuquerque, NM.

## **CHAPTER 11**

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

<sup>2</sup> Omnibus Enabling Act, 25 Stat. 676 (1889). Washington, North Dakota, and South Dakota were also admitted as states under the Omnibus Enabling Act of 1889. Peter W. Culp, Diane B. Conradi and Cynthia C. Tuell, *Trust Lands in the American West: A Legal Overview and Policy Assessment*. A Policy Assessment Report of the Lincoln Institute of Land Policy / Sonoran Institute Joint Venture on State Trust Lands, 2005, 98.

<sup>3</sup> 25 Stat. at 679 § 10.

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

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

<sup>6</sup> Culp, Conradi and Tuell, 98.

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

<sup>8</sup> 25 Stat. at 679 § 10.

<sup>9</sup> Culp, Conradi and Tuell, 98.

<sup>10</sup> Mont. Const. Art. IX, § 1.

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

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

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

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

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

<sup>16</sup> Mont. Code Ann. § 75-1-101 et seq. (2005).

<sup>17</sup> Mont. Const. Art. X, § 4.

<sup>18</sup> *Ibid.*

<sup>19</sup> Mont. Code Ann. § 77-1-201 (2005).

<sup>20</sup> Mont. Code Ann. § 77-1-202 (2005).

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

<sup>22</sup> The DNRC is to act “under the direction of the [State Land] Board.” *Ibid.*

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

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

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

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

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

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

<sup>29</sup> Mont. Code Ann. § 77-323 (2005).

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

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

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

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

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

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

<sup>36</sup> “Whitefish: Introduction,” Big Sky Fishing.Com, [http://www.bigskyfishing.com/Montana-Info/whitefish\\_mt.shtm](http://www.bigskyfishing.com/Montana-Info/whitefish_mt.shtm).

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

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



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

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

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

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

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

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

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

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

<sup>47</sup> Whitefish Demographics,” Whitefish Chamber of Commerce, [http://www.whitefishchamber.org/whitefish\\_demographics.php](http://www.whitefishchamber.org/whitefish_demographics.php).

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

<sup>49</sup> Alan Elm (Realtor, ReMax Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 16, 2005, ReMax Whitefish, Whitefish, MT.

<sup>50</sup> Bob Sandman (Area Manager, Northwestern Land Office, DNRC), telephone interview by Jessica Mitchell and Lisa Spalding, September 7, 2005.

<sup>51</sup> Tyler Tourville (President, Flathead Fat Tire Association), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT; Diane Conradi (Attorney, Law Offices of Diane Conradi, and formerly of the Sonoran Institute), interview by Jessica Mitchell and Lisa Spalding, August 19, 2005, Whitefish, MT.

<sup>52</sup> Greg Poncin (Unit Manager, Kalispell Unit Office, DNRC), telephone interview by Jessica Mitchell and Lisa Spalding, September 6, 2005.

<sup>53</sup> Diane Conradi (Attorney, Law Offices of Diane Conradi, and formerly of the Sonoran Institute), interview by Jessica Mitchell and Lisa Spalding, August 19, 2005, Whitefish, MT.

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- <sup>54</sup> Bob Sandman (Area Manager, Northwestern Land Office, DNRC), telephone interview by Jessica Mitchell and Lisa Spalding, September 7, 2005.
- <sup>55</sup> Janet Cornish (Community Development Services of Montana), telephone interview by Jessica Mitchell and Lisa Spalding, August 8, 2005.
- <sup>56</sup> Tom Schultz (Administrator, Trust Land Management Division, DNRC), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, DNRC, Helena, MT.
- <sup>57</sup> David Madison, "Community Trust: Whitefish Grows Wary of its Remaining Open Space," *The Missoula Independent*, July 24, 2003, <http://www.missoulanews.com/Archives/News.asp?no=3394>.
- <sup>58</sup> Tom Schultz (Administrator, Trust Land Management Division, DNRC), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, DNRC, Helena, MT.
- <sup>59</sup> Janet Cornish (Community Development Services of Montana), telephone interview by Jessica Mitchell and Lisa Spalding, August 8, 2005.
- <sup>60</sup> Alan Elm (Realtor, ReMax Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 16, 2005, ReMax Whitefish, Whitefish, MT.
- <sup>61</sup> Whitefish Neighborhood Planning Process Meeting Minutes, May 12, 2003, available at <http://www.statetrustland.com/index.cfm>.
- <sup>62</sup> Janet Cornish (Community Development Services of Montana), telephone interview by Jessica Mitchell and Lisa Spalding, August 8, 2005.
- <sup>63</sup> Paul McKenzie (Stoltze Lumber), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Stoltze Lumber, Columbia Falls, MT.
- <sup>64</sup> Whitefish Neighborhood Planning Process Meeting Minutes, May 12, 2003, available at <http://www.statetrustland.com/index.cfm>; Janet Cornish (Community Development Services of Montana), telephone interview by Jessica Mitchell and Lisa Spalding, August 8, 2005.
- <sup>65</sup> Andy Feury (Mayor, city of Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT.
- <sup>66</sup> Marshall Friedman (Citizen, Whitefish, MT), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Great Northern Bar and Grill, Whitefish, MT.
- <sup>67</sup> John Morrison (State Auditor, Montana State Auditor's Office), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, Montana State Auditor's Office, Helena, MT.
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- <sup>71</sup> Montana State Board of Land Commissioners Meeting Minutes, Aug. 18, 2003, available at <http://dnrc.mt.gov/commissions/Default.asp>.

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- <sup>72</sup> Marshall Friedman, interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Great Northern Bar and Grill, Whitefish, MT.
- <sup>73</sup> Montana State Board of Land Commissioners Meeting Minutes, Sept. 15, 2003, available at <http://dnrc.mt.gov/commissions/Default.asp>.
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- <sup>76</sup> Andy Feury (Mayor, city of Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT.
- <sup>77</sup> Jeanne Holmgren, email message to Tom Schultz, August 31, 2003.
- <sup>78</sup> Bob Sandman (Area Manager, Northwestern Land Office, DNRC), telephone interview by Jessica Mitchell and Lisa Spalding, September 7, 2005.
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- <sup>80</sup> Whitefish Neighborhood Planning Process Meeting Minutes, Nov. 13-14, 2003, available at <http://www.statetrustland.com/index.cfm>.
- <sup>81</sup> Andy Feury (Mayor, city of Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT.
- <sup>82</sup> Whitefish Neighborhood Planning Process Meeting Minutes, Nov. 13-14, 2003, available at <http://www.statetrustland.com/index.cfm>. Note that the order of these goals was changed at a later meeting. Whitefish Neighborhood Planning Process Meeting Minutes, Feb. 4, 2004, available at <http://www.statetrustland.com/index.cfm>.
- <sup>83</sup> Marshall Friedman (Citizen, Whitefish, MT), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Great Northern Bar and Grill, Whitefish, MT; Jeff Woods, "Phantom of Whitefish Lake," *The Missoula Independent*, January 29, 2004, <http://www.missoulanews.com/Archives/News.asp?no=3820>.
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- <sup>89</sup> Jeanne Holmgren (Real Estate Management Bureau Chief, Trust Land Management Division, DNRC), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, DNRC, Helena, MT; Tyler Tourville (President, Flathead Fat Tire Association), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT.
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- <sup>92</sup> Alan Elm (Realtor, ReMax Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 16, 2005, ReMax Whitefish, Whitefish, MT.
- <sup>93</sup> Greg Poncin (Unit Manager, Kalispell Unit Office, DNRC), personal correspondence [email] with Jessica Mitchell, February 17, 2006.
- <sup>94</sup> Diane Conradi (Attorney, Law Offices of Diane Conradi, and formerly of the Sonoran Institute), interview by Jessica Mitchell and Lisa Spalding, August 19, 2005, Whitefish, MT; Tom Schultz (Administrator, Trust Land Management Division, DNRC), personal communication [mail] with Jessica Mitchell, February 20, 2006.
- <sup>95</sup> Whitefish Neighborhood Planning Process Meeting Minutes, Feb. 5, 2004, May 13, 2004, available at <http://www.statetrustland.com/index.cfm>
- <sup>96</sup> Marshall Friedman (Citizen, Whitefish, MT), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Great Northern Bar and Grill, Whitefish, MT.
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- <sup>101</sup> Alan Elm (Realtor, ReMax Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 16, 2005, ReMax Whitefish, Whitefish, MT; Sheila Bowen (President / CEO, Whitefish Chamber of Commerce), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Whitefish Chamber of Commerce, Whitefish, MT.
- <sup>102</sup> Alan Elm (Realtor, ReMax Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 16, 2005, ReMax Whitefish, Whitefish, MT.

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<sup>103</sup> Andy Feury (Mayor, city of Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT; Diane Conradi (Attorney, Law Offices of Diane Conradi, and formerly of the Sonoran Institute), interview by Jessica Mitchell and Lisa Spalding, August 19, 2005, Whitefish, MT.

<sup>104</sup> Whitefish Neighborhood Planning Process Meeting Minutes, Jan. 22, 2004, available at <http://www.statetrustland.com/index.cfm>.

<sup>105</sup> Whitefish Neighborhood Planning Process Meeting Minutes, Jan. 22, 2003, available at <http://www.statetrustland.com/index.cfm>; Sheila Bowen (President / CEO, Whitefish Chamber of Commerce), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Whitefish Chamber of Commerce, Whitefish, MT; Donna Maddux (Former Superintendent, Flathead County Schools), interview by Jessica Mitchell and Lisa Spalding, August 16, 2005, Montana Coffee Traders, Whitefish, MT.

<sup>106</sup> Janet Cornish (Community Development Services of Montana), telephone interview by Jessica Mitchell and Lisa Spalding, August 8, 2005.

<sup>107</sup> Whitefish Neighborhood Planning Process Meeting Minutes, Jan. 22, 2004, Feb. 5, 2004, available at <http://www.statetrustland.com/index.cfm>.

<sup>108</sup> Sheila Bowen (President / CEO, Whitefish Chamber of Commerce), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Whitefish Chamber of Commerce, Whitefish, MT.

<sup>109</sup> Whitefish Neighborhood Planning Process Public Hearing Minutes, March 5, 2004, available at <http://www.statetrustland.com/index.cfm>.

<sup>110</sup> Alan Elm (Realtor, ReMax Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 16, 2005, ReMax Whitefish, Whitefish, MT.

<sup>111</sup> Bob Sandman (Area Manager, Northwestern Land Office, DNRC), telephone interview by Jessica Mitchell and Lisa Spalding, September 7, 2005.

<sup>112</sup> Alan Elm (Realtor, ReMax Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 16, 2005, ReMax Whitefish, Whitefish, MT.

<sup>113</sup> Andy Feury (Mayor, city of Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT; Bob Sandman (Area Manager, Northwestern Land Office, DNRC), telephone interview by Jessica Mitchell and Lisa Spalding, September 7, 2005.

<sup>114</sup> Diane Conradi (Attorney, Law Offices of Diane Conradi, and formerly of the Sonoran Institute), interview by Jessica Mitchell and Lisa Spalding, August 19, 2005, Whitefish, MT.

<sup>115</sup> Sheila Bowen (President / CEO, Whitefish Chamber of Commerce), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Whitefish Chamber of Commerce, Whitefish, MT; Kathy Bramer (Montana Office of Public Instruction), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, The Overland, Helena, MT.

<sup>116</sup> Sheila Bowen (President / CEO, Whitefish Chamber of Commerce), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Whitefish Chamber of Commerce, Whitefish, MT.

<sup>117</sup> Donna Maddux (Former Superintendent, Flathead County Schools), interview by Jessica Mitchell and Lisa Spalding, August 16, 2005, Montana Coffee Traders, Whitefish, MT; Sheila Bowen (President / CEO, Whitefish Chamber of Commerce), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Whitefish Chamber of Commerce, Whitefish, MT; Paul McKenzie (Stoltze Lumber), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Stoltze Lumber, Columbia Falls, MT.

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<sup>119</sup> *Ibid.*; Bob Sandman (Area Manager, Northwestern Land Office, DNRC), interview by Jessica Mitchell and Lisa Spalding, September 7, 2005.

<sup>120</sup> Whitefish Neighborhood Planning Process Meeting Minutes, April 22, 2004, available at <http://www.statetrustland.com/index.cfm>.

<sup>121</sup> Janet Cornish (Community Development Services of Montana), telephone interview by Jessica Mitchell and Lisa Spalding, August 8, 2005.

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<sup>123</sup> Andy Feury (Mayor, city of Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT.

<sup>124</sup> Whitefish Neighborhood Planning Process Meeting Minutes, July 29, 2004, available at <http://www.statetrustland.com/index.cfm>; Tyler Tourville (President, Flathead Fat Tire Association), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT.

<sup>125</sup> David Jones, email message to Tom Schultz, July 30, 2004.

<sup>126</sup> “Roberts Rules of Order” refers to a guidebook of parliamentary procedure written by General Henry A. Robert in 1874. These rules have been used to manage meetings and outline the use of motions, debate, and voting to make decisions.

<sup>127</sup> Marshall Friedman (Citizen, Whitefish, MT), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Great Northern Bar and Grill, Whitefish, MT; Whitefish Neighborhood Planning Process Meeting Minutes, Aug. 5, 2004, available at <http://www.statetrustland.com/index.cfm>.

<sup>128</sup> Alan Elm (Realtor, ReMax Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 16, 2005, ReMax Whitefish, Whitefish, MT.

<sup>129</sup> *Whitefish School Trust Lands Neighborhood Plan*, available at <http://www.statetrustland.com/index.cfm>.

<sup>130</sup> Jeanne Holmgren (Real Estate Management Bureau Chief, Trust Land Management Division, DNRC), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, DNRC, Helena, MT.

<sup>131</sup> *Whitefish School Trust Lands Neighborhood Plan*, available at <http://www.statetrustland.com/index.cfm>.

<sup>132</sup> Bob Sandman (Area Manager, Northwestern Land Office, DNRC), telephone interview by Jessica Mitchell and Lisa Spalding, September 7, 2005.

<sup>133</sup> Sheila Bowen (President / CEO, Whitefish Chamber of Commerce), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Whitefish Chamber of Commerce, Whitefish, MT.

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<sup>135</sup> Bob Sandman (Area Manager, Northwestern Land Office, DNRC), telephone interview by Jessica Mitchell and Lisa Spalding, September 7, 2005.

<sup>136</sup> Mont. Code Ann. § 77-2-101 (2005); Candace West (Assistant Attorney General, Montana Department of Justice), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, The Overland, Helena, MT.

<sup>137</sup> Paul Peters, "Trust Land Plan Takes Hit on House Floor over Easements," *The Whitefish Pilot*, April 8, 2005, <http://www.whitefishpilot.com/articles/2005/04/08/news/news04.txt>; Charles Abell (President, Whitefish Credit Union), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Whitefish Credit Union, Whitefish, MT.

<sup>138</sup> Kathy Bramer (Montana Office of Public Instruction), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, The Overland, Helena, MT; Candace West (Assistant Attorney General, Montana Department of Justice), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, The Overland, Helena, MT.

<sup>139</sup> Andy Feury (Mayor, city of Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT.

<sup>140</sup> Paul Peters, "Entrusted," *The Missoula Independent*, September 15, 2005, <http://www.missoulanews.com/Archives/News.asp?no=5176>.

<sup>141</sup> Andy Feury (Mayor, city of Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT; Marshall Friedman (Citizen, Whitefish, MT), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Great Northern Bar and Grill, Whitefish, MT.

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<sup>145</sup> Andy Feury (Mayor, city of Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT.

<sup>146</sup> Donna Maddux (Former Superintendent, Flathead County Schools), interview by Jessica Mitchell and Lisa Spalding, August 16, 2005, Montana Coffee Traders, Whitefish, MT; Greg Poncin (Unit Manager, Kalispell Unit Office, DNRC), telephone interview by Jessica Mitchell and Lisa Spalding, September 6, 2005.

<sup>147</sup> Sheila Bowen (President / CEO, Whitefish Chamber of Commerce), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Whitefish Chamber of Commerce, Whitefish, MT; Marshall Friedman (Citizen, Whitefish, MT), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Great Northern Bar and Grill, Whitefish, MT.

<sup>148</sup> Janet Cornish (Community Development Services of Montana), telephone interview by Jessica Mitchell and Lisa Spalding, August 8, 2005; Jeanne Holmgren (Real Estate Management Bureau Chief, Trust Land Management Division, DNRC), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, DNRC, Helena, MT.

<sup>149</sup> Janet Cornish (Community Development Services of Montana), telephone interview by Jessica Mitchell and Lisa Spalding, August 8, 2005.

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<sup>150</sup> Andy Feury, (Mayor, city of Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT.

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<sup>152</sup> Greg Poncin (Unit Manager, Kalispell Unit Office, DNRC), telephone interview by Jessica Mitchell and Lisa Spalding, September 6, 2005.

<sup>153</sup> Alan Elm (Realtor, ReMax Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 16, 2005, ReMax Whitefish, Whitefish, MT.

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<sup>160</sup> Alan Elm (Realtor, ReMax Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 16, 2005, ReMax Whitefish, Whitefish, MT.

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<sup>167</sup> Jeanne Holmgren (Real Estate Management Bureau Chief, Trust Land Management Division, DNRC), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, DNRC, Helena, MT; Tom Schultz (Administrator, Trust Land Management Division, DNRC), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, DNRC, Helena, MT.

<sup>168</sup> Andy Feury, (Mayor, city of Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT.

<sup>169</sup> *Whitefish School Trust Lands Neighborhood Plan*, available at <http://www.statetrustland.com/index.cfm>.

<sup>170</sup> Paul McKenzie (Stoltze Lumber), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Stoltze Lumber, Columbia Falls, MT; Diane Conradi (Attorney, Law Offices of Diane Conradi, and formerly of the Sonoran Institute), interview by Jessica Mitchell and Lisa Spalding, August 19, 2005, Whitefish, MT.

<sup>171</sup> Jeanne Holmgren (Real Estate Management Bureau Chief, Trust Land Management Division, DNRC), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, DNRC, Helena, MT.

<sup>172</sup> Charles Abell (President, Whitefish Credit Union), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Whitefish Credit Union, Whitefish, MT.

<sup>173</sup> Bob Sandman (Area Manager, Northwestern Land Office, DNRC), telephone interview by Jessica Mitchell and Lisa Spalding, September 7, 2005; Greg Poncin (Unit Manager, Kalispell Unit Office, DNRC), telephone interview by Jessica Mitchell and Lisa Spalding, September 6, 2005.

<sup>174</sup> Paul McKenzie (Stoltze Lumber), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Stoltze Lumber, Columbia Falls, MT; Marshall Friedman (Citizen, Whitefish, MT), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Great Northern Bar and Grill, Whitefish, MT.

<sup>175</sup> Alan Elm (Realtor, ReMax Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 16, 2005, ReMax Whitefish, Whitefish, MT.

<sup>176</sup> Sheila Bowen (President / CEO, Whitefish Chamber of Commerce), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Whitefish Chamber of Commerce, Whitefish, MT.

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- <sup>211</sup> Charles Abell (President, Whitefish Credit Union), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Whitefish Credit Union, Whitefish, MT; Tyler Tourville (President, Flathead Fat Tire Association), interview by Jessica Mitchell and Lisa Spalding, August 17, 2005, Montana Coffee Traders, Whitefish, MT.
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<sup>5</sup> Ben Beall (Chairman, Emerald Mountain Partnership), interview by Lisa Spalding and Matt Stout, August 2, 2005, Steamboat Springs, CO.

<sup>6</sup> Jim Stanko (Rancher), interview by Lisa Spalding and Matt Stout, August 3, 2005, Steamboat Springs, CO.

<sup>7</sup> Margaret Bird (Beneficiary Representative, State of Utah Office of Education), interview by Stephanie Bertaina and Eirin Krane, August 15, 2005, State of Utah Office of Education, Salt Lake City, UT.

<sup>8</sup> Chuck Bennett (Director of Government Relations, Confederation of Oregon School Administrators), interview by Eirin Krane and Drew Vankat, August 22, 2005, State Capitol Building, Salem, OR.

<sup>9</sup> Charles Bedford (former Director, Colorado State Land Board), interview by Lisa Spalding and Matt Stout, July 26, 2005, Great Divide Lodge, Breckenridge, CO.

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<sup>16</sup> Linda Marrom (Citizen, city of Bellingham), interview by Alden Boetsch and Matt Stout, August 9, 2005, Tino’s Pizza, Sudden Valley, WA.

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- <sup>30</sup> Richard Rodriguez (Regional Planner, Washington State Department of Health), interview by Alden Boetsch and Matt Stout, August 11, 2005, DOH, Kent, WA.
- <sup>31</sup> Libbie Miller (District Wildlife Manger, Colorado Division of Wildlife), interview by Lisa Spalding and Matt Stout, August 3, 2005, Colorado Division of Wildlife Area 10 Office, Steamboat Springs, CO; Bob Enever, interview by Lisa Spalding and Matt Stout, August 2, 2005, Steamboat Springs, CO.
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- <sup>34</sup> David Coss (Director of Field Operations, New Mexico State Land Office), interview by Stephanie Bertaina and Emily Kelly, August 22, 2005, SLO, Santa Fe, NM; Jennifer Parody (Conservation Biologist, US Fish and Wildlife Service), interview by Stephanie Bertaina and Emily Kelly, August 22, 2005, RB Winnings, Albuquerque, NM.
- <sup>35</sup> Bill Dunn (Predator and Gamebird Biologist, New Mexico Department of Game and Fish) interview by Stephanie Bertaina and Emily Kelly, August 23, 2005, Frontier Restaurant, Albuquerque, NM; Rand French (Biologist, Marbob Energy), interview by Stephanie Bertaina and Emily Kelly, August 26, 2005, Mack Energy Corporation, Roswell, NM.
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<sup>42</sup> Libbie Miller (District Wildlife Manger, Colorado Division of Wildlife), interview by Lisa Spalding and Matt Stout, August 3, 2005, Colorado Division of Wildlife Area 10 Office, Steamboat Springs, CO; Bob Enever, interview by Lisa Spalding and Matt Stout, August 2, 2005, Steamboat Springs, CO.

<sup>43</sup> Richard Rodriguez (Regional Planner, Washington State Department of Health), interview by Alden Boetsch and Matt Stout, August 11, 2005, DOH, Kent, WA.

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- <sup>44</sup> Bill McCourt (General Manager, Lummi Tribal Water and Sewer District), interview by Alden Boetsch and Matt Stout, August 8, 2005, Lummi Tribal Water and Sewer District, Lummi Nation, WA.
- <sup>45</sup> Alan Elm (Realtor, ReMax Whitefish), interview by Jessica Mitchell and Lisa Spalding, August 16, 2005, ReMax Whitefish, Whitefish, MT.
- <sup>46</sup> Kathy Bramer (Montana Office of Public Instruction), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, The Overland, Helena, MT.
- <sup>47</sup> Paul Sawyer (Director of Threatened and Endangered Species, BLM), interviewed by Stephanie Bertaina and Emily Kelly, August 24, 2005, BLM, Santa Fe, NM.
- <sup>48</sup> Wondolleck and Yaffee, *Making Collaboration Work: Lessons from Innovation in Natural Resource Management*, 177.
- <sup>49</sup> Ric McBrier (Assistant Director of Planning and Development, SITLA), interview by Stephanie Bertaina and Eirin Krane, August 15, 2005, SITLA, Salt Lake City, UT.
- <sup>50</sup> Bill McCourt (General Manager, Lummi Tribal Water and Sewer District), interview by Alden Boetsch and Matt Stout, August 8, 2005, Lummi Tribal Water and Sewer District, Lummi Nation, WA.
- <sup>51</sup> Jacqueline Dubose Christensen (Vice President of Business Advocacy and Government, Greater Albuquerque Chamber of Commerce), interview by Emily Kelly and Drew Vankat, August 16, 2005, Albuquerque, NM.
- <sup>52</sup> Ray Powell (Former Commissioner of Public Lands, New Mexico State Land Office), interview by Emily Kelly and Drew Vankat, August 18, 2005, Albuquerque, NM.
- <sup>53</sup> Greg Poncin (Unit Manager, Kalispell Unit Office, DNRC), telephone interview by Jessica Mitchell and Lisa Spalding, September 6, 2005.
- <sup>54</sup> Kathy Bramer (Montana Office of Public Instruction), interview by Jessica Mitchell and Lisa Spalding, August 15, 2005, The Overland, Helena, MT.
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- <sup>56</sup> Alan Soicher (Citizen, city of Bellingham), telephone interview by Alden Boetsch and Matt Stout, August 29, 2005.
- <sup>57</sup> Shawn Knox (Wildlife biologist, New Mexico State Land Office), interview by Stephanie Bertaina and Emily Kelly, August 22, 2005, SLO, Santa Fe, NM.; David Coss (Director of Field Operations, New Mexico State Land Office), interview by Stephanie Bertaina and Emily Kelly, August 22, 2005, SLO, Santa Fe, NM.
- <sup>58</sup> Michael Wyneken (Principal Planner, city of Tucson, Department of Urban Planning and Design), interview by Alden Boetsch and Jessica Mitchell, August 4, 2005, Tucson, AZ.
- <sup>59</sup> Calvin Baker (Superintendent, Vail School District), interview by Alden Boetsch and Jessica Mitchell, August 3, 2005, Tucson, AZ; Ken Abrahams (Executive Vice President, Diamond Ventures) interview by Alden Boetsch and Jessica Mitchell, August 5, 2005, Tucson, AZ; Linda Morales (Principal, The Planning Center), interview by Alden Boetsch and Jessica Mitchell, August 3, 2005, Tucson, AZ; Michael Wyneken (Principal Planner, city of Tucson, Department of Urban Planning and Design), interview by Alden Boetsch and Jessica Mitchell, August 4, 2005, Tucson, AZ; Phil Swaim (Architect, Swaim Associates), interview by Alden Boetsch and Jessica Mitchell, August 3, 2005, Tucson, AZ; Suzanne Bott (former Project Manager, Sonoran Institute), telephone interview by Alden Boetsch and Jessica Mitchell, August 22, 2005.

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## CHAPTER 19

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<sup>3</sup> Janet Cornish (Community Development Services of Montana), telephone interview by Jessica Mitchell and Lisa Spalding, August 8, 2005.

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<sup>7</sup> Laura Kamala (Director of Utah Programs, Grand Canyon Trust), interview by Stephanie Bertaina and Eirin Krane, August 19, 2005, Castle Valley, UT.

<sup>8</sup> Bruce Keeler (Mayor, Town of Castle Valley), interview by Stephanie Bertaina and Eirin Krane, August 18, 2005, Castle Valley Community Center, Castle Valley, UT.

<sup>9</sup> Dan Girand (Regulatory and Environmental Affairs, Mack Energy Corporation), interview by Stephanie Bertaina and Emily Kelly, August 26, 2005, Mack Energy Corporation, Roswell, NM.

<sup>10</sup> Steve Denney (Southwest Region Assistant Supervisor, Oregon Department of Fish and Wildlife), interview with Eirin Krane and Drew Vankat, August 25, 2005, ODFW, Roseburg, OR.

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<sup>13</sup> Tim Callahan (Planner, New Mexico State Land Office), interview by Emily Kelly and Drew Vankat, August 16, 2005, Albuquerque, NM.

<sup>14</sup> Dan Shults (Southern Oregon Area Director, Southern Oregon Area, Oregon Department of Forestry), interview by Eirin Krane and Drew Vankat, August 24, 2005, ODF, Roseburg, OR.

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- <sup>21</sup> Tom Edwards, Jr. (Way of Life Department, Lummi Nation), interview by Alden Boetsch and Matt Stout, August 9, 2005, Tribal , Lummi Nation, WA.
- <sup>22</sup> Paul McKenzie (Stoltze Lumber), interview by Jessica Mitchell and Lisa Spalding, August 18, 2005, Stoltze Lumber, Columbia Falls, MT.
- <sup>23</sup> Linda Morales (Principal, The Planning Center), interview by Alden Boetsch and Jessica Mitchell, August 3, 2005, Tucson, AZ.
- <sup>24</sup> Jim Stanko (Rancher), interview by Lisa Spalding and Matt Stout, August 3, 2005, Steamboat Springs, CO.
- <sup>25</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), telephone interview by Stephanie Bertaina and Eirin Krane, October 12, 2005.
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<sup>40</sup> Cestero, 74

<sup>41</sup> Gray, Barbara. "Conditions Facilitating Interorganizational Collaboration," *Human Relations* 38(1985): 921; Wondolleck and Yaffee, *Making Collaboration Work: Lessons from Innovation in Natural Resource Management*, 143.

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<sup>5</sup> Dave Erley (Southeastern Field Agent, Utah Open Lands), personal communication [email] with Stephanie Bertaina, January 2, 2006.

<sup>6</sup> Wondolleck and Yaffee, *Making Collaboration Work: Lessons from Innovation in Natural Resource Management*, 135.

<sup>7</sup> *Ibid.*, 134.

<sup>8</sup> *Ibid.*

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<sup>10</sup> Alan Soicher (Citizen, city of Bellingham), telephone interview by Alden Boetsch and Matt Stout, August 29, 2005.

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## CHAPTER 22

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<sup>2</sup> The Sonoran Institute, <http://www.sonoran.org>.

<sup>3</sup> Roundtable participants included 5 current or former state land commissioners, academic experts in state trust lands management, economics, urban planning, and institutional and program evaluation and assessment.

<sup>4</sup> Peter W. Culp, Diane B. Conradi and Cynthia C. Tuell, *Trust Lands in the American West: A Legal Overview and Policy Assessment*. A Policy Assessment Report of the Lincoln Institute of Land Policy / Sonoran Institute Joint Venture on State Trust Lands, 2005, 169.