



# Oregon

Theodore R. Kulongoski, Governor

## Department of State Lands

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### State Land Board

Theodore R. Kulongoski  
Governor

Bill Bradbury  
Secretary of State

Randall Edwards  
State Treasurer

The State Land Board met in regular session on April 10, 2007, in the Land Board Room of the State Lands Building, 775 Summer Street NE, Salem, Oregon 97301-1279.

#### Present were:

Theodore R. Kulongoski	Governor
Randall Edwards	State Treasurer

#### Land Board Assistants

Michael Carrier	Governor's Office
Elon Hasson	Secretary of State's Office
Inga Deckert	State Treasurer's Office

#### Staff

Louise Solliday	Kevin Moynahan	Julie Curtis
Steve Purchase	Nancy Pustis	Lorna Hobbs
Jeannette Holman	Mike Morales	

#### DOJ

Richard Whitman  
Steve Shipsey

The Governor called the meeting to order at 10:00 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 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).

The meeting opened with the presentation of the 2006 Land Board Awards. Two Stream Project Awards and two Wetland Project Awards were presented. The City of Wilsonville received the first stream award for the Lower Boeckman Creek fish passage and stream restoration project. The second stream award was presented to the Salmon Drift Creek Watershed Council for the Rock Creek Dam modification for Coho salmon passage. The first wetland award was presented to the City of Eugene for the Dragonfly Bend Habitat Enhancement Project and the second award went to Henry and Norma Booke for their wetland restoration project on the Wilcox Family Farm in Douglas County.

## **Consent Agenda**

1. a. **Request for approval of minutes of the February 13, 2007 State Land Board meeting.**
- b. **Request for approval of sale of a 0.585-acre parcel of filled lands in Clatsop County to Grover W. Utzinger.**
- c. **Request for approval of sale of a 1.16-acre parcel of filled lands in Multnomah County to Mar Com Holding, LLC.**

Director Solliday reviewed the items on the Consent Agenda.

Treasurer Edwards moved the Consent Agenda be approved. Governor Kulongoski seconded the motion. The consent agenda was approved.

## **Action Agenda**

2. **Request for final approval of a direct sale of a 480-acre parcel of land in Wasco County to Young Life.**

Director Solliday reviewed the agenda item requesting final approval of the direct sale of a 480-acre parcel of land in Wasco County to Young Life for \$153,475.88.

Treasurer Edwards moved the recommendation be approved and thanked staff for their work on the sale.

Governor Kulongoski seconded the motion. The item was approved.

## **Informational Agenda**

3. **Discussion of the Attorney General's advice regarding marine protected areas.**

Director Solliday introduced Richard Whitman with the Oregon Department of Justice. Mr. Whitman introduced Steve Shipsey, also with the Department of Justice, who assisted with preparing the advice. Mr. Whitman explained that the advice being presented was a general overview and did not go into detail on specific types of protected areas nor specific options the Land Board may want to pursue. The focus of the advice is on the Land Board's authority within the Territorial Sea. He stated that the term, "marine protected area," is not an assigned legal term and can encompass a range of management prescriptions for areas in the ocean. He clarified that although the legislature designated the Land Board as the manager of the land and water within the Territorial Sea, they also gave other state agencies specific regulatory authority over particular resources or uses within that area.

Treasurer Edwards asked for clarification that the Land Board not only manages the seabed within the Territorial Sea, but the water, as well.

Mr. Whitman confirmed that was correct, but stressed that it is a shared responsibility with other state agencies and that the agency with regulatory authority would have the lead for regulating the resource.

Mr. Whitman added that when considering adoption of management prescriptions or limitations within the Territorial Sea, the Land Board would need to take into consideration its Constitutional principles for land management – greatest benefit to the people of Oregon, conservation of the resources and sound techniques of land management. In addition to adhering to these principles, the Public Trust Doctrine must also be considered.

Mr. Shipsey described two channels of authority that could assist the Board in designating marine protected areas: the Ocean Policy Advisory Council's authority to advise the Land Board with regard to specific ocean resources management issues; and the Natural Heritage Advisory Council's role to advise and make recommendations to the Land Board for designation of natural heritage conservation areas, which includes the Territorial Sea.

Mr. Shipsey listed other state agencies with regulatory authority within the Territorial Sea: Department of Agriculture for oyster farming, Department of Environmental Quality for water and air quality, Department of Fish and Wildlife for animal harvest, Department of Geology and Minerals for oil, gas and geothermal exploration and extraction, Department of Land Conservation and Development under the coastal zone management program and Goal 19, Oregon Parks and Recreation Department which regulates the ocean shore, and the Marine Board which regulates boating.

Mr. Shipsey went on to say that if the Board wanted to designate a marine protected area they have the authority to do so, but to create a fully protected marine reserve, it would need to work in concert with other agencies that have regulatory authority over the resource(s) the Board wants to protect.

Governor Kulongoski asked what the interaction was between the state's authority and the federal government's authority.

Mr. Whitman used fish as an example to show that there are three entities responsible for the regulation of fishing in the Territorial Sea: the National Oceanic and Atmospheric Administration (NOAA), the Pacific Fisheries Management Council and the Oregon Department of Fish Wildlife and its Commission. The Pacific Fisheries Management Council sets harvest limits for various species, which have to be approved by the Department of Commerce, NOAA's administrating agency. The Oregon Fish and Wildlife Commission must stay within those limits, but can be more restrictive if they so choose.

Treasurer Edwards asked if the Land Board designated an area for protection, would the regulating agency have to enforce it?

Mr. Whitman responded that they would not. However, he stated that he believes it would be unlawful for the regulating agency to authorize a use contrary to the restrictions in a protected area designated by the Land Board.

Governor Kulongoski stated that the Land Board's role would then be as a managing agency striving for a consistent policy and the regulatory agencies would be charged with meeting that policy.

Director Solliday suggested that everyone have the opportunity to read through the advice, get any needed clarification from the Department of Justice, and then the Department can lay out alternative pathways for next steps to be taken.

#### **4. Presentation of the Natural Heritage Advisory Council's 25-year review of the Heritage Program.**

Director Solliday introduced Jimmy Kagan, program director for the Natural Heritage Advisory Council. Mr. Kagan discussed the recently completed 25-year review of the Oregon Heritage Program, which involved workshops with university staff, federal and state agency staff and conservation program leaders. From these workshops a report was produced and presented to the Natural Heritage Advisory Council. As a result, three recommendations were developed: 1) expand the capacity of the Heritage Information Center; 2) transfer the Natural Areas Program to the Oregon State Parks and Recreation Department and focusing the program on education and public accessibility; and 3) integration of conservation strategies throughout the state.

Governor Kulongoski expressed his concerns with transferring programs and other budgeting responsibilities to State Parks and using Measure 66 funds. The Governor stated that he believes the voters had a specific use in mind for those funds when they approved it and the legislature should be cautious about what they are using the money to fund.

#### **5. Unclaimed Property Program annual report.**

Cyndi Wickham, program manager for the Unclaimed Property Section presented information regarding DSL's Unclaimed Property Program over the past year. Highlights included the March 24<sup>th</sup> auction that brought in over \$91,000 and was well attended and covered by the press, upcoming holder seminars, and a new computer program staff can take on the road that will allow the public to search for their names in the unclaimed property database.

Ms. Wickham also discussed current legislation that would affect the program, if passed:

SB 67 – moves unclaimed property program to the State Treasurer's office – the bill is in the Ways & Means Committee and has not yet been assigned to a subcommittee.

HB 2104 – reduces the dormancy period from five to three years – the bill is scheduled for a hearing this week and is expected to move forward in the process.

SB 460 – requires that unused gift cards become unclaimed property – this bill is still in committee.

Treasurer Edwards stated that he has a meeting scheduled with the Speaker and budget co-chairs the following week to discuss SB 67.

## **6. Legislative update.**

Director Solliday gave an update on legislation that was either introduced by the agency or will affect the agency, if passed.

HB 2105 & 2106 – removal/fill and wetland delineation review fees – these bills are in the Ways & Means Committee and are waiting to be scheduled for hearing/work session.

HB 2251 – water-related permit streamlining – this bill has General Fund monies attached to it and was not in the Co-chairs' budget. Director Solliday stated that she would be meeting with Co-chair Nolan that afternoon to discuss this issue.

### Other bills not introduced by the Department:

HB 3434 – directs the Land Board to put the Elliott State Forest up for sale if earnings do not match the interest earnings of the Common School Fund during the years 2008, 2009 and 2010 – the bill had an initial hearing, but is still in committee.

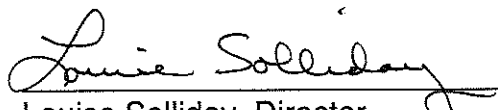
SB 432 – Ship-breaking bill – the Department offered clarifying amendments, which were accepted by the committee.

SB 544 – In its original form, the bill would add an additional step in the contested case hearing process, however, the Department has offered amendments to change the bill that will direct the Department to look at the feasibility of creating a certification program for people who perform wetland delineations in the State of Oregon.

The meeting was adjourned at 11:50 a.m.



Theodore R. Kulongoski, Governor



Louise Solliday, Director