

The Oregon State Land Board met in regular session on April 8, 1994 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
Steve Purchase
Gary Van Horn
John Lilly
Gail Lowry
agency staff

Dept. of Justice

Bill Cook

The meeting was called to order at 1:05 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).

Model Rules

Request for authority to adopt the Attorney General's Model Rules of Procedure as amended and effective November 4, 1993.

Director Gustafson explained that during 1993 the Attorney General made changes to the model rules of procedure. These new model rules will provide the Division and the Land Board with more flexibility to streamline procedures and more efficiently resolve disputes. Gustafson recommended the Board authorize the adoption of these model rules. Secretary of State Keisling moved they be approved. State Treasurer Hill seconded the motion and the approval was unanimous.



Rule Repeal

Request for authorization to repeal OAR 141-82-050; lease terms and rental provisions applicable to the North Tongue Point Marine Facility in Astoria.

Director Gustafson said the current rules governing the North Tongue Point Marine Facility require that any lease term for the submerged and submersible lands at the site not exceed ten years. He said previous authorization had been received from the Land Board to initiate the rule repeal. Gustafson explained that the rule had been initially developed in an effort to facilitate leasing of the site. However, the rule didn't have this effect, and it was later determined that it was necessary to repeal the rule in order to make the lease terms and conditions at North Tongue Point the same as for leases of other state submerged and submersible lands.

The Port of Newport previously requested a hearing regarding the repeal of the rule. They later withdrew their request after becoming better informed. Only one other comment was received which was from the Department of Land Conservation and Development in support of the repeal.

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

Elliott State Forest

Review and request for approval of recommendations related to comments received in response to the draft Elliott State Forest Management Plan. Request for direction for the Oregon Department of Forestry (ODF) to initiate a Habitat Conservation Plan (HCP) for the Elliott State Forest.

Director Gustafson introduced State Forester Jim Brown, who said the Board directed the ODF in December of 1991 to begin development of a new long-range forest management plan for the Elliott State Forest in conjunction with other agencies.

Brown said that public hearings were held late in January and February of 1994 to review the draft plan. Seventy-six public comments were received during the comment period. He said ODF was also directed to develop an HCP in preparation for requesting an incidental take permit from the US Fish and Wildlife Service. Brown said the key issues arising from the comments were owl biology, the experimental forest approach, and

riparian habitat protection. He said that based upon the hearings and public comments, six principal recommendations to the policies and proposed amendments to the Elliott State Forest Management Plan were developed. They are as follows:

1. Endorsement of the approach taken in the draft plan (i.e., a long-term, multi-species strategic plan which sets the framework for managing the Elliott State Forest) and recognition that the plan adequately considers target harvest age, group selection harvest and other revenue potentials.
2. Amendment of the draft plan by substituting the proposed FPA rules for the R2 strategy in alternative 6 and the word "enhancing" and "enhance" for "maintaining" and "maintain" in the fish and wildlife population goals.
3. Endorsement of the draft plan's approach to soil stability (i.e., listing the strategies available to maintain or improve soil stability, but addressing soil stability more specifically in the subsequent, more detailed planning efforts and in the management practices employed on the forest).
4. Direction to ODF to amend the draft plan to include a more thorough discussion of the justification for the preferred alternative (alternative 6) and the analysis of the other alternatives. This additional analysis and justification should incorporate the points addressed in the Land Board's agenda item.
5. Endorsement of the biological assumptions (including ODF's approach to owl biology) used in the draft plan and a direction to continue reviewing and analyzing scientific research as it becomes available. When appropriate, ODF should recommend changes to the draft plan (and final plan, including the HCP, once adopted) based on new scientific information.
6. Direction to ODF to continue reviewing and analyzing the remaining issues raised in the public comments (i.e., those identified as gaps, errors and omissions). Once the analysis is complete, ODF will recommend changes to the draft plan to incorporate the comments.

Of the six recommendations, Brown said #2 is somewhat

controversial. ODFW believes that R2 is the best riparian strategy as part of alternative 6, and that it fits better within the framework of what they supported in alternative 6. He said the difference is a risk level assessment, which the Land Board should discuss.

Brown recommended that the Board direct ODF to integrate the above recommendations along with alternative 6 into the HCP for the Elliott (He explained that approval of this recommendation would not adopt the experimental forest concept.). He also recommended that discussions with the USFWS should continue regarding the ramifications of the decision and any subsequent appeals of the U.S. Court of Appeals Sweet Home case.

Avis Rana, Coordinator for non-federal forestry at the Oregon Chapter of the Sierra Club, commended the Board and the agencies involved in this planning process for their thorough work. She said the framework of her comments dealt with a "truly sustainable healthy forest ecosystem." She expressed the Sierra Club's concern over fish habitat, recommending a 100 foot stream-side buffer zone. She expressed their desire that a sufficient margin be allowed in planning for error and accident, recognizing the lack of current knowledge and the many unforeseen things that occur in the natural world. She said that carrying out the improvements identified in the stream surveys already done is even more important than the stream survey habitat plans. In the future, she said, the Chapter hopes that ecoregional planning for the southwest area of Oregon would evaluate actual capacities and appropriate functions to achieve balance among the successional stages in this ecosystem. She said they hope clear direction will be given indicating that funds for adequate amounts of monitoring will be maintained as part of the cost of forest management. She urged caution with regard to shifting owl habitat over time. She said plans to develop further interpretation of the operating and marketing activities should help in clarification of the plan and in improved public understanding.

Liz Frenkel, Sierra Club, reported that she received a call from Louise Bilheimer of the Pacific Rivers Council, asking Frenkel to stress the Council's concern for the need for riparian corridors. She said Bilheimer commented that the new forest rules are basically a political consensus, going before a political body, and said it would be preferable to have the riparian corridor based on scientific evidence rather than the result of a compromise.

Secretary of State Keisling agreed with the importance of having

the inventory work and analysis done to allow for complete information.

Greg Miller, Oregon Forest Industries Council, also agreed in supporting the notion of collecting as much stream and habitat information, so that needed adjustments can be made. He said the new stream protection rules would provide a greater amount of flexibility on a site-by-site basis. He asked the Board to consider longer rotations as they make their decision. He said the idea of longer rotations will contribute to the health of riparian areas and ultimately the health of the tributaries that flow into the main streams. Miller commented that the Elliott is a 98,000 acre forest and, though it is important to make any contributions where possible to the health of the fish, he asked the Board to keep in mind that in the context of the entire coastline, those contributions are relatively small. He said that keeping the door open for necessary changes as new scientific information becomes available is an important part of the process.

Miller also said that continued review of the Sweet Home case is appropriate, saying it will have an impact on how the U.S. Fish and Wildlife Service will interpret take and will also provide greater management flexibility for the Elliott, if it becomes law. He added that he strongly recommends adoption of the FPA riparian rules.

Governor Roberts told Miller that his comment on the need for reviewing and analyzing changes as new information becomes available seems to be a contradiction from the earlier stance taken by the industry, when they said that certainty is what is needed. Miller disagreed --he said the certainty comes in knowing there is a planning process in place.

Dave McAllister, Lands Program Manager from the Oregon Department of Fish and Wildlife, requested the Board adopt the riparian management recommendation in the draft plan (R2), which he said included three main elements: 1) an interim protection riparian strategy (until watershed analysis is done as part of the plan), 2) a commitment to do watershed analysis, which will allow development of more tailored riparian prescriptions, and 3) a continuation of aquatic survey work, incorporating the information that has been gleaned and allowing better management of aquatic systems in the future. He said current constraints require use of the Forest Practices Act as a legal minimum. He believes by using watershed analysis, certain areas could actually drop below the Forest Practices Act standard, since specific protection needs would be tailored to the given

situation. He also added that ODFW endorses all other aspects of the Elliott Plan.

James McCauley, Associated Oregon Loggers, offered general support to the various goals and objectives contained in the plan, and commended staff for its efforts and for involving his industry in its development.

Regarding the discussion on whether to use the word "maintain" or "enhance" in reference to fish and wildlife goals, McCauley commented that it made no difference to him. He said other outside issues are involved in sustaining or enhancing wildlife populations--the more appropriate issue to address would be maintaining and enhancing habitat--which would be consistent with the Elliott goals, and a more manageable objective in the long term. He said previous surveys point to concerns about the current habitat conditions.

The Governor commented on McCauley's discussion of habitat vs. population. Both agreed that enhanced population is the end product desired.

Gordon Ross, Coos County Commissioner, presented a handout to the Board and discussed the Commission's concern for riparian and stream management contained in the plan. He said the Coos County Commission favors the proposed FPA riparian rules because they allow for management and stream restoration at the time of harvest, which offers definite, definable enhancement opportunities, as opposed to just a regulated setback or hands-off approach, which he said offers no benefits for anadromous fish. He cited information from the spawning escapement index he distributed to the Board showing the high number of coho returning to the streams in the Coos and Coquille Basins, though they are probably the most heavily managed basins on the coast when it comes to forest production. He contrasted that to the South Slough Reserve that has been set aside for over 20 years, where they are applying for a \$300,000 grant, in part for enhancing salmon runs in the tributaries. He said that along with the forest production in the Coos and Coquille basins, there have been accompanying activities to manage the riparian zone, rather than just a set-aside plan.

David Moskowitz, Oregon Trout, commented on his concern that the recommendation being presented at the meeting hadn't had the public review, such as the rules had received earlier. He also said it's important to keep in mind that flexibility is possible for the 100 foot no-cut buffer--allowing restoration work, enhancement work, and stand improvement work to be done.

He commented that there are huge gaps of information in the rules, and said they don't represent the management that state common school trust lands deserve. He also proposed a 100 foot buffer with management for stream habitat, etc. He recommended the Board not adopt the recommendation presented to them. He said Oregon Trout applauds the industry's willingness to do fish surveys and monitoring and suggested ODF and ODFW put measurable goals for fish numbers and habitat into place. They said the Forest Practices Act doesn't get us to the needed standard.

Paul Ketchum, Conservation Director for the Portland Audubon Society, also expressed his concerns over what he called a lack of public involvement in the process being discussed. He said the proposed FPA rules were not among those scenarios discussed in the draft Elliott plan. He said the FPA is not appropriate for public lands, where a higher standard is needed. He believes the draft rules contain a lot of assumptions not yet proven, since data aren't available yet. He said the Forestry draft rules pose a high risk, and their standards are tempered with political considerations. He recommended a more conservative management approach be taken. He said to recover the stream it needs to be protected to the maximum. Ketchum said that R2 Scenario does provide flexibility for active riparian management; would allow the Board and ODF to return these areas to a more productive status; and is consistent with a more conservative approach to riparian management in the long run.

Both Moskowitz and Ketchum emphasized, however, that they support adoption of the Forest Practices rules that will be going before the Board of Forestry shortly. They mentioned they were part of a collaborative process which spent considerable time and effort on the rules.

Secretary of State Keisling moved the Board approve the six proposed amendments to the Elliott State Forest Management Plan, with a deletion to wording in Item #2 and an insertion of wording in Item #5 (Text in brackets [] show wording being deleted. Underlined text shows wording that has been added.).

2. Amendment of the draft plan by substituting [**the proposed FPA rules for the R2 strategy in alternative 6 and**] the word "enhancing" and "enhance" for "maintaining" and "maintain" in the fish and wildlife population goals.

5. Endorsement of the biological assumptions (including ODF's approach to owl biology) used in the draft plan and a direction to continue reviewing and analyzing scientific research and other information as it relates to the owl biology assumptions, riparian management strategy, and other key habitat considerations in the plan as it becomes available. When appropriate, ODF should recommend changes to the draft plan (and final plan, including the HCP, once adopted) based on new scientific information.

State Treasurer Hill seconded the motion.

Secretary Keisling said ODF's work on the Elliott Plan has taken the lead to put Oregon on the map in innovation and creation--he said the plan is an extraordinary product. Keisling said the two strategies (the R2 and the FPA) are close, but he favors the R2, believing it will serve the forest better in allowing forest management flexibility. He said the R2 strategy gives the Board a better starting point if another listing occurs, allowing change and adjustment. State Treasurer Hill and Governor Roberts also publicly recognized the plan as being a great accomplishment. The motion was passed unanimously.

State Forester Brown requested the Board consider adoption of two additional paragraphs included in the written material presented to the Board. They were as follows:

1. That the Land Board direct ODF to integrate the recommendations and alternative 6 of the draft plan into an HCP for the Elliott State Forest, rejecting the "Experimental Forest" concept; that ODF circulate the draft HCP to the public for review and comment and present the draft HCP to the Land Board for review and approval at its May 1994 meeting.
2. That the Land Board direct ODF, the Division and the Department of Justice to continue discussions with the USFWS concerning the ramifications of the Sweet Home decision and any subsequent appeals and report any significant developments to the Land Board.

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

Director Gustafson asked whether the Board intended to apply the R2 riparian approach to county forest lands as well as the

common school forest lands in the Elliott Forest. Brown said he would discuss this item with the Board of Forestry, since he wasn't sure whether the Board had taken any position on the issue. Governor Roberts said the Land Board recommends to the Board of Forestry that it would be a good strategy to work together with the same set of criteria.

Gordon Ross said he would rather see faster fishery enhancement and work that could be done during the time of harvest when the machinery is there. He also said he would not like the R2 approach applied to the Board of Forestry's county trust lands.

Legislation Review of the Division of State Lands' draft legislative proposals for the 1995 legislative session.

Since time was limited, Jane Ard, Special Assistant to the Director, suggested the Division go forward with submission of the legislative proposals to the Department of Administrative Services, reporting back at the May meeting with more specific information at that time. In the meantime, the Division would work with the Land Board assistants on the draft legislative concepts. The Board agreed.

Secretary of State Keisling moved the Board adjourn. State Treasurer Hill seconded the motion and the decision was unanimous. The meeting was adjourned at 2:45 pm.


Gary Gustafson, Director


Barbara Roberts, Governor