

RECEIVED

FILED  
SKAGIT COUNTY CLERK  
SKAGIT COUNTY, WA18-2-01469-29  
AMCPT 7  
Amended Complaint  
7467924

JAN 23 2020

2020 JAN 16 PM 12:49

ATTORNEY GENERAL'S OFFICE  
NATURAL RESOURCES DIVISIONIN THE SUPERIOR COURT OF WASHINGTON  
FOR SKAGIT COUNTY

SKAGIT COUNTY; SEDRO-WOOLLEY  
SCHOOL DISTRICT NO. 101; SKAGIT  
COUNTY HOSPITAL DISTRICT NO. 304;  
and CENTRAL SKAGIT PARTIAL  
COUNTY LIBRARY DISTRICT, in their  
capacities as beneficiaries of a fiduciary  
trust,

Plaintiffs,

v.

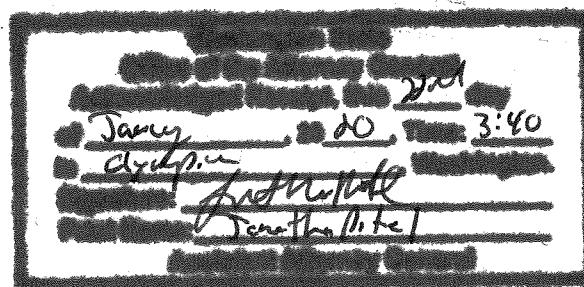
THE STATE OF WASHINGTON; THE  
STATE OF WASHINGTON  
DEPARTMENT OF NATURAL  
RESOURCES, an agency of the State of  
Washington; and THE STATE OF  
WASHINGTON BOARD OF NATURAL  
RESOURCES, its governing body, in their  
capacities as trustees of said trust,

Defendants.

19-2-01469-29

Case No. 19-2-02469-29

SKAGIT COUNTY'S FIRST AMENDED  
COMPLAINT FOR BREACH OF  
FIDUCIARY DUTY, DECLARATORY  
AND INJUNCTIVE RELIEF,  
CONSTITUTIONAL WRIT, AND  
VIOLATIONS OF THE STATE  
ENVIRONMENTAL POLICY ACT



FIRST AMENDED COMPLAINT - Page 1 of 24

PROSECUTING ATTORNEY  
OF SKAGIT COUNTY  
605 South Third Street  
Mount Vernon, WA 98273-3867  
360-416-1600

ORIGINAL

COME NOW the plaintiffs herein, and aver by way of complaint as follows:

## I. INTRODUCTION

This case involves mismanagement and breach of fiduciary duty by the State of Washington as to 84,628 acres of forest lands, held in trust by the State for the benefit of Skagit County and its junior taxing districts as beneficiaries. Skagit County acquired the trust forest lands largely during the Great Depression, which were transferred to the State to be managed in trust and in perpetuity for the benefit of Skagit County and its junior taxing districts. These lands are referred to as "State transfer lands" and will be referred to herein as such.

The State transfer lands produce a significant amount of revenue for Skagit County schools, roads, fire protection, hospitals, emergency medical services, libraries and other necessary services, while concurrently affording our citizens opportunity to use the State transfer lands for hiking, horseback riding, mushroom gathering, fishing, and hunting, including the exercise of treaty-based hunting rights by three Skagit County tribes.

About 40% of Skagit County forestland is designated for commercial forestry, with the rest of the forestland base (60%) having other principal objectives (such as recreation, preservation, habitat, biodiversity and the like). Accordingly, the State transfer lands comprise approximately a quarter of the working forest lands in Skagit County, i.e., those lands designated as long-term commercial forestland by Skagit County's Growth Management Act Comprehensive Plan, a policy explicitly intended to help ensure a future for commercial forestry in Skagit County.

In late October 2019, Defendant State presented Skagit County with a 10-year harvest plan for the State transfer lands, halfway through the planning period, which reflects a drop in harvest of over 50% for some Skagit County beneficiaries, which Defendant State explained as the result of regulations, mapping issues and prior overharvest by the State, further explaining

1 that Defendant State and its model-based management system could not explain the impact to  
2 individual beneficiaries. Among other things, this raised significant question as to whether the  
3 Defendants have maintained an accurate inventory of the timber on the State transfer lands.  
4

5 Defendant DNR announced its intention to obtain approval of its preferred alternative at  
6 a Board of Natural Resources meeting several weeks later, ignoring the Skagit County Board  
7 of Commissioners' explicit written request to delay adoption of the 10-year plan long enough  
8 for Skagit County to engage an independent expert to review the State's plan.  
9

10 Consistent with the State's expressed intention, Defendant Board of Natural Resources  
11 approved the ten year plan at its December 3, 2019 meeting, making no meaningful effort to  
12 address Skagit County's concerns.  
13

14 Concurrently, Defendant State and its officers are openly discussing plans to convert  
15 Skagit County's State transfer lands to other uses, weaning Skagit County and its junior taxing  
16 districts off the significant revenues the lands in question produce through sustainable forestry.  
17 While couched as a response to climate change by State officers, it does not appear logically  
18 connected to use of the State transfer lands for carbon sequestration, but rather appears more  
19 oriented toward the conversion of the trust forest lands to other uses. This is inconsistent with  
20 the State-County trust relationship invoked here, as well as the public intent expressed by  
21 Skagit County's Comprehensive Plan.  
22

23 In light of the foregoing, Skagit County and its junior taxing districts bring this action  
24 seeking an order invalidating the State's ten-year harvest plan and associated Environmental  
25 Impact Statement, and either (a) the appointment of an alternate trustee; or (b) return of the  
26 trust forest lands over to Skagit County and its own management.  
27

28 In bringing this action, Skagit County does **not** challenge the Defendant State's Habitat  
29 Conservation Plan for the Marbled Murrelet, adopted to satisfy the U.S. Endangered Species  
30

Act, which was concurrently approved at the Board of Natural Resources' December 3, 2019 meeting.

## II. PARTIES, JURISDICTION AND VENUE

2.1 Plaintiff Skagit County is a governmental subdivision of the State of Washington, with boundaries provided by RCW 36.04.290. Skagit County is a beneficiary of the trust composed of approximately 84,628 acres of forest lands transferred by Skagit County to the State of Washington Department of Natural Resources for the purpose of managing such lands in trust for the benefit of Skagit County and its junior taxing districts (sometimes known as "Forest Board lands", these forestlands are referenced herein as the "**State transfer lands**"). Skagit County brings this action on its own behalf, and on behalf of the taxing districts whose boundaries include the Skagit County State transfer lands.

**2.2 Plaintiff Sedro-Woolley School District No. 101 ("Sedro-Woolley") is a public school district in the State of Washington, charged with providing educational instruction to all citizens, regardless of their ability to pay for such instruction, in portions of Skagit County. Sedro-Woolley is a beneficiary of the State transfer lands at issue in this litigation.**

2.3 Plaintiff Skagit County Public Hospital District No. 304, aka United General Hospital ("United General") is a public hospital district of the State of Washington with its place of business in Sedro-Woolley, in Skagit County. United General's district covers 200 square miles within Skagit County. United General is entitled to receive revenue generated on State transfer lands as a beneficiary of the State transfer lands. United General provides a variety of vital public health services to residents of Skagit County, including emergency room services, intensive care, surgery center, breast cancer care, an oncology center, and hospice services.

1           **2.4** Plaintiff Central Skagit Partial County Library District ("Central Skagit") is a  
2 library district providing library and literacy services for much of Eastern Skagit County.  
3 Formed by local initiative in 2012 and governed by a five-member Board of Trustees, Central  
4 Skagit was recently consolidated with the Sedro-Woolley Library, and, with support from the  
5 legislature, is in the process of building a consolidated library facility in the City of Sedro-  
6 Woolley. Central Skagit is entitled to receive revenue generated on State transfer lands.  
7 (The plaintiffs herein will be referred to collectively as "**Plaintiffs**" or "**Plaintiff-Beneficiaries**".)

8           **2.5** Defendant State of Washington is responsible for supervising the activities of  
9 Defendant State of Washington Board of Natural Resources, and ensuring the fiduciary  
10 management of State transfer lands, as well as having a "paramount duty" to ensure adequate  
11 funding for its citizens' education.

12           **2.6** Defendant State of Washington Department of Natural Resources ("DNR") is an  
13 agency of the State that is charged with the responsibility of managing the State transfer lands  
14 as trustee for the Plaintiff-Beneficiaries. Defendant DNR has fiduciary duties to each of the  
15 Plaintiff-Beneficiaries.

16           **2.7** Defendant State of Washington Board of Natural Resources ("BNR") is the  
17 governing body responsible for adopting the policies to be followed by Defendant DNR, and as  
18 such is legally responsible for the breaches of fiduciary duty alleged herein related to State  
19 transfer lands within Skagit County.

20           **2.8** Jurisdiction is proper in this Court pursuant to RCW 2.08.010 (Breach of Trust),  
21 RCW 43.21C.075 (SEPA), RCW 7.24.010 (Declaratory Relief), and the inherent power of the  
22 judiciary under Article IV, Section 6 of the Washington Constitution (Writ of Certiorari). Venue  
23 is proper before this Court as "one or more of the plaintiffs" resides or has its principal place of  
24 business in Skagit County. RCW 4.92.010.

### III. RELEVANT FACTS

3.1 This case involves the mismanagement of trust assets and violation of fiduciary duties by the Department of Natural Resources. This lawsuit concerns approximately 84,628 acres of timberland located in Skagit County, i.e., the State transfer lands, managed by Defendant DNR, and DNR's policy-making body, Defendant BNR (together with the State itself, collectively, unless otherwise referenced hereinafter, the "State"), for the benefit of various trust beneficiaries, including the Plaintiff-Beneficiaries herein. Beginning in the 1920s and 1930s, during the Great Depression, many forestland owners were unable to pay their taxes and other obligations, and Skagit County thus came into ownership of these lands through tax foreclosure and other legal means. These lands were then entrusted to the State with the understanding that they would be managed by the State, in trust, in perpetuity, for the financial benefit of Skagit County and its junior taxing districts.

**3.2 The State's Trust Obligations.** As set forth by *County of Skamania v. State*, 102 Wn.2d 127 (1984)(hereinafter, *Skamania*), the Defendants are a legally accountable trustee owing the beneficial owners of the State transfer lands (including Plaintiffs) the same fiduciary duties as would be owed by a private trustee, including the duty of undivided loyalty, prudence, and duty to account. This trust obligation is judicially enforceable against the State. See, *Skamania*, 102 Wn.2d at 132.

**3.3 Forest Lands in Skagit County.** Within Skagit County, there are approximately 890,416 forestland acres. Of this, 529,677 acres, or roughly 60% of the total forestland in Skagit County, is restricted under state or federal law (i.e., National Park, National Forest, state parks, county parks, tribal lands, and the like), and is thus forestland principally devoted to habitat, biodiversity, recreation, and other principally non-commercial forestry uses, which in

1 turn puts much of that acreage into either the protection of, or trajectory toward, old growth  
2 forest.

3 The remaining 40% of the forestland within Skagit County, approximately 360,738  
4 acres, is working forest owned by private and public landowners. While subject to a wide  
5 range of environmental laws and regulations including significant riparian habitat set-asides,  
6 this portion of the Skagit County land base, generally located lower in the Skagit River Basin,  
7 is managed principally for sustainable forestry, i.e., the production of useful products such as  
8 softwoods, hardwoods, and other forest products.

9  
10 Although forestry is the principal management objective of this limited acreage, the  
11 State transfer lands are used for a wide range of other compatible activities by Skagit County's  
12 citizens, including hunting, fishing, mushroom gathering, hiking, mountain biking, and  
13 horseback riding. Moreover, the State transfer lands are used by the Upper Skagit, Sauk-  
14 Suiattle and Swinomish tribes of the Skagit Valley in the exercise of their treaty-protected  
15 hunting rights. Very few of the aforementioned uses are permitted on National Park, State  
16 Park, and other fully restricted forestlands.

17  
18 The forestry industry in Skagit County provides approximately 3,242 jobs, furnishing  
19 approximately \$170 million in annual wages to the community.

20  
21 **3.4 The State transfer Lands Were Designated for Commercial Forestry by**  
22 **Skagit County's State-Approved Comprehensive Plan, Pursuant to the Growth**  
23 **Management Act.** A sustainable forestry industry is part of Skagit County's history, economy  
24 and identity, as well as constituting part of the future our community has planned for itself  
25 pursuant to the County's Comprehensive Plan, adopted pursuant to the Washington Growth  
26 Management Act, Chapter 36.70A RCW ("GMA") in 1990, which, generally speaking, required  
27 Skagit County to help stop the suburban sprawl consuming the Salish Sea Basin. "The  
28  
29

1 regional physical form required by the [GMA] is a compact urban landscape, well designed and  
2 well furnished with amenities, encompassed by natural resource lands and a rural landscape.”  
3

4 *Bremerton et al v. King County, CPSGHMB Case No. 95-3-0039c Final Decision and Order 31*  
5 (October 6, 1995).<sup>1</sup>

6 Following this State law mandate, Skagit County designated certain areas of land to be  
7 used principally for farming and forestry, explaining that designation as follows:  
8

9 The natural resource lands designation indicates areas where Skagit County land-  
10 use plans, regulations, and incentives are intended to promote long-term, commercially significant resource use. These natural resources provide valuable products and raw materials that support jobs, create tax revenues, and are an important component in regional and local economies and markets. Farmlands and forests also provide aesthetic, recreational, and environmental benefits to the public, while contributing to a diverse community lifestyle and character.  
11  
12  
13

14 Skagit County Comprehensive Plan, Natural Resources Lands Chapter, p 105 (2016).  
15

16 Pursuant to the Skagit County Comprehensive Plan – a formal, long-range planning document adopted by Skagit County and approved by the State pursuant to RCW 36.70A.106  
17 — Skagit County zoned the preponderance of the working forest land in Skagit County, some  
18 319,500 acres both public and private, as Industrial Forest (IF):  
19  
20

21 The purpose of the Industrial Forest— Natural Resource Lands district is to ensure  
22 that forest lands of long-term commercial significance are conserved and managed to provide sustainable forest yields, job stability, ecological values and the continuation of a viable commercial forest industry in Skagit County.  
23  
24

25 Skagit County Code 14.16.410.  
26  
27

---

28 <sup>1</sup> A more complete discussion of the Growth Management Act is available on the land use NGO Futurewise's website, at [futurewise.org/growth-management-act](http://futurewise.org/growth-management-act) (last visited December 27, 2019). Futurewise has historically done a great service to the region by ensuring that local jurisdictions protect natural resource lands from incompatible development, thereby preserving open space in the Salish Sea Basin.

1           As a result, virtually all of the 84,628 State transfer land acres at issue in this litigation  
2 are zoned Industrial Forest (IF) by Skagit County's Comprehensive Plan, representing our  
3 community's consensus, obtained in the manner prescribed by state law, that a portion of the  
4 forest land within our County should remain principally dedicated to commercial forestry.  
5           Much of that land is in the lower Skagit Valley and subject to higher development pressure  
6 than areas in the upper Valley.

7           Maintaining the integrity of Skagit County's forest and farm land base requires  
8 maintaining a viable forestry and farming industry, which requires a critical mass of  
9 commercially-viable forestry and farms in order to maintain the infrastructure that supports and  
10 allows forestry and farming as a whole to thrive in our community. It is a holistic vision of long-  
11 range stewardship of the landscape by a modest commercial forestry that is a stable part of  
12 the fabric of our rural community. The fact that visitors to Skagit County see working farms  
13 and forests generally free of residential development is not the result of accident or external  
14 forces, but rather the result of the deliberate policy decisions by the people of Skagit County  
15 discussed above, documented by our County Comprehensive Plan.

16           By contrast, since the GMA was adopted in 1990, King County and its surrounding  
17 environs have experienced massive population growth, pushing residential development  
18 northward, consuming what were formerly forestland and farms. Absent the highly restrictive  
19 zoning that Skagit County has adopted under the GMA with respect to its natural resource  
20 lands, the 40% of Skagit County's forests that are currently working forests would be under  
21 significantly heightened development pressure from surrounding urban centers, as would  
22 Skagit County's remaining agricultural lands. This is because without financial revenue  
23 derived from commercial forestry, the only meaningful opportunity by which landowners can  
24

1 generate revenue is to sell off the land piece by piece for development. It is not the intent of  
2 the people of Skagit County as to our working forestlands, the State transfer lands included.  
3

4 These decisions were made democratically and transparently by the people of Skagit  
5 County. While the State transfer lands at issue in this matter are to be managed in trust for  
6 Skagit County and its junior taxing districts, invoking separate fiduciary obligations, the people  
7 of Skagit County have also made clear their will as how the State transfer lands at issue in this  
8 litigation should be managed as a matter of the public trust.  
9

10 Pursuant to the Growth Management Act, "State agencies shall comply with the local  
11 comprehensive plans and development regulations..." RCW 36.70A.103.

12 **3.5 The Significance of State transfer Lands to Skagit County and Its Junior**  
13 **Taxing Districts.** As reflected by the preceding paragraph, the approximately 84,628 acres  
14 managed by the State in trust for the County and its junior taxing districts constitute roughly a  
15 quarter (25%) of the total working forestland in Skagit County. Skagit County highly values  
16 appreciates the 60% of the forestlands within Skagit County's jurisdictional boundaries  
17 currently dedicated to principally non-forestry uses, thereby supporting biodiversity, ecosystem  
18 services, wildlife habitat and a tourism economy ahead of the needs of commercial forestry.  
19 But the State transfer lands, are, by fiduciary obligation and the intent of the people of Skagit  
20 County, to remain a long-term sustainable and renewable resource, in part to support our  
21 schools, roads, hospitals and other critical infrastructure, and in part to foster the continued  
22 existence of a sustainable forestry industry in Skagit County.  
23

24 The revenue produced by the State transfer lands for the benefit of Skagit County has  
25 historically been significant. For example, from 2009 to 2018, the Sedro-Woolley School  
26 District received \$30,496,673 in trust land revenue; the County Road Fund received  
27 \$13,507,805; the Central Skagit Library District received \$1,531,093; and the Skagit County  
28  
29

1 Emergency Medical Services ("EMS") District received \$2,758,256. In total, Skagit County  
2 and its junior taxing districts received \$76,428,459 over that time period. In a small rural  
3 county, these amounts are highly significant to budgets and finance plans.  
4

5 Furthermore, the State transfer lands have a disproportionate positive impact on the  
6 sustainable forestry industry in Skagit County, because, much like an agricultural land base,  
7 lumber mills and other infrastructure that allow a forestry industry to exist themselves require a  
8 critical mass of land to remain viable.  
9

10 In addition, working forestlands (i.e., successional forest in early-to-mid stages of  
11 growth) can sequester more carbon per acre than climax (fully mature) forests, and Skagit  
12 County is interested in pursuing management strategies that could provide revenue-producing  
13 carbon sequestration opportunities. As such, Skagit County is concerned that loss of the  
14 State transfer lands as working forests could hamper efforts to combat climate change, as well  
15 as limiting the opportunity to use these lands for commercially significant carbon sequestration  
16 opportunities. These are opportunities that the State is required by its trust obligations to  
17 afford to its beneficiaries with an undivided duty of loyalty, in a manner consistent with Skagit  
18 County's Comprehensive Plan.  
19

20 **3.6 The State's Openly Stated Plans that are Inconsistent with its Beneficiaries'**  
21 **Intent.** The State and its various officers, including members of the Board of Natural  
22 Resources and the Public Lands Commissioner, have publicly expressed intention to convert  
23 Skagit County State transfer lands to other uses and to decouple the funding of rural services  
24 from sustainable forestry, articulating various plans to replace the lost revenue by such things  
25 as purchasing commercial real estate around the state, imposing a carbon tax and making  
26 transfer payments to Skagit County and its junior taxing districts, and other financial schemes.  
27  
28

1           As previously expressed in this Complaint, Skagit County and its people have explicitly  
2 decided, through the Skagit County Comprehensive Plan and other statements of policy, that  
3 sustainable forestry is to remain a part of our community's long-term future. Skagit County  
4 does not consent to any plans by its trustee inconsistent with that understanding.  
5

6           The plans articulated by the State's officers are generally explained and justified by the  
7 State Administration's focus on the globalized problem of climate change. Home to some of  
8 the glaciers and rivers most impacted by climate change, and with a population and economy  
9 closely linked on a daily basis to local natural systems impacted by climate change, Skagit  
10 County is well aware of the grave challenges that climate change presents. As such, Skagit  
11 County stands ready to participate in any plan responsive to climate change consistent with  
12 the undivided duty of loyalty to Skagit County and its junior taxing district owed by the State in  
13 this instance, as well as our County Comprehensive Plan, and, in general, our community's  
14 right of self-determination.  
15

16           **3.7    State Forest Management Plans.**   The 84,628 acres of State transfer land in  
17 this case lie entirely within the jurisdictional boundaries of Skagit County, and are part of  
18 roughly 1.8 million acres of timberland around the state managed by DNR in trust for various  
19 trust beneficiaries.   The trust lands are also subject to Washington's Forest Practices Act,  
20 (Chapter 76.09 RCW) and regulations (Title 222 WAC), including the "Forest and Fish"  
21 regulations adopted in 1999 that provide greatly increased protection for watercourses and  
22 salmonid habitat.   The State manages the trust lands under its *Policy for Sustainable Forests*  
23 (2006) as well as *State Trust Lands Habitat Conservation Plan* (1997).   The State retains a  
24 25% management fee, which, over the past decade, means that DNR has retained roughly  
25 \$25 million (or \$2.5 million per year) of the harvest revenue from Skagit County State transfer  
26 lands.  
27  
28

1                   3.8    The Sustainable Harvest Calculation. The State's *Policy for Sustainable*  
2 *Forests* specifies that "[t]he department, with Board of Natural Resources approval, will  
3 recalculate the statewide sustainable harvest level, for Board of Natural Resources adoption,  
4 no less frequently than every ten years." This is known as the Sustainable Harvest  
5 Calculation (hereinafter, the "**SHC**"). As such, the SHC establishes the maximum level of  
6 timber harvest from lands within Skagit County for each decade that DNR believes can be  
7 harvested without depleting the corpus of the trust.

8                   3.9    The 2015-2024 Planning Decade Sustainable Harvest Calculation  
9 (hereinafter, the "2015-2024 SHC"). The State adopted the 2015-2024 SHC at the  
10 December 3, 2019 meeting of the Board of Natural Resources, approximately halfway through  
11 the planning decade for which it purports to plan. The draft Environmental Impact Statement  
12 ("EIS") for the 2015-2024 SHC, required by the State Environmental Policy Act ("SEPA") was  
13 published in December 2016 for comment, and included proposed harvest levels. The final  
14 EIS for the 2015-2024 SHC was then published in October 14, 2019, and included numerous  
15 changes to the draft EIS, including a new preferred alternative; updates to data; changes to  
16 DNR's model for calculating the level of sustainable harvest; changes to DNR's policy on  
17 arrearage (i.e., what happens when the actual harvest falls short of the SHC's forecast). And  
18 of particular note, the FEIS incorporated changes made by DNR to its *Policy on Sustainable*  
19 *Forests* governing how much the harvest level may fluctuate within and between decades.

20                   As set forth by the FEIS, the 2015-2024 SHC DNR staff-preferred alternative  
21 (Alternative 6) reflected a downward adjustment in trust lands harvest from 302 million board  
22 feet to 259 million board feet within Skagit County, attributed by the State to a broad range of  
23 factors such as prior overharvest and new environmental regulations, none of which included  
24  
25  
26  
27  
28  
29  
30

1 any specific analysis or discussion of the impacts to individual school districts, fire districts,  
2 hospital districts and the like.

3       The 2015-2024 SHC FEIS also hid the full scope of the management problems. The  
4 first half of the 2015-2024 planning decade, before the 2015-2024 SHC was adopted, saw far  
5 higher levels of annualized harvest than the preferred alternative envisions going forward. As  
6 a result, the actual harvest during the remaining life of the 2015-2024 SHC is to be  
7 considerably lower than the 2015-2024 SHC would suggest, taken together with the planned  
8 and disclosed reductions, something on the order of a 50% reduction below historic levels  
9 (depending on the specific beneficiary), which stands to create tremendous hardship for school  
10 districts, fire districts, the library districts, emergency medical services, hospital districts and  
11 the County itself.

12       Given the significant changes in the versions of the 2015-2024 SHC EIS, as well as the  
13 lack of clarity around the harvest reductions and resultant impact to specific beneficiaries, the  
14 County was unable to adequately understand the implications of the 2015-2024 SHC to itself  
15 and its junior taxing districts.

16       **3.10 The State's Dismissive Approach to its Beneficiaries' Concerns.**

17       Upon receiving the FEIS and being informed that the State planned to rush adoption of  
18 the 2015-2024 SHC several weeks later, the County was unable based on the information  
19 furnished by DNR to conclude that the State is managing State transfer lands in a manner  
20 consistent with the State's fiduciary obligations to Skagit County. Among other things,  
21 Defendant DNR appears to have limited understanding of the timber inventory within Skagit  
22 County State transfer lands, instead relying on increasingly esoteric and unproven modeling  
23 that has been criticized by academia and industry, which has gone unaddressed. In addition,  
24 DNR is applying a discount rate considerably lower than used by any other public lands  
25  
26

1 manager, an assumption that has the practical effect of reducing harvest revenue and injecting  
2 a bias for long-term tree cover retention over forestry activities.

3 In light of all the foregoing, Skagit County decided to engage an independent forestry  
4 expert to help the County assess the situation, formally requesting that the State delay  
5 adoption of the 2015-2024 SHC for several months so as to afford the County adequate time  
6 to analyze and understand the situation, as well as to communicate with junior taxing districts  
7 about the situation, a request made both in person by the Board of Skagit County  
8 Commissioners to DNR staff during a November 18, 2019 public meeting regarding the  
9 proposed 2015-2024 SHC as well as in formal comment correspondence to the Board of  
10 Natural Resources. See, Letter from Board of Skagit County Commissioners dated November  
11 27, 2019, copy attached as **Exhibit A**. The State did not respond to these requests, nor  
12 discuss the County's request at the December 3, 2019 BNR meeting, which was attended by a  
13 Skagit County Commissioner and Skagit County staff.

14 **3.11 The December 3, 2019 Board of Natural Resources Meeting.** At the  
15 December 3, 2019 BNR meeting, the BNR and Lands Commissioner discussed commercial  
16 real estate purchased by DNR to replace sustainable working forest lands as a revenue  
17 stream. Moving to discussion of the 2015-2024 SHC, DNR staff explained that they should  
18 have developed a 10-year plan at the beginning of the 10-year period but failed to do so for  
19 reasons of administrative convenience, also explaining that Defendant DNR believes it  
20 impossible to afford a reasonably accurate forecast as to the revenues that individual taxing  
21 districts can expect in the future, characterizing the failure to do so as a matter of agency  
22 discretion.

23 The BNR combined discussion of the SHC with discussion of the Marbled Murrelet,  
24 which seemed to conflate management issues with an Endangered Species Act habitat

1 conservation plan for the Murrelet that itself has limited impact on harvest from Skagit County  
2 State transfer lands as a whole.<sup>2</sup>

3 At the December 3, 2019 meeting, BNR member (and State Superintendent of Public  
4 Instruction) Chris Reykal offered the following admirably honest explanation of the situation at  
5 hand, in the course of dialogue with DNR Deputy Supervisor Angus Brodie:

6  
7  
8 CHRIS REYKDAL: So this is a critical question, folks are going to talk for  
9 the next decade about this awful board that took away a third of harvest,  
10 and somebody is going to have to describe for them decisions made in the  
11 past that under any scenario, to be crass, a front loading of consumption of  
12 a very limited product that was going to result in that curve. Now it's being  
13 marginally changed based on our latest understanding/decision since 2004,  
14 we could have picked this alternative versus that, we could have metered,  
we could have done this, it is on the margins, but there were decisions made  
that were under any scenario going to impact industry with a yield curve  
similar to that.

15 ANGUS BRODIE: Right.

16 REYKDAL: That we have to grapple with which if you are getting ready to  
17 vote I am going to tell you why I am voting yes soon because it is a much  
18 bigger question than we've been battling over for the last year in detail.  
19  
20

21 REYKDAL: So there is a reality that there's only so much you're going to  
22 achieve on paper before the—the dynamic tension and the forcing function  
23 of the risk of adopting it causes the parties to say now it's not hypothetical  
for the governor or the legislature, we have to get up there and start working  
on solutions to mitigate impacts to taxing jurisdictions or to beneficiaries.  
24 These are all things that I think are better launched in motion when there's  
something we've actually adopted, and I think there's a ton of staff work that  
has to move forward to make this thing work, so that alone is an important  
factor for me.

---

25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
7710  
7711  
7712  
7713  
7714  
7715  
7716  
7717  
7718  
7719  
7720  
7721  
7722  
7723  
7724  
7725  
7726  
7727  
7728  
7729  
7730  
7731  
7732  
7733  
7734  
7735  
7736  
7737  
7738  
7739  
7740  
7741  
7742  
7743  
7744  
7745  
7746  
7747  
7748  
7749  
7750  
7751  
7752  
7753  
7754  
7755  
7756  
7757  
7758  
7759  
7760  
7761  
7762  
7763  
7764  
7765  
7766  
7767  
7768  
7769  
7770  
7771  
7772  
7773  
7774  
7775  
7776  
7777  
7778  
7779  
77710  
77711  
77712  
77713  
77714  
77715  
77716  
77717  
77718  
77719  
77720  
77721  
77722  
77723  
77724  
77725  
77726  
77727  
77728  
77729  
77730  
77731  
77732  
77733  
77734  
77735  
77736  
77737  
77738  
77739  
77740  
77741  
77742  
77743  
77744  
77745  
77746  
77747  
77748  
77749  
77750  
77751  
77752  
77753  
77754  
77755  
77756  
77757  
77758  
77759  
77760  
77761  
77762  
77763  
77764  
77765  
77766  
77767  
77768  
77769  
77770  
77771  
77772  
77773  
77774  
77775  
77776  
77777  
77778  
77779  
777710  
777711  
777712  
777713  
777714  
777715  
777716  
777717  
777718  
777719  
777720  
777721  
777722  
777723  
777724  
777725  
777726  
777727  
777728  
777729  
777730  
777731  
777732  
777733  
777734  
777735  
777736  
777737  
777738  
777739  
777740  
777741  
777742  
777743  
777744  
777745  
777746  
777747  
777748  
777749  
777750  
777751  
777752  
777753  
777754  
777755  
777756  
777757  
777758  
777759  
777760  
777761  
777762  
777763  
777764  
777765  
777766  
777767  
777768  
777769  
777770  
777771  
777772  
777773  
777774  
777775  
777776  
777777  
777778  
777779  
7777710  
7777711  
7777712  
7777713  
7777714  
7777715  
7777716  
7777717  
7777718  
7777719  
7777720  
7777721  
7777722  
7777723  
7777724  
7777725  
7777726  
7777727  
7777728  
7777729  
7777730  
7777731  
7777732  
7777733  
7777734  
7777735  
7777736  
7777737  
7777738  
7777739  
7777740  
7777741  
7777742  
7777743  
7777744  
7777745  
7777746  
7777747  
7777748  
7777749  
7777750  
7777751  
7777752  
7777753  
7777754  
7777755  
7777756  
7777757  
7777758  
7777759  
7777760  
7777761  
7777762  
7777763  
7777764  
7777765  
7777766  
7777767  
7777768  
7777769  
7777770  
7777771  
7777772  
7777773  
7777774  
7777775  
7777776  
7777777  
7777778  
7777779  
77777710  
77777711  
77777712  
77777713  
77777714  
77777715  
77777716  
77777717  
77777718  
77777719  
77777720  
77777721  
77777722  
77777723  
77777724  
77777725  
77777726  
77777727  
77777728  
77777729  
77777730  
77777731  
77777732  
77777733  
77777734  
77777735  
77777736  
77777737  
77777738  
77777739  
77777740  
77777741  
77777742  
77777743  
77777744  
77777745  
77777746  
77777747  
77777748  
77777749  
77777750  
77777751  
77777752  
77777753  
77777754  
77777755  
77777756  
77777757  
77777758  
77777759  
77777760  
77777761  
77777762  
77777763  
77777764  
77777765  
77777766  
77777767  
77777768  
77777769  
77777770  
77777771  
77777772  
77777773  
77777774  
77777775  
77777776  
77777777  
77777778  
77777779  
777777710  
777777711  
777777712  
777777713  
777777714  
777777715  
777777716  
777777717  
777777718  
777777719  
777777720  
777777721  
777777722  
777777723  
777777724  
777777725  
777777726  
777777727  
777777728  
777777729  
777777730  
777777731  
777777732  
777777733  
777777734  
777777735  
777777736  
777777737  
777777738  
777777739  
777777740  
777777741  
777777742  
777777743  
777777744  
777777745  
777777746  
777777747  
777777748  
777777749  
777777750  
777777751  
777777752  
777777753  
777777754  
777777755  
777777756  
777777757  
777777758  
777777759  
777777760  
777777761  
777777762  
777777763  
777777764  
777777765  
777777766  
777777767  
777777768  
777777769  
777777770  
777777771  
777777772  
777777773  
777777774  
777777775  
777777776  
777777777  
777777778  
777777779  
7777777710  
7777777711  
7777777712  
7777777713  
7777777714  
7777777715  
7777777716  
7777777717  
7777777718  
7777777719  
7777777720  
7777777721  
7777777722  
7777777723  
7777777724  
7777777725  
7777777726  
7777777727  
7777777728  
7777777729  
7777777730  
7777777731  
7777777732  
7777777733  
7777777734  
7777777735  
7777777736  
7777777737  
7777777738  
7777777739  
7777777740  
7777777741  
7777777742  
7777777743  
7777777744  
7777777745  
7777777746  
7777777747  
7777777748  
7777777749  
7777777750  
7777777751  
7777777752  
7777777753  
7777777754  
7777777755  
7777777756  
7777777757  
7777777758  
7777777759  
7777777760  
7777777761  
7777777762  
7777777763  
7777777764  
7777777765  
7777777766  
7777777767  
7777777768  
7777777769  
7777777770  
7777777771  
7777777772  
7777777773  
7777777774  
7777777775  
7777777776  
7777777777  
7777777778  
7777777779  
77777777710  
77777777711  
77777777712  
77777777713  
77777777714  
77777777715  
77777777716  
77777777717  
77777777718  
77777777719  
77777777720  
77777777721  
77777777722  
77777777723  
77777777724  
77777777725  
77777777726  
77777777727  
77777777728  
77777777729  
77777777730  
77777777731  
77777777732  
77777777733  
77777777734  
77777777735  
77777777736  
77777777737  
77777777738  
77777777739  
77777777740  
77777777741  
77777777742  
77777777743  
77777777744  
77777777745  
77777777746  
77777777747  
77777777748  
77777777749  
77777777750  
77777777751  
77777777752  
77777777753  
77777777754  
77777777755  
77777777756  
77777777757  
77777777758  
77777777759  
77777777760  
77777777761  
77777777762  
77777777763  
77777777764  
77777777765  
77777777766  
77777777767  
77777777768  
77777777769  
77777777770  
77777777771  
77777777772  
77777777773  
77777777774  
77777777775  
77777777776  
77777777777  
77777777778  
77777777779  
777777777710  
777777777711  
777777777712  
777777777713  
777777777714  
777777777715  
777777777716  
777777777717  
777777777718  
777777777719  
777777777720  
777777777721  
777777777722  
777777777723  
777777777724  
777777777725  
777777777726  
777777777727  
777777777728  
777777777729  
777777777730  
777777777731  
777777777732  
777777777733  
777777777734  
777777777735  
777777777736  
777777777737  
777777777738  
777777777739  
777777777740  
777777777741  
777777777742  
777777777743  
777777777744  
777777777745  
777777777746  
777777777747  
777777777748  
777777777749  
777777777750  
777777777751  
777777777752  
777777777753  
777777777754  
777777777755  
777777777756  
777777777757  
777777777758  
777777777759  
777777777760  
777777777761  
777777777762  
777777777763  
777777777764  
777777777765  
777777777766  
777777777767  
777777777768  
777777777769  
777777777770  
777777777771  
777777777772  
777777777773  
777777777774  
777777777775  
777777777776  
777777777777  
777777777778  
777777777779  
7777777777710  
7777777777711  
7777777777712  
7777777777713  
7777777777714  
7777777777715  
7777777777716  
7777777777717  
7777777777718  
7777777777719  
7777777777720  
7777777777721  
7777777777722  
7777777777723  
7777777777724  
7777777777725  
7777777777726  
7777777777727  
7777777777728  
7777777777729  
7777777777730  
7777777777731  
7777777777732  
7777777777733  
7777777777734  
7777777777735  
7777777777736  
7777777777737  
7777777777738  
7777777777739  
7777777777740  
7777777777741  
7777777777742  
7777777777743  
7777777777744  
7777777777745  
7777777777746  
7777777777747  
7777777777748  
7777777777749  
7777777777750  
7777777777751  
7777777777752  
777777777

1           The other factor for me, and I've said this in some form in the past, as hard  
2           as this has been for a lot of you who have been in a long time, I don't think  
3           this is the hardest decision by a lot that's coming to the state over the next  
4           decade. If for one moment you believe that climate change isn't the biggest  
5           factor we're going to face then I think you need to do some serious soul  
6           searching.

7           It's going to impact forests, it is going to impact species, it's going to impact  
8           human beings, it's going to impact water quality, it's going to impact our  
9           economy, and in that respect we have to have a totally different strategy  
10           going forward than the presumption we've had over the last five or ten  
11           decades about how to harvest, support beneficiaries, move forward.

12           That's not going to work, they're going to need a different kind of support  
13           probably from more progressive sources, and I'll say again this kind of  
14           contemplation is a moment in time due to a federal listing, but the State of  
15           Washington needs something else.

16           The industries are going to need significant help to sustain themselves  
17           through this big, big crisis we're going to have over the next couple of  
18           decades. This species is going to need help. When we are 10,500,000  
19           people in this state, not 7,500,000, at the bottom of that trough they're going  
20           to expect to go out into the wilderness, and they're going to want to recreate.

21           There is such a big economy coming that's different than the one we're  
22           living in today....

23           Transcript of December 3, 2019 Board of Natural Resources meeting, 32:15-25; 35:1-23.

24           The notion that the revenue from Skagit County's working forests should be replaced by  
25           the State with something besides commercial forestry also appears to be the central thesis  
26           behind DNR's "Solutions Table," a body that includes the Public Lands Commissioner, and  
27           was formed to, generally speaking, pursue the ideas and objectives articulated by BNR  
28           member Reykdal quoted above.

29           Seemingly grounded in the apparent belief that perpetual growth in the State of  
30           Washington's urban environment and tech economy is both inherently positive as well as a  
31           foregone conclusion, and that all land use plans and human communities in the broader region

32           FIRST AMENDED COMPLAINT - Page 17 of 24

PROSECUTING ATTORNEY  
OF SKAGIT COUNTY  
605 South Third Street  
Mount Vernon, WA 98273-3867  
360-416-1600

1 should be oriented around this belief, Skagit County views the plans articulated by its State  
2 trustees with a degree of skepticism. While principally urbanized growth has taken the State  
3 of Washington from 1.5 million to nearly 8 million in the 90 years since the State transfer lands  
4 were entrusted to the State of Washington, Skagit County's view of the appropriate usage of  
5 these lands remains constant.

7 Skagit County is willing to consider in good faith any new ideas that the State might  
8 offer, but the ideology and thought processes reflected by the State officers' statements on this  
9 issue significantly aggravate the Plaintiff-Beneficiaries' concerns regarding the management of  
10 its trust assets, in part because they are offered at the same time the County and other  
11 beneficiaries are told by the State that we must expect a (thinly-explained) decline in State  
12 transfer land revenue, as well as what appears to be a lack of transparency by the State,  
13 management lapses, and, in general, the breaches of fiduciary duty articulated in this lawsuit.

15 Taken as a whole, Skagit County has serious concerns about the State's management  
16 of our community's trust assets and its future trajectory.

18 No mention was made during the December 3, 2019 BNR meeting that Skagit County  
19 had explicitly requested the BNR decision be delayed to afford Skagit County and its junior  
20 taxing districts time to analyze and comprehend the significance of the forthcoming 2015-2024  
21 SHC adoption.

23 Thereafter, the Board of Natural Resources adopted 2015-2024 SHC Alternative 6.  
24 With no other option available to address its concerns, Skagit County reluctantly brings this  
25 action.

26 **CAUSES OF ACTION**

28 **IV. Cause of Action No. 1 – Breach of Fiduciary Duty**

1           4.1    Skagit County re-alleges and incorporates by reference all preceding allegations  
2 in this Complaint.

3           4.2    The Defendants are legally accountable trustees owing the Plaintiff-Beneficiaries  
4 herein the same fiduciary duties as would be owed to a private trustee, including the duty of  
5 undivided loyalty, prudence, and duty to account. *County of Skamania v. State*, 102 Wn.2d  
6 127 (1984). This trust obligation is judicially enforceable against the State. See, *Skamania*,  
7 102 Wn.2d at 132.

8           4.3    Defendants have breached their fiduciary duties to Plaintiff-Beneficiaries herein  
9 by, *inter alia*:

- 10           • Failure to prospectively manage the State transfer lands at issue herein  
11           thoroughly timely planning;
- 12           • Failure to appropriately track and account for timber inventory within  
13           Skagit County State transfer lands;
- 14           • Failure to account for impacts in harvest caused by State decisions  
15           regarding the State transfer lands at issue, including failure to provide  
16           individual beneficiaries with individual forecasts as to future revenue,  
17           causing financial hardship for beneficiaries;
- 18           • Retention of an excessive level of management fees from revenues  
19           derived from timber harvests derived from Skagit County State transfer  
20           lands;
- 21           • Pursuit of collateral political and economic objectives that are inconsistent  
22           with undivided loyalty to the State's beneficiaries and the purpose of the  
23           trust, including but not limited to planned divestment from sustainable  
24           forestry into untested financing schemes;
- 25           • Decisions that have reduced sustainable harvest for reasons that cannot  
26           be reasonably explained;
- 27           • Failure to reasonably document and explain the State's actions and  
28           decision in a manner that can be reasonably understood by beneficiaries;

- Failure to accommodate reasonable requests for further explanation, analysis and accounting by beneficiaries before acting;
- Failure to diligently manage Skagit County's State transfer lands with undivided loyalty to the beneficiaries, i.e., the Skagit County community;
- Application of a discount rate inconsistent with that of a prudent public land manager;
- Diversion of commercial carbon sequestration business opportunity that should rightly be afforded to the trust beneficiaries to be pursued in a manner that places undivided loyalty to the Plaintiff-Beneficiaries first; and
- Such other failures and breaches as the Plaintiff-Beneficiaries herein may reveal through discovery.

4.4. Plaintiff-Beneficiaries have been damaged and by way of injunctive and/or declaratory relief hereby seek (i) appointment of a different trustee satisfactory to Plaintiff-Beneficiaries, or (ii) in the alternative, reconveyance of the trust assets to Skagit County and its direct management, pursuant to a management plan subject to approval by this Court.

#### **V. Cause of Action No. 2 – Constitutional Writ**

5.1 Skagit County re-alleges and incorporates by reference all preceding allegations in this Complaint.

5.2 Washington Constitution Article IV, Section 6, as well as RCW Chapter 7.16 and various common law doctrines permit plaintiffs to challenge government actions that are arbitrary and capricious or contrary to law.

5.3 For the reasons detailed in this Complaint, the State Defendants' actions are arbitrary and capricious, or contrary to law.

5.4 Plaintiff-Beneficiaries seek appointment of a different trustee, or, in the alternative, reconveyance of the trust assets to Skagit County and its direct management, pursuant to a management plan subject to approval by this Court.

## VI. Cause of Action No. 3 – State Environmental Policy Act

6.1 Skagit County re-alleges and incorporates by reference all preceding allegations in this Complaint.

6.2 SEPA requires the preparation of an Environmental Impact Statement ("EIS") describing environmental impacts and assessing alternative proposals for "major actions significantly affecting the quality of the environment." RCW 43.21C.030(2)(c)(i)-(iii). To meet SEPA's requirements, an EIS must include a reasonably thorough discussion of the significant aspects of the probable environmental consequences of the agency's decision. The EIS must consider the full range of elements of the environment specified in WAC 197-11-444, which includes, *inter alia*, impacts on public services and utilities, WAC 197-11-444(2)(d), and the "relationship to existing land use plans and to estimated population." WAC 197-11-444(2)(b)(i).

6.3 The 2015-2024 SHC will have significant adverse impact on the delivery of public services by the beneficiary plaintiffs. This includes reductions in funding for schools, hospitals, libraries, fire departments, roads, and numerous other critical public services. DNR furnished no meaningful analysis of the impacts that the Sustainable Harvest Calculation decisions will have on public services.

6.4 The 2015-2024 SHC will have significant adverse impact on existing land use plans, including, most notably, Skagit County's Comprehensive Plan, which expressly identified working forestlands, including the State transfer lands, as areas to be reserved for long-term commercial forestry, in support of a viable forestry industry in our County.

1           6.5   The 2015-2024 SHC will have a significant adverse impact on Skagit County's  
2 human population. This includes the thousands of jobs and families within Skagit County who  
3 are in whole or in part depending on a long-term sustainable forestry industry for their  
4 vocations and livelihoods (logging, mills, trucking, forest management, and related services);  
5 the many hundreds of people in our community employed by the taxing districts that, as a  
6 result of the dramatic drop-off in revenue the 2014-2025 SHC predicts, may be required to  
7 substantially cut staffing; and the many thousands of people in our community that depend on  
8 the medical, educational and public life safety services the taxing districts provide.  
9

10           6.6   Defendant DNR failed to provide a reasonably thorough analysis of the impacts  
11 on Plaintiff-Beneficiaries' public services, land use plans, and human population, which  
12 violates SEPA.  
13

14           **VII. Cause of Action No. 4 – Declaratory Judgment**  
15

16           7.1   Plaintiffs re-incorporate and re-allege all preceding allegations of this Complaint.  
17

18           7.2   Pursuant to RCW Chapter 7.24 this Court has authority to declare rights, status  
19 and other legal relations. In accordance with these powers the Court should enter an order  
20 declaring that DNR's Sustainable Harvest Calculation constitutes breach of the State's fiduciary  
21 duties to the Plaintiff-Beneficiaries, and that the State's decisions were arbitrary and capricious  
22 in nature and/or contrary to law. Additionally, the Court should enter an Order declaring that  
23 DNR violated SEPA by failing to adequately address the impacts that the 2015-2024 SHC  
24 decision would have in Skagit County on public services, existing land use plans, and the human  
25 population.  
26

27           **VIII. REQUEST FOR RELIEF**  
28

29           WHEREFORE, the Plaintiff-Beneficiaries herein respectfully request the following relief:  
30

1       1. That the State be ordered to promptly produce to the Plaintiff-Beneficiaries all  
2 documents in its possession and control relating to or arising from the 2014-2025 SHC, the  
3 SEPA Environmental Impact Statement associated therewith, and the State's adoption thereof;

4       2. That the State be enjoined from adoption of the 2015-2024 SHC at least until  
5 such time as the Plaintiff-Beneficiaries have had opportunity to obtain a qualified third-party  
6 assessment;

7       3. That the Court declare the State's 2014-2025 SHC to be a breach of fiduciary  
8 duty, arbitrary and capricious, or otherwise contrary to law, invalidating or issuing a writ  
9 invalidating the 2014-2025 SHC;

10       4. That the Court find the SEPA Environmental Impact Statement prepared by  
11 Defendant DNR to be inadequate and contrary to law on grounds that it failed to consider the  
12 impacts of the 2014-2025 SHC decision on public services, existing land use plans, and the  
13 human population;

14       5. That the Court issue an order invalidating the 2014-2025 SHC SEPA EIS and  
15 requiring that a complete and reasonably thorough EIS be performed by Defendant DNR;

16       6. That Defendant DNR be removed as the trustee-manager of the Skagit County  
17 State transfer lands, and an alternative trustee acceptable to Plaintiff-Beneficiaries be  
18 appointed;

19       7. In the alternative to Request for Relief ¶ 2, that the Skagit County State transfer  
20 lands be reconveyed to Skagit County and its junior taxing districts to be managed by the  
21 County and its junior taxing districts directly; and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32 8. Such other relief as the Court may deem just, fair or equitable.

DATED this 13<sup>th</sup> day of January 2020.

RICHARD A. WEYRICH

SKAGIT COUNTY PROSECUTING ATTORNEY



Will Hornea, WSBA No. 33528  
Attorneys for Plaintiff

# EXHIBIT A



# Skagit County Board of Commissioners

Ron Wesen, First District  
Kenneth A. Dahlstedt, Second District  
Lisa Janicki, Third District

November 27, 2019

The Honorable Hilary Franz  
Commissioner of Public Lands  
Board of Natural Resources  
MS 47000  
Olympia, WA 98504-7000

Submitted via email to: [hfranz@dnr.wa.gov](mailto:hfranz@dnr.wa.gov)

Re: Comments on the Sustainable Harvest Calculation (SHC) and the Mabbed Murrelet Long-Term Conservation Strategy

Dear Commissioner Franz and Members of the Board of Natural Resources,

Thank you for the opportunity to comment on the Final EIS (F-EIS) for the Sustainable Harvest Calculation (SHC) and the Mabbed Murrelet Long-Term Conservation Strategy (MM LTCS) F-EIS.

The Board of Skagit County Commissioners would like to thank you and your staff for your hard work in developing these environmental impact statements and for your responsiveness to our questions to date.

These two decisions are likely to affect the trust beneficiaries significantly. As we have attempted to understand the financial impacts of proposed alternatives on Skagit County and its junior taxing districts, we remain concerned about sustainable harvest model assumptions, policy choices, and a lack of on-the-ground analysis. With many outstanding questions, we ask that you delay your decision on these matters for a reasonable period of time.

Skagit County is one of the largest recipients of state timber sales receipts in Washington. Between 2009 and 2018, Skagit County and its junior districts received over \$76 million in timber sale revenue from state-managed land, providing mission-critical funding for our community's schools, emergency management, fire districts, hospitals, libraries, conservation of agricultural lands, veterans' relief, economic development, county roads and culverts (including habitat-related work), and general fund public services. The Department of Natural Resources (DNR's) preferred alternative for the SHC reduces Skagit County's sustainable harvest level from 326 MMBF (2015-2024) to 250 MMBF (2015-2024), representing a 21% drop. Under this alternative, our community would see a 56% decline in average annual harvest sold over the remaining five years of the current planning decade. Revenue and public services would decline commensurately.

DNR did not release the Revised Sustainable Harvest Financial Analysis until mid-October 2019. This timeline affords inadequate opportunity for Skagit County to analyze and discuss the diminished forest land revenue the SHC appears to reflect both internally and with our junior taxing districts. Among other things, we are unable to fully comprehend DNR's policy choices and modeling assumptions.

We are initiating a contract with an independent expert to review DNR's SHC modelling assumptions and policy choices, as well as to review Skagit County's timber inventory. We are also working with the Washington State Association of Counties (WSAC) to better understand the direct and indirect financial impacts of DNR's preferred alternative. We anticipate that this process will take several months.

In light of the foregoing we strongly urge the Board of Natural Resources to delay a decision on the SHC until our independent analysis is complete. It is incumbent on Skagit County government to ensure that sound alternatives are chosen applying both best available science and DNR's fiduciary responsibility to our community.

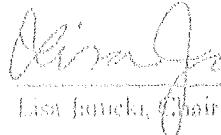
Unless the Board of Natural Resources decision is delayed and we are afforded that opportunity, Skagit County and its junior taxing districts may have no choice but to appeal, a course of action that we would sincerely like to avoid.

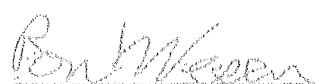
We have submitted previous comments on the MM LTCS. DNR has communicated that only 731 acres of special habitat areas will be set aside for the marbled murrelet in Skagit County. DNR has also presented a taxing district analysis that shows no Skagit County junior taxing district will see its operable acres reduced more than 2.0% under the proposed FCP amendment. Based on this information, provided by DNR, and the limited impacts of the MM LTCS specifically on our community, Skagit County will not submit further comment on the proposed alternatives under the MM LTCS. We remain concerned about the potential impacts of the MM LTCS on other trust beneficiaries throughout Washington State.

We look forward to continuing to work with you and your staff to reach an alternative for the SHC that maintains the fiduciary duty to the trust beneficiaries while protecting the sustainability of our forest lands. Thank you for your consideration of our comments and your ongoing commitment to maintaining an open dialogue on these important decisions.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON

  
Lisa Janicki, Chair

  
Ron Wesea, Commissioner

  
Kenneth A. Dahlstedt  
Kenneth A. Dahlstedt, Commissioner