

Port of Port Angeles

Port Angeles, Washington

Commissioners' Resolution No. 16-1132

A RESOLUTION of the Port Commission of the Port of Port Angeles requesting the Board of Natural Resources to address timber arrearages in Clallam County and directing Port staff to take certain action.

RECITALS

WHEREAS, in accordance with RCW 53.08.245, it is in the public purpose for the Port of Port Angeles (the "Port") to pursue economic development within Clallam County; and

WHEREAS, good schools, hospitals, roads, libraries, emergency services, and community stability are significant factors in pursuing economic development; and

WHEREAS, the State has two types of trust lands: those designated by our Federal Compact received upon Statehood for the benefit of designated Trust Beneficiaries for such things as schools, colleges, universities, and the State Capital; and those obtained by counties arising from property tax defaults in the 1920s and 1930s with taxes owed at the time to the counties for distribution to the state, the county and the various taxing districts within a county; and

WHEREAS, our Supreme Court has held that a trustee must act with undivided loyalty to the trust beneficiaries, to the exclusion of all other interests. "A trustee must seek full value for trust assets, and it may not sacrifice this goal to pursue other objectives, no matter how laudable those objectives may be." *Skamania v. Washington*, 102 Wn 2d. 127 (1984) (citing *Ervien v. United States*, 251 U.S. 41 (1919)); and

WHEREAS, based upon that principle, the Board of Natural Resources (the "Board") as a trustee has a fiduciary duty to manage Department of Natural Resources trust lands in such a manner as to maximize the revenue to the Trust Beneficiaries; and

WHEREAS, the Clallam County trust lands consist of 92,525 acres out of a total of approximately 155,000 acres of timber managed by the Department of Natural Resources (DNR) in Clallam County; and

WHEREAS, each one million board feet (1 mmbf) of timber harvested creates between 8 and 16 direct and indirect jobs within 60 miles of the harvest; and

WHEREAS, the Trust Beneficiaries, such as the Clallam County, Port, school districts, hospital districts and other taxing districts have not been receiving maximum financial benefits from our trust lands for a period in excess of 25 years; and

WHEREAS, the revenues generated for the respective Trust Beneficiaries from harvest activities on Clallam County Trust Lands results in significant relief to property owners by reducing the need for increased property taxes to fund operations and capital improvements; and

Port of Port Angeles

Port Angeles, Washington

Commissioners' Resolution No. 16-1132 (cont'd)

WHEREAS, following the completion of the 2005-2014 decadal sustainable harvest period, the DNR determined that there was an arrearage on the County's trust lands of some 245 mmbf of timber that while authorized to be sold, was not sold by the DNR; and,

WHEREAS, it is *the responsibility* of the Board to adopt policies for the best long term and short term interests of all of the Trust Beneficiaries; and

WHEREAS, political and social decisions have resulted in significant revenue losses and the placement of trust lands in long term deferrals to the detriment of the Trust Beneficiaries and with no replacement of those lost revenues; and

WHEREAS, the citizens of Clallam County are now, and have been, adversely financially and socially impacted by the loss of revenue associated with the arrearages on Clallam County's trust lands; and

WHEREAS, public timber sales for raw materials have been and remain crucial to mill owners; and

WHEREAS, timber sales proceeds play a key role in school construction and hospital construction; and

WHEREAS, timber sales play a key role in the economic growth and stability of Clallam County and the lack of DNR timber sales and volume was reported to have played a role in the closure of some of the mills in the region in the past two years; and

WHEREAS, RCW 79.10.330 provides that if an arrearage exists the department shall determine the course of action which provides "the greatest return to the trusts" and shall offer for sale the arrearage in addition to the sustainable harvest level.

NOW THEREFORE, BE IT RESOLVED, by the Port Commission of the Port of Port Angeles, as follows:

SECTION 1. Findings. The Port Commission hereby makes the following findings:

- A. During 2005 through 2014 the Department of Natural Resources did not generate revenue for Trust Beneficiaries due to arrearage of planned harvest. There were 245 million board feet planned but not harvested from trust lands in Clallam County (Olympic Experimental State Forests and Clallam County Lands). Clallam County has the highest volume of timber arrearages amongst the timber counties.
- B. During 2005 through 2014 the Port of Port Angeles lost an estimated \$.36 million of revenues because of arrearages.
- C. During 2005 through 2014 the school districts in Clallam County (Port Angeles School District 121, Joyce School District 313, Sequim School District 323, Cape Flattery School District 401, and Forks School District 402) lost an estimated \$4.4 million of revenues because of arrearages.

Port of Port Angeles

Port Angeles, Washington

Commissioners' Resolution No. 16-1132 (cont'd)

- D. During 2005 through 2014 the hospital districts in Clallam County (Forks Hospital District 1 and Port Angeles Hospital District 2) lost an estimated \$.9 million of revenues because of arrearages.
- E. During 2005 through 2014 all trust beneficiaries lost an estimated total of approximately \$12.6 million of revenues because of arrearages.
- F. The decrease in timber supply related to planned harvest has been a significant factor in the closure of three mills on the North Olympic Peninsula 2014 and 2015.

SECTION 2. Request for Action by Board of Natural Resources. The Port Commission hereby makes the following requests of the Board of Natural Resources:

- A. Require Department of Natural Resources to conduct the economic analysis required under RCW 79.68.045 to identify alternative courses of action regarding the harvest arrearage.
- B. Develop a five-year plan by December 31, 2016 that maximizes the financial benefits to Clallam County and all other Trust Beneficiaries for all arrearage volumes.
- C. Review past policies and interpretations that created the arrearages and put in place new practices, management tools, and reporting mechanisms to prevent future arrearages.
- D. Manage all state trust lands consistent with Forest Practice Board regulations and the State Habitat Conservation Plan, and not in excess of either.
- E. Require the Department of Natural Resources to provide the financial impact by county on decisions that reduce harvest levels.

SECTION 3. Request for Action by Port of Port Angeles Staff. The Port Commission hereby makes the following requests of staff:

- A. Engage state land agencies, education partners, and other Trust Beneficiaries in pursuing the maximization of our trust land revenues.
- B. Confer with legal counsel as to the other methods available to the Port and similar Trust Beneficiaries in Clallam County to ensure that their interests are adequately protected and addressed by the Department of Natural Resources.
- C. Confer with legal counsel on the Sustained Yield Calculations consistent with the legal requirements of the "Skamania" case.
- D. Take such action as necessary to receive the revenues in arrears from the Sustained Yield Calculations ending in 2004 and 2014.

Adopted this 25th day of July, 2016.

PORT OF PORT ANGELES
PORT COMMISSION



Colleen M. McAleer, President



Connie L. Beauvais, Vice President



Steven D. Burke, Secretary