

Oregon



The Oregon State Land Board met in regular session on December 13, 1994 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

DIVISION OF
STATE LANDS

STATE LAND BOARD
JOHN A. KITZHABER
Governor
PHIL KEISLING
Secretary of State
JIM HILL
State Treasurer

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Nina Johnson
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The meeting was called to order at 9:00 am by Governor Roberts. The topics discussed and the results of those discussions 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).

Administrative Rules Request for State Land Board approval of administrative rules governing compensatory mitigation for freshwater wetlands.

Director Gustafson introduced this item and recognized Frank Flynn and Janet Morlan, staff of the Division, for their contribution to this effort. Gustafson said that Senate Bill 3, adopted during the 1989 legislative session, required the Division to condition removal-fill permits with measures to provide mitigation for the reasonably expected adverse impacts associated with project development. Gustafson said an intense effort took place over the last year designing the administrative rules to implement this legislation.

One portion of the draft rules dealing with the protection and payment in-lieu of compensatory mitigation proved to be particularly difficult and received much public response. Because this provision needs further work, it was withdrawn from

the rules. Gustafson said he intends to appoint an advisory committee to study the issue with staff over the next 120 days, then come back to the Board with a final recommendation. He said that the "compensatory mitigation bank" where money is being held also needs to have criteria spelled out as to when funds will be released for projects. During the 120 days, if any applications are received, Gustafson said they would be referred to an internal advisory committee. He said the Division would also act during this interim timeframe on the presumption that no applications should be approved. A copy of any applications received during this interim period will also go to the advisory committee for their review and comment. Gustafson said the Division recommends the Board approve the rules as drafted with the proviso that the in-lieu payment provision be taken out, an advisory committee be appointed, and that the rules will be brought before the Board later for amendment.

Liz Frenkel, Oregon Chapter of the Sierra Club, said that although she doesn't agree with all the particulars of the rules for freshwater wetland compensatory mitigation, the Club agrees wholeheartedly that the rules are timely and necessary. She said they strongly support the concept of using historic losses as a guide for mitigation in certain areas. She asked who will do the analysis as to historic loss and how the public can evaluate the credibility without a completed and reviewed analysis. She also asked if the mitigation bank site meets the requirements of ORS 196.865. She commented that both "mitigation" and "sequencing" should be referenced in the definition section of the rules. Frenkel recommended that all references to payment in-lieu of compensatory mitigation be deleted from the rules until a comprehensive analysis of its role in the state wetlands policy can be determined. She said as long as the concept is included in these rules, it would appear that the decision has been made to endorse this method. She said the fundamental question of whether it even needs to be done should be considered. Frenkel said the Sierra Club also requests that the permittee's evaluation of success should be noticed to the public, and that the public should be given the right to review and challenge the decision prior to the release of the bond or other security instruments. Frenkel added that Doug DuPriest, from the Oregon Environmental Council, seconds the Sierra Club's recommendations.

Ken Bierly, the Division's wetlands program team leader, confirmed that the general compensatory mitigation requirements in the rules meet the requirement of the mitigation bank statute. He stated that the definition for "mitigation" was deleted from the rules because it was felt to be redundant, since it is already explicit in the statute. Bierly said Section DDD of the draft rules discusses unavoidable wetland losses. He stated the concept of sequencing is also embodied in

the rules, though it may need to be made clearer. He said the policy question regarding payment in-lieu is legitimate and one the agency will deal with in the amendment process. Regarding the additional requirements for public notices, Bierly said this is largely a resource staffing question, since this would be a significant additional burden upon staff already struggling with the load of other requirements. He said Section QQQ of the draft rule provides oversight of the program to achieve the same end. He commented that it would be better to look at the program effects than to look at the project-by-project effects.

Secretary of State Keisling asked whether, under Section QQQ, it would be within the discretion of the Director to send out notice if it is felt to be an important part of the review process. Bierly confirmed that this information is all part of the public record. He said if public notice is a requirement of the security bonding instruments, that this would require a change in the rules.

Governor Roberts stated that adding the definition for "mitigation" and "sequencing" back into the rules would add clarity for those not having the statutes in hand. She also suggested that the advisory committee that will be reviewing the payment in-lieu provision should also determine whether or not the provision should even be in the rule.

Secretary of State Keisling moved the Board approve insertion of the definition of "mitigation," as taken directly from the statute into the compensatory mitigation rules. State Treasurer Hill seconded the motion. The motion was unanimously approved.

Secretary of State Keisling moved the Board approve the rules with the amendment passed by the prior motion and with instructions to the Director that the committee should look at the question of whether or not the payment in-lieu portion should be included--rather than just how it should work.

In answer to a question by Secretary of State Keisling, Director Gustafson said that the agency will act from the presumption that they will not approve interim in-lieu payments, and if it is determined that an in-lieu payment provision should be seriously considered, then it will be studied by an in-house technical committee, and referred to the advisory committee for their reference and recommendation. He said the issue should come back before the Board again in approximately six months.

Secretary of State Keisling asked whether in-lieu payments are allowable under Senate Bill 3. Bierly stated he understood that the use of alternative mitigation approaches was anticipated and that mitigation banking explicitly has been authorized by statute, involving a payment process. He said it also involves a creation of wetlands up front.

The motion as amended was unanimously approved.

Administrative Rules Request for State Land Board approval of revised administrative rules governing local wetland inventories and wetland conservation plan inventories.

Director Gustafson said Senate Bill 3 also directed the Division to compile and maintain a statewide wetland inventory and develop a uniform wetland identification, delineation and comprehensive mapping system. In November 1991 the agency adopted administrative rules to implement that law. As a result of using the current system, needed changes became apparent, which are included in these revised rules. Gustafson said the review process resulted in only a few comments--and those were supportive of the proposed revision.

State Treasurer Hill recommended the Board approve the revised administrative rules. Secretary of State Keisling seconded the motion and the approval was unanimous.

Administrative Rules Request for State Land Board approval of an administrative rules related to certain public use activities on the Wilsonville Tract.

Director Gustafson said in July 1994 the Board authorized the agency to proceed with rulemaking to prohibit certain public use activities on the Wilsonville Tract, a 250-acre property acquired by the Division in 1993. The prohibited activities on the site include discharge of firearms, fireworks, and related explosive devices, the use of archery equipment, the use of campfires, open fires, or outdoor cooking devices, overnight camping, unauthorized use of the property between 10:00 pm and 5:00 am, and unauthorized use of motor vehicles. The Division's Management Plan for the site identified these public uses of the site as potentially jeopardizing public safety and possibly degrading valuable natural resources.

Secretary of State Keisling moved the Board approve these rules. State Treasurer Hill seconded the motion and the approval was unanimous.

Minutes Request for approval of minutes from State Land Board meeting of October 11, 1994.

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

Common School Fund Briefing by Wilshire Associates, Inc.
regarding the Common School Fund.

Director Gustafson said that during the March 1994 meeting, the Board requested that further review take place regarding two long-term policy issues related to the Common School Fund investment policy and that a report be made to the Board in six months. Those two issues were 1) additional options to diversify the Common School Fund investment portfolio, and 2) consideration of further acceleration for the growth of the Common School Fund principal by temporarily slowing or halting distributions to the schools.

Gustafson said that further research had been done regarding the diversification options. He asked that Dennis Sugino, from Wilshire Associates, Inc., brief the Board regarding the options, then allow the agency to come back with specific recommendations to the Board at the April meeting, which would be the time of the annual review of the Common School Fund policy.

Regarding the issue of whether to temporarily halt or reduce the portion of the earnings distributed to the schools, Gustafson reported that Bill Cook said once the Common School Fund earnings accrue to the Common School Fund distributable income account, they must be distributed to the schools. Any change to this would require either a constitutional or statutory amendment.

Gustafson also asked that minor clarifications be made to the written materials for this agenda item. On page three of the memorandum to the Land Board, before the bullets begin, it is stated "However, it may be advantageous to first examine all other alternatives which may also contribute to Common School Fund principal growth." He said this should read "which may also increase school distributions." He also mentioned that any references in the agenda items to the Board's annual review should be changed from February to April.

Gustafson then distributed charts showing preliminary information on how the Common School Fund is generally performing. He said complete information will not be available until February 1995. He then introduced Dennis Sugino from Wilshire Associates, Inc.

Sugino shared some background information on Wilshire Associates, Inc. He stated that achieving the goal of the Common School Fund contributing five percent of the total cost of K-12 education could occur as far in the future as three centuries.

Sugino shared his concern with investments in real estate. He said our forest revenue is tied to the real estate market. If revenue from the forest land drops, then revenue from real estate investments would presumably drop as well--doubling the effect on losses. He suggested looking at revenue that would offer diversity from the main revenue source. In addition, he said the expected return from real estate is around 8.5 percent, while the expected return for stocks is around 10 percent--indicating a decrease in the expected return rate. He also stated that real estate requires a long start-up period and that it is not very liquid.

He then discussed his concerns with capital projects and venture capital as investments of the Common School Fund. Comingling assets with the pension plan, he said, could present legal issues (one reason being that over 50 percent of the pension plan's assets are in equities--which is above the legal limit for the Common School Fund). He didn't feel this to be a valid option over the longer term.

Sugino stated that Wells Fargo, our index manager, has combined our assets with the state pension plan, giving us a substantial discount on their management. He said that the performance of our bond portfolio, being managed by the State Treasurer's Office, has been excellent. Having an external manager for this, he estimated, would cost around \$.5 million.

Sugino said the three guiding principals he recommends for investments are 1) safety, 2) liquidity, and 3) return. He said the domestic stock portfolio could easily be complemented with international stocks, for which returns are expected to be around 10 percent or higher. This will give the same or higher return and gain diversity as well. He suggested global bonds as also offering diversity as well as the same or higher returns. He suggested changing from the S&P 500 (a larger company stock portfolio) to the Russell 3000 or the Wilshire 5000, offering small companies which could also enhance the return. He said their recommendation for our portfolio is 50 percent in stocks, 45 percent in bonds, and 5 percent in cash.

State Treasurer Hill asked why they recommended 5 percent in cash. Gary Van Horn of the Division explained that this level gives enough liquidity to pay the semi-annual distribution and the \$2 million to cover normal operating expenses.

Secretary of State Keisling discussed the potential of going to the Legislature to raise the 50 percent ceiling on equities. He said the Public Retirement System (PERS) has a 60 percent ceiling and their rate of return was 5 percent greater than ours. This was one of the barriers to comingling assets with PERS. Sugino said that 50 percent investment in equities was not low, but agreed that it could be raised to assist in attaining the 5 percent goal earlier.

South Slough

Gift to South Slough National Estuarine
Research Reserve.

Director Gustafson shared with the Board the news that an estate had been left to the South Slough Reserve that is expected to be in excess of \$1 million after probate. The individual who passed away requested the money be used to purchase additional land in the watershed of South Slough. Gustafson said this estate transfer also gives a new base for matching federal grant dollars which can be used for additional land acquisition.

Elliott State Forest

Gustafson reported that major progress has been made toward federal conceptual approval of the Elliott Habitat Conservation Plan (HCP). He said while recently in Washington, DC he spoke with Secretary of the Interior Bruce Babbitt who was excited about Oregon having the first state HCP to be submitted. Gustafson congratulated everyone who has worked on this, especially the Department of Forestry. Governor Roberts also expressed her excitement at the "successful operation" saying the plan will allow us to manage the land well, to manage the harvest well, and to be responsible about our stewardship of the land.

North Tongue Point

Gustafson reported that Cresmont and the Division have now entered into two subleases--one with Crowley and one with Geopacific Lining, a subsidiary of Cresmont. Combined with the existing Ogilvie operations, the income base from North Tongue Point now has nearly tripled. He also reported that the Americans with Disability Act (ADA) improvements on site are nearly completed. He stated that the agency is pleased with Cresmont's performance so far.

Governor Robert's Farewell

This was Governor Roberts final meeting with the Land Board. Secretary of State Keisling commented that in her first eight years on the Board, she had been through five different Land Boards. He said through the past ten years, her service to the Board and the state have been exemplary. A map of state lands was presented to Governor Roberts in appreciation from the current Board, previous Boards and the staff of the Division of State Lands for her work with the Land Board. Governor Roberts then discussed some of the issues that arose during her years on the Board. Governor Roberts expressed her appreciation for the talented people that have worked with her on the Board, in the position as directors of the agency, and as staff of the Division of State Lands.

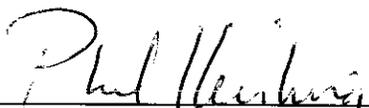
Director Gustafson read a memo to the Governor, outlining the creation of a new Barbara Roberts Educational Internship Program to recognize the many contributions Governor Roberts made to further environmental education in the State of Oregon.

Director Gustafson also presented a certificate of appreciation to both Anne Squier, the Governor's Assistant for Natural Resources, and Nina Johnson, Executive Assistant to Secretary of State Phil Keisling, who will be leaving their positions at the first of the new year. He thanked them both for their many contributions in working with the Land Board and the agency.

The meeting was adjourned at approximately 10:40 am.



Gary Gustafson, Director



Phil Keisling, Secretary
of State