

The State Land Board met in regular session on February 10, 1998 in the Land Board Room of the State Lands Building, 775 Summer Street NE, Salem, Oregon 97310.

Present were:

Phil Keisling Secretary of State

Jim Hill State Treasurer

Assistants

Rick Hanson
Rollie Wisbrock

Staff

Paul Cleary
John Lilly
Steve Purchase
Jenifer Robison
Gail Lowry

Dept. of Justice

Bill Cook

Secretary of State Keisling presided as chair and called the meeting to order at 10:05 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 Division of State Lands, 775 Summer Street NE, Salem, Oregon 97310 (phone: (503) 378-3805).

Final Board Action Items

CSF Forest Lands Request to concur with the decision of the Oregon Board of Forestry to decertify approximately 8,412 acres of marginal common school forest land and return these lands to the Division of State Lands for management as common school lands.

Director Cleary introduced this item to decertify these forest lands and return them to the Division for management. Cleary said overall supervision and management of the lands would be done by the Division with Forestry providing fire protection, technical assistance and forest practices advice. These are remote scattered tracts in Eastern Oregon unsuited for commercial timber management, some with grazing leases. The agency will be pursuing sales and exchanges in accordance with the Asset Management Plan. Cleary said the Division recommends the Board concur with the Board of Forestry's decision to decertify these parcels.

State Treasurer Hill moved the Board concur with the Board of Forestry's decertification of these parcels and authorize the Division to manage the lands as common school trust lands in accord with the 1995 Asset Management Plan. Secretary of State Keisling seconded the motion and the approval was unanimous.

Consent Agenda

Administrative Rules Request for authorization to initiate public rulemaking to revise the Division's rules for leasing state-owned submerged and submersible lands including establishing new lease rate formulas for a wide variety of waterway uses.

Administrative Rules Request for authorization to initiate public rulemaking to revise the Division's rules for granting easements across Common School Fund lands and state-owned submerged and submersible lands.

Administrative Rules Request for authorization to initiate public rulemaking to revise the Division's rules for onshore minerals prospecting and leasing.

Minutes Request for approval of December 19, 1997 State Land Board minutes.

Director Cleary individually reviewed the items on the Consent Agenda, which were three requests for initiation of the rulemaking process, and a request for approval of the December 19, 1997 minutes. He explained that there would be opportunity for public comment on the rulemaking items and that a request for final adoption will be before the Board at a later date.

Secretary of State Keisling asked if the agency would be proposing legislation for the 1999 session to deal with some of the statutes regarding “free” easements across state trust lands that are believed to be unconstitutional, as Cleary had mentioned in his review of the request for initiating easement rules. Cleary confirmed that the Division would be proposing legislation for this. He said the rulemaking process should help the easement community understand the problem that arises when authorization is given for these easements without compensation to the trust, which exposes both the easement holder and the State Land Board to potential litigation.

Secretary of State Keisling removed item 2a from the Consent Agenda regarding initiation of rulemaking for waterway leasing of state owned submerged and submersible lands to enable the Board to deal with that item individually and to allow public comment. He moved items 2b, 2c, and 2d on the Consent Agenda be approved. State Treasurer Hill seconded the motion and the approval was unanimous.

Administrative Rules Request for authorization to initiate public rulemaking to revise the Division’s rules for leasing state-owned submerged and submersible lands including establishing new lease rate formulas for a wide variety of waterway uses.

Bill Montgomery from the Portland Rowing Club urged the Board to put a new waterway task force in place and to complete the waterway inventory. He asked the Board not to adopt the “DSL fine-tuning consent agenda proposed administrative rules.”

Jay McCaulley asked that the agency propose the program changes prior to the public hearings and before proposing any rate changes. He asked that the Board reconvene a task force to assist the Division and provide the task force with the information that they need, which he believes was not provided in the past. He also asked that the agency support the interim flat rate lease rental proposal of the leaseholders, saying this will level the playing field until the Division has a program to present.

Mel Pittmon addressed the Board on behalf of Sherry Sprando, who he said was ill. Pittmon read testimony from Sprando that was signed by the following: the Waterfront Owners and Operators of Oregon, Columbia River Yachting Association,

Tyee Yacht Club, Rose City Yacht Club, Rebecca's Yacht Sales, the Astoria Waterfront Leaseholders, John Englund Marine, and West Coast Seafood Processors Association. The letter stated that the current lease structure is inequitable and a major burden of the Division. It said that lessees with extensions of upland leases are eight percent of the total number of lessees, but pay 47 percent of the total income to the Division. It further stated that by freezing lease rates at the 1996 rates, this unduly burdens certain lessees who are carrying more than their fair share of the financial responsibility.

They proposed the statewide waterway inventory be completely finished, including property size, owner, zone, location, current lease status. Any need for changes in the legislation should be researched and presented at the next legislative session.

A flat rate formula was proposed of 1.4 cents per square foot of submersible land applied to all existing leases, which was calculated to be an increase from the current income and would equalize the current inequities until the inventory is completed and a fair structure assessed.

They also would like a new task force composed of a majority of leaseholders and a representative of the Division. They asked that no decisions or recommendations regarding submerged or submersible lands be adopted during the interim rulemaking period. When the task force is convened, they would like them to be able to review any decisions to assess their impact.

Mel Pittmon then read his personal testimony, representing Columbia River Yachting Association and Rose City Yacht Club, stating that he is in opposition to the recommendation made to initiate the rulemaking process.

Pittmon said there are thousands of structures such as private docks and wharfs which are not in conformance with the Division rules. He mentioned the need for the inventory of the waterway uses to be completed. He said the formula menu suggested by the Division has an attached fiscal impact statement that is totally unacceptable, and the Division hasn't acknowledged the unreasonable use of upland values for the rate-making formula. He commented on the rate proposal previously mentioned, saying that this would afford the extension of upland six-percent leases immediate relief from current inequitable fees. He asked that the hearings not begin until all parts of the formula-making process are available and the inventory is completed.

In relation to McCaulley's concerns, Director Cleary stated that before the hearings are scheduled, the complete draft rule packages will be prepared covering both program procedures and lease rates with the rule changes highlighted in bold (representing text being added) and bracketed italics (representing text that is being deleted). Cleary said it's important to understand that no final action is being taken today. He reiterated his recommendation to the

Board for authorization to begin the rulemaking process; for direction to complete the inventory of developed areas as quickly as possible; and to defer final adoption of any new rate schedule, except for private docks, until the inventory of developed areas is completed.

McCaulley expressed his concern that the ability of the lessee to get a fair market appraisal was removed from the draft rules in the past month without any public comment considered.

Cleary said that the rulemaking process will be beneficial in that it will allow the agency to seek input from the "total universe" of lessees, and for concerns such as Mr. McCaulley's to be raised and responded to in an organized and formal manner.

Secretary of State Keisling asked if the motion on this item could include the recommendation that no final action on the rates or rules shall be taken until the inventory is complete. Cleary reviewed his recommendation as follows: that the Board: (1) authorize initiation of the public rulemaking process to solicit comments and stimulate alternatives; (2) direct the Division to complete the inventory of developed areas as quickly as possible; (3) defer final adoption of any new rate schedule, except private docks, until the inventory is completed; and (4) ask interested lessees if they would be willing to serve on a technical advisory committee to review the comments, evaluate the alternatives and help the Division craft a final proposal for the Board to consider next fall when the developed area inventory is completed.

State Treasurer Hill moved the motion be approved as stated by Cleary. Secretary of State Keisling seconded the motion.

Pittmon emphasized that people's residences are involved in this proposal, from small shanties to three-story structures with values that exceed a quarter of a million dollars. The escalations that could come out of this proposed suggested formula could have a huge impact. He stressed that many of the affected owners are not aware of what could be facing them, so he emphasized the need for fully publicizing the rulemaking hearings.

Bill Montgomery said he lives in a houseboat and the escalation would probably force him, as a retired person, off the river. Montgomery said he would be glad to serve on the task force. McCaulley said he would also volunteer for the task force.

State Treasurer Hill encouraged individuals to contact the Board, if during the process, they believe they are not being heard. He said final action will not be taken on this issue until the Board believes the result is fair and the process has been fair.

Jim Schwitter, Columbia Edgewater Yachting Association, said the Association has no "hang ups" about paying their share, but he believes that everyone should pay their fair share, not just the people in Multnomah County. He stated that the lease exemption grandfather clause should not apply. Cleary replied that the wharf exemption and some private dock lease exemptions are set in statute.

Montgomery said a basic agenda is being pushed by the Division, which the coalition does not find acceptable. He asked the Board to not approve the authorization for rulemaking, because of that problem.

The motion as previously brought forward and seconded was approved.

Informational Agenda

Computer Migration Project

Director Cleary reported that the Division's funding request for our computer migration project was included with the Department of Administrative Services' January Emergency Board appearance which addressed the year 2000 problem.

The final implementation for the agency will cost around \$750,000; an approval for an expenditure limitation increase of \$496,000 was received from the Emergency Board. The remainder will be funded within our existing budget. The project is anticipated for completion in 1999.

Navigability Study Requests

Director Cleary informed the Board that the first meeting of the Joint Legislative Interim Committee on Navigability was held in early January, with the second meeting scheduled in March. Several navigability study request comment periods are currently open. Six requests have been received since starting the process.

Removal-Fill Regulatory Streamlining Project

Director Cleary introduced Colonel Robert Slusar and Burt Paynter from the US Army Corps of Engineers to discuss the proposed State Programmatic General Permit (SPGP), which would allow the Division to implement a one- to two-year pilot test in Douglas and Linn Counties. The Division would handle routine project Corps permitting in order to test and refine the concept for possible statewide application. Cleary said the SPGP proposal is out for public comment and the issue will be brought before the Board in April for a decision as to whether or not to proceed.

Colonel Slusar said we are in a new era of partnership between the federal and state governments. He said the President's wetland plan in 1993 was intended

to spur the commitment to the environment and to the public by streamlining wetland permitting programs, making them fairer, flexible, predictable and understandable. It also called for commitment of state and local government to work together in identifying wetlands, simplifying mitigation through banking and improving environmental protection.

Colonel Slusar said the Corps is committed to this SPGP proposal and the partnership with the Division of State Lands. He said the first phase of this proposal is to work in Douglas and Linn Counties. If this is successful, then they will go for a statewide programmatic general permit. He believes the SPGP proposal will enhance resource protection, eliminate duplication between federal and state (reducing paper work), and increase clarity and timeliness. He said it will allow both agencies to operate more efficiently and effectively.

State Treasurer Hill said the partnership between the federal and state government is important. He thanked Colonel Slusar for his agency's cooperation in this.

Director Cleary reiterated that, if approved, the SPGP program will begin with a pilot project and will be receiving public comments throughout the process. This issue will be brought before the Board in April for a decision on whether to proceed. He agreed that it is a tool that may result in improved resource protection and streamlining of paperwork for everyone.

Secretary of State Keisling asked what the timeline was for a determination as to whether the project will be expanded. Cleary said that, if approved, they will commit to one year, with a possible additional year afterward for the SPGP pilot test. It is hoped that positive results will be seen in the first six months, in which case they may entertain expanding the pilot to a statewide basis.

Secretary of State Keisling made a motion to adjourn the meeting. State Treasurer Hill seconded the motion and the approval was unanimous.

The meeting was adjourned at 11:09 am.

John A. Kitzhaber, Governor

Paul R. Cleary, Director