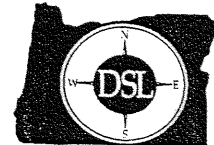


# Oregon



The Oregon State Land Board met in regular session on August 15, 1995 in the Land Board Room of the State Lands Building, 775 Summer Street N.E., Salem, Oregon 97310.

Present were:

John Kitzhaber	Governor
Phil Keisling	Secretary of State
Jim Hill	State Treasurer

DIVISION OF  
STATE LANDS

STATE LAND BOARD

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Governor Kitzhaber called the meeting to order. 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 N.E., Salem, Oregon 97310 (phone: 378-3805).

Governor Kitzhaber requested a motion on the consent agenda. State Treasurer Hill moved the consent agenda be approved. Secretary of State Keisling seconded the motion and the approval was unanimous.

**Forestry**

Request for review and approval of the Oregon Department of Forestry's Eastern Region Long-Range Forest Management Plan, including recommendations in response to public comments received.

Acting Director John Lilly introduced Jim Brown, State Forester, and Jill Bowling, state lands program director, to outline specifics of the Eastern Region Long-Range Forest Management Plan. Lilly said it is important to note that about one-third of the properties covered by the plan are common school forest lands, making the Land Board a minority owner.

Jim Brown explained the four groups of lands involved in the plan. He said Forestry has spent a couple of years putting the plan together, with the effort being led by Roy Woo of Klamath Falls, along with Ed DeBlander of Klamath Falls and Rick Quam of Salem. The resource specialists involved in the plan came from eight state and federal agencies, as well as the Klamath Indian Tribe. Brown said there are no major threatened or endangered species issues associated with the plan. Because of the historic use of the lands by the Klamath tribes, the plan deals with a number of historic/cultural issues. An uneven age management approach is being used, with a level of harvest at about 1190 acres per year with a 25-30 year rotation. The estimated volume over a ten-year period would be ninety million board feet, with a net income of a little over \$31 million during that period from the lands. Brown said the common school forest lands are expected to generate \$5 million of net income from a harvest of about 60 million board feet.

Jill Bowling, state lands program director, said the resources covered by the plan are described in great detail within the document. She said the plan commits to an ongoing program of monitoring, research, and adaptive management (with a plan to learn more about the forest in management activities, then incorporating that information into the management of the forest). One of the key questions Forestry will be asking is whether the management strategies implemented are achieving their management goals for the resource development and protection on this forest.

Bowling said the forest doesn't have significant health issues. She said that keeping a diverse productive, sustainable ecosystem is the best method of prevention. That is why Forestry has chosen the uneven age management approach to build a resilient, ecologically balanced, diverse forest.

She said there is a gentle terrain over this forest, resulting in lower costs than on some of the other forests, and there is a lower stumpage rate, so the forest generates a good rate of return. Bowling said owl surveys have been done on the forests, with no owls being found. She said they are looking at the forest to provide a connectivity area for the woodpeckers and goshawks. There are bald eagles on the forest and considerable time has been spent on inventorying that species.

Bowling said that Forestry has been working with the DSL regarding grazing lands on the property covered by the plan, to ensure that what is done on the forest fits with the policy direction the Board gives. She said they will continue to work closely with the DSL and the Asset Management Plan regarding management of the lands.

In terms of water resources, Bowling said they are using the Forest Practices Act on this forest. She said there are two main water bodies: Sun River and Annie Creek. Both of these have additional buffering in terms of conservancy lands near them. Two species of fish found not on the forest but in the associated drainages are the Lost River sucker and the short-nosed sucker. Bowling said the protection they have on the forest is believed to be more than adequate to meet any requirements downstream where the fish are located. She said Forestry has spent considerable time working with the US Fish and Wildlife Service and the Department of Environmental Quality.

Bowling said this plan covers 53 parcels of scattered tracts across 12 counties in eastern Oregon. She said Forestry is actively pursuing exchanges in blocking out programs with those scattered tracts. Brown added that they are currently working on an exchange proposal which Forestry will bring to the Land Board later. He said decertification will be recommended for a number of tracts to put them back in the hands of the Division, so they can be disposed of through the Asset Management Plan. Brown said the draft exchange proposal should be done sometime in September.

Bowling said three sets of public meetings have been held in association with the Eastern Region Management Plan, in addition to written comments that have been received. She said constituents have participated in the planning process and are satisfied with the results. She recommended that the Land Board approve the plan, so it can be taken to the Board of Forestry at their October meeting.

Secretary of State Keisling moved the Board approve the Eastern Oregon Long-Range Forest Management Plan. State Treasurer Hill seconded the motion and the approval was unanimous.

**Elliott Forest**                      Status of the Elliott State Forest Habitat Conservation Plan.

Bowling said Forestry submitted the plan to the U.S. Fish and Wildlife Service in May, after which they opened a 30-day comment period. She said public comments were received from 12 different groups and individuals. After the comment period closed, comments were incorporated into the plan. She said one outstanding issue yet to be resolved is the recent Salvage Bill that passed, and how that may affect harvest on the Elliott and the incidental take permit for marbled murrelets.

Governor Kitzhaber expressed his concerns with the bill, saying he intends to be as active as he can in the next few weeks to see if the bill can be narrowed down to its original intent.

Secretary of State Keisling asked if the original, more limited interpretation of the bill were followed, whether there would still be potential conflicts with the Elliott HCP. Brown said possibly, but he said it really shouldn't affect it.

**Administrative  
Rule**

Request for approval of an administrative rule related to "essential indigenous anadromous salmonid habitat" that was inadvertently omitted from the agenda item approved by the Board on June 13, 1995, and for permission to submit a request to the Legislative Emergency Board for resources to implement the rules.

Acting Director Lilly said this item was presented to the Board and adopted in June. He said that subsequent to that, the Division found they included the old copy of the rules with the agenda item. He said to be fair, he felt that the rules needed to be resubmitted with the corrected version. Additional testimony was received and was submitted to the Board.

Ken Bierly, wetlands program team leader, explained that legislation enacted in the 1993 session removed the 50 cubic yard threshold from regulation under the Removal-Fill Law for those areas identified as essential to species listed as sensitive, threatened or endangered under state or federal law. He said there is a specific restriction of 20 percent of any waterway that could be listed as essential habitat. Bierly said the Division worked with ODFW to identify the most biologically important 20 percent of habitat to designate as essential habitat. A series of maps identifying the habitat is attached to the rules.

Governor Kitzhaber said he understands that operations are still permitted within these regions with a permitting process on a case-by-case basis with approvals given through the Division. Bierly confirmed this. Governor Kitzhaber asked how much river is involved. Bierly said he's not sure. He said in some basins, such as the Clackamas and Coquille, it is fairly significant. He offered to obtain information regarding the total area for the Governor.

Sue Hallett, Oregon Independent Miners, said the rules are adding extra regulations which will be especially hard on the small miners, those creating the least amount of disturbance. She said one of the conditions required for using the General Authorization is avoiding spawning areas used by the fish.

Hallet said a majority of the 20 percent of the areas identified as critical habitat have traditionally been mined for years, and those are the areas they want to mine. She said if the small miners (who remove only about a wheelbarrow full of dirt) are required to apply for a General Authorization, it would take a lot of time and money and require them to submit the application to six or seven agencies. Governor Kitzhaber asked the DSL staff to address Hallett's concerns. Acting Director Lilly said the permit has been designed to streamline the process for very small impact projects. He said the intent of the legislators when they passed this law, though, was to provide for a greater level of regulatory oversight over activities that occur in these streams with sensitive habitats. Bierly explained the reporting form does not require the signature of seven different agencies, but rather a signature from the Oregon Department of Fish and Wildlife, who will know about the distribution of the fish species in the specific river, and a signature from the local planning office to insure that the project complies with the local comprehensive plan.

Bierly said the intent of the language in the legislation is clearly to prevent disturbance in the spawning areas. He said there are substantial portions of the river where fish rear that are not spawning areas. These would be available for individuals to comply with both the General Authorization as well as the general permit standards.

Hallett said the rule requires small operators to avoid the spawning areas altogether. She said the small operators would like to be in the restricted areas during times the fish aren't spawning. She stated she didn't understand why they should have to go through a full General Authorization when they are only moving a wheelbarrow full of material and causing the least amount of disturbance in the river. Governor Kitzhaber said that removing even a single cubic yard of material in a specific pocket of gravel that is highly productive for salmon probably does have an adverse effect on the spawning. Hallett responded that the 700-J permit doesn't allow anyone to mine during the critical spawning times. Acting Director Lilly explained that the 700-J permit is a self-issuing permit issued through the Department of Environmental Quality. He said no real review of the permit is done relating to the impacts of an operator at a particular location. Lilly said that with the legislation, he believes it is appropriate for all activities to go through a permitting process of some sort. He said the rules respond to the needs of this type of individual user group and still remain consistent with the requirements of the statute. He said the agency is committed to working with small miner to streamline the process.

Hallett added that the rules as currently written are not clear enough. She said they won't be enforceable because confusing regulations appear to be overregulations and people throw up their hands and don't pay attention to them.

Hazel Stevens spoke next representing the Friends of Barton Park and the Scenic Clackamas River, and Eagle Creek/Barton Community Planning Organization. Stevens shared slides with the Board and the audience regarding activity in the Lower Clackamas River that she believes was damaging and done without a permit from the Division and without any restoration required to the area damaged. Stevens expressed her concerns that other species of fish in the Lower Clackamas River are not being listed in the rules. She voiced concern that the rules will allow scalping of bars within the lower river system. She said there are plenty of sources for gravel removal upland without going into the main stem of the river itself. Governor Kitzhaber asked Stevens if her opposition to the rule is that it doesn't go far enough. She responded by saying that all the critical habitat has not been identified. She also commented that there are not enough personnel working at DSL to monitor to ensure that scalping of the bars does not occur again. She said she doesn't believe the rules go far enough in designating sensitive areas.

Governor Kitzhaber asked about the inclusive nature of the listed species. Bierly responded that the designation of essential habitat is limited to those species listed as threatened or endangered by state or federal agencies. In the Clackamas Basin, he said, it is limited to fall chinook and coho salmon, though it is recognized there are substantial additional populations in the river. Governor Kitzhaber asked if another species is listed, whether it would be added. Bierly stated that the same process would be used to identify essential habitat for that species, then a designation of 20 percent of the habitat that is involved would be included. Acting Director Lilly noted that the rules establish a procedure to follow when other species are listed.

Governor Kitzhaber asked whether the rule in any way would allow activities that would disturb the reaches of the rivers about which Stevens expressed concerns. Bierly said that on the Clackamas River, outside the scenic portion of the river, removal can occur under the Removal-Fill Law with a valid permit. He said these rules will make it more difficult than it currently is to mine in the lower Clackamas River Scenic Waterway in the areas designated habitat for the dwindling fish populations.

Randy Roop from the Friends of Barton Park and the Scenic Clackamas River addressed the Board next regarding his concerns with the detrimental effects of flood plain mining on the river. He stated that Shoe Island Side Channel should have been listed as a rearing habitat. He said that there are subterranean gravel conduits that if mined through flood plain mining will cut off the supply of ground water to spawning and rearing fish. Roop showed slides exhibiting flood plain mining on the Clackamas River. He stated that he believes the rule needs to be stringently applied. He said it falls short in some cases, but he applauds DSL for their work in this. Roop also stressed that he believes there are upland alternatives for mining for gravel.

Governor Kitzhaber said the problem that is faced when trying to mine upland is that you run into another group of people who don't want the pit mine in their neighborhood.

Secretary of State Keisling asked whether new maps will need to be adopted for the rules when additional information becomes available and stretches of river are added to the designated protected areas. Bierly said that each year the rules require the Division to consult with the Oregon Department of Fish and Wildlife and to initiate a rule amendment or make a finding that nothing has changed that would require that.

Governor Kitzhaber summarized the issues before the Board regarding these rules. He said he supports the motion with the caveat that the agency work with Hallett to ensure that her issues are considered. He reminded the agency of his request for a report halfway through the biennium to determine how the rules are working.

Secretary of State Keisling wanted the record to show the difference between the reach of the river and the 20 percent that was designated for protection of listed species. He said it is his understanding that recreational mining could be approved even (in the designated areas) at certain times of the year, if the case is made that there would be no adverse impact. Lilly confirmed that it was so. Secretary of State Keisling also agreed with Governor Kitzhaber that after the rules are in place, a review of the process would be good. Keisling also added that there is clarity needed in the "one time project" and precisely what that means. Acting Director Lilly said they will continue to clarify that and will work with the Oregon Independent Miners as well.

State Treasurer Hill asked if DSL has authority to address issues regarding flood plain mining such as Roop had described.

Lilly said he didn't believe the agency's regulatory authority extended that far. He said the issue rests with the landowner and whether they want gravel removed in those locations, in conjunction with the Department of Geology and Mineral Industries. Lilly said this part of the river at River Island Sand and Gravel near Barton Park is a state scenic waterway, as designated in 1975. Any work in the stream since that designation should have come before the Board for approval. Lilly said staff would be more than willing to meet with people in that area to discuss their concerns with this issue again.

Lilly asked that the Board adopt the recommendation to authorize the agency to appear before the Legislative Emergency Board for funding to implement this program when there is a demonstrable workload.

He requested a small change be made in the rules on page four (141-102-080(7)) to add the words, "permit process." The amended sentence should read, "This General Authorization permit process shall be reviewed by the Division."

State Treasurer Hill moved the Board approve the proposed rules and authorize the Division to appear before the Legislative Emergency Board to request the release of funds necessary for program implementation. Secretary of State Keisling seconded the motion. Governor Kitzhaber asked that direction be given to the agency to report back to the Board halfway through the biennium. The motion was approved as amended.

#### **Rangeland**

Request for the Director to appoint a working group to assist the Division in developing initial rangeland management plans for certain leaseholds.

Materials regarding this item were distributed to the Board at the meeting, though the issue wasn't on the tentative agenda. Secretary of State Keisling moved the item be approved. State Treasurer Hill seconded the motion and the approval was unanimous. Governor Kitzhaber acknowledged the need to continue work on rangeland issues. He said one concern that the Secretary of State raises is the fiduciary responsibility of the trust obligations; and another issue (which the Governor said is at the heart of the controversy) is whether or not cattle should be on this public land. Kitzhaber said until the legal issues surrounding this are settled, little definitive work can be done. Secretary of State Keisling also reiterated how the final Asset Management Plan will impact these issues. He said the agency is in a holding pattern.

Secretary of State Keisling encouraged the Board to conduct some Land Board meetings out of Salem to give wider opportunity for the public to comment on particular issues, and on the Asset Management Plan in general.

Asset Management Plan            Request for approval of the draft  
Asset Management Plan for review and  
public comment.

Acting Director Lilly said the agency has been working on the plan since August 1994. He said the lead consultant, Cogan Owens Cogan, is working hard to pull the pieces of the plan together. Lilly said there is currently no comprehensive statewide plan guiding the Division and the Board in making on-the-ground decisions. He said in the past, there was little public involvement in the Board's real estate actions--the Asset Management Plan will allow that. He said that working on the plan has allowed the Board and the Division to learn much more about its ownership. In the past the focus has largely been on the financial management of the Common School Fund investment portfolio, which is an important aspect. He said in the overall portfolio, the real estate asset has been somewhat ignored, which is in the neighborhood of \$800 million to \$1 billion. In addition to this, Lilly said there is an increasing need for monies to support kindergarten through 12th grade schools, and the trust fund exists to provide for that.

Lilly said the draft plan is ready for public review and the process calls for meetings with the stakeholder groups as well as six public workshops around the state. Lilly introduced Jim Owens from Cogan Owens Cogan.

Owens said their charge was to conduct a comprehensive analysis of the Land Board's existing real estate portfolio. Based upon that analysis, he said they were to recommend a package to promote revenue enhancement, specifically contributions to the Common School Fund, consistent with sound resource management and stewardship of the public lands. Owens said the document organizes the Land Board's lands into seven primary land classes. He explained those classes and described for each the recommended management prescriptions or strategies on revenue enhancement, acquisition, disposal, investments, et cetera.

Owens said the plan also contains implementation measures and recommendations for area management plans that will assist in implementing the plan over the long term. He stressed that as public land managers, the decisions made have longer timeframes than the private sector's may.

Some of the recommendations made in the document are to: 1) Establish asset management accounts for each of the seven major land types, so that periodic evaluations can be made as to how the land types are performing in comparison with the portfolio as a whole.

- 2) Develop a proactive approach to increasing revenues from lands, and exchanging or selling those lands not profitable or difficult to manage, using the proceeds to purchase other profitable lands.
- 3) Set lease rates at market levels and bring more unauthorized uses under lease.
- 4) Make both hard and soft investments that can result in an increased value when exchanged or sold.
- 5) Focus attention on transition areas in the state either within or near urban growth boundaries projected to receive significant population growth over the next twenty years.
- 6) Take advantage of cooperative management relationships with entities such as ports and the private sector.
- 7) Increase the real estate marketing efforts overall.

Owens said they will be asking questions during the public comment period to determine whether the plan is aggressive enough, if it has adequate safeguards to protect resources and public trust values, and what the impacts are of implementing it.

Lilly said he believes, as always, that the public involvement process is the critical piece in any kind of planning effort. He said a meeting should be held with the Board again in late October to review the public input and to discuss the issues still pending. Lilly said he hoped the plan would be ready for adoption in December. He said Senate Bill 1132 requires the plan to be done by January 1996.

Secretary of State Keisling moved the Board approve the draft Asset Management Plan for public review and comment. State Treasurer Hill seconded the motion.

State Treasurer Hill emphasized that he believes the Asset Management Plan to be one of the most important steps taken to help manage these assets, to get the proper return from them and to meet the fiduciary responsibility.

Secretary of State Keisling also applauded the efforts of the staff and the consultants, saying it is an extraordinary, historic document. He stressed that government on the whole is doing too little of asking the tough, long-range questions that are needed. He encouraged the agency to be aggressive in soliciting public comment from everyone from community groups, editorial boards, to key legislators.

The Board's approval of the public review of the draft Asset Management Plan was unanimous.

**Wetland Permitting**

Report on the preparation of an application to the US Environmental Protection Agency to assume wetland permitting under Section 404 of the Clean Water Act pursuant to new legislation (HB 2785).

Geoff Huntington, Acting Assistant Director for Policy and Planning, said a large number of fill and removal activities are now jointly governed by both the Army Corps of Engineers and the permitting authority they exercise under federal law and the Division through its state removal-fill law. House Bill 2785, passed by the legislature this last session, allows DSL to apply to assume responsibility from the Corps' permitting of individual projects, so that only one permit (from DSL) would be issued in the future. The bill mandates that application to assume the federal permitting responsibilities must be done by January 1, 1996 and must be close to approval by June 1997, or the agency will not be able to continue to regulate projects under state fill and removal laws when the federal government is doing it.

Huntington said this issue will return to the Board in December. Between now and then, he said, the agency will attempt to negotiate a tentative memorandum of agreement with the Environmental Protection Agency, with the Army Corps of Engineers and determine how the process will work. Needed changes in the state's statutes and regulations will also be assessed, so the Attorney General's Office could certify to the federal government that the state program will be as stringent as the federal law requires of the Corps.

Huntington said in December the entire package will be presented to the Board, with expectations of workload and staffing needs, and the import of actually assuming the program. After a thorough briefing, the Board will be asked whether or not the application process should continue.

Governor Kitzhaber asked that the record reflect that Carol Whitbeck of Clackamas, Oregon had also submitted written comments on the salmonid habitat rules.

Governor Kitzhaber adjourned the meeting.

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John E. Lilly, Acting Director

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John A. Kitzhaber, Governor