

The State Land Board met in regular session on April 18, 2000 in the Land Board Room of the State Lands Building, 775 Summer Street NE, Salem, Oregon 97301-1279.

Present were:

John A. Kitzhaber Governor

Bill Bradbury Secretary of State

Jim Hill State Treasurer

Assistants

Paula Burgess
Paddy McGuire
Rollie Wisbrock

Staff

Paul Cleary
John Lilly
Steve Purchase
Gary Van Horn
Gail Lowry

Dept. of Justice

Bill Cook

Governor Kitzhaber called the meeting to order at 10:20 a.m. 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 NE, Suite 100, Salem, Oregon 97301-1279 (phone: (503) 378-3805).

Action Agenda

1. Annual review of the Common School Fund investment performance and discussion of school distribution for the 1999-01 biennium.

Director Cleary said the Common School Fund market value grew last year by 16 percent, with a year-end balance of \$816 million. Because of the growth in the Fund, a five percent distribution will be made to schools for the second year of the biennium. For the entire biennium, \$76 million will be distributed – about \$3 million more than the legislative target.

Dan Smith, Director of Investments, Department of State Treasury, reviewed the equities returns and reported that 1999 was another good year for the equities market. He noted that the total Common School Fund earnings were 14.9 percent for last year, and 18.9 percent overall annual average for the past three years.

Smith reported that Treasury, working with the Division, had the consulting firm of Frank Russell Company develop a new Asset Allocation Study to determine whether the CSF investments are still in line with capital markets assumptions and to model the new distribution policy the Board adopted last fall. Russell recommended a modest change in the equities allocation--a reduction over time in the amount invested in domestic equities to 50 percent and an increase in the amount of international equities to 20 percent. Smith said the Oregon Investment Council approved that structural change through policy and will likely be adopting a formal written investment policy for the Common School Fund at their April 26 meeting.

Smith said any changes within the domestic equity investments would be a rotation among index funds. Historically, the S&P 500 index managed by Barkley Global has been used. The Russell Study suggests a migration into the Russell 3000 index, which would allow some participation in the smaller to mid-cap companies. He added that the Council approved that and will be implementing it after June when the industries composing the Russell 3000 index are rebalanced.

State Treasurer Hill commended his staff for taking full advantage of the tremendous bull market that has been available and for their work with the Common School Fund and Pension Fund investments.

2. Update on North Tongue Point sale evaluation and consideration of continued state ownership vs. sale to other public or private entities.

Director Cleary directed the Board's attention to an updated memorandum that was provided at the meeting regarding the North Tongue Point sale evaluation. He reviewed the issues central to this evaluation. He pointed out that sale of the property to anyone is subject to Cresmont's lease rights, including the right to meet a high bid and their right to continue the lease for up to 24 years, as long as their lease is in good standing. Cleary said the state's surplus property process stands in front of Cresmont's right to meet the high bid, requiring state agencies to give other governmental units first opportunity to acquire property before offering it for sale to others.

The Land Board's primary decision factor is its fiduciary obligation to act in the best interests of the Common School Fund beneficiaries. Cleary said it is important to harmonize that obligation with community and lessee interests whenever possible, but added that the fiduciary responsibilities are primary and can't be bent. Cleary said future development of North Tongue Point will require community support and involvement and it would be helpful if both the community and site owners/developers could be on the same page.

Cleary noted that under law, state lands can be purchased on a contract for deed basis with 20 percent down and the remaining balance paid over five years.

At the time the agenda item was developed in late March, Cleary said there seemed to be just one party interested in acquisition (the Port of Astoria had withdrawn their previous proposal for purchase). In an April 10 letter, however, Bob Eaton, President of the Port of Astoria Commission, expressed the Port's desire to acquire the property and requested additional time for them to develop alternative means of funding the acquisition.

Cleary reviewed four options the Board could take:

1. Defer action until the June 6 Land Board meeting to try to get consensus with the community and development interests.
2. Defer initiating the sale process until after June 6 Board meeting, trying to bring closure to the surplus property process by giving the Port of Astoria until May 30, 2000 to deposit 20 percent as down payment (if using contract for deed). If they make that deposit, enter into a contract for deed with them. If they do not make deposit, initiate the sale process with 45-, 60- or 90-day marketing exposure.
3. Pursue the first two options on a parallel track, asking the Port to decide by May 30, but simultaneously initiating the marketing process, trying to bring both to closure by the June 6 Board meeting. If the Port makes the deposit, enter into a contract for deed with them. If they don't, open bids on June 2 and process them accordingly.
4. Take a position that the surplus property process has been concluded with the Port's previous letter of mid-March; don't entertain their more recent expressions of interest and initiate the sale process at a 45-, 60- or 90-day period.

Cleary reported that Assistant Attorney Bill Cook believed any of the four could be supported legally, but said he was most comfortable with one of the first three.

Willis VanDusen, Mayor of Astoria, said the Astoria City Council met to discuss North Tongue Point. He said there was a unanimous decision that it would be in the best interests of Astoria for the Board to sell the property. There was no firm consensus to whom the Board should sell.

Bill Kelley, Cresmont, Inc., said he believes the community and development interests are on the same page, and that the community is behind Cresmont.

He added that Cresmont has gone through the process over a long period of time, following the lease, clearing up issues, marketing the property nationally and internationally. He noted that Cresmont has generated \$2 million for the Common School Fund. He said they have maintained the property, made it visible, and brought it to the point today where it is marketable and developable.

Kelley discussed Cresmont's partnership with Washington Marine Group and their intent after purchasing the property to begin development immediately. He added that he believes the due process has been entered into and that added delays make the property more difficult to market and are a financial burden on Cresmont. He said the Port had their opportunity to participate and put together a marketing plan and now the Board should move the process forward.

Bob Eaton, President for the Port of Astoria Commission, discussed the Port's letter requesting the Board allow a reasonable delay in the sale process of North Tongue Point. He said in 1999 the new Port director and new commission adopted a strategic plan for the Port with a long-term goal to acquire the property at Tongue Point. He said when Clearwater approached them regarding partnering with them for purchase of the property, it accelerated that plan. Clearwater then pulled out and Eaton said the Port has not had opportunity to consider other options that might be available to them. He said the June 6 date in the staff recommendations would be a concern and asked that the Board delay the sale process until the end of the year to give the Port an opportunity to pursue acquisition plans for the North Tongue Point property.

Secretary of State Bradbury asked what options the Port may try to pursue. Eaton said they would continue looking for business partners, saying there are tremendous advantages for private corporations to work with the Port for purchase of the property. He also told the Board that there might be opportunities for land swaps that would be advantageous to both the Port and state.

Governor Kitzhaber said the Board isn't carrying out its fiduciary responsibilities in the best manner by maintaining ownership of the property. He said the question is whether to try to sell the property into public ownership or private ownership. He asked Eaton how they plan to find a business partner in the next six or eight months, when they haven't in the last 24 plus months. Eaton replied that there is accelerated interest in the property, as has been seen through the interest of the Washington Group and Clearwater, and from other parties that have expressed some interest. He stressed that the Port has an integral role it could play in gathering the local public support that will be necessary.

Governor Kitzhaber asked how much undeveloped property the Port has and the financial liability of maintaining it. Peter Gearin, Executive Director for the Port, responded that they have 174 acres adjacent to property the Division currently owns on the Skipanon Peninsula, presently undeveloped and zoned S1, but being referred back for local zoning. He added that it costs the Port virtually nothing to maintain undeveloped property.

Governor Kitzhaber said he would prefer the Port own the property in the long run for economic benefits to Astoria. He added that there is a tenant with a lease currently maintaining the property, so a final decision should be made soon regarding how to proceed.

State Treasurer Hill commented on the minimal interest there has been in this property over the history of the Board's ownership. He said the Board should focus on its responsibilities to the Common School Fund. He noted that option 3 would be his preference for the Board, giving the Port a certain amount of time, but cautioning that the window of opportunity with Cresmont and the Washington Group who are currently interested in purchasing as partners could be jeopardized.

Secretary of State Bradbury stressed the need for benefits from this property to be accruing to the Common School Fund, as well as ensuring that the property is developed to the benefit of the citizens of Astoria and Clatsop County. He related his desire for public ownership of the property.

Governor Kitzhaber asked Assistant Attorney General Bill Cook to comment on the four options provided. Cook said the legal issues arise under the statute requiring the state, when selling property, to give first opportunity to political subdivisions before allowing bids from the general public. He noted that the statute doesn't define what the outer boundaries for the first opportunity may be. He reviewed the current situation with the Port

expressing interest, then withdrawing, then indicating again that they are interested. He reminded the Board that this is an investment of the Common School Fund, saying this is the "outer boundary" the Board must consider. Cook said the first three options allow more time for the Port to be able to put together a proposal, whereas option 4 basically says the Port has had their opportunity.

Director Cleary explained the difference between options 2 and 3, saying both options allow the Port until May 30 to bring closure to the surplus property issue. The main difference is that in option 3, advertising can begin on a parallel track during the time given the Port to make a final decision. Cleary stressed that these timeframes could be altered by the Board and added that nothing in the lease compels the Board to sell the property. Governor Kitzhaber said option 3 would allow for a quicker transfer of the property to private ownership, should the Port not be able to come up with the deposit by the deadline.

A vote found the Board in unanimous support of selling the property. Governor Kitzhaber asked whether the Board should give the Port additional opportunity to make their deposit, and if so, how long. He said he preferred to give them additional time, but agreed with Cresmont that there should be a clear ending date.

State Treasurer Hill said the Board agrees the property should be sold. He asked the Board to consider whether the potential sale prospect would be put in jeopardy by the timeframe. He stressed that the single sale prospect should not be jeopardized. He said option 3 would be the best, to have a parallel process going on, giving the Port opportunity to come up with the 20 percent deposit (if using contract for deed), while simultaneously initiating marketing exposure.

Cleary reminded the Board that the option 3 dates could be changed, as long as there would be a minimum 45-day to 90-day marketing exposure. Governor Kitzhaber said under option 3 with the parallel course the Board doesn't have to take additional action. Either the Port makes a deposit, or the process would begin for sale of the property.

State Treasurer Hill asked Cleary whether he believes extending this process longer would jeopardize the pending sale. Cleary said he didn't think extending to 90 days would jeopardize it. Beyond that, he felt there might be a risk. State Treasurer Hill asked what more could be gained by extending from 55 days to 90 days. Cleary said that anyone purchasing the property would be subject to the current Cresmont lease and would want

opportunity to review that 75-page document. He added that choosing the option with the parallel track with an extended time period would provide alternative bidders more opportunity for due diligence, while simultaneously giving the Port more time. He remarked that he understands the concerns of the Board not moving in a prudent and timely manner and perhaps ending up with the property being unsold and unleased.

Governor Kitzhaber suggested the Board consider a modification of option 3, by starting the clock now, giving the Port 45 days to make their decision and the necessary deposit, then adding an additional 45 days to determine if there would be additional private sector bids. At that point, Cresmont would have the opportunity to match the highest bid.

Bill Wolfe, Cresmont, described the situation as having changed since Washington Marine Group first decided to partner with Cresmont in purchasing the Tongue Point property. Wolfe said the property is now a burden. They had hoped to complete the sale as soon as possible and start dredging to bring in occupants. He said the property requires continual marketing to potential tenants. He requested the Board offer some relief from lease payments during the 90-day waiting period.

State Treasurer Hill asked how the longer timeframe and the delay the Board is considering might specifically effect this potential sale transaction. Wolfe discussed his company's need to plan for the future. He added that continual delays do hurt and that Cresmont and Washington Marine need to talk about it internally.

Secretary of State Bradbury asked when the next dredging window would be. Wolfe replied that it was November 1 to February 8. He added that he understands they might be able to apply for an earlier date. Cleary said the Division, the Corps, and the Department of Fish and Wildlife would determine whether to open the in-water work period up earlier and that would depend on fish counts.

Secretary of State Bradbury proposed the Board choose option 3, revising the date the Port would have to make a deposit from May 30 to June 23, and setting the public auction bid opening date on June 30, giving a one-week window after the deadline for the Port's deposit to allow any potential bidders to put their money down (if the Port fails to make the deposit). Cleary said one week would be adequate time. He noted that this revised schedule adds about three weeks to both dates.

In answer to questions by State Treasurer Hill, Cleary said the Board has expended \$6.1 million in acquisition, improvements and dredging at North Tongue Point, while the site has generated about \$2.6 million in lease revenues. State Treasurer Hill said he doesn't see that the delays would be profitable, since the Port still has no solid possibilities. He said he would maintain option 3 as being the best option, without revising the timelines.

Governor Kitzhaber said the Board owes Cresmont an ending date to this process, but he wanted to allow the Port additional time. He indicated his support of Secretary of State Bradbury's proposal.

State Treasurer Hill moved the Board approve option 3. Governor Kitzhaber seconded the motion. Secretary of State Bradbury moved the motion be amended to change the surplus property date from May 30 to June 23, and the sealed bid date to June 30. State Treasurer Hill voiced his objection to the amendment. Secretary of State Bradbury voted aye; State Treasurer Hill voted no; Governor Kitzhaber voted aye. The amendment of option 3 was approved.

Governor Kitzhaber clarified that approval of option 3 with the amended timelines would cause the surplus property process to come to a close on June 23, and the public bidding process to proceed, if the Port fails to make their deposit. Cleary added that June 6 would be scratched from the end of option three, and a special meeting of the Board would be scheduled for the final sale approval.

Secretary of State Bradbury voted aye; State Treasurer Hill voted no; Governor Kitzhaber voted aye; and the motion passed.

Governor Kitzhaber assured Cresmont there would be no further surplus property related delays beyond the June 23 date. Secretary of State Bradbury said he hoped a Land Board meeting could be held as close to the June 30 bid opening date as possible, to get the process wrapped up.

Cleary said the minimum acceptable bid would be \$4 million. The Board agreed.

3. Request to adopt new administrative rules controlling the export of unprocessed timber from common school forest lands and other Land Board managed lands.

Director Cleary said the Board repealed its outdated 1983 rules during the February 2000 Land Board meeting. No replacements were approved at that time. Staff consulted with the parties that had concerns with proposed amendments and those concerns were handled. Cleary recommended adoption of the replacement rules.

Secretary of State Bradbury said he'd met personally with several of the interests involved with these rules. He added that he's satisfied that the rules make good sense and that they should be adopted. He moved they be adopted. State Treasurer Hill seconded the motion and the approval was unanimous.

4. Results of sealed bid process and request for final approval of sale of up to nine isolated unleased parcels of rangeland in Lake and Klamath County.

Director Cleary told the Board that nine isolated unleased parcels of rangeland had been advertised for sale in Lake and Klamath County and seven of them attracted bids. Total bid sale proceeds came in at \$120,000, averaging about \$122 per acre excluding the timber tract. Cleary noted that this was 19 percent above overall appraised value. He recommended approval of the sale of the seven parcels that attracted bids, with the properties being sold to the respective high bidders.

Secretary Bradbury moved the sales be approved. State Treasurer Hill seconded the motion and the approval was unanimous.

Consent Agenda

- 5a. Request for authorization to initiate rulemaking to amend administrative rules governing local wetland inventories, wetland conservation plan inventories, and wetland conservation plans; and to develop new rules for preparing, reviewing and approving wetland delineation reports.**
- b. Request for authorization to initiate public rulemaking to revise the Division's administrative rules governing: (1) the establishment and operation of compensatory wetland mitigation banks, (2) freshwater wetland compensatory mitigation, and (3) estuarine mitigation.**

- c. Request for approval to initiate public rulemaking regarding removal-fill permitting exemptions to conform with HB 3599 (1999), clarifying the definition of "converted wetlands"; and to amend the removal-fill rules to conform with SB 11 (1999), regarding consolidation of ocean shore permitting.**
- d. Request by the Columbia Soil & Water Conservation District for a "channel improvement easement" to reconnect the historic flow between the Clatskanie River, Westport Slough, and the Columbia River on state-owned submerged and submersible lands adjacent to the Columbia River located within Columbia County.**
- e. Request for approval to appear before the June Legislative Emergency Board to seek additional Other Funds expenditure limitation for increasing disbursements from the Wetland Mitigation Bank Revolving Fund.**
- f. Request for approval to appear before the June Legislative Emergency Board for increased Federal Funds expenditure limitation authority for the South Slough National Estuarine Research Reserve. This will enable the Reserve to expend federal grant funds in the 1999-01 biennium previously approved in 1997-99 and to complete facilities renovation projects initiated during that period.**
- g. Request for approval of minutes of February 8, 2000 State Land Board meeting.**
- h. Request for authorization for the Division to file a temporary rule concerning issuance of removing-fill permits for up to twenty-five years and to initiate permanent rulemaking.**
- i. Request for approval to appear before the June 2000 Legislative Emergency Board for increased Other Funds expenditure limitation authority for the Oregon Natural Heritage Program.**

Director Cleary briefly reviewed the items on the Consent Agenda. State Treasurer Hill moved the Consent Agenda be approved. Secretary of State Bradbury seconded the motion and the approval was unanimous.

Informational Agenda

6. New Carissa stern section removal status report.

Director Cleary said since the initial grounding of the New Carissa in February 1999 the state has insisted the Responsible Party devise a safe and environmentally sound plan to remove the wreck. The salvor attempted some removal activities last season, but was unsuccessful. Cleary directed the Board's attention to a letter written from John Trew, Director with Britannia Steamship Insurance Association, Ltd, insurer for the Responsible Party.

The Responsible Party didn't post the \$25 million bond requested by Governor Kitzhaber, assuring the state that their "no-cure/no pay" contract and a letter of undertaking was a better assurance that the wreck would be removed than the \$25 million bond requested by the Governor.

Cleary said the salvor now has concerns as to whether they can remove the ship in a safe and environmentally sound manner.

Bill Milwee told the Board that many things have occurred over the past 15 months since the New Carissa grounded. He reviewed the efforts put forth by the salvors (totaling 62,000 man hours) that were "defeated." He said the primary element in that defeat is the Oregon coast with its geography, oceanology, geo-morphology and meteorology.

He characterized this as one of the highest energy beaches in the world, noting that the surf is always present, and "almost always impossible to work in." He said the sea floor is extremely mobile, constantly changing with long-shore current running perpendicular to the surf. Even on days it looks calm, there are swell patterns in the surf. Because of these conditions and the changed conditions of the wreck, he said it is a much more dangerous situation than last year and success in a wreck removal is much less probable. He doesn't believe there is any way to remove the crane house, which he said is buried to a depth of 30 feet.

The section containing the engine room cannot be refloated as it was last year. He said it must be dismantled in place.

He concluded by saying that complete removal is very likely physically impossible and discussed in more detail the two main problems he believes are involved - 1) creating a suitable work platform in that surf zone to use and then remove at the end of the job, and 2) the safety of working aboard

the inclined wreck in an open ocean surf zone. Milwee added they have no plans to work at the site this year because there is virtually no chance they can solve the two primary problems and get equipment on site in time to have a reasonable amount of time to work before the weather closes them down.

Milwee said they have agreed to have an independent consultant review the situation, giving a second opinion on the feasibility of removal of the New Carissa. In the meantime, he said they continue to investigate work platforms that might be usable, working with OSHA and the contractor to develop safety rules and work procedures and to determine if it is possible to work aboard the wreck with an acceptable degree of safety, and how that might be done. He reviewed the other measures that are being handled in the interim, such as continuing beach monitoring and clean up of oil.

Cleary said the state believes the Responsible Party bears full obligation to remove the wreck and restore the beach to the pre-accident condition. He said if they cannot develop a safe and environmentally sound approach, that the Division would be authorized to accept a \$25 million payment in lieu of wreck removal. This money would be deposited in a subaccount of the Common School Fund and the earnings used to fund site management costs, cover the state's lawsuit liability, enhance the state marine accident response capabilities, as well as the local Coos Bay region emergency response, because the state may have to respond to some incidents there. If conditions or technology change, Cleary said the corpus of that subaccount could be used to contract with others to complete the wreck removal.

Governor Kitzhaber said he agrees the state and the Responsibility Party share the burden of responsibility for whatever decision we make. He added, however, that the state doesn't share the financial liability, because in lieu of the \$25 million bond that would otherwise have been required, we had a no cure/no pay provision. He added that he would insist if the work is not completed, that the bond be posted, so the \$25 million would be available to the state.

Milwee said they will resist paying anything like that amount. He said bond removals are not usually required in wreck removals. The Governor responded by saying that Oregon is not a usual state.

State Treasurer Hill stated that damage has been done to our state. He asked if the Responsible Party is considering leaving the ship there. Milwee responded they might have no other choice. State Treasurer Hill said the

agreement was that the ship would be removed. He reiterated that the state has been damaged, and that mitigation should occur. Milwee said \$25 million is totally out of line with the amount of damage done.

Governor Kitzhaber said that since an independent assessment is proceeding, it is premature to put a motion forth regarding this until a determination has been made regarding the course of action.

7. Navigability status report.

8. Preliminary concepts for 2001 legislative session.

Cleary noted that the last two informational items were self explanatory and that written materials were available.

Governor Kitzhaber adjourned the meeting at 11:50 am.

John A. Kitzhaber, Governor

Paul R. Cleary, Director