

Encumbered Lands

Encumbered Lands Proviso 2022

Prepared by:
Washington State Department of Natural Resources

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WASHINGTON STATE DEPARTMENT OF
NATURAL RESOURCES

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Acknowledgments and Primary Contacts

Encumbered Lands Proviso Working Group

- Matt Comisky, Washington State Manager, American Forest Resource Council (AFRC)
- Travis Dutton, Policy Analyst, Washington State Association of Counties (WSAC)
- The Honorable Heidi Eisenhour, Commissioner, Jefferson County
- The Honorable Lee Grose, Commissioner, Lewis County
- The Honorable Lisa Janicki, Commissioner, Skagit County
- Paul Jewell, Policy Director, Washington State Association of Counties (WSAC)
- The Honorable Randy Johnson, Commissioner, Clallam County
- The Honorable Tom Lannen, Commissioner, Skamania County
- The Honorable Lisa Olsen, Commissioner, Pacific County
- The Honorable Lee Tischer, Commissioner, Wahkiakum County
- The Honorable Dennis Weber, Commissioner, Cowlitz County

Primary DNR Contacts

- Brian Considine, Legislative Director, brian.considine@dnr.wa.gov
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Executive Summary

Several traditional timber counties in Washington state rely on timber revenue from state trust lands managed by the Washington State Department of Natural Resources (DNR) to sustain public services and to provide benefits back to their communities. These counties experienced a disproportionate economic impact from obligations under the Endangered Species Act (ESA) for DNR to set aside habitat for the northern spotted owl, marbled murrelet, and many populations of salmon and steelhead.

Many forested lands that once generated revenue to fund the counties are now “encumbered” by restrictions to harvest due to ESA obligations and are no longer able to produce revenue. Since 2011, three of these counties – Pacific, Skamania, and Wahkiakum – have relied on legislative capital funding through the State Forest Land Replacement Program to pay for essential community services that were once paid for with timber revenue. Currently, these small county governments would be unable to sustain public services without ongoing biennial legislative appropriations.

The final 2022 State Supplemental Operating Budget identified five counties – Pacific, Skamania, Wahkiakum, Jefferson, and Clallam – and allocated \$10 million for DNR to acquire replacement forestland after a working group created criteria and procedures to distribute that funding. DNR worked with the Washington State Association of Counties (WSAC) to define a process by which land selection will occur, built a list of guidance documents for the process, and discussed statutory changes to create more flexibility for land acquisitions and revenue-sharing.

Changes in statute would allow additional counties with encumbrances on their state forestlands to access legislative funding, and further work is needed to ensure a steady stream of revenue to counties with encumbrances on their state forestlands.

Introduction

During the 2021 legislative session, the Washington State Legislature passed a budget proviso that directed DNR to partner with WSAC to develop guidelines for acquiring new state forestlands for five counties that have encumbrances that impact the ability to harvest timber on a portion of the state forestlands within those counties. The proviso was included in the final 2022 State Supplemental Operating Budget and appeared on page 570, Section 310, and reads as follows:

(48) (a) \$10,000,000 of the general fund–state appropriation for fiscal year 2023 is provided solely for the department to purchase state forestland, as described in RCW 79.22.010, to begin a program to benefit counties who have lost revenue from existing state forestlands encumbered by wildlife species listed as endangered or threatened by the federal endangered species act. The department must transfer the appropriated amount into the natural resources real property replacement account in accordance with RCW 79.17.210 to purchase state forestlands.

(b) Of the amounts provided in this subsection:

(i) \$5,000,000 must be used to purchase state forestland for the benefit of Clallam county and Jefferson county; and

(ii) \$5,000,000 must be used to purchase state forestland for the benefit of Pacific county, Skamania county, and Wahkiakum county.

(c) The purchased forestlands shall be owned and managed by the department as state forest transfer lands and shall be placed in trust for the benefit of the counties. The purchase of these state forestlands is not limited to lands within the geographic bounds of the counties listed in this subsection.

(d) The purchase of state forestlands must be made in concurrence with the Washington state association of counties before a transaction is finalized.

(e) The department shall work with the Washington state association of counties to determine if any statutory changes are necessary to address issues regarding beneficiary revenue distribution or any other fiscal matters related to state forestlands. The department and

the Washington state association of counties shall report to the legislature on any needed statutory changes by December 31, 2022.

This proviso is built on many years of past work done by the Legislature, state agencies, counties, and working groups that have attempted to find both short-term and long-term solutions to the problem of encumbered state forestlands.

History of Encumbered Lands

Endangered Species Act

In 1973, the federal government established the Endangered Species Act (ESA), a federal law that set up processes by which plant or animal species can be designated as threatened or endangered. The ESA prohibits take of these species without a permit. (Take is broadly defined as an actions that harass, harm, pursue, hunt, wound, kill, trap, capture, or collect a federally listed threatened or endangered species, or actions that attempt to do so.) Take may include disturbance of the listed species, their nesting sites, or habitat.

In the early 1990s, the northern spotted owl, marbled murrelet, and numerous salmonid species were federally listed. These listings created significant land management challenges in western Washington to ensure DNR was in compliance with the ESA.

Habitat Conservation Plan

In 1997, DNR adopted its State Trust Lands Habitat Conservation Plan (HCP). This plan is an agreement with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding how land management activities will be conducted to comply with the ESA. In exchange for expanded habitat protections by DNR, it permits "incidental take" of listed species, or take that might occur as DNR conducts its work. The HCP covers approximately 1.8 million acres and may span from 70 to 100 years.

The Original Encumbered Counties

Wahkiakum, Pacific, and Skamania counties have experienced a disproportionate economic impact for obligations under the ESA. In the past, these counties relied on forestry revenue from trust lands to sustain basic public services and to provide benefits back to their communities. An estimated \$285 million in State Forestland assets that formerly produced revenue for Pacific, Wahkiakum, and Skamania counties are encumbered due to Endangered Species Act obligations, as timber can no longer be harvested from these lands. These counties rely on legislative capital funding to pay for essential community services that were formerly funded with timber revenue.

State Forestlands Replacement Program

The Legislature established the State Forestlands Replacement Program in 2009 (SSHB 1484) cooperatively with DNR, the Washington Association of Counties, and county beneficiaries. The statute aimed to assist small (<25,000 residents), resource-dependent counties. The current process begins with DNR submitting a legislative capital funding request at the beginning of the biennium. Past requests have ranged from \$6 million to \$9 million in 2022.

When funding is provided to DNR, the agency uses it to buy out the encumbered trust lands, moving them to conservation status and providing a portion of the revenue to the counties as if the timber were sold and harvested. The land value is held by DNR in the Park Land Trust Revolving Account to purchase replacement land. This funding process provides necessary short-term funding to the counties that will help to pay for immediate operational expenses such as law enforcement, district and superior courts, emergency services, roads, schools, and other basic local services. Ongoing capital funding requests to support these small counties are essential until a long-term solution is in place.

In June 2012, the Legislature unanimously passed House Bill 2329, which recognized the effects of state forestland encumbrances on small, timber-dependent counties as well as the difficulty in finding productive forestlands for purchase in each county, and created a state forestland pool that could be used by and benefit all three counties. This allowed for some flexibility for DNR to purchase land in one county that may benefit another county or all counties in the pool. This mechanism has not yet been used.

Encumbered Lands Steering Committee

In August 2017, the Legislature provided \$60,000 to DNR in ESSB 6095 Sec. 3059 to “assess options to replace timber trust revenues for counties with populations of twenty-five thousand or fewer that are subject to timber harvest deferrals greater than 30 years due to the presence of wildlife species listed as endangered or threatened under the federal endangered species act.” The bill directed the department to “consult with the qualifying counties and other stakeholders in conducting the assessment” and to “report the findings of its assessment, including recommendations for addressing decreased revenues from state forestlands and improving the forest products economy in the qualifying counties.” DNR formed a project-specific committee to develop a comprehensive alternative to the series of biennial State Forest Land Replacement Program budget requests that DNR has submitted since 2011.

The Encumbered Lands Steering Committee comprised county commissioners from Pacific, Wahkiakum, and Skamania counties as well as representatives of Common School Trust beneficiaries, the Columbia Land Trust, and the forest products industry. The Department’s deputy supervisor for state uplands chaired the committee. The committee worked with the Department for several years to identify potential long-term solutions that could solve much of the total problem through the combined efforts of the Legislature and DNR. A comprehensive report of the assessment findings and recommendations that fulfilled the state’s responsibilities to trust beneficiaries while alleviating disproportionate economic impacts to rural, resource-dependent communities was delivered to the Legislature in January 2019. The committee created a proposal for a pilot project that would initiate a long-term solution for the three encumbered lands counties that would restore a lost revenue stream for those counties, diversify investments to increase returns, and reduce dependency on legislative capital funding.

Encumbered Lands Proviso Working Group

As was directed by the proviso, Washington State Association of Counties (WSAC) convened the Encumbered Lands Proviso working group in August 2022 with WSAC Policy Director Paul Jewell chairing the committee. The remainder of the working group included staff from WSAC; county commissioners from Whatcom, Wahkiakum, Skagit, Skamania, Pacific, Lewis, Jefferson, Cowlitz, and Clallam counties; a representative from the American Forest Resource Council; and DNR staff. Over the course of nine meetings, the working group created multiple policies, procedures, and guidelines concerning encumbered lands. Specific guidance for DNR when selecting parcels to acquire with the \$10 million legislative appropriation for encumbered lands parcels in accordance with Section 310 (48) (d) of the 2022 State Supplemental Operating Budget (ESSB 5693 (2022)) are included in the:

1. **Encumbered Lands Replacement Lands Purchase Criteria.** Outlines the criteria that WSAC want DNR to consider when finding replacement lands.
2. **Encumbered Lands Purchase Concurrence Procedure.** DNR must achieve concurrence with WSAC before any purchase utilizing this appropriation is finalized.

Additional policies, recommendations, and strategies are meant to guide the future of the encumbered lands program:

1. **Encumbered Lands Out-of-County Forestland Replacement Policy.** Implements a cooperative approach for greater flexibility when replacing encumbered State Forestlands. DNR should have the ability to consider acquisitions outside of the boundaries of the beneficiary tax districts if it proves difficult to acquire replacement forestlands within the same taxing districts or even the same county as the encumbered State Forestlands.

2. **Encumbered Lands Replacement Forestland Trust.** Recommendation from WSAC on establishing a new trust structure. Difficulties acquiring replacement lands to add to the trust may require the creation of a new trust structure that is more flexible and allows counties to collaborate on purchasing replacement lands and distributing trust benefits.
3. **Encumbered Lands Replacement Beneficiary Revenue Disbursement Policy.** To successfully replace encumbered State Forestlands, counties need flexibility in where the replacement forestlands are purchased. This may include strategies that allow purchases outside current beneficiary taxing districts, including in other counties. Counties may also pool the revenues from replacement State Forestlands for beneficiaries, if appropriate. In such instances, the income from replacement State Forestlands will need to be directed to the beneficiaries affected by the existing encumbered State Forestlands.
4. **Encumbered Lands Counties Operations Revenue Needs Policy.** WSAC will continue to support funding from the state providing financial support for Pacific, Skamania, and Wahkiakum Counties until sufficient replacement forestlands have been acquired to provide enough annual revenue to offset such appropriations fully. WSAC also supports annual funding from the state of \$1,260,577 million to be divided among the 14 counties impacted by the 2019 HCP Amendment according to each county's average annual loss.
5. **Encumbered Lands Replacement Communications Strategy.** WSAC agrees to help others understand the problem and the potential solutions and to work collaboratively with partners to meet the program's vision. This strategy includes maintaining the Encumbered Lands Working Group, aligning its statewide policy efforts to implement the encumbered lands replacement program with the actions of the Trust Land Transfer workgroup to update the Trust Land Transfer program as requested by the State Legislature, and supporting the DNR in developing legislative proposals to authorize the implementation of the encumbered lands replacement program

Present Situation

Now that a process framework has been developed between WSAC and DNR, the department is exploring available lands to acquire using the \$10 million designated in the proviso that will benefit the five counties included. Department transactions staff are examining properties in accordance with the criteria that was passed and approved by the WSAC Board of Directors. DNR's region staff are also actively seeking properties that could fulfill those same criteria. DNR will continue to work with WSAC according to the process put in place by the policies and procedures created by the Encumbered Lands Proviso group.

The ability of the department to acquire sufficient working forestlands to provide sustainable, reliable funding for counties with encumbrances on their state forestlands remains elusive unless the recommendations advanced by the Encumbered Lands Steering Committee are adopted. At this time, there is no sustainable method to increase revenue generation for these counties outside of a biennial ask for funding from the Legislature under the State Forest Land Replacement Program.

In addition, at least one county that relies on the State Forest Land Replacement Program is in danger of passing the limit on population referenced in statute. According to the latest United States Census Bureau data, as of July 1, 2021, Pacific County has an estimated population of 23,948 people. With a current population growth trend of 2.5 percent per year, Pacific County will pass the 25,000-person population threshold between 2023 and 2024.

Recommendations

In order to establish a more robust and reliable program to assist counties with encumbered state forestlands, statutory changes need to be made to provide DNR increased flexibility to purchase replacement trust lands, and counties need a means to share revenue. DNR is recommending the following changes and adjustments that will allow additional counties to qualify for assistance in the replacement of encumbered state forestlands.

- **RCW 79.22.140 (State forestland pool).** Removing language defining the population limit of 25,000 or less will allow compensation for counties in need that do not meet the population threshold. This statutory change is also needed to make the Trust Land Transfer Revitalization program successful.
- **Chapter 79.22 RCW Acquisition, Management, and Disposition of State Forestlands.** Change existing statutes to enable DNR to purchase replacement lands in another county than the county in which the transfer is located. Revenue from these replacement lands would be directed to the county in which the transfer is located.
- **Replacement Forestland Trust.** Creating a new trust for revenue pooling and distribution would allow counties flexibility to share revenue.

References

- [Encumbered Lands Legislative Report, 2019](#)
- [Encumbered Lands Pilot Project Factsheet, 2022](#)

Appendix A: WSAC Proviso Report

Encumbered Lands Proviso Working Group Recommendations Report

November 14, 2022



Introduction

Counties are beneficiaries of approximately 600,000 acres of forestland managed by the Department of Natural Resources. Called State Forestlands, they provide revenue that supports local and state schools and county services like roads, law enforcement, libraries, fire districts, ports, hospitals, and others. Income is derived through harvesting forest products like commercial timber and other activities like long and short-term leases for communications systems, mining, and grazing.

Many State Forestlands that once generated funding for counties are now “encumbered” by restrictions to harvest due to the Federal Endangered Species Act (ESA) and other obligations. They no longer produce revenue.

In 1997, DNR adopted the State Trust Lands Habitat Conservation Plan (HCP). This long-term plan outlines how DNR will provide habitat for species such as the northern spotted owl, marbled murrelet, salmon, and bull trout. The HCP enables DNR to comply with the Federal ESA requirements while providing great certainty, flexibility, and stability in generating revenue for counties by setting aside lands and agreeing not to harvest them while allowing active forest management, including commercial timber harvest, on other grounds not explicitly designated for habitat.

In 2018, DNR submitted an amendment to the HCP to adopt a long-term conservation strategy (LTCS) for the marbled murrelet. The marbled murrelet, a pigeon-sized seabird that lives along the Pacific coast of North America, is federally listed as threatened in Washington, Oregon, and California. An interim strategy to protect the marbled murrelet was included in the original HCP but never updated.

Once DNR identified the preferred alternative for the marbled murrelet LTCS (2019 HCP Amendment), WSAC became concerned about its evaluation of the economic impacts. We provided written and verbal comments that we did not believe DNR’s economic impact evaluation accurately captured all of the likely effects on local government revenues and the broader direct, indirect, and induced effects on county economies.

To address the economic analysis deficits, WSAC solicited DNR and counties for funding to conduct a more thorough study. Mason Bruce & Girard were retained to perform the review, and a steering committee was formed to direct the work. The final report was completed and published in August 2021. Unfortunately, WSAC’s study was conducted too late to impact the adoption of the amendment to the HCP, which was finalized in December 2019.

During the 2022 Legislative Session, WSAC requested a joint legislative committee work session with the Senate Committee on Agriculture, Water, Natural Resources, & Parks and the House Committee on Rural Development, Agriculture, & Natural Resources. We presented our marbled murrelet LTCS economic impact analysis, and a panel of stakeholders answered questions from committee members. After the work session, WSAC was asked to draft a budget proviso requesting funding to purchase replacement timberlands in Clallam, Jefferson, Pacific, Skamania, and Wahkiakum Counties. Senator Kevin Van De Wege (24th Legislative District) submitted the proviso for legislative consideration. The proviso was included in the final 2022 State Supplemental Operating Budget.

The proviso appeared on page 570, Section 310, and reads as follows:

(48) (a) \$10,000,000 of the general fund–state appropriation for fiscal year 2023 is provided solely for the department to purchase state forestland, as described in RCW 79.22.010, to begin a program to benefit counties who have lost revenue from existing state forestlands encumbered by wildlife species listed as endangered or threatened by the federal endangered species act. The department must transfer the appropriated amount into the natural resources real property replacement account in accordance with RCW 79.17.210 to purchase state forestlands.

(b) Of the amounts provided in this subsection:

(i) \$5,000,000 must be used to purchase state forestland for the benefit of Clallam county and Jefferson county; and

(ii) \$5,000,000 must be used to purchase state forestland for the benefit of Pacific county, Skamania county, and Wahkiakum county.

(c) The purchased forestlands shall be owned and managed by the department as state forest transfer lands and shall be placed in trust for the benefit of the counties. The purchase of these state forestlands is not limited to lands within the geographic bounds of the counties listed in this subsection.

(d) The purchase of state forestlands must be made in concurrence with the Washington state association of counties before a transaction is finalized.

(e) The department shall work with the Washington state association of counties to determine if any statutory changes are necessary to address issues regarding beneficiary revenue distribution or any other fiscal matters related to state forestlands. The department and the Washington state association of counties shall report to the legislature on any needed statutory changes by December 31, 2022.

Implementing the proviso raised significant issues and concerns directly and indirectly impacting counties. WSAC created a working group to address the various problems, assist DNR in drafting the legislative report required by the proviso, and develop recommendations for the proviso's implementation to be considered by the Board of Directors. The working group was convened by staff and included members from each of the five counties named in the proviso, three other members from counties likely to be impacted by forestland purchases, two representatives from DNR, and one representative from the American Forest Resources Council. Only WSAC members voted on the final recommendations.

Encumbered Lands Working Group Objectives and Issues Identification

The working group members met nine times, beginning in August 2022. To better define the scope of their task and how to complete it, they agreed upon four specific objectives. They adopted the following:

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1. Draft recommendations detailing how to advise DNR on forestland purchases, including establishing land acquisition priorities.
 2. Identify any statutory changes needed to authorize the encumbered lands program.
 3. Develop a recommendation for the future of the program created by the proviso.
 4. Create a process for revenue disbursement from purchased forestland and identify any necessary or recommended statutory changes.

The working group also identified nine specific issues that needed to be addressed to meet their objectives and implement the proviso. Those issues were:

1. How will WSAC concur with DNR's forestland purchase proposals?
2. Should WSAC create and recommend a criteria/principles/preferences statement for DNR's use in selecting forestlands for purchase consideration?
3. How will revenue disbursements from the replacement lands be handled by Clallam, Jefferson, and Pacific Counties if replacement lands are not in the same taxing districts?
4. Should the participating counties consider forming a separate trust structure for replacement lands? If so, what does that look like?
5. Should "out-of-county" lands be considered for purchase as replacement lands? If so, what other related issues need to be considered?
6. Should WSAC continue pursuing funding for encumbered land replacements according to the framework outlined in the proviso? Should WSAC seek to expand the applicability to other impacted counties? Should the framework be changed, and if so, how? Are there different strategies the workgroup believes should be pursued as longer-term solutions that should be noted (like federal land swaps, etc.)?
7. Do the statutorily designated encumbered lands counties (Pacifica, Skamania, and Wahkiakum) want to continue to be included in this type of encumbered lands funding program or revert to their previous strategy?
8. Are there ongoing revenue needs for certain counties that need a solution that replacement forestland acquisitions in the short-term won't address? If so, what could that solution be?
9. This is a difficult issue to understand, with many layers of complexity. A communications strategy should be developed to help legislators and others understand the problem that needs to be solved.

Development of Recommended Policies

Once the working group adopted its objectives and identified the issues that needed to be addressed, subsequent meetings focused on developing policy recommendations for each issue and meeting the group's objectives. Policy proposals were developed by staff, provided in advance of scheduled meetings, and openly discussed and debated by working group members. All working group members provided input. The final policy adoptions were made with consensus, and only WSAC members were allowed to vote on approval.

The working group developed the following policies for consideration by the WSAC Board of Directors:

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1. Replacement Lands Purchase Criteria
 2. Replacement Lands Concurrence Procedure
 3. Out-of-County Replacement Forestland Policy
 4. Replacement Forestland Trust
 5. Replacement Forestland Revenue Disbursement Policy
 6. Operations Revenue Needs Policy
 7. Encumbered Lands Communications Strategy

Each recommended policy includes a clear purpose statement followed by an explanation of the policy details. All recommended policies are attached to this report for reference as Appendix A.

The Future of the Encumbered Lands Program

Working Group members also considered the future of the encumbered lands program as it has been impacted by the proviso and the recommended policies developed. Initially, the statutorily designated encumbered lands counties (Pacific, Skamania, and Wahkiakum) expressed significant concern and frustration with the proviso as it related to their multi-year effort for funding to purchase replacement forestlands. While each of the three counties admitted remaining caution, all have agreed to adopt the policies developed and recommended by the working group and to work together with other WSAC members for a comprehensive solution.

Other working group members also expressed a willingness to continue moving forward with the encumbered lands program as a potential solution to declining timber revenues. It was universally said that members are wary of whether the legislative changes needed to implement the policies fully will be enacted as envisioned. Efforts must be focused on providing information to key legislators to share the group's vision for the program's operation and to develop support.

Many of the policies developed by this Working Group are also being considered by DNR's Trust Land Transfer workgroup, which the Legislature requested. That group is working to modernize the state's Trust Land Transfer program. DNR has informed us that it intends to develop a legislative proposal to implement recommendations from the TLT workgroup. It will include legislative proposals to enable the implementation of our recommended policies.

Requested Action

The Encumbered Lands Working Group requests that the WSAC Board of Directors adopt this report and approve the recommended policies that have not been previously considered.

The WSAC Board of Directors approved the Replacement Lands Criteria and the Replacement Lands Concurrence Procedure Policies at the September 22, 2022, meeting in Ellensburg (Resolution 2022-27). However, subsequent discussion by the Working Group members included a recommended

amendment to the Replacement Lands Criteria Policy. The Working Group requests approval of the updated policy proposal.

Acknowledgments

The Encumbered Lands Proviso Working Group would like to thank the Washington State Legislature for appropriating \$10 million to replace encumbered State Forestlands. We thank the DNR for their support in providing background information and assistance in developing and evaluating the policy proposals. We also thank the American Forest Resources Council (AFRC) for its support and service. Finally, we express gratitude for the work and commitment of the Working Group members, including Commissioner Heidi Eisenhour (Jefferson County), Commissioner Lee Grose (Lewis County), Commissioner Lisa Janicki (Skagit County), Commissioner Randy Johnson (Clallam County), Commissioner Tom Lannen (Skamania County), Commissioner Lisa Olsen (Pacific County), Commissioner Lee Tischer (Wahkiakum County), Commissioner Dennis Weber (Cowlitz County), Commissioner Frank Wolfe (Pacific County) Duane Emmons (DNR), Sarah Ogden (DNR), and Matt Comiskey (AFRC).

The best time to plant a tree was 20 years ago. The second-best time is now. – Chinese Proverb

Appendix A

ENCUMBERED LANDS REPLACEMENT ACQUISITION CRITERIA POLICY

Purpose: The purpose of this policy is to clearly outline the criteria we want DNR to consider when utilizing the funding provided in Section 310 (48) (d) of the 2022 State Supplemental Operating Budget (ESSB 5693 (2022)). That proviso appropriated \$10 million to the Department of Natural Resources (DNR) to purchase forestland to begin a program to benefit counties that have lost revenue from existing state forestlands encumbered by ESA-listed and threatened species from which timber can no longer be harvested.

When considering purchases of forestland to replace existing encumbered state forestland, WSAC requests the DNR consider the following (in order or priority):

1. Seek to replace encumbered state forestlands by prioritizing acquiring lands in the following locations, in the following order:
 - a. In the same county and taxing districts; then
 - b. In the same county; then
 - c. In the same counties where funding is intended to provide benefits as defined in the proviso (Jefferson and Clallam or Pacific, Skamania, and Wahkiakum).
2. Consider private timberlands with compatible underlying and surrounding land uses at risk of conversion to non-timber uses as some of the most desirable for acquisition.
3. Select replacement forestlands with the highest possible soil quality.
4. Target replacement forestlands with the highest possible net operable acres and minimal occurrences of imperiled and critically imperiled species or communities, steep slopes, riparian zones, and other pressures that reduce operability.
5. Prioritize lands with the highest possible management and operational flexibility. Considerations should include past silviculture practices, surrounding land uses, proximity to markets, etc.
6. Favor lands adjacent to existing DNR land holdings.
7. For non-forestland purchases to be swapped with Common School trust forestland holdings in accordance with the encumbered lands program developed for Pacific, Skamania, and Wahkiakum Counties, lands that meet the priorities of the federal land trust beneficiaries.
8. Prefer lands that provide overall acreage gains.
9. Pursue lands with low recreation pressure.
- 10. WSAC members strongly favor swapping unencumbered federal forestlands with encumbered State Forestlands as a priority for replacing encumbered lands. WSAC is eager to partner with the DNR in exploring federal land swaps and the willingness of the USFS and other federal agencies to engage in this strategy.**

ENCUMBERED LANDS PURCHASE CONCURRENCE PROCEDURE

Purpose: The purpose of this procedure is to implement a process to comply with the requirements of the proviso in Section 310 (48) (d) of the 2022 State Supplemental Operating Budget (ESSB 5693 – 2022). The proviso appropriated \$10 million to the Department of Natural Resources (DNR) to purchase state forestland to begin a program to benefit counties that have lost revenue from existing state forestlands encumbered by ESA-listed and threatened species from which timber can no longer be harvested. WSAC is required to concur with DNR before any purchase utilizing this appropriation is finalized. The following procedure outlines WSAC’s process and expectations for deciding upon concurrence.

WSAC will decide whether to concur with a proposed purchase of state forestland upon completion of the following procedure:

1. DNR will notify WSAC as soon as possible when considering the purchase of forestland or lands intended to be traded between trusts for state forestlands. WSAC and its members will maintain appropriate and legally allowable confidentiality regarding the potential investment.
2. Upon notification, WSAC will convene a meeting with DNR and all counties impacted by the purchase proposal. This will include any county in which the proposed forestland acquisition is located, even if the such county will not be a beneficiary of future revenue from timber harvest.
3. DNR will present the following information on the purchase proposal, as applicable:
 - a. Complete market value analysis of the property, including any difference between the market value and the trust management value;
 - b. An analysis of the economic benefits associated with the purchase for the impacted counties, including long-term and short-term revenue forecasts;
 - c. An analysis of other benefits associated with the purchase (environmental, recreational, etc.);
 - d. Any plans that DNR may have for placing existing lands in conservation status as offsets;
 - e. An analysis of any conservation requirements or potential encumbrances on the property;
 - f. An analysis of how the proposed purchase aligns with the Encumbered Lands Replacement Forestland Purchase Criteria as approved by WSAC; and
 - g. Any known or perceived conflicts that should be considered.
4. WSAC will provide a written concurrence decision within seven working days of the meeting. WSAC will concur if all impacted members consent to the proposed purchase. WSAC will only agree if consensus exists among all impacted members.

ENCUMBERED LANDS OUT-OF-COUNTY FORESTLAND REPLACEMENT POLICY

Purpose: To implement a cooperative approach for greater flexibility when replacing encumbered State Forestlands. In many regions, it is difficult, if not impossible, to acquire replacement forestlands within the same taxing districts and even within the same county as the encumbered State Forestlands. However, utilizing funding provided by the legislature for replacing encumbered State Forestlands is a priority and should be implemented with a sense of urgency. DNR should have the ability in such circumstances to consider acquisitions outside of the boundaries of the beneficiary tax districts, and beneficiaries should not endure reduced revenue from trust lands simply because suitable replacement forestlands cannot be acquired within their borders. Accordingly, tax districts where land may be acquired should also not be penalized.

WSAC recommends that the DNR pursue acquisitions for state forestland replacement according to the following priority¹:

1. Lands in the same taxing districts: whenever possible, purchase replacement state forestlands in the same county and taxing district as the encumbered state forestlands.
2. Lands in the same county²: in cases when the first priority is not attainable, purchase replacement forestlands anywhere within the same county as the encumbered state forestlands.
3. Lands in an encumbered lands county (with a replacement trust agreement)³: lands can be purchased in any encumbered lands county, in any taxing districts within those counties, for the benefit of any or all the encumbered lands counties within the encumbered lands group, with a replacement trust agreement in place. A replacement trust agreement is an agreement between all the encumbered lands counties within a particular group that proportionally shares the trust revenues from all replacement state forestlands.

¹ While the priority list included in this policy is WSAC's preferred order for pursuing acquisitions, we also understand that replacement forestlands available at a certain time may not be appropriate for priority consideration, as a specific acquisition may only fit one of the categories listed above. In such a case, urgency should be the primary consideration and DNR should pursue the acquisition, if appropriate, and seek WSAC's concurrence.

² The intent of this strategy is to allow a county to choose to direct the benefit from revenue derived from the replacement forestlands be provided to the taxing districts where the encumbered State Forestlands exist within the county, rather than where the replacement lands are located. This may require legislative action before it can be utilized.

³ This strategy may require legislative action to implement. Required legislative action must take place before this strategy is utilized.

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4. Lands in a proximate county with a proximate county agreement⁴: replacement forestland may be acquired in counties proximate to the county or counties that will benefit from the replacement state forestland purchase if the proximate county in which the replacement lands will be purchased is willing to enter into a proximate county agreement.

The proximate county agreement must stipulate that lands acquired within the proximate county for the benefit of encumbered lands counties will be offset by encumbered lands within the encumbered lands counties enrolled in DNR conservation programs (NAP or NRCA) as appropriate, and the corresponding PILT will be paid to the proximate county annually. It must also stipulate that the county where replacement state forestlands are purchased is prohibited from objecting or otherwise taking steps to prevent harvesting forest products and other revenue-producing activity consistent with and commonplace on timber resource lands.

If a county in which replacement state forestlands are purchased chooses to terminate a proximate county agreement, such county shall be liable for the total value of the replacement state forestlands to the county or counties to which the benefits from such replacement state forestlands are directed.

5. Through an inter-trust exchange.

⁴ This strategy may require legislative action to implement. Required legislative action must take place before this strategy is utilized.

ENCUMBERED LANDS REPLACEMENT FORESTLAND TRUST

Purpose: Counties are engaged in a strategy to replace encumbered State Forestlands by purchasing new lands and placing them in trust for beneficiaries. In many regions, it is difficult, if not impossible, to replace encumbered State Forestlands by purchasing new forestlands to place in trust within the same taxing districts and even within the same county. Difficulties acquiring replacement lands to add to the trust may require the creation of a new trust structure that is more flexible and allows counties to collaborate on purchasing replacement lands and distributing trust benefits.

WSAC proposes the following:

- A. Maintain the current trust structure and system for beneficiary benefit distribution for all existing State Forestlands.
- B. Develop a new trust structure and benefits distribution system for acquisitions of forestland to replace encumbered State Forestlands:

The new trust would be known as the Encumbered Lands Replacement Trust. It would be created within the following structure:

1. According to the grouping of counties included in the encumbered lands budget proviso, two trusts would be created – one for Clallam and Jefferson Counties and one for Pacific, Skamania, and Wahkiakum Counties. This could be modified to include more counties or, if appropriate, combined.
2. Participation in the “new” trust would require agreement among the participants. The agreement would state that the participating county voluntarily “opts in” to the trust.
3. Agreement would allow replacement lands to be purchased in any county participating in the “new” trust for the benefit of all participating counties and in proximate, non-participating counties that have entered into a proximate county agreement as outlined in WSAC’s Encumbered Lands Out-of-County Forestland Replacement Policy.
4. Agreement would require that benefits derived from the replacement lands placed within the “new” trust be shared proportionally by the participating counties. Proportionate shares are based on the encumbered State Forestland acreage percentage within each participating county.
5. Benefits derived from the replacement lands in the “new” trust would be distributed proportionally to the various taxing districts within the participating counties unless otherwise allowed by law.

ENCUMBERED LANDS REPLACEMENT BENEFICIARY REVENUE DISBURSEMENT POLICY

Purpose: Revenues derived from State Forestlands managed by the Department of Natural Resources (DNR) are provided to the county where the State Forestlands exist. In most cases (except for Skamania and Wahkiakum Counties), the county distributes that revenue to the various taxing districts where the lands from which the income was derived exist. Revenue-producing activities include harvesting timber and other forest products, leasing revenue, etc.

Unfortunately, nearly half of all existing state forestlands are encumbered by various regulations which severely limit or eliminate the ability of those lands to produce revenue. To address these encumbrances, some counties have received state funding support to purchase forestlands for DNR to manage as replacement State Forestlands. The replacement State Forestlands intend to provide new revenue to offset the losses, over time, resulting from the encumbrances on existing State Forestlands. While the ideal solution for replacement forestland purchases would be to purchase existing forestland within the same taxing districts as encumbered State Forestlands, it is likely impossible in most instances.

To successfully replace encumbered State Forestlands, counties need flexibility in where the replacement forestlands are purchased. This may include strategies that allow purchases outside current beneficiary taxing districts, including in other counties. Counties may also pool the revenues from replacement State Forestlands for beneficiaries, if appropriate. In such instances, the income from replacement State Forestlands will need to be directed to the beneficiaries affected by the existing encumbered State Forestlands.

Policy:

When replacement State Forestlands are purchased outside of the taxing districts of existing encumbered State Forestlands, or where counties are authorized to and have decided to pool the revenues from replacement State Forestlands for beneficiaries, the County Legislative Authority should have the right to direct income derived from replacement State Forestlands to beneficiaries negatively impacted by encumbered State Forestlands.

ENCUMBERED LANDS COUNTIES OPERATIONAL REVENUE NEEDS POLICY

Purpose: Unfortunately, over time, nearly half of all existing State Forestlands have become encumbered by various regulations which severely limit or eliminate the ability of those lands to produce revenue. The regulations include the 2019 Amendment to the State Forestlands Habitat Conservation Plan, adopting a long-term conservation strategy for the marbled murrelet (2019 HCP Amendment). Such encumbrances have significantly restricted the funding support counties can expect to receive each year from State Forestlands. Three counties have been considerably negatively impacted financially by the revenue losses – Pacific, Skamania, and Wahkiakum Counties. The revenue losses realized by these counties have impaired their ability to provide essential county services like law enforcement, public health, road maintenance, and others. These three counties qualify for the classification of “encumbered” by RCW 79.22.140.

To address the revenue reductions, some counties, including “encumbered” counties, have received state funding support to purchase forestlands for DNR to manage as replacement State Forestlands. The replacement State Forestlands intend to provide new revenue to offset the losses. While the replacement funding and subsequent forestland acquisitions will provide new payments to offset losses, it won’t happen quickly. Over the last several years, the State Legislature has appropriated funding specifically for Pacific, Wahkiakum, and Skamania Counties to offset their revenue losses and support county services.

In 2020 WSAC also hired Mason Bruce & Girard and Highland Economics to calculate the losses to all counties impacted by the 2019 HCP Amendment. The consultants identified average annual revenue losses of \$1.26 million directly attributable to the 2019 HCP Amendment.

Policy:

WSAC will continue to support funding from the state providing financial support for Pacific, Skamania, and Wahkiakum Counties until sufficient replacement forestlands have been acquired to provide enough annual revenue to offset such appropriations fully.⁵

WSAC also supports annual funding from the state of \$1,260,577 million to be divided among the 14 counties impacted by the 2019 HCP Amendment according to each county’s average annual loss.⁶

⁵ This is funding specifically for the three statutorily designated encumbered lands counties in RCW 79.22.140. These funds have been requested by DNR in past years and the 2022 request is for \$9 million to be split evenly between all three counties.

⁶ The average annual loss for each county was identified by Mason Bruce & Girard and Highland Economics in their report *Financial and Economic Impacts of Marbled Murrelet Conservation Strategies on Lands Managed by The Washington Department of Natural Resources*, June 30, 2021. The fourteen counties and their average annual losses identified are: Clallam (\$623,182), Grays Harbor (\$7,176), Jefferson (\$69,141), King (\$517), Lewis (\$1,868), Mason (\$5,309), Pacific (\$212,885), Skagit (\$70,067), Snohomish (\$68,805), Wahkiakum (\$156,978), and Whatcom (\$47,650).

ENCUMBERED LANDS REPLACEMENT COMMUNICATIONS STRATEGY

Purpose: The issue of encumbered State Forestlands, the related revenue losses from timber harvest, and the direct, indirect, and induced negative economic impacts on counties is an issue that may be difficult to understand. It has a long history, with many layers of complexity, including implications for junior taxing districts like fire, hospitals, emergency services, libraries, and others.

The encumbered lands replacement strategy is a significant, long-term, and expensive program that will require sustained investment by the state and changes to state law to be successful. It will also need the support of numerous partners, including counties, the Department of Natural Resources, state legislators, and industry.

A communications strategy is needed to help others understand the problem and the potential solutions and to work collaboratively with partners to meet the program's vision.

Policy:

The following steps should be taken to provide information to decision-makers and to help guide the implementation of the encumbered lands replacement program:

1. Maintain the Encumbered Lands Working Group – WSAC's appointment of the group for addressing issues and developing recommendations to implement the encumbered lands proviso included in the 2022 State Supplemental Operating Budget should remain intact. The members should be charged with advancing efforts to provide information and assistance in proposing and passing legislation for implementation and securing additional funding.
2. WSAC should align its statewide policy efforts to implement the encumbered lands replacement program with the actions of the Trust Land Transfer workgroup to update the Trust Land Transfer program as requested by the State Legislature.
3. WSAC should work to support the DNR in developing legislative proposals to authorize the implementation of the encumbered lands replacement program according to the policies developed and adopted for that purpose.