

# Oregon

The Oregon State Land Board met in regular session on September 21, 1993 in the Land Board Room of the State Lands Building, 775 Summer Street N.E., Salem, Oregon 97310.

DIVISION OF  
STATE LANDS

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 2:00 pm 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).

Secretary of State Keisling moved that Items 4, 5, and 6, since they were of a non-controversial nature, be moved to the consent agenda, at the recommendation of the Governor. State Treasurer Hill seconded the motion and Governor Roberts asked if anyone present wanted to comment or had a question regarding these items. Hearing none, the motion was unanimously approved. The items were:

- #4. Request for State Land Board approval to increase total Oregon Rural Rehabilitation funding to the Oregon Housing and Community Services Department to \$600,000.
- #5. Request for State Land Board authorization to initiate rulemaking to establish local governments' Wetland Conservation Plan responsibilities under ORS 196.678 to 196.684.



775 Summer Street NE  
Salem, OR 97310-1337  
(503) 378-3805  
FAX (503) 378-4844

#6. Request for State Land Board approval to initiate rulemaking to define freshwater wetland compensatory mitigation requirements for removal and fill permits under ORS 196.825(5).

North Tongue Point Response to the Cresmont Technical Services, Inc. proposal to obtain a long-term lease of state land at North Tongue Point in Astoria, Oregon.

Director Gustafson reviewed the history of the Request for Proposals sent out both nationally and internationally to solicit interested lessees for the North Tongue Point site. Two potential bidders were submitted and reviewed by an appointed committee. Cresmont Technical Services, Inc. from Seattle was selected as a qualified bidder. A bid by the Port of Astoria was determined to be unqualified.

A five-year lease with a provision for three different phases of development was proposed by Cresmont. They outlined over \$11 million worth of infrastructure improvements that the site would need over time, which the Division generally concurred were needed improvements. Gustafson said since it is an aging facility not well maintained, a fair amount of improvements are needed to bring the site up to full capacity in position for its highest and best use as a deep-draft port site.

Gustafson said one concern regarding the site is that environmental effects and possible contaminants have never been properly identified after the intensive military use it went through. The U.S. Army Corps of Engineers (Corps) has been alerted to the need for cleanup of an old landfill on the site, and that effort is now underway. It is unknown whether additional contaminants may be present on the site and on the area of the submerged lands between the finger piers. The Corps has also been asked to do a thorough investigation of the entire site.

In order to make the site a deep draft port, Gustafson said it is essential to dredge between the piers enough to accommodate deep draft vessels. Permits from at least two agencies are required for this--one from the Division of State Lands and the other from the Corps, who will need to issue at least a 404 fill and removal permit at the federal level. An environmental assessment or impact statement at the federal level will be necessary. Gustafson said that funding sources would need to be identified and that federal funding for the dredging will be sought. All possible federal, state, local and private incentives that are related to tax abatements, credits, utility assistance, job training, and marketing will be pursued with the help of the Oregon Economic Development Department (OEDD).

Director Gustafson said that after reviewing the proposal and considering alternatives, including selling the site, marketing it short-term, or accepting the Cresmont proposal as it stands, the recommendation to the Board is to continue dialogue for 90 days with Cresmont. This time would be used to meet intensively with Cresmont and the OEDD, and to come back to the Board no later than the December meeting with a final recommendation regarding a lease.

Gustafson said Cresmont is a relatively new company whose references are excellent. He asked Bill Scott, Director of OEDD to explain what his role has been in the review of this company.

OEDD Director Bill Scott said that Cresmont is a "capable player" with significant skills, contacts and knowledge. He said that development of the property will require more investment of time and analysis from the Board than had earlier been anticipated, to see whether a relationship can be crafted to take advantage of what Cresmont has to offer and to identify resources needed.

Governor Roberts commented that the process for finding the right potential for the Tongue Point property has been on-going for years. She said each time a proposal was entertained, it seemed to take years for it to take shape, then a contract tied up the property for two to three years making it unproductive, and the contract never results in anything economically viable. She asked whether OEDD has perhaps looked at the property with new eyes to determine what the potential of the site might realistically be. Scott said they should have a better answer at the next meeting after continuing to examine the environmental and infrastructure issues and the costs involved. He said the most important issue could be the determination of hazardous wastes on the property and how the clean up might be funded. Governor Roberts added that the need for dredging was also a big issue.

Secretary of State Keisling asked about the timeline for determination of the hazardous waste problem. Director Gustafson replied that everything depends on how extensive the problem is found to be. In the worst case scenario, he said cleanup could be a ten year process. In the best case scenario, it could be a year or two. Gustafson said he had written to the Corps asking that they examine the entire site. They are receptive to this and are drafting a response which may include some definitive timeframes.

Governor Roberts noted that Representative Federici was present, and that he is very interested in the decision the Board makes regarding the Astoria area.

William Wolfe and William Kelley, co-founders of Cresmont Technical Services, Inc., introduced themselves and shared some of their backgrounds with the Board. They also discussed how they combined their efforts and created Cresmont Technical Services, Inc.

Governor Roberts shared with Wolfe and Kelley her concerns over the state assuming a large portion of the financial risk with a lack of specifics on return. Wolfe said their vagueness is a proprietary item, since the information would be transferable to any other type of similar situation. He said that the investment they are proposing for the state is just a little over \$5 million, and that much may not even be required. Governor Roberts asked what risk the Cresmont firm is assuming. Wolfe said his firm risks the time they've spent so far on the project, and continuing to pay employees as they develop the property. Kelley said they bring a potential mutual return to the state--a professional vision to a piece of property that has defied all efforts for things to allow there. He said in the context of formal lease negotiations, they stand ready to specify and quantify, but in the format of a public document, they aren't ready yet to commit. Kelley said if the state wants the best case scenario to reach the full potential of the site, he suggested a total of \$11 million be invested, but he recommended a sharing and partnership in that investment.

Secretary of State Keisling asked why they believe the site has such potential and what will be their pitch to potential tenants of the site. Kelley said it has the greatest location going for it, both shoreside and marine-wise. It has piers, and a ready and willing work force.

Governor Roberts said something within the written materials referring to Burlington Northern made her uneasy about the possibility of that company abandoning their tracks. She also said if Cresmont is going to tie up the land for five years, the Board needs some assurances that there will be a reward.

Wolfe said that Cresmont intends to bring in enough railroad cars to encourage Burlington Northern to not only continue service, but to place additional facilities as well at Astoria and North Tongue Point.

Secretary of State Keisling asked how important the finger pier dredging would be in the first year for Cresmont's proposal to be successful, with the knowledge of the possible hazardous waste situation; and what assistance Cresmont could give in relation to the permit process. Kelley said he and Wolfe would have to be realistic--that one year is probably very optimistic, realizing that dredging is a tedious process. He said a positive note would be that in the recent past dredging occurred right to the very end of the finger piers, so nearby testing done for that effort was successful--which should ease this permitting process.

He said they would help provide the support and the justification for the dredging to occur. Should the dredging not occur, he said the project could include shallow-draft vessels. The best case scenario, he said, is that some dredging occur within the first year or two, then more in years three to five. He believes that most hazardous waste materials may have been generated in the last five years. Since the Tongue Point site has been idle so long, he doesn't anticipate concentrations of hazardous waste materials. He said some of the paints that were used seven to eight years ago, and banned in the last few years, weren't on the marketplace when the facility closed twenty years ago.

Secretary of State Keisling said the last lessee guaranteed a level of income stream to the state, regardless of how successful the operation became. He asked whether Cresmont would be willing to accept a similar condition, especially if the state must come up with resources for infrastructure. Wolfe said they were open to that suggestion, and had indicated that in their proposal. He said it is Cresmont's intention to make certain that North Tongue Point is producing income the minute they take over.

Governor Roberts expressed her concerns over past experiences with companies at North Tongue Point. Kelley responded that they are sensitive to that issue, but are a responsible company that has reviewed the situation at North Tongue Point for the past two years.

Representative Tony Federici said he was pleased to hear Wolfe and Kelley compliment the workforce in Astoria as being positive for the potential development of the site. He said without investment back into the site, it cannot be used to its full potential.

Secretary of State Keisling moved the Board adopt the recommendation to authorize the Division to continue their dialogue with Cresmont for another 90 days prior to a final decision on their lease proposal, which would be made at the December meeting. The motion also would authorize the Division to work with the Corps and other federal agencies to initiate and clean up any hazardous waste or contaminants on the site; to work with federal and state agencies to define and initiate the dredging permitting process and funding for this; and to identify all federal, state, local and private incentives related to tax abatements, tax credits, utility assistance, job training, marketing assistance, etc., which might help develop the site. State Treasurer Hill seconded the motion and the approval was unanimous.

#### Oregon Rural Rehabilitation Fund

Rey Ramsey, Director of the Housing and Community Services Department arrived after the discussion and motion had taken place regarding the Oregon Rural Rehabilitation Fund.



Director Gustafson said he recommended reviewing the existing timber sale contract to ensure it is the best that it can be to protect the state against the possibility of future litigation or to protect the state if litigation is filed. He said another recommendation would be to use shorter contract lengths of one to two years. He also recommended a thorough analysis of all marketing techniques including financial information to see what the operational costs of each alternative would be, and a cost-benefit analysis of each alternative. Gustafson said Forestry would return at a later date to brief the Land Board on the specifics of the alternatives and decide then which should proceed. Gustafson said that specialty product sales is one technique Forestry plans to begin using immediately.

Director Gustafson also mentioned the need to proceed with salvage sales where needed to maintain forest health. He said that the Land Board would be provided with periodic progress reports from Forestry on all of the above items.

Governor Roberts said that the "advantages and disadvantages" listed in the issue paper from Forestry were too generalized and not specific enough. She said also that some of the disadvantages that were listed, were not necessarily disadvantages. She asked that Forestry be more specific about the pros and cons of the various alternatives. Governor Roberts then turned the chair of the meeting to Secretary of State Keisling, since she needed to leave.

State Treasurer Hill asked whether Forestry had come to a conclusion about the alternatives, or if the Board was going to revisit them again. Craig clarified that, in the short-term, Forestry's recommendation would be to adopt Options 2 and 4. A further look would then be taken in regards to the other alternatives.

Greg Miller, Director of the State Timber Purchasers Division of the Oregon Forest Industries Council, complimented Forestry and the Division for working closely with them to keep them informed.

Miller said the Council is very supportive of flexible contract lengths. With the endangered/threatened species issues, he said flexible contract lengths become useful in execution of the contracts. He also supports selling specialty products. For instance, he said a particular member of their organization relies on pole sales. In regards to planning and designing contracts with ESA in mind, they had no problem with that but, said it's difficult to design a sale when you don't know what you're protecting--at least in terms of the murrelet.

Regarding indexing the stumpage prices, he said as indexes go up, they also go down, so the prices must go both ways. He said the federal timber sale contracts are indexed, so it is a normal practice.

Miller said they are unclear why the use of periodic payments might be of value in the process. He said the specifics weren't laid out, so they are less supportive of this, not knowing what the specifics are. He said many times periodic payments require an upfront investment in cash, which could put some purchasers at a disadvantage in their ability to put money up front and limit competitors. It may also cause the market price to be lower than it would be with more competitors.

Miller said the discussion regarding additional contract language for increased direct control over subcontractors sent up a red flag. He said if there is a problem with the execution of contracts and the contract requirements, they want to solve it, but he is unclear what kind of contract language would be offered that would address the problem, if there is one.

Another issue of concern was offering sales volumes according to the market. He said some public policy needs to ensure the generation of a fairly stable or reliable revenue stream to the Common School Fund. He said because of the shrinking federal timber supply, the state should be in a prime opportunity for filling the gap. Also, private timber is currently in a ten to fifteen year trough before it can be of age to be harvestable. With these factors, Miller said he doesn't see much need for holding the timber off the market.

Secretary of State Keisling asked that the term "indexing" be defined for him. Logan Jones, principal forester for the Forest Management Division, said indexing is new to the state, but not to the federal government. He said that indexing allows the purchase price to rise as the market for the products rises. As the market for the product decreases, the purchase price decreases. Jones said there would be definite language in the contract that would spell out what the percentages of increase or decrease would be according to the changes in the marketplace. Jones said that in the late seventies, Forestry was selling timber for \$400/mmbf, whereas in the early eighties, logs were selling for \$150/mmbf, and they continued selling the same volume. He said this may not have been wise, in terms of maximizing revenue to the Common School Fund. It was for this reason the option of indexing is being considered.

In reference to a question by Secretary of State Keisling, Jones said that periodic payments would ensure revenue coming in on a more even-flow, not dependent on timber removed.

State Treasurer Hill asked whether there would be a constant supply of timber only when when the price is right. Jones replied that they would try to have an even flow of volume on a quarterly basis. He said during tighter revenue constraints, it would be to the state's advantage to offer more timber when the timber market is high and offer less when it is low. State Treasurer Hill said the Board needs to look carefully at whether

they have a duty to ensure stable communities or to really maximize the state's return. Jones said that community stability actually is a bigger issue with the county forest trust lands where the schools actually get two-thirds of the revenue. For common school lands it is less important since the revenue goes directly to the Common School Fund. In reference to that, Director Gustafson clarified that the distributables of the Common School Fund do go to the counties.

State Treasurer Hill made a motion that the Board accept the Division's recommendations regarding this issue, with the changes to recommendation #3 (as indicated where new materials were underlined and those to be deleted are bracketed). The motion with the new language would read as follows:

1. In conjunction with the Department of Justice, work to revise the existing state timber sale contract to ensure it provides the best possible legal protection in response to changing circumstances such as the discovery of threatened and endangered species. Also explore and integrate innovative contract language which takes a long-term approach and adapts to changing circumstances without triggering future litigation.
2. Use shorter timber sale contract lengths (1-2 years) to reduce risk and position the state to better react to change. Also explore ways to make longer term contract commitments (3 year), provided the degree of risk is acceptable and the state receives adequate compensation. Also develop criteria to establish the circumstances under which 3-year contracts would be considered.
3. Assemble and analyze additional information related to the alternative marketing techniques. Ensure that this includes all applicable financial information, including operation costs and anticipated rate of return. Also review the alternate techniques against the previously identified objectives of the Land Board. [Then proceed to implement the most feasible of these techniques on an experimental basis. The results of these experimental sales should then be analyzed for future applicability.] At the next Land Board meeting (October 28) provide the Board with a specific schedule for completion of remaining work item. Once the work items are completed, return to the Land Board with recommendations for further action. In the meantime, proceed with specialty product sale(s) as soon as feasible, provided that the analysis meets the Land Board's objectives for the Common School Fund. The results of this sale(s) should then be analyzed for future applicability.
4. Proceed with salvage sales wherever needed to maintain forest health.
5. Provide the Land Board with periodic progress reports on the above items.

Secretary of State Keisling seconded the motion and the approval was unanimous.

Director Gustafson told the Board that a working group had been instituted to address the issues of the murrelet. He said they want to use whatever means possible, including higher level discussions with the US Fish and Wildlife Service (USFWS) to insure that the best possible guidance is obtained regarding how to deal with the murrelet. He said thus far no guidance has been given from the USFWS--it is an issue that needs to be pushed. State Treasurer Hill asked how that push might be accomplished. Director Gustafson said the Federal Endangered Species Act requires the USFWS proceed to rulemaking when a species is listed, but said that hasn't happened. He said the big problem has been that no one understands the murrelet, but more are being discovered each day. Director Gustafson said that at least an interim guidance policy needs to be developed. Secretary of State Keisling said the Board is in agreement with pushing to get those interim guidelines. He asked that Director Gustafson report back to the Board in October regarding the effort. State Treasurer Hill asked whether USFWS could be compelled by the courts to do their job. Director Gustafson said a lawsuit had been filed by the Department of Justice for that purpose, but the process is a slow one. He said the Congressional delegation would also be contacted for their assistance in obtaining the USFWS guidelines.

Mineral Rights  
Transfer

Request for approval to transfer mineral rights to common school lands in Lake and Harney Counties as part of a land sale to the United States Fish and Wildlife Service.

Director Gustafson said the Division has offered for sale its inholdings in the Hart Mountain and Malheur refuges. The USFWS was the successful bid with an offer above the appraised fair market value of the property. Director Gustafson asked the Board for approval to transfer the mineral estate to these inholdings as part of the proposed land sale. Permission to actually transfer the property would be requested at the next Land Board meeting. Director Gustafson said the Department of Geology and Mineral Industries did a mineral potential analysis of the inholdings. The outcome of the analysis shows that the potential for hard rock minerals is low to moderate on the site, and geothermal is moderate to high. The entire area does show geothermal potential. The Division recommends the transfer still occur, since the mineral prospect overall is low to moderate and the land currently is not making the Common School Fund any money. If the agency were to sell the property, the proceeds would be placed in a revolving fund to be used to purchase land somewhere that could provide a greater return to the Common School Fund. These lands are also within or adjacent to national wildlife refuges. The federal government has standards they could impose including the possibility of

precluding any mineral development, if there was a prospect there. The property is therefore difficult to manage. Director Gustafson said findings of fact were prepared for this item and are included in the written materials.

State Treasurer Hill asked whether there had been any value placed on the minerals. Director Gustafson replied that unless there was a known quantity of a valuable mineral, an appraiser could not apply a value to it.

John Beaulieu, Department of Geology and Mineral Industries, said the analysis was done in a fairly cursory manner. He said the land was probably no better for minerals than any other land. When considering the fragmentation and other land use/surface use restraints, he said he's comfortable there's not a mineral rights issue here.

Secretary of State Keisling asked whether it was a condition of USFWS's bid that they receive the mineral rights. Director Gustafson confirmed they were interested in receiving the entire fee estate.

Secretary of State Keisling moved the transfer of mineral rights be approved. State Treasurer Hill seconded the motion and the decision was unanimous.

Minutes Request for approval of regular session and executive session minutes from the State Land Board meeting of July 13, 1993.

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

#### Public Room Open House

Director Gustafson invited the Board and those present to attend a formal opening for the new public room.

Secretary of State Keisling moved the meeting be adjourned. State Treasurer Hill seconded the motion and the approval was unanimous. The meeting adjourned at 4:10 pm.