



# Oregon

Theodore R. Kulongoski, Governor

## Department of State Lands

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## State Land Board

State Land Board

Regular Meeting

April 13, 2010

Agenda Item 1e

Theodore R. Kulongoski

Governor

Kate Brown

Secretary of State

Ted Wheeler

State Treasurer

### SUBJECT

Request by the Oregon Department of Transportation (ODOT) to acquire a permanent bridge easement over and upon the submerged lands of Big Creek located in Lincoln County.

### ISSUE

Whether the State Land Board should approve the above referenced request from ODOT.

### AUTHORITY

Oregon Constitution, Article VIII, Section 5; requiring the Land Board to "manage lands under its jurisdiction with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management."

OAR 141-122-0010 to 141-122-0120; establishing procedures for granting easements and rights-of-way on trust and non-trust lands and requiring Land Board approval of easements granted in perpetuity.

### BACKGROUND

Big Creek is a tidally influenced waterway south of Waldport and north of Yachats. The crossing in question is on Highway 101. ODOT is planning to perform major repairs to this bridge, and is moving forward with attaining a permanent easement for this crossing.

ODOT has paid the required easement application fee of \$750. The easement is for a state-owned bridge, and is outside of a city limit. Under OAR 141-122-0060(2)(a), no compensatory land use fee is required.



## **PUBLIC INVOLVEMENT**

On January 13, 2010, ODOT easement application 43868-EA was circulated for a 30-day public review period. A notice was sent to local, state and federal agencies and adjacent landowners. The Department of State Lands did not receive any objections to the easement application from agencies or landowners.

## **RECOMMENDATION**

The Department recommends that the State Land Board approve a permanent easement to ODOT for the Big Creek Bridge crossing over and upon the submerged lands of Big Creek located in Lincoln County.

## **APPENDICES**

A. Draft Easement with signed Certificate of Approval and Conveyance

**STATE OF OREGON**  
**Department of State Lands**

DRAFT

**EASEMENT NO. 43868-EA**  
**S&S Bridge**

The STATE OF OREGON, by and through its Department of State Lands, GRANTOR, for and in consideration of \$N/A, hereby grants to GRANTEE,

NAME of GRANTEE: Oregon Department of Transportation	ADDRESS: 455 Airport Road SE Building A Salem OR 97301-5397
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an easement and right to construct, maintain, operate and replace a highway bridge over, upon, and across the following particularly described property situated in Lincoln County, Oregon, more particularly described as follows:

A parcel of land lying in Lot 11 of Section 2, Township 14 South, Range 12 West, Willamette Meridian, Lincoln County, Oregon; the said parcel being all State-owned submerged land lying between the lines of mean low tide on the Northerly and Southerly banks of Big Creek and included in a strip of land 80.00 feet in width, 40.00 feet on each side of the center line of the relocated Oregon Coast Highway, which center line is described as follows:

Beginning at Engineer's center line Station 1630+00.00, said station being 6,333.99 feet South and 1,411.30 feet West of the South Quarter corner to Section 36, Township 13 South, Range 12 West, Willamette Meridian, Lincoln County, Oregon;

thence South 11° 21' 35" West 500.00 feet to Engineer's center line Station 1635+00.00.

Bearings are based on County Survey No. 16369, filed September 17, 2001, Lincoln County, Oregon.

This parcel of land contains 7,518 square feet or 0.17 acres, more or less.

Containing 0.17 acres or 7,518 square feet, more or less, and as shown on the attached Exhibit "A".

TO HAVE AND TO HOLD the same unto GRANTEE in perpetuity, subject to the following conditions:

1. GRANTOR has the right to grant additional easements within the area authorized by this easement subject to the provisions of the administrative rules governing the granting of easements.
2. GRANTEE shall obtain prior written approval from GRANTOR prior to:
  - a) Changing the type of use authorized by this easement;
  - b) Expanding the number of authorized developments or uses;
  - c) Changing the authorized area; and/or
  - d) Permitting other persons to utilize the easement for uses and developments requiring separate written authorization by GRANTOR pursuant to the administrative rules governing the granting of easements or other GRANTOR requirements.
3. The easement area shall remain open to the public for recreational and other non-proprietary uses unless restricted or closed to public entry by the State Land Board or GRANTOR.
4. GRANTOR and/or its authorized representative(s) shall have the right to enter into and upon the easement area at any time for the purposes of inspection or management.
5. Except as expressly authorized in writing by the Department, GRANTEE shall not:
  - a) Cut, destroy or remove, or permit to be cut, destroyed or removed any vegetation, or
  - b) Remove any sand and gravel, or other mineral resources for commercial use or sale, that occur in the easement area except as expressly authorized in writing by GRANTOR.

Routine right-of-way maintenance including vegetation trimming shall be allowed.

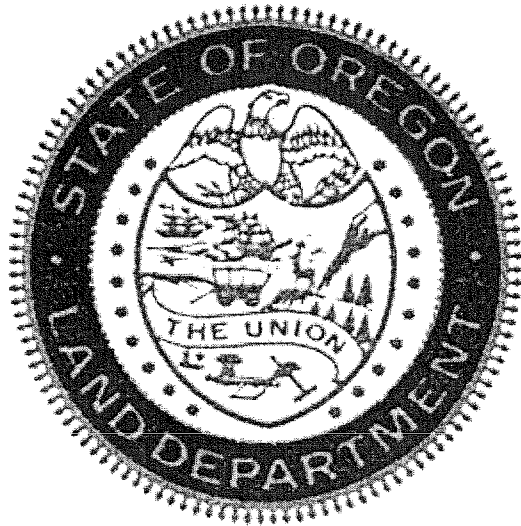
6. GRANTEE shall compensate GRANTOR for the fair market value of any commercially valuable timber or sand and gravel resources in the easement area that must be removed during or after placement of the authorized use, or which cannot be developed because of the authorized use.
7. GRANTEE shall conduct all operations within the easement area in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to soil erosion, or the introduction or spread of noxious weeds or pests. Upon completion of construction, GRANTEE shall reclaim disturbed lands to a condition satisfactory to GRANTOR.

8. GRANTEE shall obtain a surety bond in the amount of \$N/A to ensure compliance with the terms and conditions of this easement.
9. The right to use this easement shall automatically terminate if it, or the development authorized by GRANTOR, is not used within five (5) consecutive years of the date this easement was granted, pursuant to the provisions of the administrative rules governing the granting of easements.
10. Unless otherwise approved in writing by GRANTOR, GRANTEE shall remove all cables, pipes, conduits, roads, and other developments placed by GRANTEE on the easement, and shall restore the surface of the easement area to a condition satisfactory to GRANTOR within one (1) year following termination of use or expiration of this easement.
11. GRANTEE shall inspect the condition of the area authorized by this easement and the developments authorized by this easement on annual frequency.
12. GRANTOR shall have the right to stop operation of the use authorized by this easement for noncompliance with the conditions of this easement, the provisions of the administrative rules governing the granting of easements, and/or any lawful requirement by a regulatory agency of this STATE.
13. If this easement authorizes the use of state-owned submerged and/or submersible land:
  - a) Construction in navigable waters shall conform to the standards and specifications set by the U.S. Army Corps of Engineers and the U.S. Coast Guard for the use authorized by this easement.
  - b) Any blasting which may be necessary, or in-water placement, maintenance, or repair of the authorized use shall be performed according to the laws of this STATE, including strict adherence to Oregon Department of Fish & Wildlife in-water work windows.
14. GRANTEE shall pay to GRANTOR the current market value, as determined by GRANTOR, for any unnecessary and non-approved damages to state-owned lands caused by construction or maintenance of the easement.
15. GRANTEE shall pay all assessments that may be legally charged on public lands which are levied against the property subject to this easement, whether or not such assessments have been levied against the easement area or STATE by the assessing agency.
16. GRANTEE shall use the authorized easement area only in a manner or for such purposes that assure fair and non-discriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.

17. This easement is freely transferable. However, no transfer may increase the burden on the easement area or detract from the value of the underlying state-owned land.

This easement does not convey an estate in fee simple of the lands used for a right-of-way. This grant is for an easement only, and title remains in the State of Oregon.

WITNESS the seal of the Department of State Lands affixed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.



STATE OF OREGON, acting by and through its Department of State Lands

\_\_\_\_\_  
Nancy N. Pustis

STATE OF OREGON                    )  
  )ss  
County of Marion                    )

This foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by Nancy N. Pustis, the Western Region Manager of the Department of State Lands.

\_\_\_\_\_  
Signature  
My commission Expires \_\_\_\_\_, 20\_\_.

CERTIFICATE OF APPROVAL OF CONVEYANCE  
(ORS 93.808)

Oregon Department of Transportation, Grantee, hereby approves and accepts, pursuant to ORS 93.808, the grant of an interest in real property from State of Oregon Department of State Lands, Grantor, as described in the instrument to which this Certificate is attached.

A copy of this Certificate may be affixed to, and recorded with, the instrument described above.

DATED this 1<sup>st</sup> day of March, 2010.

Oregon Department of Transportation,  
Grantee

By: Joseph A. Gray

Name: Joseph A. Gray

Title: ODOT Region 2 Right of Way & Utilities Manager

STATE OF OREGON        )  
  ) ss.  
County of Marion        )

On this 1<sup>st</sup> day of March, 2010, before me personally appeared Joseph A. Gray, who being duly sworn stated that he is the Region 2 Right of Way & Utilities Manager of Oregon Department of Transportation, Grantee, and acknowledged the foregoing instrument to be the voluntary act of said Grantee and that he/she executed the foregoing instrument under authority granted by said Grantee.



Robin L Sorensen  
NOTARY PUBLIC FOR OREGON  
My commission Expires: 10-24-2010

SEC. 2, T. 14 S., R. 12 W., W.M.

Lot 10

Lot 11

Pacific Ocean

State of Oregon,  
Department of State Lands

1630+00.00 P.I.  
N. 277.740.644  
E. 7,263,799.607

Water Line

Big Creek

Water Line

Permanent Easement -  
Highway Right of Way Purposes

Permanent Easement -  
Highway Right of Way Purposes

S. 11° 21' 35" W. 001  
7.518 ±  
0.17 Ac. ±

Mean Low

Mean Low



SCALE 1" = 100'



OREGON DEPARTMENT OF TRANSPORTATION



Section US101: Big Creek Bridge #01430A, MP160.15

Highway Oregon Coast

County Lincoln

Scale 1" = 100'

Purpose Acquire PE

Date Jan., 2010

File 7446 001

See Drawing 1R-4-1117