

Clallam County Revenue Advisory Committee

Clallam County, Washington

Date: _____

Governor

Speaker of the House

President of the Senate

House Minority Leader

Senate Minority Leader

Subject: It's Time for the Legislature to Exert Its Role as Trustee of County Forest Board Transfer Lands

The Clallam County Board of Commissioners formed the Revenue Advisory Committee (RAC) on February 20, 2024 under Resolution 15, 2024. The purpose of the RAC is to,

“...confer with the County on issues related to state timber management, fiduciary responsibilities, trends, public engagement with State and Federal forest management agencies, issues impacting timber management and revenues which benefit the community, and such other related matters as the Board of County Commissioners directs.”

The RAC is comprised of elected officials from each Clallam County taxing district, and DNR representatives. Due to the fiscal and economic challenges created by the failure of the Department of Natural Resources (DNR) to offer the requisite volume of timber for sale, the RAC feels compelled to urge the Legislature, as the trustee of these trust lands, to intervene.

1. Background:

In 1935, in response to Counties taking ownership of thousands of acres of timberlands due to failure to pay property taxes, the Legislature enacted legislation (Section 3-b, Chapter 126, Session Laws of 1935) authorizing the state to demand such lands be transferred to the state to be managed in trust for the beneficiary counties and their junior taxing districts. The state felt it was better equipped to reforest and manage the land for the benefit of the counties and their junior taxing districts. Although this letter will focus on the 94,500 acres of Clallam County forest land transferred to the state, it's important to note that there are about 600,000 total acres of similarly positioned forest lands in twenty-one counties across the state.

Beginning in 1936, Clallam County deeded 94,500 acres of timberland to be managed in trust by the State of Washington. The authorizing legislation, and the deeds, created an irrevocable trust between Clallam County and the State of Washington. The deeds are very clear on this point,

*“The commissioners of Clallam County herewith deed, free from encumbrances to the State Forest Board, in accordance with the provisions of section 3-b chapter 126, Session Laws of 1935 the following described lands acquired by Clallam County through foreclosure of tax liens. **Such lands shall be held in trust** and administered and protected under the provisions of Chapter 154, Session Laws of 1923. ... Any monies derived from the lease of such lands or from the sale of forest products ... shall be distributed as follows...”*

The terms of the trust, which remain in place today, provide for reforestation, management of timber resources and the distribution of revenue to the County.

2. **The state legislature is the trustee, and the Washington Department of Natural Resources (DNR) is the trust administrator.**

Under the law, the Legislature serves as trustee, and the Department of Natural Resources (DNR) acts as trust administrator of the county transfer lands. The Legislature authorized the formation of the Board of Natural Resources (BNR), made up of trust beneficiaries, to provide policy oversight and guidance to the trust administrator (DNR).

3. **As the trustee, the Legislature has a Common Law Fiduciary Duty to Ensure County Transfer Lands are managed for the Benefit of Clallam County and its Junior Taxing Districts**

As trustee, the Legislature must abide by common law principles, which have been re-affirmed in two unanimous Washington State Supreme Court Decisions (*Skamania vs Washington State (1984)* and *Conservation Northwest vs. Franz (2022)*):

- Act with undivided loyalty to the trust beneficiaries.
- Act with prudence in sustainably managing the counties’ trust lands to generate revenues.
- Act with a duty of loyalty to the beneficiaries, within the boundaries of the Habitat Conservation Plan, Forest Practices Act and Sustainable Harvest Plan, by managing lands solely for the county’s benefit, excluding competing state or public interests no matter how laudable.
- Act with a duty of transparency.

While the Legislature can change management rules, it cannot negate the essential purpose of the trust to sustainably manage county forest lands to generate revenue for counties.

4. **Recent actions by your trust administrator and the Board of Natural Resources compel the Legislature to exert its authority as trustee to ensure adherence to common law trust principles.**

Over the past year, the DNR withheld eight timber sales with an appraised value of \$7.9 million, with a likely sale value of up to \$12 million. The revenue from these sales would have been distributed to manage trust lands and to Clallam County and its junior taxing districts (schools, fire districts, hospital districts). All these sales complied with DNR's federally approved Habitat Conservation Plan, with the Forest Practices Act and with DNR policies for protection of old growth timber and riparian areas. The decision to withhold these sales was an administrative decision by the DNR.

Moreover, state law requires that "arrearage" volume (volume not offered for sale per the decadal sustainable harvest plan) be offered in subsequent periods. Clallam County has tens of millions of board feet of arrearage volume that has not been offered for sale.

The administrative decision to withhold timber sales from the market, coupled with the failure to offer arrearage volume for sale has deprived Clallam County, and its junior taxing districts of tens of millions of dollars. The only recourse will be to cut services to Clallam County residents or ask those residents to pay higher taxes to offset the loss of trust land revenues.

As trustee, the Legislature is responsible for ensuring the trust is managed in accordance with the deed and common law trust obligations that require it to act prudently and with undivided loyalty to the trust beneficiaries, to the exclusion of all other interests no matter how laudable. Failure to supervise the trust administrator is tacit approval of DNR actions.

5. **The Legislature must exercise its discretion, and obligation, as trustee to ensure that the trust administrator is managing these lands with undivided loyalty to the beneficiaries.**

The RAC urges the Legislature to consider the following actions:

- Become educated about their common law obligations to the trust beneficiaries of these lands.
- Seek historical data from the DNR on revenue generated for Clallam County trust beneficiaries for the past two decades.
- Seek a projection from DNR on future revenue to Clallam County trust beneficiaries, and an analysis of the factors that will influence the amount of revenue including phasing in arrearage volume.
- Carefully monitor the actions of those appointed to represent trust beneficiaries at DNR and on the Board of Natural Resources to ensure that appointees are abiding by their fiduciary obligations.

Clallam County residents depend on the long-term integrity of this trust to support essential services, economic stability, and sustainable forest management. We urge you, the trustees, to review of the administration of these trust lands and make sure the management is consistent with your trustee responsibilities.

Thank you for your consideration.

Respectfully,

Clallam County Revenue Advisory Committee