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3/10/25

BOARD of CLALLAM COUNTY COMMISSIONERS

MINUTES for the week of March 10-14, 2025

WORK SESSION – 9 a.m.

The work session convened at 9 a.m., Monday, March 10, 2025. Present were Commissioners French, Ozias, and Johnson and Administrator Mielke.

Items of discussion per the agenda published March 6 were:

- Calendar/Correspondence
- Resolution appointing Kelly Burger to the Marine Resources Committee
- Resolution appointing Warren Billups to the Planning Commission
- Resolution appointing Elizabeth Betty Marcoux to the North Olympic Library System Board of Trustees
- Discussion regarding the Upper Hoh Road repairs
- Letter of concern regarding Washington State's Foundational Public Health Services FPHS
- Purchase order with CDWG for 3-year renewal of VEEAM data center back-up application subscription
- Briefing and call for hearing to be held on Tuesday, April 1, 2025 regarding amending Policy 504
- Recognitions, Refreshments and Miscellaneous Reimbursements
- Pre-application questionnaire with Foundation for Washington State Courts for courthouse security
- Pre-application questionnaire with Administrative Office of the Courts for CLJ Therapeutic Courts
- Agreement amendment 1 with Department of Ecology for Chain Gang activities
- Agreement with U.S. Marshals Service for compensation and housing of federal prisoners
- Agreement with Washington State Patrol for shared services
- Agreement amendment B with Department of Commerce for the broadband project
- Discussion on proposed budget revisions to be considered on March 25
- Discussion of proposed supplemental appropriations to be considered on March 25
- Discussion of proposed debatable emergencies to be considered on March 25
- Resolution authorizing expenditures from the Clallam County Heritage Advisory Board Grant Fund
- Legislative session update

Meeting concluded at 10:45 a.m. and continued to an Executive Session to be held on Monday, March 10, 2025 at 12:30 p.m. regarding real estate.

EXECUTIVE SESSION – March 10, 2025 at 12:30 p.m.

The Board convened in open session at 12:30 p.m. to discuss real estate. Present were Commissioners Ozias, French and Johnson, Administrator Mielke, Housing Director Dalton, Department of Community Development Havel and Clark, Real Estate Capps, Finance Department Lane and Prosecuting Attorney's Office Boughton.

The Board may recess into Executive Session to consider employment or dismissal of personnel, to review the performance of a public employee, to consult with legal counsel, to consider the position to be taken in collective bargaining, to consider acquisition or sale of real estate, or other matters per RCW 42.30.110.

ACTION TAKEN: CMOM to moved to executive session for 45 minutes, CRJs, mc

The Board recessed into executive session at 12:31 p.m.

The Board convened in open session at 1:16 p.m.

ACTION TAKEN: CMOM to moved to that authorize staff to continue their due diligence process regarding the property discussed during the executive session, CRJs, mc

Meeting concluded at 1:18 p.m.

REGULAR MEETING OF THE BOARD OF CLALLAM COUNTY COMMISSIONERS

Chair French called the meeting to order at 10 a.m., Tuesday, March 4, 2025. Also present were Commissioners Ozias and Johnson and Administrator Mielke.

REQUEST FOR MODIFICATIONS/APPROVAL OF AGENDA

Item 2b will be postponed.

ACTION TAKEN: CRJm to adopt the agenda as modified, CMOs, mc

PUBLIC COMMENT FOR AGENDA ITEMS

- Ed Bowen, Clallam Bay, commented on item 2f
- John Worthington, Sequim, commented on item 2f, Anchor, Jimmy Come Lately, Elwha
- Kenneth Reandeau, Port Angeles, commented on item 3b

CONSENT AGENDA

1a Approval of vouchers for the week of March 3

The Following warrants and electronic payments are approved for payment:

Accounts Payable:	Total
Warrant numbers: 9936137-9936208; 9936219-9936293	\$612,411.16
Electronic payments dates: n/a	\$0.00
Total Accounts Payable:	\$612,411.16

1b Approval of minutes for the week of March 3

1c Resolution appointing Chelsea Korbolic to the Marine Resources Advisory Committee

1d Resolution appointing Liam Antrim to the Conservation Futures Program Advisory Board

1e Resolution clarifying Clallam County's financial commitment to fund property acquisition and phase II design work for the joint public safety facility, and providing authority to the County Administrator

1f Letter of concern regarding Washington State's Foundational Public Health Services FPHS

ACTION TAKEN: CRJm to adopt the consent agenda, CMOs, mc

REPORTS AND PRESENTATIONS

- CRJ commented on the Upper Hoh Road, Olympic Area Agency on Aging, Timber Counties Caucus
- CMO commented on National Association of Counties Conference update, Clallam Community Leadership Program
- CMF commented on Dungeness Reservoir Workgroup meeting, Trails Advisory Committee Meeting

CONTRACTS AND AGREEMENTS

2a Agreement with Sebris Busto James for legal representation costs

ACTION TAKEN: CRJm to approve, CMOs, mc

2b Agreement with Community Health Plan of Washington for behavioral health and other health care related services

ACTION TAKEN: CRJm to approve, CMOs, mc

2c Agreement with Topper Industries, LLC for the Clallam Bay Day Use Park Ramp Replacement Project

ACTION TAKEN: CRJm to approve, CMOs, mc

2d Agreement amendment 1 with Department of Agriculture for Fairs Program Capital Project Grant

ACTION TAKEN: CRJm to approve, CMOs, mc

2e Contract with Polimorphic for Recompete Customer Relationship Manager software program

ACTION TAKEN: CRJm to approve, CMOs, mc

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2f Agreement with Clallam County Economic Development Council for 2025 services

ACTION TAKEN: CRJm to approve, CMOs, mc

BUDGET

- 3a Notice that the following Budget Revisions will be considered for adoption on March 25:
- HHS - Operations – Reallocating expenditures to install an employee badge access door at the 3rd Street building/\$7,558
 - Sheriff - Jail – Reallocating the underspend from Jail salary due to staffing shortage to Norpoint Protective Services for courthouse and juvenile facility security/\$85,220

ACTION TAKEN: CRJm to issue the notice, CMOs, mc

- 3b Notice that the following Supplemental Appropriations will be considered for adoption on March 25:
- Auditor – Office of the Secretary of State Information Security Funds reimbursement expected in 2024 but received in 2025/\$26,558
 - Sheriff – Boating Safety – Increased annual award from the WA State Parks and Recreation Commission for Recreational Boating Safety to be used for overtime and purchase of small tools and equipment/\$10,424
 - HHS – Foundational Public Health Services –
 - Additional one-time funding increase from the Department of Health Foundational Public Health Services to be used for communicable disease and rabies-related costs (1 of 2)/\$120,00
 - Reallocating unanticipated projected funding to HHS Operations to purchase capital equipment for County public health emergencies (1 of 2)/\$95,000
 - HHS Operations –
 - Additional one-time funding increase from the Department of Health Foundational Public Health Services to be used for communicable disease and rabies-related costs (2 of 2)/\$120,000
 - Additional funding is received from Department of Health Consolidated Contract #2 to be used for Women, Infants and Children (WIC) and workforce development grants/\$166,066
 - Additional funding from HHS Foundational Public Health Services to the HHS Operations for the purchase of forklift, generator and drone (2 of 2)/\$95,000
 - Community Development – Environmental Quality – Contributions from the cities of Forks, Port Angeles, and Sequim per interlocal agreement for shared work product on the updated Hazard Mitigation Plan/\$184,200

ACTION TAKEN: CRJm to issue the notice, CMOs, mc

- 3c Resolution calling for a hearing to be held March 25 at 10:30 a.m. to consider adopting the for the following Debatable Emergencies:
- Community Development-Permit Center – Additional billing from Tyler Technologies’ Enterprise Permit and Licensing (EPL) software/\$10,890
 - HHS-Chemical Dependency Mental Health – Additional 10% funding for 3 Deputy Prosecuting Attorney positions/\$67,923

ACTION TAKEN: CRJm to adopt, CMOs, mc

PUBLIC COMMENT

- Stuart Kiehl, Port Angeles, commented on local government commitment and responsibility, agenda item request
- Catherine Skagg, Port Angeles, commented on budget, local government support
- Ed Bowen, Clallam Bay, commented on Upper Hoh Road, National Association of Counties, 3 district meetings
- Eric Fehrmann, Sequim, made comments on the pledge of allegiance, making cuts
- Karin Cummins, Sequim, commented on AI, taxes, tax relief
- Dorothy Grace, Port Angeles, commented on what the local government can do for the county
- Jeff Tozzer, Sequim, commented on County land transfer, Jamestown Tribe, taxpayers

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- John Worthington, Sequim, commented on the Economic Development Council, tribes, North Olympic Development Council
- Denise Lapio, Sequim, commented on BOCC conversation, taxpayers, land, tribes, budget
- ATM, Clallam County, commented that Clallam County has not hosted any crowdfunding for the Upper Hoh Road

Meeting concluded at 11:24 a.m. and continued to an Executive Session to be held on Thursday, March 13, 2025 at 10 a.m. regarding an employee performance review.

EXECUTIVE SESSION – March 13, 2025 at 10 a.m. – CANCELLED

The executive session scheduled for March 13, 2025 at 10 a.m. was cancelled. A cancellation notice was sent out on March 12, 2025.

EXECUTIVE SESSION – March 14, 2025 at 8 a.m.

The Board convened in open session at 8 a.m. to discuss litigation. Present were Commissioners Ozias, French and Johnson, Administrator Mielke, Prosecuting Attorney's Office Nichols, Boughton, and Reno, Treasurer's Office White, Department of Community Development Havel and Risk Management Sullenger

The Board may recess into Executive Session to consider employment or dismissal of personnel, to review the performance of a public employee, to consult with legal counsel, to consider the position to be taken in collective bargaining, to consider acquisition or sale of real estate, or other matters per RCW 42.30.110.

ACTION TAKEN: CMOM to executive session for 1 hour and 15 minutes, CRJs, mc

The Board recessed into executive session at 8:02 a.m.

The Board convened in open session at 9:17 a.m. and CMF noted no action will be taken.

Meeting concluded at 9:17 a.m. and continued to 9 a.m., Monday, March 17, 2025

The Board of Commissioners attended a WSAC virtual update, Coffee with Colleen, KONP Radio Show, KSQM Radio Show, and EDC Annual Gala during the week of March 17, 2025.

PASSED AND ADOPTED this 18th day of March 2025

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mike French, Chair

ATTEST:

Randy Johnson

Loni Gores, MMC, Clerk of the Board

Mark Ozias

KEY TO ABBREVIATIONS:

ATM Administrator Todd Mielke
CMO Commissioner Mark Ozias
CRJ Commissioner Randy Johnson
CMF Commissioner Mike French

m moved
mc motion carried
s seconded

Public Comment
Jeff Tozzer
3/11/15

Clallam County continues to shrink—both in land and fiscal responsibility. With another 52.74 acres removed from the tax rolls due to a land-into-trust transfer for the Jamestown Tribe, the county commissioners remain silent. Meanwhile, budget mismanagement and misplaced priorities are crippling essential services.

The Jamestown Tribe, with an annual revenue of over \$70 million, continues to acquire land and remove it from taxable status. While their financial stability grows, Clallam County taxpayers absorb the loss. Despite being notified in advance, county officials failed to respond to the Bureau of Indian Affairs regarding the financial consequences of these acquisitions. Another 13 parcels, generating \$21,000 in taxes, were just approved for trust status—further eroding the tax base. With 1,718 acres already owned by the Tribe, much of it in, or headed toward tax-exempt status, how much more can the county afford to lose?

The Tribe's contributions to county services, such as a \$300,000 annual payment to the Sheriff's Office, are funded by federal grants—meaning taxpayers are footing the bill either way. In its application to the BIA, the Tribe said it leases a fire station to Fire District 3 at a fraction of its market value, suggesting that the BIA should approve this latest request due to the Tribe's benevolence shown to the County.

Instead of standing up for taxpayers, county officials have chosen inaction. They have been asked repeatedly to contact the BIA and address the impact of land-into-trust conversions but have failed to do so even once. Meanwhile, the county has written letters of support on behalf of any special interest or government agency that has come begging for one.

Perhaps the craziest notion ever discussed in this room occurred yesterday when it was discussed that, if residents could crowd-fund private donations, the State might unleash funding to repair the road into the Hoh Rainforest. What if there were a system in place where residents were taxed and received essential services in exchange? When our leaders fail to act, will bake sales and car washes become our last resort to fund basic services?

Without urgent reform, Clallam County will continue to hemorrhage land, revenue, and public trust. The question is: How much more can we afford to lose?

Jeff Tozzer, Sequim

BOCC Mail Correspondences Received from other Jurisdictions

Gores, Loni

From: Jim McEntire <jmcentire1@outlook.com>
Sent: Thursday, March 6, 2025 2:19 PM
To: Ozias, Mark; Johnson, Randy; French, Mike; Nichols, Mark; Mielke, Todd
Cc: Connie Beauvais; Gores, Loni; buckdj@olypen.com
Subject: Port Angeles Business Association Letter Concerning DNR's Management of Clallam County Forest Board Transfer Lands
Attachments: PABA Letter - Legal Action - DNR Not Fulfilling Trust Obligations to Clallam County Tax Districts.pdf
Importance: High

Mark, Randy, Mike, Mark, and Todd:

Attached, please find a letter from the Port Angeles Business Association asking for action from you to vindicate County Government's and other County taxing districts' legal and financial interests in these trust lands. As you know, they are an economic asset to all county governments, large and small, and ultimately of all our citizens.

Many apologies for not getting this to you sooner, and before the news article in this morning's newspaper. Events conspired against me. But that's an explanation, not an excuse.

Loni: Would you do me a great favor and forward the attachment to the Revenue Advisory Committee members? I don't have all their email addresses. Many thanks in advance.

All the best,

Jim McEntire
Chair, Port Angeles Business Association Government Affairs Committee



March 4, 2025

By Email

Board of Clallam County Commissioners

Re: Legal Action to Vindicate Clallam County Forest Board Transfer Land Trust Beneficiaries' Legal and Financial Interests

Dear County Commissioners:

You are in receipt of former State Representative Jim Buck's letter to you dated December 14, 2024 and his magisterial analysis of the legislative history of the County Forest Board Land Trust ("Lands" in this letter).

Our organization emphatically agrees with Jim Buck's letter and his analysis of the exact legal status of these lands, and also that both the legislature and the Department of Natural Resources (DNR) have not fully fulfilled their fiduciary responsibility to Clallam County taxing districts under the terms of the trust established when the County transferred the lands to the state (for the state to hold in trust for the County and taxing districts). Thus, legal action to vindicate the rights of Clallam County beneficiaries needs to be pursued if petitions to DNR to rectify their mismanagement prove unfruitful. In writing this letter, we will not duplicate former Representative Buck's analysis and conclusions, but we will provide additional comments to further illustrate how both DNR and perhaps the legislature, in the case of multiple-use statutes, have not carried out their fiduciary duties.

The Basics

*"The remaining lands were deeded by various counties to the State after tax foreclosures, pursuant to RCW 76.12.030 [now RCW 79.22.040]. That statute provides that these forest board transfer lands are to be "held in trust" by the State, and that proceeds from the management of these lands go to the grantor counties, after deducting administrative expenses. RCW 76.12.030(1), (2) [now RCW 79.64.110, I think]."*¹

These lands were part of the "revenue base" *i.e.*, the property tax base, of counties and taxing districts prior to their forfeiture for non-payment of property taxes. *"In the early 1930s, the land was transferred to the State Forest Board in trust, to be managed for the benefit of the local taxing districts for which the land had been the revenue base."*² This truth endures.

The crux of the matter is this: DNR's management of Clallam County lands is founded first and last on the law of trusts. Fundamental is the legislature's and DNR management's fidelity to the terms of the trust as laid out in former RCW 76.12.030 (as of 1935 when Clallam County-owned, tax-forfeiture lands were deeded to the state to be held in trust) – which are simply that the lands are to be managed so as to provide a sustainable and steady stream of revenue to

¹ COUNTY OF SKAMANIA, v. THE STATE OF WASHINGTON. 102 Wn.2d 127 (1984)

² *Chuckanut Conservancy v. Department of Natural Resources*, 17, 156 Wn. App. 274 (Wash. Ct. App. 2010).



Clallam County and its other taxing district beneficiaries. *Skamania's* teaching about trust responsibilities remains the law: "A trustee must act with undivided loyalty to the trust beneficiaries, to the exclusion of all other interests. ... It may not sacrifice this goal to pursue other objectives, no matter how laudable those objectives may be."³ Further, in a recent case, the state Supreme Court stated that: "DNR is likewise obligated by statute to manage forest board lands for the benefit of the counties who granted land to the State. DNR is not required to harvest timber from state lands (although it is required to do so with respect to forest board lands), but it may elect to do so to generate revenue for its beneficiaries."⁴ (Emphasis added.)

A Different Number for Clallam County Lands

DNR uses 93,018 acres as the amount of Clallam County lands, per their 4th Quarter 2024 Quarterly Income Report found here:⁵ - there are perhaps a few transfer deeds that are as yet unlocated.

Ultra Vires Actions By the Commissioner of Public Lands

A quick review of how authority and responsibility are distributed within the Department:

The Department is composed of three entities⁶: the Board of Natural Resources⁷; the Administrator (who is the Commissioner of Public Lands⁸); and the Supervisor, who serves at the pleasure of the Commissioner.⁹ The Supervisor has expansive duties in running the department under the supervision of the Administrator/Commissioner.¹⁰ The Supervisor is not germane to this discussion.

The Administrator/Commissioner is vested with authority to carry out all powers, duties, and functions assigned to the Department, except for those powers, duties, and functions specifically assigned to the Board of Natural Resources.¹¹ The Board of Natural Resources is assigned a policy-making and rule-making role;¹² which the Administrator/Commissioner is

³ COUNTY OF SKAMANIA, *op. cit.*

⁴ CONSERVATION NORTHWEST, v. COMMISSIONER OF PUBLIC LANDS, HILARY FRANZ (In her official capacity) (2022), Sec. IV.

⁵ [fm_clallam_co_0424.pdf](#)

⁶ RCW 43.30.030.

⁷ RCW 43.30.205.

⁸ RCW 43.30.105.

⁹ RCW 43.30.155.

¹⁰ RCW 43.30.430.

¹¹ RCW 43.30.421. Administrator. The administrator shall have responsibility for performance of all the powers, duties, and functions of the department *except those specifically assigned to the board. In the performance of these powers, duties, and functions, the administrator shall conform to policies established by the board*, and may employ and fix the compensation of such personnel as may be required to perform the duties of this office. (emphasis added.)

¹² RCW 43.30.2015 Powers and duties of board.

The board shall:

- (1) Perform duties relating to appraisal, appeal, approval, and hearing functions as provided by law;
- (2) Establish policies to ensure that the acquisition, management, and disposition of all lands and resources within the department's jurisdiction are based on sound principles designed to achieve the maximum effective development and use of such lands and resources consistent with laws applicable thereto; ...



obligated to follow. Specifically germane are the Board's responsibilities in setting sustainable harvest levels,¹³ and approving all trust land transactions and timber harvest sales.¹⁴

A proper understanding of this division of authority is important to understand the *ultra vires* actions that have taken place in postponing or cancelling/modifying timber sales for Clallam lands.

A tract of state forestlands known as "Power Plant" was proposed for sale at the June 6, 2023 Board of Natural Resources meeting. The minutes of that meeting reflect an extensive conversation between Board members and departmental staff regarding "Power Plant" and after all concerns were addressed, it and all proposed sales were approved by a unanimous vote. The sale was awarded soon afterward, and the contract was signed by both parties in the normal course.

The Commissioner unilaterally cancelled/postponed "Power Plant" on December 18th,¹⁵ explaining her action in a letter to the Board of Clallam County Commissioners regarding both the sale and the 69 acres from it to be nominated for carbon sequestration/storage.¹⁶

The Commissioner's cancellation was an *ultra vires* action, and is therefore null and void. Only the Board of Natural Resources is legally allowed to approve a sale for auction; therefore only the Board of Natural Resources can rescind, cancel, modify, or otherwise change a sale once it has been approved. There is no statutory power granted to the Commissioner to unilaterally modify, postpone, cancel, or set aside the Board's work after it has been approved by at least four members¹⁷ of that body. If that were true, it is legally absurd for the Legislature to have created a Board of Natural Resources with certain powers, that can be cancelled or modified in the sole discretion of another departmental component.

RCW 79.15.140 (referred to in the Commissioner's letter and set out in full in the footnote¹⁸)

(6) Adopt and enforce rules as may be deemed necessary and proper for carrying out the powers, duties, and functions imposed upon it by this chapter.

¹³ RCW 79.10.300 Definitions. ...

(5) "Sustainable harvest level" means the volume of timber scheduled for sale from state-owned lands during a planning decade as calculated by the department and *approved by the board.* (emphasis added).

¹⁴ RCW 79.10.340 Sustainable harvest sale.

The board of natural resources shall offer for sale the sustainable harvest as identified in the 1984-1993 forestland management program, or as subsequently revised. In the event that decisions made by entities other than the department cause a decrease in the sustainable harvest the department shall offer additional timber sales from state-managed lands.

¹⁵ State sets aside 2,000 acres of forestland - Controversial Power Plant sale is canceled, Wednesday, December 20, 2023; [State sets aside 2,000 acres of forestland | Peninsula Daily News](#)

¹⁶ Commissioner of Public Lands letter to Clallam County Board of Commissioners re: "Power Plant and "Structurally complex, carbon dense forestland" dated December 18, 2023.

¹⁷ RCW 43.30.225(4).

¹⁸ RCW 79.15.140 Valuable materials contract—Impracticable to perform/cancellation—Substitute valuable materials.

(1) In the event that the department determines that regulatory requirements or some other circumstance beyond the control of both the department and the purchaser has made a valuable materials contract wholly or partially impracticable to perform, the department may cancel any portion of the contract which could not be performed. In the event of such a cancellation, the purchaser shall not be liable for the purchase price of any portions of the contract so canceled. Market price fluctuations shall not constitute an impracticable situation for valuable materials contracts.



does provide for substitution of valuable materials sold, *if* events beyond the control of the Department make a contract already agreed upon *impracticable* to perform. The dictionary definition of impracticable is “impossible to do or carry out”.¹⁹

First, this was an event wholly within the Department’s control. It’s a policy choice to cancel or modify the contract since the Department asked for permission from the County to use those acres (upon which valuable materials have already been sold) for carbon sequestration/storage. Second, outside events *did not* conspire against the Department – the Department made the policy choice itself for whatever reason. *So the Department tried to rely on a statute that cannot and does not apply.* For the Commissioner to try to fit this particular carbon sequestration/storage “square peg” into this statutory “round hole” simply is impossible.

Therefore this too was an *ultra vires* act. Ditto for the December, 2024 postponement of the “Alley Cat” sale at the request of an audience member at that month’s meeting of the Board of Natural Resources. And ditto for two additional Clallam land timber sales (if the new Commissioner’s “pause” implicates Clallam lands) - that action being an *ultra vires* modification of the Sustainable Harvest Plan, which can only be accomplished by the Board of Natural Resources.

Ultra vires acts are prima facie evidence of divided loyalty in favoring policies incompatible with the fiduciary duty of DNR to provide sustainable financial returns on Clallam lands.

Arrearages

There has never not been a timber harvest arrearage on Clallam lands. An “arrearage” is simply when the planned decadal timber harvest is not fully accomplished – the “arrearage” is the shortfall in planned versus actual timber harvest.²⁰ A constant shortfall simply indicates through intent or neglect, DNR’s loyalty is to future generations, and not to the generation current in any given decadal harvest plan. This is a violation of the law of trusts.

Setting Aside Too Much Land for Marbled Murrelet Habitat

This endangered seabird nests in only old growth trees – those with limbs 7 inches or more in diameter, and 50 feet or more above ground. Clallam lands set aside for murrelet habitat totals

(2) Alternatively, and notwithstanding any other provision in this title, the department may substitute valuable materials from another site in exchange for any valuable materials which the department determines have become impracticable to remove under the original contract. Any substituted valuable materials must belong to the identical trust involved in the original contract, and the substitute materials shall be determined by the department to have an appraised value that is not greater than the valuable materials remaining under the original contract. The substitute valuable materials and site shall remain subject to all applicable permitting requirements and the state environmental policy act, chapter 43.21C RCW, for the activities proposed at that site. In any such substitution, the value of the materials substituted shall be fixed at the purchase price of the original contract regardless of subsequent market changes. Consent of the purchaser shall be required for any substitution under this section.

¹⁹ [impracticable definition - Search \(bing.com\)](#)

²⁰ RCW 79.10.300(1).



to 21,826 acres²¹, an unknown fraction of which is second growth lands unsuitable by definition as murrelet habitat. A 2018 Supreme Court opinion²² controls U.S. Fish & Wildlife Service's biological opinions on endangered species habitat set-asides, saying that only lands currently suitable as habitat can be designated as critical habitat to be set aside and dedicated to the species' survival. Second growth stands should not have been included in DNR's or USF&WS's 2019 marbled murrelet amendment to the state's existing Habitat Conservation Plan (HCP). This Supreme Court opinion reasonably should have been known by DNR and taken into account during negotiations with the Services during 2018 and 2019 when DNR was in the final stages of preparation for and ultimately approval of the Murrelet amendment to the HCP. This was an *ultra vires* act by the Board of Natural Resources, allowing an unnecessarily large number of timbered acres to be set aside from Clallam lands, a violation of DNR's duty as expressed in *Skamania*.

We are at your disposal to discuss these issues in further detail.

Very best regards,

Kelly Johnson
President

C: Clallam County Prosecuting Attorney, Clallam County Resource Advisory Committee

²¹ DNR Presentation to Clallam BOCC - 11-6-2023.

²² WEYERHAEUSER v. UNITED STATES FISH AND WILDLIFE SERVICE (2018).