

Oregon



DIVISION OF
STATE LANDS

The Oregon State Land Board met in regular session on October 3, 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

STATE LAND BOARD

JOHN A. KITZHABER
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PHIL KEISLING
Secretary of State

JIM HILL
State Treasurer

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Dept. of Justice

Bill Cook

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 noted that agenda item 4b (requesting adoption of administrative rules regarding waterway leases for historical vessels) should be postponed until the December meeting to allow some outstanding issues to be resolved. Secretary of State Keisling moved that the item be postponed. State Treasurer Hill seconded the motion and the approval was unanimous.

Consent Agenda

Administrative
Rules

Request to initiate rulemaking to re-adopt administrative rules for general authorizations: erosion control projects, certain road construction projects, wetland restoration and enhancement projects, and fish habitat enhancement projects.

Administrative
Rules

Request to initiate rulemaking to revise the Division's Administration of Unclaimed Property administrative rules with regard to retail gift certificates.

Administrative
Rules

Request to initiate rulemaking regarding recreational placer mining in state scenic waterways to assist in implementation of HB 2721.

Minutes

Request for approval of minutes from August 15, 1995 State Land Board meeting.

State Treasurer Hill moved the consent agenda be approved. Secretary of State Keisling seconded the motion and the approval was unanimous.

Short-term
agenda

Request for conceptual approval of a new short-term agenda for the State Land Board and the Division of State Lands.

Acting Director John Lilly explained that the Division has had a short-term agenda in place since June of 1993. He said it provides an opportunity for the Division, the Board and the public to understand where the agency is focusing its actions over a 24-month period. Lilly said the key issues over the next 24 months will be to continue the emphasis on enhancing the Common School Fund principal and earnings, primarily through work with the Asset Management Plan. He also outlined a number of rulemaking issues that will occur, many as a result of the last legislative session. Lilly said the agency intends to take the current short-term agenda out for public review, if the Land Board approves that next step. He said a request for final adoption of the short-term agenda by the Board is planned for December.

State Treasurer Hill moved the short-term agenda be approved for review and comment by the public, to be returned to the Board in December for final adoption. Secretary of State Keisling seconded the motion and the approval was unanimous.

Willamette River
Coordination Plan

Request for review and acceptance of the Willamette River Corridor Coordination Plan (Clackamas County, the cities of Lake Oswego, Milwaukie, Oregon City, and West Linn and the Division of State Lands).

Acting Director John Lilly introduced Ed Lindquist, Commissioner from Clackamas County, and Margaret Dickerson, from the Clackamas County Planning Department, to discuss the Willamette River Corridor Coordination Plan that covers the 11 1/2 mile stretch of river from Sellwood to the mouth of the Tualatin River in the urbanized area of Clackamas County.

Lindquist said the county worked with five cities during the process. He noted that the Plan began as an outgrowth of Governor Neil Goldschmidt's Oregon Comeback. He said that besides the Division of State Lands, they also worked with the Parks and Recreation Department, the State Marine Board, the Department of Fish and Wildlife, the Department of Environmental Quality, the US Coast Guard and the Army Corps of Engineers.

Dickerson said there were three common goals in working with the varying groups: 1) conflict resolution among the water and land users in the area; 2) strengthening the river as a natural resource; and 3) promoting responsible management and development of the river and shoreline.

She said that specific recommendations were made to the Division of State Lands to consider a special management area and open water area.

Lindquist emphasized that the conflict resolution process was a monumental task. He described it as successful in bringing the groups together. He credited Dickerson for her coordination and leadership of the endeavor.

Secretary of State Keisling moved that the Willamette River Corridor Coordination Plan be approved and that the county and municipal partners be formally commended for leading the effort to protect and conserve this reach of the Willamette River. State Treasurer Hill seconded the motion and the approval was unanimous. Governor Kitzhaber called the Plan an exceptional piece of work in consensus building.

DSL Director

Public comment on and adoption of regularized procedures, standards, criteria, and policy directives for hiring a Director for the Division of State Lands, as required by ORS 192.660(1)(a)(D).

Governor Kitzhaber reviewed the process to date in hiring a Director for the Division of State Lands. He explained that a group of finalists have been selected. He asked if anyone would like to comment on the proposed interview criteria (which was made available in written format). No one offered comments. Governor Kitzhaber said he would provide another opportunity for comments at the end of the meeting.

Navigability Request for authorization to initiate rulemaking to develop administrative rules establishing the procedure the State Land Board and Division shall follow to assert title to submerged and/or submersible land.

Acting Director John Lilly stated that with the passage of House Bill 2697 came a requirement that the Division and the Board adopt rules outlining a process for the Board in making claims to navigable waterways in the state of Oregon. Lilly said the agency is requesting authorization from the Board to begin the rulemaking process.

He reviewed that the state has owned navigable waters since Oregon received statehood in 1859. He added that the state has been identifying the navigable waters over the years and managing them primarily for public access under the Public Trust Doctrine, as well as leasing them for income to the Common School Fund. Lilly noted that those areas that are under lease within tidal influence would not subject to these rules or the navigability test (according to legal counsel's opinion).

Governor Kitzhaber said his understanding is that House Bill 2697 did not clarify the conflict over the ownership, but set up a process by which the state could assert ownership of submerged and submersible lands. Lilly confirmed this.

John Urquhart, property owner on the Sandy River near River Mile 6, asked that the written version of his testimony be placed in the meeting record. He said the deed to his property describes his ownership as extending to the center line of the river. Urquhart stated that in 1992, the Division directed the counties of Multnomah and Clackamas to change property records based on a claim of state ownership to the bed and the banks of the Sandy River. He stressed that the issue of whether the state actually has ownership of the waterbody is a federal question--only to be decided in a federal court. He described House Bill 2697 as taking away any jurisdiction of the Division to assert any claims of title, and placing that with the Board. He further stated that it prohibits the Board from making any assertions respecting title until specific requirements have been met.

Urquhart said he agrees with the need for rulemaking. He requested that the Board direct the Division to give prior notice to all affected property owners whose deeds include the bed and banks of alleged navigable waterbodies. He said there should be no fighting between landowners and the public using the rivers and streams. He asked that the Board make a clear public pronouncement of what the public's right is to use the waterways.

Urquhart asked for an Attorney General's opinion to provide current law on permissible and impermissible public uses of the bed and banks of privately held lands. He said the Board has a duty to make the public aware of the extent of its rights and if they did, the conflicts may not be present.

He asked the Board to instruct the Division to make no further navigability pronouncements. He said the Division contacted the state police telling them there is a question of ownership and not to pursue or respond to trespass claims. As a result of this, he claims that police directed people onto private property telling them to ignore the "no trespassing" signs. He stated that until the state proves otherwise in federal court, those with recorded titles should be presumed owners of the properties.

He cautioned that the state is responsible for any violence that may occur, saying the confrontations between landowners and the recreationists have been created by illegal state conduct.

Ken Merz, property owner on the Sandy River, spoke next. He requested the addresses of the Board members, so he could bring thirty or more friends to their front yards to have parties. He explained that his friends would trash their yards, consuming alcohol and drugs, and urinating and defecating in their bushes. Governor Kitzhaber said that Merz's point was well taken. Merz continued to explain what it has been like to have the public in front of his home and on his property. He said since the Division claimed the river to be navigable in 1992, anyone has been able to trespass on his property at will. He described the garbage that they continually leave behind and the embarrassment to his wife and children as the fishermen sometimes expose themselves. He also explained how his family has felt threatened on several occasions.

Merz cited a letter written to Captain Lindsay Ball of the State Police. He said the Division has no right after HB 2697 to suggest to the State Police, county sheriff, or anyone else that disputes between users and property owners should be resolved by virtue of cooperation and shared appreciation of the river; saying that doesn't work. He stressed that until the court decides the ownership issue, he should have control over the land.

Merz told the Board he received a letter dated August 28, 1995 from the Multnomah County Division of Assessment and Taxation stating that they would restore the land to his parcel that was removed as a result of the Division's first letter to them.

He said if the state pursues ownership with the courts and wins, then we will all be losers, since the current property owners are the ones who take pride in and take care of the land.

Parmalee Merz, wife of Ken Merz and property owner on the Sandy River, also explained how users of the river intimidate them at their home. Mrs. Merz presented a document to the Board summarizing State Park area rules, infractions, and minimum bail associated with those infractions. She explained that infractions such as these are issues they live with daily on their property. She said it appears to her that the state doesn't respect private ownership.

Kathy Amundson, property owner on the Sandy River, also shared her concerns. She commented that riparian owners along the river can do nothing as they see fishermen taking more than their limit of fish each day. She said the Department of Fish and Wildlife will not respond because they don't have the manpower to patrol the private properties. She added that riparian owners are the ones who must dispose of the garbage and bury the fecal matter. She said that during the dry part of the summer they live in fear, because of campfires along the riverside.

Amundson stressed that riparian property owners must be a part of the rulemaking process, since they stand to lose the most. She said owners on all 335 rivers and creeks that DSL has claimed as navigable need to be informed that the process is taking place.

Ted McCoy, Sandy River property owner, asked that the Board embark upon the rulemaking process with a sense of respect for the people that have legally deeded property rights to the land and have paid taxes for so long on it. He asked that the state undertake due process for claiming navigability, instead of what he called "the heavy-handed way" the state has taken so far.

Liz Frenkel, Sierra Club, expressed her concerns regarding the prior testimony and the trespassing that is taking place.

Governor Kitzhaber reviewed the issues being raised. He said the first is the legal question about ownership, which couldn't be resolved here. Another question, he said, is the matter of enforcement of the illegal activities which were described. He said these actions shouldn't be tolerated, whether on state-owned land or private. He suggested that the issue be explored further.

Another issue is insuring that the public is informed and involved on the rulemaking process. A final issue he raised was regarding the request for the Attorney General's Office to examine the ambiguity that exists between the present and when a navigability claim is actually taken to court. He said that the Attorney General's Office may be able to shed some light on that at the October 26, 1995 Land Board meeting.

Secretary of State Keisling agreed that it is the court that will make the ultimate decision on navigability, regardless of how the state declares it. He said one frustration he sees is the lack of a method for compensating people for taxes they have paid on land when it is assumed that it is owned by private property owners and later declared navigable. He reminded everyone that the Board is just initiating the rulemaking process with public input, as required by HB 2697.

Secretary of State Keisling moved the rulemaking be approved with the understanding that the issues the Governor mentioned will be pursued as the process moves forward.

State Treasurer Hill added to the motion that when the Board reconvenes later in the month, that they address the notice issue to ensure that people have the opportunity to have input on the hearing process. It was agreed that this would be added to the motion. The motion was adopted unanimously.

Governor Kitzhaber again asked if there were any comments on agenda item 3a regarding the hiring procedures for the Director of the Division of State Lands. There were no comments. Secretary of State Keisling moved the item be approved. State Treasurer Hill seconded the motion and the decision was unanimous.

Acting Director Lilly said he is entirely in sympathy with those who testified about problems they are experiencing. He said there is no excuse for illegal activity or misbehavior of this kind. He said this is a management problem that begs for a higher profile from law enforcement. He said the agency will do whatever they can to contact the State Police and local county law enforcement officials to determine what kinds of help are available.

Wilsonville

Report on Wilsonville lease and Dammasch State Hospital.

Insufficient time in the meeting caused discussion of this item to be postponed until a later Land Board meeting.

404 Program

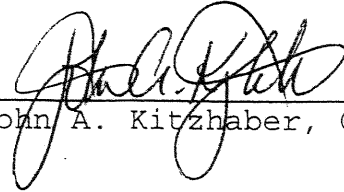
Report on assumption of the 404 program
from the US Army Corps of Engineers.

Insufficient time in the meeting caused discussion of this item
to be postponed until a later Land Board meeting.

Governor Kitzhaber adjourned the meeting at 10:28 am.



John E. Lilly, Acting Director



John A. Kitzhaber, Governor