Washington State Trust Lands and DNR’s Fiduciary Responsibilities

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 1 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 lands for the “common schools” — kindergartens through 12th-grade public schools. Other tracts received other benefits.

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 trust (CE&P&R) — 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 arable land, and numerous financial properties including wind turbines.

State Forest trust lands

DNR manages the properties of State Forest trust lands (previously known as State Forest Board Lands).

About 546,000 acres of State Forest 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 district paid for the land is located are given most of the revenue from timber sales and other revenue-producing activities. 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—mostly valuable forestslands. State Forest Purchase trust lands are to be used primarily for forestry, forever reserved from sale and managed with State Forest 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 Parks contribute to habitat conservation of the 1977 Habitat Conservation Plan, of which the马拉德Marelle 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. The state and federal government are forever reserved to the forested land.

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 ‘trustor and beneficiary is a “fiduciary” or financial bond. In the case of Washington’s trust responsibilities:

- is 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
- Ensure the assets of the trust are safe and secure
- 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 responsibility 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 stated in which private trust principles never applied to grant lands...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 in accordance with 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, the 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 Treaty

In the 1850s, the 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 reservation lands, services, and protection from the government. The Tribes also reserved rights to fish and gather at all usual and accustomed places, some of which is forested state lands.

The following are important legal commitments affecting trust lands:

- Federal Project Approvals
- 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 over-restrictive, restrictive regulations of forest practices; and
- Avoid the resulting conflict disputes, uncertainty and loss of the ability to manage trust land for its primary purpose.

As a result, in certain policies DNR has exceeded existing forest practices rules (Title 222 WAC) when necessary to protect resources on forested state trust lands. Because the trusts must be served properly, 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 5 acres and larger that originated naturally, before the year 1850, in order to help meet DNR’s 1977 Habitat Conservation Plan and regulatory requirements. The state’s old-growth stands are a part of an extensive cultural landscape and are vital to the state’s cultural identity. The department will defer harvest in old-growth stands to:

- Protect species of special concern or potential concern, such as those listed as threatened or endangered;
- Help maintain the potential for diversity and productivity; and
- Provide habitat for a wide variety of species, including rare, threatened, or endangered species.

In the future, the department plans to conduct a comprehensive study of the state’s old-growth forests to guide long-term planning and management.