For Forested State Trust Lands
A Report to the
Board of Natural Resources

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DNR’s Trust Mandate

DNR’s “trust mandate” - fiduciary obligation to manage state trust lands for the benefit of:

- Federal Granted Lands Beneficiaries, including Common Schools, Universities, and certain institutions
- Counties
DNR’s Trust Mandate

As manager of state trust lands, DNR has legal fiduciary responsibilities under the State Enabling Act and Constitution that includes duties to:

- Generate revenue and other benefits for each trust, in perpetuity
- Preserve the corpus of the trust
- Exercise reasonable care and skill
- Act prudently to reduce the risk of loss for the trusts
- Maintain undivided loyalty to beneficiaries
- Act impartially with respect to current and future beneficiaries
Washington Supreme Court Decision: *Skamania County v. State*

- **Duty of Undivided Loyalty**

  “It may not sacrifice this goal to pursue other objectives, not matter how laudable those objectives may be.”
State Trust Lands Management

- DNR must comply with:
  - Federal Laws, such as:
    - Endangered Species Act (ESA)
  - State Laws, such as:
    - Forest Practices Act and Applicable Rules
    - State Environmental Policy Act (SEPA)
Endangered Species Act

- **Purpose** is to protect and recover imperiled species and the ecosystems upon which they depend

- **Species may be listed** as endangered or threatened on the basis of biological status and threats to existence
Endangered Species Act

Once listed, endangered and threatened species and their habitats are protected by prohibiting the “take” of listed animals, except under Federal permit.

- Take is “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.”

- “Harm” is an act which actually kills or injures wildlife. This may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.
Endangered Species Act

- State of Washington is required to comply with ESA in its land management activities

- Compliance tools include Habitat Conservation Plans and Safe Harbor Agreements, as well as take avoidance
State Trust Lands Management

- **Habitat Conservation Plan**
  - Section 10 of ESA authorizes a landowner to negotiate a habitat conservation plan (HCP) to minimize and mitigate any incidental impact to threatened and endangered species.
  - HCP may allow the landowner to develop habitat at the landscape level.
  - Voluntary by landowner, but required if landowner wants an Incidental Take Permit.
HCP is expected to allow DNR to better fulfill its duties as a trust manager by providing greater:

- Certainty in management
- Stability in harvest levels
- Flexibility in operations
Environmental & Fiduciary Responsibilities

Environmental Obligations

Option 1

Option 2

Option 3

Option 4

Trust Mandate

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SHC and MMLTCS Concurrent Process

- **Advantages**
  - Quickest way to complete all planning efforts
  - Public comment informed by both processes
  - Incorporates financial analysis for MM in SHC

- **Risks**
  - Project timelines depend on each other
  - Many interrelated decisions may be confusing
MMLTCS Before SHC

- **Advantages**
  - One USFWS approved MMLTCS would analyzed in SHC
  - MMLTCS may get done more quickly

- **Risks**
  - Increases overall time to complete the projects
  - BNR may make MMLTCS decision without complete information