



# Oregon

Kate Brown, Governor

*Public Wi-Fi logon: LandsDSL*

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

## **STATE LAND BOARD**

**June 11, 2019**

**10:00 am – 12:00 pm**

**Oregon Department of State Lands**

**Land Board Room**

**775 Summer St NE**

**Salem, Oregon**

Kate Brown

Governor

Bev Clarno

Secretary of State

Tobias Read

State Treasurer

## **AGENDA**

### **State Land Board Awards Presentation**

The State Land Board will present the 2018 Land Board Awards to:

- Partnership Award: The Oregon Fishermen's Cable Committee Inc. for Oregon Submarine Cable Landing Projects
- Wetland Project Award: Cavender Wetland Enhancement Project

### **Consent Items**

1. Request for approval of the minutes of the April 9, 2019, State Land Board Meeting.

### **Action Items**

2. Request for approval to sell surface and subsurface mineral and geothermal rights of the Bear Creek property in Wallowa County.
3. Request for approval of term easement for fiber optic cable crossing the Territorial Sea in Tillamook County.
4. Request for approval to initiate rulemaking to impose restrictions on the public recreational use of state-owned land in Multnomah County.

*Continued on next page*

5. Request for re-approval of the direct sale of 63.1 acres of subsurface minerals and geothermal rights located in Marion County.

### **Informational Items**

6. Other

Livestream available at: <https://www.youtube.com/channel/UCQA7FHTWwl-gjJkQeYPJ1IA>

*This meeting will be held in a facility that is accessible for persons with disabilities. If you need assistance to participate in this meeting due to a disability, please notify Arin Smith at (503) 986-5224 or [arin.n.smith@state.or.us](mailto:arin.n.smith@state.or.us) at least two working days prior to the meeting.*

**Visitors are NOT permitted to bring backpacks, bags, or large purses into the DSL building prior to, during, or immediately following Land Board meetings.**

**Purses, medical bags, and diaper bags are permitted, but may be subject to inspection by OSP.**

**Public Testimony** - The State Land Board places great value on information received from the public. The Board accepts both oral and written comments on **consent and action agenda items only**.

When providing testimony, please:

- Provide written summaries of lengthy, detailed information
- Recognize that substance, not length, determines the value of testimony or written information
- Endorse rather than repeat the testimony of others

Written comments may be submitted before or during the meeting for consideration by the Board. To speak at the meeting, you must sign in on the sheet provided at the information table located near the meeting room's entrance. The standard time limit is three minutes for each individual. The Board cannot accept testimony on a topic for which a public hearing has been held and the comment period has closed.



# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

## M E M O R A N D U M

### State Land Board

Date: June 11, 2019

Kate Brown  
Governor

To: Governor Kate Brown  
Secretary of State Bev Clarno  
State Treasurer Tobias Read

Bev Clarno  
Secretary of State

From: Vicki L. Walker  
Director

Tobias Read  
State Treasurer

Subject: 2018 Land Board Awards

### **Background Information**

This year marks the 15th year the State Land Board Awards have been presented. Since 2004, the State Land Board (Board or Land Board) has given more than 30 awards for exceptional wetland, stream, and partnership projects.

The geographic representation of award winners spans the state: Wallowa County, the Central Coast, Charleston/Coos Bay, Wilsonville, Eugene, Klamath County, Brownsville, North Central Oregon, Deschutes County, Astoria, Columbia County, Portland area, Mt. Hood National Forest, Corvallis, and Oakland, Oregon.

Awards have gone to watershed councils, private landowners, a port, small nonprofits, mitigation bankers, large environmental organizations, cities, and county law enforcement organizations. Most awards honored projects that were supported by an array of partnerships and funding sources.

The awards themselves feature the work of Pacific Northwest glass artist Ann Cavanaugh, whose glass art reflects the colors and textures of our natural world.

Today, we are presenting a Wetland Project Award, for a project completed in 2018, and a Partnership Award.

### **Wetland Project Award: Cavender Wetland Enhancement Project**

The project enhanced an existing 9.7-acre wetland to improve water quality by allowing overland flows and floodwaters from upslope farm fields and the town of Monument to be filtered prior to entering the John Day River. By improving and protecting this wetland habitat along the river, numerous terrestrial, aquatic, avian, and amphibian species will have a rare refuge to prosper.

The project:

- Lowered the levee that separated the wetland from the river to the 2-year ordinary high-water level and increased floodplain connectivity;
- Constructed side channels within the wetland to mimic oxbow-like conditions;
- Placed large wood structures for habitat complexity and cover;
- Installed bio-engineered streambank protection against further bank erosion; and
- Began control of invasive plant species and planted native vegetation appropriate to wetland zones

The project represents the culmination of more than three years of assessment and planning work by partners that include Monument Soil and Water Conservation District, the U.S. Fish and Wildlife Service, the Confederated Tribes of Warm Springs/ Bonneville Power Administration, the Oregon Watershed Enhancement Board, the Oregon Department of Fish and Wildlife, and landowner Jack Cavender and his estate.

The project is being recognized especially for creative design and use of materials and use of existing and native resources; as an excellent concept to restore natural water flow and overflow; and, as a high-visibility project in an area of our state where wetland enhancement projects are rare. When adverse weather conditions impacted the project, the adaptive management strategies implemented also demonstrated ongoing partner commitment to the success of this innovative project.

### **Partnership Award: The Oregon Fishermen's Cable Committee Inc. for Oregon Submarine Cable Landing Projects**

For more than two decades, the Oregon Fishermen's Cable Committee (OFCC) has worked cooperatively with multiple submarine cable system owners on projects to develop and land submarine cable systems on the Oregon coast. These installations have been done in a way that minimizes negative impacts to Oregon's territorial sea while providing benefits to the State of Oregon. This ongoing collaboration has resulted in responsible, sustainable stewardship of the territorial sea and the natural resources it contains.

Benefits of this unique partnership have included:

- Reducing impacts to fishing communities by working with the cable project developers to design routes that will achieve maximum burial. Using the decades of local knowledge of the Oregon seabed gained by commercial fishers, the OFCC has achieved an outstanding record. In the OFCC's 20-year history, fishing activity has not snagged or damaged even a single submarine cable.
- Demonstrating that collaboration between applicants, stakeholders, and state agencies need not affect timely, efficient permitting. The OFCC has set a good example for other DSL partners as well as other agencies and states on how effective industry to industry to State agency cooperation can be.
- Encouraging stewardship of our state's ocean resources. The OFCC has also taken on projects to recover abandoned anchors and derelict gear in order to restore fishing grounds to productivity. OFCC outreach efforts also involve students in the fishing and subsea cable industries, thereby engaging the next generation of stewards in Oregon's maritime future.
- Increasing the number of undersea cable landings in Oregon, which has resulted in a more robust internet backbone for our state, development of data centers and cloud storage facilities, and better connectivity for tech companies.

Working together, the OFCC and submarine cable system owners have achieved what neither could accomplish alone—making Oregon a very successful place to land west coast fiber-optic cables while maintaining a vibrant fishing industry. This “Oregon model” of cooperation among stakeholders has been held up as an example globally, not just for marine spatial management but in other industries as well.



# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

The State Land Board (Land Board) met in regular session on April 9, 2019, in the Land Board Room at the Department of State Lands (DSL or Department), 775 Summer Street NE, Salem, Oregon.

### State Land Board

Kate Brown  
Governor

#### Present were:

Kate Brown

Governor

Bev Clarno

Secretary of State

Tobias Read

State Treasurer

Bev Clarno  
Secretary of State

#### Land Board Assistants

Jason Miner

Governor's Office

John Heynen

Secretary of State's Office

Ryan Mann

State Treasurer's Office

Tobias Read  
State Treasurer

#### Department Staff

Vicki Walker

Bill Ryan

Jean Straight

Ali Hansen

Chris Castelli

Arin Smith

Anne Friend

Lee Hullinger

Eric Metz

Blake Helm

#### Department of Justice

Matt DeVore

Governor Brown called the meeting to order at 10:01 a.m. The topics discussed and the results of those discussions are listed below. To view the Land Board (Board) meeting in its entirety, please visit our YouTube page: <https://www.youtube.com/watch?v=zHEqDswf-o0>

### **Consent Items**

#### 1. Minutes

Treasurer Read made a motion to approve the minutes for the February 5, 2019, Land Board meeting.

Secretary Clarno asked to be excused from the vote, as she was not in attendance in April. The item was approved at 10:02 a.m.

### **Informational Items**

#### 2. Annual Report on Common School Fund Investments & Distributions for Fiscal Year (FY) 2018

10:02 a.m.

Director Walker introduced Michael Viteri, Senior Investment Officer with Oregon State Treasury to present this report.

Treasurer Read gave a short overview of what the Treasurer's office does.

The purpose of the report is to provide the Board with a year-end summary for FY 2018.

### 3. **Annual Report on Common School Fund Real Property Program for FY 2018**

10:20 a.m.

Director Walker asked Deputy Director Bill Ryan to assist her in presenting this report. The primary purpose of this report is to provide the Board with a year-end summary for FY 2018 on the financial performance of Common School Fund trust lands overall.

Governor Brown asked about renewable energy resources and how they are shown in the report. She also asked about what can be done to increase revenue from natural resources.

Deputy Director Ryan stated that the information can be found under the Mineral and Energy Resources section of the report. The Department is in the early stages of more active marketing and research to find suitable locations as the market develops.

Treasurer Read asked for clarity on page 3 of the report and the characteristics of those lands sales.

Deputy Director Ryan explained that the small land sales are usually at the request of an adjacent property owner requesting to purchase. If the sale is at the benefit of the Department and the Common School Fund, then the properties are sold after due diligence is completed and the sale is approved by the Land Board.

Governor Brown stated that she would like the Department to expand investments in both solar and wind energy and wants to know what the Board can do to support those efforts and move them along more quickly to generate revenue for both the regions and the Common School Fund.

Director Walker stated that is one of the things that she wants to focus on as Director of the Department.

Secretary Clarno commented that hooking to the transmission lines is an issue when looking to add solar and wind energy options.

### **Action Items**

#### 4. **Request for approval to initiate due diligence for the sale and possible partition of North Tongue Point in Clatsop County**

10:36 a.m.

The Department recommends that the State Land Board authorize the Department to initiate due diligence studies for a sale and to potentially partition the property located at Township 8N, Range 9W, Section 11, Tax Lot 5800. An open, competitive sale process would be pursued.

Treasurer Read made a motion to approve agenda Item 4.

There were no objections to this motion.

The action item was approved at 10:42 a.m.

5. **Request for approval to sell surface and subsurface mineral and geothermal rights of the Bear Creek property in Wallowa County – THIS ITEM WAS POSTPONED**

\*10:43 a.m.

There was a brief and unscheduled interruption of the meeting by members of the public who oppose the Jordan Cove Energy Project.

The Governor explained that the public comment period on this subject closed on February 5, 2019, and they are unable to take additional comments.

6. **Request for approval to initiate rulemaking to impose restrictions on the public recreational use of state-owned land in Lane County**

10:45 a.m.

The Department recommends the State Land Board authorize the Department of State Lands to initiate rulemaking to impose restrictions on the public recreational use of state-owned banks and islands on the Willamette River within the city limits of the City of Eugene.

Secretary Clarno made a motion to approve agenda Item 6.

There were no objections to this motion.

The action item was approved at 10:50 a.m.

Public comment was taken on this item.

Governor Brown stated that the rulemaking process will include public comment and engagement and encouraged interested parties to participate in that process.

\*10:54 a.m.

Governor Brown stated that there will be no public comment taken on the subject of Tierra del Mar, as the comment period for that item has been closed. Those who would like to give their written comments directly to the Board members were encouraged to do so.

7. **Other**

10:55 a.m.

- Elliott State Forest Update –
  - Elliott State Research Forest Advisory Committee has been established.
  - A plan will be presented to the Board at the December meeting and public comment hearings will take place after that.
- South Redmond Tract & Stevens Road Tract Updates
- SSNERR – Coho Spawning/Winchester Creek
  - Coos County is interested in a land exchange, more information will be presented at a future Land Board meeting.

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

---

Kate Brown, Governor

---

Vicki L. Walker, Director

DRAFT



# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

Kate Brown

Governor

Bev Clarno

Secretary of State

Tobias Read

State Treasurer

## State Land Board

### Regular Meeting

June 11, 2019

### Agenda Item 2

#### **SUBJECT**

Request for final approval to sell surface and subsurface mineral and geothermal rights of the Bear Creek property, a 158.2-acre parcel located at Township 1 South, Range 42 East, Sec 16, Tax Lot 1101 in Wallowa County in a direct sale to the Rocky Mountain Elk Foundation (Foundation) on behalf of the U.S. Forest Service.

#### **ISSUE**

Whether the State Land Board (Land Board) should authorize the sale of the property through a direct sale to the Rocky Mountain Elk Foundation on behalf of the United States Forest Service (USFS). (Appendix A).

#### **AUTHORITY**

Oregon Constitution, Article VIII, Sections 2 and 5; pertaining to the Common School Fund and land management responsibilities of the Land Board.

ORS 273.055; relating to the power to acquire and dispose of real property.

ORS 273.171; relating to the duties and authority of the Director.

OAR 141-067; relating to the sale, exchange and purchase of state land.

Real Estate Asset Management Plan (REAMP), adopted by the Land Board; February 2012.

## **SUMMARY**

On June 1, 2007, the Land Board approved initial due diligence of the Bear Creek tract along with 23 other isolated tracts in Baker, Union, Umatilla, and Wallowa Counties. Some of the isolated tracts were sold at auction but this tract was held as an inholding for the USFS as the Wallowa Whitman National Forest surrounds the property. At that time, the Department of State Lands (DSL or Department) staff met with USFS staff and were unable to find equivalent exchange land or funding for purchase of the property.

Unfortunately, in 2009, a forest wildfire burned the majority of the property. This region of the Wallowa-Whitman National Forest was under a USFS area management plan that recommended allowing the area to burn in the event of a wildfire. Twenty-one acres had understory damage while 62 acres received damages of between 50-100%. In 2011, DSL filed a claim against the USFS for the value of the timber. This claim was denied, and DSL did not file an appeal

In May 2017, the Rocky Mountain Elk Foundation (RMEF) submitted an application to purchase the surface land on behalf of the USFS. The USFS, according to their rules, cannot acquire property except from a non-profit organization. In January 2018, the RMEF submitted an application to purchase the subsurface minerals and geothermal rights for the same tract. The Oregon Department of Geology and Mineral Industries (DOGAMI) report showed little or no value to the estate for the mineral rights. (was there any value here?)

On June 12, 2018, the Land Board again approved initial due diligence for the sale of this tract. The USFS provided input and coordination on the appraisal, a cultural resource review and endangered plant survey were also undertaken as part of the due diligence process. The tract is 158.2 acres of steep forestland with limited access and little potential for generating revenue for the Common School Fund.

The Department received ten comments regarding the sale between April 5 and April 22, 2019. Four comments expressed an interest in purchasing the property and six comments were submitted that supported the land staying in public hands. The property is a steep, rugged, forested in-holding parcel surrounded by USFS land with no direct access, and is 600 feet from a USFS campground and trailhead. Keeping the property in public ownership by selling to RMEF for a transfer to USFS is the most practical alternative.

## **RECOMMENDATION**

The Department of State Lands recommends that the State Land Board authorize the direct sale of the Bear Creek property, including the subsurface minerals and geothermal rights a 158.2-acre parcel in Wallowa County at Township 1S, Range 42E, Section 16, Tax Lot 110 to the Rocky Mountain Elk Foundation on behalf of the United States Forest Service for \$105,000.

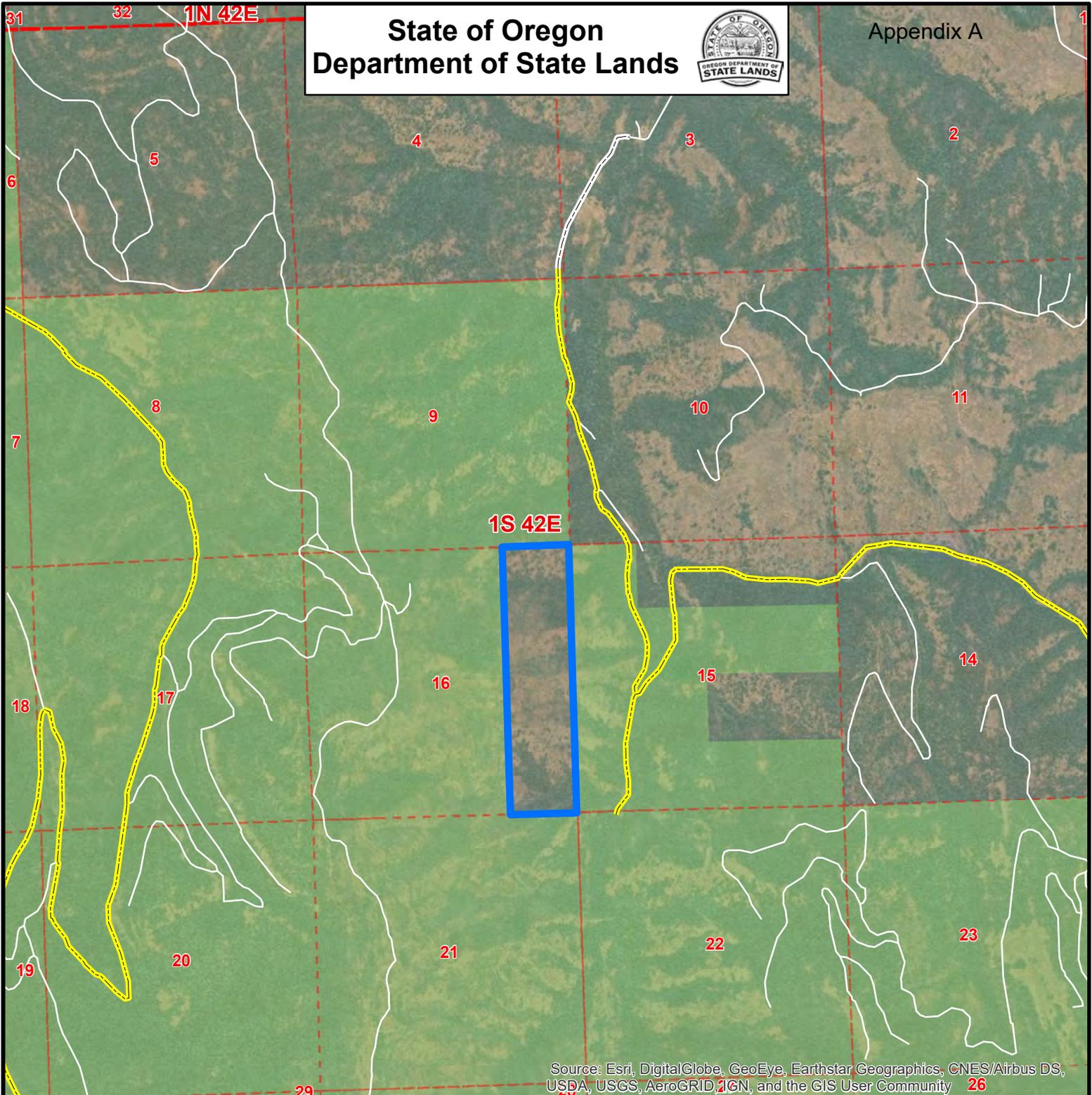
## **APPENDICES**

- A. Map of Property
- B. Land Evaluation Form
- C. 2018 Land Board Agenda Item

# State of Oregon Department of State Lands



Appendix A



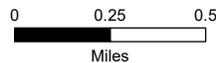
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

## Appendix A

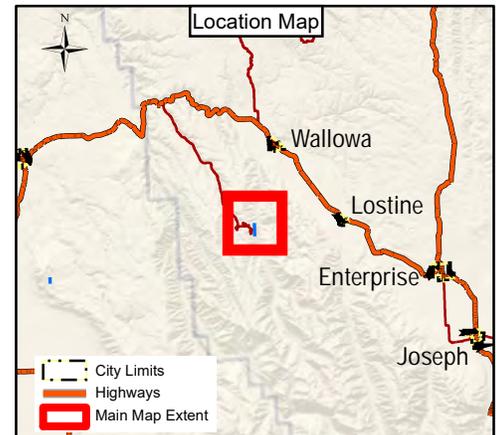
**38229-LS, Bear Creek Parcel**  
**T01S, R42E, Sec 16, Tax Lot 1101**  
**Approx. 158.2 acres**  
**Wallowa County**

- |   |  |
|---|--|
|  DSL Ownership      |  Bear Creek Road      |
|  US Forest Service  |  National Forest Road |
|  Section Boundaries |  Local Roads          |

This map depicts the approximate location and extent of a Department of State Lands Proprietary authorization for use. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.



Map Projection: Oregon Statewide Lambert  
 Datum NAD83  
 International Feet  
 State of Oregon  
 Department of State Lands  
 1645 NE Forbes Rd. Suite 112  
 Bend, OR 97701  
 541-388-6112  
[www.oregon.gov/DSL](http://www.oregon.gov/DSL)  
 Date: 2/22/2019



## LAND EVALUATION FORM

1. Evaluation completed in: Office  Field
2. Parcel Name: Bear Creek 3. County: Wallowa 4. Map & Tax Lot: 1S 42E, Sec. 16 TL 1101  
 5. Site #: 58710, LAS App# 38229 & 60863  
 6. LAS #: 172 7. GIS Acres: 158.2 8. DSL Land Class: Forest 9. REAMP Category: 4  
 10. Certified Forest:  Yes  No  
 11. Leased:  No  Yes Lease #: N/A Type of Use: N/A  
 12. Ownership Type: Trust 13. Mineral Rights:  No  Yes  
 14. Adjacent Property Owners & Use: 100% US Forest Service  
 15. Zoning: Timber/Grazing  
 16. Developable Parcel:  No  Yes 17. Minimum acres required for home site 160  
 18. Lot of Record:  No  Yes  
 19. Potential for Zone Change/Partition: None  
 20. Wildlife Overlay: N/A  
 21. Cultural-Historic: Parcel Reviewed:  No  Yes  
 22. Previously Field Surveyed:  No  Yes  Partially Date Surveyed: N/A  
 23. Cultural Resources Identified in field? (if yes, consult with staff archaeo):  No  Yes  
 24. Probability of Cultural Resources:  None  Low  Medium  High  
 25. Threatened/Endangered Species: Field Survey Completed:  No/Not Needed  Yes  
 Species: N/A  
 26. Water Rights:  No  Yes Water Right Info: N/A  
 27. Irrigation District: N/A  
 28. Depth of Nearby Wells: 60'  
 29. On-site/Distance to Existing Electrical Service and what type: 0.1 mile  
 30. Electrical service provider/PUD Name: Pacific Power  
 31. Potential for Alternative Energy: None  
 32. Access: Is very difficult; 6 aerial miles to Hwy but must take 50 miles of US Forest Service roads to reach property. Last few miles must be walked.  
 33. Legal Access:  No  Yes Gov't Maintained Road:  No  Yes Road Name/# N/A  
 34. Easements (to/from whom and what type): N/A  
 35. Interior Roads/Trails/Condition: Poor  
 36. Known Property Boundaries/Corner Survey Markers: None Known  
 37. Nearest DSL Parcel (direct): 9 miles to southwest  
 38. Topography/Shape of Parcel: Predominately very steep, rectangular  
 39. Vegetation Cover (dominant species, condition, % coverage): Very rocky soil, some grasses, regenerating young pre-merch timber  
 40. Site Structures/Improvements: N/A  
 41. View Site/Water Features/Other amenities: Mountains  
 42. Evidence of Prior Impacts/Activities (wildfire, crops, historic home site): Fire in 2009; remaining timber was harvested

- 43. Lease History:** None known
- 44. Current Use:** Timber/recreation
- 45. Agriculture/Timber Potential:** NRCS did not rate the soil here for timber
- 46. Soil Type:** 10 different types, predominately rocky with 60%-90% slopes
- 47. NRCS Soil Class:** 60-90% Slopes & Rocky **48. MB & G Forest Rating:** N/A
- 49. Age of Timber:** 9 years **50. Timber Volume:** N/A
- 51. Estimated Timber Value:** \$ 0
- 52. Site Index:** N/A **53. Type of Timber:** Doug-fir, ponderosa pine, larch
- 54. % Annual timber volume increase:** N/A
- 55. Fire District/Protection Area:** Northeast District # 97
- 56. Property Expenses (fire protection costs):** \$388.61 **57. Other Holding Costs:** \$0
- 58. Assessor's RMV:** \$169,890 **59. Tax Year:** 2018
- 60. Estimated Market Value:** \$105,000 **61. Source:** Tyler Woods Appraisal Services, LLC
- 62. Known/Proj. AUMs:** N/A **63. Annual Lease Amt.:** \$ N/A
- 64. 20 year Investment Return based on timber/lease income:** N/A
- 65. Rate of Return on Asset Value (%):** N/A
- 66. Present Value based on Current/Projected Income:** N/A
- 67. Potential developments necessary to increase marketability/land value (ie access, utilities):** N/A
- 68. Est. Annual Income after Development (Improvements/Land-Use Action):** N/A
- 69. Highest and Best Use Conclusion:** Timber/recreation
- 70. Comments:** This property is an in-holding, surrounded by US Forest Service land. This parcel was allowed to burn in 2009 by the USFS that owns the surrounding land. The USFS' land management plan for the surrounding land was designated "allow to burn" if a forest fire happened in the area. The property has rocky soils that were not rated for timber management by NRCS and has predominately 60%-90% slopes. After the fire, the property was logged and re-planted. A DOGAMI study was completed on Sept. 19, 2018 that showed there was little potential for subsurface minerals or geothermal rights.
- 71. Originator:** Clara Taylor **Date:** January 28, 2019
- 72. Reviewer:** Amber Ross **Date:** February 22, 2019

## Land Evaluation Form Instructions

General Instructions: Do not leave a portion of this form blank. If information is unavailable or not applicable please indicate why. This will ensure that everyone who reviews the information knows that the question was not skipped or overlooked, but there is a reason why the question was not addressed.

1. **Evaluation done in: \_\_Office \_\_Field:** By the time the form is completely filled out, both office and field should be checked and initialed by the staff person(s) who worked on the form. Some of the information on the form comes from DSL records, appraisals, GIS data etc. Some information needs to be completed on site in the field. (Real Property staff)
2. **Parcel Name:** DSL name given to parcel, based on names of nearby topographic features, or named county roads. Parcel names may not be derived from names of previous lessees or any person. Do some research before naming the parcel as it may already have been named.(Property Manager)
3. **County:** what county or counties the parcel is located within (Property Manager)
4. **Map & Tax Lot** Township Range Section and tax lot number of parcel being evaluated (Property Manager)
5. **Site #:** In LAS, search and navigate to the Land Parcel page for the parcel being evaluated. The site # is on the first tab called "Land Parcel Site" (Property Manager)
6. **LAS #** In LAS, search and navigate to the Land Parcel page for the parcel being evaluated. The LAS # is the "parcel Number" at the top of the page. (Property Manager)
7. **GIS Acres** Acreage of parcel. Derived from the DSL Land GIS Layer acreage information (Property Manager)
8. **DSL Land Class** Land class code found in LAS, this is set up as a drop down menu in the form- (Property Manager)
  - a. AGR – Agriculture
  - b. FORS - Forest
  - c. ICR – Industrial/Commercial/Residential
  - d. MER- Mineral Energy
  - e. RNGL – Rangeland Leased
  - f. RNGU - Rangeland Unleased
  - g. SPEC – Special Stewardship
  - h. SS - Waterway (Submerged/Submersible)
9. **AMP Category** Drop-down Menu in form. Indicate what parcel is/should be listed as under the DSL Real Estate Asset Management Plan (REAMP) Categories. Category 1 indicates parcel has "Long-Term Potential" meaning that the parcel currently or has the potential to generate revenue over the long term. Category 2 indicates that the parcel has the potential to generate revenue over the short-term (5 years or less). Category 3 indicates that the parcel is currently generating revenue (i.e. currently under lease). Category 4 indicates that parcel is not currently generating

revenue, and/or there is minimal potential to generate revenue in the future, either short or long term.

- 10. Certified Forest** Oregon Department of Forestry Certified forest. This information is found in LAS. (Property Manager)
- 11. Leased** Is the parcel under evaluation currently under a DSL lease? If yes please provide the Lease number and type of use. (Property Manager)
- 12. Ownership Type** DSL ownership of parcel, either Surface only, Subsurface only, or Surface and Subsurface ownership. This information is found in LAS and is set up as a drop down menu on the form. (Property Manager)
- 13. Mineral Rights** Does DSL Own the mineral rights to the parcel? Check Clear Lists (Yes or No) (Property Manager, Ownership Specialist)
- 14. Adjacent Property Owners & Use** List by cardinal direction the name of the property owner/BLM District/National Forest Name and the predominant use on the adjacent lands (e.g. *North Boundary of parcel is Malheur National Forest, East Boundary is BLM-Burns District, South Boundary is privately owned by John Doe at 12345 Road St Bend, OR 97701 (Irrigated agriculture-alfalfa), West boundary is privately owned by Joe Smith at PO Box 000 Pennsylvania, CA 12345 (rock quarry)*) (Asset Analyst, Real Property Staff-field work)
- 15. Zoning** What is the county zoning for the parcel in question? Must go to the county website/assessor tax lot records to get this information. (Asset Analyst)
- 16. Developable Parcel:** Use county zoning information, appraisal information to determine if parcel is buildable. Include minimum acreage required for home site (Asset Analyst)
- 17. Minimum Acres required for home site:** Note minimum acreage required for a home site based on county zoning (Asset Analyst)
- 18. Lot of Record:** Need to work with county to determine this, must be completed prior to sale (Asset Analyst)
- 19. Potential for Zone Change/Partition:** Determine this based on zoning and development information from the county. (Asset Analyst)
- 20. Wildlife Overlay** This is information that is checked as part of county zoning information. DSL also has some wildlife layers in the GIS files (from ODFW). Need to list all wildlife zones by species here. (Asset Analyst)
- 21. Cultural-Historic:** Parcel Review is where the Staff Archaeologist has completed a SHPO information request for the parcel in question. (Yes or No) (Archaeologist)
- 22. Previously Field Surveyed:** Has any Archaeological field survey been completed at any time for any part or the entire parcel? If yes or partially, list the date(s) of the survey(s). (Archaeologist)
- 23. Cultural Resources Identified in the Field:** During any site visits by DSL staff, was there any cultural or historic resources found on site? If no, check the no box. If yes, check the yes box and consult with DSL staff Archaeologist to determine next steps. Parcel may require full pedestrian survey for cultural resources. (Real Property Staff, Archaeologist)
- 24. Probability of Cultural resources:** Completed by staff archaeologist, answer None, Low, Medium or High. (Archaeologist)

- 25. Threatened/Endangered Species:** Complete an ORBIC data request, perform field survey if necessary, list species (plant and animal) found on site. If no T & E Species indicate "none" (Property Manager)
- 26. Water Rights:** Look up water rights information on OWRD Website [www.oregon.gov/OWRD](http://www.oregon.gov/OWRD) go to Maps, click on Interactive Water Right Maps, click on Oregon Water Resources Web Mapping Program. This will get to the interactive web map. Once there, use the map tools to navigate to the parcel location. If there are water right on the parcel, list type and number (i.e. permit, certificate, etc.), name of water right holder, preference date, type of use, Point of Diversion (POD) or Place of Use (POU) and any other relevant information. (Property Manager)
- 27. Irrigation District:** Name of irrigation district parcel lies within. If parcel is not within an irrigation district indicate "No District" (Property Manager)
- 28. Depth of Nearby Wells:** Information from the OWRD Website from recorded well logs. Go to OWRD website at [www.oregon.gov/OWRD](http://www.oregon.gov/OWRD), go to Maps, click on Interactive Water Right Maps, click on Oregon Water Resources Web Mapping Program. This will get to the interactive web map. Once there, use the map tools to navigate to the parcel location and look for wells (POD's) in the surrounding area (within 2 miles). Click on the Identify tool and scroll down to the well logs. Click on the well logs to determine depth of the well. List well depths on the form. (Property Manager)
- 29. On site/Distance to existing electrical service and what type:** Note where, and in what direction the nearest powerline/transmission line is located from the parcel. Note if the line is a single-phase, three-phase etc. or transmission line. (Real Property Staff-Field work)
- 30. Electrical Service Provider/PUD name:** Note who the electrical service provider is for the area. PUD is the Public Utilities District, include this name as well. (Property Manager)
- 31. Potential for Alternative energy:** Check available websites for solar, wind and geothermal energy potential for the parcel being evaluated. List the ratings (if any) for each type here. If no potential for all or any type of alternative energy indicate "no wind potential", "no geothermal potential", or "no solar potential" (Property Manager)
- 32. Access:** Detail any roads (legal or not) that can be used to gain access to the parcel. Include condition of road, type of road, any road names or numbers, or indicate no roads at all. If access is through adjacent private ownership please indicate that as well. (Real Property Staff-whomever does the field work)
- 33. Legal Access:** Indicate yes or no if there is legal access to parcel. If it is a government maintained road (county, BLM, USFS) list yes or no and include the road name or number. (Real Property Staff-Field Work)
- 34. Easements (to/from whom and what type):** List any easements on the property. Include deed book and page description and indicate if deed book is DSL or County. (Property Manager, Asset Analyst)
- 35. Interior Roads/trails/condition:** if there are any roads within the boundaries of the parcel being evaluated describe them here (Real Property Staff-Field Work)
- 36. Known Property Boundaries/Corner Survey Markers:** Indicate and describe the location of any survey markers, brass caps, section corners, witness placards etc. here. (Real Property Staff-Field Work)

- 37. Nearest DSL Parcel:** Describe how far away from the parcel being evaluated the next nearest DSL owned parcel is located. Include what direction and indicate the TRS of the nearest parcel. (Property Manager)
- 38. Topography/Shape of Parcel:** Describe the shape and topography of the parcel. Indicate any distinguishing features such as natural water, slopes etc. (Real Property Staff-Field work, and office work)
- 39. Vegetation Cover:** List the dominant species present in common names, indicate vegetative condition, and percent cover of trees, shrubs and grasses)
- 40. Site Structures/Improvements:** Describe any fences, irrigation structures, water developments, agriculture etc. Include location of structures and indicate size, or length and condition of any structures found on site. (Real Property Staff-Field Work)
- 41. View Site/Water Features/Other Amenities:** Describe any aesthetically pleasing attributes found within and around the parcel. Anything that would be potentially pleasing to a buyer (Real Property Staff-Field Work)
- 42. Evidence of Prior Impacts/Activities:** Describe the location and condition of any evidence of wildfires, crops, timber/logging, recreation or any other historic use. (Real Property Staff-Field Work)
- 43. Lease History:** Was the parcel ever, or is currently leased? Include lease number, Lessee Name, and use. This information can be found in LAS and in old files in Bend and Salem offices (All Real Property Staff)
- 44. Current Use:** Describe any current uses on the property. If known, include the name of who is using the parcel. (All Real Property-Field Work)
- 45. Agriculture/Timber Potential:** Describe the potential for agriculture and timber harvest based on conditions on site i.e. topography vegetation. (Real Property Staff-field work)
- 46. Soil Type:** Describe the soils on site from the NRCS Soils Web Mapping tool. If parcel is in a county where the soil survey is unavailable, describe the soils from what was observed during the site visit. (Property Manager-Real Property Staff)
- 47. NRCS Soil Class:** List the soils class from the NRCS Soils Web Mapping tool. (Property Manager, Asset Analyst)
- 48. MB & G Forest Rating:**
- 49. Age of Timber:** Average age of timber stand, this information comes from the appraisal and timber cruise. (Asset Analyst)
- 50. Timber Volume:** Information comes from the timber cruise (Asset Analyst)
- 51. Estimated Timber Value:** This figure from the timber cruise and appraisal (Asset Analyst)
- 52. Site Index:** Indicate what site index was used for the timber cruise (i.e. either 50 or 100 year indexes) (Asset Analyst)
- 53. Type of Timber:** What timber species are found on parcel, and what species were accounted for in the timber cruise? (Asset analyst)
- 54. % Annual timber volume increase:** What is the percent annual timber volume increase used in the timber cruise? (Asset Analyst)
- 55. Fire District/Protection Area:** Indicate if parcel is under ODF Fire Protection, within the boundaries of a Rangeland Fire Protection Area (RFPA), and/or under the BLM Fire Suppression agreement. List the name of the RFPA if appropriate. (Property Manager)

- 56. Property Expenses:** List any property expenses such as fire protection costs (ie funds paid to an RFPA or to ODF). Determine this amount by acre. (Property Manager)
- a. For RFPA's: take full amount paid to RFPA and determine how many DSL acres are within that RFPA boundary. Then determine the per acre rate for fire protection and multiply that amount by the number of acres within the parcel in question.
  - b. For ODF fire protection: Determine the rate for protection from the previous full calendar year, multiply this number by the number of acres within the parcel in question.
- 57. Other Holding Costs:** This is intended to capture the holding costs to DSL. For example: If the parcel in question is classified as Rangeland Unleased (RNGU), the holding costs to DSL would come out of the Rangeland Program costs. To determine this amount on a per acre basis, take the program expenditure amount from the previous calendar year and divide that amount by the total number of acres classified as Rangeland. That will give you the per acre costs for all lands classified as Rangeland. Then take that amount and multiply it by the number of acres within the parcel being evaluated.
- 58. Assessor's RMV:** This is the county assessor's Real Market Value. This information must come from the county as it is updated annually. (Asset Analyst)
- 59. Tax Year:** Indicate what tax year the Assessor's RMV value is from. (Asset Analyst)
- 60. Estimated Market Value:** This value comes from the appraisal. If marketable timber on parcel, indicate what the total market value would be with the timber and without the timber. (Asset Analyst)
- 61. Source:** Indicate the source of the appraisal. I.e. who completed the appraisal? (Asset Analyst)
- 62. Known/Projected AUM's:** List the AUM amount the parcel can support. This information either from appraisal, NRCS Soils web mapping tool, or on site determination. (Rangeland Manager)
- 63. Annual Lease amount:** Indicate what the Grazing lease rate would be given the AUM amount, or what the current lease fee is if parcel is under lease. (Rangeland Manager)
- 64. 20 year Investment Return based on Timber/lease income:**
- 65. Rate of Return on asset value (%):**
- 66. Present Value based on Current/Projected Income:**
- 67. Potential developments necessary to increase marketability/land value (i.e. access, utilities):** List what developments DSL could complete prior to sale to increase property value prior to sale, also have an option to say none. (Asset Analyst)
- 68. Estimate Annual Income after Development (Improvements/Land use action):** Answer based on question 31 above. Determine value of property after any developments and improvements. Also, determine what income could be if improvements were completed and DSL leased out the property (i.e. for agriculture use) (Asset Analyst/Property Manager)

- 69. Highest and Best Use Conclusion:** What is the overall highest and best use of the property? What action, either lease for a specific purpose, or sale would bring the highest value to the Common School Fund? (All Real Property staff)
- 70. Comments:** Note any extra comments or information about the parcel here.
- 71. Originator:** Names or initials of any and ALL DSL Staff that contributed information to this evaluation and the date the information was added.
- 72. Reviewer:** Filled out once Eastern Region Manager has reviewed the form and is satisfied by the information contained. Include date the form was reviewed and accepted.



# Oregon

Kate Brown, Governor

## Appendix C

### Department of State Lands

775 Summer Street NE, Suite 100  
Salem, OR 97301-1279  
(503) 986-5200  
FAX (503) 378-4844  
[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

Kate Brown  
Governor

Dennis Richardson  
Secretary of State

Tobias Read  
State Treasurer

## State Land Board

Regular Meeting  
June 12, 2018  
Agenda Item 4

### SUBJECT

Request for approval to initiate the review and determination of the sale of the Bear Creek property with its land, subsurface mineral and geothermal rights, a 158-acre tract in Wallowa County.

### ISSUE

Whether the Land Board should authorize the Department to initiate the review and determination for the potential land, subsurface mineral and geothermal rights sale of the Bear Creek property in Wallowa County (Appendix A).

### AUTHORITY

Oregon Constitution, Article VIII, Sections 2 and 5; pertaining to the Common School Fund and land management responsibilities of the State Land Board.

ORS 273.055; relating to the power to acquire and dispose of real property.

ORS 273.171; relating to the duties and authority of the Director.

ORS 273.775-273.790; Mineral and Geothermal Resource Rights.

OAR 141-067; relating to the sale, exchange and purchase of state land.

OAR 141-067-0320; relating to procedures for the sale, exchange, or release and transfer of mineral and geothermal resources.

## **SUMMARY**

On June 1, 2007, the State Land Board approved initial due diligence of the Bear Creek tract along with 23 other isolated tracts in Baker, Union, Umatilla and Wallowa Counties. Some of the isolated tracts were sold at auction but this tract was held as an inholding for the U.S. Forest Service (USFS) as the Wallowa Whitman National Forest surrounds the property. At that time, DSL staff met with USFS staff and were unable to find equivalent exchange land or funding for purchase of the property. The tract is 158.2 acres of steep forestland with limited access.

In 2009, a forest wildfire burned 83 acres of the property. Twenty-one acres had understory damage while 62 acres received damages of between 50-100%. In 2015, DSL filed a claim against the United States Forest Service for the value of the timber. This claim was denied.

In May 2017, the Rocky Mountain Elk Foundation submitted an application to purchase the surface land on behalf of the U.S. Forest Service. In January 2018, the Foundation submitted an application to purchase the subsurface minerals and geothermal rights for the same tract.

The tract is an isolated in-holding within the Wallowa Whitman National Forest that is located next to a USFS campground. The property is steep, has limited access and little potential for generating revenue for the Common School Fund.

## **RECOMMENDATION**

The Department recommends that the State Land Board authorize the Department to initiate the review and determination for the potential sale of the Bear Creek property, with its surface, subsurface and geothermal rights, a 158.2-acre tract in Wallowa County located at Township 1S Range 42E, Section 16, Tax Lot 1101.

## **APPENDIX**

A. Map



# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

Kate Brown  
Governor

Bev Clarno  
Secretary of State

Tobias Read  
State Treasurer

## State Land Board

**Regular Meeting**  
**June 11, 2019**  
**Agenda Item 3**

### **SUBJECT**

Request for approval of a term easement for a fiber optic cable in Township 04 South, Range 11 West, Section 01 DD in Tillamook County.

### **ISSUE**

Whether the State Land Board (Land Board or Board) should approve a request from Edge Cable Holding USA, LLC (Edge Cable) for a twenty (20) year easement to maintain the fiber optic cable crossing the Territorial Sea.

### **AUTHORITY**

Article VIII, Section 5 of the Oregon Constitution; requiring the Land Board to “manage lands under its jurisdiction with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management.”

ORS 273.171; relating to the duties and authority of the Director.

OAR 141-083-0800 to 141-083-0870; establishing procedures for granting easements and rights-of-way for fiber optic and other cables on state-owned submerged and submersible land within the territorial sea.

## **BACKGROUND**

On November 05, 2018, Edge Cable submitted their application for an easement for a fiber optic cable crossing the Territorial Sea to the Department of State Lands (DSL or Department).

Pursuant to OAR 141-083-0830(3) a non-refundable application fee of \$5,000 was submitted. As permitted in OAR 141-083-0850(2), the Department required the applicant to obtain a surety bond in the amount of \$20,000 to ensure that they will perform in accordance with all terms and conditions of the easement.

The easement template includes the following “future imposition” clause:

*This easement is granted with the express understanding and provision that it may be subject to the future imposition by GRANTOR of a consideration payment (if not already subject to one under current law), and/or usage fee to be established by the Oregon State Land Board as authorized by law.*

As companies reviewed draft easements with this “future imposition” clause, some wanted to avoid the uncertainty of a future unknown fee and asked to have the clause removed. Companies were willing to pay a fee to remove the clause if the state would waive its right to impose such a fee in the future, at least for the term of the contract. This allowed the applicant some assurance that future legislation would not lead to the future imposition of a large or annual fee.

Therefore, in accordance with past practice, DSL waived any potential future impositions or annual fees in lieu of a one-time payment of \$300,000.

The project proposes to install an ultra-high-speed fiber-optic cable system. This cable system aims to provide a large capacity direct link between the United States and Asia. Installation of the cable landing in Tierra del Mar will be achieved via a horizontal directional drilling (HDD) bore pipe. The undersea cable will cross the Territorial Sea and will be trenched where possible. The proposed route was coordinated with the assistance of Oregon Fisherman’s Cable Committee (OFCC) and was selected for its potential to achieve cable burial and for its avoidance of large rock outcrops, both of which are a desired result when installing a submarine cable.

The project requires additional permits before construction can begin as planned. The project requires an Ocean Shores Permit from the Oregon Parks and Recreation Department, a 404-discharge permit from the US Army Corps of Engineers (USACE), and a removal/fill permit from the Department. Each of those permits have been issued. However, on April 18<sup>th</sup> the Department received notice that OPRD’s decision to approve Edge Cable’s Ocean Shores Permit (#2900-18) has been appealed. In addition, Conditional Use and Development Permits are pending in Tillamook County.

## **PUBLIC INVOLVEMENT**

Pursuant to OAR 141-083-0840(4), the application was circulated to various local, state and federal agencies as well as other interested persons for review and comment. The Department originally opened the Public Review Process (PRP) on November 27, 2018 and circulated the application for thirty (30) days. Due to issues with the corresponding removal/fill PRP, the application was circulated for an additional twenty-one (21) days beginning February 1<sup>st</sup>, 2019

On February 19<sup>th</sup>, 2019, the Department held a public hearing and informational meeting in the community of Tierra del Mar. Community residents were invited to attend to learn more about the proposed project, ask the applicant questions regarding their easement application and proposed use of state-owned land, and to submit a public comment into the record. Six (6) written comments were submitted at the public hearing. These comments focused on the possible environmental effects to threatened and endangered species that utilize the Territorial Sea, physical and geological impacts to community members' homes, the safety measures and contingency plans necessary for the work, the public need for this project, and any effects that the cable would have on the reef system during construction.

All public comments received by the Department were provided to Edge Cable. Edge Cable provided responses to all comments and addressed all relevant concerns raised. Numerous comments received by the Department from the public focused on issues outside of the Department's jurisdiction. For example, concerns about noise, vibration, dust and traffic during construction are under the regulatory purview of Tillamook County.

## **RECOMMENDATION**

Pursuant to OAR 141-083-0810(9), approval of an easement by the State Land Board shall be conditional and not valid until the applicant has received all other authorizations required by the Department and other applicable local, state, and federal governing bodies for the placement of the cable in the Territorial Sea. As stated in OAR 141-083-0810, the placement of fiber optic and other cables on state-owned land within the Territorial Sea is recognized by the Department as a conditionally allowable use of that land. The proposed cable route protects public trust values of commerce, navigation, fisheries and recreation by: (1) sufficiently burying the cable in state waters, (2) minimizing conflicts with other ocean users and industries, and (3) avoids, when possible, rocky substrates that would prevent burial. The Department of State Lands recommends that the State Land Board approve the term easement to Edge Cable Holding USA, LLC (61603-EA) to maintain and operate a fiber optic cable on, over, under or across the Territorial Sea.

**APPENDICES**

A. Map

B. Easement 61603-EA



Esri, HERE, Garmin, © OpenStreetMap contributors, Esri, HERE, Garmin, © OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS

Esri, HERE, Garmin, © OpenStreetMap contributors, Esri, HERE, Garmin, © OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

**APPENDIX A**  
**61603-EA**  
**Beginning in**  
**T04S, R11W Section 01DD**  
**Territorial Sea**  
**Tillamook County**

- ▲ Points of Beginning
- Description lines
- Use Area

This map depicts the approximate location and extent of a Department of State Lands Proprietary authorization for use. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

0 1,300 2,600

Feet



Map Projection:  
Oregon Statewide Lambert  
Datum NAD83  
International Feet  
State of Oregon  
Department of State Lands  
775 Summer St NE, Suite 100  
Salem, OR 97301  
503-986-5200  
www.oregon.gov/DSL  
Date: 4/19/2019



**STATE OF OREGON**  
**Department of State Lands**

**COMMUNICATION CABLE EASEMENT AGREEMENT**  
**61603-EA**

THIS COMMUNICATION CABLE EASEMENT AGREEMENT (this "Agreement"), effective as of \_\_\_\_\_, 2019, is made by and between the State of Oregon, by and through its Department of State Lands ("GRANTOR"), and GU Holdings Inc., a Delaware corporation ("GRANTEE").

1. Grant of Easement. Pursuant to ORS 758.010 and OARs 141-083 and 141-122 (as may be amended at any time and from time to time), GRANTOR hereby grants to GRANTEE an easement (the "Easement") to construct, maintain, operate and replace a submarine fiber optic cable line, known as the JUPITER cable system (the "Cable"), in, over, under and across GRANTOR-owned submerged and submersible land of the Pacific Ocean, in or adjacent to Tillamook County, Oregon, described as the Easement Parcel in Section 2 below. This Agreement does not convey an estate in fee simple of the Easement Parcel. The grant contained herein is for an easement only, and title to the Easement Parcel remains in GRANTOR.

2. Easement Parcel. The Easement runs in, over, under and cross a fifteen foot (15.00') wide swath of shore and seabed located seven and half feet (7.50') on either side of the proposed centerline described below (the "Easement Parcel"). The Easement Parcel includes the "Shore Area" (GRANTOR'S submersible land, i.e., from the ordinary high tide to the ordinary low tide, pursuant to ORS 390.615) and the "Territorial Sea Area" (GRANTOR'S submerged land, i.e., from the ordinary low tide to the three-mile limit of the Territorial Sea (as defined in ORS 196.405(5) and OAR 141-083-0280(11) and pursuant to ORS 274.710).

The proposed centerline of the Easement Parcel is further described as follows:  
All latitude and longitude are in degree decimal minutes:

Beginning at the northeast corner of Tax lot 3200, Section 01 DD, Township 04 South, Range 11 West, Willamette Meridian, Tillamook County, Oregon, (located approximately Lat: 45° 14.8733' / Long: -123° 57.991') more particularly described as follows:

thence to Point 1, 45° 14.8793', -123° 58.0183';

thence to Point 2, 45° 14.9053', -123° 58.1185';

thence to Point 3, 45° 14.9250', -123° 58.1945';

thence to Point 4, 45° 15.0250', -123° 58.5799';

thence to Point 5, 45° 15.0536', -123° 58.6902';

thence to Point 6, 45° 15.0583', -123° 58.7082', the approximate end of HDD (horizontal directional drilling);

thence to Point 7, 45° 15.0727', -123° 58.7504';  
 thence to Point 8, 45° 15.1053', -123° 58.8461';  
 thence to Point 9, 45° 15.1652', -123° 58.9832';  
 thence to Point 10, 45° 15.3206', -123° 59.3391';  
 thence to Point 11, 45° 15.7174', -124° 00.2480';  
 thence to Point 12, 45° 15.8486', -124° 00.8069';  
 thence to Point 13, 45° 15.9411', -124° 01.6467';  
 thence to Point 14, 45° 15.9657', -124° 01.8696';  
 thence to Point 15, 45° 15.9927', -124° 02.2708' to the approximate extent of the Three (3) Mile Limit of the Territorial Sea.

The Easement parcel contains 8.28 acres (360,676 square feet), more or less, and is shown on Exhibit A.

3. Payment. GRANTEE understands and acknowledges that the Easement may be granted at no charge, pursuant to current Oregon state law and GRANTOR'S administrative rules, but that, if Oregon state law changes during the term of this Agreement, GRANTEE may be subject to future imposition, by GRANTOR, of a consideration payment and/or usage fee that would be established by the Oregon State Land Board as authorized by law. In order to avoid the potential future imposition of a consideration payment and/or usage fee, GRANTEE has paid to GRANTOR, concurrently with the execution of this Agreement, a one-time payment of Three Hundred Thousand Dollars (\$300,000.00), the receipt and sufficiency of which is acknowledged by GRANTOR. No additional consideration, payments, usage fees and/or rents shall be due or may be imposed as consideration for the rights granted in this Agreement, regardless of any amendment to statutes or administrative rules governing this Agreement that may be enacted during the original term of this Agreement. Notwithstanding the foregoing, GRANTEE acknowledges and agrees that it shall not be entitled to any rebate or reimbursement of all or any portion of the consideration paid for the Easement if for any reason this Agreement is not renewed or is terminated pursuant to the provisions herein.

4. Term. The term of this Agreement is twenty (20) years.

5. Renewal. GRANTEE, subject to continued compliance with the terms and conditions of this Agreement, shall have the right to renew this Agreement for an additional twenty (20) -year term, in accordance with the governing law and applicable rules of GRANTOR at the time of renewal.

6. Construction of Cable.

(a) Construction of the Cable shall conform to standards and specifications set by the U.S. Army Corps of Engineers and the U.S. Coast Guard.

(b) Any blasting which may be necessary for the construction of the Cable shall be performed according to the laws of the State of Oregon and the rules of its agencies, including, without limitation, Oregon Department of Fish and Wildlife's in-water work windows.

(c) GRANTEE shall supply to GRANTOR an as-laid survey for the Cable within ninety (90) days after completion of construction.

7. Surety Bond. GRANTEE shall furnish to GRANTOR a surety bond in the amount of \$20,000.00 (or, in lieu of the surety bond, an equivalent cash deposit or certificate of deposit), which names the State of Oregon as co-owner, to ensure that GRANTEE performs construction of the Cable in accordance with all terms and conditions of this Easement, to be held until construction of the Cable is completed.

8. Maintenance and Repair in Shore Area. If maintenance or repair is required within the Shore Area, GRANTEE shall follow and adhere to the Oregon Parks and Recreation Department OARs 736-020 – Beach Construction/Alteration Standards (as may be amended at any time and from time to time).

9. Inspection. GRANTEE shall inspect the Cable and related fixtures at least every five (5) years and after any major geologic event, such as subduction-zone earthquakes, to ensure continued burial (from the entry of the Cable on the Shore Area to the end of HDD) and location integrity of non-buried cable (from the end of the HDD to the remainder of the Cable on the Easement Parcel). GRANTEE shall promptly perform any maintenance or repair shown to be necessary after such inspections, to ensure continued burial or location integrity of the Cable.

10. Restoration. The Easement Parcel shall be restored to a condition acceptable to GRANTOR, in GRANTOR'S discretion, as soon as construction or maintenance is completed.

11. Vegetation and Mineral Resources.

(a) Except as expressly authorized in writing by GRANTOR, GRANTEE shall not:

(i) cut, destroy or remove, or permit to be cut, destroyed or removed, any vegetation from the Easement Parcel (provided, however, that routine right-of-way maintenance, including vegetation trimming, is allowed without GRANTOR'S express authorization); or

(ii) remove from the Easement Parcel any sand and gravel, or other mineral resources, for commercial use or sale.

(b) GRANTEE shall compensate GRANTOR for the fair market value of any commercially valuable timber or sand and gravel, or other mineral resources, in the Easement Parcel that must be removed during or after construction or maintenance of the Cable, or which cannot be developed because of GRANTEE'S use of the Easement Parcel.

12. Damage; Fines.

(a) GRANTEE shall pay to GRANTOR the current market value, as determined by GRANTOR, for any unnecessary and non-approved damages to the Easement Parcel or surrounding seabed or shoreline caused by construction or maintenance of the Cable.

(b) GRANTEE shall be responsible for the payment of any fines or penalties charged against the Easement Parcel resulting from GRANTEE'S failure to comply with laws or regulations affecting the Easement Parcel.

13. Conservation. GRANTEE shall conduct all operations within the Easement Parcel in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to soil erosion, or the introduction or spread of noxious weeds or pests.

14. Compliance with Other Agreement and GRANTEE'S Applications. In all of its activities related to the Easement, including construction, maintenance and repair, GRANTEE shall strictly comply with the following:

(a) "Agreement between the Oregon Fishermen's Cable Committee, Inc. and Edge Cable Holdings USA, LLC as Relates to the JUPITER Cable System" dated June 20, 2018, attached as Exhibit B;

(b) All of the information provided by or on behalf of GRANTEE in GRANTEE'S "Easement Application Form for 'Territorial Sea' Fiber Optic Cable," dated November 5, 2018; and

(c) All of the information provided by or on behalf of GRANTEE in GRANTEE'S "Joint Permit Application," dated November 9, 2018.

15. Prior Notification to GRANTOR. GRANTEE shall notify GRANTOR in writing at least ninety (90) days:

(a) prior to any pre-planned change in the location of the Cable;

(b) prior to any change in ownership of the Cable;

(c) after discovery of any change in the location of the Cable resulting from accidental contact or geologic or other natural causes; or

(d) prior to an abandonment or termination of the use of the Cable.

16. Prior Consent from GRANTOR. GRANTEE may not, without prior written approval from GRANTOR:

(a) change the type of use authorized by this Agreement;

(b) expand the number of authorized developments or uses of the Easement;

(c) change the location of the Easement Parcel; or

(d) permit other persons to utilize the Easement Parcel for uses and developments requiring separate written authorization by GRANTOR pursuant to the administrative rules governing the granting of easements or other GRANTOR requirements.

17. No Interference. Nothing in this document may be construed as permission, except during construction or maintenance periods, to GRANTEE to interfere with navigation or fisheries, or reduce the public's rights to the free and unimpeded use of the navigable waters of the State of Oregon within the area of the Easement Parcel; provided, however, that to the extent necessary

to facilitate construction and maintenance of the Cable, GRANTEE may so interfere, but shall keep such interference to an absolute minimum. GRANTEE shall perform and complete all such construction and maintenance of the Cable as promptly as is reasonable.

18. Requirements of Regulatory Agencies. In its activities related to the Easement, GRANTEE shall comply with all applicable requirements of the regulatory agencies of the State of Oregon, including, without limitation, the Oregon Department of Fish and Wildlife.

19. Assessments. GRANTEE shall pay all assessments that may be legally charged on public lands which are levied against the Easement Parcel, whether or not such assessments have been levied against the Easement Parcel or GRANTOR by the assessing agency.

20. Nondiscrimination. GRANTEE shall use the Easement Parcel only in a manner, or for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.

21. Nonuse. If the Easement Parcel is not used for a period of five (5) consecutive years, this Agreement may be terminated by written notice from GRANTOR to GRANTEE at its last known address. Upon termination or expiration of this Agreement, GRANTEE shall have one (1) year to remove the Cable and appurtenances from the Easement Parcel. However, if GRANTEE demonstrates to GRANTOR'S satisfaction that removal of the Cable will be more detrimental to the Easement Parcel than leaving it in place, GRANTEE shall be permitted to abandon the Cable in place.

22. Hold Harmless. GRANTEE shall indemnify, defend and hold GRANTOR harmless from any and all claims suffered or alleged to be suffered as a result of GRANTEE'S use of the Easement.

23. Open to Public. The Easement Parcel shall remain open to the public for recreational and other non-proprietary uses unless restricted or closed to public entry by GRANTOR.

24. GRANTOR'S Reservation of Rights.

(a) GRANTOR reserves the right to lease or otherwise utilize the Easement Parcel in a manner and for uses that will not be incompatible with the primary use for which the Easement is granted.

(b) GRANTOR has the right to grant additional easements within the Easement Parcel, subject to the provisions of the administrative rules governing the granting of easements.

(c) GRANTOR and its employees, agents and contractors shall have the right to enter into and upon the Easement Parcel at any time for the purposes of inspection or management.

25. Assignment of Agreement. This Agreement may be assigned, pursuant to the provisions of OAR 141-122-0080.

26. Default. A "Grantee Default" shall occur if:

(a) GRANTEE fails to comply with or fulfill any term, condition or obligation of this Agreement (except with regard to Section 17 above), within thirty (30) days after notice from GRANTOR specifying the nature of the failure with reasonable particularity or, in the event such failure cannot

reasonably be cured within such thirty (30) -day period, then within such time as the failure can be cured with reasonable good faith and diligence; provided, however, that such cure period shall not exceed one hundred eighty (180) days; or

(b) GRANTEE fails to comply with Section 17 above within ten (10) days after notice from GRANTOR specifying the nature of the failure with reasonable particularity; or, in the event such failure cannot reasonably be cured within such 10-day period, then within such time as the failure can be cured with reasonable good faith and diligence; provided, however, that such cure period shall not exceed thirty (30) days.

27. Remedies. Upon any Grantee Default, GRANTOR may exercise any one or more of the following remedies:

(a) At GRANTEE'S cost and expense, GRANTOR may perform GRANTEE'S unperformed obligations that gave rise to the Grantee Default, and charge all such costs and expenses to GRANTEE pursuant to this Agreement, which GRANTEE shall pay within thirty (30) days after GRANTOR delivers an invoice therefor, together with reasonable supporting documentation of such costs and expenses.

(b) GRANTOR may terminate this Agreement.

(c) GRANTOR may sue periodically to recover damages as they accrue without barring a later action for further damages.

(d) GRANTOR shall be entitled to recover from GRANTEE any and all damages arising from a Grantee Default, including all costs and expenses of curing Grantee Default, with any amounts due and owing to accrue interest at the rate of eight percent (8%) per annum.

(e) The foregoing remedies in this Section 27 shall be in addition to and shall not exclude any other remedy available to GRANTOR in law or equity.

28. Governing Law; Consent to Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, suit action or proceeding ("Claim") between GRANTOR (or any other agency or department of the State of Oregon) and GRANTEE that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State of Oregon. In no event shall this Section 28 be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. GRANTOR and GRANTEE each hereby consents to the exclusive jurisdiction of such court, waives any objection to venue and waives any claim that such forum is an inconvenient forum.

*[Remainder of page intentionally left blank]*



**GRANTOR:**

STATE OF OREGON,  
acting by and through its Department of State Lands

Name: Vicki L. Walker

Title: Director

Signature: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss  
County of Marion            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2019, by \_\_\_\_\_, the \_\_\_\_\_ of the  
Department of State Lands.

\_\_\_\_\_  
Signature  
My Commission Expires \_\_\_\_\_, 20\_\_\_\_.





# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

Kate Brown

Governor

Bev Clarno

Secretary of State

Tobias Read

State Treasurer

## State Land Board

**Regular Meeting  
June 11, 2019  
Agenda Item 4**

### **SUBJECT**

The Department of State Lands (DSL or Department) requests approval to initiate permanent rulemaking to impose restrictions on the public recreational use of state-owned land in Multnomah County.

### **ISSUE**

Whether the State Land Board (Land Board or Board) should initiate permanent rulemaking to impose restrictions on the public's recreational use of the state-owned easterly banks of the Willamette River between river mile 9 and river mile 10 within the City of Portland.

### **AUTHORITY**

Oregon Constitution, Article VIII, Section 5, specifies that the State Land Board is responsible for managing Common School Fund lands.

ORS 273.041 to 273.071; authorizing the Department to exercise the administrative functions of the Land Board; relating to the general powers and duties of Department and Board.

OAR 141-088-0000; relating to the purpose and applicability of public recreational use of state-owned property.

OAR 141-088-0004; relating to restriction of the use of state-owned lands that pose a significant risk of harm or damage to the natural resources of the land or to the public.

## **SUMMARY**

The Port of Portland (Port) and Daimler Trucks North America (DTNA) currently manage a stretch of upland property adjacent to the East bank of the Willamette River in Portland, Oregon. Camping is not allowed on Port property; but attempts to keep unauthorized camps off the Port's property adjacent to the river are complicated by the indistinct property boundary that they share with the State of Oregon. At this location, the State of Oregon owns the bed and banks of the Willamette River up to the line of Ordinary High Water (Appendix A) Since 2018, DSL and the Port regularly receive calls from DTNA and the public highlighting the accumulation of garbage and human waste in the area, safety concerns, and the diminished ability for the public to access and recreate on the river. The Port regularly removes camps and debris from their own property but are unable to pursue enforcement on the banks and beaches of the Willamette River where the line of Ordinary High Water is difficult to discern when staff are in the field.

The Department and the Port have documented illegal or nuisance activity on state-owned land at Swan Island These activities have included:

- Offensive littering and dumping;
- Reckless burning and open fires;
- Damage to riparian vegetation and wildlife habitat;
- Interference and damage to property; and
- Diminished public safety and recreational opportunities.

Provided is photo documentation collected by Department and Port staff (Appendix B). Some of the illegal activities occur at night and are difficult for the Department and law enforcement to monitor. The repeated accumulation of garbage and human waste is a concern to wildlife habitat and water quality. On May 7, 2019, the Department received a formal request from the Port to enact restrictions on public use of the beaches to address these issues (Appendix C). In response, the Department recommends that all state-owned lands identified in Appendix A be closed to all uses between 10:00 p.m. and 5:00 a.m. Moreover, the Department recommends those state-owned lands be closed to camping at any time in order to assist the Port of Portland in posting the scheduled removal of occupied encampments.

**The Department has proposed the recreational use restrictions through the following proposed permanent rule:**

*OAR 141-088-\_\_\_\_\_*  
*RESTRICTIONS FOR STATE-OWNED OF THE WILLAMETTE RIVER AT SWAN ISLAND*  
*(Willamette River)*

*All state-owned land that is under the jurisdiction of the Department between the line of ordinary high water and the line of ordinary low water along the Easterly bank of the Willamette River, between River Mile 9 and River Mile 10, located in Sections 20 and 21, Township 1 North, Range 1 East, Willamette Meridian, in Multnomah County, Oregon, is closed to:*

- (1) All uses between 10 p.m. and 5 a.m.*
- (2) The establishment of a campsite at any time. For purposes of this section, "campsite" means any place where any bedding, sleeping bag or other material used for bedding purposes, or any stove is placed, established or maintained for the purpose of maintaining a temporary place to live, whether such a place incorporates the use of any tent, lean-to, shack, or any other structure.*
- (3) Fires at any time.*

*Excepted from this restriction are Government personnel on official business, public and private employees performing company business, vehicles and persons involved in rescue or emergency activities, Department authorized persons, and adjacent landowners inspecting or maintaining property.*

Upon approval to initiate permanent rulemaking by the Board, the Department may convene a Rulemaking Advisory Committee (RAC) to review and provide input on the proposed rules and the "Notice of Proposed Rulemaking Filing Including Statement of Need and Fiscal Impact." The Department will solicit input on the proposed rules through a public comment period and will hold at least one public hearing on the proposed rules in Multnomah County.

The Department will take into consideration public comment, input from the RAC and other local and state agencies, and affected stakeholders to determine the appropriate final proposed restrictions in accordance with OAR 141-088-0006.

## **RECOMMENDATION**

The Department recommends the Land Board authorize the Department to initiate permanent rulemaking to impose restrictions on the public recreational use of state-owned banks on the Willamette River at Swan Island.

## **APPENDICES**

- A. Site Map
- B. Photo Documentation
- C. Port of Portland Letter

# State of Oregon Department of State Lands



APPENDIX A



Esri, HERE, Garmin, (c) OpenStreetMap contributors, Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

## APPENDIX A

- River Miles
- Proposed Closure Area

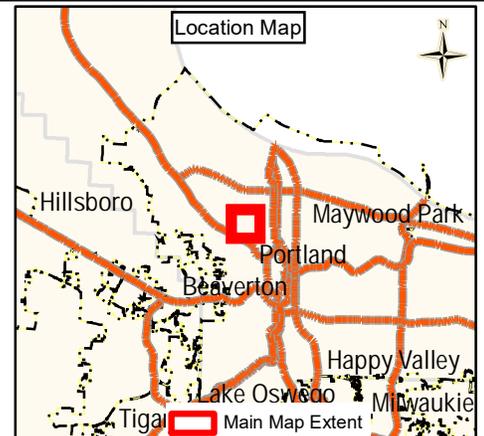
0 410 820

Feet



Map Projection:  
Oregon Statewide Lambert  
Datum NAD83  
International Feet  
State of Oregon  
Department of State Lands  
775 Summer St NE, Suite 100  
Salem, OR 97301  
503-986-5200  
[www.oregon.gov/DSL](http://www.oregon.gov/DSL)  
Date: 5/21/2019

This map depicts the approximate location and extent of a Department of State Lands Proprietary authorization for use. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.











May 7, 2019

Vicki Walker  
Director  
Oregon Department of State Lands  
775 Summer Street NE  
Salem, OR 97301

Re: Request for Department of State Lands (DSL) restrictions on public recreation use  
Swan Island – adjacent to Willamette River

Dear Ms. Walker:

By way of introduction, my name is Nicole Miranda. I am the Port of Portland's (Port) property manager for the Swan Island Industrial District. I am writing to request that DSL take appropriate action to address camping on its property adjacent to the Swan Island property.

This matter was recently discussed in an April 18, 2019 email to you from Matthew Markstaller, Corporate Real Estate Manager for Daimler Trucks North America (DTNA), a Port tenant at Swan Island. Mr. Markstaller described issues with long-term camping on DSL's property adjacent to DTNA, which includes portions of the Willamette Greenway trail. I have attached DTNA's correspondence for your reference, as well as a map depicting the Port's property mentioned in this letter.

As you are no doubt aware, long-term unauthorized camping has been increasing exponentially in the Portland metropolitan area, giving rise to a host of concerns. The Port is currently dealing with illegal camping and dumping on a number of its properties, and I suspect you are as well. Camping is not allowed on Port property; attempts to keep unauthorized camps off the Port's property adjacent to the beach at Swan Island are challenging and complicated in part because of the indistinct property boundary.

DTNA and the Port have documented illegal or nuisance activity on state-owned land at the Swan Island location. These activities include, but are not limited to:

- Offensive littering and dumping (both hazardous and non-hazardous);
- Open fires;
- Harassment;
- Interference with property; and
- Damage to property.





# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

Kate Brown

Governor

Bev Clarno

Secretary of State

Tobias Read

State Treasurer

## State Land Board

### Regular Meeting

June 11, 2019

Agenda Item 5

### SUBJECT

Request for re-approval of the direct sale of 63.1 acres of subsurface minerals and geothermal rights located in Marion County.

### ISSUE

Whether the State Land Board (Land Board or Board) should authorize the direct sale of 63.1 acres of subsurface minerals and geothermal rights in Marion County (Appendix A).

### AUTHORITY

Oregon Constitution, Article VIII, Sections 2 and 5; pertaining to the Common School Fund and land management responsibilities of the State Land Board.

ORS 273.775 – 273.790; Mineral and Geothermal Resource Rights

OAR 141-067-0320; relating to procedures for the sale, exchange, or release and transfer of mineral and geothermal resources.

Real Estate Asset Management Plan (REAMP), adopted by the Land Board; February 2012.

### SUMMARY

On October 1, 2015, the Department of State Lands (DSL or Department) received an application from Silverton Rock Farm, for the release of approximately 63.1 acres of subsurface mineral and geothermal rights held by the State Land Board (Appendix A)

below their surface ownership. The applicant had recently purchased the property along with adjacent parcels for the express purpose of developing a rock quarry, believing they had purchased all mineral rights as well.

DSL staff became aware of the issue while reviewing land use action notices from Marion County, and informed the landowner of the State's subsurface ownership. It was subsequently determined the State's mineral ownership was improperly dropped from the land title in the mid 1940's and a rock quarry were established at approximately the same time with operations continuing until 1996. That operation was confined to a portion of the State-owned mineral rights and paid no royalties to the State. The current landowner proposes to reopen that quarry and eventually expand onto the adjoining parcel where the State does not own mineral rights. The Title Company admitted error and settled with the landowner for an undisclosed amount.

On October 11, 2016, the State Land Board approved due diligence on the property for the potential sale of the subsurface minerals. The State obtained its own appraisal of the mineral interest of the property indicating a value of \$50,000. On April 6, 2018, the property owner agreed to purchase the minerals for this price. The Department believes the direct sale of the mineral interest will provide the greatest benefit for this resource. On June 12, 2018, the State Land Board approved the final sale of the subsurface minerals (Appendix B).

In the process of finalizing the documentation for release of the subsurface minerals, staff discovered that no public outreach had occurred. Therefore, in order to comply with the land and mineral sales process, public comments were sought in April and May 2019.

DSL received 78 comments over that period. Many of the comments were related to operations of a quarry; noise, environmental impacts on nearby streams and reservoir, wildlife and traffic. Two comments suggested this should be an open bid sale, one comment stated a negative aesthetic impact and two comments were received related to devaluing nearby property/home values. Several comments also referred to holding a public forum for further discussion of the gravel quarry operation and the impacts that would have on the local community.

The Department contacted Marion County to discuss whether they received public comments or held an open public forum. They responded that the comments DSL received were very similar to what the County received through their public outreach. The County did not hold an open public forum. All comments were received through email or hard copy mail. The County approved the mining operation request.

## **RECOMMENDATION**

Since the majority of comments received were outside the scope of the action of selling the state's mineral right and more related to the local land use decision regarding a future gravel quarry mining operation – which already received approval by the local jurisdiction, Marion County – the Department would again recommend the Land Board move forward with the mineral sale to Silverton Rock Farm for \$50,000; located in Marion County at Township 7 South, Range 1 East, Section 7D, Tax Lot 400.

## **APPENDICES**

- A. Site Map
- B. June 12, 2018, Agenda Item 6

State of Oregon  
Department of State Lands



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

**APPENDIX A**

**Mineral Sale Application 58495-LS**  
**T07S, R01E Sec. 7D, Tax Lot 400**  
**63.1 Acres Requested**  
**Marion County**

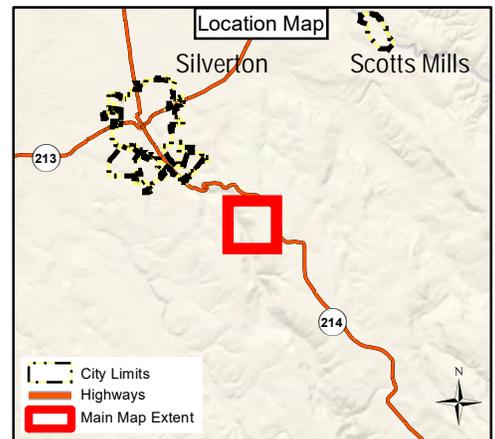
-  DSL Mineral Ownership
-  Section Boundaries
-  Minerals Requested
-  Local Roads
-  Tax Lot 400, Applicant - Surface Owner



Map Projection:  
Oregon Statewide Lambert  
Datum NAD83  
International Feet

State of Oregon  
Department of State Lands  
775 Summer St NE, Suite 100  
Salem, OR 97301  
503-986-5200  
www.oregon.gov/DSL

Date: 4/27/2018



This map depicts the approximate location and extent of a Department of State Lands Proprietary authorization for use. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.



# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100  
Salem, OR 97301-1279  
(503) 986-5200  
FAX (503) 378-4844  
[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

## State Land Board

**Regular Meeting  
June 12, 2018  
Agenda Item 6**

Kate Brown  
Governor

Dennis Richardson  
Secretary of State

Tobias Read  
State Treasurer

### **SUBJECT**

Request for approval of the direct sale of 63.1 acres of subsurface minerals and geothermal rights located in Marion County.

### **ISSUE**

Whether the State Land Board should authorize the direct sale of 63.1 acres of subsurface minerals and geothermal rights in Marion County (Appendix A).

### **AUTHORITY**

Oregon Constitution, Article VIII, Sections 2 and 5; pertaining to the Common School Fund and land management responsibilities of the State Land Board.

ORS 273.775 – 273.790; Mineral and Geothermal Resource Rights

OAR 141-067-0320; relating to procedures for the sale, exchange, or release and transfer of mineral and geothermal resources.

Real Estate Asset Management Plan (REAMP), adopted by the Land Board; February 2012.

### **SUMMARY**

On October 1, 2015, DSL received an application from Silverton Rock Farm, for the release of approximately 63.1 acres of subsurface mineral and geothermal rights held by the State Land Board (Appendix A) below their surface ownership. The applicant had recently purchased the property along with adjacent parcels for the express

purpose of developing a rock quarry, believing they had purchased all mineral rights as well.

DSL staff became aware of the issue while reviewing land use action notices from Marion County, and informed the landowner of the State's subsurface ownership. The Department proposed a lease to allow the joint development of the adjacent private and state-owned resources. The landowner refused to lease the property, contending that paying the State royalty rates would make the proposed operation economically unviable. On October 11, 2016, the State Land Board approved due diligence on the property for the potential sale of the subsurface minerals (Appendix B).

It was subsequently determined the State's mineral ownership was improperly dropped from the land title in the mid 1940's and a rock quarry was established at approximately the same time with operations continuing until 1996. That operation was confined to a portion of the State owned mineral rights and paid no royalties to the State. The current landowner proposes to reopen that quarry and eventually expand onto the adjoining parcel where the State does not own mineral rights. The Title Company admitted error and settled with the landowner for an undisclosed amount.

The State is not responsible for the error or the damages suffered by the current landowner, nor can the State force the landowner to lease the property. The only avenue to a mutually agreeable solution is for the State to consider a sale of its mineral rights to reunite the current split estate.

ORS 273.780 (3): "Except as provided in ORS 273.787, the mineral and geothermal resource rights shall be retained by the state in the absence of a finding by the State Land Board upon adequate facts presented to it that their sale or exchange is for the purpose of obtaining the greatest benefit for the people of this state, consistent with the conservation of lands under its jurisdiction under sound techniques of land management." ORS 273.787 does not apply to this circumstance.

The State obtained its own appraisal of the mineral interest of the property indicating a value of \$50,000. On April 6, 2018, the property owner agreed to purchase the minerals for this price. The Department believes the direct sale of the mineral interest will provide the greatest benefit for this resource.

## **RECOMMENDATION**

The Department recommends the State Land Board approve the direct sale of the subsurface minerals and geothermal rights to the surface owner, located in Marion County at Township 7 South, Range 1 East, Section 7D, Tax Lot 400.

## **APPENDICES**

- A. Site Map
- B. October 2016 agenda item 1h