

The Oregon State Land Board met in regular session on May 10, 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 10:05 a.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).

Elliott Forest Request for approval of submission of the Elliott State Forest Habitat Conservation Plan to the U.S. Fish and Wildlife Service.

Director Gustafson said at the April meeting the Land Board directed that Alternative #6 of the Elliott Forest Management Plan be integrated into the draft Habitat Conservation Plan (HCP) and presented to the Board during the May meeting for review and approval. He introduced Jill Bowling from the Department of Forestry (DOF) and Dave McAllister from the Department of Fish and Wildlife (ODFW).

Bowling said that in order to receive an Incidental Take Permit from the U.S. Fish and Wildlife Service (USFWS) an HCP must be developed describing the proposed activity, the level and location of the harvest of habitat where owls and murrelets live, and an explanation of how the harvest will impact the



species and how the planning process will be mitigated and minimized. The HCP must also explain the funding sources for these activities and the plan for handling any unforeseen circumstances that might occur.

Bowling said the strategy outlined in the plan, essentially based on Alternative #6, divides the forest into 17 management basins, with special habitat conservation areas established to protect threatened and endangered species and to provide a level of biodiversity across the forest. Bowling asked that the Board give approval for DOF to submit the HCP to the USFWS to receive a 30-year incidental take permit. She stressed the flexibility that is being incorporated into the plan, allowing adaptation as new scientific information is received. Other documents included in the package (aside from the HCP) will be an environmental assessment, an incidental take permit application form, and an agreement between the State of Oregon and the USFWS for implementation of the HCP.

Bowling said the budget for actually fulfilling the long-range management plan is \$3.5 million over a ten-year period. Additional costs associated with the public comment period should be borne by the USFWS.

As far as a public comment process, she said both the Habitat Conservation Plan and the Environmental Assessment have been available at the DOF for the last few weeks and notices of their availability were mailed to a list of about 300 persons and organizations. She said that during the USFWS review, a public notice will be published in the Federal Register.

Dave McAllister from ODFW said his agency is in accord with the plan and is acting as the biological consultant to the DOF, especially focusing on the minimizing and mitigating aspects of the HCP as it relates to the level of incidental take proposed in the plan.

Governor Roberts asked Bowling to clarify what additional costs the Board could expect above normal operating expenses of managing the Elliott with the HCP. Bowling said the cost would be around \$334,000 per year. The total costs for the ten-year period are anticipated to be \$25.5 million with an expected revenue of \$188 million, for a net income of \$163 million. Bowling said DOF wants the USFWS to pay for the HCP submission costs. Other than that, she said the consultants costs should be approximately \$50,000 plus some additional funds for stream survey work.

Secretary of State Keisling asked whether the issue would come back before the Board, if the USFWS gives approval to the plan but requests some changes. Bowling confirmed that the Board would have the final word.

Liz Frenkel of the Sierra Club shared her concern with the wording in the last sentence in Section III(K) of the HCP entitled "Limitation on Further Mitigation." She asked that it be reviewed, since she believed the provision for a 30-year permit to be too rigid, when, she said, so little is currently known regarding the murrelet. She said an assumption is also being made that any tree over 100 years old is acceptable habitat. She stressed that the trees that would be proper habitat must be the right kind, with a top that would accommodate a nest. Secretary of State Keisling emphasized the need for being able to adjust the plan as more is learned. Director Gustafson said that Section IV entitled "Amendments" would also allow for changes when needed.

Bowling agreed with Frenkel that many scientists are struggling with questions right now about the murrelet and that much is still unknown. She said the HCP document has a provision for 5-year reviews with the USFWS, allowing for adjustments where necessary. She called this "adaptive management." Roberts said although the plan says, "...no further mitigation is required," it doesn't say more cannot be done.

State Treasurer Hill moved the Board direct DOF to submit the HCP and supporting documentation to the USFWS for the purpose of obtaining an Incidental Take Permit and to implement the Elliott State Forest Management Plan. Secretary of State Keisling seconded the motion and added that before the results are published in the Federal Register, the Land Board assistants should be consulted with any changes that may be needed. The approval of the motion was unanimous.

Scenic Waterway Request for adoption of scenic waterway removal-fill rules.

Director Gustafson said that at the February Land Board meeting the Board reviewed the public comments received to date on the draft scenic waterway removal-fill rules. He stated the Board then asked that another draft be submitted for further public comment. Gustafson said that has now occurred, and that two other public meetings have been held as well. He introduced Ken Franklin from the Division who has been coordinating the rule development.

Franklin said the main topic discussed at the public meetings was the prohibition on placer mining set forth in the February 24, 1994 Attorney General opinion. He said the public comments were evenly divided for and against that prohibition. Another issue discussed was the emergency permit procedures, which were deemed to be unresponsive in the event of actual

emergencies, especially the requirement that a written permit be in hand in the case of emergency situations before work could begin. A verbal approval process was proposed, with a requirement that the permit occur in writing soon after. A process for a memorandum of agreement between the Division and the Department of Fish and Wildlife and the Parks and Recreation Department has now been included in the revised rules to address this situation. This would enable preauthorizations to occur in certain limited circumstances such as wildfires or hazardous chemical spills and thereby allow the emergency permit process to operate more effectively and responsively.

Franklin said the sandbagging issue was also identified by some commentators as an "emergency situation." However, he said that low water conditions resulting from drought or constraints in the upstream flow (i.e., impoundments) are different from true emergencies such as flash floods, chemical spills, etc.

Director Gustafson directed the Board to a letter from Sue Hallet of the Oregon Independent Miners (OIM), concerned with the process used, and a letter from Robert Hamlyn of Hellgate Jetboat Excursions in favor of allowing sandbagging on the scenic waterways during periods of low water (which Hamlyn classified as an emergency situation).

Director Gustafson said that concerns stemming from the public comments have been addressed as best as possible. He recommended the Board adopt the scenic waterway removal-fill rules.

Mel Schmidt read the letter signed by Sue Hallet of the OIM, requesting the Board postpone the adoption of these rules and requesting additional time for the mining community to again meet with staff to discuss issues such as "takings" and to avoid "possible litigation." The letter said the Division was trying to "rush the rule change through" and said OIM feels it to be a waste of time, since the issue will be addressed in the next legislative session. Schmidt complained that the mining community isn't receiving timely information regarding changes to the draft rules, and feels they have been left out of the rulemaking process. He said that it appears that none of the public comments received after January 12, 1994 were going to be considered in the proposed rule.

Gustafson emphasized that all public comments submitted during the policy and rulemaking development comment periods were considered. He said he was unsure why Schmidt didn't receive the card mailed from the Division with information about the agenda item and the meeting date of the State Land Board. Gustafson said that during the February Land Board meeting (where Schmidt was present), it was also made known that the Board would consider final adoption of the rules during the May meeting.

Bill Cook, Assistant Attorney General, was asked to speak to the "takings" issue. As Cook had to leave the room to consult on another matter, the Board decided to begin discussion on the next agenda issue and to come back later in the meeting to the scenic waterway removal-fill rules for discussion and a decision.

Wilsonville Plan Request for conceptual approval of the Wilsonville Tract Management Plan.

Director Gustafson said the Land Board authorized the purchase of the Wilsonville tract last year. He introduced John Lilly, Assistant Director for Policy and Planning, to brief the Board regarding what has occurred since that time. Lilly said the Wilsonville Tract is a 250-acre parcel south of Dammasch State Hospital outside of Wilsonville. Currently 160 acres are under a farm lease, 70 acres are forested lands, and 20 acres are wetlands, with some of the land being used as an outdoor educational project by Wood Middle School. Two small streams course the western side of the property. Lilly said two public workshops were held to gather public comment regarding potential uses of the property. A draft plan was distributed toward the end of 1993 with options for uses outlined, ranging from selling the property outright to developing it for a golf course or a public arboretum. Lilly said the draft Wilsonville Tract Management Plan recommends the Board retain the land, at least for the short term, until future uses are determined. He said the plan proposes to classify the tract for the following allowable uses: agriculture, water treatment plant, forestry and public park, and open space. The following provisional uses would also be allowable if land use or zoning concerns are resolved: public school, arboretum, and golf course.

Lilly said the Division would like the Request for Proposal (RFP) process to go forward, as outlined in the plan. Gustafson said that the review of the RFP responses will be closely examined with the plan, keeping long-term needs in mind.

Governor Roberts asked which of the uses would require a change in the Urban Growth Boundary. Lilly responded that a public school was the only option requiring a change.

A number of students from the Wood Middle School then asked to speak. Perry Freeze, Charlene Knapp, T.J. Thornton and Kristin Sinclair, students of Wood Middle School, described the educational activities they are involved in using the Wilsonville Tract. They discussed their desire for the Board to retain the land to use for a school or an arboretum. They stressed the hope that they could continue the educational use of the area. The Board thanked the students for their informational presentation.

Steve Benson, Wilsonville City Council, disapproved of the sale of the property. He said there would be no long-term gain for the state, and stated the revenue generated from the sale, when costs per child are considered, divided among all the school children in the state, may provide about two hours worth of education per student. He said the City Council backs the arboretum proposal, which would bring an estimated 500,000-750,000 visitors each year, providing a boon to the nursery dollars and revenue in general for the state--a much greater impact than the lease of the property or selling it outright. He said there is much opposition on the public's part to a golf course.

Charlotte Lehan, Wilsonville City Council, expressed her appreciation to the Division and especially John Lilly for the public hearing process and the work that has been done on the management plan. She reaffirmed that much organized opposition exists for the golf course idea.

Lehan asked for clarification regarding the potential annexation of the adjacent Dammasch property and the Callahan Center. She said the plan infers that the annexation was initiated by the City of Wilsonville. The real reason, she said, was for the sale of the Callahan Center.

Lehan said the Council supports the Oregon Association of Nurserymen (OAN) regarding the establishment of an arboretum, believing it to be a sustainable industry that will generate statewide dollars. The Council's second choice for the use of the property would be a public park. She asked whether it would be right for the local government to submit an RFP for a park, even though their first choice is an arboretum.

Lehan questioned the forestry option in the plan. She said John Lilly assured her that "salvaged logging" is for fire or insect damage--which she said, isn't made clear in the document. She commented that all the trees standing in the forest before the 1920's fire have some damage. Her concern under this option is that it might be possible for someone to remove everything with char on it.

She said there is a problem with options that require a review process every three years (such as siting a school on the property.) She said the public would like something more sure. She also mentioned an error on the Division's map regarding the location of the school. She commented that the process for an RFP should not be too complicated so that it favors a developer.

Jack Broome, concerned citizen from Tualatin, described the property as an extraordinary piece of land, saying there aren't others like it in the north Willamette Valley in public ownership. He wants the land to remain in public ownership and said his first priority for use for the site would be a park. He stressed that the forest should not be logged--even the snags. He also proposed a living history farm for the property, showing how the early-day working farm was managed. He said his second choice would be an arboretum, noting there could be space for both the living history farm and an arboretum.

He stressed that he doesn't like the golf course option. He commented that if a school is situated there, it should be on Dammasch State Hospital site where utilities are already located.

Broome remarked that much of the value of the tract is attributed to its trees as merchantable timber. If the timber is not to be logged, then the land's value in dollar's terms will be greatly diminished, since it is being valued with the timber.

Secretary of State Keisling asked Broome of his understanding of the Board's fiduciary responsibility. Broome said he previously thought the property would be bought with General Funds. He said trees on the property are 200-400 years old. He believes the return to the Common School Fund could be greater in the long run by conservation of the property.

Deborah Iguchi, citizen from Wilsonville, stressed the need to preserve places such as this tract for the history they provide, and to view them as a part of a greater system. She said the forest management should include extending the forests to include accessibility for a wildlife corridor to the Willamette River and to the forest park area.

Iguchi suggested the lands be retained for their inherent values. She commented that she likes the farm idea, and that it would bring in tourist revenue.

Jeff Grant of the Wilsonville Chamber of Commerce supports a botanical garden concept and the preservation of the wetlands and forests on the area. He says this is the most judicious way to preserve property and contributions to the Common School Fund.

Miles McCoy, from the OAN, said they support an arboretum for the area, since it provides educational value and a research center, is a tourist attraction, will create new jobs, and will be a showcase for the industry. Being so close to the I-5 corridor and to the major metropolitan areas of the state also makes the site ideal for an arboretum. He said that nursery crops are now a number one industry in the state and this kind

of showcase is needed for Oregon to remain in that spot. He reviewed plans for a proposed arboretum with the Land Board members, and left a number of letters of support for the arboretum.

Kathie Femrite, also from the OAN, said education is one of the top goals in their desire to have an arboretum. She stressed the opportunity of creating a world class garden that will be bring tourism into the area, while preserving the wetlands, forested areas, and the open areas.

Art Anderson, OAN, said the arboretum would complement and enhance work that other institutions are doing, as well as do what currently cannot be done, due to funding, etc. It will also assist in increased awareness of ecosystem wetlands, and in gardening that can be done in those wetlands. He said there is no better climate in the world than Oregon's for this arboretum.

Ron Mosely said the College of Agricultural Sciences at Oregon State University strongly supports an arboretum project for the property.

Ben Altman, from the Living Enrichment Center (LEC) and current owner of the adjacent property, said the LEC has two primary interests in the management plan. The first is in co-creating adjacent development of the property as compatible to LEC's function. The second is to seek improved access to the site. He said he agrees with all of the possible uses discussed, except any timber harvesting.

Mike Ragsdale, Tualatin Valley Water District, said they are in total agreement with the Division's recommendation and would propose the use of a portion of site for a water treatment facility.

Secretary of State Keisling explained that there are many opportunities to explore for possible uses of the land, but emphasized the Board is dealing with its fiduciary responsibility, and must be able to justify how the asset is managed.

Secretary of State Keisling moved the Board approve the management plan in concept, and direct the Division to return to the Board with a strategy for soliciting lease proposals including discussion of land use constraints, and for revisiting the question of whether sale or retention is most consistent with fiduciary obligations. State Treasurer Hill seconded the motion.

Governor Roberts stated she doesn't believe a golf course is an appropriate use of the property at this time. She said the Board should explain what uses they will approve and will not approve before an RFP is developed. She added that the idea of retention of the land allows more options for long-term leases, which could serve both the fiduciary and other responsibilities. She said that any necessary property changes should be clarified in advance of the RFP. She said the Land Board needs to be given more clarity and asked that the staff come back with a more fleshed-out concept. She said many legal and land use questions should be clarified before RFPs are requested.

State Treasurer Hill recommended a number of proposals be put forth and commented that the Land Board shouldn't prejudge any concepts. He said the Board should listen to all proposals, then determine how each might fit within their fiduciary responsibility.

Governor Roberts again expressed her desire that the Board narrow the field before asking for RFPs that would be unacceptable.

The motion was approved.

Secretary of State Keisling then began chairing the meeting, since Governor Roberts had to leave.

Scenic Waterways (A continuation of the previous discussion.)

A letter from Bob Meinen, Director of the Parks and Recreation Department, was distributed in support of the proposed scenic waterway removal-fill permit rules.

Assistant Attorney General Bill Cook clarified that the rules don't ban placer mining. He said the Legislature banned it by statute and gave the enforcement authority to the Water Resources Department. He said that, because of this, answers to questions 1, 2, 3, and 6 in the letter from the OIM aren't relevant to the rulemaking issue being discussed. Regarding the "takings" issue, the AG opinion states that it depends on who owns the riverbed of the waterway. If the owner is other than the state and they have a mining claim, then it involves a fact-intensive determination.

State Treasurer Hill asked Cook to clarify how much the Board is bound by an AG opinion. Cook said it represents the state's official legal position, and that agencies determine what they will do based on the AG advice.

Secretary of State Keisling asked if jetboat companies requesting permits to place sandbags in the scenic waterways due to low water conditions could go through the regular process. Gustafson confirmed that they could apply for a scenic waterway permit under the rules if they anticipate a low water condition.

State Treasurer Hill moved the Board adopt the rules. Secretary of State Keisling seconded the motion. Secretary of State Keisling said the rule may not make sense to some, but it's an issue that is out of the Board's control. He said it is the law that should be addressed.

Mel Schmidt asked if the Board could delay adoption of the rule for another month to allow the written materials to be reviewed, since he and some other individuals didn't receive materials at all or in a timely fashion. Gustafson said it was made clear throughout the process that the Division intended to bring the issue of final adoption of the rules to the Board at this meeting. Gustafson said staff checked and found Mel Schmidt was on the mailing list and should have received a card through the mail offering a copy of the draft rules and giving information about the rules going before the Board at this meeting.

The motion was approved.

Minutes Request for approval of minutes of April 8, 1994 State Land Board meeting.

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

Division 95-97 Budget Proposal

Director Gustafson explained the process and the schedule for the briefing of agency stakeholders on the Division's budget. He said the Division would compile the results of those meetings and will report back to the Board. Gustafson reviewed briefly the Division's new budget proposals for the next biennium, stating that a full item will be brought before the June meeting for final Board approval.

Director Gustafson recognized Special Assistant Jane Ard, explaining that Friday would be her last day at the agency. He praised Jane for her support and then introduced Jenifer Robison, who will take her place as Special Assistant to the Director on Thursday.

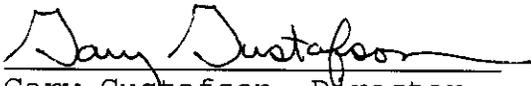
Division's Legislative Proposals

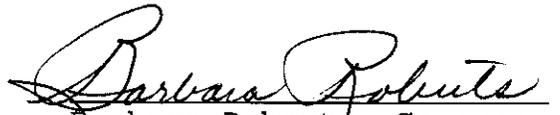
Jane Ard reported on the various legislative proposals submitted by the Division to the Department of Administrative Services on May 2. They are as follows 1) An omnibus removal-fill package for streamlining the permit process, 2) Transfer of state surplus property near Boardman (Space Age Industrial Park) to the Division, 3) Deleting a requirement that proceeds from land sales be used to purchase forestry or grazing agricultural land, 4) Amending a provision regarding removal of state-owned materials, defining "reclaim," 5) Omnibus bill with minor amendments regarding proceeds from unclaimed property and transferring the Apperson program to Oregon State University. The bill would also exempt the Division's building and Common School Fund from parking taxes.

Secretary of State Keisling expressed his concern about the parking tax exemption; State Treasurer Hill also agreed with the concern.

Ard said the omnibus fee bill is the most far reaching with some very substantial fee changes. Gustafson said the objective of this bill is to bring fees closer to what the programs actually cost.

State Treasurer Hill moved the Board adjourn. Secretary of State Keisling seconded the motion and the decision was unanimous. The Board adjourned at 12:44 pm.


Gary Gustafson, Director


Barbara Roberts, Governor