

Washington State Trust Lands and DNR's Fiduciary Responsibilities



WASHINGTON STATE DEPARTMENT OF
Natural Resources



Washington State's Trust Lands

Granted trust lands

All together, DNR cares for about 5.6 million acres of state-owned lands.

At statehood in 1889, Congress granted Washington more than 3 million acres of land to support various public institutions. For example, the act set aside 2 of every 36-square miles of each "township" across the state (sections 16 and 36) to produce funds for the 'common schools'— Kindergarten through 12th grade public schools. Other trusts received other lands.

Federally granted state trust lands support seven specific trusts, each with its own lands:

- **Common School trust** – supports construction of public kindergarten through 12th -grade public schools statewide
- **University trust** – supports University of Washington
- **Normal School trust** – supports 4 state universities (Western, Central, and Eastern Washington – former teacher colleges, and The Evergreen State College)
- **Agricultural School trust** – supports Washington State University
- **Scientific School trust** – also supports Washington State University
- **Capitol Building trust** – supports state buildings at the Capitol in Olympia
- **Charitable, Educational, Penal and Reformatory Institutions (CEP&RI) trust** – supports institutions managed by the state Departments of Corrections and Social and Health Services

Today, the granted Lands include 2.1 million acres of forests, 1 million acres of agricultural lands and some commercial properties including wind turbines.

State Forest trust lands

DNR manages two categories of State Forest trust lands (previously known as State Forest Board Lands).

About 546,000 acres of State Forest Transfer trust lands were acquired by 21 counties in the 1920s and 1930s through tax foreclosures. Unable to manage these mostly harvested and abandoned lands, counties deeded them to the state to manage as trust lands. In exchange for the deed transfer, the county and taxing districts in which the land is located are given most of the revenue from timber sales and other revenue-producing activities. They are managed in a manner similar to federally granted trust lands.

Nearly 80,000 acres are State Forest Purchase trust lands, either purchased by the state, or acquired as a gift—chiefly valuable forestlands. State Forest Purchase trust lands are to be used primarily for forestry, forever reserved from sale and managed with State Forest Transfer trust lands.

Natural areas

DNR also manages a significant system of Natural Areas across the state that represent some of the last examples of native ecosystems and unique features in Washington. Many forested Natural Resources Conservation Areas and Natural Area Preserves contribute to habitat commitments of the 1997 Habitat Conservation Plan, of which the Marbled Murrelet Conservation Strategy is a part.



Managing trust lands in perpetuity – that is, forever

State trust lands provide substantial revenue to specific beneficiaries to benefit the people of Washington. Granted trust lands help fund construction of state public institutions. The state forest trust lands fund roads, fire departments, hospitals, and other public services in many counties, and contribute to the state general fund, for education.

State trust lands provide jobs, commodities, clean water, wildlife habitat and recreational opportunities. DNR manages trust lands to provide the added benefits while maintaining the primary goal of trust revenue production. As steward of land and natural resources, DNR relies on a diverse staff of foresters, engineers, geologists, biologists, cartographers, hydrologists, soil scientists, economists, and others.

TRUST DUTIES

A trust is a relationship in which the trustee holds title to property that must be used for the benefit of another. The relationship between trustee and beneficiary is a 'fiduciary' or financial bond. In the case of Washington's trust responsibilities:

- the state is trustee
- the Legislature has designated DNR as trust land manager
- the trust assets consist of state trust lands, and funds associated with specific trusts.

The legal construction of Washington's trust lands also creates considerable differences in how these lands are managed compared to other public lands and private fiduciary trusts. For example, because the trusts are public institutions, the trust obligation continues in perpetuity—that is, forever.

Trust Mandate

In addition to complying with general laws, as a trust land manager DNR follows the common law duties of a trustee. These include, but are not limited to:

- Generate revenue and other benefits for each trust, in perpetuity
- Preserve the corpus or body 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 the trusts and current and future beneficiaries

In 1984, Washington's Supreme Court addressed the state trust relationship in County of Skamania v. State of Washington. The Skamania decision explicitly addressed two of the trustee's duties. The Court found that a trustee must act with undivided loyalty to the trust beneficiaries and to manage trust assets prudently. The court also cited cases in which private trust principles were applied to land grant trusts...they indicate that a state's duty is to strive to obtain the most substantial financial support possible from the trust property over time, while exercising prudence and taking necessary precautions to preserve the trust estate.

IMPORTANT LEGAL COMMITMENTS

Sustainable Harvest

DNR is to manage the forested state trust lands on a sustained yield basis. DNR must periodically adjust the acreages designated for inclusion in the sustained yield management and calculate a new sustainable harvest level to be offered during a decade, as calculated by DNR and approved by the Board of Natural Resources.

Forest Practices Act

To protect public resources such as water and slope stability on state lands .

State Environmental Policy Act (SEPA)

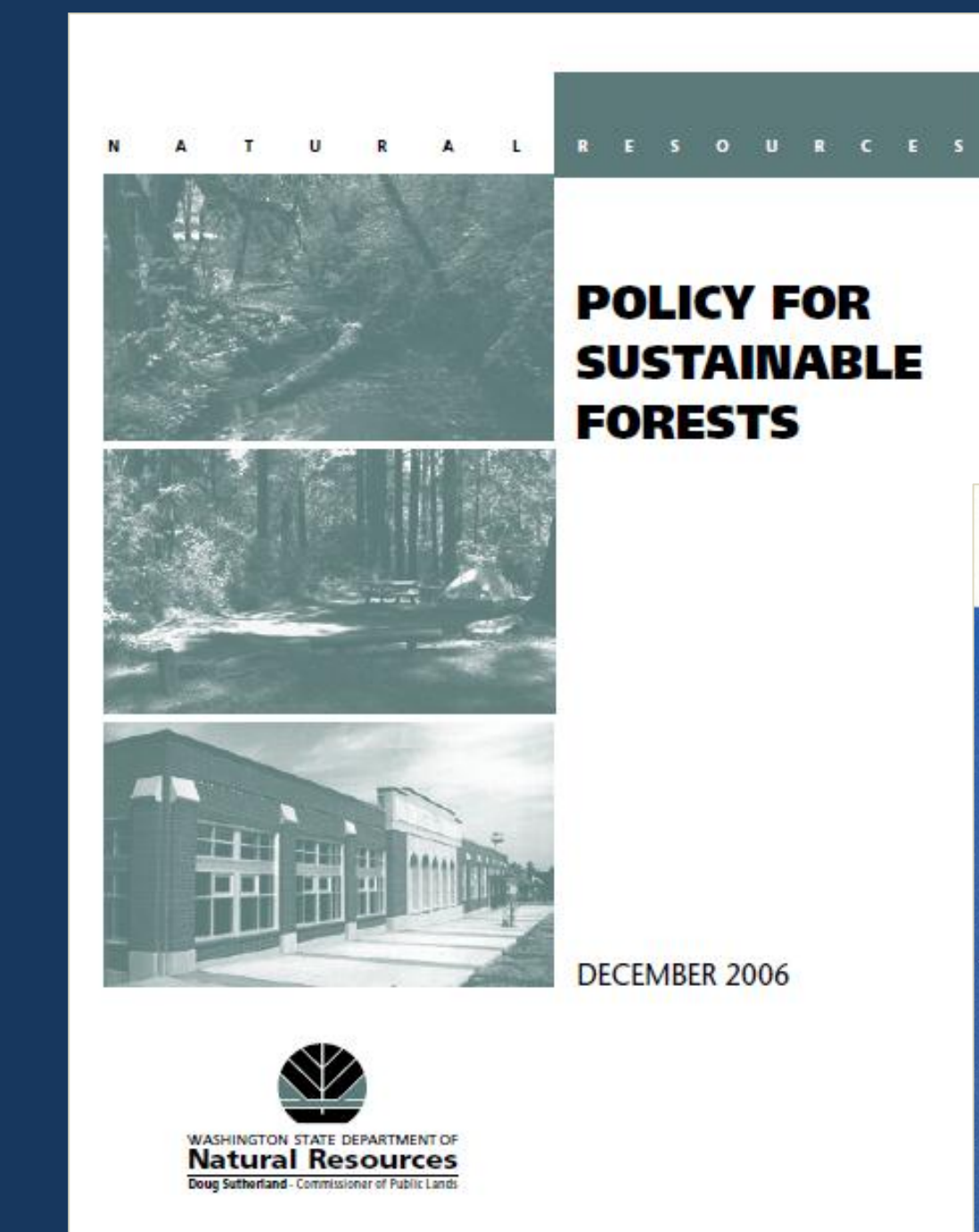
Requires state agencies to review proposed actions for probable significant adverse environmental impacts and, when necessary, to prepare an environmental impact statement on the action to analyze the potential significant adverse impacts.

Tribal treaties

In treaties signed during the 1850s, Tribes of the Washington Territory ceded millions of acres of land to the federal government. In exchange for the ceded land, the Tribes were to receive certain payments, services, and protections from the government. The Tribes also reserved rights to fish and gather at all usual and accustomed places, some of which is forested state trust lands.

The following also are important legal commitments affecting trust lands:

Hydraulic Project Approval ▪ **Growth Management Act** ▪ **Shoreline management Act** ▪ **Open Meetings Act** ▪ **Public Records Act** ▪ **Surface Mining Act** ▪ **Water Pollution Control act**



POLICY FOR SUSTAINABLE FORESTS

Prudent Person Doctrine for forested state trust lands

In the Board of Natural Resources and DNR's view, expressed in the *Policy for Sustainable Forests*, prudent management means, among other things, avoiding undue risk. DNR believes it is in the best interest of the trusts over the long term to manage forested state trust lands to:

- Prevent losses of ecological function, which may cause the listing of additional species as threatened or endangered;
- Avoid circumstances likely to lead to public demand for ever-increasing, restrictive regulations of forest practices; and
- Avoid the resulting contract disputes, uncertainty and loss of the ability to manage trust lands for their primary purpose.

As a result, in certain policies DNR has exceeded existing state forest practices rules (Title 222 WAC) when necessary to best protect resources on forested state trust lands. Because the trusts must be served in perpetuity, it is important to retain the long-term productive capacity of the forest, recognizing that near-term actions can create long-term economic, ecological and social benefits.

Old-growth Stands in Western Washington

The department will defer from harvest old-growth stands (stands 5 acres and larger that originated naturally, before the year 1850), in order to help meet DNR's 1997 *Habitat Conservation Plan* and regulatory requirements, older-forest targets, and social/cultural values. This policy is subject to the following conditions:

- The Board of Natural Resources will be notified of any exceptions to this policy for operational considerations; and
- DNR will retain very large diameter, structurally unique trees to meet HCP requirements for large, structurally unique trees. DNR will notify the Board of Natural Resources of proposed harvests that may involve removals of these trees.

When in the best interest of the trust(s), the department will actively seek to transfer old-growth stands and areas containing very large diameter trees of high social or cultural significance out of trust status, when full market value compensation to the trust(s) is secured. In seeking to transfer such stands out of trust status, the department will immediately prioritize old-growth stands that are not subject to protection under the HCP or other applicable regulations.

