

The State Land Board met in regular session on December 14, 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

Bill Bradbury Secretary of State

Assistants

Paula Burgess
Jen Stineff
Rollie Wisbrock

Staff

Paul Cleary
John Lilly
Steve Purchase
Gary Van Horn
Gail Lowry

Dept. of Justice

Bill Cook

Governor Kitzhaber called the meeting to order at 10:06 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).

Governor Kitzhaber moved the Board reappoint Paul Cleary as Director of the Division of State Lands, for a second term. Secretary of State Bradbury seconded the motion and the approval was unanimous. Secretary of State Bradbury administered the oath of office with Director Cleary.

- 1. Request for authorization to sell the Wilsonville Tract (230 acres) to either Metro or Tualatin Valley Water District through a sealed bid process with the minimum acceptable bid set at \$2,329,200 and the final sale subject to Land Board approval.**

Director Cleary informed the Board that Tualatin Valley Water District had withdrawn from the sale process. He said this opens the door for the direct sale of this tract to Metro, with no sealed bid process. Cleary said if the Board approves, the agency is prepared to conclude the sale and transfer of all surface interests in the property before the first of the year. He added that the appraisal has been completed and he is comfortable with the sale price of approximately \$2.3 million.

Charlotte Lehan, Mayor of Wilsonville, discussed previously proposed uses of the site. She said many of these uses were not appropriate for the tract, since it is unique due to its size and the combination of so many different features in a single parcel, such as old growth forest, fish bearing streams, four different classifications of wetlands, and rolling uplands that are currently productive farmland. She described how the property creates a firm boundary for Wilsonville's urban growth boundary.

She said Metro's plan for acquisition of the site as regional open space meets the goals set out by the Asset Management Plan, including protection from logging for the 60 acres of forest. She said the net proceeds from any timber removed for safety, disease or any other reason should go directly to the Common School Fund, with the agreement that the property would not otherwise be logged. She added that Metro looks forward to the transfer happening expeditiously.

Tom Cropper spoke briefly in support of maintaining this area as open space.

Charles Ceiko, Director for the Regional Parks and Greenspaces Department of Metro, said they have been fully committed to acquiring this property since shortly after the voters approved the Open Spaces Parks and Streams Bond Measure in May 1995.

Ceiko discussed two issues of concern and asked the Board to reconsider these during the sale negotiations: 1) He said Metro believes it's inappropriate for the full value of the merchantable timber to be included in the recommended minimum sale price, since the

Asset Management Plan determined that timber and other natural resources should be preserved for public benefit. He asked that this be taken into consideration and the appraisal be reevaluated. In doing this, he added that a condition could be added to ensure that the net value of any timber harvested for fire, disease or public purpose would be paid to the Common School Fund.

2) Ceiko explained that the "public use" deed restriction on the property limits the future uses of the property to park and open space purposes. Metro believes this could decrease the market value of the property by more than 50 percent. Ceiko said the Division instructed the appraiser to ignore the deed restriction when determining the fair market value of the property. He said if there is a deed restriction, the appraiser should take this into account for the fair market value.

Director Cleary responded that the agency would dispose of the entire surface interests of the site, giving Metro complete control of the property. He added that the timber cruise is a conservative one.

Regarding the "public use" deed restriction, Cleary said this is the approach the Division uses on direct sales to public entities, especially when dealing with Common School Fund assets. The statute indicates that when a state agency does a direct sale, not exposing a property to the open market, it may require at the time of the sale that the property be used for a public purpose or benefit and not for resale to a private purchaser. Cleary said the agency is comfortable with this approach and has confirmed with other states that do direct sales of trust land to public entities that they use a similar approach.

He said the agency is willing to use an "excess profits clause," rather than the reversionary clause, should Metro decide to sell. This would enable Metro to sell the property to a private entity, then pay the state the difference between the market value at the time they acquired it, and the market value at the time they sell.

Cleary said the recommendation is to authorize the sale of the tract to Metro for \$2,329,200 with either the reversionary or excess profits clause, as previously discussed. He added that, during Metro's appraisal review, if there are found to be major errors or omissions, the appraisal should be returned to the Board for reconsideration. If major errors or omissions are not found, the sale should be concluded.

Governor Kitzhaber moved the recommendation be approved as stated by Director Cleary. Secretary of State Bradbury seconded the motion and the approval was unanimous.

2. Request for authorization to sell up to nine isolated unleased parcels of rangeland totaling about 1,800 acres in Lake and Klamath Counties through a sealed bid process, with minimum acceptable bids as specified (\$50 to \$200 per acre) and the final sales subject to Land Board approval.

Director Cleary said the Legislature, interest groups and individuals have encouraged the agency over the years to review the small, isolated, difficult-to-manage state-owned parcels in eastern Oregon and identify those that make sense for disposition via sale or exchange. He said 29 parcels were identified totaling approximately 8,000 acres. These are properties that are either unleased or have lessees interested in purchasing them. They represent about one percent of the total state-owned rangelands. Appraisals have been received on all of these parcels. They range from \$50 to \$200 per acre. In order to test these appraisals, Cleary recommended proceeding first with the unleased parcels, putting them up for an open, competitive sealed bid process, determining whether they attract a bid premium and applying that bid premium to the leased parcels as well.

These parcels range in size from 26 to 640 acres. Seven are zoned agricultural use; two are forest use (with only one tract having commercial forest land). The high value parcel is the 40-acre Lake County timber tract, which includes about \$52,000 in marketable timber. The Division's recommended minimum bid includes both the appraised value and the timber value. Resource agencies, local and tribal governments, and other interest groups have been notified over the last three years and no significant concerns have been identified for, or interest expressed in, these parcels. Cleary said they will be circulated one more time over the next 60 days to ensure that, now that the appraisals are complete, there are no significant concerns or easement needs. Parcels with concerns will be pulled. For parcels with no concerns, the agency will proceed with advertising and a sealed bid process.

Cleary said his recommendation at this time would be for the Board to authorize the sale of the nine selected parcels using the sealed bid

process with minimum bids as specified, subject to one more round of review and the final sales being subject to Land Board approval.

Secretary of State Bradbury asked about the "bid premiums" and whether this will be a good test of bid premiums, since the parcels for sale are unleased. Cleary said it is possible that no bids will be received on some of the parcels.

Secretary of State Bradbury moved the recommendation be approved, as stated by Director Cleary. Governor Kitzhaber seconded the motion and the approval was unanimous.

3. Request for approval to adopt a permanent rule establishing a General Authorization for Minimal Disturbance Activities (less than one cubic yard) in Essential Indigenous Anadromous Salmonid Habitat.

Director Cleary said this rule would authorize activities with no more than one cubic yard to be disturbed in any location and no more than five cubic yards cumulatively within any stream segment designated essential salmonid habitat. These essential habitat designations cover spawning and rearing areas for state and federal listed species, and total about 17,600 stream miles, or about 16 percent of the state's rivers and streams. Unless otherwise exempt, any removal-fill activity within these areas requires a permit or general authorization. Best management practices will be used to minimize impacts.

Cleary said these were initially adopted as temporary rules in June. A hearing was held yesterday, and the comments received at the hearing were summarized in the written materials provided to the Board. The Marine Board and several park and recreation districts submitted comments regarding their need to go in after flooding events to clear boat ramps and other structures located below the bankfull stage. They wanted to know whether the general authorization could be expanded for removal up to 20 cubic yards allowing them to do this. Cleary said the Division will discuss bringing these activities under the existing maintenance authorization, as long as they are not digging material out of the water or redepositing in wetlands.

Secretary of State Bradbury moved the Board adopt rules establishing a general authorization for projects disturbing less than one cubic yard in Essential Indigenous Salmonid Habitat. Governor Kitzhaber seconded the motion and the approval was unanimous.

Consent Items

- 4. Request for authorization to initiate rulemaking to revise the General Authorizations for: Fish Habitat Enhancement; Erosion Control; Road Construction; Wetland Restoration and Enhancement; Recreational and Small Scale Placer Mining; and Removing and Disposing of Sediment Behind Tidegates for Channel Maintenance.**

Director Cleary said the agency is currently working on a biological assessment of the removal-fill program as part of a programmatic consultation with the National Marine Fisheries Service and the US Fish and Wildlife Service. DSL identified a need to revise some general authorizations to enhance protection of fish and aquatic species via new and refined best management practices. They are using the technical advisory committee that previously assisted with the essential salmonid habitat rules to draft some proposed rules, which will then be circulated for public and agency review. The rule amendments will then be brought back to the Land Board along with a summary of comments received.

- 5. Request for approval of minutes of October 12, 1999 Land Board meeting.**

Secretary of State Bradbury moved the two items on the Consent Agenda be approved. Governor Kitzhaber seconded the motion and the approval was unanimous.

Information Reports

- 6. Report on the Status of Common School Forest Land Management – Department of Forestry.**

Mike Bordelon, State Forest Program Director, began with the an update of the Northwest Forest Management Plan Habitat Conservation Plan (HCP). This includes 630,000 acres primarily in the coast range; three percent of which are CSF forest lands. This plan has been in the

works for five years with significant public involvement. He said rigorous, scientific and technical reviews have been made of the proposed plan strategies. The management approach has been one of managing the forest to provide sustainable timber and revenue while concurrently providing for species protection.

Bordelon said there have been questions about the level of timber and revenue outputs from the proposed structure-based management approach. He informed the Board that Forestry is currently engaged in a contract with OSU to review the structure-based management approach to measure habitat values and to consider a variety of other management based approaches, i.e., shorter rotation, or industrial approach, or a reserve-based approach.

He said some of the stakeholders are recommending that Forestry not pursue the habitat conservation plan due to the perception of increased litigation risks, as well as less certainty for landowners. He said they will be exploring the issues brought forward and Forestry will benchmark with others who are currently involved or have recently completed HCP processes. The OSU evaluations will be shared with the Board of Forestry in January and February, with other policy issues to be resolved in March and April.

He reported they would like to take the Northwest Forest Management Plan to the Board of Forestry in June; and then afterward to the State Land Board. They will be requesting preliminary approval of the Forest Management Plan to enable them to submit the habitat conservation plan to the federal process, which takes about a year. During that period, Bordelon said they would update both the Board of Forestry and the Land Board. Final approval on the HCP is expected about July 2001.

Jim Young, Coos District Forester with the Elliott State Forest, discussed accomplishments on the Elliott for the past year, as well as upcoming activities. He said the cooperative research for both northern spotted owl and the marbled murrelet continues. He discussed efforts working with other agencies and watershed councils to improve fish habitat.

Young said the current HCP includes a 60-year incidental take permit for the northern spotted owl and a six year-incidental take for the marbled murrelet. He discussed their plans for revision of the marbled murrelet portion of the HCP. He said a planning team is being

organized to work on this effort that will include representation by state agencies, including the Division of State Lands, working cooperatively with the federal agencies. Research that has been ongoing for the past four years will help in this effort. He added that other species will be considered during this revision, such as coho salmon and cutthroat trout.

Young also reported on an aquatic and riparian task force meeting for the last several months composed of local agency folks from ODFW, DSL, DEQ, DOF, USFWS, NMFS, and local watershed coordinators to review the Elliott riparian and aquatic strategies to determine if they are adequate for protection and restoration of salmon habitat along streams.

He said they hope to have the revised Elliott HCP ready to bring to the Board in January of 2001 for approval to submit it to the federal services for their planning process.

Bordelon reviewed the financial outlook for the past year, saying forest land gross revenues to the Common School Fund were \$17.6 million, with expenses at \$4.2 million, for a net revenue of \$13.4 million. He reviewed the written materials provided to the Board that showed the historic trend in those revenues and projected future revenue.

Director Cleary expressed his appreciation to the Board for Bordelon and Young and acknowledged the efforts that Forestry has made in recent years in reducing the percent of revenues that must go to management costs.

7. Update on coastal telecommunications linkages in Coos Bay/Bandon region – AT&T/GTE.

Director Cleary introduced Laura Imeson from AT&T, who informed the Board that AT&T completed the landing for the US/China cable and it is in the testing phase, expecting to go online on December 31.

She said there is a point of presence (POP) in Coos Bay. She said the community is in the process of doing strategic planning and is using telecommunications as one of their tools to try to attract businesses.

She said the local community college is developing a curriculum for training for call centers, which they want to market around the state. AT&T will continue to meet with folks at Coos Bay, the south coast community and the Port to discuss these and other opportunities.

Cleary said that as a result of Senate Bill 622 (1999) Economic Development will do a statewide needs assessment. The Division will work with them and other interested parties to determine how best to use state land easements and local government easements to stimulate infrastructure development.

8. Status report on North Tongue Point activities.

9. Draft status report on waterway leasing program implementation and waterway improvement inventory.

Director Cleary said written materials were provided to the Board on these last two informational items, and were also available for the public. Cleary said there would be a public information meeting in Astoria at the end of January on North Tongue Point. He said a public workshop on the waterway leasing program would also be held in Salem at the end of January.

Governor Kitzhaber requested that any written comments received at the meeting today on waterway leasing be added to the record in preparation for the next time the Board reviews the issue.

Director Cleary recognized the retirement of Marcella Easley, manager of the unclaimed property program, which brings in around \$15 million per year. He said Marcella did a great job in development of the program for almost 14 years.

Governor Kitzhaber adjourned the meeting at 11:18 a.m.

John A. Kitzhaber, Governor

Paul R. Cleary, Director