



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.oregonstatelands.us

The State Land Board met in regular session on April 12, 2016, in the Land Board Room at the Department of State Lands, 775 Summer Street NE, Salem, Oregon.

State Land Board

Present were:

Kate Brown
Governor

Kate Brown Governor
Jeanne P. Atkins (via telephone) Secretary of State
Ted Wheeler State Treasurer

Jeanne P. Atkins
Secretary of State

Land Board Assistants

Richard Whitman Governor's Office
Robert Taylor Secretary of State's Office
Kristin Dennis State Treasurer's Office

Ted Wheeler
State Treasurer

Department Staff

Jim Paul Bill Ryan Cyndi Wickham Chris Castelli
Lorna Stafford Julie Curtis Lanny Quackenbush

Department of Justice

Matt DeVore

2015 STATE LAND BOARD AWARDS

Prior to the meeting, the Board presented two wetland project awards to the following:

- Batwater Station Floodplain Restoration Project, Clatskanie
- North Unit Restoration Project, Sauvie Island Wildlife Area

Governor Brown called the meeting to order at 10:15 a.m. She noted that agenda item number five (5) would be moved to the top of the agenda to accommodate Secretary Atkins' schedule, who participated by telephone. The topics discussed and the results of those discussions are listed below.

5. Annual report on Common School Fund investments and possible action related to the CSF distribution.

Director Paul explained that the first part of agenda item five was the annual report on Common School Fund (CSF) investments and the second would be a discussion on whether the State Land Board should authorize an increase in the CSF distribution for the 2015-17 biennium. He recommended that the Board address the increase first in order for Secretary Atkins to participate in the discussion and decision.

Director Paul provided background information related to the past increases to the CSF distribution in response to requests from the state legislature. Director Paul stated that the Department was requesting that the Land Board make a determination on whether to increase the CSF distribution to five percent of the three year rolling average balance of the CSF for the 2015-17 biennium.

Treasurer Wheeler said the distribution process has become confusing for him and probably for the other Board members, as well. He stated that the policy currently in place, was originally

adopted in 2009 and since that time, there have been exceptions to the policy for three subsequent budget cycles. He explained that he voted for those exceptions twice. However, the last time he voted for an exception, he was clear on the record that he did not believe a five percent distribution was sustainable and that he would not vote for an exception again.

Treasurer Wheeler added that it would be good for the Board to revisit the policy and establish one that makes sense given current market conditions. He suggested that Treasury staff work with Department and Land Board staff and come back to the Board with some ideas around a different policy distribution and answer questions about whether or not the Board is actually pursuing an endowment model, and clarify the respective roles of the legislature and the Land Board. Treasurer Wheeler noted that adding to the confusion is the reality of the legislature having already budgeted the funds that the Board is now being asked to make an exception to the policy to provide.

Secretary Atkins commented that she believes the increased allocation is appropriate given that our schools were hit hard by cuts beginning in 2009 and districts in some areas of the state are still recovering from the recession. She added that she does agree with the Treasurer that the legislature doesn't quite have the same obligations that the Land Board has, and she appreciated the suggestion to revisit the policy to provide a sustainable formula for the distribution.

Governor Brown confirmed that she too agreed that Treasury staff should work with the Department to revisit the policy. She also agreed with the Treasurer's concerns about the previous increases in the distribution. She said she was willing to support the increase again because of the underlying changes that have occurred, which she asked Richard Whitman, her Land Board Assistant to outline for everyone present.

Mr. Whitman explained that the Land Board has adopted a series of policies concerning distributions from the Common School Fund (CSF) going back to 1999. The most recent change to the policy, in 2009, moved to a three-year rolling average and also raised the floor for distributions from two percent to four percent. As a result of those policy changes, the size of the corpus of the CSF has been on a steady increase. He noted that this is of concern to Governor Brown, in particular, given her history on this issue as former Secretary of State and having been responsible for an audit report on the CSF. He said the audit report made the central point that the size of the corpus of the Fund was decreasing. So, he said, it is the Governor's desire to keep the bottom line of continuing to grow the corpus of the fund as a central objective. He added that given the current circumstances, a five percent distribution will still keep the size of the corpus on a healthy trajectory.

Mr. Whitman also discussed legal issues that he recommended be looked at in connection with the policy review. One is the treatment of the unclaimed property portion of the Fund and specifically, what happens when the Fund has losses and where do those losses get charged to?

Governor Brown made a motion for the Land Board to increase the Common School Fund distribution to five percent for the 2015-2017 biennium and direct the Department to implement this determination.

Treasurer Wheeler voted no on the motion. No other objections were expressed. The item was approved 2-1.

Secretary Atkins dismissed herself from the meeting.

CONSENT AGENDA

1. Request for approval of the minutes from the February 9, 2016 State Land Board meeting.

Director Jim Paul introduced the one item on the consent agenda.

Treasurer Wheeler moved to approve the consent agenda. There were no objections. The consent agenda was approved.

ACTION AGENDA

5. Annual report on Common School Fund investments and possible action related to the CSF distribution. (Continued)

Director Paul introduced Perrin Lim from the State Treasury Department's Investment Division who presented the annual report on Common School Fund investments.

Mr. Lim stated that, even given a very poor year for investments, the Fund was outperforming the benchmark. For 2015, however, the Fund is down 5.9 percent. He said that staff would be revisiting investment allocations and making recommendations for changes later in the year.

2. Request for adoption of:

- **New administrative rules governing the identification, notification, sale and exchange, clearing title or reservation of historically filled lands, and the approval to create, sell, exchange or reserve new lands (OAR 141-068); and**
- **Amendments to and repeal of administrative rules that reference new and historically filled lands within OAR 141-067.**

Chris Castelli, Senior Policy and Legislative Analyst discussed the work of the Filled Lands Advisory Group (FLAG) that was previously presented to the Board. He also discussed enacted legislation that incorporated the work of the FLAG. Mr. Castelli noted the instrumental work of Jay McCaulley who was on the FLAG, but unfortunately passed away before the legislation was enacted. Mr. Castelli said that the proposed rules address the recommendations of the FLAG, the requirements of SB 912 (2015 session), and ensure that administrative costs are covered. In addition, an administrative process for addressing the creation of new lands was developed and included in the proposed rules. A rules advisory committee was formed and two public hearings were held.

Mr. Castelli added that the Department is working to improve its outreach efforts for rulemaking activities.

Director Paul noted that the Department could potentially complete a comprehensive determination of the location of all filled land ownership disputes within ten years and that it has developed a streamlined process for claims where the lands are appraised at less than \$100,000.

Treasurer Wheeler commented that the issue of filled lands is a complex, arcane and important subject. He thanked the members of the FLAG, Department staff and the legislature for coming together to improve and simplify the process.

Treasurer Wheeler moved to approve the staff recommendation. There were no objections. The item was approved.

Governor Brown added her appreciation for the work accomplished.

3. Request for approval to sell 17.3 acres of submersible and filled lands in Coos County.

Director Paul explained that, in December of 2011, the Board approved the issuance of a fill permit to Ocean Terminals, Inc. to fill submerged lands. Under state law, the applicant has the right to purchase the property once it is filled. Ocean Terminals, Inc. has completed the fill project and fulfilled the requirements of their permit. Director Paul said that the proposed sale also includes the purchase of historically filled lands and submersible lands, in addition to the new filled lands. A public comment period was opened and no comments were received.

Treasurer Wheeler made a motion to approve the staff recommendation to complete the direct sale of the lands described in the staff report to Ocean Terminals for a total estimated value of \$258,434, pending a final survey to confirm the precise acres of the new and submersible lands and to exchange quitclaim deeds to memorialize the sale.

There were no objections to the motion. The item was approved.

4. Request for approval to sell 120 acres of in-lieu lands in Linn County to satisfy a longstanding debt to the Baldwin-Herndon Trust.

Director Paul provided background information regarding in-lieu lands. At statehood, Oregon was granted two sections of every township to support public schools. In the late 1800s and early 1900s, the state sold off many of these lands to private citizens and it was later discovered that the state did not own some of the land that was sold; either because they were never surveyed or were located in national forests. ORS 273 provides a process for parties to select lands to repay the debt owed by the state. The Baldwin-Herndon Trust (Trust) is one of the entities to which the state still owes land. The Department and Trust worked with the Bureau of Land Management to select land acceptable to the Trust. The site selected is larger than what is still owed to the Trust, so the Trust also worked with Giustina Tree Farms, who offered to purchase the entire tract with a portion of the proceeds going to the Baldwin-Herndon Trust and the remainder going to the Common School Fund. This transaction will also decrease the amount of land still owed to the Department from the federal government.

Treasurer Wheeler moved to approve the direct sale of the 120-acre Shot Pouch Creek tract to Giustina Tree Farms to satisfy a longstanding debt to the Baldwin-Herndon Trust for a value of \$2,515,000.

There were no objections. The item was approved.

Informational

6. Annual report on Common School Fund Real Property program activities for fiscal year 2015.

Director Paul presented the annual report on real property activities for fiscal year 2015. He noted that the purpose of the report was to provide the Board with a year-end summary of the financial performance of Common School Fund trust lands. He reported that the Department conducted a total of five (5) land sale and exchange transactions, equaling 459 acres, generating nearly \$1.2 million in gross revenues. He noted that the performance from trust lands in 2015 was very similar to the prior year. He said that there continues to be a loss in revenues from the Elliott State Forest, as expected. The loss totaled approximately \$800,000. However, the Department is continuing to move forward with the process under the Elliott protocol to come up with a solution for the forest and the Common School Fund. Director Paul said, on average, there have been marginal returns under the other land classes. He added that the Department is continually evaluating the real property asset portfolio and plan to update the Real Estate Asset Management Plan (REAMP) in the near future.

Treasurer Wheeler asked what other ongoing structural challenges Director Paul sees in addition to the Elliott State Forest that needs to be addressed to improve financial returns.

Director Paul replied that one of the fundamental challenges is that generally, Common School Fund lands do not have a lot of potential to generate revenue. However, the Department is looking at, for example, particular types of rangelands that have the potential to be developed for irrigated agriculture. However, the total percentage of the land base that has that potential is still very small – at most a few thousand acres. He added that, not including the Elliott, forestlands are inherently productive lands in and of themselves, and the Department is looking to see if there is a different management approach that can be taken for these lands.

Treasurer Wheeler asked if there was a prohibition against using the land for renewable energy generation.

Director Paul said there was no prohibition. He added that the Department is looking at renewable energy opportunities, such as wind energy development and has identified lands that might be suitable.

Treasurer Wheeler asked if there was an assessment of lands that can potentially be used for renewable energy generation.

Director Paul said there has been no systematic evaluation, but parcels have been reviewed in an ad hoc way, during regular reviews and evaluations for land sale potential.

Treasurer Wheeler asked if the reviews were done internally by staff or by outside consultants. Director Paul said the work is done internally by staff.

7. Presentation on the Department's cultural resource review process for potential land sales and exchanges.

Director Paul introduced Lanny Quackenbush, Eastern Region Manager, who provided an overview of the Department's process for reviewing parcels for cultural resources that may be sold or exchanged.

Mr. Quackenbush said staff works closely with the State Historic Preservation Office (SHPO) to ensure compliance with cultural resource laws and administrative rules, particularly on public lands. He noted that original focus was placed on active land management activities where ground-disturbing activities were taking place. Later, it was realized that there was an obligation to assess lands that were being considered for sale or exchange. Qualified staff analyzes archaeological records within two to three miles of a parcel and determine if there is any likelihood of cultural resources on the property. Cultural resource information is disclosed to potential buyers and they are made aware of their obligation to protect the site.

Treasurer Wheeler asked what constitutes a cultural resource site.

Mr. Quackenbush said a site is the presence of some archaeological artifact. If artifacts are found, the site is then assessed for extent and integrity of the site; and, becomes part of the record with SHPO.

Treasurer Wheeler asked how often a site is found.

Mr. Quackenbush said it is very common in Eastern Oregon to find at least isolates. It is somewhat less common to find a collection in a concentrated area that would qualify as a site. He said that it is very common to find artifacts, particularly in non-forested environments.

Treasurer Wheeler asked if the Department's process is a policy adopted by the Department or is it required by law.

Mr. Quackenbush responded that it is a policy that answers to the laws for archaeological protections.

8. Other.

The Land Board took public comment from the following citizens:

Gordon Ross, Coos Bay spoke to timber harvests in the Elliott State Forest.

The following citizens spoke regarding liquefied natural gas facilities in Oregon:

Lori Durham, Astoria
Theodore F. Thomas
John Clarke, Winston
Bill Gow, Roseburg
Apollonia Goeckner, Stand Up for Oregon, Phoenix
Francis Eatherington, Day Creek
Deb Evans, Jackson County
Linda Kelley, 350.org
Jody McCaffree, Citizens Against LNG
Kathleen Zunkel, Citizens Against LNG
Pearl Rasmussen, Astoria
Tracy Farwell, Better Energy LLC

Governor Brown thanked everyone for traveling to Salem to speak to the Board. The meeting was adjourned at 11:40 a.m.



Kate Brown, Governor



James T. Paul, Director