

**WASHINGTON STATE
DEPARTMENT OF NATURAL RESOURCES
LETTER OF INTENT**

LAKE CUSHMAN TRUST LAND TRANSFER PROJECT

1. Introduction. The City of Tacoma, Department of Public Utilities (Receiving Agency) has been designated to receive state trust land identified as Lake Cushman in the Trust Land Transfer (TLT) legislative appropriation for the 2015–2017 biennium. The purpose of this Letter of Intent (LOI) is to identify the process and terms of the proposed transfer as provided by legislative direction and the Department of Natural Resources (DNR) trust management obligations. This LOI is an expression of the intent of both parties to move this transaction to completion and is not a legally binding document.

2. Trust Land Transfer Program. The Trust Land Transfer program was created by legislation to protect special trust lands, provide funds for school construction and reposition Common School Trust lands to increase revenues and reduce management costs. Trust lands included in the program are recognized as having special characteristics desirable for uses other than timber harvest and trust revenue production. The legislature appropriates funds to acquire or lease the property at market value and directs the timber value be deposited to the common school construction account and the land value be used to acquire other common school trust land better suited for producing trust revenues. The selected property is transferred to the designated receiving agency to be managed for the intended special public use.

3. Authority. Authority and funding for the transfer is provided by Section 3224, Chapter 3, Laws of 2015 3rd Special Session (Capital Budget Bill), RCW 79.17.200, and other statutes that may apply. The legislature has appropriated \$9,784,000 to transfer or lease 5 properties. A copy of the legislation is attached as Exhibit D.

4. Receiving Agency. The receiving agency as identified on LEAP Capital Document No. 2015-3, referenced in 3224(1) as the approved property list, is “Tacoma Public Utilities”. The conveyance deed will identify Tacoma Public Utilities as the Grantee.

5. Property. The Lake Cushman property (herein referred to as ‘The Property’) proposed for transfer comprises approximately 70 acres within Section 7, Township 23 North, Range 4 West, W.M., in Mason County. A copy of the legal description for The Property is listed in Exhibit A. The Property is currently managed for the CEP&RI Trust and must be exchanged for equal valued Common School Trust property to complete the transfer. This extra step will be included in our administrative process and involves a public hearing that will be scheduled by DNR. The Receiving Agency will need to send a representative to the public hearing to answer questions from the attendees applicable to the Receiving Agency prior to DNR taking testimony from the public.

6. Title. Title will be conveyed by quitclaim deed substantially in form as set forth in Exhibit B. The property will be conveyed AS IS, WHERE IS. The deed shall contain a release of liability relating to the condition of the property. The applicable deed will be submitted to the Receiving Agency for approval prior to conveyance.

7. Title Insurance. DNR will not provide title insurance. The Receiving Agency may acquire title insurance at its own expense.

8. Reservations. DNR will reserve minerals as required by RCW 79.11.210 and the ability to purchase access under RCW 79.36.370. Specific reservation language is shown in Exhibit B.

9. Property Value. The Legislative appropriation will be used to compensate the Common School Trust for the value of The Property. The Receiving Agency will receive The Property without charge, but will be responsible for all future costs after ownership has been transferred.

10. Appraisal. DNR will complete an appraisal of The Property to determine market value. The appraisal will include a value for land and timber that will provide the basis for distributions to the land replacement and school construction accounts as required by legislation. The appraisal will be initiated after the LOI has been signed to indicate agreement with the property transfer. The appraisal will remain confidential to DNR until the transfer is complete.

11. Board of Natural Resources. The transfer is conditioned upon approval by the Board of Natural Resources. The transfer will be presented to the Board after the appraisal is complete and the property transfer is desirable to both parties. The Board has the legal obligation to establish value for all lands leaving trust ownership. The Receiving Agency is to provide a representative at the Board of Natural Resources meeting where the project will be presented who may choose to testify and will be available to answer questions from the Board of Natural Resources.

Any transfer of real property to the Receiving Agency must comply with City of Tacoma charter provisions and municipal code. Therefore, transfer is conditioned upon approval by the City of Tacoma City Council and the City of Tacoma Public Utility Board. If said approval is not forthcoming, the said transfer or transaction shall not be moved to completion. Approval by the City of Tacoma City Council and City of Tacoma Public Utility Board will need to occur prior to a decision by the Board of Natural Resources.

12. Administrative Costs. DNR costs to complete the transfers are paid for by the appropriation. Such costs include staff time, equipment, travel, appraisals, closing costs, etc. Costs incurred by the Receiving Agency to receive, hold and manage The Property are the responsibility of the Receiving Agency.

13. Use Restriction. As required in Section 3224(6), a use restriction will be included in the deed that dedicates The Property for the appropriate public use as identified in Section 3224(1). The public use restriction proposed for Lake Cushman is that it be conveyed to be used exclusively for fish and wildlife habitat, public open space or recreation. Refer to the second paragraph in the deed (Exhibit B).

14. Prorations. All lease/rental income, if any, and assessments and other expenses relating to The Property shall be prorated as of closing. The Receiving Agency will assume responsibility for any assessments remaining unpaid as of the closing date.

15. Leases and Encumbrances. Leases and encumbrances will be transferred with the property unless other arrangements are made. A DNR title records report with copies of lease and encumbrance documents will be provided for review.

16. Access. Legal access appurtenant to The Property will be conveyed when available. However, DNR does not guarantee legal access to all properties. Access to some properties may be unavailable or restricted by easement language.

17. Removal from List. DNR and the Receiving Agency will attempt to complete the transfers as provided by legislation, however, either party may remove a property from the list as provided for in Section 3224(7) if determined the transfer is not in the state wide interest of the Common School Trust or Receiving Agency.

18. Continuing Forest Obligation. The Notice of Continuing Forest Land Obligation form will be signed by DNR and then the Receiving Agency prior to closing as required by RCW 76.09.070, RCW 76.09.390, and WAC 222-20-055. A sample of the form is attached as Exhibit C. All continuing forest obligations will become the responsibility of the Receiving Agency following closing.

19. Closing. Closing shall be carried out at the Olympia office of the Department of Natural Resources. The Receiving Agency acknowledges that DNR staff is acting as interested parties and not as escrow agents in preparing documentation and closing this transfer. Closing (Closing Date) will usually occur within 45 days following approval by the Board of Natural Resources. Each party will execute sufficiently in advance of the Closing Date all documents necessary to carry out this transfer including but not limited to real estate excise tax affidavits, assignment of any leasehold rights, etc. The cost of recording will be paid by DNR.

20. Schedule. DNR is initiating appraisal contracts for higher elevation properties first in order to take advantage of the summer operating season. Properties with high timber to land values also have an earlier schedule. We expect to begin work on Lake Cushman in the Winter of 2015 and hope to have it ready for transfer by Fall of 2016.

21. Notices. Notices affecting this LOI or the subject transfers should be addressed to the following:


DNR	Receiving Agency
State of Washington Department of Natural Resources Conservation, Recreation and Transactions Division Attn: Bob Winslow	Tacoma Public Utilities Tacoma Power Attn: Bret Forrester

P O Box 47014 1111 Washington Street SE Olympia, WA 98504-7014 Fax: (360) 902-1789 Phone: (360) 902-1622 email: robert.winslow@dnr.wa.gov	3628 South 35 th Street Tacoma, WA 98409-3192 Fax: (360) 502-8396 Phone: (253) 502-8782 email: bforrest@ci.tacoma.wa.us
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22. Acknowledgments. The acknowledgments below indicate the above process and terms are acceptable to both parties. It is understood that the decision to proceed is based on current knowledge and that new information could change the desirability of the transfer for either party. Neither this document nor anything contained herein shall be construed as an actual agreement or contract. This LOI is not intended to have a legally binding effect, but is an expression of intentions of both parties.

Please return the signed original to the above address and an executed copy will be returned when signed by DNR. Signature is requested by January 15, 2016, to maintain the indicated schedule.

Department of Natural Resources

Signed: 
Printed: Jed P. Herman
Title: C&T Division Manager
Date: 12/29/15

Receiving Agency

Signed: 
Printed: Keith Underwood
Title: Natural Resource Mgr.
Date: 12/16/2015

**EXHIBIT A
LETTER OF INTENT
LAKE CUSHMAN TRUST LAND TRANSFER**

LEGAL DESCRIPTION

Government Lot 1 and the Northeast Quarter of the Southwest Quarter of Section 7, Township
23 North, Range 4 West, W.M., Mason County, Washington

**EXHIBIT B
LETTER OF INTENT
LAKE CUSHMAN TRUST LAND TRANSFER**

AFTER RECORDING RETURN TO:

Department of Natural Resources
Asset Management and Protection Division
ATTN: Bob Winslow
PO Box 47014
Olympia, WA 98504-7014

QUITCLAIM DEED

_____ County

Grantor: State of Washington, by and through the Department of Natural Resources
Grantee: _____
Legal Desc.: _____
Tax Parcel #: _____

THE GRANTOR, STATE OF WASHINGTON, acting by and through the Department of Natural Resources, for and in consideration of the sum of _____ Dollars (\$_____), which amount has been paid by state legislative appropriation pursuant to Section 3224, Chapter 3, Laws of 2015, 3rd Special Session, hereby conveys and quitclaims to _____, GRANTEE, all interest in the real property situated in _____ County, Washington, and described in EXHIBIT A, attached hereto, which by this reference is made a part hereof.

This transfer is subject to a restriction on use of the property for the public purposes of fish and wildlife habitat, open space, or recreation. This restriction shall run with the land and shall be binding upon Grantee, its successors and assigns forever, provided, however Grantee may request approval of alternative uses of the property that are compatible with the originally intended public purpose subject to Grantor and Legislature approval of such uses.

The above-described lands are subject to that certain statutory reserved right as set forth in RCW 79.36.370 and to the following reservation:

The Grantor hereby expressly saves, excepts, and reserves out of the grant hereby made, unto itself and its successors and assigns forever, all oils, gases, coal, ores, minerals, and fossils of every name, kind, or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself

and its successors and assigns forever, the right to enter by itself or its agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its successors and assigns, forever, the right by its or their agents, servants, and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, and railroads, sink such shafts, remove such soil, and to remain on said lands or any part thereof for the business of mining and to occupy as much of said lands as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself and its successors and assigns, as aforesaid, generally, all rights and powers in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved.

No rights shall be exercised under the foregoing reservation, by the state or its successors or assigns, until provision has been made by the state or its successors or assigns, to pay to the owner of the land upon which the rights reserved herein to the state or its successors or assigns, are sought to be exercised, full payment for all damages sustained by said owner, by reason of entering upon said land: PROVIDED, That if said owner from any cause whatever refuses or neglects to settle said damages, then the state or its successors or assigns, or any applicant for a lease or contract from the state for the purpose of prospecting for or mining valuable minerals, or option contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the right to institute such legal proceedings in the superior court of the county wherein the land is situate, as may be necessary to determine the damages which said owner of said land may suffer.

Grantee accepts the Property "AS IS, WHERE IS" with all faults. The Grantor disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose about the Property, including but not limited to improvements located thereon, and no employee or agent of the Grantor is authorized otherwise. The foregoing specifically includes warranties with respect to the existence or nonexistence of any pollutants, contaminants, or hazardous waste or claims based thereon arising out of the actual or threatened discharge, disposal, seepage, migration, or escape of such substances at, from, or into the Property. Grantee hereby fully releases the Grantor from any and all liability to Grantee arising out of or related to the condition of the Property prior to, at, or after Grantee accepts title to the Property, including but not limited to the deposit or release of hazardous or toxic wastes or material and pollutants.

This Deed is executed and delivered pursuant to RCW 79.02.270 at the request of the Commissioner of Public Lands with the approval of the Board of Natural Resources, State of Washington.

WITNESS the Seal of the State of Washington, affixed this _____ day of _____, 20__.

GOVERNOR

ATTEST:

SECRETARY OF STATE

Approved as to form this _____ day
of _____, 20__.

Assistant Attorney General

Deed No. _____.
State Record of Deeds, Volume _____, Page _____.
Transaction File No. 02-_____

SAMPLE

**EXHIBIT C
LETTER OF INTENT
LAKE CUSHMAN TRUST LAND TRANSFER**

Return to:

_____ Region

**Washington State Department of Natural Resources
Notice of Continuing Forest Land Obligation**

Sellers and Buyers of land and perpetual timber rights have certain rights and responsibilities when the land or perpetual timber rights are sold or transferred. Where the land is subject to certain continuing forest land obligations including without limitation: Reforestation; Road Maintenance and Abandonment Plans; Harvest Strategies along Type Np Waters in Eastern Washington; Conversion of forest land and required mitigation. **Prior to the sale or transfer of the land or perpetual timber rights the law requires that the following occur:** 1) the seller shall notify the buyer of the existence and nature of the obligations and 2) the buyer shall sign a Notice of Continuing Forest Land Obligation Form indicating the buyer's knowledge of such obligation. At the time of sale or transfer of the land or perpetual timber rights, the seller shall send the signed Form to the Department of Natural Resources (DNR). The Form is available at DNR region offices.

If the seller fails to notify the buyer about the continuing forest land obligation referenced above, the seller shall pay the buyer's costs related to such continuing forest land obligation, (including all legal costs) incurred by the buyer in enforcing the continuing forest land obligation against the seller. Failure by the seller to send the required notice to the DNR at the time of sale shall be prima facie evidence, in an action by the buyer against the seller for costs related to continuing forest land obligation, that the seller did not notify the buyer of the continuing forest land obligation prior to sale. See RCW 76.09.070, RCW 76.09.390 and WAC 222-20-055.

There are also other types of obligations subject to certain requirements, including without limitation Small Forest Landowner Forest Riparian Easements and Landowner Landscape Plans. For more information, contact the DNR Region Office.

CONTINUING OBLIGATION/S

[Enter in Project Name & App No Here]

Reforestation (RCW 76.09.070)

- Obligation exists on the property identified below and relates to the following Forest Practice Application/Notification (FPA/N) Numbers (list all that apply, add attachment if necessary)

Road Maintenance and Abandonment Plan (WAC 222-24-051) (RCW76.09.390(2))

- Obligation exists on property identified below and relates to the following Road Maintenance and Abandonment Plan Numbers (list all that apply, add attachment if necessary) _____

Harvest Strategy along Type Np Waters in Eastern Washington (WAC 222-30-022 (2)(b))

- Obligation exists on the property identified below and relates to the following Forest Practices Application / Notification Numbers (list all that apply, add attachment if necessary)

Conversion of forest land (RCW 76.060 and 070)

Obligation exists on the property identified below and relates to the following Forest Practices Application / Notification Numbers or enforcement documents. (list all that apply, add attachment if necessary) _____

PROPERTY IDENTIFICATION

Land/Rights Sold/Transferred (circle one): *Land and Timber* *Land* *Perpetual Timber Rights*

Date that the Land/Rights was/were Sold/Transferred (month/day/year): _____

County/ies: _____

DNR Region/s: _____

Legal Description of the Lands/Rights being Sold/Transferred (include county parcel number/s, add attachment if necessary): _____

SELLER:
Signature: _____

Date: _____

Print name: _____

Title: _____

Address: _____

Phone: _____

BUYER:
Signature: _____

Date: _____

Print name: _____

Title: _____

Address: _____

Phone: _____

NOTE TO SELLER: At the time of sale or transfer of the property or the perpetual timber rights: The seller is responsible for delivering (by certified mail or in person) the SIGNED ORIGINAL to the DNR Region Office in which the property is located. However, if you choose to also have this form recorded by the county, deliver the original to the county and a copy delivered (by certified mail or in person) to the DNR Region Office.

FOR DNR USE ONLY

Notice of Continuing Forest Land Obligation #: _____ Date Received: _____

Region: _____ Received by: _____

**EXHIBIT D
LETTER OF INTENT
LAKE CUSHMAN TRUST LAND TRANSFER**

**SECOND ENGROSSED HOUSE BILL 1115
Chapter 3, Laws of 2015, 64th Legislature, 2015 3rd Special Session
CAPITAL BUDGET**

**NEW SECTION. Section 3224. FOR THE DEPARTMENT OF NATURAL
RESOURCES**

Trust Land Transfer (30000200)

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation is provided solely to the department to transfer from trust status, or enter into fifty year leases for, certain trust lands of statewide significance deemed appropriate for state park, fish and wildlife habitat, natural area preserve, natural resources conservation area, department of natural resources community forest open space, or recreation purposes. The approved list of properties for lease or transfer is identified in the LEAP capital document No. 2015-3, developed June 30, 2015.

(2) Property transferred under this section must be appraised and transferred at fair market value. By September 30, 2015, the department must deposit in the common school construction account the portion of the appropriation in this section that represents the estimated value of the timber on the transferred properties. This transfer must be made in the same manner as timber revenues from other common school trust lands. No deduction may be made for the resource management cost account under RCW 79.64.040. The portion of the appropriation in this section that represents the value of the land transferred must be deposited in the natural resources real property replacement account.

(3) Property subject to lease agreements under this section must be appraised at fair market value. Lease terms must be fifty years with options to renew for an additional fifty years. Lease payments must be lump sum payments for the entire term of the lease at the beginning of the lease. The department shall calculate such lump sum payments using professional appraisal standards. These lease payments may not exceed the fee simple purchase price based on current fair market value and must be deposited by the department to the common school construction account in the same manner as lease revenues from other common school trust lands. No deduction may be made for the resource management cost account under RCW 79.64.040.

(4) All reasonable costs incurred by the department to implement this section are authorized to be paid out of the appropriations. Authorized costs include the actual cost of appraisals, staff time, environmental reviews, surveys, and other similar costs and may not exceed one and nine-tenths percent of the appropriation.

(5) Intergrant exchanges between common school and other trust lands of equal value may occur if the exchange is in the interest of each trust, as determined by the board of natural resources.

(6) Prior to or concurrent with conveyance of these properties, the department, with full cooperation of the receiving agencies, shall execute and record a real property instrument that

dedicates the transferred properties to the purposes identified in subsection (1) of this section. Fee transfer agreements for properties identified in subsection (1) of this section must include terms that perpetually restrict the use of the property to the intended purpose. Lease agreements for properties identified in subsection (1) of this section must include terms that restrict use of the property to the intended purpose for the term of the lease. Transfer and lease agreements may include provisions for receiving agencies to request alternative uses of the property, provided the alternative uses are compatible with the originally intended public purpose and the department and legislature approves such uses.

(7) The department and receiving agencies shall work in good faith to carry out the intent of this section. However, the department or receiving agencies may remove a property from the transfer list based on new, substantive information, if it is determined that transfer of the property is not in the statewide interest of either the common school trust or the receiving agency.

(8) By June 30, 2017, the state treasurer shall transfer to the common school construction account any unexpended balance of the appropriation in this section.

Appropriation:

State Building Construction Account—State. \$9,784,00030

2015-17 Capital Budget

Trust Land Transfer

LEAP Capital Budget Document No. 2015-3

Developed June 30, 2015
(Dollars In Thousands)

Parcel	Receiving Agency	Acres	Estimated Values		
			Timber	Land	Total
Morning Star	DNR - NRCA	2,550	6,027	1,019	7,046
Lake Cushman	Tacoma Public Utilities	80	715	120	835
Preston Ridge	King County	40	800	120	920
Olympic View	Kitsap County	50	205	78	283
Glenrose	Spokane County	160	60	640	700
Total		2,880	7,807	1,977	9,784