

DIVISION OF
STATE LANDS

The Oregon State Land Board met in regular session on June 8, 1993 in the Land Board Room of the State Lands Building, 775 Summer Street N.E., Salem, Oregon 97310.

Present were:

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

STATE LAND BOARD
BARBARA ROBERTS
Governor

PHIL KEISLING
Secretary of State

JIM HILL
State Treasurer

Assistants

Anne W. Squier
Nina Johnson
Rollie Wisbrock

Staff

Gary Gustafson
John Lilly
Gary Van Horn
Steve Purchase
agency staff

Dept. of Justice
Bill Cook

The meeting was called to order at 10:15 am 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 NE, Salem, Oregon 97310 (phone: 378-3805).

Short-Term Agenda

Request for approval of a short-term agenda for the State Land Board and Division of State Lands.

Director Gustafson said this item was initially discussed at the May meeting of the State Land Board. At that time, he recommended soliciting public involvement and comments on the four-year agenda before requesting that the Board vote on its approval. After that meeting, the list of objectives constituting the short-term agenda were mailed out with requests



for comment. Responses were received from Dolan Communications; DOGAMI; Peg Reagan, Curry County Commissioner; Ralph Blanchard, Polk County Commissioner; Mike Thorne, Port of Portland; Rocky McVay, Curry County Commissioner; Cecil Edwards, legislative historian; Michael Borreson, Washington County; Greg Miller, Oregon Forest Industries Council; Rick Fanning, Sixes, Oregon; Martha Pagel, Water Resources Department; Liz Frenkel, Sierra Club; Russell Hursh, Malheur County Judge; Representative Tony Federici; Avis Rana; Jim Myron; and the Douglas County Board of Commissioners. Gustafson said valuable input was received and this input was reflected in the final short-term agenda items presented to the Board today. Two additional objectives were added to the original list--1) the completion of the Elliott State Forest long-range management plan, and 2) ensuring that removal-fill education and enforcement efforts are properly emphasized--making a total of 18 objectives.

Gustafson noted that a chart had been attached to the written agenda materials to give visual depiction of how the timing of the short-term agenda would be addressed over the next four years. He also added that it would be necessary on a yearly basis to review the list to ensure that updates and revisions occur as necessary.

Les Helgeson, representing Friends of the Nestucca and the Nestucca Grange, circulated written comments to the Board. He said they are generally supportive of the primary short-term agenda for the Division and State Land Board, particularly the items pertaining to the Common School Fund. He said the Division's intent to concentrate additional resources on watershed enhancement protection efforts is a noteworthy goal. He suggested a working group be formed to discuss amendments to ORS Chapters 273 and 274.

Helgeson expressed concerns regarding the Division's intent to advance the state's navigability ownership interests. He said a more desirable goal would be to generally clarify the extremely complex navigability issue as opposed to advancing the state's ownership which, he said, in some cases could result in adverse human impacts degrading or otherwise compromising habitat for fisheries and other important natural functions. He also shared his concerns regarding the impacts to local property tax revenues. By removing lands from existing local tax roles, revenues are being removed from local school districts. This could be a problem, he said, where ownership assertion isn't accompanied by benefits to the Common School Fund, especially with Ballot Measure 5 already causing substantial impacts to school funding. He recommended, on behalf of the children who depend on the Common School Fund and local property taxes, that the Board amend this goal to "reflect the clarification and resolution of the exceptionally complex navigability issue, which is deeply rooted in common law and tradition."

Liz Frenkel, Sierra Club, commented that management plans tend to produce better natural resource goals. She said the concern of the Sierra Club is in the formation of policies, and the lack of accountability that they can produce. She said the rulemaking process is a full public process which produces a litigable standard against which an agency can be held accountable. Administrative rules, she said, are the yardstick that members of the public can use. She stressed her desire to see the implementation of policies followed by rulemaking, in which the public can be involved.

Governor Roberts said the purpose of policy implementation is to set a management tone for the agency and to set priorities and a framework for how things will be done.

Frenkel reemphasized when a policy is established, she feels it should be followed by rules. She sees rules as a means of policy implementation, as well as statute implementation.

Secretary of State Keisling said there have been cases recently where issues came to light initially from a management standpoint; policies were implemented and then rules were created. He cited the example of recreational mining on state-designated scenic waterways.

Governor Roberts said she believes it may be almost impossible to create a rulemaking process for everything the Board does in managing its assets.

Frenkel expressed her concerns about the process of public input. She said they have dealt with some federal agencies who spend a lot of time talking but nothing happens. Governor Roberts said the Board's intent here is to expand the input of citizens rather than to narrow it. She commended Frenkel on her letter and input, saying the comments were applied in the revisions of the original policy.

Secretary of State Keisling moved the Board adopt the short term agenda. State Treasurer Hill seconded the motion. Secretary of State Keisling encouraged continued comments on the list, since it will be periodically reviewed. State Treasurer Hill expressed his appreciation for the short-term agenda, saying it gives notice to people regarding how the Board and agency are proceeding.

Secretary of State Keisling asked that the words "clarify" and "resolve" be substituted for the word "advance" in written materials when dealing with the issue of navigability. He said where there is an ownership interest, the Land Board is vulnerable to a court suit, if it fails to assert the claim. It is not just a policy choice. Governor Roberts also stressed the

responsibility of the three members of the Land Board to assert ownership issues. She also said the short-term agenda is a living document that will be revised as things are accomplished or with ongoing evaluations.

The motion was approved and the decision was unanimous.

**Administrative
Rules**

Request for authorization to amend the administrative rules relating to wetland inventories.

Director Gustafson said the concept of identifying jurisdictional wetlands for development and other activities over the past several years has been very controversial in Oregon as well as across the United States. This request would allow amendment of the existing rules dealing with identification of wetlands and would delete a reference in the rules to the use of the 1989 federal manual for identifying and delineating jurisdictional wetlands. Gustafson said federal agencies are now using the 1987 manual. There are some slight differences in the two manuals, he said, though they are difficult to detect. Congress has recognized the problem and requested the National Academy of Sciences to study wetlands and recommend a consistent approach for both state and federal agencies to identify them. Deleting the reference to the 1989 manual in our rules will allow the Division the flexibility of proceeding with whatever standards are appropriate for the State of Oregon, including the use of the 1987 manual--but not locking the Division into a requirement of the use of a particular manual.

Director Gustafson explained that the second rulemaking change involves deleting the buffer mapping and planned designations from Wetland Conservation Plan inventories. The requirement to do these will still be there, but since these are not solely an inventory requirement but a planning requirement, they shouldn't be in the inventory section. The amendments would also clarify that wetland boundaries must be surveyed before actual development takes place.

State Treasurer Hill moved the Board approve the amendment of administrative rules related to wetland inventories. Secretary of State Keisling seconded the motion and the approval was unanimous.

NHAC

Request by the Natural Heritage Advisory Council for registration of nine additional sites on the Oregon Register of Natural Heritage Resources.

Director Gustafson explained that of these nine nominations from the Council, eight of them are located in the Columbia River Gorge and are managed by the Oregon Parks and Recreation

Department. The ninth site is in the vicinity of Roseburg, nominated by a special non-profit trust formed to identify and preserve the resources in the area. He said these nominations are part of the ongoing effort of the Council to fill the remaining biological and flora cells that will compose the natural heritage resource base for Oregon and the overall national system.

Gustafson said he learned from Jimmy Kagan of The Nature Conservancy that about one-half of the cells required as representative samples across the State of Oregon have been filled at present. He said each of the landowners of the sites nominated today have concurred with the nominations.

Secretary of State Keisling moved the Board approve the nine sites for registration. State Treasurer Hill seconded the motion and the decision was unanimous.

Minutes

Request for approval of minutes of the May 11, 1993 State Land Board meeting.

State Treasurer Hill moved the minutes be approved. Secretary of State Keisling seconded the motion and the approval was unanimous.

Dammasch Property

Update on Dammasch property planning effort.

John Lilly, Waterway Planner, was asked to brief the Board on the current planning efforts for the Dammasch property at Wilsonville. He said a public workshop had been held on April 29, 1993 at the Dammasch State Hospital with an attendance of around 35 people. The purpose of the meeting was to allow for dialogue with the community regarding future plans for the property. Lilly said the meeting was primarily a question and answer session. He reported that most of those present were in favor of keeping the property in its present condition--continuing the current farm use.

Lilly reported that the Natural Heritage data base will be used to review the property for potential threatened and endangered species. An archaeological team will also be contracted to review whether there are archaeological or cultural resources on the site.

Lilly said he has been in contact with the Clackamas County Planning Department, the City of Wilsonville, groups in the area, and realtors and commercial folks in the Portland area to gain a broad spectrum of ideas and possibilities for the property. He said another workshop will be held in late July or early August to update those interested about what has occurred. He expects that a draft plan will be circulated and then a proposal brought back to the Land Board by October.

Governor Roberts expressed her appreciation to Lilly for the ongoing work on this project.

Elliott Forest

Update on the Elliott State Forest Plan.

Director Gustafson introduced Jill Bowling from the Department of Forestry to update the Board on the Elliott State Forest Plan. He acknowledged the progress that has occurred and credited Jill Bowling and staff of Forestry for their work on the Plan.

Bowling stated that Forestry is on target with the planning process. She said that meetings are taking place with other state agency staff to analyze data collected to date. Three public meetings were held in Roseburg, North Bend and Salem. Informal contacts with interest groups are happening during this second stage of the public involvement aspect. In September a public workshop is planned to discuss the guiding principles, management objectives and strategies for the forest. Public comments that have been received will appear as a record in the planning document. Bowling said a number of comments were received about concerns over social economic impacts and the importance of the forest. Due to this, a three-month project was designed with members of the Department of Forestry working with a state economist, to study impacts of the forest on local communities and to model that work.

Bowling said a second concern was the lack of information regarding fish habitat. Forestry is consulting with ODFW and they are providing staff to do in-stream survey work. Data are being meshed on fish availability and habitat in the forest, including reviewing opportunities for improving stream quality.

Staff have been working throughout the winter, she said, to update the inventory on the timber resources in the forest. Data have been inputted into a Geographic Information System's (GIS) format. Layers of GIS information are now available for timber, rivers and streams, roads, soils, aspect and slope, land ownership, and threatened and endangered species. The state GIS service center was previously used for this, but Forestry now has a computer within the department allowing them to do this data manipulation.

Students from OSU have also been hired to do a recreational assessment on the forest. A consultant will be hired to review objectives and strategies from a biodiversity aspect to ensure that nothing has been omitted and information is properly integrated.

Background sections of the plan have been written, including sections on history and resource assessments. A writing consultant has been hired to assist with the writing process who has had prior experience in writing a habitat conservation plan.

Bowling said three elements are needed--the Elliott Management Plan, the habitat conservation plan for owls and murrelets, and the state conservation plan, which is being written by the Department of Fish and Wildlife.

In summary she said she is pleased with the progress, the timetable and the talented people working on this project.

Governor Roberts thanked Bowling for her part in "keeping a very complex and large job on track." The other two members agreed.

Forest Products

Marketing forest products from state lands.

Governor Roberts introduced Representative Sam Dominy of House District 44. Dominy discussed an aerial logging technique which resulted in a successful harvest of approximately 10 million board feet of timber in the Ashland area with no threat to nesting spotted owls (in his opinion). He brought a video tape explaining how the logging project was conducted.

Greg Miller, Oregon Forest Industries Council, said he hoped the video would show that forestry and wildlife do coexist. He said that aerial logging is a creative way to address some of the management issues on the Elliott. The video entitled "Resolving the Conflict in the Woods" was then shown.

After the video, Greg Miller commented that there are site specific differences between the area in the video and the Elliott State Forest, and the possibility for using the aerial lift techniques is important.

Jim Neal, Aerial Forest Management Foundation, offered to conduct a field trip for any of the Board members to northern or southern California to show them some of the areas these techniques have been used.

Governor Roberts said we are currently in the process of reviewing options for management of the Elliott in today's world and learning to be more creative in how we manage the forest. She said Forestry has in the past requested helicopter bids on a couple of specific sales, so this is an option already being considered.

Secretary of State Keisling asked for the cost breakdown figures for the Ashland logging project. Representative Dominy said he would provide that information. Dominy commented that the cost is sometimes more than just dollars, but includes the overall cost to the environment. Governor Roberts added that when new roads don't have to be built or maintained, as well as a number of other factors that go along with logging in the conventional manner, that aerial logging could begin to get more cost effective. She said other areas where it is useful is in steep landscapes.

Ray Craig, Assistant State Forester, briefed the Board on the concept of exploring different ways to market forest products from state forest lands. Forestry is currently examining the concept of selling logs versus stumpage on all state lands that the Department manages, including the Elliott State Forest. Under Forestry's current method, the contract purchaser has up to three years to remove the timber. With the new proposal, Forestry would employ the loggers and sell the logs on the open market. Forestry anticipates this change will improve the system by: 1) reducing the exposure to litigation; 2) increasing potential revenues to the Common School Fund and to the counties through the lands Forestry manages; 3) increasing the certainty of how the logging is operated, especially in dealing with threatened and endangered species; and 4) enhancing the ability to control the logging operations and improving silvicultural techniques, overall ecosystem management and biodiversity.

Craig said a working group has been formed to research the possibility of lowering the risk of legal or financial problems. The results of this research will be available in early August to the Land Board Assistants, then brought to the Land Board in September. He said full implementation may take a longer period of time.

Governor Roberts commented that, rather than choosing just one of the alternatives offered on the first page of the May 21, 1993 memo, that these alternatives could possibly all work together to offer flexibility in the marketing program. She also cautioned against too much detail in the first draft to be presented to the Board. She said, at that point, policy choices aren't needed. She also commented that she's unsure why the state would lose money (a caution that Ray Craig said should be avoided), since others make money when they cut and sell our timber. She expressed another concern that the Board made a commitment to a level of harvesting that would occur this year and she wanted to ensure that the commitment would be kept.

Secretary of State Keisling commented that over the next three months a number of items are happening simultaneously--the revision of the forest contract, different options of marketing forest products are being explored, issues are pending on the sales in the Elliott, and results being available regarding the owl and murrelet surveys. He said these all need to work together in a coherent approach.

Secretary of State Keisling said it is conceivable that at some point, the Board may decide to even go beyond selling the raw timber, and mill it ourselves. He said we need to take a broad conceptual look at the options of what may be possible.

Governor Roberts emphasized the need for the Board to give input on the plan before it becomes a detailed draft

document--preventing work from being done on options that the Board may not approve. She reiterated that the long-term contracts currently being used for marketing timber potentially result in legal situations delaying harvest and costing us legal fees. One of the reasons the Board is reviewing other options for management is to avoid some of this. The option of a shorter term contract was considered, but it was decided to explore the broader range of options we have to manage the forest for the best return of the Common School Fund.

Bowling said the Governor's request for input along the way could be handled by presenting ideas to the Board early and updating the Board as the ideas change.

Governor Roberts commented that management option discussions will become more public now and said they will not be without controversy. Those who have made large dollars from these lands will not be happy with some of the discussions, she said, but it is the responsibility of the Land Board to explore these options.

Director Gustafson said that with the owl and murrelet surveys being completed around the end of September, options must be fleshed out, so decisions can be made. He said time is of the essence.

Governor Roberts stressed flexibility--the Board has to be able to change--if they try something today and decide later there may be a more effective way to operate. She said it would be a mistake to get too bogged down in bureaucracy and be unable to make any decision at all.

Ray Craig asked whether Forestry could return in July to discuss the Governor's response to Craig's comments about ensuring that money isn't lost with the options being presented. He also answered a concern of the Governor that the commitment for timber harvest this year may not be met. He said the Department of Forestry is on track with that commitment. He noted that the Board of Forestry has expressed some of the same concerns as the Land Board.

Other

Jeri Cohen, attorney with Hoyt and Associates from Eugene, spoke to the Board as a representative of the Board of Commissioners of Lake County in connection with the possible sale of Division of State Land inholdings on Hart Mountain. She expressed the Commissioner's interest in acquiring the 80-acre Deer Creek parcel and their offer to exchange approximately 580 acres of County land for it. She said the intent would be to retain the parcel in county ownership. They would like to make it available to groups willing to provide appropriate assurances of compliance with all laws and regulations by which the county is bound. She said they believe the county has a preference to

purchase after other state agencies, when the Division disposes of land. In reference to the Attorney General opinions which provide authority for the Division not strictly adhering to statutes interfering with its constitutionally-mandated responsibilities, they interpret these to be applicable to management functions and not disposition of land. (Written comments from the County were provided to Director Gustafson regarding this position.)

She requested that Lake County be granted a preference in acquiring the Deer Creek parcel, as proposed in the exchange offer.

In reference to a question by Governor Roberts, Cohen said she had been privately hired as an attorney for this specific issue.

Governor Roberts stated that selling the property by parcels could disadvantage the Board financially by allowing someone to purchase the most productive or desirable piece of the package, and leave the rest. She stated there is no intention to change that decision at this point. Cohen said an alternative-type bid package might provide the greatest financial return. She suggested offering the parcel for sale as a package and as individual parcels and then approving the proposal that yields the greatest return.

Secretary of State Keisling clarified that the Board is ready to go out to bid on the property soon, after completion of some last steps, such as identification of possible mineral values. He said it would be an open process--allowing bids from federal or county entities, as well as private individuals. At that point, he said, it is up to the Land Board whether to accept any of the bids. He said Lake County would be free to bid on the entire parcel, of which the Deer Creek parcel is a part. Cohen responded that few entities would be financially able to bid on the entire package. She did not believe Lake County would be in a position to bid on it.

State Treasurer Hill asked whether the County Commissioners have held a public hearing on the proposed exchange of land. Cohen replied that they had not--that at the time the offer was accepted, public input would be solicited and it would go through a public process. She said the issue has been raised at the Commissioners' hearings, which are open to the public, so she assumed it would have been covered in the local newspapers.

Governor Roberts asked whether the hiring of an attorney in addition to county counsel had been discussed at those meetings. Cohen affirmed it had been.

Secretary of State Keisling moved the Board adjourn the meeting. State Treasurer Hill seconded the motion and the approval was unanimous. The meeting was adjourned at 12:10 pm.