

Whitefish School Trust Lands Neighborhood Plan
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I. INTRODUCTION AND OVERVIEW

The Whitefish/State Trust Lands Neighborhood Plan (Neighborhood Plan) is a land-use plan for the 13,000-plus acres of State School Trust Land (trust lands) surrounding the community of

Whitefish (Whitefish) in Flathead County (the County), Montana. The Neighborhood Plan defines future land uses for trust lands, which comprise a large portion of the area covered by the Whitefish City/County Master Plan that was adopted in 1996; the remainder is covered by the Flathead County Master Plan of 1987. This Neighborhood Plan would become an integral part of any growth policy plan that may be updated at periodic intervals by the Whitefish or the County. As stated in *Montana Codes Annotated (MCA) 76-1-605, (2)(a)* 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. *(2)(b)* 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. The Neighborhood Plan is the first large-scale, collaborative land-use plan prepared for any trust lands in the State of Montana.

The public planning process for the Neighborhood Plan was initiated by the Montana Department of Natural Resources (DNRC) in March 2003 with assistance from Community Development Services, a planning firm based in Butte, Montana. The initial agency plan developed a broad set of goals and policies to assist in evaluating development proposals in the rapidly growing Whitefish area. However, given the importance of trust lands to the community and the community's lack of knowledge about the Trust Lands mandate, members of the community sought to develop a more open and representative process. Local residents approached the State Board of Land Commissioners (Land Board), which oversees DNRC's management of trust lands, to request a more collaborative, community-based, land-use planning process that would both protect important community values and honor the financial objectives of trust lands.

At its September 2003 meeting, the Land Board responded by chartering a diverse stakeholder group, including DNRC staff, to work collaboratively to develop a land-use plan that met the needs of both the State trust and the community. In developing the charter, the Land Board exercised its fiduciary responsibility by recognizing: 1) that the State trust benefits when conflict is minimized by meaningfully involving local communities in the management decisions of neighboring trust lands; 2) high quality land-use planning adds value to trust assets; 3) trust-management decisions must result in full market value to the trust beneficiaries for the interests disposed of and must consider how those decisions would stabilize and impact economic vitality of communities in order to ensure short- and long-term revenue opportunities for beneficiaries; and 4) recreation, conservation, and other "nondevelopment" values on trust lands significantly enhance property values, thereby increasing the tax revenues available for school districts and supporting local economies.

The charter authorizes the Whitefish Advisory Committee (Advisory Committee) to develop a sound land-use plan for the 13,000-plus acres of trust lands surrounding Whitefish that would provide increased revenue for the beneficiaries of the school trusts while maintaining the economic, environmental, and cultural vitality of Whitefish and the surrounding areas. The Advisory Committee hired its own consultant, Conservation Partners, and engaged in the planning process that created this Neighborhood Plan. During the 5 months leading up to October 2004, the Advisory Committee met in 4 work sessions with Conservation Partners, conducted numerous phone conferences, and held 2 public meetings to update the public on the progress of the plan and obtain input. Recognizing that the diverse members of the Advisory Committee would come to the process with very different viewpoints, the Advisory Committee first defined and agreed to a set of principles, or criteria for success, that have served to guide deliberations and interaction (*Additional Information, Item C*).

All parties of Whitefish Advisory Committee understood that producing a plan everyone could support was critically important, though, given the differing constituencies of the representatives, deliberations were contentious at times. Only if all participants supported the outcome would the Neighborhood Plan have a chance to effectively establish a framework for success. During the planning process, all available information relating to these lands was assembled; an atlas of aerial photos and maps was created that illustrated a variety of natural resources, ownerships, and physical and hydrologic information. Using this information, the Advisory Committee worked through the planning issues for each subarea and produced several alternatives, which were

ultimately refined to create this Neighborhood Plan. *Note: Maps included in this Neighborhood Plan are conceptual in nature.*

As with all plans, this is not the end of the road, but is the beginning of the hard work of implementing the identified actions. The same spirit of cooperation, creativity, and stick-to-itiveness that went into the creation of this Neighborhood Plan would be required to move ahead in the years to come. If these actions are successful, this may be an example of how other communities could protect lands and resources important to their sense of place and identity and how trust lands could meet their fiduciary requirements in a complementary and predictable manner.

II. NEIGHBORHOOD PLAN CONCEPTS, POLICIES, AND IMPLEMENTATION STRATEGIES FOR THE TRUST LANDS IN THIS NEIGHBORHOOD PLAN

This section addresses concepts, policies, and implementation strategies for all 13,000-plus acres of trust lands within this Neighborhood Plan.

OVERALL GOALS OF THE NEIGHBORHOOD PLAN:

- Generate long-term and full-market economic return from the use of trust lands for Montana's public schools and other beneficiaries.
 - Create a framework for orderly and predictable conservation and development land uses on trust lands for the lands in this Neighborhood Plan over the next 20 years.
 - Clarify the goals and legal responsibilities necessary between Whitefish, the County, DNRC, and their partners to complete a set of transactions to protect important conservation lands and meet trust land fiduciary objectives.
 - Minimize or reduce the risk of catastrophic fire in Whitefish and the County neighborhoods that are adjacent to State trust lands.
 - Preserve and maintain critical wildlife habitat for sensitive, threatened, and/or locally significant species.
 - Maintain the high water quality in the Whitefish Lake watershed, the primary source of drinking water for Whitefish.
 - Maintain the scenic, rural, small-town character and landscape of the County and Whitefish.
 - Enhance recreational use of trust lands for multiple users in a manner that provides compensation and supports the local economy and provides responsible stewardship of the natural resources.
- Policy 1 - Reduce Uncertainty, Enhance Income to the School Trusts, and Increase Protection of Lands Important to the Community

DNRC administers trust lands for the primary benefit of the trust beneficiaries, which includes public education. DNRC operates under a constitutional mandate to manage these lands to maximize revenue while considering environmental and economic factors. This constitutional mandate is further described under Additional Information, Item I.

Over the last several years, the demand for property in the Whitefish area and the greater Flathead Valley has increased significantly. As a result, land values in the Whitefish area have increased dramatically. A significant land base of trust lands in this Neighborhood Plan are under development pressure due to valleywide growth. As a result, pressure and temptation have increased to sell some of these lands to increase short-term revenue to the trust beneficiaries. To increase predictability, this Neighborhood Plan identifies a set of strategies to compensate the trust beneficiaries at full market value and permanently protect the most important lands and ensure that they would be available for public recreational use for future generations to come. In some cases, the Neighborhood Plan recommends that DNRC continue to manage certain lands for traditional uses such as forestry and recreation. However, recommendations to continue traditional forestry management and uses are made with the understanding that, in the future, DNRC might entertain proposals to lease or dispose of these lands for development in order to generate additional revenue where the Whitefish community has not proposed site-specific transactions in accordance with the time frames and priorities in this Neighborhood Plan.

Wherever possible, the Neighborhood Plan recommends actions that protect the most important lands *permanently* over the next 20 years rather than putting these decisions off, creating an uncertain future. Implementing the Neighborhood Plan would achieve the fiduciary responsibility of the trust through the sale of development rights and a limited number of high-value homesites in carefully selected areas. The sale or leasing of these high-value sites helps pay for permanent deed restrictions or conservation easements on

more than 90 percent of the land. Through actions undertaken according to a phased and predictable sequencing timetable in this Neighborhood Plan, the community would help determine the future of these lands once and for all. Traditional uses, such as forestry and recreation, shall continue and, in most cases, DNRC would continue to manage and obtain revenue from timberland and specific recreational uses.

- Policy 2 – Create a Multipurpose, Regional Recreational System That Links Trust Lands in the Whitefish Area

Trust lands create a border of undeveloped land along Whitefish's north, west, and south boundaries. Residents in nearby neighborhoods and visitors to the area use these lands for a variety of recreational uses. While trails have evolved in an ad hoc fashion, none have been planned, developed, or maintained to maximize the experience of these lands or interconnections to the community. This plan calls for the creation of a regional recreation system as a significant amenity to the area. The following characteristics would be implemented into this system:

Implementation Strategy 2.1 - Create a Regional Loop Trail

The cooperation of multiple partners has afforded an opportunity to create an interconnected trail that stretches from a trailhead on Swift Creek at the north end of Whitefish Lake to the southern end of Spencer Mountain, via Boyle Lake, Beaver Lakes, and Skyles Lake. This multiuse trail could be connected in a continuous loop to Whitefish and would be the spine of a recreational system that interconnects to neighborhoods and trailheads along the way.

The trust beneficiaries would be compensated as follows: *Area of land encumbered by trail (15 feet x length = area) x value of adjacent land x 5 percent = annual license fee.*

- Policy 3- Create an Areawide Fire-Mitigation Strategy

In conjunction with the development of the regional recreation system, DNRC, MT FWP, Whitefish, and the County should explore the creation of a fire-mitigation strategy or firebreak that would significantly reduce the potential for catastrophic wildfire to further protect the value of these trust lands and reduce firefighting expenses. Since trust lands are adjacent to Whitefish and County neighborhoods to the north, west, and south of Whitefish, an opportunity exists to explore a fire-mitigation strategy in conjunction with the creation of the recreation trail. The cooperation of the 4 jurisdictions could be useful in obtaining federal grants to determine and implement the best strategy.

- Policy 4 – Land-Use Actions on Trust Lands Should Support Community Values

The 13,000-plus acres of trust lands near Whitefish have great importance to the regional community and the economy of the Flathead Valley. In the case of the Happy Valley/KM Subarea, these lands are surrounded by development and provide open space, wildlife habitat, and scenic and recreational opportunities to people in adjacent neighborhoods. In other places like Spencer and Beaver lakes, recreational access is provided to people throughout the community and visitors who may have learned of their availability from area sports retailers. Recreational uses include mountain biking, hiking, hunting and fishing, wildlife viewing, horseback riding, cross-country skiing, backcountry skiing, snowshoeing, snowmobiling, and water activities. Since these lands are in the urban to rural transition area, they all provide wildlife habitat in varying degrees of importance. Swift Creek and Haskill Basin are parts of important watersheds that supply water for Whitefish and Whitefish Lake. The resource maps document these values for the region and each subarea. An understanding of these values has guided the development of the subarea plans.

Since the State has the duty to manage these lands solely for the fiscal benefit of specified trust beneficiaries, the State has identified various strategies by which the State could satisfy its legal duties to the trust beneficiaries, while simultaneously taking actions that are consistent with, or complementary to, the desires of the local community.

Implementation Strategy 4.1 - Develop a Geographic Information System That Illustrates the Natural, Physical, and Other Resource Values of These Lands

To identify the important natural resource and community values of the trust lands, all current and available information was gathered into a geographic-information database that created a set of resource and aerial photo maps. The Neighborhood Plan identifies these maps, which should continue to guide its implementation actions.

Implementation Strategy 4.2 – Consider Relevant Issues During Project-Level Review

Project-level reviews should consider relevant issues and address land-management considerations such as aesthetics, wildlife, water quality, and wildland fire hazard and risk.

- Policy 5 – Utilize a Flexible Menu of Techniques Tailored to Conservation Objectives to Protect Land

In order to meet the trust and community objectives to protect as much of the trust lands as possible from development, a full range of conservation techniques would be required. Some of the techniques listed below are currently not permitted under Montana State law governing trust lands and would require legislative changes to be utilized. DNRC is seeking legislation that provides the ability to sell only the development rights. Sale of timber, agriculture, grazing, and mineral rights would be prohibited. Under current law, DNRC may only sell conservation easements to MT FWP and nonprofit organizations that have adjacent ownership as of 1997. These techniques involve complicated real estate transactions and concepts. The benefit is that DNRC could obtain full market return for the sale or lease of land or interests in its property in a variety of ways that tap both private and public sources efficiently. A number of these techniques encourage private landowners and DNRC to be partners with the community in protecting land.

Implementation Strategy 5.1 - Emphasize the Use of the Following Conservation Techniques to Implement This Neighborhood Plan

In general, a conservation easement is a permanent deed restriction that restricts future development on land with recreation, public, scenic, or wildlife qualities (*Additional Information, Item F. Information on Conservation Easements* further describes conservation easements [see *Table of Contents*]). Under Montana law, conservation easements may only be held by nonprofit land trusts or by public bodies, as defined by *Section 76-6-104(4) MCA*.

a. Conservation Easement in This Neighborhood Plan

The conservation easement transfers future development or partial ownership rights and, in return, may allow the landowner to take advantage of federal income and estate tax benefits. The value of the easement is determined by an independent appraisal, with the value of the easement representing the difference between the full market value of the land and the value of the same land with the restrictions in place. Typically, easement value varies between 30 and 70 percent of full market value, although values could be higher in some instances. A conservation easement is generally granted to a nonprofit land trust whose job is to see that the terms of the deed restriction are not violated. In this Neighborhood Plan, conservation easements on trust lands would preserve public access where it has historically existed or is planned and, in most cases, traditional forestry and recreational management would continue. A conservation easement could be structured to reserve a few carefully selected homesites; this is discussed in the Conservation Buyer description below. Conservation easements could be placed on school trust lands a couple of ways. DNRC, if allowed in the future, could sell conservation easements in certain limited cases to public entities or qualified nonprofit groups. Or, DNRC could sell land to buyers who voluntarily place conservation easements on the property that restricts future development.

b. Conservation Buyer

A conservation buyer pays full market value for a conservation easement or a large parcel of trust land and desires to keep the land open and undeveloped. In order to keep the land undeveloped, the conservation buyer places a conservation easement on the land that limits future development of the property. In some instances, a conservation buyer may reserve the opportunity to create a 5-acre homesite. In this case, the

purchaser may take advantage of tax benefits available from the gift of the easement and also obtain a valuable homesite surrounded by protected land. This Neighborhood Plan is based on the premise that buyers who obtain or gain control of what is currently public land should assist the community in protecting remaining trust lands. As a consequence, the community seeks private partners who are willing to assist in the protection of as much of the trust lands as possible. In order to obtain greater access rights, conservation buyers would need to demonstrate a commitment to protecting additional lands important to the community. Below is the proposed 3-tiered approach:

1) *Conservation Easement*

The purchaser acquires a minimum 50-acre conservation easement on trust lands that prevents future development, or purchases the 50 acres and donates a conservation easement on the land that eliminates future development. In either case, public access to the land is maintained.

2) *Conservation Easement with Retained Homesite*

The purchaser protects land and acquires a homesite in 1 of 2 ways. In the first alternative, the buyer acquires a minimum of 250 acres of land, retains the right to build on one 5-acre homesite, and donates a conservation easement over the remaining land, thereby obtaining a variety of tax benefits. The buyer may also want to donate the fee interest back to the State trusts for additional tax benefits and to allow DNRC continued management of the land. In the second option, the buyer purchases a 5-acre homesite and a conservation easement over a minimum of 250 acres of adjacent trust lands. This second option is currently not allowed under Montana law, but could be with minor legislative changes. In appropriate locations, the conservation buyer also has the option to acquire a Land Use License on 20 to 160 acres of land surrounding the homesite to ensure privacy and manage land to maintain a healthy forest. For both options, public access outside the 5-acre homesite is maintained, but may be limited to historic use or planned trails and corridors.

3) *Conservation Easement with Retained Homesite and Restricted Public Access*

This option is similar to the *Conservation Easement with Retained Homesite* alternative, except that 500 acres must be acquired or protected and the buyer has the right to restrict public access where historic access has not existed. In appropriate locations, the conservation buyer also has the option to acquire a Land Use License on 20 to 160 acres of land surrounding the homesite to ensure privacy and manage land to maintain a healthy forest. Public access would be maintained in those locations where public access has historically existed or is planned.

The acreages associated with these 3 tiers are desirable targets and serve as guidelines that may be modified based on the particular circumstances of a transaction. In the final analysis, DNRC would have to determine whether sufficient value is being generated from the proposed transactions.

c. Conservation Development

Conservation development involves a limited amount of development on a property, done in a manner that protects the open and productive qualities of the land. The density of development that normally would be permitted on a parcel of land may be reduced by as much as 75 to 90 percent. The density reduction is accomplished by placing a conservation easement on the open land that has conservation values such as wildlife habitat, outstanding scenery, or productive forestland. The landowner obtains income from the sale of a few carefully selected homesites and the tax benefits gained by granting the conservation easement. In conservation development, the value of homesites is enhanced by their location next to protected lands, and buildings are designed to blend in with surroundings. Often fences are restricted to ensure wildlife movement, the area of disturbance is minimized, and road lengths and widths are kept to

a minimum. Open space that is retained could be managed and utilized by the homeowners, DNRC, or another public or nonprofit entity.

d. Cluster Development

Cluster development uses a more compact pattern of development than large-lot development. By placing smaller lots on less than half the total land area of a parcel, this type of development protects open space for recreational use and forestry production and preserves wildlife habitat and scenic views. Through cluster development, the same number of large lots that could have been created on the entire parcel is configured on a smaller portion of the site, creating a compact pattern of smaller lots. This pattern of development could dramatically reduce the costs of roads and utilities because of the smaller lot sizes. Retained open space could be managed and utilized by the homeowners, DNRC, or another public or nonprofit entity.

e. Public Purchase of Development Rights or Land

Whitefish, the County, and/or the Community Conservation Entity could raise funds or pass a bond issue for the purchase of a conservation easement, development rights, or for the purchase of land if allowed by law in the future. Many communities use funds from sales, property, or real estate transfer taxes to fund the protection of open lands. The benefits of the purchase of development rights (a conservation easement) are that the cost to acquire the easement is less than an acquisition of land and management stays with DNRC; therefore, DNRC would still be able to derive revenue from traditional uses. In addition, a variety of federal funding programs assist communities in the protection of important lands.

f. Land Trade

Through a land exchange, land or interests in land may be exchanged for other land of similar value. The benefit to a private party in a land trade is that the exchange could be accomplished without the tax consequences that accompany the sale of land.

Implementation Strategy 5.2 - Land Trades Involving Trust Lands Should Only Be Made for Other Lands in the Whitefish Area

Land trades of school trust lands in the Whitefish area should be made in those instances where DNRC could create a more coherent and logical pattern of ownership in the best interests of the trust beneficiaries. The trading of trust lands adjacent to Whitefish should be made for other desirable lands in the greater Whitefish area.

Implementation Strategy 5.3 - Leasing Lands for Development Should Take Preference Over the Sale of Land

A stated preference of this Neighborhood Plan is that, wherever possible, lands that are proposed for development should be leased, unless leasing produces an inferior return or is not feasible in the market place.

➤ **Policy 6 – Engage a Variety of Partners to Help Implement This Neighborhood Plan**

This Neighborhood Plan, created by the combined efforts of a variety of constituencies that have worked to resolve differences and define common ground, is ambitious and would require continued constructive engagement of these parties to be successful. Implementation would require even greater and more diverse partnerships with a broader set of resources, interests, and agencies.

This Neighborhood Plan seeks to engage a variety of community, charitable, and governmental partners in the protection of important trust lands. These include the basic partnership between DNRC and the community to carry out the Neighborhood Plan, a number of public funding programs, private charitable sources, area land trusts and Community Transaction Partners (discussed below), interested community members, and area landowners.

- Policy 7 – Provide Adequate Time for the Community and DNRC to Meet Their Respective Goals According to an Agreed-Upon Timetable and Periodically Assess Progress in Meeting Goals

This Neighborhood Plan differs from traditional land-use plans in that it identifies a flexible menu of options to implement actions that would achieve results beneficial to both DNRC and the community. While it recommends a desired future condition for these lands and a set of performance guidelines for achieving these results, no detailed zoning or land-use controls are specifically recommended. The Neighborhood Plan gives the community and DNRC the time that both parties need to work creatively to achieve mutual objectives. Since these transactions are complicated and would require time and expertise to complete, the time frames, in planning terms, for their completion are long. The capacities of both DNRC and the community to manage this process are limited and, in order to maximize the potential for success, a sequencing timetable for completion of transactions has been developed. The sequencing timetable works to the advantage of both the community and DNRC. It gives the community the time it needs to work with partners to put together creative transactions that maximize conservation benefits. It gives DNRC the time to progress through DNRC-initiated actions at a measured pace that ensures they would take a careful, measured look at each transaction with the knowledge that the value of its assets is appreciating.

This policy is intended to provide a flexible framework that allows DNRC to proactively implement provisions of the Neighborhood Plan while remaining responsive to other implementation opportunities, community initiated or otherwise. In order to accommodate potential projects that may be consistent with this Neighborhood Plan, but not specifically provided for, DNRC would establish a process for reviewing and incorporating these projects into the implementation timetable.

Implementation Strategy 7.1 - Use the Timetables Outlined Below to Guide Actions in Each of the Trust Lands Subareas

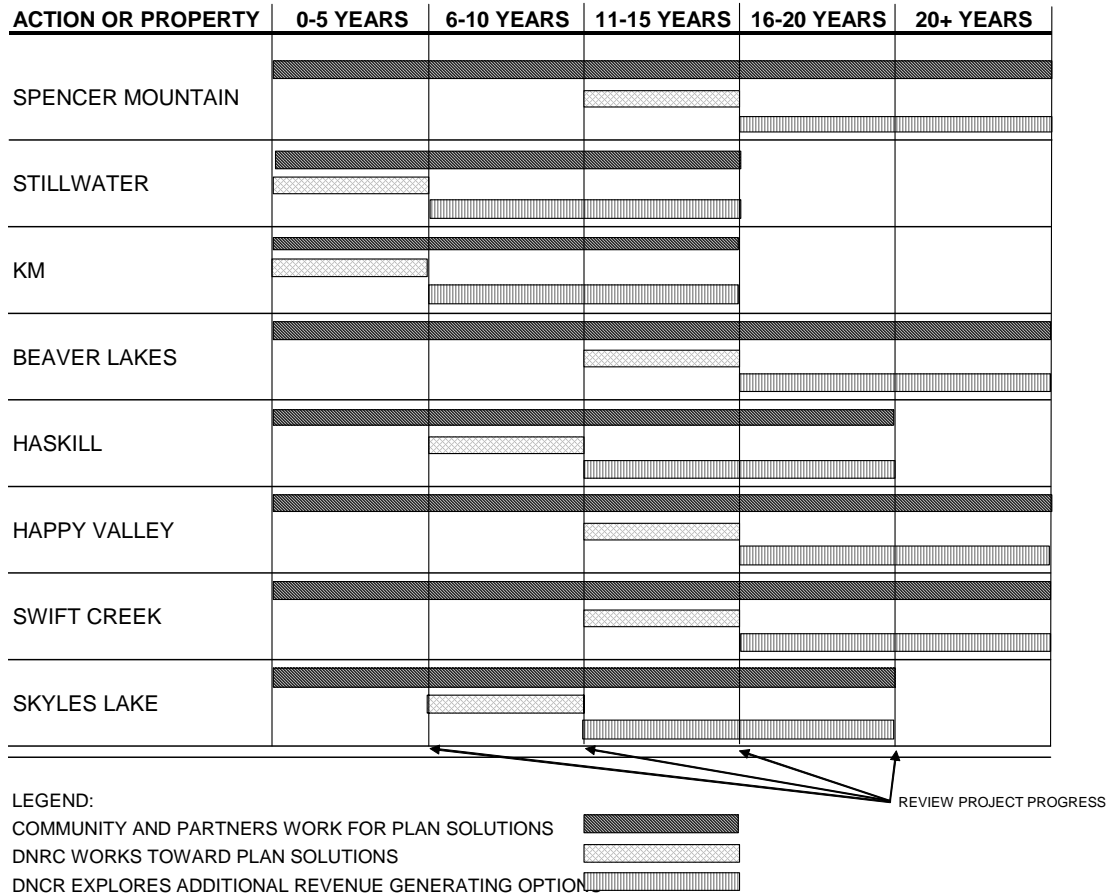
This Neighborhood Plan identifies the desired future condition for each of the subareas. Since staffing and budget levels would prevent DNRC from accomplishing all of the desired future conditions immediately, and DNRC is also likely to be working on high-priority projects outside the Neighborhood Plan area, DNRC agrees that when a proposal is brought forward to them that could achieve the desired objectives of the Neighborhood Plan, DNRC would work with the proponent of the proposal to identify its priority relative to other work and establish the timing for processing the proposal. Priority would be given to proposals that most effectively achieve the goals and policies of the Neighborhood Plan. If proposals are brought forward to DNRC, the time frame for DNRC to initiate other actions could be extended.

Some of the transactions on the timetable (Stillwater and KM subareas) have shorter time frames because they are more straightforward and easier to accomplish than others. The Neighborhood Plan recognizes that actions in many areas would take more time and are inherently more complicated, so the time periods for completion are extended at least 10 years (Spencer, Swift Creek, and Beaver Lakes subareas). In several areas, performance criteria have been established for proposals that would be utilized to evaluate proposals as they are generated. Also, as the community and its partners develop a greater capacity to implement the subarea plans, expectations of success increase.

The chart below shows that for all subareas, the community, DNRC, and other partners would initiate some actions. At the end of the 5- and 10-year increments, the parties would make assessments of progress. The target for the first 5 years is to implement actions, or have projects nearing completion, on a total of 1,000 acres. These actions may be to protect all or most of that acreage or develop those areas identified for limited development in the Neighborhood Plan. The parties would assess progress to that point and may agree to make the changes or adjustments necessary to improve performance. Another assessment would be made at the end of 10 years with the expectation that a total of 2,500 acres would have been addressed, or have projects nearing completion, according to the Neighborhood Plan.

The timetable below identifies when the sequencing of certain actions are programmed to occur.

Whitefish Neighborhood Plan - Sequencing Plan



To the extent that the community is successful in bringing forward proposals to DNRC for processing, the time frames for additional transactions is extended simply by the fact that it would take DNRC more time to process the additional transactions. For example, if the community and DNRC are successful in implementing significant portions of any 2 of the KM, Stillwater, Beaver Lakes, or Swift Creek subarea projects (1,000 acres in 5 years and 2,500 acres in 10 years), the time frames for completing all other subareas would be pushed out by an additional 5 to 10 years (this is shown on the second chart as an illustration). This strategy recognizes and rewards everyone for its actions by extending the sequencing of future actions. It is also recognized that the extension of timetables would likely result in higher land values and associated costs for protection-based proposals.

Whitefish Neighborhood Plan - Extended Sequencing Plan

ACTION OR PROPERTY	0-5 YEARS	6-10 YEARS	11-15 YEARS	16-20 YEARS	20+ YEARS
SPENCER MOUNTAIN	Community and Partners Work for Plan Solutions				Review Project PRC
STILLWATER		Community and Partners Work for Plan Solutions	Review Project PRC		
KM		Community and Partners Work for Plan Solutions	Review Project PRC		
BEAVER LAKES				Community and Partners Work for Plan Solutions	Review Project PRC
HASKILL			Community and Partners Work for Plan Solutions	Review Project PRC	
HAPPY VALLEY				Community and Partners Work for Plan Solutions	Review Project PRC
SWIFT CREEK				Community and Partners Work for Plan Solutions	Review Project PRC
SKYLES LAKE			Community and Partners Work for Plan Solutions	Review Project PRC	

LEGEND:

COMMUNITY AND PARTNERS WORK FOR PLAN SOLUTIONS

DNRC WORKS TOWARD PLAN SOLUTIONS

DNCR EXPLORES ADDITIONAL REVENUE GENERATING OPTIONS



REVIEW PROJECT PRC

➤ **Policy 8 – Utilize Existing or Develop New Transaction Capacity to Assist the Community and DNRC in the Implementation of This Neighborhood Plan**

In order to increase revenue for school trusts and achieve community land-protection objectives, the need is critical to increase the capacity necessary to develop and negotiate proposals and transactions on behalf of the community with DNRC and private landowners. New or existing government or nonprofit entities could provide transaction capacity as Community Transaction Partners. Since the successful implementation of this Neighborhood Plan requires working through complicated real estate transactions that achieve the maximum conservation with the minimum amount of development, assisting new or existing entities would require competent transactional skills, the capacity to utilize the menu of land-protection techniques, an ability to work with diverse parties, and effective communication skills to maintain the confidence of DNRC, Whitefish, and the County. The community has a number of options to meet this need, including:

a. Existing Land Trusts

Work with existing land trusts, such as the Montana Land Reliance or Flathead Land Trust, who would agree to take on this project as a major initiative; they would expect support from the community in order to cover staff requirements. In working with a land

trust, the community could establish a representative advisory committee that would work with the land trust's staff to guide the implementation of projects.

b. New Nonprofit

A new 501 (c)(3) nonprofit entity could be created with community participation to work with the community, Whitefish, and the County to develop and negotiate proposals for DNRC review. Such an entity could work with an existing land trust to implement transactions or develop its own capacity to perform conservation and development transactions, or develop a hybrid combination.

c. New Land Trust

A new 501 (c)(3) nonprofit land trust could be created with community participation that would work to protect lands in the Whitefish area, with a primary focus on implementing the transactions necessary to implement the Neighborhood Plan. In this case, the new land trust could hold conservation easements and other interests in land and would have to hire either staff or contractors to implement projects.

d. City/County Open-Land Protection Program

A new government program with funding and dedicated staff could be created to perform the conservation entity functions.

In order to maximize the potential for success, several entities may be available to assist the community with transactions, each with the different skills and capacities necessary to complete the different types of transactions. In general, it is always better to work with existing entities rather than establish a new organization. Therefore, option *a) Existing Land Trusts* is preferable. However, since the effort would require financial support from the community, it may be advisable to also pursue options *b) New Nonprofit* or *c) New Land Trust*, establishing a new nonprofit entity so that its fundraising is separate from its land-trust partner. If problems develop between the land trust and the nonprofit entity, both could go their own way without compromising the effort. Option *d) City/County Open-Land Protection Program* would require a dedicated funding source and the creation of governmental capacity to pursue land protection; this option is probably the least efficient of the alternatives. The functions that Community Transaction Partners could fulfill include some or all of the following:

- a. Raise funds to support the protection of identified lands and identify community fundraising options; federal, State, and charitable grants; and other funding sources for consideration by the community.
- b. Represent and communicate the interests of the community, Whitefish, and the County in negotiations with DNRC and private landowners in order to develop and complete the transactions necessary to implement this Neighborhood Plan.
- c. Cultivate private-sector interest and participation in the full menu of creative land-protection options that implement this Neighborhood Plan and are in the best interests of the community.
- d. Work with a variety of partners to fund and prepare plans for: the regional recreation system, including the multiuse trail; care and maintenance of the recreational system; fire mitigation strategy; and timber management. Specific plans may be necessary to assist the Happy Valley neighborhood in finding a community solution to septic-disposal problems.
- e. Ensure that the elements of this Neighborhood Plan are implemented effectively when involving transfers of trust lands or interests in trust lands.
- f. Ensure that the terms of conservation easements and other land-use agreements are monitored and enforced.
- g. As appropriate and in conjunction with other community partners, manage lands, trails, and other assets on trust lands.

- h. Assist public partners in working for State legislative changes that may be necessary to implement this Neighborhood Plan.

DNRC would work with those entities that demonstrate a capacity to help implement the goals and policies of this Neighborhood Plan.

- Policy 9 – Explore Ways to Generate Additional Revenue on Trust Lands in Ways That Are Compatible to Maintaining Community Values

In addition to the revenue-generating strategies identified for the subareas, this Neighborhood Plan recommends that DNRC reform its permit system and make more creative use of its existing tools, such as land-use licenses, while exploring emerging recreational markets. Throughout the planning process, residents have stated that the existing permit process is confusing and ineffectual. In order to address this situation, this Neighborhood Plan recommends that DNRC work with Community Transaction Partners, different user groups, neighborhoods, and local businesses to design and implement a permit system that is user friendly, encourages users to act responsibly, and is more efficient in generating revenue to maintain lands and trails. While not currently permitted under Montana State trust land laws, allowing a portion of the proceeds from the use of trust lands to be allocated to their direct management would increase the likelihood that the local community would embrace a new permit system and take a greater role in the responsible management and stewardship of trust lands. Additional and compatible recreational uses, such as the proposed backcountry lodge on the Beaver Lakes parcel, should be explored. Also, emerging recreational markets, such as guided trips, would increasingly offer ways to derive income *and* compatibly use these unique lands.

- Policy 10 – Formalize Agreements Necessary to Define Roles, Expectations, and Processes Necessary to Implement This Neighborhood Plan

Implementation Strategy 10.1 - Develop Operating Plans and Implementation Agreements Between the Parties of This Neighborhood Plan

In order to implement this Neighborhood Plan, it may be desirable for DNRC, local jurisdictions, and/or Community Transaction Partners (described above) to establish an operating plan or other agreement that explains how they would work together to implement this Neighborhood Plan. Such plan or agreement should identify the roles, process, and expectations of the parties and how they would work with each other to accomplish the Neighborhood Plan objectives. Another option to establish the relationship between DNRC and a Community Transaction Partner would be if DNRC were requested to become an advisor or ex-officio member of the organization to more effectively achieve implementation of the Neighborhood Plan. In this case, a description of roles, processes, and functions might be spelled out in the organization's bylaws.

Necessary adjustments should be anticipated as we learn more about the availability or effectiveness of the proposed implementation tools or marketability of the subarea concepts. This Neighborhood Plan recognizes that minor changes may be needed to optimize the effectiveness of some of the implementation strategies and subarea concepts. Any proposed changes to the Neighborhood Plan must be designed to better respond to the adopted goals and policies for this Neighborhood Plan. Any changes must follow the local regulatory process established by Whitefish and the County.

- Policy 11 – Pursue Legislative Changes Necessary to Implement Components of This Neighborhood Plan

Currently, DNRC clearly has the authority to dispose of lands at auctions and could reject all offers unless bids are sufficient to meet estimates of full market value. DNRC also has the ability to sell development rights, or a conservation easement, on trust lands at full market value, but only in very limited circumstances. If the community and DNRC are to meet mutually identified objectives, these limitations on the sale of conservation easements should be modified to make it clear that DNRC has the authority to sell conservation easements to governmental entities or a qualified nonprofit organization. This would provide the school

trust with another avenue to increase revenue from lands that should remain in an undeveloped condition while still retaining the underlying fee. Retaining the underlying fee interest in its lands would permit DNRC to obtain continuing annual income from traditional activities such as grazing, mineral development, or forestry operations.

Another legislative change that might be considered is giving local communities the first option to acquire lands that DNRC proposes to sell. The communities would need to pay full market value for the interests that are being disposed, but would have preference over private interests. This change would permit communities to more effectively influence the future of these lands that, in many cases, have become important community assets.

➤ Policy 12 – Improve the Stewardship and Management of Trust Lands

Most of the trust lands that are covered by this Neighborhood Plan would continue to be managed by DNRC for forestry and some recreational uses. Over time and through the operation of this Neighborhood Plan, most of these lands would be permanently protected from future development through legal restrictions, primarily conservation easements. In many ways, these lands would become community lands because they would have been protected, in large part, through the actions of the community for their benefit and enjoyment. Community members, users, and DNRC have the responsibility and opportunity to work together to improve the management and maintenance of these lands in a more coordinated and organized manner. Firebreaks, trail maintenance, forestry practices, and wildlife-habitat management are not just DNRC issues, but issues that could be constructively addressed by partnerships between the community, businesses, users, neighborhoods, and DNRC. These lands would continue to be managed as forestry lands that permit traditional uses and generate a return for the trust beneficiaries. New or increased recreational opportunities would need to be managed by authorized user groups or other appropriate agencies.

With the exception of areas that are ultimately developed, trust lands would be managed for traditional uses, which, in most cases, is forestry. Secondary uses such as organized recreation (i.e., mountain biking parks, Frisbee golf, archery range, paintball games, annual sporting events), outfitting, commercially guided recreation, etc., should be encouraged to generate additional income and meet land-management objectives. Secondary uses should be carefully considered based on their impact to the experience of the general recreational user.

➤ Policy 13 – Develop Specific Plans for Each Subarea Within This Neighborhood Plan That Addresses Their Unique Attributes, Issues, and Community Values

Section III of this Neighborhood Plan proposes land-use actions for each subarea. As DNRC manages these lands, they would follow this Neighborhood Plan in conjunction with other State policies.

This Neighborhood Plan assumes the Flathead County Master Plan base density of 1 house per 20 acres for the purpose of land appraisals in all of the subareas, except where specifically noted in a subarea plan. DNRC would seek input from interested local jurisdictions and Community Transaction Partners in the development of instructions to appraisers. Ultimately, the Land Board would set the minimum bid for trust land property transactions, as authorized by *MCA 77-2-323*.

III. SUBAREA PLANS

A. HAPPY VALLEY/KM SUBAREA

➤ *Happy Valley Parcel*

1. Current Situation and Planning Issues

The Happy Valley parcel of trust lands is approximately 480 acres in size and contains relatively flat, timbered land interspersed with a few small meadows. The area has a high water table and poor drainage. The Happy Valley area is well developed, and the neighborhood provides a diversity of housing types that are more affordable than found in many areas near Whitefish.

This parcel of trust lands currently provides open space, recreational trails, and access opportunities for the surrounding community. Recreational uses include mountain biking, hiking, horseback riding, cross-country skiing, backcountry skiing, snowshoeing, snowmobiling, ATV use, hunting, wildlife viewing, and paintball games. Trailheads, which are generally old logging roads and skid trails, are located on several streets bordering Happy Valley. Sports stores in Whitefish send visitors to Happy Valley for paintball games, easy biking trails, cross-country skiing, hiking, and hunting. Neighborhood residents use the land for biking, horseback riding, hiking, cross-country skiing, ATV use, and snowmobiling. In some instances, this heavy recreational use has resulted in negative impacts from unauthorized motorized use, vandalism, eroded trails, and trash.

Happy Valley is accessed from Highway 93 and is bounded by Bowdish Drive, Meadow Lane, Elk Trail, and Primrose Lane, all county roads. Access to Highway 93 is challenging at times, and some local roads experience heavy traffic and related safety issues.

Lands developed at a variety of densities surround the Happy Valley parcel. To the north and west are half- to 1-acre residential properties, including some areas zoned R-2 that permit half-acre sites. To the east are larger lots of 5 to 10 acres in size; to the south are large, predominantly undeveloped agricultural and forestry parcels. The Neighborhood Plan concept described for this subarea would be used for appraisal purposes.

The high density of adjacent development and the lack of community water and sewer availability results in a high density of individual septic-treatment systems and wells in the area. Moreover, the area suffers from a high water table, a history of flooding, and poor soils for on-site individual septic-treatment systems. As a result, residents are concerned about the potential health effects of the current situation and worried that additional development would worsen the situation. The Whitefish sewer system is located 4.5 miles north of the Happy Valley parcel and, currently, no plans exist to extend lines to the south. Connections to the sewer line would be expensive and, even if practical, might be opposed by the Whitefish community.

The parcel is heavily timbered and provides a variety of wildlife habitat, including whitetail deer winter range. A recently completed timber-management demonstration project on the periphery of the trust-lands site improved the timber stand and met multiple objectives for mitigating wildfire hazards and improving visual quality, recreational access, and wildlife habitat. Timber sales on the remaining portions of the site are planned.

2. Planning Process

The Advisory Committee reviewed a variety of site information and area conditions, as shown on the accompanying maps. Key concerns with changing land uses on this site are the wetlands in the southwest corner, the need for open space in the neighborhood, and the use of the area for a variety of recreational activities, and the conditions of the high water table, existing septic-tank failures, and traffic on access

roads. The Advisory Committee believes that unless alternative land uses could address these issues in a constructive manner, to propose new density in the area would be irresponsible. Several alternative minimal development configurations were examined that took advantage of high points on the land, but the group concluded that without understanding a variety of potential technological and other solutions to the development issues, identifying definitive areas for specific land uses was premature.

3. Neighborhood Plan Concept and Implementation Strategy for the Happy Valley Parcel of the Happy Valley/KM Subarea

The Neighborhood Plan's overall strategy for Happy Valley is to retain the land in traditional uses until private or public/private solutions are generated that address a number of the development constraints and concerns of the neighborhood community. In addition, public funds that could lead to solutions for the community-wide septic issues should be pursued. Happy Valley would be retained in traditional forestry and recreational uses for the next 10 years. During this 10-year period, DNRC would entertain any proposal from a public or nonprofit entity or several conservation buyers that would generate full market return for the land and retain it in open space. In determining the full market value of the land and conservation easements, DNRC would rely on an independent appraisal of the land according to the land use and performance criteria identified below. During the 10-year period, DNRC would also entertain proposals from private or public/private entities that propose changing the use of Happy Valley in a manner that meets the following conditions:

- a. The proposed change in land use must address not only onsite water and septic-treatment issues, but should provide solutions to solving the broader septic-treatment problems in the neighborhood. Details on the broader septic solutions regarding financial responsibilities for any new proposals and the existing neighborhood would require further analysis and discussion.
- b. No more than one-third of the 480 acres should be proposed for development land uses, and new development should be arranged in a cluster pattern.
- c. A significant portion of proposed new residential land uses should be affordable, as defined by the County definition of 'affordability'. (With an affordable housing component, incentives are usually provided to allow the overall project to be profitable.)
- d. Open space and recreational uses of the undeveloped land should continue to be offered to the entire community, and development agreements or a conservation easement should ensure that the open area would remain undeveloped and managed by DNRC or other appropriate public or nonprofit entities.
- e. A portion of the common open space may be dedicated to a community septic-treatment facility.
- f. Off-site transportation impacts created by proposed development land uses would be addressed or mitigated in the development plan.

If DNRC has received no proposals that meet the above requirements at the end of the 10-year period, it may continue to work with the neighborhood under the same conditions, or it may accept additional proposals within the local land-use-regulatory process that solve the septic-treatment and open-space-protection issues in different ways. If progress in generating additional revenues on 2 of the other subareas has been sufficient, the time frame for DNRC to pursue other alternatives would be extended an additional 5 years.

All proposed uses that meet the above conditions and require County subdivision approval would be reviewed by the County. In addition, one or more public meetings would be conducted in the neighborhood when DNRC is seriously considering any

proposal. Community Transaction Partners should also work with the Happy Valley neighborhood and other governmental entities to help locate government grants or other funds to protect Happy Valley and address the community issues on wastewater treatment. With time and some assistance, the neighborhood may be able to permanently protect Happy Valley and address the wastewater-treatment problem at the same time.

➤ *KM Parcel*

1. Current Situation and Planning Issues

The KM portion of this subarea is a 480-acre timbered area bisected by KM Ranch and Spring Prairie roads, both County roads, and an isolated 40-acre parcel that is leased for grazing and is surrounded by private land. The KM area is surrounded by a variety of large and small private parcels that are interspersed with timber and agricultural lands. The eastern portion of the parcel consists of rolling timberland, much of the timber is dog-hair lodgepole pine; a number of old logging roads are frequented by trail users and four-wheelers. The west side is timbered and bordered by rural landowners, a trap-shooting range, and the County landfill; whitetail deer and other wildlife frequent the area.

The KM area is used primarily for timber production. The public uses old logging roads and skid trails that are accessed from KM Road for recreational activities. Recreational uses include mountain biking, hiking, gun club use, hunting, ATV use, horseback riding, cross-country skiing, backcountry skiing, snowshoeing, wildlife viewing, and snowmobiling. The land is currently leased for grazing (165 acres), agriculture (5 acres), and residential (5 acres) uses.

2. Planning Process

The KM area is relatively flat and timbered; the only steep portion is adjacent to the KM parcel on the east side. Once the Advisory Committee studied the existing site conditions, neighborhood use of the site, and the development patterns in the neighborhood, they discussed various ways that a portion of the KM parcel could be developed in order to protect the majority of the parcel.

3. Neighborhood Plan Concept and Implementation Strategy for the KM Parcel of the Happy Valley/KM Subarea

The objective of the approach adopted for the KM parcel is to permanently protect the East Side of KM road for public access and use by transferring density to a portion of the West Side of the road through conservation development. As a result, limited, but valuable, real estate products are created on a small portion of the land while DNRC continues to manage most of the land for traditional forestry. In order for this concept to be put in motion, the KM parcel would be divided into 3 areas:

a. Southwest Corner

This area consists of an approximately 75-acre parcel of land east of KM Ranch Road and south of Spring Prairie Road. This parcel of land would be available for development or purchase by conservation buyers. At a 20-acre density, this parcel could accommodate 3 homesites. However, to the extent that this parcel is permitted to accept density shifts from the East Side, it would help protect the East Side by transferring density from the East Side of KM at a density of 1 unit per 20 acres. By transferring density from the East Side of KM at a density of 1 unit per 20 acres, 20-acre blocks on the East Side could be permanently protected with a conservation easement. DNRC would accept proposals for sale or lease of the Southwest Corner that are at densities or values sufficient to protect portions of the East Side.

b. East Side

A 230-acre parcel on the east side of KM Road has the greatest importance to the community. It shall remain undeveloped and managed for timber and recreation by DNRC for a minimum of 10 years, or until DNRC receives an acceptable offer for the Southwest Corner that purchases density from this parcel. The way this works is that for every additional unit added to the Southwest Corner above 3 units, a 20-acre portion of the East Side would be protected by a conservation easement. In addition, neighbors or other community members could assist as conservation buyers by purchasing the development rights (conservation easement) over a specific portion of the East Side.

c. West Side

The West Side encompasses 175 acres that shall remain undeveloped and managed for timber, wildlife, and recreation by DNRC for a period of at least 10 years. At the end of that time, DNRC may sell homesites to 1 to 3 conservation buyers, depending on how much of the East Side was protected through the transfer of development rights to the Southwest Corner. If no transfer of density occurred, DNRC could sell the West Side to 3 conservation buyers; if all of the East Side was protected, only 1 conservation-buyer homesite would be available. The conservation buyers would pay the full market value of the land, but would be free to take advantage of potential tax benefits that may be available from the donation of the easement.

In addition, the isolated 40-acre parcel that is part of the KM subarea should remain in its current condition until the current grazing lease expires. At that point, DNRC would be free to evaluate whether to renew the existing grazing lease, enter into another long-term lease, sell a conservation easement, or sell the land to a conservation buyer. To the extent that it could, DNRC would give preference to neighbors in any change of ownership. In any event, no more than 1 homesite with associated outbuildings would be allowed on the parcel.

B. SWIFT CREEK SUBAREA

1. Current Situation and Planning Issues

The Swift Creek Subarea is a large 2,930-acre parcel at the north end of Whitefish Lake. The predominant feature of this area is Swift Creek, a major tributary of Whitefish Lake and a secondary source of water for Whitefish. Swift Creek is classified as a bull trout/cutthroat trout stream as well as water-quality limited under the Clean Water Act. In addition, Lazy Creek is a tributary to Whitefish Lake, flowing largely through trust land and containing large amounts of organic material. The entire area is characterized by densely stocked forestland, much of it old-growth timber.

East Shore Whitefish Lake Road, a narrow rural road inadequate for carrying current traffic loads, accesses the Swift Creek parcel. Due to steep slopes and limited rights-of-way, reconstruction of this road is unlikely because it would be extremely costly and destructive of the lakeshore character. Thus, additional development in the Swift Creek Subarea is currently limited by poor access.

Whitefish Lake is located south of the Swift Creek Subarea. The lake frontage, virtually all residential, includes a few very large holdings and numerous half- and 1-acre parcels. Some of these lakeshore owners have failing septic-disposal systems and would like to acquire access to a portion of trust lands for septic leach fields. To the north are a number of large-lot residential properties. Additional residential properties are interspersed with corporate timber holdings (Plum Creek) to the west, and U.S. Forest Service lands are located to the east at the toe of the Whitefish Mountains. Smith Lake, located on a bench on the east side of the parcel, is accessed by a steep logging road and, reportedly, has dam safety issues. The Swift Creek area is unzoned.

The Swift Creek area experiences heavy recreational use. Recreational activities include mountain biking, hiking, fishing, wildlife viewing, horseback riding, cross-country skiing, backcountry skiing, snowshoeing, snowmobiling, and water activities. A trailhead at Swift Creek serves as an access point for 4 seasons of recreational use to public and private lands further up Swift Creek and is heavily used by snowmobiles. Currently, DNRC leases the area to commercial outfitters and for 1 residential access.

Swift Creek, a wildlife sensitive-species area, contains winter range for elk, mule deer, and whitetail deer. In addition, Sections 29 and 30 in the Swift Creek area are included in the Lazy Creek Subunit of the Northern Continental Divide Ecosystem (NCDE) Grizzly Bear Recovery Area. The remaining Swift Creek area is included in occupied habitat, indicating that grizzly bears are expected to continue to use these areas. The Lazy Creek Wolf Pack uses portions of the Swift Creek area adjacent to the Plum Creek Olney Block. A bald eagle nest, documented in 2001 near Smith Lake in the Swift Creek area, is no longer active; the current nesting status and location are unknown. Fisher habitat exists along Swift Creek.

2. Planning Process

The Advisory Committee reviewed a variety of site information, as shown on the accompanying maps. Given the high values of community, wildlife, old growth, watershed, and recreation associated with the Swift Creek Subarea, strategies focused on finding ways to generate revenue to protect most of the area with as minimal development as possible. The Advisory Committee discussed ways to engage the local neighborhood in protecting the area through a conservation-buyer approach. It was decided that any homesite development should be in fairly close proximity to existing development to minimize impacts on wildlife, a no-build buffer should protect streams, and traditional recreational access should be maintained in any plan. Swift Creek is also the logical location for a trailhead for the Loop Trail, which would travel from Swift Creek through Beaver Lakes to Spencer.

3. Neighborhood Plan Concept and Implementation Strategy for the Swift Creek Subarea

The basic concept behind the plan for Swift Creek is to engage the community that is located at the north end of Whitefish Lake in the protection of the open-land qualities on trust lands that define the special character of the area. DNRC would continue to manage the Swift Creek Subarea for timber and recreation for a minimum of 10 years. Timber-harvesting and recreational activities have the potential to generate greater revenues than they do currently.

During the next 10 years, interested residents and others would have the opportunity to assist in the permanent protection of the area and obtain a few carefully located homesites. The objective is to engage conservation buyers that are willing to assist in the protection of the entire area with those that obtain greater access rights and pay more than those obtaining fewer rights. Using the 3-tiered conservation-buyer approach identified at the beginning of this Neighborhood Plan, a series of transactions could be assembled to protect the majority of Swift Creek and locate a few, highly valuable homesites in compatible locations. In all, a maximum of 6 homesites would be available in an area within a half-mile of the trust land southern boundary line (approximately 1,065 acres). Ideally, those who share an interest in protecting the Swift Creek Subarea would work together and with the Community Transaction Partners to structure a proposal to DNRC that protects as much land as possible. DNRC would evaluate the proposal to assess whether the trust is receiving full market value for the land interests that are being transferred. Preference would be given to leasing alternatives that generate a full market return. If this approach works, a large portion of Swift Creek would be permanently protected.

At the end of 10 years, or earlier if the parties agree, DNRC and the community would evaluate the success of this program. If the program has generated sufficient revenue or

led to the permanent protection of more than 1,000 acres of Swift Creek, DNRC shall extend the period that the remainder of Swift Creek would be retained in timber and recreation management for another 10 years. During this time, DNRC and the community would work towards a mutually beneficial strategy to protect and generate revenue from the remaining unprotected lands.

Of all the subareas, the Swift Creek Subarea has some of the highest wildlife and natural values. The siting of the 6 potential homesites needs to be accomplished with great sensitivity. The following performance guidelines shall be utilized in the selection of homesite locations:

- a. No more than a 5-acre building envelope may be utilized for a principal residence, guest/caretaker house, and outbuildings.
- b. Building envelopes shall be within a half-mile of the existing trust-land boundary.
- c. Building envelopes cannot be placed closer than a quarter-mile from traditional and planned recreational access routes, and all traditional recreational access shall be maintained.
- d. All structures shall be at least 100 feet from the nearest stream.
- e. New construction shall minimize site disturbance and take all prudent erosion-control measures.
- f. New construction shall minimize roadway/driveway lengths and widths and the amount of cut and fills. DNRC reserves the right to reject any proposal that contains excessive roadway/driveway lengths.
- g. Landscaping shall be achieved by utilizing native vegetation and should screen all buildings from public view.
- h. Open-pole or wire agricultural fencing is permitted around the perimeter of the building envelope if MT FWP determines the fencing to be "wildlife friendly". Solid fencing is permitted around small privacy areas directly adjacent to the main residence. Otherwise, fencing is not permitted.
- i. In order to minimize wildlife conflicts, homesite owners should utilize practices and precautions identified in MT FWP's "Living with Wildlife" brochures.
- j. The use of materials, textures, and colors naturally occurring in the surrounding landscape are encouraged.
- k. No towers or structures taller than 35 feet should be constructed on the building envelope.

In addition to the above revenue-generating measures, DNRC could lease certain lands to adjacent landowners to use for a community leach field to address septic-tank failures along the lake. This should be done in a manner that aids in the protection of other trust lands and ensures that there is no devaluation of adjacent trust lands, the public's right to use the lands, or other opportunities to generate revenue.

C. SPENCER MOUNTAIN SUBAREA

1. Current Situation and Planning Issues

The Spencer Mountain Subarea encompasses approximately 2,740 acres of timbered, rolling terrain in 4 parcels; the majority lies south of Highway 93 and east of KM Road. This subarea is surrounded by developments of varying densities, including the large-lot Whitefish Hills subdivision to the east, the Highway 93 corridor and scattered development to the north, and a mixture of large and small lot parcels intermingled with open agricultural lands on the west and south. Traffic is increasing and heavy on Highway 93 and KM Ranch Road; the school district has identified the intersections of Highway 93/Twin Bridges Road and Twin Bridges/KM roads as dangerous.

The Spencer Mountain Subarea includes 3 parcels of land that are separate from the main Spencer Mountain site. These include an isolated 40-acre parcel with no public access on Stillwater River, a 200-acre parcel located south of Highway 93 with access to the highway, and an 86-acre parcel lying north of Highway 93 above Spencer Lake.

Spencer Lake is located adjacent to Highway 93; an informal trailhead has public access to the lake and Spencer Mountain. Spencer Mountain is steep with many areas of the slopes in excess of 25 percent. The area is attractive for a variety of recreational uses, including mountain biking, hiking, hunting and fishing, wildlife viewing, horseback riding, cross-country skiing, backcountry skiing, snowshoeing, and unauthorized motorcycle, ATV, and snowmobile use. The south side of Spencer Mountain is less steep, has rolling terrain, and provides expansive views to surrounding areas. Since Spencer Mountain is close to Whitefish and the surrounding neighborhoods, the community and visitors heavily use its trail network. Preserving public access to Spencer Mountain for the large variety of users is viewed as an important community objective. The trailhead and parking area at Spencer Lake could be improved to better handle user volume.

The Whitefish Rifle Club consists of 400 members and has leased a 31-acre parcel on Spencer Mountain since 1969; they would like to continue operations. An additional 340 acres is leased for grazing. Previously, the Flathead Archers had a lease on 20 acres. Spencer Mountain is frequented by a variety of wildlife; the western portion of this land lies within the whitetail deer winter range.

2. Planning Process

The Advisory Committee reviewed a variety of site information and area conditions, as shown on the accompanying maps. The Committee looked at a number of alternatives for limited development and conservation buyers that would generate additional funds for trust lands and allow for the permanent protection of most of the area. All of the alternatives left the main portion of Spencer Mountain open and undeveloped for continued recreation and forestry uses. The areas that were considered for development included an isolated 40-acre parcel on the Stillwater River; a 200-acre parcel located south of Highway 93 with access to the highway; an 86-acre parcel lying north of Highway 93 above Spencer Lake; and a 160-acre parcel on the northeast corner of the Spencer Lake Subarea, just south of Highway 93 and adjacent to the Whitefish Hills subdivision. There was also discussion of whether it would be appropriate to look at the southeast corner if the rifle club were to move at some point. The upshot of these discussions was the sense that defining the benefits and trade-offs of different areas would require more community involvement and understanding of the conservation and development options and impacts. No specific geographic parcels within the Spencer Mountain Subarea are specifically identified at this time for development or conservation. The proposed strategy results from the need for greater community engagement in these decisions.

3. Neighborhood Plan Concept and Implementation Strategy for the Spencer Mountain Subarea

The Spencer Mountain Subarea would continue to be managed by DNRC as a timber and recreational asset for a minimum of the next 10 years. During this 10-year period, the community has the opportunity to develop and submit a proposal to DNRC that defines the conservation and revenue-generating strategy that DNRC would pursue. The objective of this process would be to define the strategy that generates a full market return to the State trusts and permanently protects the important community-identified lands on the Spencer Mountain Subarea with the least development possible. In order to initiate this process, an appraisal of the entire subarea and its parcels would be commissioned. The appraisal process would be expected to take about 2 years, and the appraiser would be expected to evaluate a variety of land interests so the community could make informed decisions on the available techniques to protect as much of the land as possible. Techniques that would be evaluated include purchase of easements,

community fundraising, federal and State funding, conservation buyers, conservation development, cluster development, and development in specific areas. Following the determination of value, the community, with the help of the Community Transaction Partner and other partners, would determine the most appropriate mix of strategies and make a proposal to DNRC of their strategy to generate revenue and permanently protect the majority of the land. As part of this proposal, the Skyles portion of the subarea may be included if the community deems that it could best be used to help protect the Spencer Mountain Subarea. The community is free to work with other public and private partners in order to meet its objectives.

At the end of 10 years, if substantial progress has been made (over 1,000 acres has been protected or substantial income has been generated), DNRC would commit to an additional 10 years to work with the community and a Community Transaction Partner to protect the remainder. If Whitefish, the County, and DNRC agree, these terms could be adjusted at any time. If, at the end of 20 years, portions of the Spencer Lake Subarea have not been protected, the community and DNRC would meet to develop a strategy or a new plan that would address their mutual objectives through cooperative action.

This Neighborhood Plan also recommends that DNRC, recreation groups, area sports stores, and Community Transaction Partners meet to discuss ways to increase the effectiveness of the DNRC permit system and improve recreational management of the area and leasing arrangements with different user groups. Both DNRC and the community could benefit if the responsibilities for the care and maintenance of the area are shared with the community and recreationalists.

D. BEAVER LAKE/SKYLES SUBAREA

1. Current Situation and Planning Issues

The Beaver Lake/Skyles Subarea is the largest subarea, encompassing approximately 4,810 acres of land in 2 separate parcels. The Skyles parcel consists of approximately 600 acres in a U-shape around Skyles Lake. The more remote Beaver Lakes parcel consists of approximately 4,210 acres and stretches from Boyle Lake, near the north end of Whitefish Lake, south to the Skyles parcel, just north of Highway 93. With great scenic beauty, the varied terrain of the Beaver Lakes parcel includes cliffs, ridges, benches, potholes, and 6 lakes in a relatively remote and pristine mountain environment. The area is frequented by a variety of recreational users, with lakes being the primary destination.

Access to Skyles Lake is from U.S. Highway 93. The primary access to the Beaver Lakes parcel is via a County road from Highway 93 to the southwest below Beaver Lake. Pedestrian and bike access are available closer to Whitefish; near Skyles Lake on Highway 93, a gated road is maintained by an adjacent landowner and DNRC. Some members of the community have complained that dirt piles and the presence of the private gate have discouraged pedestrian access into Beaver Lakes. This road was built to County road standards, but, according to specifications contained in a reciprocal access agreement, currently has no public motor-vehicle access other than use by private landowners and State land-management personnel.

The Beaver Lakes and Skyles parcels are surrounded by a large number of private parcels, both developed and undeveloped. To the east are Whitefish Lake and a large private landholding of approximately 400 acres. Lion Mountain, an upscale residential development of mountaintop sites and smaller 1- to 2-acre lots, is located to the southeast. To the south, towards Highway 93, are smaller residential tracts that include 1- to 5-acre sites. A portion of this area is encompassed in the Blanchard Lake Zoning District, which is zoned for 15-acre residential tracts. Along Highway 93 toward Skyles Lake, the residential development has smaller lots and higher density. Going north along Skyles Lake Road are 5-, 10-, 20- and 40-acre residential lots. Larger private timber and agricultural lands, interspersed with residential development, are located to the west; U.S. Forest Service lands are located to the southwest. The remaining areas surrounding the Beaver Lakes/Skyles parcels are privately held and used for residential purposes.

There are 20 residential State leaseholders at Beaver Lake. Within the Skyles parcel, the State leases 7.38 acres to 3 lessees for residential purposes.

Currently, DNRC manages the area for timber; large areas with fuel loads and tree mortality have built to the point that restoration and fire mitigation would be beneficial. Recreational uses in the subarea include mountain biking, hiking, hunting and fishing, wildlife viewing, horseback riding, cross-country skiing, backcountry skiing, snowshoeing, snowmobiling, and water activities. Sports stores in Whitefish send people to the Beaver Lakes for fishing. These lakes have easy shoreline access and good conditions for floating and ice fishing. Some areas in the Beaver Lakes receive high recreational use with the attendant negative impacts, especially along shorelines. Since the main access for vehicles is a long County road, and the access near Whitefish is limited to hikers and bikers, this parcel is not as well developed for recreation as other parcels. However, unauthorized trails are increasingly being developed throughout the area.

Due to its large size, high elevation, and remote qualities, the area provides habitat for a variety of wildlife species, including critical winter range for elk, mule deer, and whitetail deer. Grizzly bears are expected to continue to use these areas. Loons consistently use Beaver, Boyle, Little Beaver, Murray, and Spencer lakes. Skyles Lake receives sporadic recreational use. Loon reproduction has been documented on both Beaver and Boyle lakes. Beaver Lake supported a pair of loons until 2000. Recently, a pair was sighted on Little Beaver Lake, but no nesting activity was observed.

2. Planning Process

The Advisory Committee reviewed information for a site and the surrounding area, as shown on the accompanying maps. This subarea contains a variety of steep ridges and valleys with slopes in excess of 25 percent that break up the land, making access challenging in certain areas. Discussions about the Beaver Lakes parcel focused on access issues, trails and recreational use, fire-mitigation strategies, a variety of minimal development that might produce revenues to protect other portions, the potential for conservation buyers, and different small development areas. The Skyles parcel was not viewed as being as important to protect as the main Beaver Lakes parcel. The east and west ends of the Skyles parcel were viewed as having development capability; the portion connecting the east and west ends is steep and would be difficult to develop.

3. Neighborhood Plan Concept and Implementation Strategy for the Beaver Lakes/Skyles Subarea

In order to maximize the potential benefits of the large Beaver Lakes/Skyles Subarea, this Neighborhood Plan recommends the creation of a Beaver Lakes Recreation Plan. The current trails have grown up in an ad hoc manner without a systematic evaluation of how the area could be a major regional amenity. The recreation plan should be created through the participation of DNRC, MT FWP, a Community Transaction Partner, Whitefish, and the County. Although DNRC would be the agency authorizing the trail system, another agency like MT FWP or another entity like a bicycle club would be managing and maintaining the trail system. The following items are among the elements that the plan should address:

- a. Identify a multiple-use trail system that connects the lakes.
- b. Define a loop trail that goes from Swift Creek through Beaver Lakes and south to Spencer Mountain, providing a unique opportunity to hike or bike in a continuous loop around the community and Whitefish Lake. A possibility may even exist to provide train service from Whitefish to the north end of Whitefish Lake, near Boyle Lake, for a combination train/bike/hike experience.
- c. Identify trailheads that could connect to principal roads and neighborhoods.
- d. Examine the feasibility of a ski/hike hut system on trust lands.
- e. Identify new trail opportunities and places where social trails should be closed.

- f. Examine the concept of a firebreak on the west side of Whitefish, options for its creation, and ways to integrate the concept into the construction and management of the trail.
- g. Recommend a management system.
- h. Recommend a fee system to support DNRC and management.
- i. Provide the appropriate agencies with estimated budgets to create the system and properly maintain the trails.

The Beaver Lakes/Skyles Subarea would continue to be managed by DNRC as a timber and recreational asset for a minimum of the next 10 years. During this 10-year period, the community and DNRC would initiate a number of revenue-generating and land-saving activities, which include:

a. *Develop a Recreational Plan for the Beaver Lakes Recreation Area*

The Beaver Lakes trust land parcel, the largest trust land parcel in this Neighborhood Plan, encompasses 4,800 acres and contains 6 lakes and a wide variety of scenic terrain. A recreational plan for the area needs to be prepared through the cooperation of DNRC, MT FWP, Whitefish, and the County. This plan should systematically determine the appropriate access, trailheads, and wildlife areas, and how the system would be developed and maintained. The idea of a recreational hut system should be explored as part of this process.

b. *Pursue Conservation-Buyer Opportunities*

As with the Swift Creek and Spencer Mountain subareas, a number of conservation-buyer opportunities are available in the Beaver Lakes Beaver Lakes/Skyles Subarea. The preferred strategy would be for interested conservation buyers to work with a Community Transaction Partner to structure a proposal to submit to DNRC. The structure of proposals should follow the same 3-tiered guidelines for the other area conservation buyers identified in the first section of this Neighborhood Plan.

c. *Limited Development Area*

In the southwest corner of the Beaver Lakes/Skyles subarea is a 255-acre lodgepole pine forest. This parcel is set away from public-use areas and offers the opportunity for limited residential development. Access to this area is from the primary County road near the State trust land boundary. Ideally, this area would be sold to 1 or 2 conservation buyers that would help protect other portions of the subarea. However, if these areas are developed more conventionally, they could also assist in protecting other portions of the subarea. As in the KM area, to the extent that development in this area exceeds 1 unit per 20 acres, an additional 20-acre portion of the subarea would be placed in permanent protection under a conservation easement. Therefore, under both the conservation buyer and more conventional development scenarios, development on a small portion of land could help to permanently protect other more important areas.

d. *Skyles Lake Development*

The U-shaped Skyles Lake parcel is in proximity to Highway 93, and the east side is relatively close to Whitefish City utilities. The east side (approximately 173 acres) and the west side (approximately 128 acres) of the parcel are appropriate for development, while the middle portion is steep and difficult to develop. As in the above area, to the extent that development in this area exceeds 1 unit per 20 acres, an additional 20-acre portion of the subarea would be placed in permanent protection under a conservation easement. Therefore, development on a portion of the Skyles parcel would help to permanently protect other more important areas in the subarea. It should be noted that the Skyles parcel could be used to help protect the Beaver Lakes parcel or the Spencer Mountain Subarea, depending on where the protection need is greatest.

e. *Backcountry Lodge*

DNRC may want to examine the feasibility of establishing a backcountry lodge in the vicinity of Murray Lake. If this concept is desirable, the lodge land could be leased on a long-term basis. The concept would be to create a backcountry lodge/destination resort to blend in with surroundings in the tradition of national park architecture. Design guidelines would have to be developed at the time of lease. The Murray Lake site is appropriate since it is remote and separate from other areas that receive higher public use.

If, at the end of 10 years, substantial progress has been made in generating additional revenue and/or protecting land through purchase or easements (over 1,000 acres have been protected), DNRC would commit to an additional 10 years to work with the community and a Community Transaction Partner to protect the remainder. These terms could be adjusted at any time if Whitefish, the County, and DNRC agree. If portions of the Beaver Lakes parcel have not been protected at the end of 20 years, the community and DNRC would meet to develop a strategy or a new plan that would address their mutual objectives through cooperative action. As in all the subareas, this Neighborhood Plan recommends that DNRC look to additional revenue sources that could be generated through traditional activities, such as timber sales and additional camping and/or cabinsites on lakes that currently have leases.

E. STILLWATER SUBAREA

1. Current Situation and Planning Issues

The Stillwater Subarea encompasses approximately 1,020 acres of land at the southern end of a large block of State trust lands managed as Stillwater State Forest. Located north of Whitefish, the parcel is easily accessed from Highway 93. The site has rolling forested terrain and is surrounded by a variety of rural residential development ranging from 5 to 40 acres on the east, west, and south. Other trust lands and Plum Creek Timber Company forestlands are located to the east and north. A portion of the western boundary is the Highway 93 right-of-way; the west side of the property also has the mainline of the Burlington Northern/Santa Fe (BNSF) Railroad, traversing from north to south. Lupfer Road, a County-maintained road, accesses the property from the south after crossing the BNSF Railroad line.

The Stillwater Subarea is undeveloped and managed for timber production. Area residents use the parcel recreationally for mountain biking, hiking, hunting and fishing, wildlife viewing, horseback riding, cross-country skiing, backcountry skiing, snowshoeing, and snowmobiling. The area supports a variety of wildlife that includes elk, mule deer, whitetail deer, and grizzly bears. The Lazy Creek Wolf Pack uses portions of the trust lands that are adjacent to the Plum Creek Olney Block; this area is located outside the Whitefish Planning jurisdiction.

2. Planning Process

The Advisory Committee reviewed a variety of information on the site and surrounding areas, as shown on the accompanying maps. The heart of the Stillwater Subarea connects to Stillwater State Forest and contains productive timberland that DNRC would like to continue to manage. Much of the discussion focused on alternative ways to develop the east and west sides of the parcel in ways that would retain wildlife values and permanently protected the heart of the property. The west side contains an area that is bordered by Highway 93 and the railroad tracks, while on the east side, a County road, which serves adjacent rural residential tracts, bisects the area.

3. Neighborhood Plan Concept and Implementation Strategy for the Stillwater Subarea

The objective of the approach adopted for Stillwater is to permanently protect the heart of the property for public access and use by transferring density to lands on the east and west sides of the subarea. As a result, limited, but valuable, real estate products are created on a small portion of the land, while DNRC continues to manage most of the land for traditional forestry. In order for this concept to be put in motion, the Stillwater parcel would be divided into 3 management areas:

a. *West Side*

This area consists of approximately 66 acres of land that is sandwiched between Highway 93 and the BNSF Railroad line. This area could be developed for residential or light industrial uses as long as it meets a number of the performance standards discussed below. If this area were developed for light industrial uses, the preference would be to lease sites for long-term use.

b. *Interior*

This 755-acre area consists of most of the Stillwater Subarea and contains prime wildlife habitat and timber resources. DNRC would continue to manage this land for timber and wildlife for a minimum of 10 years and likely much longer.

c. *East Side*

This area consists of a 160-acre parcel of land that is bisected by County-maintained Lupfer Road. Subdivision and development of private lands has occurred to the north and south of this parcel. In addition, a fairly steep ridge separates the East Side from the Interior. Ideally, this area would be sold to 1 or 2 conservation buyers that would help permanently protect the Interior portion of the subarea. The alternative form of development would be cluster development that provides open space between nodes of development for wildlife movement and the retention of rural character. As in the KM area, to the extent that development in this area exceeds 1 unit per 20 acres, for each dwelling unit, an additional 20-acre portion of the Interior would be placed in permanent protection under a conservation easement. Therefore, under both the conservation-buyer and cluster-development scenarios, development on a small portion of land would help to permanently protect other more important areas.

Key to this plan is a set of performance standards for the West and East Sides. For the West Side, the following performance standards would be required of new development, whether it was residential or light industrial:

- a. All development shall be set back a minimum of 50 feet from the edge of the Highway 93 right-of-way. All structures shall be shielded from view by either natural vegetation or a landscape buffer with tree heights comparable to the height of new structures.
- b. The height of new structures shall be limited to 35 feet above the existing natural grade.

- c. No more than 2 access points shall be permitted to serve the development. If necessary, a loop road should be constructed within the site to provide access to residences or businesses.
- d. All outdoor lighting shall be down-directed to minimize the impact of light sources on the night sky.
- e. All business signs shall meet City and County requirements, with the most restrictive standards applying. Only a registry sign is permitted on Highway 93; all other signage shall be on the internal loop road.

For the residential area on the East Side, the following performance standards shall apply to cluster development:

- a. No more than a 3/4-acre building envelope may be utilized for a principal residence and outbuildings.
- b. Site disturbance would be minimized; no over-lot grading is permitted and all reasonable and prudent erosion-control measures must be taken.
- c. New construction shall minimize roadway/driveway lengths and widths and minimize the amount of cuts and fills. DNRC reserves the right to reject any proposal that contains excessive roadway/driveway lengths/widths.
- d. Landscaping shall be achieved by utilizing native vegetation.
- e. Open-pole or wire agricultural fencing is permitted around the perimeter of the building envelope if MT FWP determines the fence to be "wildlife friendly". Solid fencing is permitted around small privacy areas directly adjacent to the main residence. Otherwise, fencing is not permitted.
- f. In order to minimize wildlife conflicts, homesite owners should utilize practices and precautions identified in MT FWP's "Living with Wildlife" brochures.
- g. The use of materials, textures, and colors naturally occurring in the surrounding landscape are encouraged.
- h. No towers or structures taller than 35 feet should be constructed on the building envelope.

An alternative option for the Stillwater Subarea is the possibility of trading the East and/or West sides for Plum Creek lands in the Whitefish area that have wildlife and forestry values suitable for long-term DNRC management. In this case, the above performance standards would apply to the new owners of the land, likely Plum Creek or their successors.

F. HASKILL SUBAREA

1. Current Situation and Planning Issues

The Haskill Subarea includes approximately 520 acres of land in the foothills of the Whitefish Range, approximately 4 miles east of Whitefish Lake. Haskill Creek, which supports cutthroat trout, runs through the center of the property and is a primary source for the City's municipal drinking water. Access to the Haskill Subarea is limited to unimproved private logging roads. The parcel is remote and some steep areas are mixed into its rolling topography. Much of the streambanks above Haskill Creek are steep and subject to erosion. The area contains sensitive wildlife habitat associated with grizzly bears.

Adjacent lands are zoned for 20-acre lots. Stoltze Land and Lumber Company owns land on the northwest and south boundaries and the U.S. Forest Service owns land on the north and east boundary. Smaller 20- to 40-acre private properties are interspersed among the public and private timberlands. The North Woods subdivision, a residential development southwest of the Haskill Subarea, was built in the 1970s and includes homes built on 1- to 5-acre sites. The adjacent areas are generally undeveloped and

used for timber production.

Recreational uses in Haskill Basin include mountain biking, hiking, fishing, wildlife viewing, horseback riding, cross-country skiing, backcountry skiing, snowshoeing, and snowmobiling. Reportedly, an unauthorized trail accesses the Big Mountain ski area from this area.

2. Planning Process

The Advisory Committee reviewed a variety of site information, as shown on the accompanying maps. Given that the site is remote, accessed by private roads, is part of the Whitefish watershed, and has good timber and wildlife values, it was felt that the Haskill Subarea should be managed to retain these values. Very minimal development that pays for the protection of the remainder of the site is considered appropriate. As a result, a number of conservation-buyer concepts were explored. Given that the Haskill Creek streambanks are steep and prone to erosion, a no-build buffer was judged to be important.

3. Neighborhood Plan Concept and Implementation Strategy of the Haskill Subarea

The Haskill Subarea contains valuable wildlife habitat and watershed lands that should be protected. Development beyond a very minimal level would be destructive of these values. As a result, the Neighborhood Plan for the Haskill Subarea is to sell 1 homesite on the east side of Haskill Creek and 1 homesite on the west side to conservation buyers. DNRC would commit to maintain these lands in forestry management for a minimum of 10 years or until conservation buyers are located for the parcel. The east side of Haskill Creek would be sold to a conservation buyer who would place a conservation easement on the land that limits use to a 5- to 10-acre homesite. The conservation buyer would also purchase a conservation easement over the remainder of the east side. In this manner, DNRC would receive full market value for the interests purchased, and would either retain the underlying fee interest for forestry purposes or transfer the fee, but retain public-access rights and a conservation easement that prevents future development. A similar strategy would be undertaken for the west side of Haskill Creek, with access via a logging road to the southern portion of the parcel. Depending on DNRC's ability to sell conservation easements, this strategy could be implemented in the short or long term.

The following performance guidelines shall be utilized in the selection of homesite locations:

- a. No more than a 5-acre building envelope may be utilized for a principal residence, a guest/caretaker house, and outbuildings.
- b. Building envelopes shall be within a half-mile of the existing trust-land boundary.
- c. Building envelopes cannot be placed closer than a quarter-mile from traditional or planned recreational access routes, and all traditional recreational access shall be maintained.
- d. All structures shall be at least 100 feet from Haskill Creek.
- e. New construction shall minimize site disturbance and ensure all prudent erosion-control measures are taken.
- f. New construction shall minimize roadway/driveway lengths and widths and minimize the amount of cuts and fills. DNRC reserves the right to reject any proposal that contains excessive roadway/driveway lengths/widths.
- g. Landscaping shall be achieved by utilizing native vegetation.
- h. Open-pole or wire agricultural fencing is permitted around the perimeter of the building envelope if MT FWP determines the fencing to be "wildlife friendly". Solid fencing is permitted around small privacy areas directly adjacent to the main residence. Otherwise, fencing is not permitted.

- i. In order to minimize wildlife conflicts, homesite owners should utilize practices and precautions identified in the MT FWP's "Living with Wildlife" brochures.
- j. The use of natural materials, textures, and colors found in the surrounding landscape are encouraged.
- k. No towers or structures taller than 35 feet should be constructed on the building envelope.

IV. ADDITIONAL INFORMATION

A. MONTANA TRUST LAND MANAGEMENT OVERVIEW

Under the Enabling Act approved on February 22, 1889, the Congress of the United States granted Sections 16 and 36 in every township within the State to the State of Montana. These “trust lands” were set aside for the support of the “common schools”. Some sections had been homesteaded, some were within the boundaries of Indian reservations, and others had been otherwise disposed of before the passage of the Enabling Act. To make up for this loss, and in lieu thereof, other lands were selected by the State of Montana. The Enabling Act further provided that proceeds from the sale and permanent disposition of any of the trust lands, or part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various other State institutions for which the lands had been granted. The Montana Constitution provides that these permanent funds shall forever remain inviolate, guaranteed by the State of Montana against loss or diversion.

The TLMD of DNRC is responsible for the administration and management of the State trust timber, surface, and mineral resources associated with these lands for the benefit of the common schools and the other endowed institutions in Montana. The mission of TLMD is to manage the State of Montana’s trust-land resources to produce revenues for the trust beneficiaries while considering environmental factors and protecting the future income-generating capacity of the land. TLMD is divided into 4 bureaus: Agriculture and Grazing Management, Forest Management, Minerals Management, and Special Use Management. Under the direction of the State Board of Land Commissioners, which consists of Montana’s top elected officials, the Department’s obligation is to obtain the largest measure of legitimate and reasonable advantage for the school trusts. The greatest monetary return to current beneficiaries must be weighed against the long-term productivity of the land to ensure continued returns to the trusts in perpetuity.

The mission of the Trust Land Management Division (TLMD) is to manage the trust land resources to produce revenues for the trust beneficiaries while considering environmental factors and protecting the future of the income-generating capacity of the land. Revenue is generated on behalf of the trust-land beneficiaries, including public schools (kindergarten through grade 12 and universities) and other public institutions and facilities. This is accomplished through the management of almost 5.2 million acres (plus subsurface rights) of trust lands granted to the State of Montana at statehood by the federal government.

The management of trust lands is the responsibility of TLMD of DNRC. The Department is governed by a series of statutes as well as the State Constitution. Implementation of this Neighborhood Plan will follow DNRC’s policies and procedures.

B. SCHOOL TRUST LANDS FOREST MANAGEMENT

The majority of the 13,000 acres within the study area are classified as 'forestland' under the TLMD classification system. These lands are managed for a sustainable supply of forest products and diverse habitat under the direction of the State Forest Land Management Plan (SFLMP), adopted in 1996, and the Administrative Rules for Forest Management (Rules), adopted in 2003. Statewide sustained-yield projections completed in 1996 allow for an annual harvest of 42.2 million board feet (mmbf) from the 720,160 acres of forested trust land. The sustained-yield figure is currently under review and is expected to increase slightly from 1996. The Northwestern Land Office (NWLO), which manages the lands within the project area, is responsible for nearly half of the annual Statewide sustained-yield harvest. The continued active management of the forestlands included in this study area is critical to the ability of DNRC to continue to meet the sustained-yield commitments and contributes significantly to the local economy through providing raw material for the local forest-products industry.

C. WHITEFISH/STATE TRUST LANDS PRINCIPLES OR CRITERIA FOR SUCCESS

The following principles were developed and agreed upon by the Advisory Committee at the beginning of the planning process. These principles have guided the actions and served as a framework for the deliberations of the Advisory Committee.

1. Open and Collaborative Process

The aim of this planning process is to produce a Neighborhood Plan that defines both a land use and conservation product for the 6 subareas of trust lands. This process should meet the primary objectives of Whitefish, the County, and DNRC. They recognize that all are starting with different objectives, but, through a collaborative process, the possibility exists to explore and create solutions that are beneficial to their interests and increase the predictability of a desirable outcome. In order to arrive at an acceptable plan, participants must be willing to openly explore alternatives without commitment to preconceived solutions. There is mutual risk taking. The participants desire to maximize benefits and minimize potential losses through this joint planning process. All participants enter this process with constructive, open, and flexible attitudes.

2. Trust Objectives

The primary objective of trust lands is to realize a full economic return from the use or disposition of these lands for the benefit of the State school trust or its beneficiaries. In addition, to the extent that development is appropriate on Trust Lands, obtaining public planning approvals are necessary for the use or disposition of those lands. For purposes of this study, the term "full economic return" may mean 1) full market value, the value that an informed buyer would pay for these lands recognizing their positive and negative attributes and local conditions; 2) the rental, lease, or other annual income derived from the use of these lands; or 3) the income derived from a combination of sales of interests in land, lease, or rental income and income from public, private, or nonprofit sources to retain identified community values. In addition, DNRC desires to work cooperatively, as a good neighbor, with Whitefish and the County and promote an understanding of trust lands and TLMD's mission.

3. Community Objectives

The primary objective of Whitefish and the surrounding community is to see that trust lands that have important natural-resource and recreation values be protected to retain those characteristics for the benefit of the community and County residents. In addition, to the extent that real estate development is indicated on these properties in order to generate economic value, that new development would respond to the preferences and unmet needs of Whitefish and the surrounding community.

4. Local Government Objectives

The location of the trust lands parcels places them under the jurisdiction of both the County and Whitefish. These 2 jurisdictions have different attitudes towards growth and development. The County desires that the development and use of trust lands address concerns identified in the County Growth Policy and that proposed uses and densities comply with applicable State and County standards and regulations. Whitefish, through its Growth Policy, desires to see trust lands continue to be available for community use and, if developed, have development that is less dense, which would fit in and blend with the surrounding landscape, respond to input from the local community, and not create undue service burdens. Both jurisdictions recognize the legitimate approaches of the other and would work in constructive, open, and flexible ways to reach mutually desirable agreements.

5. Identify Development, Community, and Conservation Opportunities, Constraints, and Strategies

All of the trust land parcels should be analyzed for their natural-resource characteristics, development potential, and community values. The objective of this exercise is to define those parcels that have high natural-resource, community, or recreation values, high opportunities for development, or a mix of natural-resource, community, and development opportunities. The planning process would then focus on not only the type of natural-resource and development products that are appropriate for these area, but also strategies to achieve the trust land financial objectives and the Whitefish and County objectives. A full range of creative options for natural-resource protection, recreation, and development should be considered.

6. Land Uses

In defining the types of appropriate land uses, preference shall be given to those kinds of uses that fit in and blend with the natural landscape, meet critical needs and concerns identified by the Whitefish community and the County, meet economic objectives, and minimize the amount and area of disturbance. New development land use should pay its own way, and the pace of development should occur at a rate that does not overwhelm Whitefish or County services. The County, Whitefish, and DNRC would have to jointly identify the types of land uses and development that are desirable from their different perspectives.

7. Neighborhood Plan and Timetable

The Neighborhood Plan should identify the use, development, and land-protection program for each of the trust land parcels. Among other things, the Neighborhood Plan would identify areas appropriate for development, including recommended development types and densities; appropriate recreation, community, or extractive use areas and their economic benefit; and areas that are appropriate for natural-resource protection or unsuitable for development. A time frame for the disposition of the parcels shall also be identified; this time frame shall identify the minimum amount of time prior to the disposition or change of use of each of the parcels. No parcel should be disposed of prior to the date identified in the timetable. The objective of this timetable is twofold. First, to give the Whitefish community and its various partners reasonable time to develop alternative acquisition or protection strategies that might lessen the impact of development or lead to greater community or conservation benefits. Second, to identify a set time frame for the trust lands that would allow for reasonable and economically beneficial disposition or use of the individual parcels, with the assurance that Whitefish and the County would support such development and uses.

8. Plan Completion.

Whitefish, the County, and TMLD agree to stay engaged in the planning process so the Neighborhood Plan could be completed by the end of September 2004. In the event that there are unresolved disagreements between the parties, these shall be noted in the Neighborhood Plan.

D. ZONING AND SUBDIVISION REGULATIONS

The Neighborhood Plan is located entirely within the County and is, therefore, subject to County land-use regulations. The County is responsible for enforcement of the zoning and subdivision statutes affecting trust lands in this planning process. The trust land planning area includes lands that are zoned Ag-40 and Ag-20, as well as those that are unzoned. Unzoned lands are considered to have a density of 1 home per 20 acres until such time as zoning is applied. Clustering is not permitted in Ag-40 zoned areas.

E. GROWTH-POLICY COMPLIANCE

The Neighborhood Plan is adopted as a document compliant with the Growth Policy Statutes (76-1-601). This document is intended to be an addendum to the existing Flathead County and Whitefish City-County Master Plans as well as the future Flathead County and Whitefish City-County Growth Policies. This Neighborhood Plan is written as a Growth-Policy-compliant document.

Growth-Policy-compliant neighborhood plans must, at a minimum, provide:

- community goals and objectives,
- maps and text describing the jurisdictional areas;
- projected trends for each of the neighborhood plan elements;
- policies and implementation tools for the neighborhood plan's goals and objectives;
- a strategy for the development, maintenance, and replacement of public infrastructure;
- a time line for implementation and updating of the neighborhood plan;
- a statement that explains the cooperation between the DNRC, the County and Whitefish; and
- a statement that describes how subdivisions would be reviewed and the due process rights.

The following overview is a description of how the Neighborhood Plan complies with the Growth Policy statutes. This overview directs the reader to the sections of the Neighborhood Plan that address the required elements.

Community Goals and Objectives

Section II of the Neighborhood Plan clearly defines the goals and policies for the various lands within the boundaries of the Neighborhood Plan. These goals and objectives were developed over the course of a year and a half of community and local advisory committee meetings. The Advisory Committee, made up of stakeholders and interested citizens, provided the vital link between the public at large and DNRC in crafting this Neighborhood Plan. A description of the planning process, community meetings, and public input are described in *Section IV.C* of the Neighborhood Plan.

Maps and Text Describing the Jurisdiction

This Neighborhood Plan document provides a complete map inventory of the trust lands within the Neighborhood Plan area and the subarea boundaries. Descriptions of the subareas are found in *Section III* of this Neighborhood Plan.

Projected Trends of the Neighborhood Plan Elements

As part of the Neighborhood Plan, a companion Resource Document was used to collect current data and projected trends on land use, transportation, utilities and service, population, housing characteristics, economic conditions, and natural resources.

In addition to the Resource Document, the Neighborhood Plan gives a brief description of the existing land use, major transportation links, and natural resources located within the subarea (see *III. SUBAREA PLANS*). The Neighborhood Plan and its surrounding area have rural areas with low population densities and large tracts of forest and agricultural lands. As addressed in the Resource Document, of the 12,870 acres within the Neighborhood Plan area, 9.4 percent of the area could potentially be developed, which is consistent with rural setting of low populations.

The Neighborhood Plan hopes to develop additional revenues on trust lands that are compatible with community values. The Neighborhood Plan also attempts to balance the mandate to generate income on trust lands with the values for recreation, timber management, and conservation. The Neighborhood Plan presents some creative ideas to accomplish this goal.

Policies and Implementation Tools

Section II of the Neighborhood Plan presents the goals of the Neighborhood Plan, along with policies to implement the goals. Section III of the Neighborhood Plan breaks the trust lands into subareas that provide specific implementation strategies and a time frame for accomplishing implementation.

A Strategy for the Development, Maintenance, and Replacement of Public Infrastructure

The majority of the Neighborhood Plan falls in the rural areas of the Whitefish City County and Flathead County master plans. As such, the public infrastructure is rural in nature, with the Flathead County Road Department providing maintenance of the existing County roads. New roads, privately constructed to a rural standard, would provide access to the development pods and would be maintained in accordance with County policy.

Sewer and water facilities would most likely be provided through individual well and septic infrastructure, with the exception of 3 subareas. If the Happy Valley Subarea is developed, the Neighborhood Plan would require a community sewer and water system that would address the needs of the development on trust lands *and* the greater Happy Valley community, which is struggling with sewerage disposal problems. The Skyles Lake Subarea (*Item C. Skyles Lake Development*) is in close proximity to Whitefish utilities and, if developed, would be encouraged to use these facilities. The Neighborhood Plan's Swift Creek Subarea provides an opportunity for a community sewer facility to be developed on trust lands near the head of Whitefish Lake. This facility would help remove old septic systems from the lake-front lots in order to facilitate water-quality issues that were identified through the planning process.

For those areas that would use individual septic service, that infrastructure is reviewed, approved, and inspected by the Flathead City-County Health Department, Environmental Health Services. The Environmental Health Services reviews individual and community sewerage systems for compliance with their adopted rules designed to prevent harmful impacts to land and water resources.

Overall, the impacts associated with development of the trust lands identified in the Neighborhood Plan would be addressed when specific applications are presented. For example, the subdivision would go through the Montana Environmental Protection Act (MEPA) and Montana Subdivision Act processes as adopted by the County and Whitefish. The Montana Subdivision Act requires specific analysis of the project in relation to its impact on public services and the level of service.

A Timeline for the Implementation and Updating of the Neighborhood Plan

Goal 3 and Policy 3.1 of the Neighborhood Plan establishes the time frames for implementing the Neighborhood Plan. The Neighborhood Plan is truly a long-range planning document with many of the implementation strategies occurring 10 or more years out. These time frames reflect the complexity and diversity of trust lands, the creativity needed to accomplish the goals of this Neighborhood Plan, and the current workloads of the DNRC staff and their ability to bring projects on line.

A Statement That Explains the Cooperation Between DNRC, the County, and Whitefish

The Neighborhood Plan is founded in cooperation between DNRC, the Land Board, County officials, Whitefish officials, the Local Trust Lands Advisory Committee, and the community at large. A Charter dated September 15, 2003, approved by DNRC, the County, and Whitefish, establishes a framework for cooperation between the entities and establishes the Local Trust Lands Advisory Committee.

A Statement That Describes How Subdivisions Would be Reviewed and Due Process Rights

Subdivisions would be reviewed per the *Montana Subdivision and Platting Act Title 76, Chapter 3*. Subdivisions on trust lands are also subject to the MEPA review, as defined in

State statutes. The public is notified and invited to comment on the Environmental Impact Statement (EIS) through the MEPA process. The MEPA review would be completed prior to submission of a subdivision application. All subdivisions on trust lands would be reviewed for compliance with the adopted Neighborhood Plan.

Title 76-3-608(3)(a) of the *Platting Act* identifies 6 items (agriculture, agricultural water-user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety) for which the governing body must evaluate the effects as a result of a subdivision. The *Growth Policy Statutes* require that we define the terms of *76-3-608(3)(a)*.

Agriculture – All aspects of farming, including the practice of cultivating the ground, raising crops, and/or rearing animals. Any forestry or lumbering operations, timber production, and management of forestlands.

Agricultural water-user facilities – Those facilities that provide water for agricultural lands as part of an irrigation system used in the production of agricultural products on property used for agricultural purposes.

Local services – All services or facilities that local government entities are authorized to provide.

Public health and safety – A condition of optimal well-being, free from danger, risk, or injury for a community at large, or for all people, not merely for the welfare of a specific individual or small class of persons.

The natural environment – The physical conditions, including land, air, water, mineral, flora, fauna, noise, and objects of historic or aesthetic consideration, that exist within a given area.

Wildlife – Living things that are neither human nor domesticated.

Wildlife habitat – Place or type of site where wildlife naturally lives and grows.

For a minor subdivision (5 lots or fewer) in the County, the plat would be submitted to the Flathead County Planning Office for review of the statutory criteria. Public hearings and adjacent landowner notifications are not required for a minor subdivision. After review by the County Planning Office, the Subdivision Application is sent to the Flathead County Commissioners, along with a staff report and recommendation with conditions. The County Planning Office would review the proposal for compliance with the Neighborhood Plan as part of the staff report and recommendation. The County Commissioners would address the matter at a regularly scheduled meeting that is open to the public, but is not open to public debate. The Commissioners would conditionally approve or deny the subdivision. If approved, the developer would have 3 years to comply with the conditions of approval and make any required infrastructure improvements. Once conditions have been met or addressed through a Subdivision Improvements Agreement, the County Commissioners would approve the final plat, and the subdivision would be recorded.

For a major subdivision (6 or more lots) in the County, the plats would be submitted to the County Planning Office for review of the statutory criteria. A public hearing and adjacent-landowner notification are required for a major subdivision. The County Planning Office would review the proposal for compliance with the Neighborhood Plan as part of the staff report and recommendation. After review by the County Planning Office, the Subdivision Application, staff report, and recommended conditions are sent to the Whitefish City-County Planning Board in the Whitefish planning jurisdiction or Flathead County Planning Board for properties in the County planning jurisdiction. The County Planning Board would invite the public to comment on the subdivision at a public hearing. After reviewing the staff report and public comments, the County Planning Board would make a recommendation to approve or deny the subdivision to the County Commissioners. The County Commissioners would then review the public comments from the County Planning Board meeting, their staff report, and recommendation. The County Commissioners would address the matter at a regularly scheduled meeting that is open to the public, but is not open to public debate. The Commissioners would conditionally approve or deny the subdivision. If approved, the

developer would have 3 years to comply with the conditions of approval and make any required infrastructure improvements. Once the conditions have been met or addressed through a Subdivision Improvements Agreement, the County Commissioners would approve the final plat and the subdivision would be recorded.

If a subdivision is proposed on trust lands that would annex to Whitefish and use city utilities, the Tri-City Planning Office would conduct the staff review for compliance with the Neighborhood Plan and statutory criteria and make recommendations to the Whitefish City County Planning Board. The review process and public hearing requirement for minor and major subdivisions are the same as that of the County, with the exception that Planning Board recommendations are sent to the Whitefish City Council for approval or denial of the subdivision.

Should the planning jurisdiction be amended by Whitefish and the County in the future, an interlocal agreement between Whitefish and the County would describe the process for review of subdivisions in the newly aligned jurisdiction boundaries.

F. INFORMATION ON CONSERVATION EASEMENTS - PROVIDED BY THE NATIONAL LAND TRUST ALLIANCE

What is a Conservation Easement?

A conservation easement is a legal agreement made by a property owner to restrict the type and amount of development that may take place on his/her property. Each easement's restrictions are tailored to the particular property and the interests of the individual owner.

To understand the easement concept, think of owning land as holding a bundle of rights. A landowner may sell or give away the whole bundle or just one or two of these rights, which may include, for example, the right to construct buildings, subdivide the land, restrict access, or harvest timber. To give away certain rights while retaining others, a property owner grants an easement to an appropriate third party, such as a land trust, a public agency, or a historic preservation organization.

An easement for the land is recorded at the county or town records office so all future owners and lenders would learn about the restrictions when they obtain a title report. The original owner or donor of the easement, and all subsequent owners, are bound by the restrictions of the easement.

Why Grant a Conservation Easement?

People grant conservation easements to protect their land or historic sites from inappropriate development while retaining private ownership. By granting an easement in perpetuity, the owner may be assured that the resource values of his or her property would be protected indefinitely, no matter who owns the property. Granting an easement could also yield tax savings.

Must an Easement Allow Public Access?

Landowners who grant conservation easements generally make their own choice about whether to open their property to the public. Some landowners convey certain public-access rights, such as allowing fishing or hiking in specified locations or permitting guided tours once a month; others do not.

If an income tax deduction is to be claimed, however, some types of easements require access. If the easement is given for recreational or educational purposes, public access is required. For scenic easements, much of the property must be visible to the public, but physical access is not necessary. Access is generally not required for easements that protect wildlife or plant habitats or agricultural lands.

Does an Easement Reduce a Donor's Income Tax?

The donation of a conservation easement could be a ruled a tax-deductible charitable gift, provided that the easement is perpetual and is donated "exclusively for conservation purposes" to a qualified conservation organization or public agency. Internal Revenue Service makes the final decision as to deductibility, and *Code 170 (h)* generally defines "conservation purposes" to include the following:

- The preservation of land areas for recreation by, or the education of, the general public, provided such access is for substantial and regular use.
- The protection of relatively natural habitats of fish, wildlife, or plants or similar ecosystems.
- The preservation of open space, including farmland and forestland, when pursuant to a clearly delineated government conservation policy or for the scenic enjoyment of the public. In both cases, such open-space preservation must yield a significant public benefit.
- The preservation of a historically important land area or a certified historic structure.

To determine the value of the easement donation, the owner has the property appraised both at its full market value without the easement restrictions and at its full market value with the easement restrictions. The difference between the appraised values is the tax-deductible easement value. Detailed federal regulations govern these appraisals.

Can Granting an Easement Reduce Estate Taxes?

Heirs to farms, ranches, and urban open spaces can face large estate taxes. Even if the heirs wish to keep their property in its existing condition, federal estate tax is levied not on the value of the property for its existing use, but on its full market value, which is usually the amount a developer or speculator would pay. The resulting estate tax can be so high that the heirs must sell the property to pay the taxes.

A conservation easement, however, often can reduce estate taxes. If the property owner has restricted the property by a perpetual conservation easement before his or her death, the property must be valued in the estate at its restricted value. To the extent that the restricted value is lower than the unrestricted value, the value of the estate would be less and there would be a lower estate tax. Such an easement could also be donated in a person's will, thus having the same effect.

G. 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,

- 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 desirable 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).

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:

- 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

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.

H. NEIGHBORHOOD PLAN RESOURCE MAPS

I. Article X, Montana Constitution

Article X, Section 11, of Montana's Constitution provides that School Trust Lands "shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated, or devised." The Montana Supreme Court has clearly stated the terms of this trust:

The grant of lands for school purposes by the federal government to this state constitutes a trust [citations omitted]; and the State Board of Land Commissioners, as the instrumentality created to administer that trust, is bound, upon principles that are elementary, to so administer it as to secure the largest measure of legitimate advantage to the beneficiary of it.

Rider v. Cooney, 94 Mont. 295 at 307, 23 P.2d 261 (1933).

Article X, Section 11(2) of Montana's Constitution mandates, in reference to any use or disposition of an interest in school trust lands, that:

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

School trust assets cannot be diverted to accomplish other nontrust goals without capturing the full market value of that use for the financial benefit of the trust beneficiaries. The purpose of the Congressional conveyance of trust lands to the State of Montana in its Enabling Act was to produce a fund, accumulated by the sale and use of school trust lands, with which the State could support the specific public institutions expressly designated in the Enabling Act as trust beneficiaries. The various restrictions of conveyance within the Enabling Act establish that the Enabling Act's designated beneficiaries are to derive the full benefit of the grant. Neither the City of Whitefish nor Flathead County is listed in the Enabling Act as a direct trust beneficiary, nor are "open space" or "conservation of lands" listed as an enumerated purpose of the school trust established by Congress.

Thus, it is well established in private trusts that "(i)t is the duty of a trustee to administer the trust solely in the interest of the beneficiaries." *II A. Scott, The Law of Trusts* 170, at 1298 (3d ed. 1967). See *G. Bogert, The Law of Trusts and Trustees* s 541, at 157 (rev. 2d ed. 1978). In *Montrust v. State of Montana, ex rel. Board of Land Commissioners*, 296 Mont. 402, 989 P.2d 800 (1999), the Montana Supreme Court cited private trust law authority in striking down a number of statutes that violated the State's duty of undivided loyalty to the beneficiaries and prevented the institutional trust beneficiaries from deriving the full benefit of revenue from trust lands. In describing the State's duty of undivided loyalty, the Court wrote that:

In *Wild West Motors, Inc. v. Lingle* (1986), 224 Mont. 76, 728 P.2d 412, this Court considered a trustee's duty of undivided loyalty and concluded:

When a party undertakes the obligation of a trustee to receive money or property for transfer to another, he takes with it the duty of undivided loyalty to the beneficiary of the trust. The undivided loyalty of a trustee is jealously insisted on by the courts which require a standard with a "punctilio of an honor the most sensitive." 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.

DNRC's principal legal obligation is to maximize trust revenue over the long term pursuant to 77-1-202, MCA. It cannot legally favor preservation over greater revenue-producing uses of the trust land without increased compensation paid into the various trusts. In recognition of this constitutional principle, the 2001 Montana legislature has declared that State trust lands cannot be utilized for old-growth timber preservation or wildlife management areas without receiving full compensation for that use. *Section 77-5-116, MCA* mandates that:

The board and the department are prohibited from designating, treating, or disposing of any interest in State forest lands for the preservation or nonuse of these lands prior to obtaining funds for the affected beneficiary equal to the full market value of that designation, treatment, or disposition. Unless the full market value of the property interest or of the revenue foregone is obtained, the board and the department are prohibited from either temporarily or permanently designating, treating, or disposing of any interest in any State forest lands for the following purposes:

- (1) as a natural area pursuant to Title 76, chapter 12, part 1, or as otherwise provided for by law;*
- (2) as open-space land as defined in 76-6-104;*
- (3) for old growth timber preservation; and*
- (4) as a wildlife management area.*

[See also 36 A.G.Op. 92 (1976), where the Attorney General held that the State must actually compensate its school trust in money for the full appraised value of school trust lands designated as, or exchanged for, natural areas to prevent a breach of trust under the Enabling Act and the Montana Constitution.]

J. FINANCIAL ANALYSIS

INTRODUCTION

The Draft Environmental Impact Statement for the Real Estate Management Bureau's Programmatic Plan (REMBP) indicates that the DNRC manages lands under 4 broad categories of use including forest management, agriculture, grazing, and real estate. The largest share of income State-wide is from agriculture and grazing due to the vast acreages involved in those uses (primarily in eastern Montana). Income from real estate management uses contributes approximately 4 percent to the total annual trust revenue. However, on a revenue per acre basis, commercial, industrial, residential, and conservation uses generate over \$54 per acre, dwarfing agriculture and grazing at \$2.80 per acre. Although the State-wide acreage of new real estate lands is expected to remain under 1 percent of the total trust land acreage, the percentage of revenue from commercial, residential, industrial, and conservation uses is expected to increase.

The Trusts represented in the 13,000-acre planning include:

- Common Schools (kindergarten through grades 12)
- MT State University
- MT Tech
- MT Normal School
- Public Building
- Western MT College
- Eastern MT College
- MT School for the Deaf and Blind

The following financial analysis was prepared to estimate the financial consequences of implementing this Neighborhood Plan. The financial analysis compares the existing revenue types and amounts with the revenue anticipated to occur as a result of the Neighborhood Plan. The figures are used for estimate purposes only and are not to be used to indicate actual project-level values. Once the projects are proposed, project-specific economic analysis would be completed to weigh the financial consequences at the project level.

DESCRIPTION OF EXISTING FINANCIAL RETURN

- **Land Value**

According to the Montana Department of Revenue, between 2000 and 2002 the taxable value of residential property in the City of Whitefish increased in market value by 35 percent. For the same period, the value of residential property in Flathead County increased at 12.7 percent. For the entire State the value of residential property increased by only 9.5 percent. Therefore, the value of residential property in Whitefish is growing at a rate that is nearly 3 times that of Flathead County, and almost 4 times that of the State of Montana. Provided the entitlements afforded private property were also afforded State property, it could be assumed that State property around Whitefish is increasing in value at a similar rate.

- **Forest Management**

Roughly 10,000 acres of the 13,000 acres within this Neighborhood Plan are currently managed primarily for forest-management-related revenue (subtracting roads, lakes, leases, etc., from the total acreage). Depending on when sales are prepared, sold, and harvested, revenue from timber sales fluctuates over time. Although the State's accounting practices cannot provide the exact revenue figures for State lands within the planning area, net revenue per acre accomplished State-wide in FY 2003 yielded a \$7.00 per acre return. Using this revenue figure and applying it to the planning area results in average annual long-term revenue of \$70,000 per year.

- **Agriculture and Grazing**

Just over 500 acres of land within the planning area are currently leased for grazing. These leases represent 80 Animal Unit Months (AUM) over 4 separate parcels. At a value of \$6.64 per AUM, annual revenue from these leases is \$531.

- **Minerals**

Currently no active mineral leases are within the planning area; 1 inactive gravel pit north is located north of Whitefish Lake.

- **Real Estate**

Within the planning area are 26 residential/cabinsite leases and 13 land-use licenses, representing an annual return of \$40,837.

DESCRIPTION OF ANTICIPATED FINANCIAL RETURN

- **Land Value**

Forecasts by the Bureau of Business and Economic Research indicate the population of Northwest Montana (Whitefish, Kalispell, Bigfork, Polson) will grow 48 percent by 2025. Given the increased demands from growth placed on neighboring lands and lands within this Neighborhood Plan, the overall land values are expected to continue to appreciate at rates significantly higher than the State average. Because the Neighborhood Plan includes entitlements for State land in partnership with the community, the trust assets within the planning area are anticipated to realize similar increases in land value.

- **Forest Management**

Forest Management is a traditional form of revenue generation on trust land that would be retained as both a legitimate source of long-term revenue and a necessary part of preserving the future income-generating capacity of the land. Available acreage is not anticipated to change significantly. The rate of return on forest-management activities is dependent on fluctuating market conditions, but the viability of the industry is expected to remain stable through the life of this Neighborhood Plan. Revenues are not expected to deviate significantly from the present long-term annual return of \$70,000 per year. However, some of this revenue may be replaced by leases that compensate the trusts for alternative forms of forest management from those implemented through SFLMP.

- **Agriculture and Grazing**

Neither agriculture nor grazing leases are expected to contribute significantly to the revenue generated from lands within this Neighborhood Plan. It is a goal of DNRC's TLMD to shift lands away from grazing, which in fiscal year 2003 netted \$1.25 per acre, and towards real estate actions such as residential or commercial leasing, which during the same fiscal year netted a return of \$55 per acre.

- **Minerals**

Future revenues from minerals are anticipated to be relatively small, primarily from gravel permits and decorative/building stone.

- **Real Estate**

The biggest increase in anticipated increase in financial return would occur through various forms of real estate transactions.

By capitalizing on real estate tools that were previously not utilized for managing trust lands, DNRC could capture the full market value of the land by exploiting the various uses that are possible. These tools include conservation easements, cluster developments, conservation developments, and/or public purchase of development rights, in addition to the more traditional tools of residential/commercial/industrial development, land exchange, sale, leasing, licensing, and permitting.

As an example, strategies that include the purchase of development rights would achieve the community's goal of maintaining open space and recreational opportunities important

to the local tourism economy. The trust beneficiaries would be compensated for the value of that open space and public access and still preserve the ability to generate revenue from traditional uses such as timber management, grazing, gravel permits, compatible secondary uses, etc. Pending legislation, which would allow for the purchase of development rights by private parties, values this type of conservation easement at 50 percent of the per-acre land value. The Neighborhood Plan has identified up to 90 percent of the 13,000 acres as available for development-right purchase. The REMBP indicates that the Department of Revenue estimates the 2003 raw-land value in northwestern Montana at \$8,743 per acre (as noted above, actual appraisals around Whitefish are likely to be higher than this estimate). Using this figure, a residential-development-rights purchase would be valued at roughly \$4,372/acre. If all of the potential development rights available in the Neighborhood Plan were purchased at 2003-dollar values, the trusts could potentially receive over \$51 million in additional revenue for the permanent fund. If this were accomplished, the current rate of return would yield approximately \$2.55 million in distributable interest revenue annually.

The REMBP states that the value of those rights would vary somewhat depending on associated entitlements. Ultimately, the conservation market and legislative authorizations would decide the amount and mix of conservation strategies. In a general sense, annual rent (lease or license) for development or conservation rights would generate a higher rate of return as compared to the permanent disposition of rights through a single purchase. However, either option exceeds current returns; in both cases, the State would primarily retain ownership.

Also, DNRC retains the ability to generate additional revenue from traditional activities, such as forest management, nondevelopment-use leasing, and land-use licensing on these same lands. These revenues would continue to be adjusted based on appraised land values, because the payments are a percentage of land value.

If the fiscal year 2003 net return on development transactions is applied to the remaining 1,300 acres (the 10 percent available for development), the beneficiaries could see an additional \$71,500 per year, with 95 percent of this revenue being distributable annually; the remainder would be deposited in the permanent fund.

COMPARISON TO OTHER TYPES OF PLANS

Although it is clear that the Neighborhood Plan would produce significantly higher annual revenues over the existing condition, the Neighborhood Plan's potential revenue still needs to be compared to other types of approaches, such as greater or lesser degrees of land development or sale.

As long as property values continue to escalate at a rate that is higher than the rate of return in the permanent fund (currently 5 percent), it makes sense for the State to retain as much ownership as possible. This is currently an objective of the Neighborhood Plan.

At some point, however, the beneficiaries must be able to capture this value as revenue. The Neighborhood Plan charts a course over a 20-year period of potentially increasing distributable interest revenue from the permanent fund by approximately \$2.55 million, and increasing the primarily distributable revenue annually by approximately \$71,000.

A more aggressive development approach could realistically result in 25 percent of the land being developed, but with a corresponding percentage decrease in development-right purchases (develop 3,250 acres and sell development rights on 4,680 acres). Using the same land values and predicted annual revenues, this approach would result in an increase of approximately \$107,250 per year in distributable income (\$178,750 total income per year instead of \$71,000). It would also result in a decrease in permanent-fund interest by approximately \$1.53 million per year (\$1.02 million interest income per year instead of \$2.55 million). So, although the distributable income would increase, the interest income would decrease significantly with a net reduction from the proposed Neighborhood Plan by more than 1 million dollars. Yes, the State would still own the nondeveloped asset base that is

currently experiencing capital growth, but the capital growth has limited value to the trust until it is ultimately converted into a form that allows it to earn revenue.

A less aggressive approach would be to try and develop less than 10 percent of the property and simply hold the property for some unknown future use, or attempt to sell most of the development rights. Without the ability to liquidate some property to leverage development-rights purchases, this approach would not likely result in any more development-rights purchases than in the Neighborhood Plan (90 percent). Consequently, this approach may see similar annual revenue from the permanent-fund interest, but would result in less annual distributable income.

SUMMARY

This Neighborhood Plan has outlined overall goals and strategies that allow DNRC to achieve its financial obligation to the beneficiaries, promote the highest and best use for lands within its charge, and achieve full market value for those uses across all of the ownership. The Neighborhood Plan has also accounted for the priorities of the local community and, in so doing, is helping protect an asset that is critical to the local economy. This creates opportunities that neither DNRC nor the community was able to take advantage of before. With the adoption of this Neighborhood Plan, the long-term annual distributable revenue stream is estimated to go from \$111,368 to approximately \$182,868 (an 80-percent increase), with additional development-rights purchases that provide potential nondistributable revenue of approximately \$2.55 million annually. Any additional leasing or permitting would simply increase these figures. Because other approaches are not likely to be supported locally, they are less likely to achieve greater objectives across the entire ownership, and are, therefore, less likely to yield higher rates of return.