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**IN THE SUPERIOR COURT OF WASHINGTON
FOR SKAGIT COUNTY**

SKAGIT COUNTY; SEDRO-WOOLLEY
SCHOOL DISTRICT NO. 101;
CONCRETE SCHOOL DISTRICT NO. 11;
SKAGIT COUNTY HOSPITAL DISTRICT
NO. 304; and CENTRAL SKAGIT
PARTIAL COUNTY LIBRARY DISTRICT,
in their capacities as beneficiaries of a
fidiciary 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
capacites as trustees of said trust,

Defendants.

Case No. 19-2 - 01469-29

**COMPLAINT FOR BREACH OF
FIDUCIARY DUTY, DECLARATORY
AND INJUNCTIVE RELIEF**

1
2 COME NOW the plaintiffs herein, and aver by way of complaint as follows:

3
4 **I. INTRODUCTION**

5 This case involves mismanagement and breach of fiduciary duty by the State of
6 Washington as to 84,628 acres of forest lands, held in trust by the State for the benefit of
7 Skagit County and its junior taxing districts as beneficiaries. Skagit County acquired the trust
8 forest lands largely during the Great Depression, which were transferred to the State to be
9 managed in trust and in perpetuity for the benefit of Skagit County and its junior taxing districts.
10 These lands are referred to as "**State transfer lands**" and will be referred to herein as such.
11

12 The State transfer lands produce a significant amount of revenue for Skagit County
13 schools, roads, fire protection, hospitals, emergency medical services, libraries and other
14 necessary services, while concurrently affording our citizens opportunity to use the State
15 transfer lands for hiking, horseback riding, mushroom gathering, fishing, and hunting, including
16 the exercise of treaty-based hunting rights by three Skagit County tribes.
17

18 About 40% of Skagit County forestland is designated for commercial forestry, with the
19 rest of the forestland base (60%) having other principal objectives (such as recreation,
20 preservation, habitat, biodiversity and the like). Accordingly, the State transfer lands comprise
21 approximately a quarter of the working forest lands in Skagit County, i.e., those lands
22 designated as long-term commercial forestland by Skagit County's Growth Management Act
23 Comprehensive Plan, a policy explicitly intended to help ensure a future for commercial
24 forestry in Skagit County.
25

26 In late October 2019, Defendant State presented Skagit County with a 10-year harvest
27 plan for the State transfer lands, halfway through the planning period, which reflects a drop in
28 harvest of over 50% for some Skagit County beneficiaries, which Defendant State explained as
29 the result of regulations, mapping issues and prior overharvest by the State, further explaining
30

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

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

3
4 **II. PARTIES, JURISDICTION AND VENUE**

5 **2.1** Plaintiff Skagit County is a governmental subdivision of the State of Washington,
6 with boundaries provided by RCW 36.04.290. Skagit County is a beneficiary of the trust
7 composed of approximately 84,628 acres of forest lands transferred by Skagit County to the
8 State of Washington Department of Natural Resources for the purpose of managing such
9 lands in trust for the benefit of Skagit County and its junior taxing districts (sometimes known
10 as "Forest Board lands", these forestlands are referenced herein as the "**State transfer**
11 **lands**"). Skagit County brings this action on its own behalf, and on behalf of the taxing districts
12 whose boundaries include the Skagit County State transfer lands.
13

14 **2.2** Plaintiff Sedro-Woolley School District No. 101 ("**Sedro-Woolley**") is a public
15 school district in the State of Washington, charged with providing educational instruction to all
16 citizens, regardless of their ability to pay for such instruction, in portions of Skagit County.
17 Sedro-Woolley is a beneficiary of the State transfer lands at issue in this litigation.
18

19 **2.3** Plaintiff Concrete School District No. 11 ("**Concrete**") is a public school district in
20 the State of Washington, charged with providing educational instruction to all citizens,
21 regardless of their ability to pay for such instruction, in portions of Skagit County. Concrete is
22 a beneficiary of the State transfer lands at issue in this litigation.
23

24 **2.4** Plaintiff Skagit County Public Hospital District No. 304, *aka* United General
25 Hospital ("**United General**") is a public hospital district of the State of Washington with its
26 place of business in Sedro-Woolley, in Skagit County. United General's district covers 200
27 square miles within Skagit County. United General is entitled to receive revenue generated
28 on State transfer lands as a beneficiary of the State transfer lands. United General provides a
29 variety of vital public health services to residents of Skagit County, including emergency room
30

1 services, intensive care, surgery center, breast cancer care, an oncology center, and hospice
2 services.

3 **2.5** Plaintiff Central Skagit Library District ("**Central Skagit**") is a library district
4 providing library and literacy services for much of Eastern Skagit County. Formed by local
5 initiative in 2012 and governed by a five-member Board of Trustees, Central Skagit was
6 recently consolidated with the Sedro-Woolley Library, and, with support from the legislature, is
7 in the process of building a consolidated library facility in the City of Sedro-Woolley. Central
8 Skagit is entitled to receive revenue generated on State transfer lands. (The plaintiffs herein
9 will be referred to collectively as "**Plaintiffs**" or "**Plaintiff-Beneficiaries**".)
10

11 **2.6** Defendant State of Washington is responsible for supervising the activities of
12 Defendant State of Washington Board of Natural Resources, and ensuring the fiduciary
13 management of State transfer lands, as well as having a "paramount duty" to ensure adequate
14 funding for its citizens' education.
15

16 **2.7** Defendant State of Washington Department of Natural Resources ("**DNR**") is an
17 agency of the State that is charged with the responsibility of managing the State transfer lands
18 as trustee for the Plaintiff-Beneficiaries. Defendant DNR has fiduciary duties to each of the
19 Plaintiff-Beneficiaries.
20

21 **2.8** Defendant State of Washington Board of Natural Resources ("**BNR**") is the
22 governing body responsible for adopting the policies to be followed by Defendant DNR, and as
23 such is legally responsible for the breaches of fiduciary duty alleged herein related to State
24 transfer lands within Skagit County.
25

26 **2.9** Jurisdiction is proper in this Court pursuant to RCW 2.08.010 (Breach of Trust),
27 RCW 43.21C.075 (SEPA), RCW 7.24.010 (Declaratory Relief), and the inherent power of the
28 judiciary under Article IV, Section 6 of the Washington Constitution (Writ of Certiorari). Venue
29

1 is proper before this Court as “one or more of the plaintiffs” resides or has its principal place of
2 business in Skagit County. RCW 4.92.010.

3 **III. RELEVANT FACTS**

4
5 **3.1 This case involves the mismanagement of trust assets and violation of**
6 **fiduciary duties by the Department of Natural Resources.** This lawsuit concerns
7 approximately 84,628 acres of timberland located in Skagit County, i.e., the State transfer
8 lands, managed by Defendant DNR, and DNR’s policy-making body, Defendant BNR (together
9 with the State itself, collectively, unless otherwise referenced hereinafter, the “**State**”), for the
10 benefit of various trust beneficiaries, including the Plaintiff-Beneficiaries herein. Beginning in
11 the 1920s and 1930s, during the Great Depression, many forestland owners were unable to
12 pay their taxes and other obligations, and Skagit County thus came into ownership of these
13 lands through tax foreclosure and other legal means. These lands were then entrusted to the
14 State with the understanding that they would be managed by the State, in trust, in perpetuity,
15 for the financial benefit of Skagit County and its junior taxing districts.

16
17
18 **3.2 The State’s Trust Obligations.** As set forth by *County of Skamania v. State*,
19 102 Wn.2d 127 (1984)(hereinafter, ***Skamania***), the Defendants are a legally accountable
20 trustee owing the beneficial owners of the State transfer lands (including Plaintiffs) the same
21 fiduciary duties as would be owed by a private trustee, including the duty of undivided loyalty,
22 prudence, and duty to account. This trust obligation is judicially enforceable against the State.
23 See, *Skamania*, 102 Wn.2d at 132.

24
25 **3.3 Forest Lands in Skagit County.** Within Skagit County, there are approximately
26 890,416 forestland acres. Of this, 529,677 acres, or roughly 60% of the total forestland in
27 Skagit County, is restricted under state or federal law (i.e., National Park, National Forest,
28 state parks, county parks, tribal lands, and the like), and is thus forestland principally devoted
29 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 regional physical form required by the [GMA] is a compact urban landscape, well designed and
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30

1 well furnished with amenities, encompassed by natural resource lands and a rural landscape.”
2 *Bremerton et al v. King County*, CPSGHMB Case No. 95-3-0039c Final Decision and Order 31
3 (October 6, 1995).¹
4

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

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

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

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

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

24 Skagit County Code 14.16.410.

25 As a result, virtually all of the 84,628 State transfer land acres at issue in this litigation
26 are zoned Industrial Forest (IF) by Skagit County’s Comprehensive Plan, representing our
27

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

1 community's consensus, obtained in the manner prescribed by state law, that a portion of the
2 forest land within our County should remain principally dedicated to commercial forestry.
3 Much of that land is in the lower Skagit Valley and subject to higher development pressure
4 than areas in the upper Valley.
5

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

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 generate revenue is to sell off the land piece by piece for development. This is not the intent
25 of the people of Skagit County as to our working forestlands, the State transfer lands included.
26
27

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

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

7 **3.5 The Significance of State transfer Lands to Skagit County and Its Junior**
8 **Taxing Districts.** As reflected by the preceding paragraph, the approximately 84,628 acres
9 managed by the State in trust for the County and its junior taxing districts constitute roughly a
10 quarter (25%) of the total working forestland in Skagit County. Skagit County highly values
11 appreciates the 60% of the forestlands within Skagit County's jurisdictional boundaries
12 currently dedicated to principally non-forestry uses, thereby supporting biodiversity, ecosystem
13 services, wildlife habitat and a tourism economy ahead of the needs of commercial forestry.
14 But the State transfer lands, are, by fiduciary obligation and the intent of the people of Skagit
15 County, to remain a long-term sustainable and renewable resource, in part to support our
16 schools, roads, hospitals and other critical infrastructure, and in part to foster the continued
17 existence of a sustainable forestry industry in Skagit County.
18
19

20 The revenue produced by the State transfer lands for the benefit of Skagit County has
21 historically been significant. For example, from 2009 to 2018, the Sedro-Woolley School
22 District received \$30,496,673 in trust land revenue; the Concrete School District received
23 \$2,507,933; the County Road Fund received \$13,507,805; the Central Skagit Library District
24 received \$1,531,093; and the Skagit County Emergency Medical Services ("EMS") District
25 received \$2,758,256. In total, Skagit County and its junior taxing districts received
26 \$76,428,459 over that time period. In a small rural county, these amounts are highly
27 significant to budgets and finance plans.
28
29

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

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

16 **3.6 The State's Openly-Stated Plans That Are Inconsistent with Its**
17 **Beneficiaries' Intent.** The State and its various officers, including members of the Board of
18 Natural Resources and the Public Lands Commissioner, have publicly expressed intention to
19 convert Skagit County State transfer lands to other uses and to decouple the funding of rural
20 services from sustainable forestry, articulating various plans to replace the lost revenue by
21 such things as purchasing commercial real estate around the state, imposing a carbon tax and
22 making transfer payments to Skagit County and its junior taxing districts, and other financial
23 schemes.
24

25 As previously expressed in this Complaint, Skagit County and its people have explicitly
26 decided, through the Skagit County Comprehensive Plan and other statements of policy, that
27 sustainable forestry is to remain a part of our community's long-term future. Skagit County
28 does not consent to any plans by its trustee inconsistent with that understanding.
29

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

12 **3.7 State Forest Management Plans.** The 84,628 acres of State transfer land at
13 in this case lie entirely within the jurisdictional boundaries of Skagit County, and are part of
14 roughly 1.8 million acres of timberland around the state managed by DNR in trust for various
15 trust beneficiaries. The trust lands are also subject to Washington's Forest Practices Act,
16 (Chapter 76.09 RCW) and regulations (Title 222 WAC), including the "Forest and Fish"
17 regulations adopted in 1999 that provide greatly increased protection for watercourses and
18 salmonid habitat. The State manages the trust lands under its *Policy for Sustainable Forests*
19 (2006) as well as *State Trust Lands Habitat Conservation Plan* (1997). The State retains a
20 25% management fee, which, over the past decade, means that DNR has retained roughly
21 \$25 million (or \$2.5 million per year) of the harvest revenue from Skagit County State transfer
22 lands.
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25 **3.8 The Sustainable Harvest Calculation.** The State's *Policy for Sustainable*
26 *Forests* specifies that "[t]he department, with Board of Natural Resources approval, will
27 recalculate the statewide sustainable harvest level, for Board of Natural Resources adoption,
28 no less frequently than every ten years." This is known as the Sustainable Harvest
29 Calculation (hereinafter, the "SHC"). As such, the SHC establishes the maximum level of
30

1 timber harvest from lands within Skagit County for each decade that DNR believes can be
2 harvested without depleting the corpus of the trust.

3 **3.9 The 2015-2024 Planning Decade Sustainable Harvest Calculation**

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

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18 As set forth by the FEIS, the 2015-2024 SHC DNR staff-preferred alternative
19 (Alternative 6) reflected a downward adjustment in trust lands harvest from 302 million board
20 feet to 259 million board feet within Skagit County, attributed by the State to a broad range of
21 factors such as prior overharvest and new environmental regulations, none of which included
22 any specific analysis or discussion of the impacts to individual school districts, fire districts,
23 hospital districts and the like.
24

25 The 2015-2024 SHC FEIS also hid the full scope of the management problems. The
26 first half of the 2015-2024 planning decade, before the 2015-2024 SHC was adopted, saw far
27 higher levels of annualized harvest than the preferred alternative envisions going forward. As
28 a result, the actual harvest during the remaining life of the 2015-2024 SHC is to be
29 considerably lower than the 2015-2024 SHC would suggest, taken together with the planned
30

1 and disclosed reductions, something on the order of a 50% reduction below historic levels
2 (depending on the specific beneficiary), which stands to create tremendous hardship for school
3 districts, fire districts, the library districts, emergency medical services, hospital districts and
4 the County itself.
5

6 Given the significant changes in the versions of the 2015-2024 SHC EIS as well as the
7 lack of clarity around the harvest reductions and resultant impact to specific beneficiaries, the
8 County was unable to adequately understand the implications of the 2015-2024 SHC to itself
9 and its junior taxing districts.
10

11 **3.10 The State's Dismissive Approach To Its Beneficiaries' Concerns.**

12 Upon receiving the FEIS and being informed that the State planned to rush adoption of
13 the 2015-2024 SHC several weeks later, the County was unable based on the information
14 furnished by DNR to conclude that the State is managing State transfer lands in a manner
15 consistent with the State's fiduciary obligations to Skagit County. Among other things,
16 Defendant DNR appears to have limited understanding of the timber inventory within Skagit
17 County State transfer lands, instead relying on increasingly esoteric and unproven modeling
18 that has been criticized by academia and industry, which has gone unaddressed. In addition,
19 DNR is applying a discount rate considerably lower than used by any other public lands
20 manager, an assumption that has the practical effect of reducing harvest revenue and injecting
21 a bias for long-term tree cover retention over forestry activities.
22
23

24 In light of all the foregoing, Skagit County decided to engage an independent forestry
25 expert to help the County assess the situation, formally requesting that the State delay
26 adoption of the 2015-2024 SHC for several months so as to afford the County adequate time
27 to analyze and understand the situation, as well as to communicate with junior taxing districts
28 about the situation, a request made both in person by the Board of Skagit County
29 Commissioners to DNR staff during a November 18, 2019 public meeting regarding the
30

1 proposed 2015-2024 SHC as well as in formal comment correspondence to the Board of
2 Natural Resources. See, Letter from Board of Skagit County Commissioners dated November
3 27, 2019, copy attached as **Exhibit A**. The State did not respond to these requests, nor
4 discuss the County's request at the December 3, 2019 BNR meeting, which was attended by a
5 Skagit County Commissioner and Skagit County staff.

7 **3.11 The December 3, 2019 Board of Natural Resources Meeting.** At the
8 December 3, 2019 BNR meeting, the BNR and Lands Commissioner discussed commercial
9 real estate purchased by DNR to replace sustainable working forest lands as a revenue
10 stream. Moving to discussion of the 2015-2024 SHC, DNR staff explained that they should
11 have developed a 10-year plan at the beginning of the 10-year period but failed to do so for
12 reasons of administrative convenience, also explaining that Defendant DNR believes it
13 impossible to afford junior taxing districts a reasonably accurate forecast as to the revenues
14 junior taxing districts can expect in the future, characterizing this as a matter of agency
15 discretion.

18 The BNR conflated discussion of the SHC with discussion of the Marbled Murrelet,
19 which seemed to obfuscate the issues with management of the State transfer lands with an
20 Endangered Species Act habitat conservation plan for the Murrelet that itself has limited
21 impact on harvest from Skagit County State transfer lands as a whole.²

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

27 CHRIS REYKDAL: So this is a critical question, folks are going to talk for
28 the next decade about this awful board that took away a third of harvest,

30 ² Skagit County is not challenging the Marbled Murrelet Habitat Conservation Plan, or the BNR's adoption thereof.
This challenge arises exclusively from the State's acts and omissions related to the 2015-2024 SHC.

1 and somebody is going to have to describe for them decisions made in the
2 past that under any scenario, to be crass, a front loading of consumption of
3 a very limited product that was going to result in that curve. Now it's being
4 marginally changed based on our latest understanding/decision since 2004,
5 we could have picked this alternative versus that, we could have metered,
6 we could have done this, it is on the margins, but there were decisions made
7 that were under any scenario going to impact industry with a yield curve
8 similar to that.

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ANGUS BRODIE: Right.

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

.....
REYKDAL: So there is a reality that there's only so much you're going to
achieve on paper before the—the dynamic tension and the forcing function
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.
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.

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

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

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

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

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

8
9 Transcript of December 3, 2019 Board of Natural Resources meeting, 32:15-25; 35:1-23.

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

15
16 Seemingly grounded in the apparent belief that perpetual growth in the State of
17 Washington's urban environment and tech economy is both inherently positive as well as a
18 foregone conclusion, and that all land use plans and human communities in the broader region
19 should be oriented around this belief, Skagit County views the plans articulated by its State
20 trustees with a degree of skepticism. While principally urbanized growth has taken the State
21 of Washington from 1.5 million to nearly 8 million in the 90 years since the State transfer lands
22 were entrusted to the State of Washington, Skagit County's view of the appropriate usage of
23 these lands remains constant.

24
25 Skagit County is willing to consider in good faith any new ideas that the State might
26 offer, but the ideology and thought processes reflected by the State officers' statements on this
27 issue significantly aggravate the Plaintiff-Beneficiaries' concerns regarding the management of
28 its trust assets, in part because they are offered at the same time the County and other
29

1 beneficiaries are told by the State that we must expect a (thinly-explained) decline in State
2 transfer land revenue, as well as what appears to be a lack of transparency by the State,
3 management lapses, and, in general, the breaches of fiduciary duty articulated in this lawsuit.
4

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

7 No mention was made during the December 3, 2019 BNR meeting that Skagit County
8 had explicitly requested the BNR decision be delayed to afford Skagit County and its junior
9 taxing districts time to analyze and comprehend the significance of the forthcoming 2015-2024
10 SHC adoption.
11

12 Thereafter, the Board of Natural Resources adopted 2015-2024 SHC Alternative 6.
13 With no other option available to address its concerns, Skagit County reluctantly brings this
14 action.
15

16 CAUSES OF ACTION

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

18 **4.1** Skagit County re-alleges and incorporates by reference all preceding allegations
19 in this Complaint.

20 **4.2** The Defendants are legally accountable trustees owing the Plaintiff-Beneficiaries
21 herein the same fiduciary duties as would be owed to a private trustee, including the duty of
22 undivided loyalty, prudence, and duty to account. *County of Skamania v. State*, 102 Wn.2d
23 127 (1984). This trust obligation is judicially enforceable against the State. See, *Skamania*,
24 102 Wn.2d at 132.
25

26 **4.3** Defendants have breached their fiduciary duties to Plaintiff-Beneficiaries herein
27 by, *inter alia*:

- 28 • Failure to prospectively manage the State transfer lands at issue herein
29 thoroughly timely planning;

- 1 • Failure to appropriately track and account for timber inventory within
2 Skagit County State transfer lands;
- 3 • Failure to account for impacts in harvest caused by State decisions
4 regarding the State transfer lands at issue, including failure to provide
5 individual beneficiaries with individual forecasts as to future revenue,
6 causing financial hardship for beneficiaries;
- 7 • Retention of an excessive level of management fees from revenues
8 derived from timber harvests derived from Skagit County State transfer
9 lands;
- 10 • Pursuit of collateral political and economic objectives that are inconsistent
11 with undivided loyalty to the State's beneficiaries and the purpose of the
12 trust, including but not limited to planned divestment from sustainable
13 forestry into untested financing schemes;
- 14 • Decisions that have reduced sustainable harvest for reasons that cannot
15 be reasonably explained;
- 16 • Failure to reasonably document and explain the State's actions and
17 decision in a manner that can be reasonably understood by beneficiaries;
- 18 • Failure to accommodate reasonable requests for further explanation,
19 analysis and accounting by beneficiaries before acting;
- 20 • Failure to diligently manage Skagit County's State transfer lands with
21 undivided loyalty to the beneficiaries, i.e., the Skagit County community;
- 22 • Application of a discount rate inconsistent with that of a prudent public
23 land manager;
- 24 • Diversion of commercial carbon sequestration business opportunity that
25 should rightly be afforded to the trust beneficiaries to be pursued in a
26 manner that places undivided loyalty to the Plaintiff-Beneficiaries first;
- 27 • Such other failures and breaches as the Plaintiff-Beneficiaries herein may
28 reveal through discovery.

1 **4.4.** Plaintiff-Beneficiaries have been damaged and by way of injunctive and/or
2 declaratory relief hereby seek (i) appointment of a different trustee satisfactory to Plaintiff-
3 Beneficiaries, or (ii) in the alternative, reconveyance of the trust assets to Skagit County and
4 its direct management, pursuant to a management plan subject to approval by this Court.
5

6 **V. Cause of Action No. 3 – Constitutional Writ**

7 **5.1** Skagit County re-alleges and incorporates by reference all preceding allegations
8 in this Complaint.
9

10 **5.2** Washington Constitution Article IV, Section 6, as well as RCW Chapter 7.16 and
11 various common law doctrines permit plaintiffs to challenge government actions that are
12 arbitrary and capricious or contrary to law.

13 **5.3** For the reasons detailed in this Complaint, the State Defendants' actions are
14 arbitrary and capricious, or contrary to law.
15

16 **5.4** Plaintiff-Beneficiaries seek appointment of a different trustee, or, in the
17 alternative, reconveyance of the trust assets to Skagit County and its direct management,
18 pursuant to a management plan subject to approval by this Court.

19 **VI. Cause of Action No. 4 – State Environmental Policy Act**

20 **6.1** Skagit County re-alleges and incorporates by reference all preceding allegations
21 in this Complaint.
22

23 **6.2** SEPA requires the preparation of an Environmental Impact Statement (“EIS”)
24 describing environmental impacts and assessing alternative proposals for “major actions
25 significantly affecting the quality of the environment.” RCW 43.21C.030(2)(c)(i)-(iii). To meet
26 SEPA's requirements, an EIS must include a reasonably thorough discussion of the significant
27 aspects of the probable environmental consequences of the agency's decision. The EIS must
28 consider the full range of elements of the environment specified in WAC 197-11-444, which
29
30

1 includes, *inter alia*, impacts on public services and utilities, WAC 197-11-444(2)(d), and the
2 “relationship to existing land use plans and to estimated population.” WAC 19711-444(2)(b)(i).

3
4 **6.3** The 2015-2024 SHC will have significant adverse impact on the delivery of public
5 services by the beneficiary plaintiffs. This includes reductions in funding for schools, hospitals,
6 libraries, fire departments, roads, and numerous other critical public services. DNR furnished
7 no meaningful analysis of the impacts that the Sustainable Harvest Calculation decisions will
8 have on public services.

9
10 **6.4** The 2015-2024 SHC will have significant adverse impact on existing land use
11 plans, including, most notably, Skagit County's Comprehensive Plan, which expressly
12 identified working forestlands, including the State transfer lands, as areas to be reserved for
13 long-term commercial forestry, in support of a viable forestry industry in our County.

14
15 **6.5** The 2015-2024 SHC will have a significant adverse impact on Skagit County's
16 human population. This includes the thousands of jobs and families within Skagit County who
17 are in whole or in part depending on a long-term sustainable forestry industry for their
18 vocations and livelihoods (logging, mills, trucking, forest management, and related services);
19 the many hundreds of people in our community employed by the taxing districts that, as a
20 result of the dramatic drop-off in revenue the 2014-2025 SHC predicts, may be required to
21 substantially cut staffing; and the many thousands of people in our community that depend on
22 the medical, educational and public life safety services the taxing districts provide.

23
24 **6.6** Defendant DNR failed to provide a reasonably thorough analysis of the impacts
25 on Plaintiff-Beneficiaries' public services, land use plans, and human population, which
26 violates SEPA.

27
28 **VII. Cause of Action No. 5 – Declaratory Judgment**

29 **7.1** Plaintiffs re-incorporate and re-allege all preceding allegations of this Complaint.

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: bnr@dnr.wa.gov

Re: Comments on the Sustainable Harvest Calculation FEIS and the Marbled 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 (FEIS) for the Sustainable Harvest Calculation (SHC) and the Marbled Murrelet Long-Term Conservation Strategy (MM L'TCS) FEIS.

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 (2005-2014) to 259 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 modelling 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.

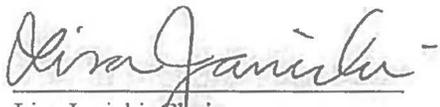
Unless the Board of Natural Resources decision is delayed and we are afforded that opportunity, Skagit County and its junior taxing districts may have no choice but to appeal, a course of action that we would sincerely like to avoid.

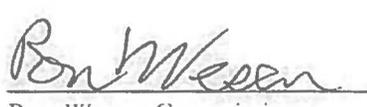
We have submitted previous comments on the MM LTCS. DNR has communicated that only 731 acres of special habitat areas will be set-aside for the marbled murrelet in Skagit County. DNR has also presented a taxing district analysis that shows no Skagit County junior taxing district will see its operable acres reduced more than 2.0% under the proposed HCP 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.

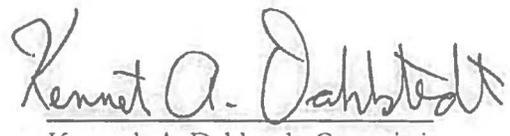
We look forward to continuing to work with you and your staff to reach an alternative for the SHC that maintains the fiduciary duty to the trust beneficiaries while protecting the sustainability of our forest lands. Thank you for your consideration of our comments and your ongoing commitment to maintaining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

Sincerely,

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**


Lisa Janicki, Chair


Ron Wesen, Commissioner


Kenneth A. Dahlstedt, Commissioner