

DIVISION OF
STATE LANDS

The Oregon State Land Board met in regular session on December 20, 1993 in the Land Board Room of the State Lands Building, 775 Summer Street N.E., Salem, Oregon 97310.

STATE LAND BOARD

BARBARA ROBERTS
Governor

PHIL KEISLING
Secretary of State

JIM HILL
State Treasurer

Present were:

Barbara Roberts Governor
Phil Keisling Secretary of State
Jim Hill State Treasurer

Assistants

Anne W. Squier
Nina Johnson
Rollie Wisbrock

Staff

Gary Gustafson
Steve Purchase
Gary Van Horn
Gail Lowry
agency staff

Dept. of Justice

Bill Cook

The meeting was called to order at 1:40 p.m. by Governor Roberts. The topics discussed and the results of those discussions in the regular session of the meeting are listed as follows. Further details of the discussions may be obtained in the written transcript of the meeting available at the Division of State Lands, 775 Summer Street N.E., Salem, Oregon 97310 (phone: 378-3805).

Governor Roberts suggested that Item 4a (request for rulemaking authority to repeal a 10-year lease limitation for North Tongue Point) be removed from the consent agenda and placed on the regular agenda, to allow for discussion on the issue. Secretary of State Keisling moved that the item be transferred to the regular agenda. State Treasurer Hill seconded the motion and the approval was unanimous.

Director Gustafson introduced Rich Carson, a new staff person with the Division of State Lands, working to develop administrative rules under SB 81 (formerly SB 192) to identify essential indigenous anadromous salmonid habitat.



Tongue Point

Request to initiate rulemaking authority to repeal 10-year lease limitation for North Tongue Point.

Director Gustafson introduced former consent item 4b, a request for rulemaking authority to repeal a 10-year lease limitation at North Tongue Point. Gustafson said that in 1981 the Board approved and the Division adopted a rule that established a 5-year lease limitation on the submerged and submersible lands and established a minimum lease rental rate. In 1985 the Land Board amended that rule to extend the lease term to 10 years. Gustafson said the Division has a current proposal considering a holistic use for both the uplands and the submerged and submersible lands, which he said are integral to each other, since any uses on the piers will effect the uplands and visa versa. He said if this rule is repealed, an existing administrative rule will allow the Division to keep the same leasing rate. Repeal of the rule allows the arbitrary 10-year constraint to be lifted.

State Treasurer Hill moved the item be approved. Secretary of State Keisling seconded the motion. The decision was unanimous.

Tongue Point

Report on status of lease negotiations with Cresmont Technical Services, Inc. and request to proceed to finalize a long-term lease of state land at North Tongue Point.

Director Gustafson said the Board last discussed the Cresmont proposal at its September 1993 meeting. The Land Board authorized the Division to continue negotiations with Cresmont and to return with the results of those negotiations. Since that time, Gustafson reported that he, David Blum of the Division and Greg Jenks, regional business development officer of the Oregon Economic Development Department, met with Cresmont a number of times to work through the major primary components of the proposed long-term lease.

The primary lease terms are a 55-year term, including a purchasing option. The Division plans to initially negotiate a 10-year lease with Cresmont which will be extended to 55 years, if the administrative rule is repealed that does away with the 10-year limitation. Gustafson said it's unrealistic to expect a private sector tenant to invest money in the site without the ability to amortize that investment over a period of time.

An option to sell the property is also included in the lease. The state surplus property review process would be followed, so other state agencies would be given first right to purchase. After this, local government is given the next right to purchase, including cities, counties and port districts. Then, if the property has not sold, it would go on the open market and Cresmont would be the first private entity able to purchase it. Gustafson said if the decision was made to sell the property, the purchase price would be no less than the current fair market appraised value of the property and the improvements.

Gustafson said a sale would be contingent upon the site being found free of any hazardous wastes, and a complete bill of health being received from appropriate federal and state agencies. He added that significant progress has been made to date on this issue.

The lease could be assigned and subleases would be permissible with prior written approval of the Division of State Lands. None of the contractual obligations of the master lease could be abrogated in any sublease.

During the first year of the lease, Cresmont would guarantee the Division \$5,000 per month minimum lease rental, plus they will construct improvements to the site as follows: 1) A \$12,000 upgrade to Hangar 3 to meet the Americans with Disabilities Act requirements; 2) Extension of electricity to the piers and the addition of lighting to the piers (\$125,000); and 3) Exterior improvements (\$68,000) to Hangar 3, such as window and door replacement and painting (the labor might be done through the Job Corps in Astoria). After the initial year, Cresmont has agreed to pay the Division 40 percent of all gross receipts accruing from any activity on the property or \$20,000 per month (whichever is greater). After each 5-year period, there will be a readjustment of the minimum monthly rental to ensure that it is commensurate pay for the site.

State Treasurer Hill asked whether there was a deadline for these improvements to be done. Gustafson said the lower rental rate could be extended to 14 months, if needed, at which time the improvements must be completed. He said that other long-term improvements which are needed will be the responsibility of Cresmont and are to be outlined in a master development plan which is to be paid for and submitted to the Division by Cresmont by January 1, 1995 (if the lease is signed by January 1, 1994). The master plan will identify the 10-year plan for the uses and activities that Cresmont would bring to

the site. It will detail the infrastructure of the improvements that would be necessary to accommodate those uses and activities, as well as the engineering specifications for the improvements. The master development plan will be reviewed by the Land Board and once approved will become part of the master lease. The master development plan will be reviewed at least every five years thereafter. If Cresmont can't produce according to the master plan, termination of the lease can take place.

Governor Roberts asked what would happen if the Board denied approval of the master development plan. Gustafson said if there were issues in the plan that the Board didn't approve of, communication could take place with Cresmont to change these items. If after changes, the master development plan was still not suitable to the Board, the lease could be terminated.

Gustafson said close attention must to be paid to environmental compliance. He said we will go beyond federal, state and local ordinances to ensure we have protected the state's interests.

He discussed the performance bonding, insurance and indemnification provisions in the proposed lease. Gustafson said that the lease clarifies that any property taxes related to the leasehold interest, as well as all associated utilities, normal maintenance of the improvements, and on-site security, are the sole responsibility of Cresmont.

The Division will retain administration of the lease and will maintain responsibility for getting final certification of any hazardous waste clean-up. Gustafson said the agency is working with the Corps' office in Seattle which is doing the remediation work on site currently and is ready to begin testing between the finger piers. Once the testing is completed, it can be better determined how long the clean up will take, whether dredging between the finger piers is possible and how it could be accomplished. Governor Roberts said the lease must clearly specify that, should any hazardous waste be created after the lease is entered into, the responsibility for clean up would be Cresmont's, and not that of the Division or Board. Gustafson agreed, but said the lease would be designed to ensure that hazardous waste won't be produced on the site in the first place.

Gustafson said the Division will initiate the permitting process for dredging. He said it's possible that the necessary permits can be obtained and dredging authorization can proceed within the next two years. He said work is underway to obtain federal funds to pay for the dredging. State Treasurer Hill asked whether the federal government or another entity would pay for the dredging. Gustafson said he's not certain. He said the federal government will want to ensure its prior dredging

efforts aren't wasted. He said another factor is that the site would be dredged for both North Tongue Point and South Tongue Point--rather than just the one site, making it more worthwhile. Gustafson said the two challenges for dredging are getting the funding obtained and the permit approvals.

Secretary of State Keisling asked whether the language in the lease will clarify that obtaining the needed permitting and funding for the dredging is not 100 percent sure. Gustafson agreed and said that Cresmont understands this and is willing to deal with the site without dredging, though everyone is optimistic that dredging will be possible.

The Division along with the Economic Development Department is also investigating any federal grants that may be available. He said the agency will do what it can to apply for these to assist in the development of the site.

Gustafson then reviewed the appendices to the written materials indicating projections for long-term revenues from the leasing of the site. He said these are predicated, of course, on whether dredging is completed. Additional information compares the existing expenditures at North Tongue Point with what expenditures could be expected under the proposed Cresmont lease, and under a situation where the site was retained without doing a master lease with anyone--for the next five years (at which time hopefully the site would be certified free of contaminants and the dredging question settled). He said the agency would expend more and receive less by continuing the Division's management of the lease, rather than entering into the proposed lease with Cresmont.

Gustafson said the agency's recommendation to the Board would be to allow negotiations to continue with Cresmont until a comprehensive long-term lease document has been fully developed and has the approval of the Department of Justice. He anticipated that might happen in time to bring the issue before the Board in February.

Governor Roberts acknowledged Senator Joan Dukes and Representative Tony Federici, who were at the meeting.

William Wolfe, President of Cresmont Company, commended the Board for the efforts of Director Gustafson, David Blum of the Division of State Lands and Greg Jenks of the Oregon Economic Development Department. He stated he believes the North Tongue Point property has viability with a strong labor base and the potential of drawing from a national or an international basis.

He said if dredging doesn't occur, though it is important, Cresmont will develop the industrial aspect of the business instead of the marine. He said the master plan is a critical element to the overall success of the project. They will use it to create activity and income for both the state and Cresmont.

He said the effort to develop the site is definitely not an individual effort, that Cresmont, the state, the City of Astoria, the Port of Astoria and others within the state need to work as a team regarding the process.

State Treasurer Hill asked Wolfe how he felt about "competing with the Port of Astoria." Wolfe responded that the Port of Astoria will realize benefits from the efforts at North Tongue Point. He reiterated again his intent that once a long-term lease is finalized to sit down with the Port and other parties on a team meeting basis. He doesn't see Cresmont as being in competition with the Port.

Secretary of State Keisling asked Wolfe how he would feel if, during the term of the lease, the state assigned the master lease. Keisling said he would like to see that option made available. Wolfe said if the lease were kept intact and the ground rules didn't change, and it was passed on to someone that could manage the lease, he would have no problem with that.

Willis Van Dusen, Mayor of Astoria, commended Director Gustafson, David Blum and the Division of State Lands for keeping the city informed of the details about the North Tongue Point lease proposal. He said previously the city has not always felt it was kept in the information loop. He said some of the benefits of the closer communication was the cooperation that occurred in the filming of the movie Teenage Mutant Ninja Turtles 3 in Astoria.

He said Tongue Point had been annexed into the city, enabling them to provide both police and fire protection for the area. A new water line is being prepared for installation. He said they agree in concept with the proposed Cresmont lease. He believes that Cresmont will be an equal partner with the county commission, the Port of Astoria and the state.

State Representative Tony Federici said, though the lease looks generally good. He voiced his concern that the lease is 55 years in duration. He also expressed his desire that there be greater specificity to the period of time allowed for the construction phase of the lease.

Another concern was labor issues and the potential for liability if injury occurs in the use of the Job Corps for construction at North Tongue Point.

Leal Sundet, chairman of labor relations for the Longshore locals on the Columbia River and Oregon Coast (ILWU), said the union contracts coastwide to load and unload cargo on oceangoing vessels and barges. He said they are somewhat concerned with what the intent of Cresmont is for the use of the site, and concerned that Cresmont may circumvent the stability in the industry. He said they aren't opposed to development of the site, but are concerned that there isn't real clarity on the issue of whether non-union labor will be used. He asked the Board to ensure the labor union will be involved in the process.

June Spence, President of the Port of Astoria Commission, said she appreciated Mr. Wolfe's comment regarding working together. She said business on the river is good for everyone. She said the Port is in a state of change right now, which she feels is all for the better. She said they also look to the state for assistance.

Frank Little, Commissioner with the Port of Portland, said he believes the Port will be a competitor with Cresmont. His concern would be that the Port be on an even-playing field, since the state and Cresmont would be forming an alliance. Little said after reviewing the latest materials, he feels the income projections for the first six months may be too optimistic. He stated that the lease should include a provision that market rates be required for leasing. He said Cresmont's warehouse space leasing rate is below the market rate that they are trying to achieve for the Port, which he feels could pose a problem for the Port. He also encouraged switching to general commercial zoning rather than industrial/marine related.

Wolfe responded to a prior comment by saying he doesn't feel the state is subsidizing Cresmont, since Cresmont has put considerable money into the project. He also reiterated that they aren't competing with any port authority. He said there is plenty of business available on an international business basis that they can bring into the North Tongue Point, that has no effect on any port authority in the state.

Regarding the labor union issues, he said they aren't in a position while drawing up a lease to dictate whether anyone can say the force must be either pro- or non-union.

As far as maintaining fair market rates on leasing--he said they are very cognizant of the situation and are working closely with the Division regarding the issue.

He summarized by saying Cresmont doesn't want to compete with anyone--that their thrust is for creating new and quality jobs.

In response to a question regarding timing from State Treasurer Hill, Wolfe responded that timing is of the essence with Cresmont. He said most businesses make decisions around the end of the year. He said it is important that they obtain a long-term lease to ensure prospective lessees that they could make leasehold improvements they can amortize over a 30-50 year period.

State Treasurer Hill moved the Board accept the Division's recommendation to give conceptual approval to the primary lease terms specified in the written materials presented to them and to authorize the Division to proceed to prepare a final long-term lease with Cresmont subject to those terms, as soon as reasonably possible. Secretary of State Keisling seconded the motion.

Secretary of State Keisling said North Tongue Point hasn't been a great performer, since approximately \$5 million has been invested into it and approximately \$1 million has been returned. He said the state is losing money at the rate of \$70,000 per year currently on the site. He said the master plan is an extremely important part of the process--giving the Board a second chance to review the lease. He feels as a long term goal, the Board should be looking for another entity to hand the site to, consistent with the fiduciary duty and preserving the investment that has been made. He thanked the staff and Cresmont for the work that has been done, but stated that if twenty years from now the Board is still in this business, something has gone wrong. He said he will be looking for future alternatives for the site.

State Treasurer Hill said he is pleased with the opportunity for people to see that private industry and business can work together in a cooperative fashion. He thanked the staff and others who have participated in this process.

Governor Roberts also commended the staff for their work. She said at the next step in the process, there are many places where this could work or go astray. She said she feels the five-year checkpoints are important aspects of the proposal. At this point, if certain things aren't working we should be able to stop and admit it hasn't been successful. She also commented on the importance of being able to work with Cresmont during the developmental stages of the master plan. She said that, after nine years of working on the site, she would be very pleased to see this be a successful negotiation and a successful operation for the community, the Land Board, the state and for the Common School Fund.

A vote was taken on the motion and the decision was unanimous.

Forestry

Request for approval of the revised Common School Forest Land Management Agreement with the Oregon Department of Forestry.

Director Gustafson explained some changes to be incorporated into the written materials:

1. Page 4, Section 4, second sentence should read, "Such plans, when approved by the Land Board shall govern all management activities."
2. Page 11, Section 17, the word "contract" should be changed to read "agreement."

Secretary of State Keisling moved approval of the agreement as amended by staff. State Treasurer Hill seconded the motion and the approval was unanimous.

State Forester Jim Brown said this has been a long negotiated process--but is a good agreement, which does the job of defining the roles and updating the provisions of the agreement into one that will serve the Board and Division as well as the Department of Forestry.

Director Gustafson said the agreement is the result of close cooperation between the Division and the Department of Forestry. He asked that the agreement be signed by all parties today.

Forestry

Review of draft management plan for the Elliott State Forest.

State Forester Jim Brown reviewed Forestry's role in management of the Common School forest lands since about 1955. He said in the early years the predominant interest was to manage the land primarily for the raising of revenue for the Common School Fund. As demographics of the state have changed, people want us to move from just dealing with the management of the timber resources to a more integrated approach, still consistent with the statutory responsibility.

When owls were discovered on the forest, it complicated the timber management aspect. Several years ago, after this occurred, the Board asked Forestry to put together a comprehensive forest management plan for the Elliott to take into account the sustainability of all the resources, while meeting their fiduciary responsibility. Jill Bowling was hired to head the state land forest management program, and to coordinate the development of the Elliott State Forest Plan.

Bowling said the effort has been a collaborative one, with a lot of technical experts from the Department of Forestry, Division of State Lands and Department of Fish and Wildlife. This has produced a set of guiding principals, goals and strategies for managing the natural resources on the forest. She said seven alternative strategies were developed dealing with timber, owls, murrelets, and fish--the most difficult pieces of the forest to deal with. Both ODFW and ODF recommend a single alternative--the balanced landscape alternative, providing for long-term revenue generation, as well as protection for the listed endangered species, fish protection and takes into account elements of biodiversity. She said this will be used as part of a habitat conservation plan--the first in the state--that will get us away from haphazard management for owls and give us something integrated, coordinated and soundly based. She said very active public participation has occurred during the process to date, and they would like to continue the public review over the next couple of months before bringing a final product to the Board for signature:

Governor Roberts expressed the importance of the public in the process. She said this plan should help us meet the standards of the law and also the standards of long-term management allowing the species and forest to thrive and the harvest to take place.

Governor Roberts brought attention to the chart on 5-3 provided in the written materials, laying the options down including the balanced landscape. She recommended attention be paid to the impacts of the riparian strategy (number two) and how that might change, if a different riparian plan is chosen. She said this is a critical element right now. There are some fish specifically not listed that could be listed later.

Governor Roberts asked Secretary of State Keisling to chair the meeting, since she needed to leave.

Bowling said throughout the year, meetings have been taking place monthly with the USFWS to review protection standards appropriate for the owl and murrelet, and they have seen a copy of the plan. She said that with the limited biology on the murrelet, Forestry has been told they are on the cutting edge of murrelet biology with the Elliott Plan and the recommended alternative. She said the plan allows for incorporating new scientific information as it becomes available.

Mineral Rights

Request for approval to transfer mineral rights under Board of Forestry lands in Tillamook County as part of a proposed land exchange with the Bureau of Land Management.

Director Gustafson said this is part of an exchange already initiated by the Department of Forestry to exchange lands owned by the Board of Forestry for BLM lands in Tillamook County. Land Board approval is necessary to approve mineral estate transfers; the Board of Forestry has already approved the exchange. Gustafson said the extent and value of any minerals isn't precisely known for either of the sites. The Department of Geology and Mineral Industries has done a cursory analysis, which is included in the appendix of the written materials. Both sites are unencumbered and are part of the same basin. The transfer will assist surface estate management making it easier for both the BLM and the Department of Forestry to do their jobs. It is believed that any value associated with the minerals should be fairly equal.

State Treasurer Hill moved the Board approve the exchange as recommended by the Division, based on the findings set forth in the written materials. Secretary of State Keisling seconded the motion. Keisling said he would like to explore with the federal government ways of dealing with these small parcels en masse rather than singularly. State Forester Brown said Forestry has been more successful in doing large exchange programs with the private sector than with the federal government. He said to the extent that parcels are identified for this and local BLM managers are willing, they have accomplished exchanges.

Gustafson said the agency has initiated an asset management planning process which will assist in this process. He said he met recently with Dean Bibbes, State Director of the BLM, and discussed doing large scale land exchanges.

State Treasurer Hill voiced his concern for transferring mineral rights when he's uncertain exactly what value is being transferred. He said if at all possible, he would like to have a better idea of the mineral estate, in order to be able to make the wisest decision. Gustafson said that the Department of Geology and Mineral Industries is contracting with the Division on some of our larger ownership blocks to do mineral analysis, to give us a clearer understanding of what our mineral ownership might be.

A vote was taken on the motion and the decision was unanimous.

Wilsonville

Update on Wilsonville site specific land use plan.

John Lilly, Assistant Director of Policy and Planning, reviewed the preliminary draft of the Wilsonville site plan. He said five options are being proposed for the public to consider. Over the next four to six weeks, a draft will be finalized to send out for public review. A public meeting to receive input will be held in the Wilsonville area. The plan will then be revised and a recommendation brought to the Board in March or April.

Land Transfer

Update regarding common school land sales at Hart Mountain National Antelope Refuge and Malheur National Wildlife Refuge.

Director Gustafson said the title research for Hart Mountain National Antelope Refuge and Malheur National Wildlife Refuge has been completed. He said 320 acres in the Hart Mountain inholdings (of the 12,000 total acres) were found to be not common school lands, but rather swamp lands. These must be deleted from the sale package, since there is no constitutional authority to overcome the county's objection to the sale. Gustafson said the Division intends to proceed with the sale of the remainder of the acreage to the U.S. Fish and Wildlife Service and to adjust the sale price accordingly.

A productive way of disposing of the 320 acres of swamp lands needs to be found, and options with any interested parties will be considered.

After completing the title search on Harney County, Gustafson said the finding was that the majority of those lands were characterized as common school lands acquired through a foreclosure sale in the 1920's. The Land Board operated a program of loaning Common School Funds to individuals to purchase land. In this situation, these individuals didn't pay their taxes and the county foreclosed. The Land Board purchased the property back. A small portion of those lands were determined to be mud lands, which definitely aren't constitutional. In those days, Gustafson said, it was difficult to determine whether the monies used to purchase the properties was constitutional or statutory. In this case, it is best to be safe and to drop the sale of the lands entirely. Gustafson said he had called Harney County to discuss future disposal of the lands, in a way which will meet with the fiduciary responsibility of the Board. No action is necessary.

Secretary of State Keisling moved the meeting be adjourned. State Treasurer Hill seconded the motion and the approval was unanimous. The meeting was adjourned at 4:00 pm.