

No. 62707-4-I (Consolidated)

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

CHUCKANUT CONSERVANCY and NORTH CASCADES
CONSERVATION COUNCIL,

Respondents,

vs.

WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES
and WILLIAM WALLACE,

Petitioners/Defendants,

and

AMERICAN FOREST RESOURCE COUNCIL, CARPENTERS
INDUSTRIAL COUNCIL, and SKAGIT COUNTY,

Petitioners/Intervenors,

and

CONSERVATION NORTHWEST,
Intervenor

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REPLY OF THE AMERICAN FOREST RESOURCE COUNCIL AND
CARPENTERS INDUSTRIAL COUNCIL

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. THIS CASE ILLUSTRATES WHY SEPA REQUIRES THAT AN AGENCY'S DNS BE ACCORDED SUBSTANTIAL WEIGHT.	4
III. RESPONDENTS' PREMISE THAT DNR CAN REMOVE TRUST LAND FROM SUSTAINED-YIELD PRODUCTION AT WILL IS SIMPLY WRONG.	11
A. The Trustee's Duty Of Undivided Loyalty To the Trust Beneficiaries Does Not Allow It To Simply Take Forestland Out Of Sustained Yield Forestry.....	11
B. DNR Has No Statutory Authority To Take Trust Land Out Of Sustained Yield Management In The Absence Of Compensation Being Paid To The Trust.	13
IV. RESPONDENTS MISSTATE THE LAW WHEN THEY ARGUE THAT AN EIS IS ALWAYS REQUIRED OR THAT CONSIDERATION OF ALTERNATIVES IS REQUIRED AT THE THRESHOLD STAGE UNDER SEPA.....	18
A. SEPA Does Not Require An EIS For a Proposal Unless the Proposal Has Probable Significant Adverse Environmental Impacts.....	18
B. No Analysis Of Alternatives Is Required At The Threshold Stage.	19

V.	PHASED REVIEW IS MEANINGLESS IF THE COURTS USURP THE DISCRETION THE SEPA RULES GIVE THE AGENCY TO DETERMINE THE APPROPRIATE POINTS FOR ENVIRONMENTAL REVIEW.....	21
VI.	CONCLUSION.....	25
	APPENDIX A	
	Laws of 1923, ch. 154.....	26
	APPENDIX B	
	Laws of 1927, ch. 288.....	29
	APPENDIX C	
	Laws of 1935, ch. 126.....	32
	APPENDIX D	
	Laws of 1971, 1 st Ex. Sess. ch. 234.....	33

TABLE OF AUTHORITIES

	Page
Cases	
<i>Citizens Against Burlington, Inc. v. Busey</i> , 938 F.2d 190 (DC Cir. 1991).....	19
<i>Cougar Mountain Assocs. v. King County</i> , 111 Wn.2d 742, 747, 765 P.2d 264 (1988).....	11
<i>County of Skamania v. State</i> , 102 Wn.2d 127, 685 P.2d 576 (1984).....	12
<i>Erection Co. v. Dep't of Labor & Indus.</i> , 121 Wn.2d 513, 852 P.2d 288 (1993).....	14
<i>Glasser v. Office of Hearing Exam'r</i> , 139 Wn. App. 728, 162 P.3d 1134 (2007).....	23
<i>Glenbrook Homeowners Ass'n v. Tahoe Reg'l Planning Agency</i> , 425 F.3d 611 (9 th Cir. 2005)	19
<i>Granite Beach Holdings, LLC v. State Dep't of Natural Resources</i> , 103 Wn. App. 186, 11 P.3d 847 (2000).....	14
<i>Hayden v. Port Townsend</i> , 93 Wn.2d 870, 613 P.2d 1164 (1980), <i>overruled</i> on other grounds, <i>SANE v. Seattle</i> , 101 Wn.2d 280 (1984).....	18
<i>Kaiser Aluminum v. Dep't of Labor & Industries</i> , 121 Wn.2d 776, 854 P.2d 611 (1993).....	14
<i>King County v. Boundary Review Bd. of King County</i> , 122 Wn.2d 648, 860 P.2d 1024 (1993).....	21
<i>Moss v. City of Bellingham</i> , 109 Wn. App. 6, 31 P.2d 703 (2001).....	20
<i>Nisqually Delta Ass'n v. DuPont</i> , 103 Wn.2d 720, 696 P.2d 1226 (1985).....	4
<i>NLRB v. Amax Coal Co.</i> , 453 U.S. 322, 101 S.Ct. 2789, 69 L.Ed. 2d 672 (1981).....	13

<i>Norway Hill Pres. and Prot. Ass'n v. King County Council</i> , 87 Wn.2d 267, 552 P.2d 674 (1976).....	18
<i>San Juan County v. Dep't of Natural Res.</i> , 28 Wn. App. 796, 626 P.2d 995, rev. denied, 95 Wn.2d 1029 (1981)	20
<i>State ex rel. Citizens Against Tolls (CAT) v. Murphy</i> , 151 Wn.2d 226, 88 P.3d 375 (2004) (citing <i>Dep't of Ecology v. Campbell & Gwinn L.L.C.</i> , 146 Wn.2d 1, 43 P.3d 4 (2003))	14, 15
<i>Waste Mgmt. of Seattle, Inc. v. Utilities and Transp. Comm'n</i> , 123 Wn.2d 621, 869 P.2d 1034 (1994).....	14

Statutes

16 U.S.C. §§ 1531 to 1544.....	13
16 U.S.C. §1539(a)(1)(B)	1
57 Fed. Reg. 45328-45337 (Oct. 1, 1992)	6
57 Fed. Reg. page 45334.....	6
Laws of 1923, ch. 154.....	12
Laws of 1927, ch. 288	12
Laws of 1935, ch. 126.....	12
Laws of 1971, 1 st Ex. Sess. ch. 234	15
Laws of 2004, ch. 199 §210.....	15
RCW 43.21C.030(1)(c).....	20
RCW 43.21C.031.....	18
RCW 43.21C.090.....	4, 11
RCW 76.09.040(1)(e)	1

RCW 76.09.050(1).....	1
RCW 79.10.100	15
RCW 79.10.100 to .210	14
RCW 79.10.110	15
RCW 79.10.120	15, 16
RCW 79.10.200	15
RCW 79.10.210	15
RCW 79.10.310	15, 16
RCW 79.10.320	13, 15, 16
RCW 79.22.120	17
RCW 79.70.040	17
RCW 79.71.050	17
RCW 90.48.260	1
RCW ch. 76.09.....	13
RCW ch. 79.70.....	10
RCW ch. 79.71.....	10
WAC 197-11-055(1).....	22
WAC 197-11-060(5)(a)	23
WAC 197-11-330.....	20
WAC 197-11-330 to -360	18
WAC 197-11-330(2).....	22
WAC 197-11-330(2)(b)	24

WAC 197-11-794.....	4
WAC 197-11-960.....	20
WAC 222-16-050(1)(a)	6
WAC 222-30-021.....	5
WAC 222-30-025(2).....	5
WAC 222-30-025(4).....	5

I. INTRODUCTION

Respondents say the multiple rule-making proceedings by the Washington Forest Practices Board to determine, based on its expert knowledge, what forest practices have “a potential for a substantial impact on the environment and therefore require an evaluation by [DNR] as to whether or not [an EIS] must be prepared pursuant to the state environmental policy act,” RCW 76.09.050(1), are irrelevant. It is irrelevant that those forest practices rules affecting water quality were only adopted after reaching agreement with the Washington Department of Ecology, RCW 76.09.040(1)(e), the agency responsible for implementing the Federal Clean Water Act in Washington. RCW 90.48.260. It is irrelevant that those rules have been approved by the National Marine Fisheries Service (“NMFS”) and the U. S. Fish and Wildlife Service (“USFWS”) as a habitat conservation plan (“HCP”), and received an incidental take permit for aquatic species affected by forestry practices conducted under those rules. 16 U.S.C. §1539(a)(1)(B). Adoption by the Commissioner of Public Lands (“Commissioner”) of a strategy for removing one-third of a block of trust timberland from future sustained yield management under those rules still requires a full EIS because of the risk of “disastrous flooding,” Respondents’ brief (“Resp’t Br.”) at 13, and “huge environmental impacts,” *Id.* at 49, that will cause “stormwater filled with sediment [to] inevitably make[] its way to streams.” *Id.* at 54. According to Respondents, a court should ignore the expert agency conclusions that the impacts of forestry have been mitigated to less than

“significance.” “One need only consider the seemingly annual winter floods and landslides . . . to question the credibility of the proposition that modern rules have eliminated all significant impacts.” *Id.* at 58.

Respondents say it is irrelevant that the Department of Natural Resources (“DNR”) has adopted, and USFWS has approved, a habitat conservation plan for the northern spotted owl, the marbled murrelet, and 24 federally listed and 21 state listed candidate species or species of concern. Adoption by the Commissioner of a strategy for removing one-third of a block of trust timberland from future sustained yield management under that HCP still requires a full EIS because of the risk it poses to spotted owls and marbled murrelets, as well as “all creatures, great and small.” Resp’t Br. at 9-10.

Respondents say it is irrelevant that the Board of Natural Resources has adopted policies governing forest management for public access and recreation and mitigation of visual impacts, Rec 9120-123. Adoption by the Commissioner of a strategy for removing one-third of a block of trust timberland from future sustained yield management under those policies still requires a full EIS because continued sustained yield management will “decimat[e] an extraordinary system of trails heavily used by nearby residents and distant visitors alike; [and cause] the loss of the tranquility and visual splendor of the current forest.” Resp’t Br. at 58.

Respondents say the Commissioner of Public Lands has authority to take any block of timberland out of future sustained yield management, and thus adoption of a management strategy for a block of trust timberland

must start with the assumption that the entire block can be returned to old-growth conditions and devoted exclusively to recreational uses. *Id.* at 40-50. Generating revenue for trust beneficiaries is at most a consideration to be balanced with Respondents' conservation and recreational objectives.

Respondents' theory, if accepted, would make the entire planning process and decisions of every major resource agency over the last 20 years irrelevant, because those processes and decisions would effectively mean nothing. Whenever DNR considered its options for managing a particular block of trust timberland it would have to start over, to prepare a full EIS as to how the forest practices rules, the state's HCP and the Policy for Sustainable Forests would function as applied to that block. DNR's resources would be consumed in revisiting issues on a block scale that were previously considered on a landscape scale. Trust beneficiaries, and the families and businesses whose livelihoods depend upon sustained yield management of Washington trust land, would be left on the sideline while DNR devoted its resources to endless duplicative environmental review.

Respondents' arguments should be rejected. The trustee's duty of undivided loyalty to the trust beneficiaries does not permit DNR to take timberland out of sustained yield production to foster the objectives of others. DNR's governing statutes provide no authority to take blocks of timberland out of sustained yield production except in narrow circumstances and where full compensation is provided to the trust — not the case here. The trial court has impermissibly ignored the record and invaded the province of the expert agency. SEPA did not require DNR to

first analyze every other strategy that was remotely possible. DNR's determination of non-significance ("DNS") for adoption of the Blanchard Strategies was not clearly erroneous, and must be sustained by the court.

II. THIS CASE ILLUSTRATES WHY SEPA REQUIRES THAT AN AGENCY'S DNS BE ACCORDED SUBSTANTIAL WEIGHT.

Respondents are passionate advocates. They do what passionate advocates do, which is to tie snippets of the record here and there together with colorful language to paint the picture they hope the court will see. Space does not permit us to point out all the instances in which Respondents have seriously misrepresented the record. Hopefully a handful of examples will illustrate why RCW 43.21C.090 requires courts to accord the agency's decision substantial weight, and the court defers to the expertise of the administrative agency, in review of SEPA decisions. *Nisqually Delta Ass'n v. DuPont*, 103 Wn.2d 720, 696 P.2d 1226 (1985).

The issue here is not whether commercial forestry has any impacts, but whether the adoption of the Blanchard Strategies had significant adverse impacts. That entails an expert judgment about degree: Is there more than a "moderate" impact? WAC 197-11-794. For that, one must understand the entire record. It is because a court will rarely have either the technical expertise of the agency's responsible official, or a full command of a record such as this one, that SEPA requires that courts defer and give substantial weight to the agency's determination.

Example: Respondents characterize the adoption of the Blanchard Strategies as a decision to "log[] two-thirds of the Forest,"

Resp't Br. at 4, and claim DNR argues the baseline for SEPA analysis is that "every acre was subject to logging." *Id.* at 40. If one didn't read carefully or realize that the bullet points, although single spaced, are not quotes, one might read the second bullet in Resp't Br. at 17 to say that the Blanchard Strategies called for harvest of 3,227 acres. If one turns to Rec 49, which Respondents cite in support of that second bullet, it states:

[T]he annual area harvested on Blanchard Forest will average approximately 2% of the entire ownership (currently 4827 acres) in that area until such time that full compensation is secured and/or a new sustainable harvest is calculated that places the core in long-term deferral status.

Two percent of 4,827 acres is 96½ acres per year that will be harvested under the Blanchard Strategies. Respondents conjure up a mowing down of the forest, but with a 60 year rotation, only a small area is harvested in any year. It is replanted the following winter, and becomes a young managed forest.¹ The record also reflects that in the absence of the Blanchard Strategies, riparian areas, Rec 1762-81, WAC 222-30-021, the minor amount of old-growth on Blanchard, Rec 1890, 9114, 9127, talus slopes, cliffs, balds and caves, Rec 1861-68, potential marbled

¹ Although the state forest practice rules don't limit the rate of harvesting, Resp't Br. at 10, the Policy for Sustainable Forestry adopted by the Board of Natural Resources mandates that in order to ensure intergenerational equity among trust beneficiaries the harvest level on DNR-managed trust land cannot vary up or down more than 25 percent between decades, which effectively limits the harvest. Rec 9109. The Policy for Sustainable Forestry also limits clear cuts to 100 acres, Rec 9117, rather than the 250-acre limit of the Forest Practices rules. WAC 222-30-025(2). WAC 222-30-025(4) requires green-up around harvest units. Contrary to the suggestion, at Resp't Br. p. 13, that Blanchard is at risk because of rain-on-snow events, DNR's HCP precludes harvest on DNR-controlled land unless at least two-thirds of a drainage basin in rain-on-snow zones remains in hydrologically mature forest. Rec 1776.

murrelet stands, Rec 1745-46, and steep or unstable slopes, Rec 1770, WAC 222-16-050(1)(a), would all be deferred or protected from any harvest in the absence of the Strategies. Rec 54.

Example: Respondents' brief at 8 suggests that the Blanchard Strategies will adversely affect the marbled murrelet, relying on 57 Fed. Reg. 45328-45337 (Oct. 1, 1992), portions of which they append to their brief. Respondents say that "to the extent that some of Blanchard's forests are not quite old enough to be suitable for murrelets, they will be soon (if not logged)." Respondents conjure up a forest on the verge of providing old-growth habitat, and a decision by the Commissioner to instead clearcut that "near old-growth." Resp't Br. 9-10, 56, 58-59.

Respondents' brief omits 57 Fed. Reg. page 45334 from its appendix, which says "Forests generally require approximately 200 years to develop old-growth characteristics." The record shows that in Washington State the mean age of marbled murrelet nest stands was found to be 879 years, with a range of 450 years to 1,736 years. Rec 1622. The actual nest trees chosen by murrelets are mammoth. Rec 1623-25.

The record shows that the vast majority of the old-growth on the Blanchard block was removed between 1880 and 1940. CP 295-308. The small amount of remaining old growth is protected by the state's HCP. Rec 1890, 9114, 9127. Thirty-six percent of the Blanchard block was harvested a second time in the decade prior to 1992. Rec 472. Harvests continued through the 1990s. Rec 4317. The substantial majority of the forest is from 31 to 70 years old. Rec 3520, 3570, 3585. "[T]he major

[plant] community types present . . . are the two most common forest communities in the Puget Lowland ecoregion.” Rec 3586. In short, Respondents’ argument that the Blanchard block, if removed from sustained yield forestry, will “soon” support old-growth dependent creatures is romantic, but fictional.

Example: Respondents argue that prior environmental review has not considered cumulative impacts to recreation, Resp’t Br. at 65-67, relying on a snippet in an EIS saying that trails in active harvest areas may be closed, moved, or decommissioned as a result of harvest activities. Resp’t Br. at 67, quoting Rec 5233.

DNR’s responsible official had to consider that snippet in the context of the “summary of effects” two pages earlier in the EIS, describing the opportunities to mitigate adverse impacts when designing individual harvests, the fact that while harvests adversely impact some recreation, it benefits other recreation, and the overall assessment of the EIS that “none of the Alternatives are expected to result in any probable significant adverse environmental impacts to recreation.” Rec 5231.

He also had to consider any effects on recreation based on a more complex reality than Respondents’ fears that “logging great swaths of Blanchard forest undoubtedly will destroy recreational opportunities and the forest’s scenic grandeur.” Resp’t Br. at 54. The record shows that the current 30-50,000 annual recreational users of the Blanchard block are using a managed working forest. Rec 4305-4383. On-going sustained yield management has not dissuaded them from actively using it. The

Blanchard Strategies protect a significant portion of the existing trails. The campgrounds and rock climbing sites are protected by the Blanchard Strategies and the HCP. Rec 45, 4313. Major recreational opportunities, including a hang gliding site and a major view spot, have been created or enhanced by recent harvest. Rec 4313. “While some may see harvest areas as degrading the recreational experience, others prefer the views that harvested areas provide.” Rec 174, 3574-77. The Washington State Parks and Recreation Commission’s comment on the DNS was “The strategies presented in the SEPA checklist and accompanying documents are consistent with State Parks’ mission to provide recreational opportunities while protecting valuable natural resources.” Rec 120. The Pacific Northwest Trail Association, whose volunteers have contributed the most to creation and maintenance of trails on the Blanchard block, commented:

We understand that the DNR has a responsibility to the beneficial owners of the timber, the local school districts, to provide funds for their educational requirements.

As a group, we cannot take a position either in favor of or against logging, but we do support the DNR in its harvesting policies. If there is a decision to perform logging operations in the Blanchard area, then we support the right of the DNR to make that decision. If the trails are directly affected by logging then we ask that we be able to reestablish the trails after the logging is completed.

Rec 8607.

DNR’s responsible official also had to consider that the roads Respondents decry provide critical access for recreational users of state trust forestland. To the extent that DNR policy minimizes the number of

forest roads, that has an adverse impact on public access and recreational users. Timber harvest revenue is DNR's primary source of funds to maintain those roads, and without the revenue, the roads must be abandoned. Rec 8837. He also had to consider that:

Potential effects on recreation may be mitigated on a case-by-case basis during operational planning prior to the initiation of harvest activities. Potential effects may be mitigated by employing harvest systems that minimize potential visual effects and by relocating or rerouting affected recreation facilities, particularly trails, as appropriate.

Rec 5231. It may be that the time will come when part of a trail on Blanchard has to be rerouted. It may be that the time will come when a trail passes through or along the edge of a 100 acre harvest unit. The record shows that the Blanchard block has 20 miles of trails, Rec 4312, out of the 840 miles of recreation trails on DNR-managed lands in Western Washington. Rec 5232. In light of the record, DNR's responsible official was fully entitled to conclude that management of those trails in conjunction with continued sustained yield timber management had no more than a moderate impact.

Example: Respondents portray the Blanchard block, and their concerns, as unique. The reality is that every place DNR manages has equally ardent advocates. DNR is forced to evaluate the lands it manages objectively — and with reference to all its lands. As a DNR analysis said, "When assessing the importance and uniqueness of anything, a relative scale is imperative." Rec 3580.

The record shows that this is not “the largest undeveloped block of land in the rapidly urbanizing Puget lowlands.” Resp’t Br. at 4. DNR’s Tiger Mountain block, two miles east of Issaquah, is 13,500 acres, or three times as large. Rec 4352. Blanchard’s recreational use is important to people in Whatcom and Skagit Counties, but the Capitol Forest in Thurston County, Tahuya State Forest in Mason County, Yacolt Burn State Forest in Skamania County and Tiger Mountain in King County are more used. Rec 5232. DNR’s objective evaluation, when compared to other lands competing for funds under the Natural Area Preserves, RCW ch. 79.70 and Natural Resource Conservation Area, RCW ch. 79.71, programs was that:

1) that Blanchard is locally important to the residents of the immediate area near Bellingham and of Skagit and Whatcom Counties, 2) it has ecological values that deserve protection, all of which can be protected under the Habitat Conservation Plan (1997), 3) the geology underlying Blanchard Forest is not geologically significant or unique in the world, the US or Washington State, and 4) given the natural features of the site, Blanchard Forest would be a low priority for inclusion in the Natural Areas Program.

Rec 163, relying on Rec 3583.

Hopefully these examples demonstrate that this Court must be wary of Respondents’ factual statements throughout their brief. They also illustrate the challenge of review under the “clearly erroneous” standard.

Under the clearly erroneous standard of review, the court does not substitute its judgment for that of the administrative body and may find the decision clearly erroneous only when it is left with the definite and firm conviction that a mistake has been committed. The court

should examine the entire record and all the evidence in light of the public policy contained in the legislation authorizing the decision.

Cougar Mountain Assocs. v. King County, 111 Wn.2d 742, 747, 765 P.2d 264 (1988) (authorities and quotations omitted) (emphasis added). The Court cannot base reversal of a DNS on snippets of the record. It must be based on the entire record and all the evidence. SEPA's mandate that the decision of the agency be given substantial weight, RCW 43.21C.090, recognizes that the expert agency officials are likely to have a fuller grasp of the entire record than a court can ever have, given the court's dependence on advocates to distill the issues.

III. RESPONDENTS' PREMISE THAT DNR CAN REMOVE TRUST LAND FROM SUSTAINED-YIELD PRODUCTION AT WILL IS SIMPLY WRONG.

Both Respondents and the trial court based their argument on the premise that DNR had the option of removing the entire Blanchard block from future sustained yield production, and therefore the SEPA analysis had to assume that none of the Blanchard block ever needed to be harvested again. CP 313-14; Resp't Br. at 40-51. That premise conflicts with DNR's duty of undivided loyalty to the trust beneficiaries and it conflicts with the statutes which define the limits of DNR's authority.

A. The Trustee's Duty Of Undivided Loyalty To the Trust Beneficiaries Does Not Allow It To Simply Take Forestland Out Of Sustained Yield Forestry.

Respondents argue that DNR should have approached the Blanchard Strategies like the U.S. Forest Service approaches management of federal land — treating future revenue from timber harvests as simply

one of many “public goods” that forestland can offer, along with wildlife habitat, recreation and other environmental values. Resp’t Br. pp. 1-3, Issue 2. The distinction between the Blanchard block and federal forestland is that the Blanchard block is held in trust for the benefit of the taxing districts that were forced to surrender the lands as tax base when the state forest board made the decision that the lands were chiefly valuable for the growing and harvesting of timber and thus compelled the lands to be deeded to the state.²

County of Skamania v. State, 102 Wn.2d 127, 132, 685 P.2d 576 (1984) held that the forest board transfer lands, like the lands received from the federal government at statehood, are held in “real, enforceable trusts that impose upon the State the same fiduciary duties applicable to private trustees.” These include a duty to “act with undivided loyalty to the trust beneficiaries, to the exclusion of all other interests.” *Id.* at 134.

[A] trustee bears an unwavering duty of complete loyalty to the beneficiary of the trust, to the exclusion of the interests

² Laws of 1923, ch. 154 (Appendix A) created the state forest board. Section 3 of that Act authorized the forest board to acquire lands which “are chiefly valuable for purpose of developing and growing timber,” and to “seed, plant and develop forests” on the lands. Section 3-b of Laws of 1927, ch. 288 (Appendix B) authorized counties to deed land they took back in tax foreclosures that met the criteria of §3 of Laws of 1923, ch. 154, to the forest board, which would reforest and manage the lands in trust and pay the net revenues from the lands to the counties, to be distributed to the various taxing districts. Laws of 1927, ch. 288 had relatively little impact, because counties and their junior taxing districts were hesitant to give up current tax base for a revenue stream decades in the future. But the Great Depression made it increasingly critical that the cut-over lands be put back into production. CP 168-179. Laws of 1935, ch. 126 (Appendix C) amended the earlier laws to allow the forest board to require lands meeting the criteria of §3 of Laws of 1923, ch. 154, to be deeded to the forest board to be managed in trust, with the net revenues to be paid to the county to distribute to the taxing districts.

of all other parties. . . [T]he rule against a trustee dividing his loyalties must be enforced with uncompromising rigidity. A fiduciary cannot contend that, although he had conflicting interests, he served his masters equally well or that his primary loyalty was not weakened by the pull of his secondary one.

NLRB v. Amax Coal Co., 453 U.S. 322, 329-330, 101 S.Ct. 2789, 69 L.Ed. 2d 672 (1981) (authorities omitted). The state as trustee may, as it has done for years, manage trust land to also benefit other interests in addition to the beneficiaries. What it may not do is to manage trust lands to benefit other interests at the expense of the beneficiaries.³ The interests of the trust beneficiaries — here the county, the Burlington-Edison School District and the Port of Skagit County, which are entitled to share in the net revenue of the lands — must always be primary. Respondents' and the trial court's, CP 314, argument that DNR should have considered the potential that the public at large may find enhanced recreational opportunities to be preferable to generating income for the beneficiaries is not legally relevant to decisions about prudent management of trust assets.

B. DNR Has No Statutory Authority To Take Trust Land Out Of Sustained Yield Management In The Absence Of Compensation Being Paid To The Trust.

DNR is a creature of statute and has only those powers given it by the Legislature or necessarily implied from the powers given. *Kaiser*

³ A trustee may [indeed must], of course, manage the land in compliance with police power laws applicable to all lands. *See* RCW 79.10.320, compelling DNR to manage trust lands on a sustained yield basis “insofar as compatible with other statutory directives.” In its management of trust land, DNR must comply with the Forest Practices Act, RCW ch. 76.09, and the Endangered Species Act, 16 U.S.C. §§ 1531 to 1544, as must any landowner.

Aluminum v. Dep't of Labor & Industries, 121 Wn.2d 776, 854 P.2d 611 (1993). Respondents argue that RCW 79.10.100 to .210 gives DNR the authority to manage a block of trust land for non-income uses, and that therefore DNR was required to evaluate the impact of the Blanchard Strategies as if DNR had no obligation to continue sustained yield management of the land. Resp't Br. at 40-44.

In construing DNR's statutory authority, recognized rules of statutory construction apply. The first is that the word "shall" is mandatory; the word "may" is permissive. "The term 'may' is presumed to be used in a permissive or discretionary sense." *Granite Beach Holdings, LLC v. State Dep't of Natural Resources*, 103 Wn. App. 186, 206-207, 11 P.3d 847 (2000). "The use of the word 'shall' imposes a mandatory duty." *Waste Mgmt. of Seattle, Inc. v. Utilities and Transp. Comm'n*, 123 Wn.2d 621, 629, 869 P.2d 1034 (1994). "The Legislature's use of both 'may' and 'shall' [in a statutory provision] indicates it intended the two words to have different meanings: 'may' being directory - while 'shall' being mandatory." *Erection Co. v. Dep't of Labor & Indus.*, 121 Wn.2d 513, 519, 852 P.2d 288 (1993).

The second is that statutes must be construed as a whole. The Court's fundamental objective is to ascertain and carry out the Legislature's intent. *State ex rel. Citizens Against Tolls (CAT) v. Murphy*, 151 Wn.2d 226, 242, 88 P.3d 375 (2004) (citing *Dep't of Ecology v. Campbell & Gwinn L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2003)). If the statute's meaning is plain on its face, then the court must give effect to

that plain meaning as an expression of legislative intent. *Id.* Under this plain meaning rule, examination of the statute in which the provision at issue is found, as well as related statutes or other provisions of the same act in which the provision is found, is appropriate as part of the determination whether a plain meaning can be ascertained. *Id.* (citing *Campbell & Gwinn*, 146 Wn.2d at 10-12).

Turning to RCW 79.10.100, 79.10.120, 79.10.200, and 79.10.210, relied on by Respondents, all were adopted as part of the 1971 Multiple Use of State-Owned Lands Act (“Multiple Use Act”). Laws of 1971, 1st Ex. Sess. ch. 234 (Appendix D). Section 1 of the Multiple Use Act, now RCW 79.10.100, directs DNR to utilize a multiple use concept in managing state-owned lands where such concept “is consistent with the applicable trust provisions of the various lands involved.”⁴ Section 2, now RCW 79.10.110, defines “multiple use” to be management “to provide for several uses simultaneously on a single tract. . .” Section 3, now RCW 79.10.310, defines “Sustained Yield Plans” to mean “management of the forest to provide harvesting on a continuing basis without major prolonged curtailment or cessation of harvest.” Section 4, now RCW 79.10.320, provides that DNR “shall manage the state-owned lands under its jurisdiction which are primarily valuable for the purpose of growing forest

⁴ In a cleanup of Title 79 adopted in 2004, that provision was amended to read “where such concept . . . is consistent with the applicable provisions of the various lands involved.” Laws of 2004, ch. 199 §210. The change reflects the fact that DNR manages some lands that are not held in trust but which have other restrictions which may make multiple use management inappropriate.

crops on a sustained yield basis insofar as compatible with other statutory directives.” (emphasis added). It was the forest board’s determination that the Blanchard block was “chiefly valuable for purpose of developing and growing timber” that caused the lands to be placed into trust in the first place. *See* sources cited note 2, p. 12 *supra*. Thus a plain reading of the Multiple Use Act makes sustained yield management on the Blanchard block mandatory, just as the state’s duty as a trustee makes it mandatory. The Multiple Use Act codifies the state’s duty of undivided loyalty to the beneficiary. Respondents’ argument about DNR’s statutory authority never mentions RCW 79.10.310 or .320. This Court, however, must read the Multiple Use Act as a whole and give meaning to all its parts.

Within that context of sustained yield management of trust forest land being mandatory (“shall”), Section 5 of the Multiple Use Act, now RCW 79.10.120, provides, “[m]ultiple uses additional to and compatible with those basic activities necessary to fulfill the financial obligations of trust management may include but are not limited to [recreation, special educational or scientific studies, hunting and fishing, etc.]” (emphasis added). Thus while sustained yield management of trust forest land is made mandatory by the Multiple Use Act, the additional uses that the lands can be put to are discretionary with the trustee — subject to the proviso that they be “compatible with those basic activities necessary to fulfill the financial obligation of trust management.” Section 5 continues:

If such additional uses are not compatible with the financial obligations in the management of trust land they may be permitted only if there is compensation from such uses

satisfying the financial obligations.
(emphasis added) Or put another way, in the absence of compensation, the other multiple uses listed in Section 5 are not permitted if they conflict with DNR's financial obligation to the trust.

Because DNR has only those powers given to it by the Legislature, in the absence of compensation being provided, DNR has no power to take land out of sustained yield production to enhance other multiple uses such as recreation, wildlife or aesthetics. The provision of the Blanchard Strategies that harvesting within the core area would be deferred for five years while DNR sought compensation for the trusts, Rec 45-46, only complied with DNR's statutory (and trust) obligations because the core will be reconsidered if that compensation is not provided. Rec. 48-49.

Respondents seem to concede that DNR has no authority to take state forest lands out of trust to make them a park unless the county commissioners request reconveyance for that purpose, which the Skagit County Commissioners haven't done. RCW 79.22.120, Resp't Br. fn. 15 at 50. Respondents claim, however, that the same result can be achieved through a Natural Area Preserve or a Natural Resource Conservation Area. *Id.* The short answer is that DNR has no power to place trust land in a Natural Area Preserve unless "the appropriate state land trust receives the fair market value for any interests that are disposed of," RCW 79.70.040, and no power to transfer trust land to a natural resources conservation area unless "the owner of the trust land receives full fair market value compensation for all rights transferred." RCW 79.71.050.

IV. RESPONDENTS MISSTATE THE LAW WHEN THEY ARGUE THAT AN EIS IS ALWAYS REQUIRED OR THAT CONSIDERATION OF ALTERNATIVES IS REQUIRED AT THE THRESHOLD STAGE UNDER SEPA.

A. SEPA Does Not Require An EIS For a Proposal Unless the Proposal Has Probable Significant Adverse Environmental Impacts.

Respondents both misquote the decision and misstate the law when at Resp't Br. p. 28 they quote *Norway Hill Pres. and Prot. Ass'n v. King County Council*, 87 Wn.2d 267, 273, 552 P.2d 674 (1976) as saying, "In order to achieve [the public policy of SEPA] it is important that an environmental impact statement be prepared in all cases." What *Norway Hill* says is that an EIS must "be prepared in all appropriate cases." (emphasis added) RCW 43.21C.031 makes clear that an EIS is only required for proposals "having a probable significant, adverse environmental impact." (emphasis added) "An environmental impact statement is required to analyze only those probable adverse environmental impacts which are significant." *Id.*

The purpose of the threshold determination process, at issue here, is for the SEPA responsible official to determine whether the proposal in question has any probable significant environmental impacts. *Hayden v. Port Townsend*, 93 Wn.2d 870, 613 P.2d 1164 (1980), *overruled* on other grounds, *SANE v. Seattle*, 101 Wn.2d 280 (1984); WAC 197-11-330 to -360. Here, the proposal is a decision to remove one-third of a block of trust forest land from active harvest for five years, while implementing that proposal "within the existing policy and regulatory framework that [DNR] currently operates for all state trust lands." Rec 22.

Respondents assume that at some point an EIS must be prepared for the management of the Blanchard forest. *See, e.g.*, Resp't Br. at 18, "But DNR did not promise that the future 'environmental review' would consist of an EIS;" Resp't Br. at 21, "DNR's contention that the EIS prepared for those earlier statewide or Western Washington plans include an 'intensive' analysis of Blanchard Forest issues is not supported . . .;" Resp't Br. at 33, "A checklist is not a substitute for the rigorous analysis of environmental impacts and alternatives to the proposal that would be contained in an EIS."⁵ To the contrary, SEPA limits the occasions for which the resources of the public must be devoted to preparation of a full environmental impact statement to those where the proposal at hand has a probable significant adverse environmental impact.

B. No Analysis Of Alternatives Is Required At The Threshold Stage.

Respondents concede, Resp't Br. at 37, that the SEPA checklist which is prepared at the threshold determination stage does not require the proponent to discuss what alternatives may be available to the proposed

⁵ Respondents cite a footnote in *Glenbrook Homeowners Ass'n v. Tahoe Reg'l Planning Agency*, 425 F.3d 611 (9th Cir. 2005) twice, Resp't Br. at 33, 55, for the proposition that an EIS is more comprehensive than an environmental assessment or checklist. That is true, but irrelevant to the decision. The holding of *Glenbrook* was that no EIS was required for the project. Respondents cite *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190 (DC Cir. 1991) twice, Resp't Br. at 29, 52, for the proposition that rigorous adherence to the policy of SEPA is required. Again that is true, but irrelevant to the holding of *Busey* – that the EIS in question was adequate even though it included no consideration of alternatives the plaintiffs wanted to have considered. None of the Respondents' authorities support the proposition that in the absence of the proposal at hand having probable significant adverse environmental impacts, an EIS should be required so that the public and the decision maker can know whether some alternative proposal might have less impact.

action. The checklist is focused on providing a brief, complete description of the action that is proposed, and then describing basic information about the existing environment and the potential impacts of the proposal on that existing environment. WAC 197-11-960. The SEPA responsible official independently reviews that information to make a determination if the proposal is likely to have a probable significant adverse environmental impact. WAC 197-11-330. SEPA only requires consideration of alternatives to “major actions significantly affecting the quality of the environment.” RCW 43.21C.030(1)(c). If the threshold determination is that the action is not a major action significantly affecting the environment, there is no need to discuss alternatives. *San Juan County v. Dep’t of Natural Res.*, 28 Wn. App. 796, 801, 626 P.2d 995, rev. denied, 95 Wn.2d 1029 (1981).

Respondents attempt to bootstrap a requirement for an alternatives analysis, however, by arguing that in order to decide whether the proposal has probable significant adverse impacts, you have to be able to compare the proposal to the other options the proponent may have had available to it. Resp’t Br. at 50-51. That argues for a fundamental change in the nature of SEPA. Respondents would require any proposal, regardless of how environmentally innocuous, to identify other choices that may be more innocuous.

SEPA as written does not demand a particular substantive result. *Moss v. City of Bellingham*, 109 Wn. App. 6, 14, 31 P.2d 703 (2001). It imposes the obligations to prepare an EIS only on major actions with

significant impact. It must be remembered that in the absence of the Strategies, DNR will continue managing the entire Blanchard block for sustained yield production with multiple uses, under the forest practices rules, the state's HCP, the sustainable harvest calculation and the Policy for Sustainable Forestry. Removal of one-third of the Blanchard block from sustained yield forestry has no adverse environmental impacts. Respondents would rather two-thirds, or all was withdrawn, instead of one-third. But if SEPA were construed to require an analysis of the comparative environmental benefits of Respondents' preferred choices, any number of environmentally positive actions would be burdened with the requirement of a full EIS to analyze whether something even better might have been possible. That is not what SEPA as currently written requires. SEPA neither mandates that the most environmentally beneficial alternative be chosen, nor that any analysis of alternatives be provided for proposals that are not themselves major actions, with significant adverse impact on the environment.

V. PHASED REVIEW IS MEANINGLESS IF THE COURTS USURP THE DISCRETION THE SEPA RULES GIVE THE AGENCY TO DETERMINE THE APPROPRIATE POINTS FOR ENVIRONMENTAL REVIEW.

Respondents rely on the Supreme Court's statement in *King County v. Boundary Review Bd. of King County*, 122 Wn.2d 648, 664, 860 P.2d 1024 (1993) (addressing a decision to commit a large area of commercial forest to future urban development through annexation) that decision making without full environmental review "may begin a process

of government action which can ‘snowball’ and acquire virtually unstoppable administrative inertia.” Resp’t Br. at 31. DNR, the Forest Practices Board and the Board of Natural Resources have clearly heeded that warning in the exhaustive environmental review they have conducted at the stage when the forest practices rules governing future forestry were adopted, Rec 211-469, 3591-4304, 7164-8518, when DNR was developing its HCP for the management of all trust lands, Rec 484-1378, 2208-3493, when the Board of Natural Resources adopted the current sustained yield calculation, Rec 4384-5824, and when the Board of Natural Resources adopted the Policy for Sustainable Forestry, Rec 5825-6090, 8608-9074. The state has consistently focused its intensive environmental review at the early stage, where there was the most opportunity for both widespread adverse impact by ill-considered decisions, and for wise regulatory decisions to reduce that impact. WAC 197-11-055(1).

The SEPA rules provide that in making a threshold determination, the SEPA responsible official should determine whether:

(a) All or part of the proposal, alternatives, or impacts have been analyzed in a previously prepared environmental document, which can be adopted or incorporated by reference (see Part Six) . . .

(b) Environmental analysis would be more useful or appropriate in the future in which case, the agency shall commit to timely, subsequent environmental review, consistent with WAC 197-11-055 through 197-11-070 and Part Six.

WAC 197-11-330(2). The rules direct the lead agency to determine the appropriate scope and level of detail of environmental review to coincide

with meaningful points in their planning and decision-making process. WAC 197-11-060(5)(a).

The continuing theme of Respondents' brief is that regardless of all the prior environmental review of the regulations and policies that govern DNR management of the Blanchard block, there must be an EIS at the block level because prior analysis was "general, not site-specific, and there is no mention of any specific tract such as Blanchard Forest." Resp't Br. at 69. Respondents' argument fails on at least three grounds.

First, what Respondents may really be saying is that they disagree with the conclusions reached by the decision-makers after those earlier, programmatic environmental analyses. Each of the earlier EISs included analysis of alternatives that would have been more protective than the alternative chosen, but the expert agencies concluded the greater protection was not required to achieve the statutory mandates and policy objectives of the proposal. Respondents could have challenged those decisions, but did not. As the court said in *Glasser v. Office of Hearing Exam'r*, 139 Wn. App. 728, 738, 162 P.3d 1134 (2007), "Allowing opponents to use a project EIS to collaterally attack previous programmatic policy decisions would disrupt the finality of the decision and eliminate any benefits of phased review." The correctness of the programmatic decisions simply cannot be revisited when those decisions are utilized in specific proposals, or phased review will have the effect of multiplying, not simplifying the SEPA process.

Second, Respondents seem to think that there had to be Blanchard-specific data in the earlier EISs for the SEPA checklist for the Blanchard Strategies to be adequate. What the earlier EISs did was to provide information about the impacts of forestry under a range of conditions found statewide, including the same conditions as are found on the Blanchard block. The Blanchard checklist also referenced a great deal of information that was specific to Blanchard, Rec 3497-3577, 4305-4383; its geology, Rec 3578-81; its plant communities, Rec 3494-96; and its recreational assets and usage, Rec 1379-1544. With that Blanchard-specific information, DNR's responsible official could determine that there is nothing about Blanchard that would lead to environmental impacts outside the range of impacts described in the programmatic EISs.

Third, Respondents simply presume that there must be impacts that escaped detection in environmental analyses at the programmatic or state-wide scale that will pop into view if the analysis is conducted at the block scale. Putting aside collateral attacks on the programmatic decisions, that presumption is unsupported by anything. The whole purpose of the programmatic analysis was to understand the impacts of the programmatic decisions across the range of conditions under which they would be implemented.

Finally, Respondents disparage the checklist's reference to the fact that further SEPA review (although probably not an EIS) would occur as individual harvests or road building projects are planned. *See, e.g.* Resp't Br. at 18. WAC 197-11-330(2)(b) specifically directs the responsible

official to determine whether environmental review would be more useful or appropriate in the future. The record here shows that some of the environmental impacts Respondents are most concerned about, such as recreational and aesthetic impacts, are best mitigated during the design of specific harvest units. *See, e.g.*, Rec 5231. Thus the record fully supports deferring review to the site-specific stage, when real mitigation opportunities are actually presented.

VI. CONCLUSION

DNR and other resource agencies have done a commendable job of using SEPA and NEPA to mitigate the impacts of forestry in Washington through extensive forestry regulations. Thousands of people annually enjoy Blanchard forest's multiple uses, at the same time as it is managed for sustained yield on behalf of the trust beneficiaries. Adoption of the Blanchard Strategies had no probable significant adverse environmental impact on the real world of Blanchard forest. DNR's issuance of a DNS must be sustained by this Court, and the trial court's decision that the DNS was clearly erroneous and an EIS has to be prepared before the Blanchard Strategies can be adopted must be reversed.

RESPECTFULLY SUBMITTED this 19th day of August, 2009.

GRAHAM & DUNN PC

By 
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Attorneys for American Forest Resource
Council and Carpenters Industrial Council

notwithstanding the provisions of any ordinance, to charge such deficit to such utility and provide by ordinance for payment thereof out of the income of such utility.

SEC. 4. If any section or provision of this act should be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Passed the House February 6, 1923.

Passed the Senate March 5, 1923.

Permitted to become a law without the signature of the Governor.

J. GRANT HINKLE,
Secretary of State.

CHAPTER 154.

[H. B. 108.]

STATE FORESTS.

AN ACT relating to and providing for the acquiring, seeding, reforestation and administering of lands for State Forests, and repealing Chapter 169, Laws of 1921, and making an appropriation.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. There is hereby created a State Forest Board to consist of ex-officio, the Governor, Commissioner of Public Lands, Dean of Forestry of the University of Washington, Director of Conservation and Development, and State Supervisor of Forestry. The Governor shall be Chairman and the Commissioner of Public Lands Secretary of said Board. A Vice-Chairman, who shall act during the absence or disability of the Chairman may be selected by said Board from among its members; and an assistant secretary may be designated from among the em-

State forest board, created.

ployes in the office of Commissioner of Public Lands. The members of said Board shall receive no salary or compensation for their services, but shall be reimbursed for expenses incurred in the performance of their duties.

SEC. 2. Within thirty (30) days after the taking effect of this act, the Commissioner of Public Lands shall call a meeting of the Board at which meeting the Board shall adopt such rules and regulations as are deemed advisable and necessary for carrying out the provisions of this act. Special meetings of the Board may be called at any time by the Secretary of the Board, and shall be called at any time upon request of the Chairman, or any two members.

First meeting called.

SEC. 3. The Board shall have the power to acquire in the name of the state, by purchase or gift, any lands which by reason of their location, topography or geological formation, are chiefly valuable for purpose of developing and growing timber, and to designate such lands and any lands of the same character belonging to the state as State Forest lands; and may acquire by gift or purchase any lands of the same character, and reserve to the grantor or donor of such lands all oils, gases, coal, minerals and fossils of every name, kind and description, or either of them, which may be in, under or upon said lands, and the right to enter upon said lands, for the purpose of prospecting for or opening, developing and working mines thereof and taking and removing therefrom the materials reserved, with the right in the board to make such rules and regulations as it deems necessary for the protection of the forest growth thereon. Said board shall have power to seed, plant and develop forests on any lands, purchased, acquired or designated by it as State Forest Lands, and shall furnish such care and fire protection for such lands as it shall deem advisable.

Powers of board.

Lands ac-
quired for
reforestation.

Price to be
paid.

Area.

Utility bonds.

SEC. 4. Said board shall take such steps as it deems advisable for locating and acquiring lands suitable for state forests and re-forestation. No sum in excess of two dollars per acre shall ever be paid or allowed either in cash, bonds or otherwise, for any lands suitable for forest growth, but devoid of such; nor shall any sum in excess of six dollars per acre be paid or allowed either in cash, bonds or otherwise, for any lands adequately restocked with young growth or left in a satisfactory natural condition for natural reforestation and continuous forest production; nor shall any lands ever be acquired by said board except upon the approval of the title by the Attorney General and on a conveyance being made to the State of Washington by good and sufficient deed. No forest lands shall be designated, purchased, or acquired by said board unless the area so designated or the area to be acquired shall, in the judgment of the board be of sufficient acreage and so located that it can be economically administered for forest development purposes. Whenever the board acquires or designates an area as forest lands it shall designate such area by a distinctive name or number, *e. g.*, "State forest No.....", or, "Cascade State Forest".

SEC. 5. For the purpose of acquiring and paying for lands for state forests and reforestation as herein provided the board may issue utility bonds of the State of Washington, in an amount not to exceed two hundred thousand dollars (\$200,000.00) in principal, during the biennium expiring March 31, 1925, and such other amounts as may hereafter be authorized by the Legislature. Said bonds shall bear interest at not to exceed the rate of three and a half per cent per annum which shall be payable annually. Said bonds shall never be sold or exchanged at less than par and accrued interest, if any, and shall mature in not less than a period equal to the time neces-

sary to develop a merchantable forest on the lands exchanged for said bonds or purchased with money derived from the sale thereof. Said bonds shall be known as State Forest Utility Bonds. The principal or interest of said bonds shall not be a general obligation of the state, but shall be payable only from the Forest Development Fund hereinafter created. The Board may issue said bonds in exchange for lands selected by it in accordance with this act, or may sell said bonds in such manner as it deems advisable, and with the proceeds purchase and acquire such lands. Any of said bonds issued in exchange and payment for any particular tract of land may be made a first and prior lien against the particular land for which they are exchanged, and upon failure to pay said bonds and interest thereon according to their terms, the lien of said bonds may be foreclosed by appropriate court action.

Bonds
exchanged
for lands.

SEC. 6. There is hereby created a Forest Development Fund of which the State Treasurer shall be the custodian. The State Treasurer shall keep an account on his records of said fund and of all sums deposited therein and expended or withdrawn therefrom. Any sums placed in said Forest Development Fund shall be kept separate and apart from the funds of the state treasury, and shall not be deemed to be a part of the state treasury funds, but shall be pledged for the sole purpose of paying interest and principal on the bonds issued by the State Forest Board; and any of such bonds shall be a first and prior claim and lien against said fund for the payment of principal and interest. No sums shall be withdrawn or paid out of said fund except upon order of said State Forest Board.

Forest develop-
ment fund.

SEC. 7. All lands acquired or designated by said Board as state forest lands shall be forever reserved from sale, but the timber and other products thereon

Forest lands
reserved
from sale.

may be sold or the said lands may be leased in the same manner and for the same purposes as is authorized for the state granted lands, except that no sale of any timber or other products thereon and no lease of said lands shall be made until ordered and approved by the State Forest Board. All money derived from the sale of timber or other products or from lease, or from any other source from said lands, except where the constitution of this state requires other disposition, shall be disposed of as follows: The Commissioner of Public Lands shall first determine the amount, if any, that has been expended from the Reclamation Revolving Fund of the state treasury in acquiring, caring for, maintaining and administering the lands from which said revenue is derived and until such cost to the Reclamation Revolving Fund is repaid, the whole amount of revenue derived from said lands shall be paid into the Reclamation Revolving Fund of the state treasury; but upon the repayment to the Reclamation Revolving Fund, of the amount that such land has cost the Reclamation Revolving Fund, the remaining, or any subsequent revenues derived from said land shall be paid into the State Forest Development Fund.

Disposition of funds from sale of timber.

SEC. 8. The Supervisor of Forestry, the Supervisor of Reclamation, the Supervisor of Geology and the Commissioner of Public Lands shall, on or before the first day of January of each year report to the State Forest Board any logged off lands, or deforested lands belonging to the state, or held in private ownership coming to their knowledge and observation during the preceding year of a character suitable for state forest lands or reforestation.

Officials to report lands suitable for reforestation.

SEC. 9. The Commissioner of Public Lands shall keep in his office in a permanent bound volume a record of all proceedings of the State Forest Board; and shall also keep a permanent bound

Record of proceedings of board.

record of all forest lands acquired by the state and any lands owned by the state and designated as such by the State Forest Board. The record shall show the date and from whom said lands were acquired; amount and method of payment therefor; the forest within which said lands are embraced; the legal description of such lands; the amount of money expended, if any, and the date thereof, for seeding, planting, maintenance or care for such lands; the amount, date and source of any income derived from such land; and such other information and data as may be required by the Board.

Record of lands.

SEC. 10. There is hereby appropriated from the Reclamation Revolving Fund of the state treasury the sum of twelve thousand dollars (\$12,000.00), or so much thereof as is necessary to pay any costs of administering this act and any interest on bonds that may be issued by said board; said expenditures to be made upon vouchers approved by said Board or a majority of its members. Any sums necessary to pay interest or principal on any bonds issued shall, upon direction of the State Forest Board, be transferred to and paid out of the said Forest Development Fund.

Appropriation \$12,000.00.

SEC. 11. That chapter 169 of the Laws of 1921 is hereby repealed.

Repeals Rem. Comp. Stat. §5812 to 5817; Pierce's Code § 2578-2 to 2578-7.

Passed the House February 26, 1923.

Passed the Senate March 6, 1923.

Approved by the Governor March 19, 1923.

CHAPTER 288.

[H. B. 202.]

STATE FORESTS—REFORESTATION.

AN ACT relating to and providing for the acquiring, seeding, reforestation and administration of lands for state forests, creating a state forest board, defining its powers and duties, providing penalties and amending Sections 1 and 2, of Chapter 154, of the Laws of 1923, and by adding thereto two new sections to be known as sections 3-a and 3-b.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That section 1, of chapter 154 of the Laws of 1923 be amended to read as follows:

Section 1. There is hereby created a state forest board to consist of the governor, commissioner of public lands, dean of forestry of the University of Washington, all ex-officio members, and four electors of the State of Washington, one of whom shall reside west of, and one east of the Cascade range of mountains and two of whom shall be recommended for appointment by the dean of the college of agriculture of the Washington state college and the Washington forest fire association, respectively. The member recommended by the dean of the college of agriculture of the Washington state college shall be an elector engaged in agricultural pursuits and the one recommended by the Washington forest fire association shall be a member of said association.

All members of said board, except the *ex-officio* members shall be appointed by the governor for a term of four years, and until their successors are appointed and accept the appointment. Names of persons recommended by the dean of the college of agriculture of the Washington state college and the Washington forest fire association shall be accep-

APPENDIX B

table to the governor who, in his discretion, may reject any such name or names and request additional recommendations before making appointment.

The first appointment of the member recommended by the dean of the college of agriculture, of the Washington state college and the Washington forest fire association as above provided shall be made within thirty days after this act becomes effective, and shall be for a term expiring January 31, 1928, and the first appointment of the other appointed members of the board shall be for terms expiring January 31, 1930.

In the absence of recommendations as above provided from the dean of the college of agriculture of the Washington state college and/or the Washington forest fire association, the governor shall appoint any other qualified person or persons. In event a vacancy occurs in any appointive membership in said board such vacancy shall be filled by appointment by the governor for the unexpired term, *Provided* That in case of a vacancy in the position held by the person recommended by the dean of the college of agriculture of the Washington state college or in the position held by a member of the Washington forest fire association, the secretary of the board shall forthwith notify the said dean or the association and either the said dean or the said association shall within thirty days recommend a person, satisfactory to the governor and qualified under this act to fill the vacancy, and the governor shall appoint such person to such vacancy. If no name is submitted to the governor within said thirty day period, the governor shall name any person qualified under this act to fill such vacancy. The first appointments to said board shall be made by the governor within sixty days after this act takes effect and the first meeting of said board shall be called by the secretary and be held at the state

Vetoed.

Vetoed.

capitol within ninety days after this act takes effect. The governor shall be chairman of said board. A vice-chairman who shall act during the absence or disability of the chairman may be selected by said board from among its members. The supervisor of forestry of the State of Washington shall be secretary of said board. The members of said board shall receive no salary or compensation for their services, but shall be reimbursed for expenses incurred in the performance of their duties.

Vetoed.

§ 2, ch. 154, L. 1923.

SEC. 2. That section 2, of chapter 154 of the Laws of 1923, be amended to read as follows:

First meeting.

Section 2. Within ninety (90) days after the taking effect of this act, the supervisor of forestry of the State of Washington, shall call a meeting of the board at which meeting the board shall adopt such rules and regulations as are deemed advisable and necessary for carrying out the provisions of this act. Special meetings of the board may be called at any time by the secretary of the board and shall be called at any time upon request of the chairman or any two members.

Special meetings.

§§ 3a, 3b, ch. 154, L. 1923.

SEC. 3. That chapter 154 of the Laws of 1923 be amended by adding thereto two sections to be known as sections 3-a and 3-b as follows:

Natural reforestation of lands acquired by state.

Section 3-a. Any lands acquired by the state under the provisions of chapter 154, Laws of 1923, or any amendments thereto, shall be logged, protected and cared for in such manner as to insure natural reforestation of such lands, and to that end the state forest board shall have power, and it shall be its duty to make rules and regulations, and amendments thereto, governing logging operations on such areas, and to embody in any contract for the sale of timber on such areas, such conditions as it shall deem advisable, with respect to methods of logging, disposition of slashings, and debris, and pro-

Logging operations.

Slashings.

tection and promotion of new forests. All such rules and regulations, or amendments thereto, shall be adopted by majority vote of the state forest board by resolution and recorded in the minutes of the board, and shall be promulgated by publication in one issue of a newspaper of general circulation published at the state capitol, and shall take effect and be in force at the time specified therein. Any violation of any such rules and regulations shall be a gross misdemeanor.

Board adopt rules.

Publication.

Penalty for violating rules.

Section 3-b. Any lands heretofore acquired, or which may hereafter be acquired, by any county through foreclosure of tax liens, or otherwise, may be offered by such county to the State of Washington for forest lands, and if such lands come within the classification of lands described in section 3 of chapter 154, Laws of 1923, the state forest board may select any or all of the lands so offered to become a part of state forest lands; and upon such selection by the state forest board the board of county commissioners is authorized to deed such lands to the State of Washington for state forest lands; and upon such deed being made the commissioner of public lands shall be notified and enter and note upon the records of his office such lands in accordance with the provisions of section 9 of chapter 154, Laws of 1923.

Lands acquired by county.

Deeded to state for state forest lands.

30

Recorded in land office.

Such lands shall be held in trust and administered and protected by the said board under the provisions of chapter 154, Laws of 1923, or any amendments thereto. Any monies derived from the lease of such lands or from the sale of forest products, oils, gases, coal, minerals or fossils therefrom, shall be distributed as follows:

Lands held in trust by board.

Disposition of proceeds from such lands.

(a) The expense incurred by the state for administration, reforestation and protection, shall be returned to the general fund of the state treasury.

Return to general fund for expenses.

Forest development fund.

(b) Ten per centum thereof shall be placed in the forest development fund of the state treasury.

Balance to county.

(c) Any balance remaining shall be paid to the county in which the lands are located to be paid, distributed and pro-rated to the various funds in the same manner as general taxes are paid and distributed during the year of such payment.

Passed the House March 9, 1927.

Passed the Senate March 9, 1927.

Approved by the Governor, with the exception of section 1, which is vetoed, March 21, 1927.

CHAPTER 289.

[H. B. 205.]

POWERS AND DUTIES OF DIRECTORS OF SCHOOL DISTRICTS OF THE SECOND AND THIRD CLASS.

AN ACT relating to powers and duties of directors of school districts of the second and third class in relation to buildings, and amending section 4819 of Remington's Compiled Statutes.

Be it enacted by the Legislature of the State of Washington:

§ 5023, Pierce's Code.

SECTION 1. That section 4819 of Remington's Compiled Statutes be amended to read as follows:

Schoolhouses and teachers' cottages.

Section 4819. The board shall build or remove schoolhouses and teachers' cottages, purchase or sell lots or other real estate when directed by a vote of the district to do so and where the district shall possess a schoolhouse upon a site owned by such district the board may by unanimous vote of all the members thereof purchase or lease additional real estate adjacent to such site; *Provided*, That a schoolhouse, or other building, already built on a site which has been selected by a majority vote of the legal school electors of a district shall not be removed to a new site without a two-thirds vote of the school electors voting at an annual or special elec-

May build or remove.

Purchase and lease real estate.

Change of school site.

tion; nor shall a schoolhouse site that has been selected by a majority vote of the legal school electors, but upon which no schoolhouse has been built, be changed except by a two-thirds vote of the legal school electors voting at an annual or special election as hereinbefore provided.

SEC. 2. That section 4835 of Remington's Compiled Statutes be amended to read as follows:

§ 5039, Pierce's Code.

Section 4835. The board shall build or remove schoolhouses and teachers' cottages, purchase or sell lots or other real estate, when directed by a vote of the district to do so; *Provided*, That a schoolhouse, or other building, already built on a site which has been selected by a majority vote of the legal school electors of a district shall not be removed to a new site without a two-thirds vote of the school electors voting at an annual or special election; nor shall a schoolhouse site that has been selected by a majority vote of the legal school electors, but upon which no schoolhouse has been built, be changed except by a two-thirds vote of the legal school electors voting at an annual or special election as hereinbefore provided.

Build and remove schoolhouses and teachers' cottages; purchase and sell realty.

Election to change site or remove schoolhouse.

Passed the House February 17, 1927.

Passed the Senate March 8, 1927.

Approved by the Governor March 19, 1927.

13

CHAPTER 126.

[H. B. 477.]

STATE FORESTS: REFORESTATION.

AN ACT providing for the acquiring of forest lands by the state forest board and authorizing the issuance and disposition of \$300,000.00 of utilities bonds of the State of Washington; amending section 3-b of chapter 288 of the Laws of 1927 and section 1 of chapter 117 of the Laws of 1933.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That section 3-b of chapter 288 of the Laws of 1927 is hereby amended to read as follows:

Section 3-b. If any lands heretofore acquired, or which may hereafter be acquired, by any county through foreclosure of tax liens, or otherwise, come within the classification of lands described in section 3 of chapter 154 of the Laws of 1923, which can be used as state forest lands and if the state forest board deems such lands necessary for the purposes of this act, the counties shall, upon demand by the state forest board, deed such lands to the said board and said lands shall become a part of the state forest lands; and upon such deed being made the commissioner of public lands shall be notified and enter and note upon the records of his office such lands in accordance with the provisions of section 9 of chapter 154, Laws of 1923.

Such lands shall be held in trust and administered and protected by the said board under the provisions of chapter 154, Laws of 1923, or any amendments thereto. Any monies derived from the lease of such lands or from the sale of forest products, oils, gases, coal, minerals or fossils therefrom, shall be distributed as follows:

Amends § 3-b, ch. 288, Laws of 1927.

County to deed lands to state.

Lands held in trust.

Monies from lease of lands.

APPENDIX C

(a) The expense incurred by the state for administration, reforestation and protection, shall be returned to the general fund of the state treasury. How distributed.

(b) Ten per centum thereof shall be placed in the forest development fund of the state treasury.

(c) Any balance remaining shall be paid to the county in which the lands are located to be paid, distributed and prorated to the various funds in the same manner as general taxes are paid and distributed during the year of such payment.

SEC. 2. That section 1 of chapter 117 of the Laws of 1933 be amended to read as follows: Amends § 1, ch. 117, Laws of 1933.

Section 1. That for the purpose of acquiring, seeding, reforestation and administering lands for forests and of carrying out the provisions of chapter 154 of the Laws of 1923, the state forest board is authorized to issue and dispose of utility bonds of the State of Washington in an amount not to exceed three hundred thousand dollars (\$300,000.00) in principal during the biennium expiring March 31, 1937: *Provided, however,* That no sum in excess of one dollar (\$1.00) per acre shall ever be paid or allowed either in cash, bonds, or otherwise, for any lands suitable for forest growth, but devoid of such, nor shall any sum in excess of three dollars (\$3.00) per acre be paid or allowed either in cash, bonds, or otherwise, for any lands adequately restocked with young growth. 32

Issuance and disposal of utility bonds.

Limitation of amount paid for forest growth.

Passed the House March 10, 1935.

Passed the Senate March 13, 1935.

Approved by the Governor March 20, 1935.

APPENDIX D

WASHINGTON LAWS, 1971 1st Ex. Sess. Ch. 233

Passed the Senate May 4, 1971.
Passed the House May 3, 1971.
Approved by the Governor May 20, 1971.
Filed in Office of Secretary of State May 21, 1971.

CHAPTER 234

[Engrossed Senate Bill No. 314]
MULTIPLE USE OF STATE-OWNED LANDS--
MANAGEMENT OF WATERSHED AREAS--
LAND USE DATA BANK

AN ACT Relating to lands; creating new sections; amending section 32, chapter 255, Laws of 1927 and RCW 79.01.128; amending section 1, chapter 20, Laws of 1963 and RCW 79.44.003; repealing section 1, chapter 175, Laws of 1933, section 1, chapter 159, Laws of 1949, section 1, chapter 301, Laws of 1955 and RCW 79.56.010; and repealing section 1, chapter 73, Laws of 1939 and RCW 79.56.020.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. The legislature hereby directs that a multiple use concept be utilized by the department of natural resources in the management and administration of state-owned lands under the jurisdiction of the department where such a concept is in the best interests of the state and the general welfare of the citizens thereof, and is consistent with the applicable trust provisions of the various lands involved.

NEW SECTION. Sec. 2. "Multiple Use" as used in this 1971 amendatory act shall mean the management and administration of state-owned lands under the jurisdiction of the department of natural resources to provide for several uses simultaneously on a single tract and/or planned rotation of one or more uses on and between specific portions of the total ownership consistent with the provisions of section 1 of this 1971 amendatory act.

NEW SECTION. Sec. 3. "Sustained Yield Plans" as used in this 1971 amendatory act shall mean management of the forest to provide harvesting on a continuing basis without major prolonged curtailment or cessation of harvest.

NEW SECTION. Sec. 4. The department of natural resources shall manage the state-owned lands under its jurisdiction which are primarily valuable for the purpose of growing forest crops on a sustained yield basis insofar as compatible with other statutory directives. To this end, the department shall periodically adjust the acreages designated for inclusion in the sustained yield management program.

NEW SECTION. Sec. 5. Multiple uses additional to and compatible with those basic activities necessary to fulfill the financial obligations of trust management may include but are not limited to:

- (1) Recreational areas;
- (2) Recreational trails for both vehicular and nonvehicular uses;
- (3) Special educational or scientific studies;
- (4) Experimental programs by the various public agencies;
- (5) Special events;
- (6) Hunting and fishing and other sports activities;
- (7) Maintenance of scenic areas;
- (8) Maintenance of historical sites;
- (9) Municipal or other public watershed protection;
- (10) Greenbelt areas;
- (11) Public rights of way;
- (12) Other uses or activities by public agencies;

If such additional uses are not compatible with the financial obligations in the management of trust land they may be permitted only if there is compensation from such uses satisfying the financial obligations.

NEW SECTION. Sec. 6. For the purpose of providing increased continuity in the management of public lands and of facilitating long range planning by interested agencies, the department of natural resources is authorized to identify and to withdraw from all conflicting uses at such times and for such periods as it shall determine appropriate, limited acreages of public lands under its jurisdiction. Acreages so withdrawn shall be maintained for the benefit of the public and, in particular, of the public schools, colleges and universities, as areas in which may be observed, studied, enjoyed, or otherwise utilized the natural ecological systems thereon, whether such systems be unique or typical to the state of Washington. Nothing herein is intended to or shall modify the department's obligation to manage the land under its jurisdiction in the best interests of the beneficiaries of granted trust lands.

NEW SECTION. Sec. 7. The department of natural resources is hereby authorized to carry out all activities necessary to achieve the purposes of this act, including, but not limited to:

- (1) Planning, construction and operation of recreational sites, areas, roads and trails, by itself or in conjunction with any public agency;
- (2) Planning, construction and operation of special facilities for educational, scientific, or experimental purposes by itself or in conjunction with any other public or private agency;
- (3) Improvement of any lands to achieve the purposes of this

1971 amendatory act;

(4) Cooperation with public and private agencies in the utilization of such lands for watershed purposes;

(5) The authority to make such leases, contracts, agreements or other arrangements as are necessary to accomplish the purposes of this 1971 amendatory act: PROVIDED, That nothing herein shall affect any existing requirements for public bidding or auction with private agencies or parties, except that agreements or other arrangements may be made with public schools, colleges, universities, governmental agencies, and nonprofit scientific and educational associations.

NEW SECTION. Sec. 8. The department of natural resources shall foster the commercial and recreational use of the aquatic environment for production of food, fibre, income, and public enjoyment from state-owned aquatic lands under its jurisdiction and from associated waters, and to this end the department may develop and improve production and harvesting of seaweeds and sealife attached to or growing on aquatic land or contained in aquaculture containers, but nothing in this section shall alter the responsibility of other state agencies for their normal management of fish, shellfish, game and water.

NEW SECTION. Sec. 9. The department of natural resources may adopt a multiple use land resource allocation plan for all or portions of the lands under its jurisdiction providing for the identification and establishment of areas of land uses and identifying those uses which are best suited to achieve the purposes of this 1971 amendatory act. Such plans shall take into consideration the various ecological conditions, elevations, soils, natural features, vegetative cover, climate, geographical location, values, public use potential, accessibility, economic uses, recreational potentials, local and regional land use plans or zones, local, regional, state and federal comprehensive land use plans or studies, and all other factors necessary to achieve the purposes of this 1971 amendatory act.

NEW SECTION. Sec. 10. The department of natural resources may confer with other public and private agencies to facilitate the formulation of policies and/or plans providing for multiple use concepts. The department of natural resources is empowered to hold public hearings from time to time to assist in achieving the purposes of this 1971 amendatory act.

Sec. 11. Section 32, chapter 255, Laws of 1927 and RCW 79.01.128 are each amended to read as follows:

In the management of public lands lying within the limits of any watershed over and through which is derived the water supply of any city or town, the department may alter its land management practices to provide water with qualities exceeding standards

established for intrastate and interstate waters by the department of ecology: PROVIDED, That if such alterations of management by the department reduce revenues from, increase costs of management of, or reduce the market value of public lands the city or town requesting such alterations shall fully compensate the department.

((Whenever any state lands except capitol building lands, etc)) The exclusive manner, notwithstanding any provisions of the law to the contrary, for any city or town to acquire by condemnation ownership or rights in public lands for watershed purposes within the limits of any watershed over or through which is derived the water supply of any city or town ((in this state, and such city or town shall desire to purchase or condemn the same, it may do so; and, in case of purchase, it shall have the right to purchase the land with the timber, fallen timber, stone, gravel, or other valuable material thereon without a separate appraisalment thereof)) shall be to petition the legislature for such authority. Nothing in this 1971 amendatory act shall be construed to affect any existing rights held by third parties in the lands applied for.

NEW SECTION. Sec. 12. Nothing in this 1971 amendatory act shall be construed to affect or repeal any existing authority or powers of the department of natural resources in the management or administration of the lands under its jurisdiction.

NEW SECTION. Sec. 13. The department of natural resources may comply with county or municipal zoning ordinances, laws, rules or regulations affecting the use of state lands under the jurisdiction of the department of natural resources where such regulations are consistent with the treatment of similar private lands.

Sec. 14. Section 1, chapter 20, Laws of 1963 and RCW 79.44.003 are each amended to read as follows:

As used in this chapter "assessing district" means:

- (1) Incorporated cities and towns;
- (2) Diking districts;
- (3) Drainage districts;
- (4) Port districts;
- (5) Irrigation districts; ((and))
- (6) Water districts;
- (7) Sewer districts;
- (8) Counties; and

(9) Any municipal corporation or public agency having power to levy local improvement or other assessments which by statute are expressly made applicable to lands of the state.

NEW SECTION. Sec. 15. Nothing in this 1971 amendatory act shall be construed to affect, amend, or repeal any existing withdrawal of public lands for state park or state game purposes.

NEW SECTION. Sec. 16. (1) The department of natural

resources shall design expansion of its land use data bank to include additional information that will assist in the formulation, evaluation, and updating of intermediate and long-range goals and policies for land use, population growth and distribution, urban expansion, open space, resource preservation and utilization, and other factors which shape state-wide development patterns and significantly influence the quality of the state's environment. The system shall be designed to permit inclusion of other lands in the state and will do so as financing and time permit.

(2) Such data bank shall contain any information relevant to the future growth of agriculture, forestry, industry, business, residential communities, and recreation; the wise use of land and other natural resources which are in accordance with their character and adaptability; the conservation and protection of the soil, air, water, and forest resources; the protection of the beauty of the landscape; and the promotion of the efficient and economical uses of public resources.

The information shall be assembled from all possible sources, including but not limited to, the federal government and its agencies, all state agencies, all political subdivisions of the state, all state operated universities and colleges, and any source in the private sector. All state agencies, all political subdivisions of the state, and all state universities and colleges are directed to cooperate to the fullest extent in the collection of data in their possession. Information shall be collected on all areas of the state but collection may emphasize one region at a time.

(3) The data bank shall make maximum use of computerized or other advanced data storage and retrieval methods. The department is authorized to engage consultants in data processing to ensure that the data bank will be as complete and efficient as possible.

(4) The data shall be made available for use by any governmental agency, research organization, university or college, private organization or private person as a tool to evaluate the range of alternatives in land and resource planning in the state.

NEW SECTION. Sec. 17. The following acts or parts of acts are each repealed:

(1) Section 1, chapter 175, Laws of 1933, section 1, chapter 159, Laws of 1949, section 1, chapter 301, Laws of 1955 and RCW 79.56.010; and

(2) Section 1, chapter 73, Laws of 1939 and RCW 79.56.020.

Passed the Senate May 6, 1971.

Passed the House May 5, 1971.

Approved by the Governor May 20, 1971.

Filed in Office of Secretary of State May 21, 1971.

No. 62707-4-I (Consolidated)

**COURT OF APPEALS DIVISION I
OF THE STATE OF WASHINGTON**

CHUCKANUT CONSERVANCY and NORTH CASCADES
CONSERVATION COUNCIL,

Respondents,

v.

WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES
acting through WILLIAM WALLACE, Northwest Regional Manager, and
other officials,

Petitioners,

and

AMERICAN FOREST RESOURCE COUNCIL, CARPENTERS
INDUSTRIAL COUNCIL, and SKAGIT COUNTY, a municipal
corporation of the State of Washington

Petitioners-Intervenors,

and

CONSERVATION NORTHWEST,

Respondent-Intervenor.

FILED
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STATE OF WASHINGTON
2009 AUG 19 PM 3:55

DECLARATION OF SERVICE

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Council and Carpenters Industrial Council

DECLARATION OF SERVICE

The undersigned hereby declares: On August 19th, 2009, a true and correct copy of the foregoing **Reply of American Forest Resource Council and Carpenters Industrial Council** and this Declaration of Service were served in the manner described below on the following counsel of record:

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Signed at Seattle, Washington this 19th day of August, 2009.


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