

The State Land Board met in regular session on February 8, 2005 in the Land Board Room of the State Lands Building, 775 Summer Street NE, Salem, Oregon 97301-1279.

Present were:

Theodore R. Kulongoski	Governor
Bill Bradbury	Secretary of State
Randall Edwards	State Treasurer

<u>Assistants</u>	<u>Staff</u>	<u>Dept. of Justice</u>
Mike Carrier	Ann Hanus	Lore Bensel
Inga Deckert	John Lilly	
Jesse Cornett	Steve Purchase	
	Jeannette Holman	
	Gail Lowry	

The Governor called the meeting to order at 10:02 am. 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 Department of State Lands, 775 Summer Street NE, Suite 100, Salem, Oregon 97301-1279, (phone: (503) 378-3805, ext. 224).

Consent Agenda

- 1. a. Request to approve the adoption of amendments to the administrative rules governing minerals reservation and release (OAR 141-073-0100 through 141-073-0280).**
- b. Request to approve the adoption of amendments to the administrative rules governing the granting of easements on Trust and Non-Trust Land (OAR 141-122-0010 through 141-122-0120). – (Removed from agenda)**
- c. Request to accept quitclaim deed from the Port of Astoria for the purpose of clearing title to certain lands in Clatsop County.**

d. Request for authorization to sell, through open and competitive sealed bid process, up to 13 isolated parcels in Wheeler, Malheur and Wallowa counties.

e. Request for approval of December 14, 2004, State Land Board meeting minutes.

Director Hanus introduced the Consent Agenda. She explained that there were two amendments to Item 1a, both to clarify that only the Land Board could authorize a release for sale or exchange. The other clarifies that the Board must approve every request, according to Attorney General advice.

Hanus explained that Item 1b was being removed from the agenda due to a technical problem with the way that Senate Bill 82 was written. She said the agency would work on legislation to remedy the problem this session.

On Item 1c, Hanus explained that the Port would issue a quitclaim. They want to develop an 18-hole golf course and related marine facilities.

Hanus said Item 1d is a request to sell through an open competitive bid process up to 13 isolated parcels to reposition the asset management portfolio and boost revenue to the Common School Fund. She noted that these parcels are isolated and difficult to manage. She further explained that one parcel in Jackson County is being considered for improvements prior to sale because of its potential as a better investment. She said the plan is to sell these parcels in early 2005.

Treasurer Edwards asked what analysis was done to conclude that the parcel in Jackson County would be suitable for improvement, making it a better investment. Steve Purchase, Assistant Director for Field Operations, said this parcel was determined eligible for a home site. He explained that this would require a permit, road upgrades, a legal agreement with the adjacent homeowner and an adjusted appraisal. The parcel's previous appraisal was \$65,000. Purchase said the cost of the improvements is estimated to be around \$116,000, making the value of the property approximately \$400,000, for an increase of \$284,000 to the Common School Fund. Treasurer Edwards expressed his appreciation that the agency was considering this.

Treasurer Edwards asked about the request for a direct sale of a parcel in Wallowa County to the Nez Perce Indian Tribe. Hanus explained that the agency made the request for an open competitive process, since this generally yields a higher market value than selling at the appraised price.

Hanus noted that the tribe does not qualify as a political entity under Oregon law. She said the agency recommends the Board go forward with an open competitive sealed bid process. Treasurer Edwards asked about the first right to buy given to government entities. Hanus explained that it also depends on the fiduciary responsibility of the trust. Governor Kulongoski asked why the tribe wants the site, if it is an archaeological or burial site. Purchase said the tribe believes the parcel may have a rare endangered plant. Purchase said there is a possible archaeological site on another parcel and added that the information for this will be in the bid package when it goes out.

Secretary of State Bradbury said he supports the tribe and is sensitive to their desire to reclaim their homeland, but stated that the Board does not have authority under the statute to treat them as a local government entity. He said his best advice to them would be to bid appropriately.

Governor Kulongoski asked why the tribes are not listed as a local government. Lore Bensel, Assistant Attorney General, said this statute is part of the ORS chapters that the Department of Administrative Services administers for state lands. She explained that the list of entities that can be considered for a sale has been prioritized. She added that she is not aware of a plan to reach out to the federal government. Governor Kulongoski said these statutes were probably enacted early on, and were it done today, the tribes may have been added to that list. He suggested an amendment be considered to include tribal rights for the first refusal on some of these lands.

Bensel said there is a statute giving adjacent landowners first right refusal provisions. Hanus said ORS 270.010, first right of refusal, is written fairly broad. She offered to talk to DAS regarding the tribes, but said the sale would still need to be subject to the Board's fiduciary responsibilities.

Treasurer Edwards said the Board's hands are tied on this, since as fiduciaries they must get the maximum return. He suggested the agency review the statutes to determine why the tribes were not

added. Governor Kulongoski said the Board's trust responsibility is trumping the issue. Bensel said the statute has explicit language that this will not override the fiduciary responsibilities.

Hanus recommended approval of the Consent Agenda with the addition of the amendments to Item 1a and the removal of Item 1b. Treasurer Edwards moved the Consent Agenda be approved. Secretary of State Bradbury seconded the motion and the approval was unanimous.

Action Agenda

2. Request for approval for transmittal to the 2005 Oregon Legislature of the cost-benefit analysis for the Common School Forest Land within the Elliott State Forest.

Director Hanus said both the Department of State Lands and the Department of Forestry received budget notes from the Legislature directing an analysis to be done of the Elliott State Forest to determine whether it would be more profitable for the forest to be sold and the moneys deposited into the Common School Fund, or whether the forest should be retained. Hanus said consultants, Mason, Bruce & Girard (MBG), were chosen to do that analysis. MBG is a subcontractor for Cogan Owens Cogan who developed the Asset Management Plan.

Hanus said at the June 2004 meeting, the Board said they do not intend to sell the Elliott. The analysis provides good information for managing the forest and for evaluating the Forest Management Plan, the Habitat Conservation Plan (HCP) and the Asset Management Plan.

Carl Ehlin, MGB, said the analysis lays out reasonable timber harvest scenarios that meet the intent of the scope of the project, while addressing the scope of the project and the complexities of past management practices and endangered species issues.

Roger Lord, MBG, reported that since the Elliott was established in the 1930s it has been well managed by the Department of Forestry. He said the mature character of the forest has provided a great deal of habitat for the northern spotted owl and the marbled murrelet, but this has impacted the management of the forest and the revenue to the Common School Fund.

Lord explained the objectives of the analysis were: 1) to determine how much the Elliott would bring if sold today; 2) to compare that to the value under continued state ownership; and 3) to determine the indirect economic and non-market benefits and costs of a potential sale of the Elliott to the private sector.

He described the process that was used to determine each of the objectives. He said the acreage allocation was the most perplexing part of the project, due to the high uncertainty around the threatened and the endangered species.

Lord said that at recent levels of timber harvest, the Elliott's net present value of income to the Common School Fund is \$282 million. Higher harvest levels are expected from current plan revisions and the renegotiated HCP, which could increase the value of the forest to between \$318-\$381 million.

He said the report puts the potential net income from a sale between \$245-\$488 million. Under continued state ownership the net incremental benefit, the difference between the net income from the sale and the value if the state retains ownership, would range from a \$136 million loss to a \$206 million gain for the Common School Fund. In addition, they calculated the state economy would benefit from added employment, income, and tax receipts, which could range as high as \$400 million. The sale would result in a decline in late-successional habitat for the federally listed northern spotted owl.

The agency recommended the Land Board:

1. Authorize the transmittal of the report to the 2005 Oregon Legislature.
2. Authorize the Agencies to evaluate the implications of the Cost Benefit Report for:
 - a. The current Elliott Forest Management Plan revision process;
 - b. The current Habitat Conservation Plan revision process; and
 - c. The current Asset Management Plan revision process.
3. Require the Agencies to report back to the Land Board at its June 2005 meeting the results of the work identified in (2) above.

State Treasurer Edwards moved the recommendation be approved. Secretary of State Bradbury seconded the motion and the approval was unanimous.

3. Request to approve proposed changes to the Common School Fund Distribution Policy.

Director Hanus recognized Department staff Jeannette Holman, Assistant Director for Finance and Administration, and Pamela Konstantopoulos, Fiscal Manager, for their work on the proposed changes to the distribution policy.

Hanus reported the record distribution of \$53.5 million in 2003-05, saying the original distribution estimate was about half this amount. She noted that the Common School Fund was at \$911 million at the end of December 2004.

Hanus said that revisions to the Common School Fund distribution policy were in line with recommendations of the State Treasurer's and Attorney General's offices. She said the new policy would not go into effect until January 2006, when it will be phased in.

The policy will smooth out distributions using a three-year rolling average, rather than the current year-over-year method. It would also specify that distributions cannot exceed the annual earnings for the Fund.

Hanus noted a change on Appendix A of the item, saying on the 5th bullet, the last part of the sentence should be deleted, "*and to cover down year minimum distributions.*" She said this portion needs deleted, since the corpus of the fund cannot be dipped into.

Chuck Bennett, Confederation of Oregon School Administrators, said this kind of change is helpful for school districts during cycles. He stated this is an important part of the local revenue picture, especially with the distribution announced today. He said this could help the districts get off the roller coaster effect. He thanked the Board for their consideration of the policy change.

John Marshall, Director of Legislative Services, Oregon School Boards Association, said the rationale is good. He discussed the volatility of the market and uncertainty for schools in budgeting. He said distributions have ranged from \$10.5 million to \$40 million. For an average school, he said this is a difference of between \$53,000-\$207,000.

Marshall thanked Hanus for encouraging the involvement of the educational community. He said this policy would provide the stability and certainty they have needed.

Governor Kulongoski asked whether their organizations will take a position on the Elliott Cost-Benefit Study. Bennett indicated that they will probably follow the Board's position. He agreed with the Treasurer's statement on the need for a balanced portfolio. He added that some values cannot be measured in a monetary way, such as air and water quality.

He added that they would subscribe to a more aggressive management/cutting plan if it could be done responsibly.

Marshall commented that if those in authority years ago had not gotten rid of the lands given to the state, there would not be such a school funding need today.

Secretary of State Bradbury approved the item, State Treasurer Edwards seconded the motion, and the approval was unanimous.

Informational Agenda

4. Update on State Programmatic General Permit.

Director Hanus said she hopes the Corps will be signing the 404 assumption in April. She noted that written materials were available with an update of the SPGP.

5. Update on legislation.

Director Hanus said written materials were available reviewing legislation impacting the Department.

Governor Kulongoski adjourned the meeting at 11:16 am.

_____/s/
Theodore R. Kulongoski, Governor

_____/s/
Ann Hanus, Director