

The State Land Board met in regular session on August 19, 1999 in the Land Board Room of the State Lands Building, 775 Summer Street NE, Salem, Oregon 97301-1279.

Present were:

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

<u>Assistants</u>	<u>Staff</u>	<u>Dept. of Justice</u>
Paula Burgess	Paul Cleary	Bill Cook
Suzanne Townsend	John Lilly	
Rollie Wisbrock	Steve Purchase	
	Gary Van Horn	
	Jenifer Robison	
	Gail Lowry	

Governor Kitzhaber called the meeting to order at 10:07 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 written transcript of the meeting available at the Division of State Lands, 775 Summer Street NE, Salem, Oregon 97301-1279 (phone: (503) 378-3805).

CSF Review of the Common School Fund distribution levels and policies.

Director Cleary said this item was a continuation of the previous discussion on the Common School Fund (CSF) distribution levels and policies. The Legislative Assembly assumed the Land Board would consider an increase in distributions and added \$50 million to the school funding formula, for a total of \$74 million in CSF distributions for the 1999-2001 biennium.

Cleary briefly reviewed the current market value of the Fund and explained how the distributions are apportioned among the counties to assist in school funding.

At a previous meeting, the Board had requested the Division analyze some pros and cons of various scenarios for revising distribution levels and establishing a long-term CSF distribution policy, using the worst ten-year period since 1969, and bring to the Board a sample distribution policy.

Cleary reviewed a sample policy that would vary distributions based on annual growth in the Fund value, while providing for inflation protection and long-term growth of the Fund. Under this proposal, a minimum of two percent and a maximum of five percent of Fund value would be distributed each year. If the Fund grew at five percent or less, two percent would be distributed. Between five percent and 11 percent Fund growth, the distribution would be increased by half of the rate of Fund growth up to a maximum distribution of five percent (at 11 percent annual Fund growth). Everything above 11 percent would be retained for Fund growth to cover the down years, or years that the Fund growth may be below the two percent level.

Cleary said he would like to have staff apply this policy to the previous ten-year revenue and distribution period to determine how it would have performed if the Board had been operating under this policy-- how many years distributions would have exceeded two percent and what the growth of the Fund would have been.

He said an analysis being done by the Department of Justice on CSF revenues and expenditures should be completed prior to the October Land Board meeting, which should assist the Board in evaluating CSF distribution policy issues and options. He added that discussions have taken place with Treasury staff regarding the mechanics of funding increased distributions, should the Board decide to do that.

Cleary said the policy, if adopted, would provide for a distribution in the 1999-01 biennium of \$74.5 million, depending on continued growth in the CSF market value at 11 percent per year or more. This number matches the increase the Legislature had assumed in their budget.

Cleary added that the Board should take time to discuss the sample policy, identify any additional analysis they would like conducted, and determine during the October meeting whether to change the distribution policy. He said this would allow time for staff to do the preparatory work prior to calculating the December distribution (paid in January 2000).

Secretary of State Keisling asked whether the Board has the ability to target the additional distribution money in any way, such as for capital construction. Cleary said with a change in statute, it could be directed to something other than the State School Fund Equalization Formula. Keisling said it would be productive for the Board to have a discussion at some time regarding this. Cleary said Washington State directs their Common School Fund distributions into a capital construction fund.

He added that no action is necessary at this time on this item. The agency will provide the analysis of the sample policy modeled over the past ten years at the next meeting in October. He reiterated that the legal analysis from the Department of Justice should also be ready by that time.

Governor Kitzhaber stated the Board doesn't want to be in the position of allocating money for a specific legislative budget. He stressed that they want to make a policy that deals with the long-term distribution, and if the two match, that's fine.

Tongue Point Request for approval to renegotiate certain lease terms with Cresmont Technical Services for the long-term lease of state-owned land at North Tongue Point in Astoria, Oregon to reestablish the Premises Improvement Fund and delay the five-year rental increase for a one-year period.

Director Cleary introduced this request by Cresmont Technical Services to reestablish the Premises Improvement Fund and to delay the rental increase scheduled under the current lease. He reviewed some of the history of the property, which was purchased in 1980 under Governor Atiyeh's administration. The lease with Cresmont was entered into in 1994.

Cleary said as part of the renegotiations with Cresmont, he would like to add a standard provision that is in all the agency's upland leases allowing for termination of the lease for sale or exchange with a two-year notice.

He said this property was acquired as an investment of the CSF using statutory revenues. He added that under the statute, the Board is directed to ensure the investment is maximally productive and protected in the long run.

Cleary reported that Clearwater Environmental, Inc., a native corporation and a subsidiary of Ahtna, is interested in purchasing the North Tongue Point property outright for conversion into a ship repair and dismantling facility. Clearwater asked to report to the Board on a series of stakeholder meetings they held in Astoria. Cleary added that the strategic planning cycle needs to be completed for North Tongue Point in order to update the Master Development Plan. In addition, discussions with the community will continue, various property experts will be used to identify all potential uses, and a competent appraisal firm will be hired to appraise the property for the current fair market value as well as its highest and best use. This information will be brought to the Board to consider the current return under a lease, versus what the Board could achieve under a sale. He added that a sale subject to a lease should be avoided.

Cleary said if the Board decides to sell, the property must first be offered to state agencies interested in acquisition. Afterwards, it must be offered to local political subdivisions. If neither are interested in purchasing, it can be sold into the private sector under a sealed bid process with the current lessee able to meet the high bid. If the decision is made to sell, Cleary said everything possible must be done to ensure the sale proceeds from the property are maximized.

Information will be brought back to the Board in October, so they can make a determination as to whether or not to begin on the sale path or to retain the property with alternate approaches to uses.

William Kelley of Cresmont, the current lessee of the property, said the North Tongue Point property is maturing and getting a significantly higher level of acceptance and recognition by potential users. He said this was not the case five years ago when the property had no development plan, no basic occupancy permits or dredge permits and had serious environmental citations in Hangar Two. He reviewed what has occurred on the property over the past five years. He said the use of the improvement fund has been instrumental in clearing up one by one all of the negative strikes against the property over a period of time.

Kelley said the marketing plan focuses on three basic sectors: the fishing industry; timber and lumber; and marine transportation and industrial. He reviewed the progress made in each sector. He emphasized how much the opening of the rail at North Tongue Point has generated interest in the site, especially in the timber/lumber sector.

Kelley added that they would be pleased to work with Ahtna and Clearwater on any and all options for use of the site.

Kelley said Cresmont has shown an identifiable record of success and they want to continue their high level of marketing activity. He asked the Board to hold to the base rental rate for one more year to enable them to use the revenue for site improvements.

In conclusion, Kelley said Cresmont has made promises and stuck to them. He added that the property is secure, maintained, occupied and poised for growth and development.

Bill Wolfe, President of Cresmont, further discussed marketing activities for North Tongue Point.

Kelley said Cresmont wants to continue the growth process, eventually leading to acquisition of the property by Cresmont.

Ed Cronick, President and CEO of Clearwater Environmental and Vice-President of the Ahtna, Inc., presented the history of their companies.

Mark Schindler, Senior Vice-President of Clearwater, reviewed their company's desire to purchase the property and explained to the Board the steps they have taken to this point, including their letter of August 9, 1999, with an offer to buy the property. He said they have begun discussions with Cresmont and stakeholder's meetings with interested parties from Astoria, as well as discussions with CREST.

He said they would like the Board to move forward with their public process requirements for the sale of the property. He discussed their company's plans for use of the property, saying they intend to submit their application for site improvement and ship dismantling to MARAD in mid-September. The following plans are required in that application submittal: an environmental plan, business plan, and operational plan. He said the application approval could be done in the fourth quarter of the year with a potential closing for the property on or about the first of the year.

Cronick said in order to make North Tongue Point successful, there must be a massive capital investment immediately to allow for the major site improvements. He said his company is prepared to do that.

Secretary of State Keisling asked what kind of initial capital investment is needed. Cronick responded that an estimated \$45 million of financed capital and \$15 million of direct capital investment are needed, for a total of \$60 million, which they are prepared to provide over the course of the next 18 months.

Governor Kitzhaber asked Cleary to explain the legal responsibilities regarding the signed lease agreement with Cresmont. Cleary explained the provisions of the lease allow the agency to sell the land subject to the remaining term of the lease, with Cresmont having a right to meet the highest bid offered or the appraised value, whichever is higher, after the public process of offering to state agencies and local political subdivisions. Cleary added that he is reluctant to sell the land subject to a lease. Clearwater is attempting to negotiate an assignment of the lease with Cresmont and they would be expected to surrender the lease prior to the sale process. He said that if that doesn't happen, as a part of the improvement fund and rental negotiations with Cresmont, the agency would request adding provisions to the lease to allow termination for sale or exchange with two years' notice.

Cleary said it is important to note that if the Board sells the property, it must be through an open competitive bid process, with no control on our part of who purchases the property and how it is to be used.

Cleary said the agency would try to get an appraisal completed by the October Board meeting and a planning firm contracted to determine alternative uses of the site, to ensure that the Board has as much information as possible to make the decision as to whether to retain and utilize or dispose. He said they will work with Cresmont during that time frame as well to negotiate with them on their requests.

Secretary of State Keisling commented that the Board should have as a goal to liquidate this piece of property in the cleanest, simplest way that is consistent with its fiduciary duty.

Secretary of State Keisling moved the Board authorize the Division to continue negotiations with Cresmont concerning issues that include, but are not limited to, the Premises Improvement Fund, the one-year rental deferral and the two-year termination clause in case of sale. He added that the Division should keep the Land Board members informed about the status of those negotiations and return to the Board in October for further discussion.

State Treasurer Hill seconded the motion and the approval was unanimous.

Administrative Rules Request for final adoption of amendments to the rules concerning renewal of removal-fill permits.

Director Cleary said adoption of these rule amendments would give the Division additional flexibility for permits that are ready to expire to allow them to continue under the same or modified conditions for up to 120 days while the renewal process is taking place. He said this flexibility is helpful due to recent fish listings and other resource concerns which must be resolved prior to permit renewal.

Governor Kitzhaber said Jerry Reeves had signed up to testify during this part of the agenda. The Governor noted that there is a pending contested case hearing between Reeves' corporation and the Division regarding an enforcement order. The Governor said the Board is not legally empowered to hear arguments in the contested case and asked that Reeves' comments be kept to whether or not the rules should be approved.

Attorney General Bill Cook clarified that Mr. Reeves is able to testify today on the rules, but cautioned that the enforcement order issues must be dealt with in the contested case hearing.

Reeves said as a builder he is concerned that the rules in effect at the time of the permit application should be the only rules applicable throughout the process. He was especially concerned when a permitted area was delineated as a wetland site during a building process.

Cleary said these rules would pertain to permits that are ready to expire, where the project is not complete. He added that this frequently applies to permits such as for sand and gravel that are issued for three years. Under the current rules, the permittee can apply up to the last day of that permit for a renewal. This poses a problem, since it doesn't allow time for the required consultation with other resource agencies and the public review process. He said these rule amendments could prevent the permittee from having to shut down the project when the permit expires, and the Division has not been able to get the new permit circulated and renewed in a timely fashion. He explained that these rule amendments would require the renewal request to be in 45 days ahead of the expiration, and allow the Division to extend the permit for up to 120 days to complete the

processing, if necessary. He added that from a developer's or a permit holder's standpoint, the rule amendments are in their interest. He added that no adverse comments were received.

Reeves expressed his concerns with paragraph (3)(c) of the rules, saying the Division can extend the permit for 120 days, but in the process may add new or modified conditions, or even deny the permit. He commented that if anyone raises issues during the consultation process, this puts projects in jeopardy. He said this doesn't give any certainty to the builder.

Cleary said the only two options under the current rules when a permit expires is either to renew the permit or deny the request for the permit renewal. He said if there is a fish listing, and the permittee wants to finish the project outside the in-water work period, the project might be denied for that time period. Cleary stressed that during the last biennium the agency issued about 2,300 permits and denied only about 15.

Governor Kitzhaber asked Cleary if there were situations where additional conditions might be added to a permit as it comes up for renewal. Cleary answered that on a permit, such as Ross Island, where a fish listing occurred between the time the permit was initially issued and the renewal of the permit, a condition was added for an in-water work period for the shallow dredging and the fill activities. He said that conditions could be added to comply with federal law or the DEQ site assessment. Most projects are completed within the permit period, except where there may be problems getting financing. Cleary said conditions wouldn't normally change upon renewal unless there's been a fish listing or something of that nature.

Secretary of State Keisling clarified that paragraph (3)(c) is intended to be used only if there is an issue of compliance with the law.

Reeves believes that wetland delineations are variable and the Division could change a previous delineation, imposing new conditions in the process. Governor Kitzhaber said the discussions are getting close to the contested case issues. He suggested the Board go forward with the administrative rulemaking process, realizing that modifications could be made at a later date, if necessary. He asked Reeves to return to the Board to revisit the issue after his contested case hearing is completed, allowing a couple of months for the rules to take effect.

Both Director Cleary and Assistant Attorney General Bill Cook said the issues before the Board are simply timing issues and don't deal with the Division's ability to impose new conditions or refuse to renew a permit.

Secretary of State Keisling moved the Board adopt these rule amendments. State Treasurer Hill seconded the motion and the approval was unanimous. Governor Kitzhaber reiterated that the Board will take the opportunity to discuss these rules with Mr. Reeves at a later date.

Consent Agenda

Easement Request by Level 3 Communications for an easement for a fiber optic communication cable conduit over state-owned submerged lands on the Willamette River in Multnomah County within the Portland city limits.

Administrative Rules Request for authorization to initiate rulemaking to revise the administrative rules on removals and fills in essential salmonid habitat and to amend the administrative rules for issuance and enforcement of removal and fill permits.

NHAC Request for approval of the addition of Knappa Slough Island in Clatsop County to the Oregon Register of Natural Heritage Resources.

Minutes Request for approval of minutes of the June 8, 1999 State Land Board meeting.

Easement Request by the City of Rainier for a "channel improvement easement" to allow for restoration of Fox Creek by removing a culvert (approximately six feet by 500 feet) and restoring a natural stream channel, over state-owned lands adjacent to the Columbia River in Columbia County within the Rainier city limits.

Director Cleary briefly reviewed the items 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.

Informational Agenda

Legislature Report on the 1999 Legislative Session.

PGP Update on Programmatic General Permit Pilot Project for Douglas and Linn Counties.

Director Cleary said the Division had the option of renewing the one-year pilot study of the Programmatic General Permit from the Corps of Engineers for routine permitting in Douglas and Linn County. He said the agency has chosen not to extend the pilot project because of problems with the endangered species consultation process. He said there needs to be a way to streamline the process, but currently neither the Corps nor the State can issue permits without this consultation. This hinders the one-stop-shopping permit objective. Cleary said more efforts need to be directed toward streamlining the consultation process.

Governor Kitzhaber adjourned the meeting at 11:42 a.m.

John A. Kitzhaber, Governor

Paul R. Cleary, Director