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No. 100036-7

SUPREME COURT
OF THE STATE OF WASHINGTON

STEVENS COUNTY,

Petitioner,

v.

WESTERN RIVERS CONSERVANCY,

Respondent.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Pursuant to WA RAP 13.4(b)(3) & (4), Petitioner Stevens County, a municipal corporation of the state of Washington, hereby respectfully requests review of a decision of the Washington State Court of Appeals, Division III.

B. COURT OF APPEALS DECISION TO BE REVIEWED

Petitioner seeks review of pages 1-10 of the Court of Appeals decision in *Western Rivers Conservancy v. Stevens County*, No. 37516-III, filed on July 1, 2021 (hereinafter “Decision”). A copy of the Decision is attached hereto as **Appendix A**.

C. ISSUES PRESENTED FOR REVIEW

1. If this Court grants review, should this Court hold that imposition of the compensating tax does not violate the Supremacy Clause of the United States Constitution or the United States Supreme Court holding in Dawson v. Steager and its predecessors?
2. If this Court grants review, should this Court reverse the grant of summary judgment when Western Rivers failed to overcome the presumption that Stevens County lawfully removed the property from forestland designation under RCW 84.33.140(5)(e)?

D. STATEMENT OF THE CASE

Western Rivers Conservancy (hereinafter “Western Rivers”) purchased 2,392 acres of real property (hereinafter the “property”) in 2014, in Stevens County, Washington. CP 139. Approximately one year later, Western Rivers sold the property to the United States Department of Agriculture, through the United States Forest Service (hereinafter “USFS”). CP 139. During the time Western Rivers owned the property, it enjoyed a reduced tax on the property, based upon legal designation of the property as “forestland”. CP 139.

The Stevens County Assessor’s Office (hereinafter “Stevens County”) concluded that Western Rivers had not been using the property primarily for forestland. CP 96, 98. After Western Rivers sold the property to the USFS and gave notice of sale, Stevens County ruled that the transfer was non-exempt and imposed a compensating tax. CP 96-97. Western Rivers paid the compensating tax to the Stevens County Treasurer and sued for refund. CP 113.

In June of 2016, Western Rivers filed a Summons and Complaint for Refund of Compensating Tax, in Spokane County Superior Court. CP 1-4. In 2018, after nearly two years of inactivity from Western Rivers, the Spokane County Clerk filed a Notice of Intent to Dismiss. CP 10.

Western Rivers filed its First Motion for Summary Judgment on July 16, 2018. CP 11-19. Stevens County responded in writing and briefed the issue for Spokane County Superior Court Judge Maryann Moreno (hereinafter the “Superior Court”). CP 88-93.

The Superior Court heard oral argument on the First Motion for Summary Judgment on September 14, 2018. CP 139. After hearing argument from both Parties, the Superior Court took the matter under advisement. On December 11, 2018, the Superior Court announced its ruling and made several factual findings and conclusions of law (hereinafter “First Summary Judgment Ruling”). CP 139-41.

The Superior Court framed the sole issue as: “...whether or not the tax exemption in RCW 84.33.140(13)(d) applies in this case.” CP 139. The Superior Court concluded that “[t]his sale is to a federal agency for broader use than parks and recreation purposes. The Supremacy Clause does not apply here.” The Superior Court made factual determinations about the roles of USFS and the Washington State Parks and Recreation Commission. CP 140-41.

The Superior Court’s findings of fact included: “Clearly, the duties of the USFS are more diverse than those duties of the parks and recreation department; sustainment of forests and grasslands, firefighting, research, technical and financial assistance, tree planting, improvement of trails,

education and improvement of conditions are additional responsibilities of [the USFS].” CP 141. “The USFS is not the Washington State Parks and Recreation Commission. The mission, role, duties and tasks of these agencies diverge.” CP 141.

The Superior Court also concluded that the only remaining issue of material fact after the First Motion for Summary Judgment was “...the reason for the Assessor’s action.” CP 140. Therefore, the only remaining determination to make was whether or not the triggering event for Stevens County removing the forestland designation was because Western Rivers did not use the property for the growth and harvest of timber, the sale to the USFS, or both. CP 140. Attached, as **Appendix B**, is the Superior Court’s First Summary Judgment Ruling, in which the Superior Court stated the appropriate test and correctly worked the test.

Western Rivers did not move for reconsideration, nor did it mount any timely challenge to the findings or conclusions. The First Summary Judgment Ruling was memorialized by entry of the Order Denying Plaintiff’s Motion for Summary Judgment on January 7, 2019. CP 147-48.

After the First Summary Judgment Ruling, Western Rivers conducted discovery, presumably to answer the Superior Court’s question of Stevens County’s motive in removing the forestland designation. CP 171.

On December 13, 2019, Western Rivers took a second bite at summary judgment on the same issues. CP 152. The Superior Court heard argument on the Second Motion for Summary Judgment on January 10, 2020, and took the matter under advisement. RP at pages 3; 15, lines 10-15. Western Rivers' Second Motion for Summary Judgment challenged the Superior Court's findings about the differences between the USFS and the Washington State Parks and Recreation Commission. CP 157-58.

In an unusual reversal of its prior findings and conclusions, the Superior Court granted Western Rivers' Second Motion for Summary Judgment on the same issue and on the same set of facts on which it had denied the First Motion for Summary Judgment. On March 4, 2020, the Superior Court issued its decision via letter (hereinafter "Second Motion for Summary Judgment Ruling). CP 231-33.

The Superior Court concluded that RCW 84.33.140(13)(d) implicated the Supremacy Clause of the United States Constitution and was therefore an unconstitutional tax on the United States. CP 233. The Superior Court did not rule on the issue of whether imposition of the compensating tax was proper under RCW 84.33.140(5)(e).

Stevens County appealed the Second Motion for Summary Judgment Ruling. On July 1, 2021, the Court of Appeals, Division III, handed down its ruling (hereinafter the "Decision"), holding that imposition

of forestland compensating tax violated the Intergovernmental Tax Immunity Doctrine because the recipient federal agency may use the forestland in the same way that the Washington Parks and Recreation Commission would use the forestland. Decision at 8-10. Among its many faults, the Decision ignored half of the case's procedural history, including the Superior Court's ruling on Western Rivers' First Summary Judgment Motion. Stevens County now petitions this Court for review.

E. ARGUMENT

There is a reason Washington is known as the Evergreen State. According to the Washington Forest Protection Association, Washington's total land area is 42.6 million acres. See **Appendix C**, "Forest Facts and Figures", by WFPA. Approximately half of Washington's total land area is comprised of forestland. Id. Of the 21.3 million acres of forestland, nearly 37% of that land is privately owned and approximately 63% is managed or owned by a governmental entity. Id. Of the 63% of governmental forestlands, the United States Government owns or manages approximately 44.1%. Id. Other governmental entities, such as Native American tribes and nations, own or control approximately 7% of the total forestland. Id. State trust lands and county and municipal properties make up over 12% of the total. Id. For example, the total estimate of Washington Department of

Natural Resources forestland holdings is approximately 2.5 million acres. See **Appendix D**, USFS Forest Inventory and Analysis: Washington.

The factual scenario presented by this Case will happen again in Washington and the dangerous, incorrect, and unwieldy test handed down by the Court of Appeals not only implicates a significant question of law under the Constitution of the State of Washington and the United States, but it will have a far-reaching negative impact on counties, municipalities, native nations, and private landowners, throughout the state.

1. The Court of Appeals’ decision involves a significant constitutional question because it misapprehends the Intergovernmental Tax Immunity Doctrine.

The Intergovernmental Tax Immunity Doctrine (hereinafter the “Doctrine”) is a core constitutional principle that is derived from interpretation of the United States Constitution, particularly the Supremacy Clause, and the relationship between states and the federal government.

Founded upon the United States Constitution’s Supremacy Clause, “...a state tax may not discriminate against the [Federal] Government or those with whom it deals.” Phillips Chem. Co. v. Dumas Indep. Sch. Dist., 361 U.S. 376, 387, 80 S. Ct. 474, 481, 4 L. Ed. 2d 384 (1960) (citing M’Culloch v. Maryland, 4 Wheat 316, 4 L.Ed. 579 (1819)). However, “[a] tax is not invalid simply because it treats those who deal with the Federal Government differently than it treats others.” Washington v. United States,

460 U.S. 536, 537, 103 S. Ct. 1344, 1345–46, 75 L. Ed. 2d 264 (1983). “Under our precedents, “[t]he imposition of a heavier tax burden on [those who deal with one sovereign] than is imposed on [those who deal with the other] must be justified by significant differences between the two classes.” Davis v. Michigan Dep’t of Treasury, 489 U.S. 803, 815–16, 109 S. Ct. 1500, 1508, 103 L. Ed. 2d 891 (1989) (quoting Phillips Chemical Co. v. Dumas Independent School Dist., 361 U.S. 376, 383, 80 S.Ct. 474, 479 (1960)).

The Doctrine prohibits differential treatment by a state when, “1. A state imposes more favorable tax conditions on those who deal with state government than it imposes on those who deal with the federal government and 2. No significant differences between the two **classes** exist that would justify the disparate treatment.” Dawson v. Steager, 139 S. Ct. 698, 703, 203 L. Ed. 2d 29 (2019) (emphasis added). The Doctrine should be thought of as the “Similarly Situated” test. Dawson v. Steager is unremarkable when viewed in light of its predecessor, Davis v. Michigan Dept. of Treasury, 489 U.S. 803, 109 S.Ct. 1500 (1989). The only thing Dawson v. Steager did beyond that of Davis, was to add an exclamation mark to Davis. Both Dawson v. Steager and Davis direct a reviewing court to examine whether there is any “significant difference” between the favored state

employee or retiree and the disfavored federal employee or retiree. Dawson v. Steager, 139 S.Ct. at 703-04; Davis, 489 U.S. at 815–16.

Dawson v. Steager concerned the interpretation and potential violation of 4 U.S.C. § 111, by a state taxing authority. Section 111 contained a specific prohibition on certain taxing behavior by a state. The prohibited taxing behavior was discrimination “...against the [federal] officer or employee because of the source of the pay or compensation.” 4 U.S.C. §111(a). West Virginia imposed a tax on the pensions of retired federal employees but exempted the pensions of retired “...West Virginia police, firefighters, and deputy sheriffs.” Id. at 705. “[The West Virginia law] extends a special tax benefit to retirees who served as West Virginia police officers, firefighters, or deputy sheriffs—and it categorically denies that same benefit to retirees who served in similar federal law enforcement positions.” Id. at 706.

Unlike the State of West Virginia in Dawson v. Steager, Washington’s RCW 84.33.140(13)(d) does not discriminate against the USFS solely because of its position as a federal agency. More aptly put, Subsection (13)(d) does not differentiate between agencies solely on the federal vs. state dichotomy. Instead, the tax exemption found in subsection 13(d) relates to the situation of the recipient agency **and** the uses to which

the agency will put the forestland. What the Court of Appeals failed to grasp was that the Washington tax rule is more exacting than the Doctrine.

The Court of Appeals' dangerous, unwieldy rule forces assessors to take the recipient agency's stated intentions at face value and prevents an inquiry into whether the disfavored and favored entities are similarly situated. Decision at 8-10. The Court of Appeals' rule misses the forest for the trees. The Court of Appeals cleaved the long-standing Doctrine and admonishes Washington entities to look **only** at the uses to which the recipient agencies claims it will put the forestland, not whether the favored and disfavored agencies are similarly situated.¹ Doing so ignores the Doctrine and the more stringent Subsection 13(d), in favor of a new rule that borders on absurdity in its application.

The Court of Appeals' rule is akin to disregarding the similar situation of the federal and state retirees' original job descriptions, in favor of asking how each retiree spends her or his money. If, according to the Court of Appeals' test, there is no difference in how a state retiree spends

¹ "At summary judgment, Western Rivers produced evidence showing the land sale to the USFS was for recreation purposes....Because Western Rivers produced uncontested evidence showing its land sale met the definitional purpose of a tax exemption under RCW 84.33.140(13)(d), summary judgment was proper." Decision at 9-10. The Court of Appeals also claimed that Petitioner Stevens County "...complains there are questions of fact as to whether USFS's stated intent was accurate." Decision at 9. That part of the Decision is egregiously false. Petitioner Stevens County did not contend that there were genuine issues of material fact; it contended that Western Rivers was not entitled to judgment as a matter of law.

her or his retirement money and how the federal retiree spends her or his retirement money, then the state tax violates the Doctrine. Applied to a land transfer scenario, a federal agency such as the United States Nuclear Regulatory Commission (hereinafter “U.S.NRC”) could state its intention to acquire forest land, with the stated purpose of recreation and environmental preservation. The U.S.NRC’s slogan is “Protecting People and the Environment.” The U.S.NRC could acquire the forest land and then convert it to a radioactive waste storage site. Under the Court of Appeals’ rule, the transfer to the U.S.NRC would qualify as a tax-exempt transfer, in spite of the subsequent use as a radioactive waste storage site. On the other hand, under the appropriate bright-line rule created by the United States Supreme Court, the transfer would be taxable because the Washington State Parks and Recreation Commission and the U.S.NRC are not similarly situated agencies.

The Court of Appeals agreed that USFS and Washington State Parks and Recreation Commission are not similarly situated entities, but relegated that conclusion--which coincidentally is the Doctrine in a nutshell--to only a footnote. Decision at 8, footnote 3.

This Court should accept review of the Decision to reverse a rule based on such a horrific misapprehension of constitutional law. This Court should restore the bright-line rule.

2. The Court of Appeals’ decision substantially impacts a matter of significant public interest: the taxation, use, and transfer of half of the land in the state of Washington.

The Decision upends a significant portion of Washington State taxation of forestland. The public has a substantial interest in what is done with 50% of the state of Washington. “We may grant review and consider a Court of Appeals opinion if it ‘involves an issue of substantial public interest that should be determined by the Supreme Court.’” State v. Watson, 155 Wash. 2d 574, 577, 122 P.3d 903, 904 (2005) (quoting RAP 13.4(b)(4)). Prime examples of issues of substantial public interest include proceedings involving DOSA sentencings in Pierce County and policy letters regarding *ex parte* communications. Id.

“It is well established in this state that an exemption in a statute imposing a tax must be strictly construed in favor of the application of the tax and against the person claiming the exemption.” Corp. of Catholic Archbishop of Seattle v. Johnston, 89 Wash. 2d 505, 507, 573 P.2d 793, 794 (1978) (internal citations and quotation marks omitted). “Further, the burden of showing qualification for the tax benefit afforded rests with the taxpayer. And, statutes which provide for (exemption) are, in case of doubt or ambiguity, to be construed strictly, though fairly and in keeping with the ordinary meaning of their language, against the taxpayer.” Id. (internal quotation marks omitted).

The Legislature's intent on creating a system of forestland taxation, known as the Open Space Taxation Act, is for the public welfare, which requires that Washington's

...system for taxation of timber and forestlands be modernized to assure the citizens of this state and its future generations the advantages to be derived from the continuous production of timber and forest products from the significant area of privately owned forests in this state. It is this state's policy to encourage forestry and restocking and reforestation of such forests so that present and future generations will enjoy the benefits which forest areas provide in enhancing water supply, in minimizing soil erosion, storm and flood damage to persons or property, in providing a habitat for wild game, in providing scenic and recreational spaces, in maintaining land areas whose forests contribute to the natural ecological equilibrium, and in providing employment and profits to its citizens and raw materials for products needed by everyone.

RCW 84.33.010. The general rule of the compensatory tax in this case is stated in RCW 84.33.140(11): "[e]xcept as provided otherwise in this section, a compensating tax is imposed on land removed from designation as forestland." RCW 84.33.140(11). Removal from forestland designation can occur for one or several reasons. RCW 84.33.140(5); Washington Administrative Code 458-30-700(2). The grounds for removal are therefore not mutually exclusive. For example, a landowner can request removal under Subsection (5)(b) and the assessor can simultaneously find that the land is no longer primarily devoted to and used for the growth and harvesting of timber under Subsection 5(e).

Petitioner Stevens County removed the forestland designation and imposed the compensating tax under two triggering events. First, Petitioner Stevens County concluded that the compensating tax was due because Western Rivers was not using the property for growth and harvest of timber. That determination was made pursuant to RCW 84.33.140(5)(e) and WAC 458-30-700(2)(c). Second, Petitioner Stevens County concluded that the compensating tax was due because sale of the property did not meet any of the exceptions in RCW 84.33.140(13). That determination was made pursuant to RCW 84.33.140(5)(d), (11), & 13(d) and WAC 458-30-700(2)(b) and (6)(e). CP 96-101.

“The compensating tax specified in subsection (11) of this section may not be imposed if the removal of designation under subsection (5) of this section resulted **solely** from: ... (d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes...” Wash. Rev. Code Ann. § 84.33.140(13)(d) (emphasis added). In other words, Western Rivers had to show that the property was primarily used for growth and harvest of timber **and** that its sale fit within the exempted transfers in RCW 84.33.140(13) and WAC 458-30-700(6)(e). Western Rivers neither showed that the property was used for the growth and harvest of timber nor did it show that its transfer to the USFS met any of the transfers exempted by rule or statute.

Washington State law permits and, in the case of Washington Administrative Code, commands counties to remove forestland designation if the owner of the property ceases to use the land for the growth and harvest of timber. Washington Administrative Code commands that “[t]he assessor **must** remove forest land from its designated forest land status when: ...(c) The assessor determines that the land is no longer primarily devoted to and used for growing and harvesting timber....” Washington Administrative Code 458-30-700(2)(c) (emphasis added) (see also RCW 84.33.140(5)(e) (West)).

In its Second Motion for Summary Judgment, Western Rivers raised the issue of whether Petitioner Stevens County properly removed the forestland designation under RCW 84.33.140(5)(e) and WAC 458-30-700(2)(c), but relied heavily on Subsection (5)(e)(i), which provides an escape hatch if a governmental agency, organization or other recipient of a transfer, identified in RCW 84.30.140(13) or (14) is exempt from payment of compensating tax and has “...manifested its intent in writing or by other official action to acquire a property interest in the designated forestland by means of a transaction that qualifies for an exemption under subsection (13) or (14) of this section.” However, the recipient of the property must also “... annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the designated land

as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year....” RCW 84.33.140(5)(e)(i) (West); CP 159.

However, Western Rivers offered no evidence to address the latter portion of Subsection 5(e)(i) or assail the conclusion that Petitioner Stevens County complied with the requirements of Subsection (5)(e) in removal of the forestland designation. The Superior Court and the Court of Appeals entirely failed or refused to address the issue, even though it was the only remaining issue after the First Summary Judgment Ruling. The Court of Appeals compounded the error by also ignoring the issue and ignoring the fact that there had been more than one summary judgment ruling.

The Superior Court and Court of Appeals also failed to inquire as to when the removal occurred. Under Subsection 5(e) and 700(2)(c), the removal can occur before a sale or even contemplation of sale and Western Rivers would therefore owe the compensating tax for the year in which it did not use the property for the growth and harvesting of timber. Therefore, Western Rivers could have owed compensatory taxes, even if the sale to the USFS qualified as an exempt transfer under Subsection 13. The Superior Court and Court of Appeals seemed to assume that the sale was the event that triggered the compensating tax, under RCW 84.33.140(5)(d), and jumped straight to the constitutional question of whether RCW

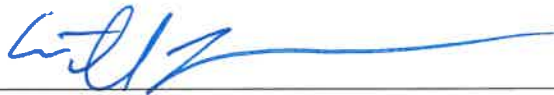
84.33.140(13) unlawfully discriminates against the United States Government.

Taxation, by local and state governments, of half of all land within the state of Washington is undeniably a matter of great public concern. Allowing the Court of Appeals' Decision to stand without the benefit of this Court's review is an avoidable crisis.

F. CONCLUSION

The state of Washington needs this Court to rule upon these questions because they affect our State and Federal Constitutions and half of the land in Washington.

RESPECTFULLY SUBMITTED this 28th day of July, 2021.



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APPENDIX A

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

WESTERN RIVERS CONSERVANCY,)	No. 37516-1-III
)	
Respondent,)	
)	
v.)	PUBLISHED OPINION
)	
STEVENS COUNTY,)	
)	
Appellant.)	

PENNELL, C.J. — Stevens County assessed a tax against Western Rivers Conservancy when Western Rivers sold a tract of timberland to the United States Forest Service (USFS) for recreational purposes. The tax would not have applied if the land had been sold to the Washington State Parks and Recreation Commission for the same purpose. Western Rivers paid the tax under protest, claiming it violated the supremacy clause of the United States Constitution by discriminating against land sales to the federal

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government. Western Rivers then filed suit in Spokane County Superior Court, successfully obtaining an order of summary judgment finding the tax invalid and void, and reimbursing the tax with interest.

We agree Western Rivers is entitled to summary judgment. Under the doctrine of intergovernmental tax immunity, if the State provides a tax break for a land sale to one of its own entities, the same tax break must be afforded to a substantially similar land sale to a foreign sovereign. The land sale here was substantially similar to sales to the parks and recreation commission that are protected from taxation. Given this comparability, the tax assessment against Western Rivers based on its land sale to the USFS cannot stand.

FACTS

In 2015, Western Rivers Conservancy sold a large tract of Stevens County timberland to the USFS. The USFS intended to add the property to the Colville National Forest and route a portion of a national scenic trail through it. The property had been designated by the county assessor as “forestland,” and therefore subject to a lower tax rate than normal property taxes. As the sale to the USFS drew to a close, Stevens County issued a notice that it was removing the forestland designation from the property, triggering the imposition of a \$194,652.18 compensating tax. The county removed the designation for two reasons. First was the sale of the property to the USFS, an entity

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exempt from taxation. Second, the county determined the property was no longer being primarily used for the growth and harvesting of timber. Western Rivers paid the tax under protest on the day the property was sold to the USFS.

Western Rivers brought suit against Stevens County for a refund of the compensating tax. It argued imposition of the tax violated the doctrine of intergovernmental tax immunity under the supremacy clause of the United States Constitution. U.S. CONST. art. VI, cl. 2. Western Rivers pointed out that those who sell forestland to the Washington State Parks and Recreation Commission for recreation purposes are exempted from paying the compensating tax. As the exemption did not apply to the sale to the USFS, Western Rivers contended the exemption unlawfully discriminated against those who deal with the federal government. The trial court agreed and granted summary judgment to Western Rivers. The court ordered Stevens County to refund the tax, with prejudgment interest on the entire sum previously collected.

Stevens County now appeals the trial court's adverse summary judgment order.

ANALYSIS

We review a summary judgment order de novo. *Colo. Structures, Inc. v. Blue Mountain Plaza, LLC*, 159 Wn. App. 654, 661, 246 P.3d 835 (2011). The question is whether the evidence, viewed in the light most favorable to the nonmoving party, reveals

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a genuine issue of material fact for trial. *Keck v. Collins*, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). If there are no material factual disputes, summary judgment is appropriate as a matter of law. *Id.*¹

This case turns on the validity of the compensating tax imposed on Western Rivers when it sold timberland to the USFS. Washington protects privately held timber and forestlands from standard ad valorem property taxes. *See* chapter 84.33 RCW. To qualify for protection, the property must meet the definition of “forestland” as set forth in RCW 84.33.035(5). Forestland property is land “devoted primarily to growing and harvesting timber.” *Id.* If property is removed from the forestland designation, with some exceptions a compensating tax is imposed. Former RCW 84.33.140(11) (2014).

Shortly after Western Rivers announced the plan to sell its forestland to the USFS, Stevens County issued a notification that it was removing the forestland designation and imposing a compensating tax for each parcel involved in the sale. The county

¹ Stevens County claims the trial court made factual findings, as part of a December 2018 letter to the parties explaining its ruling in the initial summary judgment proceedings, that are unchallenged and therefore binding on appeal. This assertion misapprehends the summary judgment standard. Factual findings on contested issues are not proper in the summary judgment context. *Hemenway v. Miller*, 116 Wn.2d 725, 731, 807 P.2d 863 (1991). Our de novo analysis is the same as the trial court. *Ruvalcaba v. Kwang Ho Baek*, 175 Wn.2d 1, 6, 282 P.3d 1083 (2012). We therefore owe no deference to the trial court’s assessment of the evidence.

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eventually supplied two reasons for the removal: (1) the land was being sold to a buyer that was exempt from taxation (RCW 84.33.140(5)(c)), and (2) the land was not being managed by Western Rivers for the growth and harvest of timber (RCW 84.33.140(5)(e)(i)). Neither basis for taxation would have applied had Western Rivers sold the timberland “to the parks and recreation commission for park and recreation purposes.” RCW 84.33.140(13)(d); *see* RCW 84.33.140(5)(e)(i). But because the USFS is not our state’s parks and recreation commission, Stevens County assessed the tax.

Western Rivers acknowledges that, under the plain terms of the statute, its sale to the USFS is not exempt from the compensating tax. Nevertheless, Western Rivers argues the compensating tax must be exempted as a matter of law. According to Western Rivers, imposition of the tax would violate the supremacy clause by imposing a discriminatory tax on those who deal with the federal government. Western Rivers’s legal argument falls under a doctrine known as intergovernmental tax immunity. *See McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 425-37, 4 L. Ed. 579 (1819).

The tax immunity doctrine restricts the imposition of taxes by one sovereign (such as a state) on another sovereign (such as the federal government). The doctrine not only forbids direct taxation on a separate sovereign, it also prohibits taxation on a private entity based on the entity’s dealings with a separate sovereign. *Davis v. Michigan Dep’t*

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of Treasury, 489 U.S. 803, 813, 109 S. Ct. 1500, 4 L. Ed. 891 (1989). The tax immunity doctrine requires equal tax treatment unless there are significant differences between those who deal with one sovereign and those who deal with the other. *Id.* at 815-16.

The tax immunity doctrine’s “significant differences test” requires identifying and analyzing the definitional rule used by a sovereign to carve out a tax-protected class. Once the definitional rule is identified, its protections must be extended to foreign entities on transactions meeting the same rule. For example, a state law exempting all land sales to state agencies from taxation would have a broad definitional rule, applicable to all land sales. To comport with the tax immunity doctrine, a similarly broad exception would need to extend to land sales to all federal agencies. *See id.* at 816.

The recent case of *Dawson v. Steager*, ___ U.S. ___, 139 S. Ct. 698, 203 L. Ed. 2d 29 (2019) illustrates the significant differences test in practice.² *Dawson* concerned a West Virginia tax exemption on pension benefits afforded to a subset of the state’s retired police officers, firefighters and sheriff’s deputies. 139 S. Ct. at 705. Mr. Dawson, a retired United States Marshall living in West Virginia, was denied the exemption because his pension was derived from work as a federal law enforcement officer. Mr. Dawson

² *Dawson* specifically involved the application of 4 U.S.C. § 111. 139 S. Ct. at 702. That statute is simply a codification of the doctrine of intergovernmental tax immunity in relation to the taxation of federal employees. *Id.*

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contended this difference in treatment was discriminatory. *Id.* at 702. The United States Supreme Court agreed.

Dawson recognized that, to be valid, West Virginia's tax exemption for state retirees must be extended to similarly situated federal retirees. *Id.* at 703-04. Given this imperative, Mr. Dawson could only be denied the tax exemption if his circumstances were significantly different from the state retirees who received the exemption. The Supreme Court determined West Virginia defined the protected class of retirees by job type, i.e. work in law enforcement. *Id.* at 705. Because Mr. Dawson's pension was from work in law enforcement, there was no significant difference between him and the recipients of the state exemption. *Id.* The tax immunity doctrine therefore required the exemption be extended to Mr. Dawson. *Id.* at 706.

With these legal principles in mind, we turn to the case at hand. The applicable tax exemption involves forestland sales to the Washington State Parks and Recreation Commission for recreation purposes. RCW 84.33.140(13)(d). By its plain terms, this statute favors land sales to an entity of the state over sales to the federal government. The tax immunity doctrine therefore requires the state's exemption be extended to federal land sales so long as there are no significant differences between the state's exempted land sales and sales to the federal government.

Stevens County claims there are significant differences in this case justifying disparate tax treatment. According to Stevens County, RCW 84.33.140(13)(d)'s definitional rule focuses on the type of organization protected from taxation. Specifically, the statute exempts land sales to the Washington State Parks and Recreation Commission from compensating taxes. While this protection is facially discriminatory, Stevens County claims it is not discriminatory as to the USFS. Because the duties of the USFS and the parks and recreation commission differ,³ the county argues the tax immunity doctrine does not require exempting the sale of timberland to the USFS from a compensating tax.

We disagree with Stevens County's characterization of the definitional rule set by RCW 84.33.140(13)(d). The statute does not exempt from taxation all forestland sales to the parks and recreation commission. Only sales for parks and recreation purposes are protected. This specificity reveals that the true definitional feature of the tax exemption in RCW 84.33.140(13)(d) is an exemption based on a land sale for recreational purposes.

The fact that Washington favors recreational land sales to its parks and recreation commission over similar sales to other state agencies does not change our assessment of

³ The powers and duties of the parks and recreation commission are narrowly tied to maintaining parks and parkways for aesthetic and recreational purposes. Former RCW 79A.05.030 (2005); RCW 79A.05.035. The USFS has broader duties, including administrating lands for "recreation, range, timber, watershed, and wildlife and fish purposes." 16 U.S.C. § 528.

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W. Rivers Conservancy v. Stevens County

the definitional rule set by RCW 84.33.140(13)(d). We recognize the statute treats the USFS the same as state agencies other than the parks and recreation commission. But the “relevant question” for tax immunity purposes “isn’t whether [federal land sales] are similarly situated to [state land sales that] *don’t* receive a tax benefit; the relevant question is whether they are similarly situated to those [that] *do*.” *Dawson*, 193 S. Ct. at 705. The simple fact is our state law confers a tax benefit to a portion of land sales to the parks and recreation commission, a state agency. As a result, the tax immunity doctrine requires substantially similar sales to a federal agency, such as the USFS, be treated equally for tax purposes as sales to the protected state agency.

At summary judgment, Western Rivers produced evidence showing the land sale to the USFS was for recreation purposes. Western Rivers produced a letter from the USFS announcing its intent to acquire the land and manage it for public access and recreation. Stevens County complains there are questions of fact as to whether USFS’s stated intent was accurate. But Stevens County points to no evidence in the record to support this position. After a moving party submits sufficient evidence to justify summary judgment, relief cannot be denied on the basis of speculation or argumentative assertions. *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997). Because Western Rivers produced

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W. Rivers Conservancy v. Stevens County

uncontested evidence showing its land sale met the definitional purpose of a tax exemption under RCW 84.33.140(13)(d), summary judgment was proper.

As a final matter, Stevens County contends that, even if Western Rivers was entitled to summary judgment, the trial court erred by applying prejudgment interest on the entirety of the collected compensating tax. According to Stevens County, the trial court should have first conducted an inquiry into the amount of tax Western Rivers should have lawfully paid before imposing prejudgment interest on the excess collected. Western Rivers answers that the entire tax was invalid and void as a matter of law, and thus it was unnecessary for the court to inquire into whether any of the tax was lawfully paid. We agree with Western Rivers. *Moses Lake Homes, Inc. v. Grant County*, 365 U.S. 744, 752, 81 S. Ct. 870, 6 L. Ed. 2d 66 (1961) (constitutionally invalid tax may not be exacted).


For the reasons set forth above, the entire compensating tax assessed against Western Rivers was discriminatory and therefore unlawful. Western Rivers was properly granted summary judgment and awarded reimbursement of the tax, together with interest from the date of payment. *See* RCW 84.68.030.

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CONCLUSION

The order of summary judgment and refund award are affirmed.



Pennell, C.J.

WE CONCUR:



Siddoway, J.



Fearing, J.

APPENDIX B

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SN: 32

PC: 3



SPOKANE COUNTY COURT HOUSE

Superior Court of the State of Washington
For the County of Spokane

Department No.7

Maryann C. Moreno
Judge

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FILED

DEC 11 2018

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

December 11, 2018

Ms. Michelle DeLappe
Garvey Schubert Barer
1191 Second Avenue
Seattle, Washington 98101

Mr. Nick Force
Stevens County Prosecutor's Office
215 South Oak, Room 114
Colville, Washington 99114

Re: WESTERN RIVERS CONSERVANCY v. STEVENS COUNTY
Petitioner's Motion for Summary Judgment
Cause No. 16-2-02474-7

Dear Counsel:

I heard argument in this matter on September 14, 2018 and took the matter under advisement. The sole issue before the court is whether or not the tax exemption in RCW 84.33.140(13)(d) applies in this case.

The undisputed facts are as follows: Western Rivers Conservancy (Western Rivers) purchased the property known as Bennett Meadows Tract in 2014 from a private timber company. The land consisted of 2,392 acres of wetlands, meadows and riverlands along Big Sheep Creek. In 2015, the property was sold to the United States Forest Service (USFS). The USFS plan was to add this property to the Pacific Northwest National Scenic Trail and to manage the land for public access and public recreation activities.

Prior to sale the property had been designated as forestland and received the benefit of reduced property taxes. When designated forestland is sold or transferred and removed from the program, a compensating tax is due.¹ A transfer of land is exempt from compensating tax when the removal of the forestland designation results solely from "the sale or transfer of fee title to the parks and recreation commission for park and recreation purposes."²

¹ RCW 84.33.140(5)(c), (11).

² RCW 84.33.140(13)(d).

In this case, the Stevens County Assessor denied the tax exemption, claiming that the property was removed from the forestland designation upon transfer due to USFS's status as an entity exempt and because Western Rivers was not entitled to the designation.³ Stevens County also claims that the exemption for transfer to the parks and recreation commission is inapplicable to transfers to USFS.

In order to remove land from designation, the assessor must provide written notice and an opportunity to be heard.⁴ It is difficult to determine based upon the limited evidence presented if removal was based upon the transfer of the property to the USFS or upon the Assessor's determination that the property was not qualified. Material issues of fact exist with regard to the reason for the Assessor's action. If removal of the designation was triggered solely by the sale of property, a question remains as to whether the compensating exemption would apply.

Was the sale to USFS a sale or transfer of fee title to the parks and recreation commission for park and recreation purposes? Western Rivers concedes it is not, as the relevant statute defines "parks and recreation commission" as the state agency established under RCW 79A.05 to care for and administer public use of the state's parks and parkways. Western Rivers argues, however, that the Supremacy Clause of the United States Constitution prohibits Stevens County from discriminating against them in their deal with the federal government by offering the exemption only to sales of land to the state.

RCW 79A.05.030 defines the powers and duties of the Washington State Parks and Recreation Commission:

The commission shall:

- (1) Have the care, charge, control, and supervision of all parks and parkways acquired or set aside by the state for park or parkway purposes;
- (2) Adopt policies, and adopt, issue, and enforce rules pertaining to the use, care, and administration of state parks and parkways. The commission shall cause a copy of the rules to be kept posted in a conspicuous place in every state park to which they are applicable, but failure to post or keep any rule posted shall be no defense to any prosecution for the violation thereof;
- (3) Permit the use of state parks and parkways by the public under such rules as shall be adopted....
- (7) By majority vote of its authorized membership, select and purchase or obtain options upon, lease, or otherwise acquire for and in the name of the state such tracts of land, including shore and tide lands, for park and parkway purposes as it deems proper.

By contrast, the USFS has broader power and duties as defined by a compilation of legislation contained in the United States Code. Its mission statement broadly defines its purpose as:

"... a multi-faceted agency that manages and protects 154 national forests and 20 grasslands in 43 states and Puerto Rico. The agency's mission is to sustain the health, diversity, and productivity of the nation's forests and grasslands to meet

³ Declaration of Dewey Simmons, August 9, 2018.

⁴ RCW 84.33.140 (5)(e); WAC 458-30-700(4)(d).


the needs of present and future generations. We have an elite wildland firefighting team and the world's largest forestry research organization. Our experts provide technical and financial help to state and local government agencies, businesses, private landowners and work government-to-government with tribes to help protect and manage non-federal forest and associated range and watershed lands. We augment our work through partnerships with public and private agencies that help us plant trees, improve trails, educate the public, and improve conditions in wildland/urban interfaces and rural areas, just to name a few. Our team also promotes sustainable forest management and biodiversity conservation internationally. Gifford Pinchot, first Chief of the Forest Service, summed up the mission of the Forest Service: "to provide the greatest amount of good for the greatest amount of people in the long run."⁵

Clearly, the duties of the USFS are more diverse than those duties of the parks and recreation department; sustainment of forests and grasslands, firefighting, research, technical and financial assistance, tree planting, improvement of trails, education and improvement of conditions are additional responsibilities of this federal agency. This is further acknowledged in the November 23, 2015 letter wherein Western Rivers is thanked for the "continued support of the Forest Service and our work to provide public recreation opportunities, habitat protection, and watershed restoration."⁶

The USFS is not the Washington State Parks and Recreation Commission. The mission, role, duties and tasks of these agencies diverge. "A tax is not invalid simply because it treats those who deal with the Federal Government differently than it treats others."⁷ Discrimination is only found when the state treats someone else better than it treats the federal government and those with whom it deals.⁸ Here, the exemption is designated only for sales to the state commission and only for parks and recreation purposes. The exemption does not apply to sales to other entities including the Washington State Department of Natural Resources. This sale is to a federal agency for broader use than parks and recreation purposes. The Supremacy Clause does not apply here.

My ruling therefore is as follows: material issues of fact exist as to the motivation for the Assessor's action in imposing the compensating tax. The Supremacy Clause does not apply to the sale of the land to the USFS. Mr. Force is requested to prepare the appropriate pleadings reflective of my ruling, and to circulate for signature. **A presentment without oral argument is scheduled for Friday, January 4, 2019 at 9:00 A.M.**

Yours truly,



Maryann Moreno
Judge

⁵ <https://www.fs.fed.us>.

⁶ Declaration of Rob Griffith, Exhibit A.

⁷ *Washington v. U.S.*, 460 U.S. 536, 537, (1983).

⁸ *Id.*

APPENDIX C



FOREST
FACTS &
FIGURES



WASHINGTON FOREST
PROTECTION ASSOCIATION

*We're managing private forests
so they work for all of us.*

Washington Land Area

Washington's total land area is 42.6 million acres. Half of this is forested. Nearly 37% of the forestland is privately owned, and 63% is managed by the government.

	Acres (000)	Acres (000)	Percent of Total
Washington Total Land Area		42,588	100 %
Forestland		21,305	50.0%
Other Land (urban, cropland, etc.)		21,283	50.0%
Total Government Forestland		13,492	63.3%
Federal		9,389	44.1%
National Forest Service	4,984		
National Forest Service Wilderness	2,569		
National Forest Scenic & Recreation	190		
National Parks	1,451		
Department of Defense	60		
Bureau of Land Management	50		
US Fish & Wildlife, National Wildlife Refuges	85		
State Trust Lands		2,265	10.6%
Native American		1,492	7.0%
County and Municipal		346	1.6%
Total Private Forestland		7,813	36.7%
Industrial Private Landowners*		4,573	21.5%
Nonindustrial Private Landowners**		3,240	15.2%

* Industrial Private Landowners – Includes companies and individuals operating wood-using plants and nonindustrial companies and individuals not operating wood-using plants but with statewide holdings totaling 1,000 or more acres.

** Nonindustrial Private Landowners – Includes companies and individuals not operating wood-using plants and having statewide holdings totaling less than 1,000 acres.

The federal government manages 44% of the forestland in Washington.



Sources: U.S. Forest Service, *Forest Inventory & Analysis, PNW Research Station, Interim Values for Washington Forestlands from 2000-2001 Inventory – Western Washington*. Eastern Washington figures from the 1997 RPA Assessment (www.fia.fs.fed.us)

National Park Service, *Public Use Statistics Office* (www2.nature.nps.gov/stats)

U.S. Forest Service, *USFS Land Area Reports*, as of September 30, 2003 (www.fs.fed.us)

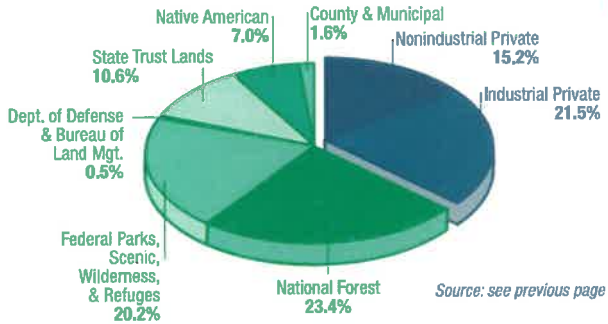
U.S. Fish and Wildlife Service (<http://refuges.fws.gov>)

Forestland Ownership and Use

The 1994 Northwest Forest Plan changed the way federal agencies manage the forest. Timber harvest was reduced 80% and lands were designated to provide protection for riparian areas and late successional reserves for species associated with old-growth ecosystems, such as the northern spotted owl. While forestland in matrix areas contain some harvesting, about 98% of the timber harvested in Washington now comes from non-federal forestland.

Washington Forestland (21.3 million acres)

Government = 63% Private = 37%



Timber Harvest by Ownership (MBF)

More than 76% of the timber harvested in Washington State comes from privately owned forestland.

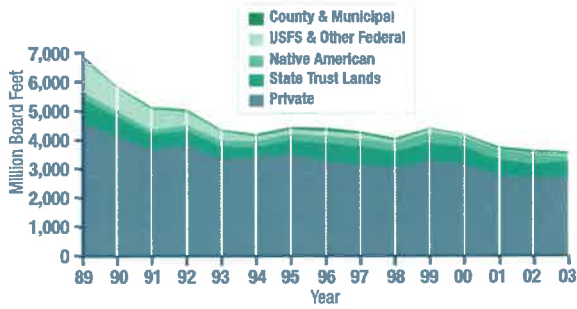
Ownership	1999	2000	2001	2002	2003*	%
Private	3,245,816	3,176,794	2,791,230	2,681,224	2,696,842	76.2%
State	662,479	559,254	496,043	456,516	567,149	16.0%
Native American	333,904	330,184	324,304	319,118	160,878	4.5%
USFS & Other Federal	125,489	93,837	78,568	84,822	80,463	2.3%
County & Municipal	15,091	16,499	25,831	40,390	33,615	1.0%
Total Harvest	4,382,779	4,176,568	3,175,976	3,582,070	3,538,947	100%

Average annual harvest level: 1980-89 – 6.1 billion board feet; 1990-99 – 4.6 billion board feet; 2000-2003 – 3.8 billion board feet.

Source: Washington State Department of Natural Resources, *Washington Timber Harvest Report, 1999-2003* (www.dnr.wa.gov) * Preliminary figures.

Timber Harvesting Trends 1989-2003

State and federal policy changes enacted during the 1990s greatly restricted timber harvest on state and federal forestlands. Despite these harvest declines, the forest products industry has become more efficient in converting raw wood materials to final products in order to meet market demand.



Source: see previous page

Washington boasts some of the most productive forests in the world, with harvest occurring every 40 to 60 years. Patterns of timber harvesting are influenced by natural events (fire, ice, storms, volcanic eruptions, insects and disease), market conditions (supply and demand), management practices, and public policies (administrative set-asides and silvicultural restrictions).

Sustainable Forestry

There are nearly 4.1 million acres enrolled in the Sustainable Forestry Initiative® (SFI) program in Washington, of which 3.4 million have been certified by independent audit firms.

SFI was developed with inspiration from the concept of sustainability that evolved from the 1987 report by the World Commission on Environment and Development. It was subsequently adopted by the 1992 Earth Summit in Rio de Janeiro. Today more than 152 million acres are enrolled in SFI nationwide, of which 93 million acres have been certified by independent audit firms.

Source: American Forest & Paper Association (www.afandpa.org)



Harvesting Methods

A variety of methods are used to harvest timber, such as commercial thinning, partial cut, selective harvest, and clearcuts. Clearcutting occurs predominately in Douglas-fir forests, west of the Cascades, where newly planted trees require open sunlight to grow. Clearcut size is limited by law to 120 acres without a special review. The average clearcut size in Washington is less than 60 acres.

Average Size of Clearcuts in Washington State by Region

DNR Region (in acres)*	2000**	2001	2002	2003
South Puget	32.7	34.5	36.3	35.2
Pacific Cascade	40.4	45.0	43.1	39.1
Olympic	31.3	38.8	36.6	40.7
Southeast	42.8	60.7	54.7	58.2
Northwest	24.2	31.0	23.2	22.7
Northeast	38.3	44.3	49.2	49.3

* Acres shown represent the average acres reported on forest practice applications and may be higher than acres actually cut.

** The above figures for 2000 differ from the last Forest Facts & Figures publication, as only acres for applications approved are included, rather than the total submitted.

Note: The DNR regional designations "Southwest" and "Central" used in previous editions of this publication have since been merged into one category, "Pacific Cascade," by DNR.

Source: Washington State Department of Natural Resources, Forest Practices Division

Sustainable Timber Harvest

Timber harvesting and replanting occur every year. Timberland managers monitor their rate of harvest to ensure there will always be a sustainable supply of timber.

In any given year, only a small fraction of the commercial forest – private and public – is in the harvest phase of the forest cycle. The average rate of harvest for all the state's commercial forestland was 1.1%, according to the last state Department of Natural Resources "Rate of Timber Harvest" report. This means that for every acre harvested in any one year, there are nearly 99 other acres growing more wood for the future.

Source: Washington State Department of Natural Resources, 1991-1993 *The Rate of Timber Harvest in Washington State* (released August 1997)

Timber Industry Regulations

State and private forestland is regulated by state and federal environmental laws, and is subject to Native American treaty rights. Laws that protect public resources such as plants, animals, water and air quality during the course of growing, harvesting and processing timber, are listed below.

Year Est.	State and Federal Environmental Law	Administered by
1947	Federal Insecticide, Fungicide & Rodenticide Act	Environmental Protection Agency
1949	Hydraulics Code Guidelines	Wash. Dept. of Fish & Wildlife
1969	National Environmental Policy Act	Environmental Protection Agency's Council on Environmental Quality
1970	Federal Clean Air Act	Environmental Protection Agency
1971	Wash. Clean Air Act	Wash. Dept. of Natural Resources, Wash. Dept. of Ecology
1971	State Environmental Policy Act	Wash. Dept. of Ecology
1971	State Shorelines Management Act	Wash. Dept. of Ecology
1971	Wash. Pesticide Control Act	Wash. Dept. of Agriculture
1972	Federal Clean Water Act	Environmental Protection Agency
1973	State Water Pollution Control Act	Wash. Dept. of Ecology
1973	Federal Endangered Species Act	U.S. Fish & Wildlife Service, NOAA Fisheries
1974	State Forest Practices Act	Wash. Dept. of Natural Resources' Forest Practices Board

The 1974 Forest Practices Act, Chapter 76.09 of the Revised Code of Washington (RCW) requires a balance between protecting public resources and assuring that Washington continues to be a productive timber growing state.

Forest practices rules have been amended and strengthened thirteen times since they were established in 1975*. The most recent changes are a result of the Forests & Fish Law, adopted by the Legislature in 1999 in response to federal listings of endangered salmon and impaired water quality on non-federal forested streams.

* www.dnr.wa.gov/forestpractices/rules

The Forests and Fish Law

The Forests & Fish law is an historic, science-based set of forest practices regulations that protects 60,000 miles of streams running through 9.1 million acres of state and private forestland.

With the Forests & Fish law in place, the state of Washington has the greatest level of protection for forested streams in the United States. Since it was adopted by the Washington State Legislature and signed by Governor Gary Locke in 1999, forest practices regulations have been strengthened and brought into compliance with the Endangered Species and Clean Water acts.

As the first of its kind in the nation, the Forests & Fish law was developed in collaboration with federal, state, tribal and county governments and private forest landowners who worked together for 18 months to develop changes to forest practice rules to protect clean water and riparian habitat on non-federal forestland in Washington. Changes were made to improve how forest managers build and maintain roads, protect streams and unstable slopes, and an adaptive management monitoring program was created to test the effectiveness of the new rules.

The Forests & Fish law amended Washington's Forest Practices rules and has become the basis for a statewide Habitat Conservation Plan (HCP), covering 9.1 million acres of non-federal forestland.

The Department of Natural Resources on behalf of the Governor's Office submitted an application to the federal government for approval of the Forest Practices HCP, under section 10 of the Endangered Species Act (ESA). The conservation plan will cover virtually all native fish species in the state and 7 amphibian species. Once approved, Washington state will have the largest and most comprehensive conservation plan in the United States.



Forests & Fish Implementation

All forest operations are now conducted in a manner to prevent sediment from entering streams. Timber harvest operators are leaving 90 - 200 feet of forested buffers in western Washington and 75 - 130 feet of forested buffers in eastern Washington along each side of streams that support fish, and 50 foot buffers on many small streams near fish habitat. Road construction standards have been improved to reduce the occurrence of landslides and to prevent silt from entering into streams. Mapping of landslide hazard areas is complete on about one-third of non-federal lands. This allows more efficient enforcement of rules that protect vulnerable areas. More accurate maps of streams and fish habitat are now complete. A cooperative plan is being implemented to address Native American cultural sites on private forestlands.

Adaptive Management

The foundation of the Forests & Fish law is science and adaptive management. To ensure that the new rules are meeting the objectives of restoring salmon habitat and protecting water quality, key factors such as stream temperature, habitat accessibility, and sediment from roads are being monitored. These rules may change after peer-reviewed scientific determination. Scientists have currently completed 16 adaptive management projects, and 10 more are underway. Substantial progress has been made on understanding the composition of mature forested riparian areas, fish use of forest streams, amphibian habitat, fire influences on riparian areas and water temperature in eastern Washington streams, regeneration of trees in forest wetlands, and wildlife use of forested stream buffers.

Impacts on Small Business

Many of the economic concerns of family forest owners who are disproportionately impacted by the new rules have been addressed by the Legislature. In addition, provisions in the law provide financial incentives to offset the impact of the new forest practices rules including:

- Exemption from new rules for owners of less than 80 acres statewide (with parcels less than 20 acres);
- A 16 percent tax credit for all harvesters complying with new rules;
- And a riparian easement program for landowners who harvest less than two million board feet of timber per year;
- The Family Forest Fish Passage cost share program, offering financial assistance to small landowners to remove barriers that block fish passage.

Road Maintenance & Abandonment Plans

Since the Forests & Fish law was enacted, thousands of miles of forest roads have been improved and hundreds of miles of fish habitat have been unblocked and reopened. Figures listed are cumulative.

	2001	2002	2003	2004
RMAPs Approved	4,066	5,530	6,939	7,333
Miles of Road Under a Plan	15,484	29,079	39,784	45,832
Miles of Road Abandoned	645	1,007	1,205	1,513
Miles of Road Orphaned	502	1,031	1,164	1,579
Miles of Fish Habitat Opened	52	175	380	690*
Number of Structures Removed/Replaced on Fish Bearing Streams	46	355	637	1,231

* Includes 58 miles of streams opened and 36 structures removed/replaced through the Family Forest Fish Passage Program.

State law requires forest landowners to improve their forest roads to the extent necessary to prevent damage to public resources including water, fish and wildlife habitat. Roads can impact public resources if culverts block fish passage and sediment enters streams from runoff and erosion.

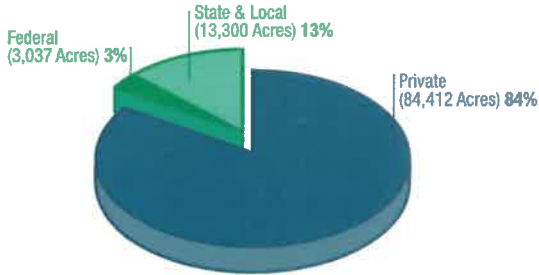
Landowners are required to submit Road Maintenance and Abandonment Plans (RMAP) to the Department of Natural Resources (DNR) for approval, and annual reports are submitted to the DNR to track progress. By July 2006 all forest industry and state forest roads will be under regulatory plans for repair and maintenance to protect streams. The law requires all of the upgrade work to be done by July 2016. Small forest landowners may submit either an RMAP or a Check List RMAP at the landowner's choice. See Chapter WAC 222-24, Road Construction and Maintenance.

In the past four years, more than 1,230 structures blocking fish passage have been removed or replaced, and 690 miles of fish habitat have been opened up. This is equivalent to a plane flight from Seattle to San Francisco.

Source: *Washington DNR Statewide RMAP Accomplishment Report*

Forest Planting and Seeding on Public & Private Forestland: 2003

State law requires reforestation within three years of harvest. Private landowners replanted more than 84,000 acres in 2003. On average WFFPA members replant within 18 months.



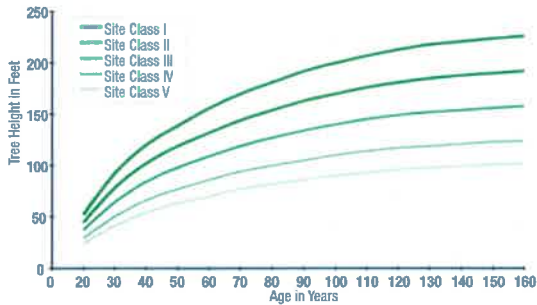
Total tree planting, including seeding, was 100,749 acres.

Washington State shipped 118 million trees from their nurseries in 2003.

Source: Unpublished data, USDA Forest Service State & Private Forestry Cooperative Forestry Washington Office.

Average Douglas-fir Tree Growth for Western Washington

The width of protected riparian areas next to streams is based on the "site-potential tree height" at age 100 and stream size. Westside riparian management zones are 90 - 200 feet and eastside riparian management zones are 75 - 130 feet.



"Site Class" refers to the growing conditions of the soil as described by the USDA Natural Resource Conservation Service and is a measure of the forest site productivity or growth potential of the forest.

Source: U.S. Department of Agriculture, Technical Bulletin No. 201, *The Yield of Douglas-fir in the Pacific Northwest*, revised 1949 and 1961, Richard E. McArdle.

Washington Production of Lumber Has Improved

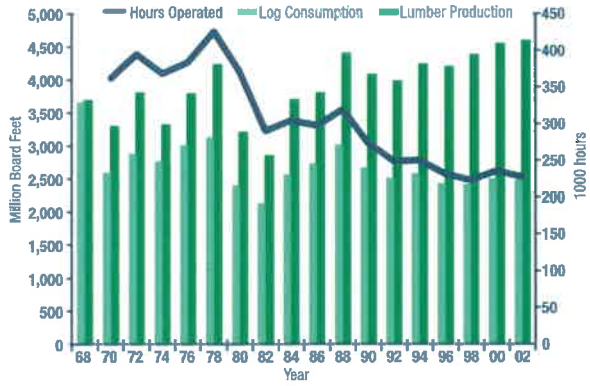
Overview of the Scribner Log Rule:

The 4th edition of the Scribner Log Rule was published in 1846. J. M. Scribner developed the diagram rule by drawing as many one inch boards as could be cut from a cross-section equal in diameter to that of the small end of the log. Today, in part due to increased mill efficiency, most modern sawmills produce twice the amount of lumber from a log than they did in 1846.

Sources: Green Diamond Resource Company (www.greendiamond.com); and Beck Group, Portland, Oregon (www.beckgroupconsulting.com)

Washington Mills are More Efficient

Washington's lumber milling sector has improved. Industry investment in mill technology has resulted in greater lumber recovery from logs and sawmills that require a higher skilled workforce. Annual operating time in Washington has declined while the quantity of lumber products manufactured has increased.



Softwood Lumber Production Top Ten States (MMBF)

The forest industry in Washington is the second largest in the nation behind Oregon, accounting for 13% of total U.S. softwood lumber production, and more than 7% of the total value of U.S. softwood veneer and plywood production.

	1996	1997	1998	1999	2000	2001	2002
Oregon	5,288	5,589	5,486	6,056	5,927	6,056	6,177
Washington	3,596	3,851	3,913	4,224	4,384	4,257	4,625
Georgia	2,632	2,794	2,838	2,899	2,773	2,547	2,657
California	3,257	3,432	3,188	3,216	3,216	2,731	2,634
Alabama	2,110	2,074	2,184	2,238	2,343	2,190	2,224
Arkansas	1,852	1,930	1,960	2,079	2,133	2,133	2,153
Mississippi	2,301	2,306	2,299	2,494	2,395	2,219	2,071
Idaho	1,802	1,859	1,908	1,975	1,896	1,833	1,906
North Carolina	1,648	1,751	1,708	1,823	1,565	1,765	1,849
Texas	1,333	1,292	1,249	1,385	1,390	1,291	1,375

Sources: Western Wood Products Association, *2003 Statistical Yearbook of the Western Lumber Industry* (www.wwpa.org)

U.S. Census Bureau, *Softwood Veneer and Plywood Manufacturing: 2002*; Issued September 2004 (www.census.gov)

U.S. Softwood Lumber Demand and Supply (MMBF)

The United States is a net importer of wood products. In total, the U.S. produces about two-thirds of the lumber it consumes. More than 91% of the softwood lumber imported comes from Canada.

	1998	1999	2000	2001	2002	2003	2004*	Avg.
Market (Demand):	52,209	54,263	53,940	53,929	56,064	56,993	61,776	100%
Sources (Supply):								
USA	33,522	35,085	34,491	33,854	35,084	35,783	38,261	64%
Imports	18,687	19,178	19,449	20,075	20,980	21,210	23,515	36%

Source: Western Wood Products Association, *2003 Statistical Yearbook of the Western Lumber Industry* (www.wwpa.org)

* Preliminary figures



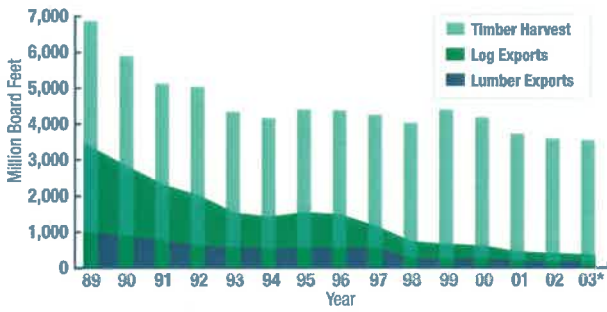


Photo: Keith W. Wood

Softwood Log & Lumber Exports

Due to market prices and regulatory restrictions, foreign export of raw logs and lumber, as a percent of total timber harvest, has sharply declined, from a high of 49% in 1989 to just over 10% in 2003.

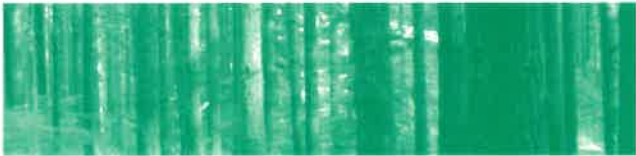
Washington Timber Harvest Log & Lumber Exports 1989-2003



Sources: Washington State Department of Natural Resources, *Washington Timber Harvest Report 1999-2003* (www.dnr.wa.gov)

Western Wood Products Association, *2003 Statistical Yearbook of the Western Lumber Industry* (www.wwpa.org)

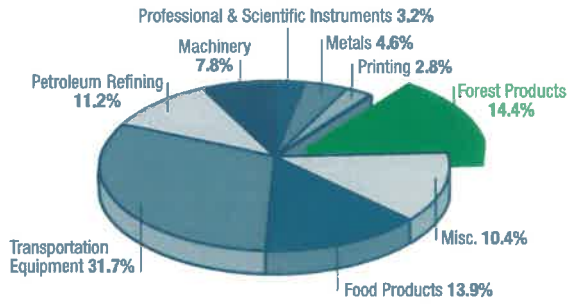
* 2003 Preliminary timber harvest report data.



Economic Impact

The forest products industry in Washington is the second largest manufacturing sector in the state after transportation (primarily aircraft). The forest products industry represents more than 14% of total manufacturing in the state.

Washington Manufacturing Gross Business Income 2003 (\$88 billion)



Forest Products Gross Income (millions of dollars)

	1999	2000	2001	2002	2003
Lumber & Wood Products	\$8,302.5	\$6,773.5	\$6,284.6	\$6,274.5	\$5,868.8
Paper & Allied Products	\$3,451.9	\$5,742.1	\$5,005.0	\$5,585.7	\$6,828.3
Forestry	\$305.2	\$317.4	\$217.7	\$162.6	\$310.7
Combined	\$12,059.6	\$12,833.0	\$11,507.3	\$12,022.8	\$13,007.8

Source: Washington State Department of Revenue, *Quarterly Business Review*, calendar year 2000-2003 (www.dor.wa.gov/reports)



Forest Products Wages

The forest products industry pays family wage jobs. In 2003, the forest products industry paid average wages of \$41,903 per year, which exceeded the average state wage of \$38,654 by 8.4%.

Industry Wage	1999 (NAICS)	2000 (NAICS)	2001 (NAICS)	2002 (NAICS)	2003 (NAICS)
Total	\$1.88 billion	\$1.90 billion	\$1.81 billion	\$1.77 billion	\$1.77 billion
Average	\$35,777	\$37,105	\$40,347	\$41,177	\$41,903
State Avg. Wage	\$38,090	\$38,881	\$37,455	\$38,255	\$38,654
% Above State Avg.	6.5%	4.8%	7.7%	7.6%	8.4%

Industry Wage	1999 (SIC)	2000 (SIC)	2001 (SIC)	2002 (SIC)
Total	\$2.12 billion	\$2.09 billion	\$2.07 billion	\$2.02 billion
Average	\$41,366	\$41,703	\$43,911	\$44,479
State Avg. Wage	\$35,742	\$37,031	\$37,746	\$38,244
% Above State Avg.	18.1%	12.6%	16.3%	16.3%

Source: Washington State Department of Employment Security, *Covered Employment and Wages, Classified by Industry* (www.workforceexplorer.com)

In 2002 the North American Industry Classification System (NAICS) replaced the U.S. Standard Industrial Classification (SIC) system, and will reshape the way we view our economy. NAICS was developed jointly by the U.S., Canada and Mexico to provide comparability in statistics about business activity across North America.

NOTE: The above NAICS figures are lower than actual because they do not include NAICS codes which included partial figures for the forest products industry that are inseparable from other industries under the new system. The following industries have been excluded: Maple sap gathering, wood cooling tower manufacturing, household furniture, cork life preservers, mirror and picture frames, wood containers and pallets, all other miscellaneous wood product manufacturing, showcase partitions, shelving manufacturing, administration, and managerial forest products positions.



Forest Products Direct Employment

The forest products industry directly employed 42,358 workers in 2003, making up more than 14% of total manufacturing employment.

Direct Employment	1999 (NAICS)	2000 (NAICS)	2001 (NAICS)	2002 (NAICS)	2003 (NAICS)
Wood Product Manufacturing	20,958	21,670	18,636	16,670	17,573
Paper Manufacturing	15,238	14,427	14,038	14,229	12,887
Forestry and Logging	7,711	7,386	6,645	6,495	6,087
Forestry Support Activities	1,343	1,294	1,272	1,216	1,297
Plastic Bag Manufacturing	690	662	673	680	728
Wood Kitchen Cabinets & Countertops	3,489	3,521	3,544	3,608	3,786
Combined	49,429	48,960	44,809	42,898	42,358

Direct Employment	1999 (SIC)	2000 (SIC)	2001 (SIC)	2002 (SIC)
Lumber & Wood Products	33,133	32,176	30,318	29,216
Paper & Allied Products	15,772	15,530	14,871	14,019
Forestry	2,374	2,354	2,004	2,113
Combined	51,279	50,060	47,193	45,348

Source: Washington State Department of Employment Security, *Covered Employment and Wages, Classified by Industry* (www.workforceexplorer.com)

Each forest products job indirectly supports 2.64* additional jobs (SIC), accounting for more than 165,000 jobs or 6.2% of total employment in 2002.

* Dick Conway & Associates, *The Forest Products Economic Impact Study*, 1994.



Photo: Keith W. Wood

Private & Public Timber Harvest and Employment: Top 20 Counties 2003

County	Statewide Public & Private Timber Harvest Volume (MMBF)	Annual Average Employment in Forest Products*	Percent of Total County Employment in Forest Products*	
1	Grays Harbor	503	2,824	12.0%
2	Lewis	453	1,267	9.1%
3	Pacific	265	394	6.4%
4	Pierce	265	4,038	1.6%
5	Cowlitz	217	4,882	13.6%
6	Clallam	207	960	4.6%
7	Yakima	187	1,542	1.7%
8	Stevens	175	1,106	10.9%
9	Mason	135	1,090	8.1%
10	Skagit	124	728	1.7%
11	Pend Oreille	120	351	10.6%
12	Whatcom	106	1,908	2.6%
13	Thurston	98	987	1.1%
14	Kittitas	94	152	1.2%
15	Snohomish	91	3,243	1.6%
16	King	91	3,627	0.3%
17	Klickitat	88	325	5.4%
18	Jefferson	74	452	5.0%
19	Wahkiakum	69	150	15.4%
20	Clark	52	2,925	2.5%
Top 20 Counties				
	3,414	38,709	1.4%	
State Total				
	3,582**	42,358	1.6%	

* Includes lumber, wood products, paper & pulp. Employment figures shown may be slightly lower than actual because forestry employment data was unavailable in some counties.

** Data from 2002.

Sources: Harvest – Washington Department of Natural Resources, *Washington Timber Harvest Report 2002* (www.dnr.wa.gov)

Employment – Washington State Department of Employment Security, *Covered Employment Classified by Industry by County; NAICS for 2003* (www.workforceexplorer.com)



Public Access and Current Use Property Taxes

In Washington state designated timberland is assessed and thus, taxed on its current use value as timberland, rather than on its highest and best use, which in many cases would be as commercial retail or residential land. The current use property tax treatment of forestland was implemented by the state legislature in 1971 for the purposes of encouraging forest sustainability and preventing forced conversions that may otherwise occur due to the higher land values for non-timber, generally, urban uses.

All 50 states have current use property tax laws for timberland and only four of which require public access in order to receive current use treatment. Further, those states that do have public access requirements have expressly stated so in their laws. Washington's laws, like those of 46 other states not requiring public access, make no express public access requirement as a condition of current use tax treatment for timberland. Rather legislative history establishes that the purpose of these laws is to prevent conversions and foster forest management practices.

NOTE: Commercial timberland should not be confused with lands designated as open-space and open-space timberland, as there are express provisions requiring public access for these lands. This further illustrates that the absence of any express mention of a public access requirement for timberland, in contrast to these other current use lands, was specifically intended by the legislature.



Private & Public Forest Tax Revenues

In 2003, more than \$53 million in timber harvest and property taxes were distributed to counties, libraries, local schools, fire and taxing districts. Private forest landowners paid 83% of the total tax.

These taxes represent only a small portion of the total taxes paid by the forest products industry. Other taxes include B&O, sales and use, employer, fuel, real estate, federal excise and income taxes, as well as various user fees and assessments. For example, the Forest Products Industry paid more than \$50 million in B&O taxes in 2003.

Source: Washington State Department of Revenue, *Quarterly Business Review, Business and Occupation Tax, Calendar 2003* (www.dor.wa.gov)

Top 20 Counties: 2003

	County	5% Timber Harvest Tax*	Annual Property Tax	Combined Revenue to State and Counties
1	Grays Harbor	\$6,407,322	\$1,476,154	\$7,883,476
2	Lewis	6,369,418	1,135,074	7,504,492
3	Cowlitz	3,554,320	867,434	4,421,754
4	Pacific	3,158,641	857,434	4,015,706
5	Mason	2,452,358	477,872	2,930,230
6	Pierce	2,243,404	572,084	2,815,488
7	Clallam	1,999,834	406,223	2,406,057
8	Stevens	1,953,283	231,191	2,184,474
9	Thurston	1,798,063	252,481	2,050,544
10	Skagit	1,487,832	332,125	1,819,957
11	Whatcom	1,648,421	169,315	1,817,736
12	Snohomish	1,507,288	216,602	1,723,890
13	King	1,242,274	355,889	1,598,163
14	Klickitat	1,222,320	266,993	1,489,313
15	Pend Oreille	1,343,346	126,765	1,470,111
16	Clark	1,069,926	150,629	1,220,555
17	Jefferson	933,044	231,149	1,164,193
18	Wahkiakum	929,946	200,256	1,130,202
19	Kittitas	583,700	72,707	656,407
20	Kitsap	477,736	86,702	564,438
	Top 20 Counties	\$42,382,477	\$8,484,710	\$50,867,187
	State Total	\$44,384,053	\$8,895,574	\$53,279,627

* Timber harvesters operating under the Forests & Fish Law are eligible to receive a 0.8% tax credit to partially offset the cost of these new regulations. If this salmon credit is applied, the effective tax rate will become 4.2%.

NOTE: Lewis County property tax figure is significantly lower than reported in 2000 due to local government's inclusion of all current use lands in 2000, not just timberland.

Source: Washington State Department of Revenue, *Property Tax Statistics 2004, Tables 20 and 27 "#B2 40 FE, report 3"* (www.dor.wa.gov/doc/2003)



Washington Forest Fires and Acres Burned 2000-2003*

WFPA was founded in 1908 to protect private forests from fire. Today, the Department of Natural Resources is responsible for protecting private lands, in addition to state and some federal lands – about 12 million acres in total. Landowners share the fire protection costs.

Cause	2000	2001	2002	2003
Lightning	13,946.4	9,541.8	508.8	222.9
Incendiary	1,069.2	26.9	107.3	565.6
Recreation	946.6	194.0	210.4	321.2
Smokers	19.6	8.9	19.4	1,148.9
Debris Burns	611.3	5,698.7	3,059.6	2,056.6
Logging	47.0	17.8	21.1	17.6
Children	94.8	13.0	39.4	34.8
Railroad	43.9	34.5	22.7	39.3
Miscellaneous	1,248.1	6,785.2	6,154.0	7,955.3
Total Acres Burned	18,026.9	22,320.8	10,142.7	12,632.2

* Fires on lands within the jurisdiction of the Washington State Department of Natural Resources.

Source: Washington State Department of Natural Resources, Resource Protection Division; 2001-03, *Annual Fire Statistics*

State Firefighting Resources

In the 2002-03 biennium, the state increased its proportional share of fire protection funding, returning to more equitable funding levels. Since 2003 total funding increased by more than \$1 million. Private forest landowners' assessments increased \$.03 per acre to a total of \$.25 per acre.

These funds allow the Department of Natural Resources to continue replacing old equipment, add an additional firefighter to each fire truck and provide better training for all fire personnel. The improvements increase the agency's ability to control fires when they are small, and to avoid large, dangerous and destructive fires.

DNR Fire Protection Program Budget 1992-2005

Years	1992-93	1994-95	1996-97	1998-99	2000-01	2002-03	2004-05
Total (000)	\$22,419	\$22,279	\$20,324	\$19,401*	\$20,853	\$28,631	\$29,749**
Cost Sharing:							
State	55.8%	18.1%	35.3%	16.7%	18.6%	49.0%	42.4%
Private	40.6%	78.2%	60.3%	78.7%	73.3%	35.1%	39.0%
Federal	3.6%	3.7%	4.4%	4.6%	8.1%	15.9%	18.6%

* Restated

** Allotted

Source: Washington Department of Natural Resources, Resource Protection Division



WASHINGTON FOREST PROTECTION ASSOCIATION

Founded in 1908 to protect private forests from fire, the Washington Forest Protection Association's members are large & small companies, individuals, and families who grow, harvest, and re-grow trees on more than 4.1 million acres of private forestland in Washington. WFPA works for balanced public policy so that its members can continue to practice forestry that is economically sound and environmentally sensitive.



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APPENDIX D



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Washington

More than half of Washington is forested. About 22 million acres of forest cover the total land area of 43 million acres, almost evenly divided between east and west of the Cascade crest. Most forest land in Washington is productive timberland, most of it occurring in the Okanogan Highlands, Northern Cascades, Washington Coast Range, and Western Cascades.

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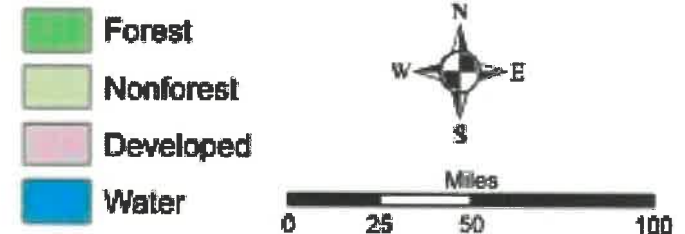
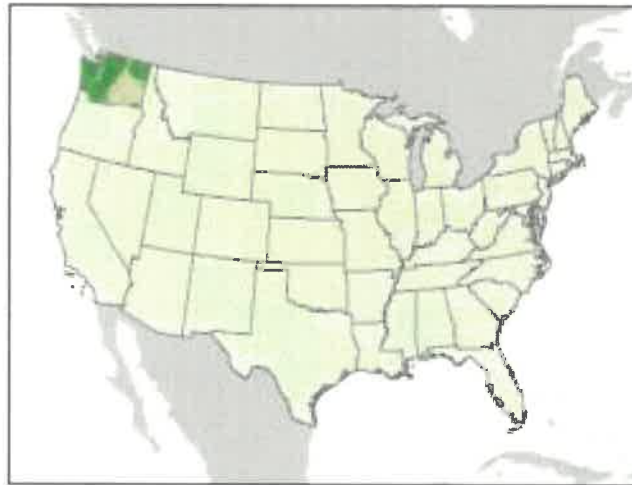
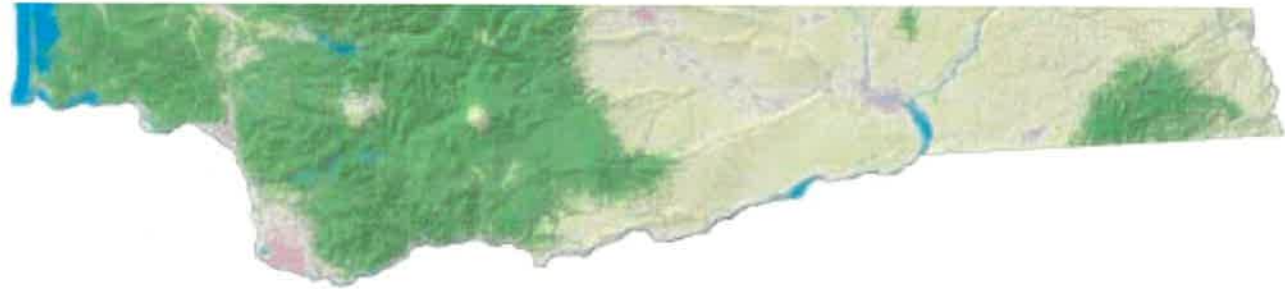
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Source: US Forest Service
biomass map forest/nonforest mask,
USGS MRLC-NLCD 2001.

- About 86 percent of Washington's forests are dominated by coniferous forest types, predominantly Douglas-fir (39 percent of all forested land area), fir/spruce/mountain hemlock (18 percent), and western hemlock / Sitka spruce (15 percent).
 - Hardwood forest types cover an additional 2.6 million acres (12 percent of forested land area). The major hardwood forest type is alder/maple (1.9 million acres).
- Washington has approximately 95 billion net cubic feet (413 billion board feet) of wood volume on forest land with a mean volume of about 4,231 cubic feet (18,433 board feet) per acre.
- The greatest proportion of wood volume is found in softwood tree species such as Douglas-fir, true firs, and western hemlock, which collectively make up 73 percent of all live-tree volume on Washington forest land.

- Total estimated biomass in live trees and dead wood across Washington is 107 tons per acre.
- The federal government manages about 44 percent of Washington's 22.4 million acres of forested land.
 - The National Forest System (NFS) and the National Park Service (NPS) administer most of this acreage.
 - The state also has substantial holdings, mostly managed by the Washington Department of Natural Resources with about 2.5 million acres.

July 28, 2021 - 10:46 AM

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