



**DEPARTMENT OF
NATURAL RESOURCES**

**OFFICE OF THE
COMMISSIONER OF PUBLIC LANDS**
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June 29, 2023

The Honorable Bernard Dean
Chief Clerk of the House
338B Legislative Building
Olympia, WA 98504

The Honorable Sarah Bannister
Secretary of the Senate
312 Legislative Building
Olympia, WA 98504

Dear Chief Clerk Dean and Secretary Bannister:

Please accept the enclosed legislative report on the 2023 Shared Stewardship pilot project, submitted on behalf of Department of Natural Resources (DNR), as required in Sec. 310 (31) of the 2021-2023 Operating Budget (ESSB 5092). The bill directed DNR to work with stakeholders to evaluate the costs and benefits of entering into stewardship agreements with individual neighboring landowners who would take on the responsibility for protecting small segments of shared boundary with DNR managed lands. The report is due to the appropriate committees of the legislature by July 1, 2023.

Should you have any questions, please contact me at 360-486-3469 or Brian.Considine@dnr.wa.gov.

Sincerely,

Brian Considine
Legislative Director
Office of the Commissioner of Public Lands

Enclosure: Legislative Report – 2023 Shared Stewardship

cc: Members of the Senate Agriculture, Water, Natural Resources, and Parks Committee
Members of the House Rural Development, Agriculture & Natural Resources Committee
Members of the Senate Ways and Means Committee
Members of the House Appropriations Committee
Ruth Musgrave – Senior Policy Advisor, Natural Resources, Office of the Governor
Jim Cahill – Senior Budget Assistant, Natural Resources, Office of Financial Management
Lisa Borkowski – Budget Assistant, Natural Resources, Office of Financial Management

Shared Stewardship Report

A Report to the Legislature in Response to ESSB 5092 (Chapter 334, Laws of 2021)



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Office of the Commissioner of Public Lands, Hilary Franz
June 30, 2023



WASHINGTON STATE DEPARTMENT OF
NATURAL RESOURCES

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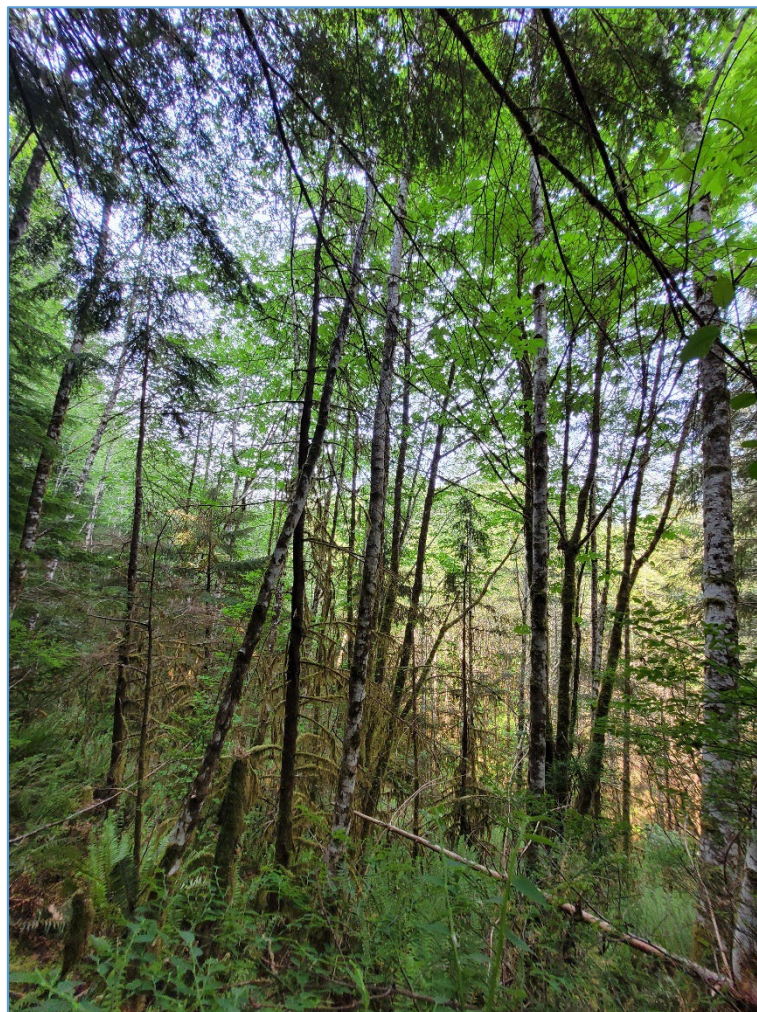


Figure 1: Land adjacent to DNR land near Darrington, WA.

Executive Summary

The Washington Department of Natural Resources (DNR) was directed to develop a pilot project under ESSB 5092 (Chapter 334, Laws of 2021 PV) to evaluate the costs and benefits of entering into stewardship agreements with individual neighboring landowners who would take responsibility for protecting small segments of shared boundary with DNR-managed state trust lands. The pilot project was required to identify legal limits, cost effectiveness, the appropriate mechanism for agreements, constraints and limitations, and risks, including any insurance that landowners would need to carry to participate. The pilot was required to include agreements in at least the Teanaway or Klickitat Community Forests and on state trust lands near the town of Darrington.

DNR was successful in identifying the legal limits of what DNR could permit on state trust lands, the best mechanism for the agreements, risks to both the DNR and landowner, how to mitigate risks within the agreements, and the need for landowners to fully indemnify DNR within the agreements. This presented challenges to implementation, because the agreements would have strict limits on what landowners could do on state trust lands while placing the burden of risk on the landowners. If implemented purely within these sideboards, the agreements would require the landowner to volunteer out of their own interest to manage the shared boundary while also taking on all of the risk.

Since the Shared Stewardship Project's implementation in July of 2022 the project has focused on identifying private landowners interested in promoting forest health and fire mitigation strategies on their private land adjacent to state trust land, thereby extending treatment benefits and mitigations to state trust land.

The project was designed around a concept already in use with DNR's Small Forest Landowner Assistance Program, and more specifically the Service Forestry Cost Share Program (SLF) that works with private landowners to conduct forest health and fire mitigation measures on their private parcel. Modeling Shared Stewardship after this program and working collaboratively extends the fire mitigation onto state trust lands. Goals of DNR's program were to create a win/win situation with private landowners who express an interest in protecting their own land and beyond, and in result have more wildfire ready acres, for both their protection and the state.

As part of this project, DNR reached out to homeowners in the Darrington, Klickitat Community Forest, and Teanaway Community Forest areas, adjacent to state trust lands. The goal of this outreach was to promote borderless mitigation treatments and identifiable opportunities to create partnerships with non-industrial private homeowners. To date, the project has made strides in identifying these landowners but had limited success in getting homeowner buy-in to the project.

Program Overview

Under the 2021 Operating Budget Bill (ESSB 5092 SL), a proviso was set forth appropriating funds for the Department of Natural Resources (DNR) to create and evaluate a pilot project wherein the agency would enter into stewardship agreements with individual neighboring landowners who would take responsibility for protecting small segments of shared boundary lands.

The project had the following requirements:

1. Evaluate the costs and benefits of entering into stewardship agreements with individual neighboring landowners who would take on the responsibility of protecting small segments of shared boundary with DNR-managed lands
2. Identify the legal limits of such stewardship agreements
3. Identify the legal bounds of such stewardship agreements
4. Identify suitable areas
5. Prepare and enter into shared stewardship agreements
 - 5.1. Evaluate the costs of those agreements
 - 5.2. Evaluate the benefits of those agreements

The evaluation must include the following:

- 5.3. Appropriate mechanism for the sale of valuable materials from state trust lands harvested under a stewardship agreement
- 5.4. Identification of regulatory constraints and staffing levels necessary to administer a statewide program
- 5.5. Other limitations
- 5.6. Identification of legal risk and insurance and indemnification requirements that might be necessary on the part of private individuals entering into the agreements

Agreements are to be within (at least) the Teanaway or Klickitat Community Forests, and on state trust lands in the vicinity of the town of Darrington

DNR addressed all of the requirements as follows:

- 1. Evaluate the costs of entering into stewardship agreements with individual neighboring landowners who would take on the responsibility of protecting small segments of shared boundary with DNR-managed lands.**

DNR determined the best tool to utilize as the contract between both the agency and the homeowner would be a Land Use License (LUL). The LUL would not confer an estate in land

and would not be a real property right. Instead, it is a mere authorization to make use of land owned by another, to do a particular act or a series of acts that would otherwise be a trespass. DNR customarily grants LUL's to others for short duration activities at fair market value. DNR determined the pilot program would reimburse the trusts for the costs of the LUL on behalf of the adjacent landowner performing the work on DNR-managed land.

2. Evaluate the benefits of entering into stewardship agreements with individual neighboring landowners who would take on the responsibility of protecting small segments of shared boundary with DNR managed lands.

Some of the perceived benefits of the pilot project included a reduction of fuel loads on state trust lands adjacent to the wildland urban interface, increased concern and commitment from adjoining neighbors caring for DNR trust lands, more treated acres for wildfire prevention, and increased community outreach. These benefits would outweigh the cost of the LUL and the commitment of staff and resources in education and outreach to the community. The work performed by these volunteers also would allow state employees to focus on higher priority areas in other areas of the state.

3. Identify the legal limits of such stewardship agreements.

Utilizing the LUL allowed the homeowners to have enough authority to complete the work, including addressing the issues with risk, insurance, and liability (to be addressed in requirement 6.2.4), but would not be subject to the real estate statute of frauds, as currently codified at RCW 64.04.010. As a result, the LUL does not need to meet the requirements of a deed. DNR also retained the right to revoke the LUL at will, unless restricted under the terms of the license, and that the access would not be exclusive. Homeowners would be granted the ability to conduct work within a 100-foot area of state trust land adjacent to their property, and the ability to remove undesirable vegetation with a diameter at breast height (DBH) of 8 inches or less. One of the legal limits of the agreement is the homeowner taking the responsibility for the acts of its contractors who may perform mitigation on state trust land. This requires the homeowner to supervise the work being performed on the state trust lands, and to ensure that it is being done according to any treatment plan. Also, the homeowner would be responsible for following DNR's inadvertent discovery plan in regards to cultural resources and human remains, and must follow the state's strict protocols or the homeowner could face felony charges.

4. Identify the legal bounds of such stewardship agreements.

As described in Requirement 3, homeowners performing work under the LUL on state lands would be permitted to clear undesirable vegetation and dead vegetative material on state trust lands within the 100-foot corridor adjacent to their property, subject to any limitations placed in the contract to protect habitat features required by either the State Uplands HCP or Forest Practices Rules. One of the frequently asked questions was, could the homeowner burn the debris while the debris remained on state trust lands. DNR determined that this posed an additional risk beyond what the agency was comfortable with permitting.

The homeowner was permitted to perform the following activities:

- Lop and scatter the cut vegetation while ensuring the debris does not increase the fuel loading within the state trust land area.
- Chip debris providing that chip piles were spread evenly over the treatment area, and not piled into massive piles. Some homeowners had concerns about the chip option actually increasing the seed source of weeds on DNR trust lands (and their properties) and disagreed this was not a satisfactory solution.
- Homeowners were also given the option to have the material hauled away to another site for vegetation recycling and reuse.

DNR determined the following limitations:

- Homeowners participating in the Shared Stewardship Program, and who requested compensation or re-imburement for work done on trust lands would be subject to state procurement laws if they hired a contractor to do the work.

Awards of contracts for work completed on State trust lands, even though hired by private homeowners, but eventually to be reimbursed by DNR would be subject to all state small business, veteran owned, minority owned and other regulations, as if the state where the hiring agent.

- Contractors working for homeowners on state trust lands, where homeowners would eventually be reimbursed by DNR would be subject to state procurement laws, contract standards, and prevailing wage laws.

The combination of the above limitations prohibits DNR from offering any consideration, re-imburement, or compensation beyond the cost of the LUL to homeowners participating in the program.

5. Identifying suitable areas.

DNR performed geospatial queries to identify potential homeowners who live adjacent to DNR trust lands in the Darrington, Teanaway Community Forest, and Klickitat Community Forest areas. DNR staff then reviewed those areas for state trust lands that might be suitable for a wildfire prevention treatment. After performing the query, staff conducted outreach to homeowners. DNR excluded private lands adjacent to Natural Areas as these are not state trust lands and often have sensitive plants or other special features.

6. Preparing and entering into shared stewardship agreements and evaluating agreements.

DNR was not successful with convincing a homeowner to enter a shared stewardship agreement. Items identified within legal risk, insurance, and indemnification requirements created most of the issues with homeowners. Homeowners participating in the program had to accept the liability for a number of issues, which contributed to this failure, such as:

- Homeowners are responsible for injuries to property or persons should it happen to occur on DNR property due to the actions of the homeowner or its contractors.

- Homeowners are responsible for any fatalities while working within the LUL for themselves or their contractors.
- Homeowners are responsible for complying with any applicable requirements of DNR's State Uplands or Forest Practices Habitat Conservation Plans and for any violations that may occur.
- Homeowners are responsible for acquiring any needed Forest Practices Application/Notification (FPA/N) and following terms of the FPA/N and the Forest Practices Act and Rules, and for any violations that may occur.
- Responsibility for the treatment, and any failure to properly treat the area within the prescribed plan of operation.
- The LUL requires the homeowner to fully indemnify DNR for the homeowner's acts. They would have to carry adequate insurance, and this might require them to increase their types and levels of coverage.
- Responsibility for any environmental spills, from homeowners, or permittees actions, including fuels, or other chemicals.
- Responsibility for removal or destruction culturally significant artifacts or human remains
- Under RCW 79.15.010, DNR is required to appraise the value and receive fair market value for any valuable materials, which could include timber and vegetation (or biomass). DNR limited the LUL to vegetation trunk size to be 8 inches DBH or less to ensure that merchantable timber would not be able to be harvested under authority of the LUL and that material being removed is undesirable or invasive brush.

7. Agreements to be within (at least) the Teanaway or Klickitat Community Forests, and on state trust lands in the vicinity of the town of Darrington Washington.

DNR focused on these geographical areas as mandated by the legislation. DNR interpreted the language requiring working with individual landowners to manage a small, shared boundary to mean adjacent homeowners and small forest landowners who had concerns about the condition of the forest adjacent to their private lands. As such, this pilot focused on small private landowners, rather than industrial forest landowners.

DNR utilized the Small Forestland Landowner Assistance Program (SLF) currently housed and organized in its Forest Resilience Division. This program promotes the coordination and delivery of services with federal, state, and local agencies, including local fire districts, conservation districts, and community wildfire resilience coalitions, forest landowner associations, colleges and universities, landowner assistance organizations, consultants, forest resource-related industries, and environmental organizations to nonindustrial forests and woodland owners. DNR hoped to utilize some of the contacts this program was making, to extend SLF's work to increase the impact of both programs. Unfortunately, DNR was unable to build this connection to the point that a successful agreement with a homeowner was reached.

Successes

DNR was able to determine which legal document the authority to complete the work would be conducted under (the LUL) and drafted a template that authorized the activities and addressed the identified liabilities to the extent possible. DNR also identified that proviso funds could be utilized to compensate the trusts for the work being completed, at no cost to the homeowner participating within the program. DNR was also able to determine the limitations on use of funds, and under which circumstances funds could be spent under the authority of the legislative proviso.

DNR successfully identified adjacent landowners that were within all of the defined geographic areas using the geospatial query, completed outreach to all of those identified, and invited them to participate in the program. Staff held meetings, both virtually and in person with interested homeowners, and answered inquiries and numerous questions about the proviso. DNR was successful in getting knowledge of the program out to potential homeowners and communicating the abilities and limitations of the proviso. DNR staff completed walk-throughs with interested homeowners and explored how the program could benefit those homeowners. Staff also communicated how the program could also work in conjunction with the SLF program, to treat a much wider swath of land and to reduce the risk of wildfire impacting both private and state trust land.

A total of 302 homeowners were identified utilizing the geospatial query. Of those homeowners, DNR had communication with 15 homeowners about the program.



Figure 2: Property line between DNR and private landowner.

Barriers to Success

While DNR met a number of its objectives, there were several roadblocks the department was unable to overcome. These include reluctance of private homeowners to participate in the project, reluctance to respond to DNR outreach, increased risks to DNR, risks to workers and volunteers, environmental risk concerns, and concerns with DNR's motives and means.

DNR reached out to potential homeowners using United States Postal Service invitations, reaching out to the DNR Community Forestry Program, utilizing the DNR Wildfire Ready Resilience Program, and addressing inquiries from the public. Response to these communications was limited, with homeowners reluctant to respond and participate.

DNR was unwilling to allow homeowners to burn debris on DNR-managed lands, as most requested to. DNR's concern was that burning the debris on state land would be opposite of the goal of the program and instead would increase the risk of wildfires. DNR also found situations where homeowners expressed interest in participating in the pilot to clear on DNR land, but due to the condition of the homeowner's private land there would be no reduction in overall fire danger. In one instance the private homeowner's comments were that they could not see themselves ever treating their land or performing any clearing/fire protection on their overgrown and heavily wooded lands. DNR did encourage those homeowners to reach out to and participate with SLF to begin a treatment of the private property.

One of the larger roadblocks that could not be overcome is the cost of mitigation work on DNR-managed lands and the question of cost-sharing these expenses. Homeowners repeatedly requested to have the use of proviso funding to actually perform the work on DNR-managed lands without burdening the cost of the work on the homeowners. State purchasing and finance policy, procedures, public works requirements, and other applicable laws made it prohibitively difficult and more costly for private landowners to perform the work compared to private contracting practices.

Homeowners were also responsible for taking responsibility for the following: any damage to the remaining vegetation (including the growing timber), environmental harm from spills, any violation of DNR's Habitat Conservation Plans, completion of an FPA/N, fires, injuries or death of workers, damage to culturally significant artifacts, and damage to riparian areas. Homeowners did not perceive that the benefits of the program exceeded the costs of the work, increased insurance, increased risk, and increased liability taken on by the homeowner. These responsibilities were clearly explained to potential participants in the program.

Conclusions and Recommendations

In conclusion, for this program to be feasible within the scope of what was identified in the proviso, two critical needs must be met before moving forward:

1. Liability for possible unintended adverse consequences of homeowners conducting forest restoration activities on DNR-managed lands must clearly be established to DNR. The legislature, through the state's self-insurance program, must be ready to provide DNR with sufficient funds to offset this increased liability.
2. A means whereby reimbursement payments to homeowners for expenses incurred to carry out forest restoration activities on state lands are exempt from state hiring and contracting requirements.

Homeowners are unwilling to participate in the program without the above changes, or perhaps other means to compensate homeowners for the costs and risks they will be undertaking while performing work on state trust lands.

DNR staff also encountered several homeowners suspicious of the state's intent with the program. Without the means to reduce their risk or liability, and/or to properly compensate homeowners for the work, staff were unable to convince the homeowners of the broad benefit of the program and why the homeowner should participate in the program. Most conversations included discussions on this should be the state's responsibility and not the private homeowner adjacent to state lands. Homeowners also expressed that they have either enough work to do on their own properties or that they did not wish for the treatment to be occurring on the state land.

The State should carefully consider the consequences of these changes: they may have serious ramifications beyond the narrow scope of this project. While critical to any future iterations of this project, they may cause more dramatic impacts to how the state conducts its business.

DNR also recommends additional outreach on the benefits of forest health treatment to the community. As DNR staff interacted with homeowners and concerned citizens, there was a general disagreement on the need to treat lands to prevent wildfires and the benefits a program such as this could provide. Maybe a wise first step to any future program would be further funding the outreach program, to better communicate the need to treat and care for the forest (both private and public) and utilize (and fund) the SLF crews and resources to better educate those homeowners where the risk has been identified as the highest priority. However, in the absence of the core changes described above, such additional outreach is unlikely to convince homeowners to participate in this program. Alternatively, it should be considered that the benefits created by this program do not match the level of risk and operational challenges to DNR and private landowners. In this case the project should be abandoned to focus on other more effective forest health and wildfire mitigation measures and programs.



Figure 3: Overstocked DNR land adjacent to private land near Darrington.