



Oregon

Kate Brown, Governor

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Department of State Lands

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State Land Board

Kate Brown
Governor

Jeanne P. Atkins
Secretary of State

Ted Wheeler
State Treasurer

STATE LAND BOARD

Tuesday, April 12, 2016

10:00 am – Noon

Oregon Department of State Lands

Land Board Room

775 Summer St NE

Salem, Oregon

MEETING AGENDA

State Land Board Awards Presentation

The State Land Board will present the 2015 Land Board Awards to:

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

Consent

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

Action

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.
3. Request for approval to sell 17.3 acres of submersible and filled lands in Coos County.
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.
5. Annual report on Common School Fund investments and possible action related to the CSF distribution.

State Land Board Meeting Agenda Continued

Informational

6. Annual report on Common School Fund Real Property program activities for fiscal year 2015.
7. Presentation on the Department's cultural resource review process for potential land sales and exchanges.
8. Other.

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 Lorna Stafford at (503) 986-5224 or lorna.stafford@state.or.us at least two working days prior to the meeting.

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. Please bring 10 copies for distribution. 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.



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Regular Meeting

April 12, 2016

Agenda Item 2

Jeanne P. Atkins

Secretary of State

Ted Wheeler

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SUBJECT

Request for adoption of OAR 141-068-0000 through OAR 141-068-0140, "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" (Appendix A & B) and the amendment and repeal of sections of OAR 141-067, "Rules Governing the Sale, Exchange and Purchase of Land" that reference new and historically filled lands (Appendix C), upon adoption of OAR 141-068.

ISSUE

Whether the State Land Board should adopt OAR 141-068 and amend and repeal sections of OAR 141-067 that are no longer applicable upon adoption of OAR 141-068.

AUTHORITY

Oregon Constitution, Article VIII, Section 5

ORS 183; regarding administrative procedures and rules of state agencies

ORS 273; regarding the creation and general powers of the Land Board

ORS 274; regarding submerged and submersible lands in general; historically filled lands and new lands

BACKGROUND

The Filled Lands Advisory Group (FLAG) was formed out of the 2013 legislative session to engage with the Department to ensure a fair and transparent process to resolve state ownership interests in historically filled submerged and submersible lands. The State of Oregon claims an interest in historically filled lands by virtue of the fact that they were formed on state-owned submerged and submersible lands provided the state has never relinquished its title to the underlying submerged and submersible lands.

The FLAG was comprised of the following members:

- Chuck Bennett, Confederation of Oregon School Administrators
- Jim Green, Oregon School Boards Association
- Senator Floyd Prozanski
- Senator Jeff Kruse
- Maddy Sheehan, Sheehan & Sheehan LLC
- Dave Hunnicutt, Oregonians in Action
- Chris Hathaway, Lower Columbia Estuary Partnership
- Jay McCaulley, Marine Environmental & Development
- Paula Miranda, Port of St. Helens
- Martha Pagel, Schwabe, Williamson & Wyatt

The FLAG came up with a suite of recommendations to improve the administrative process for an affected landowner and the Department. The FLAG recommendations were presented to the Board at its June 9, 2015 meeting.

The FLAG also recommended (through the work of a subgroup) that the state would benefit from *“pursuing the statewide identification and notification of historically filled lands. The FLAG Subgroup notes any statutory identification and notification requirements must be contingent on funding being appropriated to DSL to complete this task, and with a time frame long enough to provide DSL every opportunity to successfully complete the task.”*

This became the basis for SB 912 (Appendix D) which passed in the 2015 legislative session. SB 912 also carried forward all of the recommendations of the FLAG that required statutory amendments.

The State Land Board authorized the Department to undertake rulemaking to address the recommendations of the FLAG, and the requirements of SB 912, at its June 9, 2015 meeting. The Department convened a Rules Advisory Committee (RAC) for this effort. All members of the FLAG were invited to participate on the RAC. In addition, the Department invited the following persons to also participate on the RAC:

- Mary Anne Nash, Oregon Farm Bureau
- Joy Vaughan, Oregon Department of Fish and Wildlife
- Rodger Craddock, City of Coos Bay
- Mark Nystrom, Association of Oregon Counties

The RAC met to discuss the draft rules on October 8, 2015 and November 4, 2015. The RAC came to agreement at the November 4th meeting that the draft rules were ready to go out for public review and comment.

PUBLIC INVOLVEMENT

Public Notice

A notice of this rulemaking effort, which included the Notice of Proposed Rulemaking Hearing and the Statement of Need and Fiscal Impact required by the Oregon Secretary of State, was sent to the agency's rulemaking listserv and posted on the Department's website.

Public Hearing

The Department held two public hearings in Astoria on December 16, 2015; and in Coos Bay on December 17, 2015. No public comment was received at the Astoria hearing. Public comment was received at the Coos Bay hearing. An audio recording of the comment is available from the Department.

Extension of the Public Comment Period

Due to strong public interest, the Department extended the public comment period for this rulemaking effort for an additional 30 days. There was frustration voiced by the public that the rules and public hearings were not advertised sufficiently. It was also noted that there was a lot of information to review for someone who was not already acquainted with the subject. The public comment period for the draft rules ran from December 1, 2015 through January 31, 2016.

The Department returned to Astoria for a public meeting on January 26, 2016, to provide information on our rulemaking efforts (including this effort) and to discuss any waterway related issues that people were interested in.

The Department issued a press release for both the extension of the public comment period and the public meeting in Astoria on January 26, 2016.

PUBLIC COMMENTS RECEIVED and AGENCY RESPONSE

Public comment was received by:

- The Oregon Farm Bureau
- Rex E. Miller
- Harold David Smith Jr.
- Frank Williams

Comment

Some concerns were expressed that "ordinary high water" was a non-technical term and should not be used.

Response

The term "line of ordinary high water" and "line of ordinary low water" are used to describe the state's ownership interest in the submerged and submersible lands of navigable and tidally influenced waterways because they are defined in statute. These

definitions have been added to the rules to supplement the definitions of “submerged” and “submersible lands.”

Comment

Some concerns were expressed about the extent of waterways that the Department may study per SB 912. Specific concerns were expressed about “non tidal” waterways, and waterways behind tide gates, and how farmland behind dikes and tide gates may be impacted.

Response

ORS 274.952(1)(a) states:

“The State Land Board shall direct the Department of State Lands to determine whether any interest remains or is vested in the State of Oregon with respect to historically filled lands, as defined in ORS 274.905, in:

- (A) Waterways of the state subject to tidal influence;
- (B) Waterways of this state that have been administratively or judicially determined navigable pursuant to ORS 274.400 to 274.412; and
- (C) Waterways in which the state has asserted ownership prior to the enactment of ORS 274.402 on September 9, 1995.”

This includes freshwater rivers determined to be navigable and meandered lakes. It is also in the purview of the State Land Board to investigate historically filled lands on tidally influenced waterways behind tide gates (to the original head of tide), to the extent the bed and banks of a tidally influenced waterway were filled to create uplands by artificial fill or deposit (as defined in ORS 274.905).

It is the role of the Land Board to prioritize which waterways the Department will study based on preliminary information previously compiled and being collected by the Department. The Department’s expectation is that the focus will be along the developed areas of navigable harbors, rivers and bays. These are the areas where the Department has regularly been engaged in issues concerning historically filled lands and clouded title. The Department and State Land Board have not traditionally been approached to address clouded title on meandered lakes or behind tide gates on tidal sloughs. The Department does not anticipate this trend to change based on the adoption of these rules.

Comment

Many concerns were expressed that the Department will claim ownership of dikes, tide gates and other structures maintained by diking and drainage districts due to the enactment of SB 912 and these rules. A similar concern was expressed about wharves and bridges.

Response

Rip-rap, tide gates and structures constructed by a drainage or diking district, are covered by a different set of rules and section of statute. These structures are eligible

for a free registration from DSL. This will not change with the adoption of the new rule. Wharves and bridges are also covered under different sections of statute and administrative rules. The Department has added language to OAR 141-068-0000 (Purpose and Applicability) to address these concerns.

The work of the FLAG and SB 912 was a very public process. However, it is worth noting that diking and drainage districts were underrepresented through the process. The Department will work to improve our outreach to these stakeholder groups on rulemaking efforts moving forward.

Comment

It was noted that improvements to the historically filled lands should not be considered in the valuation process. It was also noted that the Department should not use current fair market value for the valuation of the purchase of land filled many years ago. Current fair market value doesn't take into consideration property tax and income tax generated from the productive use of the land.

Response

The initial valuation of historically filled lands, as recommended by the FLAG, is "based on the Real Market Value (RMV) of the property's land, not including structures, as determined by the County Assessor." (OAR 141-068-0070(8)). The Department will assess the value of the historically filled lands based on the RMV of the bare land, not including improvements.

Properties where the state's interest in the property is determined to be greater than \$100,000 are addressed through a negotiated sale. A negotiated sale between the Department and an applicant requires an appraisal. Appraisals determine the fair market value of the land based on the highest and best use. However, a negotiated sale may take into account a number of factors besides just fair market value; including strength of claim, access, public interest values, existing property rights and other factors as agreed upon.

It should be noted that the Department anticipates that the state's interest in many properties will be less than \$100,000 in value. In these situations, the applicant will be able to settle a claim for either no compensation or for 50% of the RMV of the state's interest in said property.

ADDITIONAL QUESTIONS

Some additional questions were posed to the Department outside of the formal public comment process that the Department would like to address.

Question

There is a potential conflict between ORS 274.940 (Reservation of historically filled lands or new lands) and ORS 196.880 (Fill under permit presumed not to affect public rights). For new fills, the statute indicates that the issuance of a fill permit creates a

presumption that the fill does not infringe on traditional “public trust” interests in navigation, fishery or recreation, and declares such interests are extinguished. So how can the Department reserve new lands created under a fill permit to preserve recreation, conservation of fish and wildlife or the development of navigation facilities per ORS 274.940?

Response

This was discussed at the December 12, 2013 FLAG meeting, and was briefly discussed in a document prepared by the Oregon Department of Justice (DOJ) for the meeting titled “Filled Lands Legal Issues.” The conflict between statutes was noted. In addition, DOJ stated that there is “a serious question as to whether the legislature can extinguish the jus publicum because, among other reasons, the state holds the jus publicum in trust for the people of this state.” To prevent confusion, future removal/fill permits will contain language indicating whether the presumptions in ORS 196.880 will apply.

The Department doesn’t believe that this controversy can be explained in these rules. These rules are meant to govern the Department’s proprietary role in identifying, notifying and clearing title to historically filled lands; and to govern how the Land Board gives permission to create new lands and sells the such lands. The rules are not meant to govern the process the Department undertakes to review a removal/fill permit and whether the fill impacts public rights. To that end, it is important that the rules lay out the steps for implementing the Historically Filled Lands and New Lands Statutes (ORS 274.905 to ORS 274.956); this includes the provisions of ORS 274.940. The Department believes this rule can be implemented in a way that does not conflict with ORS 196.880, which is administered through the Department’s Removal/Fill Law (OAR 141-085). To explain the distinction, the Department made an addition to OAR 141-068-0000 (Purpose and Applicability) that clarifies that these rules do not address the regulation of removal and fill activities; which are administered through OAR 141-085.

It may have been beneficial to address this potential conflict between statutes in SB 912. The Department is required to submit a report to the legislature by September 15, 2017 on its progress, and may include recommendations for legislation if warranted. The 2017 progress report may present a good opportunity to review and address the potential conflict between ORS 274.940 and ORS 196.880.

Question

Where did the date of May 28, 1963 come from for defining “historically filled lands?”

Response

The new lands statutes (ORS 274.905 to 274.940) were established in 1963 and were deemed to apply to “new lands created before, on or after May 28, 1963.” This was confusing and problematic, as some lands created prior to May 28, 1963 were not in compliance with portions of the new lands statutes. The FLAG looked into this issue. Both the FLAG and Legislative Counsel recommended that a bright line be drawn

between filled lands created prior to the enactment of the new lands statute, and filled lands created afterwards. Therefore, it was recommended that ORS 274.905 be amended to statutorily define “historically filled lands” to mean filled lands created before May 28, 1963; and that new lands be defined as filled lands created on or after May 28, 1963.

Question

Why did SB 912 delete the Formerly Submerged and Submersible Lands Statutes – ORS 274.960 to ORS 274.985?

Response

ORS 274.960 and 274.985 was enacted in 1973. The statutes directed the Department of State Lands to study formerly submerged and submersible lands in the Willamette River, and establish a process for the purpose of resolving conflicting ownership claims between the state and private owners. It is the state’s position that the Formerly Submerged, Submersible Lands statutes do not apply to filled lands. Instead, it is the state’s position that these statutes relate only to lands that were at one time submerged or submersible lands, but are no longer so as a result of the process of accretion and avulsion along the waterways. Legislative Counsel recommended to the FLAG that these statutes be repealed: “These statutes legislatively mandate that DSL perform a study of lands ‘formerly submerged and submersible’ where the title to the property is in question. The study was required to be completed, and any declarations of a state interest pursuant to the study made by July 1, 1979. The statutes appear to be moot and should be repealed. It would be appropriate to draft a relating clause for the FLAG legislative concept that would encompass the repeal of these statutes. The repeal would help to streamline the filled lands process by eliminating related statutes from the ORS that are unclear and no longer useful, but that may lend themselves to argumentation by upland owners as to the state’s ability to claim an interest in new lands.”

Question

What is the implication of SB 912 and these rules on the Astoria Quit Claim Act?

Response

The Astoria Quit Claim Act was passed by the State Legislature in 1969, and allowed Clatsop County to transfer title to private property owners for certain areas within the city limits of Astoria that were created before May 28, 1963 (the date used in the definition of historically filled lands), and within the city limits on June 13, 1969. The act applies to lands that were filled by artificial means and to improvements on the land. The Act and ability to transfer title did not apply to wharves, docks, piers, marinas, bridges, quays or other structures protruding above the high water mark or to land that was submersible or submerged (under water) as of May 28, 1963. These statutes remain intact and no amendments were made to them by the passing of SB 912. The Astoria Quit Claim statutes, and all of the work that was done to transfer title to private property owners, will be taken into consideration if the Land Board directs the

Department to determine whether any state interest remains in historically filled lands for that segment.

LEGISLATIVE REPORT AND REVIEW OF THE AGENCY RULE

The Department is required to submit a report to the legislature by September 15, 2017 on its progress, and may include recommendations for legislation if warranted. The Department will solicit input from FLAG members, and will provide a copy of the progress report to FLAG and RAC members upon submission to the legislature.

Pursuant to ORS 183.405, the Department will review these administrative rules within five (5) years after their adoption. The purpose of this review is to determine:

- Whether the rule has had the intended effect;
- Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
- Whether subsequent changes in the law require that the rule be repealed or amended; and
- Whether there is continued need for the rule.

The Department will provide the RAC with a report on the review of this administrative rule.

OREGON DEPARTMENT OF JUSTICE

The Oregon Department of Justice was actively involved in the work of the FLAG, reviewing SB 912 and this rulemaking effort. Counsel was present at all of the FLAG meetings, RAC meetings, and assisted the Department in drafting rule language and reviewing and responding to comments. The Department would like to especially recognize the efforts of Senior Assistant Attorney General Mark Schumock as former counsel to the Land Board, and Assistant Attorney General Matt DeVore as current counsel to the Land Board.

NEXT STEPS

The legislature allocated \$328,228 of general fund monies to the Department for the 2015-2017 biennium. The Department is in the process of hiring two limited duration positions. This staff will begin compiling and digitizing existing data and information on waterway ownership, boundaries and earlier filled lands research and studies that have been undertaken. This work is the foundation that the identification and notification process will be based upon; and will assist the Land Board as they direct the Department to determine whether any interest remains or is vested in the State of Oregon with respect to historically filled lands.

The Department will develop a policy option package for the 2017-2019 biennium; and work to get the funding necessary to complete the project into the Governor's recommended budget.

RECOMMENDATION

The Department recommends that the State Land Board:

- 1) Adopt OAR 141-068-0000 through OAR 141-068-0140, "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" (Appendix A & B); and
- 2) Amend and repeal sections of OAR 141-067, "Rules Governing the Sale, Exchange and Purchase of Land" that reference new and historically filled lands (Appendix C), covered upon adoption of OAR 141-068.

APPENDICIES

- A. OAR 141-068 final draft rule (clean version) for State Land Board consideration
- B. OAR 141-068 draft rule (redline version) with edits in response to public review and comment
- C. OAR 141-067 draft rule (redline version) with amended and repealed sections upon adoption of OAR 141-068
- D. Senate Bill 912 (Engrossed), 2015 Regular Legislative Session

FINAL RULE FOR LAND BOARD CONSIDERATION
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DEPARTMENT OF STATE LANDS**DIVISION 68**

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

141-068-0000**Purpose and Applicability**

These rules:

- (1) Govern the identification of State's interest in historically filled lands by the Department of State Lands (Department).
- (2) Govern the notification process of State's interest in historically filled lands by the Department.
- (3) Govern the process to clearing title to historically filled lands and new lands.
- (4) Govern the sale, exchange and reservation of historically filled lands by the Department.
- (5) Govern the creation, sale, exchange and reservation of new lands by the Department.
- (6) Do not govern the land sale or exchange of state-owned trust lands, or mineral and geothermal resource rights as administered in OAR 141-067.
- (7) Do not govern the issuance of state leases, easements or other local, state or federal permits for historically filled lands and new lands.
- (8) Do not govern the placement of rip-rap; structures constructed by a drainage or diking district; tidegates; wharves; or other uses of state-owned submerged and submersible lands as administered in OAR 141-082.
- (9) Do not govern the placement of bridges or other crossings of state-owned submerged and submersible lands as administered in OAR 141-122.
- (10) Do not govern the removal or fill of material in waters of the state as administered in OAR 141-085.

141-068-0010**Definitions**

- (1) "**Abutting**" means immediately adjacent to or facing.
- (2) "**Affected Property Owners**" refers to those people listed in the records of the county assessor as owners of property fronting, abutting or underlying, or having a recorded easement allowing access to a waterway segment at the time that the Department undertakes a State's interest study of the subject waterway.
- (3) "**Applicant**" is any person who submits a written request to the Department to create, purchase or exchange land or interests in land.
- (4) "**Appraisal**" or "**Appraisal Report**" means a written statement setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s)

prepared by a qualified appraiser in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP) standards.

(5) "**Deed**" means a written, legal instrument that conveys an estate or interest in real property when it is properly executed and delivered.

(6) "**Department**" means the Department of State Lands.

(7) "**Declaration**" is a written statement by the Land Board concerning the nature and extent of the state's interest to historically filled lands in a waterway segment under study.

(8) "**Director**" means the Director of the Oregon Department of State Lands or designee.

(9) "**Easement**" is an authorization granted that gives a person the use of a specifically designated parcel of land for a specific purpose and length of time. An easement does not convey any proprietary or other rights of use to the holder other than those specifically granted in the easement authorization.

(10) "**Fair Market Value**" means the most probable price, as of a specified date, in cash, or in terms equivalent to cash for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller acting prudently, knowledgeably, and assuming that neither is under undue duress.

(11) "**Geothermal Resources**" as defined in ORS 522.005 means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or that may be extracted from, the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam in whatever form, found below the surface of the earth, exclusive of helium or of oil, hydrocarbon gas or other hydrocarbon substances, but including, specifically:

(a) All products of geothermal processes, including indigenous steam, hot water and hot brines;

(b) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(c) Heat or other associated energy found in geothermal formations; and

(d) Any by-product derived from them.

(12) "**Highest and Best Use of Filled Land**" means to treat the land (not including improvements) as if it were a part of the adjacent, or larger upland parcel, rather than an isolated land-locked parcel, unless the parcel is solely created by filled land. Filled land must be appraised with this definition unless the Department has given specific instructions to the contrary.

(13) "**Historically Filled Lands**" as defined in ORS 274.905, means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian lands on the same side of the body of water that were created upon submersible or submerged lands by artificial fill or deposit before May 28, 1963. Historically filled lands does not include bridges, wharves and similar structures constructed upon submersible or submerged lands by other than artificial fill or deposit.

(14) "**Interest**" means right, title, or legal share in something.

- (15) “**Interested persons**” means any person that has requested to be notified of certain Department actions within an area, or who has previously provided comment on a similar agency action.
- (16) “**Line of Ordinary High Water**” as defined in ORS 274.005, means the line on the bank or shore to which the high water ordinarily rises annually in season.
- (17) “**Line of Ordinary Low Water**” as defined in ORS 274.005, means the line on the bank or shore to which the low water ordinarily recedes annually in season.
- (18) “**New Lands**” as defined in ORS 274.905 means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian land on the same side of the body of water, that were created upon submersible or submerged lands by artificial fill or deposit on or after May 28, 1963 and not including bridges, wharves and similar structures constructed upon submersible or submerged lands by other than artificial fill or deposit.
- (19) “**Person**” includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or Indian Tribe.
- (20) “**Public Interest**” as used in ORS 274.940 includes the values, rights and interests that the public holds in historically filled lands for recreation, conservation of resources, or navigation.”
- (21) “**Quitclaim Deed**” is a form of deed in which any interest the grantor possesses in the property described in the deed is conveyed to the grantee without guaranteeing that interest or its title.
- (22) “**Real Market Value**” or “**RMV**” means the current real market value of the property (not including improvements) assigned to the land or comparable tax lot by the county tax assessor.
- (23) “**Reserved Interest**” means an interest in the land that is retained by the Department from a conveyance of the title to the state land.
- (24) “**State Land Board**” or “**Board**” means the constitutionally created body consisting of the Governor, Secretary of State and the State Treasurer that is responsible for managing the assets of the Common School Fund as well as for additional functions placed under its jurisdiction by law.
- (25) “**Submerged Lands**” as defined in ORS 274.005, means lands lying below the line of ordinary low water of all navigable waters within the boundaries of this state as heretofore or hereafter established, whether such waters are tidal or nontidal.
- (26) “**Submersible Lands**” as defined in ORS 274.005, means lands lying between the line of ordinary high water and the line of ordinary low water of all navigable waters and all islands, shore lands or other such lands held by or granted to this state by virtue of her sovereignty, wherever applicable, within the boundaries of this state as heretofore or hereafter established, whether such waters or lands are tidal or nontidal.

141-068-0020

General Provisions

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board has a constitutional responsibility to manage all land (Trust and Non-Trust) 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.”

(2) Pursuant to Oregon law as defined in ORS 274, all tidally influenced and title navigable waterways (referred to as state-owned submerged and submersible land) have been placed by the Oregon State Legislature under the jurisdiction of the State Land Board and the Department, as the administrative arm of the State Land Board.

(3) State-owned submerged and submersible lands are managed to ensure the collective rights of the public, including riparian owners, to fully use and enjoy this resource for commerce, navigation, fishing, recreation and other public trust values. These rights are collectively referred to as “public trust rights.”

(4) All references in these rules to “state-owned submerged and submersible lands” include state-owned submerged lands or submersible lands or both.

(5) The Department recognizes that uncertainty exists as to the extent of the State’s interest in historically filled lands. Actions to determine and assert the State’s interest, if any, in historically filled lands should be done in a prompt and orderly manner and as funding allows. The State Land Board authorizes the Department to negotiate settlements in lieu of litigation, when and where appropriate, with regard to the ownership of historically filled lands.

(6) The State Land Board authorizes the Director to issue land sale contracts, deeds or conveyances as are necessary to carry out the land transactions approved by the State Land Board in conformance with these rules. Such instruments shall include, but not be limited to quitclaim deeds, and be drawn in a manner to transfer any and all rights and interests (excluding mineral and geothermal resource rights) to the buyer/exchange partner that the Department may hold or has agreed to convey.

(7) Administrative fees delineated in these rules shall be adjusted on January 1 of every year based on Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by Labor Statistics of the US Department of Labor. The calculated adjustment shall be rounded up to the nearest dollar.

(8) The real market valuations described in OAR 141-068-0070(9), (10), and (11) rules shall be adjusted on January 1 of every year based on Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by Labor Statistics of the US Department of Labor. The calculated adjustment shall be rounded up to the nearest \$10 dollars.

(9) The State Land Board authorizes the Director to (without further State Land Board approval) issue land sale contracts, deeds or conveyances as are necessary to carry out the land transactions, in conformance with these rules, for:

- (a) Historically filled lands where no State interest is determined to exist; and
- (b) Historically filled lands that are determined to be of low value and low public interest values are present per OAR 141-068-0080(5)(d).

(10) The State Land Board shall recognize and adhere to all terms and conditions of valid existing leases and easements as they affect proposed land sales or exchanges.

(11) The State Land Board shall retain all mineral and geothermal resource rights (as defined) except as allowed under OAR 141-067-0320.

(12) It is the policy of the State Land Board that public access to a waterway shall be preserved to the extent practicable. The Department may require a public easement to, or along the waterway, as a condition of a land sale.

(13) Pursuant to ORS 274.950, the State Land Board shall not assert title to historically filled lands after December 31, 2025 unless the Board had made a declaration of State's interests prior to the date.

(14) Excluded from OAR 141-068-0020(13) are:

(a) Historically filled lands over which the State Land Board asserted title prior to January 1, 2016;

(b) Historically filled lands fronting upon the Pacific Ocean; or

(c) Lands in the portion of the Lower Willamette River that includes the Portland Harbor Superfund Site as delineated by the United States Environmental Protection Agency.

141-068-0030

Identification of State's Interest in Historically Filled Lands

(1) Upon direction from the Board to determine whether any interest remains or is vested in the State of Oregon with respect to historically filled lands in a segment of a waterway, the Department shall take the following steps:

(a) Post a public notice on the Department's website;

(b) Submit a press release to media in the study area; and

(c) Inform affected property owners, affected local, state and federal agencies, state legislators representing the district where the segment is located, any local port district, any local federally recognized tribes, any local watershed councils, national estuary programs and soil and water districts, and other interested persons.

(2) In conducting a study the Department shall take, at a minimum, the following steps:

(a) Analyze existing filled lands inventories, plat maps and deeds, historic low and high water lines as reported by the United States Army Corps of Engineers, aerial photography and tax lot information as compiled and digitized by the Department;

(b) Identify the purpose and date that the fill was placed, if possible;

(c) Identify the current site characteristics and use; and

(d) Evaluate any new information that can be collected by researching the local property records, or that may be provided by affected property owners or other stakeholders.

(3) Upon completion of a study the Department shall prepare and submit to the Board a draft report setting forth the Department's findings and conclusions as to whether any historically filled lands are located within the area under study.

(4) Upon completion of the draft report, the Department shall:

(a) Post a public notice on the Department's website;

(b) Submit a press release to media in the study area; and

(c) Provide appropriate public notice to affected property owners, affected local, state and federal agencies, any local port district, , any local federally recognized tribes, any local watershed councils, national estuary programs and soil and water districts, and other interested persons concerning the draft report.

- (5) The Department shall provide an opportunity for the public to submit written comments on the draft report and to submit other evidence concerning the presence of historically filled lands.
- (6) The Department may post a notice of a draft report and opportunity to comment at a local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a study and draft report. The Department shall make paper copies of materials available to any person upon request.
- (7) The Department shall hold public workshops and informational meetings in the study area as appropriate.
- (8) The Department shall hold a public hearing in the area of affected lands if it receives a written request within thirty (30) days after the posting of notice of the draft report by the Department.
- (9) Following the notification and opportunity for a public hearing, the Board may adopt the draft report as final, or the Board may refer the report to the Department for further action.
- (10) Upon adoption of a final report, the Board shall declare the nature and extent of the State's claim to any interest that remains vested in the State of Oregon as identified in the final report.
- (11) A declaration by the Board is not a final agency order.

141-068-0040 Notification of a State Land Board Declaration

- (1) Following a Board declaration, the Department shall:
 - (a) Post a public notice on the Department's website;
 - (b) Submit a press release to media in the study area; and
 - (c) Provide notice to affected local, state and federal agencies, state legislators representing the district where the study area is located, any local port district, any local federally recognized tribes, any local watershed councils, national estuary programs and soil and water districts, and other interested persons.
- (2) The Department shall give notice by registered mail or by certified mail, return receipt requested, to each owner of record of land identified as having a State interest in the property. This notice shall include a copy of the declaration made with respect to the land and a statement informing the owner of record of a point of contact at the Department and options available to the owner of record based on the notice.
- (3) The notice shall use common description and maps shall be designed to identify the land or waterway in a manner intelligible to the layperson and useful in establishing the exact location of the state claim in relation to existing descriptions.
- (4) The Department shall record the declaration with the county of record for parcels determined to have a State interest.

141-068-0050

Resolving Ownership of Historically Filled Lands prior to State Land Board declaration and New Lands

- (1) Notwithstanding the provisions of OAR 141-068-0030 through OAR 141-068-0040, any person with a potential interest in a property that wishes to resolve ownership of historically filled lands prior to declaration (including those lands excluded per OAR 141-

068-0020(14)), or new lands may meet with the Department to discuss the facts concerning the creation and ownership of the lands in question.

(2) The Department shall charge an investigation fee of \$250 if requested to complete a Strength of Claim checklist. The director has the discretion to waive this fee. A waiver must be in writing and explain the rationale for the waiver.

(3) The Department shall take the steps listed in OAR 141-068-0030(2) when completing an investigation.

(4) The Department shall complete a Strength of Claim checklist that summarizes the findings of the Department's investigation.

(5) Based on the facts presented, as well as the Department's own investigation, the Department may do the following:

(a) Agree that the Department has no interest in the historically filled land and offer to provide a conveyance that clears title to the lands as allowed under these rules;

(b) Begin the process to sell or clear title to the historically filled lands as provided under these rules;

(c) Enter into litigation to resolve the ownership issue, including but not limited to a suit to quiet title;

(d) Enter into negotiation in lieu of litigation with the person to resolve the ownership question;

(e) Request more information from the landowner or person; or

(f) Pursue other actions aimed at resolving the ownership question.

(g) A conveyance issued under OAR 141-068-0050(5)(a) may be carried out by the Director, and does not require further State Land Board approval.

141-068-0060

Land Sale Application Requirements

(1) An application to clear title, buy or exchange land subject to these rules must be submitted on a form provided by the Department.

(2) Each land sale applicant must submit with the application a correct and concise description of the land(s) involved in the requested transaction.

(3) A single application may include multiple contiguous land parcels.

(4) The application fee for historically filled land, and existing new lands sales or land exchanges is \$500 per application.

(5) An application to create new lands under OAR 141-068-0100 shall serve as the application fee to purchase if approved by the State Land Board.

141-068-0070

Application Review Process

(1) Upon receipt of an application, the Department will determine whether it is complete. In order to be complete, an application must meet the requirements of OAR 141-068-0060 (all sections of the application must be correctly filled out), and must be signed and dated by the applicant. Applications determined to be incomplete will be returned to the applicant with a written explanation of the reason(s) for rejection.

(2) If a rejected application is resubmitted within 120 calendar days from the date the Department returned it to the applicant, no additional application fee will be assessed.

- (3) The Department will prioritize the processing of complete applications based on the following factors:
- (a) An impending transaction or financing of the property in question;
 - (b) Department resources available to process the application requests;
 - (c) Other factors as delineated by the Director.
- (4) If determined by the Department to be complete, the application shall be circulated to affected local, state, and federal agencies; holders of valid authorizations granted by the Department in the requested area; any local port district, any local federally recognized tribes, any local watershed councils, national estuary programs and soil and water districts, and other interested persons. As a part of this review, the Department will specifically request comments concerning:
- (a) The presence, type and location of state or federally listed species (including threatened, endangered, candidate and sensitive species), and archeological and historic resources within the lands;
 - (b) Current or historic use of the lands for fishing or recreation;
 - (c) Existing public access to the water from lands, road, or right of way across the lands;
 - (d) Importance of the lands to existing or future navigational needs.
- (5) The Department may post a notice of an application and opportunity to comment at a local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a proposed action. The Department shall make paper copies of an application available to any person upon request.
- (6) If the Department does not find evidence of significant public interests per ORS 274.940, then the Department may determine that there are “low” public interests in the lands.
- (7) If the Department finds that there are recreational, navigational, or fish and wildlife interests (per ORS 274.940) in the property, the Department may determine that there are “moderate” to “high” public interests in the lands.
- (8) The Department shall evaluate the value of the State’s interest in the lands under review. The valuation shall be based on the Real Market Value (RMV) of the property’s land, not including structures, as determined by the County Assessor. This process for valuation shall be applied to determine parcels eligible for settlement under OAR 141-068-0080(4).
- (9) Land where the State’s interest in the property is determined to be less than \$20,000 shall be considered “low value”.
- (10) Land where the State’s interest in the property is determined to be greater than \$20,000 and less than \$100,000 shall be considered “moderate value”.
- (11) Land where the State’s interest in the property is determined to be greater than \$100,000 shall be considered “high value”.
- (12) If the RMV is found to be artificially depressed for any extenuating circumstance, the Department may select another comparable tax lot(s) as the basis for establishing the valuation.
- (13) The Department shall complete an Evaluation Form that provides:
- (a) The results of the Department’s due diligence;
 - (b) The results from the valuation of the State’s interests in the lands;
 - (c) The applicable elements from the public review and comment period; and

(d) A determination of whether the proposal is consistent with the general provisions set forth in OAR 141-068-0020.

(14) The review requirements of this section do not apply for a person requesting a conveyance that clears title when the Department has determined that there is no State interest in the historically filled land.

141-068-0080

Land Sale Approval Process

(1) An applicant and the Department may enter into a negotiated sale at any time. A negotiated sale shall include:

(a) An appraisal or appraisal report must be completed on the land if the initial evaluation determines the value to be over \$100,000. If the initial Department evaluation determines the property to be under \$100,000 in value, the RMV is used to establish the value; and

(b) A schedule of the costs to be borne by the applicant and those administrative costs to be reimbursed to the Department by the applicant.

(2) A negotiated sale may include factors including, but not limited to:

(a) The relative strength of the state's ownership claim;

(b) Access or lack of access;

(c) The potential loss of public interest values by extinguishing the State's interest in the property;

(d) An evaluation of any existing authorizations or property rights either on, or adjacent to the land; and

(e) Any requirement to impose deed restrictions or issue easements in order to protect public interest values.

(3) The Department may participate in a negotiated sale for:

(a) A parcel determined to be of "high value" as described in OAR 141-068-0070(11); or

(b) Upon public review and findings, the Department determines that there are "moderate" to "high" public interests in the lands.

(4) All negotiated sales shall go to the State Land Board for final approval.

(5) The Department shall provide the following sale options for lands determined to have "low" public interest values, and to be of "low value" to "moderate value":

(a) The Department shall offer to provide a conveyance that clears title to the lands as allowed under these rules.

(b) No compensation is required for the issuance of a conveyance that clears title for a parcel that is determined to be of "low value" as described in OAR 141-068-0070(9).

(c) The Department shall offer to issue a conveyance that clears title for compensation at 50% of real market value of the State's interest in the property for a parcel that is determined to be of "moderate value" as described in OAR 141-068-0070(10).

(d) A conveyance issued under OAR 141-068-0080(5)(b) may be carried out by the Director and does not require further approval from the State Land Board.

141-068-0090

Land Sale Conditions

(1) The Department will offer the type of deed (for example: quitclaim deed or bargain and sale deed) it deems to be the most legally defensible and best represents the

known rights and interests held by the State in the land or interest in land being conveyed in the transaction.

(2) The Department may enter into a land sale contract that allows the applicant to make annual installment payments over no more than five years when purchasing the property.

(3) The Department and an applicant may agree to enter into a land sale contract where payment to the Department is made through a lien against the property if:

(a) The applicant is over the age of 65; or

(b) The applicant has a level of income that is less than 80% of the median income in the county where the property is located.

(4) Any land sale contract negotiated under OAR 141-068-0090(2) or (3) shall include an interest rate as defined in ORS 82.010, set at the time of the agreement.

(5) As part of a negotiated sale, the Department may request additional requirements or conditions on the issuance of a deed, including but not limited to indemnification of and waiver of claims against the Department and State of Oregon.

(6) An offer by the Department to enter into a land sale or exchange is valid for 12 months. If the transaction is not completed within 12 months, the Department may:

(a) Revoke the offer and require a new application and fee in order to continue; or

(b) The Director may extend the deadline in writing to an agreed upon timeframe.

(7) When the land sale or land exchange process has been completed, including the payment of the purchase price and fulfillment of the terms of the land sale or land exchange agreement, the Director will execute and deliver to the purchaser a deed in a manner and form prescribed by these rules. The Department may choose to conduct closing through an escrow agent.

(8) All assignments of land sale contracts shall be executed and acknowledged in the same manner as a deed to land or real property. All requests for assignment of land sale contracts shall be in writing. Written consent of the Department is required for any assignment. The Department shall issue the deed to the assignee upon full payment of the purchase price or the remaining balance of the land sale contract.

(9) The Department shall record, in the appropriate county office, any and all deeds it receives as a result of a land exchange or purchase.

(10) The grantee shall record any conveyance issued by the Department it received as a result of a land exchange or purchase. A copy of the recorded document shall be submitted to the Department.

(11) The Department may, where feasible and deemed to be in the best interests of the public to do so, require the grantee to issue a similar deed to the Department for the existing submerged and submersible land fronting and abutting the grantee's land on the waterway as it exists at the time of the transaction.

141-068-0100

Permission to Create New Lands

(1) Pursuant to ORS 274.920, no one other than the United States, while engaged in the promotion of navigation, shall artificially create new lands by fill or deposit upon submersible or submerged lands without the approval of the owner of such lands and the owner of the adjoining or opposite upland on the same side of the body of water.

- (2) Any person requesting to create new lands from state-owned submerged and submersible lands shall meet with Department staff to discuss the proposed project and use before submitting an application to the Department. This meeting may be in person or through other means acceptable to the Department. The Department may invite other government entities to take part in a pre-application meeting.
- (3) Any person requesting to create new lands from state-owned submerged and submersible lands shall apply for permission to create the new lands.
- (4) The application fee for requesting to create new lands is \$1,000 per application. A single application may include multiple contiguous land parcels.
- (5) An application to create new lands shall be circulated to affected local, state, and federal agencies; holders of valid authorizations granted by the Department in the requested area; any local port district, any local federally recognized tribes, any local watershed councils, national estuary program and soil and water districts, and other interested persons. As a part of this review, the Department will specifically request comments concerning:
 - (a) The presence, type and location of state or federally listed threatened and endangered species (including threatened, endangered, candidate and sensitive species), and archeological and historic resources within the lands;
 - (b) Current or historic use of the lands for fishing or recreation;
 - (c) Existing public access to the water from lands, road, or right of way across the lands;
 - (d) Importance of the lands to existing or future navigational needs.
- (6) The Department may waive the circulation requirement described in OAR 141-068-0100(5) if the action or development has been previously reviewed by the listed agencies and other interested persons, and the results are documented by the Department.
- (7) The Department may post a notice of an application and opportunity to comment at a local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a proposed action. The Department shall make paper copies of an application available to any person upon request.
- (8) A request to create new lands may be taken to the State Land Board for review and approval. If a request for approval is submitted to the State Land Board, then the Department shall provide findings and a recommendation for the Board's consideration.

141-068-0110

Sale or Exchange of New Lands

- (1) The Department shall follow the provisions of ORS 274.925 to ORS 274.937 when offering an eligible person the right to purchase certain new lands.
- (2) Notwithstanding the provisions of OAR 141-068-0110(1), any person may apply to purchase or exchange new lands per OAR 141-068-0060. The application shall be processed and reviewed per OAR 141-068-0070.
- (3) Notwithstanding the provisions of OAR 141-068-0110(1), the sale or exchange of new lands shall be a negotiated sale subject to the provisions of OAR 141-068-0080 and OAR 141-068-0090.

141-068-0120

Reservation of New and Historically Filled Land

(1) Pursuant to ORS 274.940, the Department may reserve new and historically filled lands from sale, transfer or lease where upon notice and hearing the Department determines that the public interest requires the lands to be preserved for recreation, conservation of fish and wildlife or the development of navigation facilities. But in case of such reservation, the adjoining or opposite upland or riparian owner shall be allowed reasonable access across such reserved historically filled lands to navigable water.

(2) The Department shall use the comments received during public review and other findings when considering whether lands shall be reserved from sale.

(3) The Department shall hold a public hearing in the affected community prior to reserving the new or historically filled lands from sale.

(4) The Department will give 30 calendar days' notice of a public hearing to adjacent land owners, lessees, interested persons, agencies and local governments by mail or e-mail, and press release. The public hearing information will also be posted on the Department's website.

(5) A determination that the public interest requires new and historically filled lands to be reserved is not a final agency order.

141-068-0130

Compliance with the Department of Administrative Service (DAS) Rules for the Disposition and Acquisition of Real Property

(1) Before acquiring any land by purchase or exchange or selling or exchanging any land or interests in land, the Department will notify the Department of Administrative Services Facilities Division (DAS) on an approved form. DAS will notify all state agencies and political subdivisions of the anticipated transaction.

(2) The Department will seek certification of these rules (OAR 141-068) as permitted by 125-045-0210.

(3) DAS approval is not required for the sale of New Land, where ORS 274.905 to 274.940 gives a person or public body a right to purchase New Lands.

141-068-0140

General Requirements for Appraisals

(1) Appraisals conducted for land sales, purchases or exchanges shall comply with the following requirements:

(a) Be conducted by a State of Oregon-licensed appraiser familiar with the type of property to be appraised and in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) standards.

(b) Unless directed otherwise by the Department, the appraisal shall estimate the fair market value of the property based on its Highest and Best use, taking into account the contributory value of all offered interests in the property such as water rights, minerals, or timber to the extent that such interests are consistent with the highest and best use of the property.

(c) The appraisal report must include sufficient description of the property, highest and best use analysis, valuation methodology and support materials to fully document and justify the appraiser's estimate of fair market value.

(d) The Department may, based on the particular use of the appraisal, impose additional requirements or conditions on the appraisal.

(2) For land sales, purchases or exchanges where the estimated fair market value of the lands or interest in lands is \$100,000 or less, the Department may utilize a “desk appraisal” or a “letter opinion of value” as the Appraisal required under these rules.

(3) For purposes of this section, a “desk appraisal” is a written statement setting forth an opinion as to the market value of the lands or interest in lands as of a specific date. A desk appraisal conducted for land sales, purchases or exchanges shall comply with the following requirements:

(a) The desk appraisal must be conducted by an employee of the Department. A desk appraisal need not be prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP), as desk appraisals performed by an employee of the Department are not required to be performed by State of Oregon-licensed appraiser pursuant to ORS 674.100(2)(h).

(b) Unless directed otherwise by the Department, the desk appraisal shall estimate the fair market value of the property based on its highest and best use, taking into account the contributory value of all offered interests in the property such as water rights, minerals, or timber to the extent that such interests are consistent with the highest and best use of the property.

(c) The desk appraisal must include a sufficient description of the characteristics of the property, a highest and best use analysis, a description of the valuation methodology, and a description of the support materials utilized to fully document and justify the estimate of fair market value. The description of the characteristics of the property, and description of the characteristics of properties used as comparison to the property, may be based on aerial and topographic photographs and maps and on generally accepted property data resources, such as the United States Department of Agriculture — Natural Resources Conservation Service, county assessor tax lot information, multiple listing services, and similar resources. Field inspections of the property and of the properties used as comparison to the property are not required as part of the desk appraisal.

(4) For purposes of this section, a “letter opinion of value” is a written statement from a real estate professional licensed under ORS 696 setting forth an opinion as to the market value of the lands prepared in accordance with the requirements of OAR 863-015-0190(3).

FINAL RULE WITH TRACK CHANGES FOR LAND BOARD CONSIDERATION

NOTE: The proposed revisions to the draft rules which were available for public review and comment are indicated in underlined red type.

**DEPARTMENT OF STATE LANDS
DIVISION 68
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**

141-068-0000**Purpose and Applicability**

These rules:

- (1) Govern the identification of State's interest in historically filled lands by the Department of State Lands (Department).
- (2) Govern the notification process of State's interest in historically filled lands by the Department.
- (3) Govern the process to clearing title to historically filled lands and new lands.
- (4) Govern the sale, exchange and reservation of historically filled lands by the Department.
- (5) Govern the creation, sale, exchange and reservation of new lands by the Department.
- (6) Do not govern the land sale or exchange of state-owned trust lands, or mineral and geothermal resource rights as administered in OAR 141-067.
- (7) Do not govern the issuance of state leases, easements or other local, state or federal permits for historically filled lands and new lands.
- (8) Do not govern the placement of rip-rap; structures constructed by a drainage or diking district; tidegates; wharves; or other uses of state-owned submerged and submersible lands as administered in OAR 141-082.
- (9) Do not govern the placement of bridges or other crossings of state-owned submerged and submersible lands as administered in OAR 141-122.
- (10) Do not govern the removal or fill of material in waters of the state as administered in OAR 141-085.

141-068-0010**Definitions**

- (1) "**Abutting**" means immediately adjacent to or facing.
- (2) "**Affected Property Owners**" refers to those people listed in the records of the county assessor as owners of property fronting, abutting or underlying, or having a recorded easement allowing access to a waterway segment at the time that the Department undertakes a State's interest study of the subject waterway.
- (3) "**Applicant**" is any person who submits a written request to the Department to create, purchase or exchange land or interests in land.

- (4) "**Appraisal**" or "**Appraisal Report**" means a written statement setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s) prepared by a qualified appraiser in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP) standards.
- (5) "**Deed**" means a written, legal instrument that conveys an estate or interest in real property when it is properly executed and delivered.
- (6) "**Department**" means the Department of State Lands.
- (7) "**Declaration**" is a written statement by the Land Board concerning the nature and extent of the state's interest to historically filled lands in a waterway segment under study.
- (8) "**Director**" means the Director of the Oregon Department of State Lands or designee.
- (9) "**Easement**" is an authorization granted that gives a person the use of a specifically designated parcel of land for a specific purpose and length of time. An easement does not convey any proprietary or other rights of use to the holder other than those specifically granted in the easement authorization.
- (10) "**Fair Market Value**" means the most probable price, as of a specified date, in cash, or in terms equivalent to cash for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller acting prudently, knowledgeably, and assuming that neither is under undue duress.
- (11) "**Geothermal Resources**" as defined in ORS 522.005 means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or that may be extracted from, the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam in whatever form, found below the surface of the earth, exclusive of helium or of oil, hydrocarbon gas or other hydrocarbon substances, but including, specifically:
- (a) All products of geothermal processes, including indigenous steam, hot water and hot brines;
 - (b) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;
 - (c) Heat or other associated energy found in geothermal formations; and
 - (d) Any by-product derived from them.
- (12) "**Highest and Best Use of Filled Land**" means to treat the land (not including improvements) as if it were a part of the adjacent, or larger upland parcel, rather than an isolated land-locked parcel, unless the parcel is solely created by filled land. Filled land must be appraised with this definition unless the Department has given specific instructions to the contrary.
- (13) "**Historically Filled Lands**" as defined in ORS 274.905, means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian lands on the same side of the body of water that were created upon submersible or submerged lands by artificial fill or deposit before May 28, 1963. Historically filled lands does not include bridges, wharves and similar structures constructed upon submersible or submerged lands by other than artificial fill or deposit.

(14) **“Interest”** means right, title, or legal share in something.

(15) **“Interested persons”** means any person that has requested to be notified of certain Department actions within an area, or who has previously provided comment on a similar agency action.

~~(16) **“Line of Ordinary High Water”** as defined in ORS 274.005, means the line on the bank or shore to which the high water ordinarily rises annually in season.~~

~~(17) **“Line of Ordinary Low Water”** as defined in ORS 274.005, means the line on the bank or shore to which the low water ordinarily recedes annually in season.~~

(186) **“New Lands”** as defined in ORS 274.905 means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian land on the same side of the body of water, that were created upon submersible or submerged lands by artificial fill or deposit on or after May 28, 1963 and not including bridges, wharves and similar structures constructed upon submersible or submerged lands by other than artificial fill or deposit.

(197) **“Person”** includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or Indian Tribe.

(2048) **“Public Interest”** as used in ORS 274.940 includes the values, rights and interests that the public holds in historically filled lands for recreation, conservation of resources, or navigation.”

(2149) **“Quitclaim Deed”** is a form of deed in which any interest the grantor possesses in the property described in the deed is conveyed to the grantee without guaranteeing that interest or its title.

(220) **“Real Market Value”** or **“RMV”** means the current real market value of the property (not including improvements) assigned to the land or comparable tax lot by the county tax assessor.

(234) **“Reserved Interest”** means an interest in the land that is retained by the Department from a conveyance of the title to the state land.

(242) **“State Land Board”** or **“Board”** means the constitutionally created body consisting of the Governor, Secretary of State and the State Treasurer that is responsible for managing the assets of the Common School Fund as well as for additional functions placed under its jurisdiction by law.

~~(253) **“Submerged Lands”** as defined in ORS 274.005, means lands lying below the line of ordinary low water of all navigable waters within the boundaries of this state as heretofore or hereafter established, whether such waters are tidal or nontidal.~~

(264) **“Submersible Lands”** as defined in ORS 274.005, means lands lying between the line of ordinary high water and the line of ordinary low water of all navigable waters and all islands, shore lands or other such lands held by or granted to this state by virtue of her sovereignty, wherever applicable, within the boundaries of this state as heretofore or hereafter established, whether such waters or lands are tidal or nontidal.

~~(25) **“Summary Appraisal”** means a commonly accepted appraisal term to describe a complete appraisal that summarizes its information, analyses and conclusions.~~

141-068-0020

General Provisions

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board has a constitutional responsibility to manage all land (Trust and Non-Trust) 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.”

(2) Pursuant to Oregon law as defined in ORS 274, all tidally influenced and title navigable waterways (referred to as state-owned submerged and submersible land) have been placed by the Oregon State Legislature under the jurisdiction of the State Land Board and the Department, as the administrative arm of the State Land Board.

(3) State-owned submerged and submersible lands are managed to ensure the collective rights of the public, including riparian owners, to fully use and enjoy this resource for commerce, navigation, fishing, recreation and other public trust values. These rights are collectively referred to as “public trust rights.”

(4) All references in these rules to “state-owned submerged and submersible lands” include state-owned submerged lands or submersible lands or both.

(5) The Department recognizes that uncertainty exists as to the extent of the State’s interest in historically filled lands. Actions to determine and assert the State’s interest, if any, in historically filled lands should be done in a prompt and orderly manner and as funding allows. The State Land Board authorizes the Department to negotiate settlements in lieu of litigation, when and where appropriate, with regard to the ownership of historically filled lands.

(6) The State Land Board authorizes the Director to issue land sale contracts, deeds or conveyances as are necessary to carry out the land transactions approved by the State Land Board in conformance with these rules. Such instruments shall include, but not be limited to quitclaim deeds, and be drawn in a manner to transfer any and all rights and interests (excluding mineral and geothermal resource rights) to the buyer/exchange partner that the Department may hold or has agreed to convey.

(7) Administrative fees delineated in these rules shall be adjusted on January 1 of every year based on Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by Labor Statistics of the US Department of Labor. The calculated adjustment shall be rounded up to the nearest dollar.

(8) The real market valuations described in OAR 141-068-0070(9), (10), and (11) rules shall be adjusted on January 1 of every year based on Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by Labor Statistics of the US Department of Labor. The calculated adjustment shall be rounded up to the nearest \$10 dollars.

(9) The State Land Board authorizes the Director to (without further State Land Board approval) issue land sale contracts, deeds or conveyances as are necessary to carry out the land transactions, in conformance with these rules, for:

- (a) Historically filled lands where no State interest is determined to exist; and
- (b) Historically filled lands that are determined to be of low value and low public interest values are present per OAR 141-068-0080(5)(d).

(10) The State Land Board shall recognize and adhere to all terms and conditions of valid existing leases and easements as they affect proposed land sales or exchanges.

(11) The State Land Board shall retain all mineral and geothermal resource rights (as defined) except as allowed under OAR 141-067-0320.

(12) It is the policy of the State Land Board that public access to a waterway shall be preserved to the extent practicable. The Department may require a public easement to, or along the waterway, as a condition of a land sale.

(13) Pursuant to ORS 274.950~~XXX~~, the State Land Board shall not assert title to historically filled lands after December 31, 2025 unless the Board had made a declaration of State's interests prior to the date.

(14) Excluded from OAR 141-068-0020(13) are:

(a) Historically filled lands over which the State Land Board asserted title prior to January 1, 2016;

(ba) Historically filled lands fronting upon the Pacific Ocean; or

(cb) Lands in the portion of the Lower Willamette River that includes the Portland Harbor Superfund Site as delineated by the United States Environmental Protection Agency.

141-068-0030

Identification of State's Interest in Historically Filled Lands

(1) Upon direction from the Board to determine whether any interest remains or is vested in the State of Oregon with respect to historically filled lands in a segment of a waterway, the Department shall take the following steps:

(a) Post a public notice on the Department's website;

(b) Submit a press release to media in the study area; and

(c) Inform affected property owners, affected local, state and federal agencies, state legislators representing the district where the segment is located, any local port district, any local federally recognized tribes, any local watershed councils, national estuary programs and soil and water districts, and other interested persons.

(2) In conducting a study the Department shall take, at a minimum, the following steps:

(a) Analyze existing filled lands inventories, plat maps and deeds, historic low and high water lines as reported by the United States Army Corps of Engineers, aerial photography and tax lot information as compiled and digitized by the Department;

(b) Identify the purpose and date that the fill was placed, if possible;

(c) Identify the current site characteristics and use; and

(d) Evaluate any new information that can be collected by researching the local property records, or that may be provided by affected property owners or other stakeholders.

(3) Upon completion of a study the Department shall prepare and submit to the Board a draft report setting forth the Department's findings and conclusions as to whether any historically filled lands are located within the area under study.

(4) Upon completion of the draft report, the Department shall:

(a) Post a public notice on the Department's website;

(b) Submit a press release to media in the study area; and

(c) Provide appropriate public notice to affected property owners, affected local, state and federal agencies, any local port district, , any local federally recognized tribes, any local watershed councils, national estuary programs and soil and water districts, and other interested persons concerning the draft report.

- (5) The Department shall provide an opportunity for the public to submit written comments on the draft report and to submit other evidence concerning the presence of historically filled lands.
- (6) The Department may post a notice of a draft report and opportunity to comment at a local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a study and draft report. The Department shall make paper copies of materials available to any person upon request.
- (7) The Department shall hold public workshops and informational meetings in the study area as appropriate.
- (8) The Department shall hold a public hearing in the area of affected lands if it receives a written request within thirty (30) days after the posting of notice of the draft report by the Department.
- (9) Following the notification and opportunity for a public hearing, the Board may adopt the draft report as final, or the Board may refer the report to the Department for further action.
- (10) Upon adoption of a final report, the Board shall declare the nature and extent of the State's claim to any interest that remains vested in the State of Oregon as identified in the final report.
- (11) A declaration by the Board is not a final agency order.

141-068-0040 Notification of a State Land Board Declaration

- (1) Following a Board declaration, the Department shall:
 - (a) Post a public notice on the Department's website;
 - (b) Submit a press release to media in the study area; and
 - (c) Provide notice to affected local, state and federal agencies, [state legislators representing the district where the study area is located](#), any local port district, any local federally recognized tribes, any local watershed councils, national estuary programs and soil and water districts, and other interested persons.
- (2) The Department shall give notice by registered mail or by certified mail, return receipt requested, to each owner of record of land identified as having a State interest in the property. This notice shall include a copy of the declaration made with respect to the land and a statement informing the owner of record of a point of contact at the Department and options available to the owner of record based on the notice.
- (3) The notice shall use common description and maps shall be designed to identify the land or waterway in a manner intelligible to the layperson and useful in establishing the exact location of the state claim in relation to existing descriptions.
- (4) The Department shall record the declaration with the county of record for parcels determined to have a State interest.

141-068-0050

Resolving Ownership of Historically Filled Lands prior to State Land Board declaration and New Lands

- (1) Notwithstanding the provisions of OAR 141-068-0030 through OAR 141-068-0040, any person with a potential interest in a property that wishes to resolve ownership of historically filled lands prior to declaration (including those lands excluded per OAR 141-

068-0020(14)), or new lands may meet with the Department to discuss the facts concerning the creation and ownership of the lands in question.

(2) The Department shall charge an investigation fee of \$250 if requested to complete a Strength of Claim checklist. The director has the discretion to waive this fee. A waiver must be in writing and explain the rationale for the waiver. -

(3) The Department shall take the steps listed in OAR 141-068-0030(2) when completing an investigation.

(4) The Department shall complete a Strength of Claim checklist that summarizes the findings of the Department's investigation.

(5) Based on the facts presented, as well as the Department's own investigation, the Department may do the following:

(a) Agree that the Department has no interest in the historically filled land and offer to provide a conveyance that clears title to the lands as allowed under these rules;

(b) Begin the process to sell or clear title to the historically filled lands as provided under these rules;

(c) Enter into litigation to resolve the ownership issue, including but not limited to a suit to quiet title;

(d) Enter into negotiation in lieu of litigation with the person to resolve the ownership question;

(e) Request more information from the landowner or person; or

(f) Pursue other actions aimed at resolving the ownership question.

(g) A conveyance issued under OAR 141-068-0050(5)(a) may be carried out by the Director, and does not require further State Land Board approval.

141-068-0060

Land Sale Application Requirements

(1) An application to clear title, buy or exchange land subject to these rules must be submitted on a form provided by the Department.

(2) Each land sale applicant must submit with the application a correct and concise description of the land(s) involved in the requested transaction.

(3) A single application may include multiple contiguous land parcels.

(4) The application fee for historically filled land, and existing new lands sales or land exchanges is \$500 per application.

(5) An application to create new lands under OAR 141-068-0100 shall serve as the application fee to purchase if approved by the State Land Board.

141-068-0070

Application Review Process

(1) Upon receipt of an application, the Department will determine whether it is complete. In order to be complete, an application must meet the requirements of OAR 141-068-0060 (all sections of the application ~~form~~ must be correctly filled out), and must be signed and dated by the applicant. Applications determined to be incomplete will be returned to the applicant with a written explanation of the reason(s) for rejection.

- (2) If a rejected application is resubmitted within 120 calendar days from the date the Department returned it to the applicant, no additional application fee will be assessed.
- (3) The Department will prioritize the processing of complete applications based on the following factors:
 - (a) An impending transaction or financing of the property in question;
 - (b) Department resources available to process the application requests;
 - (c) Other factors as delineated by the Director.
- (4) If determined by the Department to be complete, the application shall be circulated to affected local, state, and federal agencies; holders of valid authorizations granted by the Department in the requested area; any local port district, any local federally recognized tribes, any local watershed councils, national estuary programs and soil and water districts, and other interested persons. As a part of this review, the Department will specifically request comments concerning:
 - (a) The presence, type and location of state or federally listed species (including threatened, endangered, candidate and sensitive species), and archeological and historic resources within the lands;
 - (b) Current or historic use of the lands for fishing or recreation;
 - (c) Existing public access to the water from lands, road, or right of way across the lands;
 - (d) Importance of the lands to existing or future navigational needs.
- (5) The Department may post a notice of an application and opportunity to comment at a local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a proposed action. The Department shall make paper copies of an application available to any person upon request.
- (6) If the Department does not find evidence of significant public interests per ORS 274.940, then the Department may determine that there are “low” public interests in the lands.
- (7) If the Department finds that there are recreational, navigational, or fish and wildlife interests (per ORS 274.940) in the property, the Department may determine that there are “moderate” to “high” public interests in the lands.
- (8) The Department shall evaluate the value of the State’s interest in the lands under review. The valuation shall be based on the Real Market Value (RMV) of the property’s land, not including structures, as determined by the County Assessor. This process for valuation shall be applied to determine parcels eligible for settlement under OAR 141-068-0080(4).
- (9) Land where the State’s interest in the property is determined to be less than \$20,000 shall be considered “low value”.
- (10) Land where the State’s interest in the property is determined to be greater than \$20,000 and less than \$100,000 shall be considered “moderate value”.
- (11) Land where the State’s interest in the property is determined to be greater than \$100,000 shall be considered “high value”.
- (12) If the RMV is found to be artificially depressed for any extenuating circumstance, the Department may select another comparable tax lot(s) as the basis for establishing the valuation.
- (13) The Department shall complete an Evaluation Form that provides:
 - (a) The results of the Department’s due diligence;

- (b) The results from the valuation of the State's interests in the lands;
- (c) The applicable elements from the public review and comment period; and
- (d) A determination of whether the proposal is consistent with the general provisions set forth in OAR 141-068-0020.

(14) The review requirements of this section do not apply for a person requesting a conveyance that clears title when the Department has determined that there is no State interest in the historically filled land.

141-068-0080

Land Sale Approval Process

(1) An applicant and the Department may enter into a negotiated sale at any time. A negotiated sale shall include:

(a) An appraisal or appraisal report must be completed on the land if the initial evaluation determines the value to be over \$100,000. If the initial Department evaluation determines the property to be under \$100,000 in value, the RMV is used to establish the value; and

(b) A schedule of the costs to be borne by the applicant and those administrative costs to be reimbursed to the Department by the applicant.

(2) A negotiated sale may include factors including, but not limited to:

(a) The relative strength of the state's ownership claim;

(b) Access or lack of access;

(c) The potential loss of public interest values by extinguishing the State's interest in the property;

(d) An evaluation of any existing authorizations or property rights either on, or adjacent to the land; and

(e) Any requirement to impose deed restrictions or issue easements in order to protect public interest values.

(3) The Department may participate in a negotiated sale for:

(a) A parcel determined to be of "high value" as described in OAR 141-068-0070(11); or

(b) Upon public review and findings, the Department determines that there are "moderate" to "high" public interests in the lands.

(4) All negotiated sales shall go to the State Land Board for final approval.

(5) The Department shall provide the following sale options for lands determined to have "low" public interest values, and to be of "low value" to "moderate value":

(a) The Department shall offer to provide a conveyance that clears title to the lands as allowed under these rules.

(b) No compensation is required for the issuance of a conveyance that clears title for a parcel that is determined to be of "low value" as described in OAR 141-068-0070(9).

(c) The Department shall offer to issue a conveyance that clears title for compensation at 50% of real market value of the State's interest in the property for a parcel that is determined to be of "moderate value" as described in OAR 141-068-0070(10).

(d) A conveyance issued under OAR 141-068-0080(5)(b) may be carried out by the Director and does not require further approval from the State Land Board.

141-068-0090

Land Sale Conditions

- (1) The Department will offer the type of deed (for example: quitclaim deed or bargain and sale deed) it deems to be the most legally defensible and best represents the known rights and interests held by the State in the land or interest in land being conveyed in the transaction.
- (2) The Department may enter into a land sale contract that allows the applicant to make annual installment payments over no more than five years when purchasing the property.
- (3) The Department and an applicant may agree to enter into a land sale contract where payment to the Department is made through a lien against the property if:
 - (a) The applicant is over the age of 65; or
 - (b) The applicant has a level of income that is less than 80% of the median income in the county where the property is located.
- (4) Any land sale contract negotiated under OAR 141-068-0090(2) or (3) shall include an interest rate as defined in ORS 82.010, set at the time of the agreement.
- (5) As part of a negotiated sale, the Department may request additional requirements or conditions on the issuance of a deed, including but not limited to indemnification of and waiver of claims against the Department and State of Oregon.
- (6) An offer by the Department to enter into a land sale or exchange is valid for 12 months. If the transaction is not completed within 12 months, the Department may:
 - (a) Revoke the offer and require a new application and fee in order to continue; or
 - (b) The Director may extend the deadline in writing to an agreed upon timeframe.
- (7) When the land sale or land exchange process has been completed, including the payment of the purchase price and fulfillment of the terms of the land sale or land exchange agreement, the Director will execute and deliver to the purchaser a deed in a manner and form prescribed by these rules. The Department may choose to conduct closing through an escrow agent.
- (8) All assignments of land sale contracts shall be executed and acknowledged in the same manner as a deed to land or real property. All requests for assignment of land sale contracts shall be in writing. Written consent of the Department is required for any assignment. The Department shall issue the deed to the assignee upon full payment of the purchase price or the remaining balance of the land sale contract.
- (9) The Department shall record, in the appropriate county office, any and all deeds it receives as a result of a land exchange or purchase.
- (10) The grantee shall record any conveyance issued by the Department it received as a result of a land exchange or purchase. A copy of the recorded document shall be submitted to the Department.
- (11) The Department may, where feasible and deemed to be in the best interests of the public to do so, require the grantee to issue a similar deed to the Department for the existing submerged and submersible land fronting and abutting the grantee's land on the waterway as it exists at the time of the transaction.

141-068-0100

Permission to Create New Lands

- (1) Pursuant to ORS 274.920, no one other than the United States, while engaged in the promotion of navigation, shall artificially create new lands by fill or deposit upon

submersible or submerged lands without the approval of the owner of such lands and the owner of the adjoining or opposite upland on the same side of the body of water.

(2) Any person requesting to create new lands from state-owned submerged and submersible lands shall meet with Department staff to discuss the proposed project and use before submitting an application to the Department. This meeting may be in person or through other means acceptable to the Department. The Department may invite other government entities to take part in a pre-application meeting.

(3) Any person requesting to create new lands from state-owned submerged and submersible lands shall apply for permission to create the new lands.

(4) The application fee for requesting to create new lands is \$1,000 per application. A single application may include multiple contiguous land parcels.

(5) An application to create new lands shall be circulated to affected local, state, and federal agencies; holders of valid authorizations granted by the Department in the requested area; any local port district, any local federally recognized tribes, any local watershed councils, national estuary program and soil and water districts, and other interested persons. As a part of this review, the Department will specifically request comments concerning:

(a) The presence, type and location of state or federally listed threatened and endangered species (including threatened, endangered, candidate and sensitive species), and archeological and historic resources within the lands;

(b) Current or historic use of the lands for fishing or recreation;

(c) Existing public access to the water from lands, road, or right of way across the lands;

(d) Importance of the lands to existing or future navigational needs.

(6) The Department may waive the circulation requirement described in OAR 141-068-0100(5) if the action or development has been previously reviewed by the listed agencies and other interested persons, and the results are documented by the Department.

(7) The Department may post a notice of an application and opportunity to comment at a local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a proposed action. The Department shall make paper copies of an application available to any person upon request.

(8) A request to create new lands may be taken to the State Land Board for review and approval. If a request for approval is submitted to the State Land Board, then the Department shall provide findings and a recommendation for the Board's consideration.

141-068-0110

Sale or Exchange of New Lands

(1) The Department shall follow the provisions of ORS 274.925 to ORS 274.937 when offering an eligible person the right to purchase certain new lands.

(2) Notwithstanding the provisions of OAR 141-068-0110(1), any person may apply to purchase or exchange new lands per OAR 141-068-0060. The application shall be processed and reviewed per OAR 141-068-0070.

(3) Notwithstanding the provisions of OAR 141-068-0110(1), the sale or exchange of new lands shall be a negotiated sale subject to the provisions of OAR 141-068-0080 and OAR 141-068-0090.

141-068-0120

Reservation of New and Historically Filled Land

(1) Pursuant to ORS 274.940, the Department may reserve new and historically filled lands from sale, transfer or lease where upon notice and hearing the Department determines that the public interest requires the lands to be preserved for recreation, conservation of fish and wildlife or the development of navigation facilities. But in case of such reservation, the adjoining or opposite upland or riparian owner shall be allowed reasonable access across such reserved historically filled lands to navigable water.

(2) The Department shall use the comments received during public review and other findings when considering whether lands shall be reserved from sale.

(3) The Department shall hold a public hearing in the affected community prior to reserving the new or historically filled lands from sale.

(4) The Department will give 30 calendar days' notice of a public hearing to adjacent land owners, lessees, interested persons, agencies and local governments by mail or e-mail, and press release. The public hearing information will also be posted on the Department's website.

(5) A determination that the public interest requires new and historically filled lands to be reserved is not a final agency order.

141-068-0130

Compliance with the Department of Administrative Service (DAS) Rules for the Disposition and Acquisition of Real Property

(1) Before acquiring any land by purchase or exchange or selling or exchanging any land or interests in land, the Department will notify the Department of Administrative Services Facilities Division (DAS) on an approved form. DAS will notify all state agencies and political subdivisions of the anticipated transaction.

(2) The Department will seek certification of these rules (OAR 141-068) as permitted by 125-045-0210.

(3) DAS approval is not required for the sale of New Land, where ORS 274.905 to 274.940 gives a person or public body a right to purchase New Lands.

141-068-0140

General Requirements for Appraisals

(1) Appraisals conducted for land sales, purchases or exchanges shall comply with the following requirements:

(a) Be conducted by a State of Oregon-licensed appraiser familiar with the type of property to be appraised and in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) standards.

(b) Unless directed otherwise by the Department, the appraisal shall estimate the fair market value of the property based on its Highest and Best use, taking into account the contributory value of all offered interests in the property such as water rights, minerals,

or timber to the extent that such interests are consistent with the highest and best use of the property.

(c) The appraisal report must include sufficient description of the property, highest and best use analysis, valuation methodology and support materials to fully document and justify the appraiser's estimate of fair market value.

(d) The Department may, based on the particular use of the appraisal, impose additional requirements or conditions on the appraisal.

(2) For land sales, purchases or exchanges where the estimated fair market value of the lands or interest in lands is \$100,000 or less, the Department may utilize a "desk appraisal" or a "letter opinion of value" as the Appraisal required under these rules.

(3) For purposes of this section, a "desk appraisal" is a written statement setting forth an opinion as to the market value of the lands or interest in lands as of a specific date. A desk appraisal conducted for land sales, purchases or exchanges shall comply with the following requirements:

(a) The desk appraisal must be conducted by an employee of the Department. A desk appraisal need not be prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP), as desk appraisals performed by an employee of the Department are not required to be performed by State of Oregon-licensed appraiser pursuant to ORS 674.100(2)(h).

(b) Unless directed otherwise by the Department, the desk appraisal shall estimate the fair market value of the property based on its highest and best use, taking into account the contributory value of all offered interests in the property such as water rights, minerals, or timber to the extent that such interests are consistent with the highest and best use of the property.

(c) The desk appraisal must include a sufficient description of the characteristics of the property, a highest and best use analysis, a description of the valuation methodology, and a description of the support materials utilized to fully document and justify the estimate of fair market value. The description of the characteristics of the property, and description of the characteristics of properties used as comparison to the property, may be based on aerial and topographic photographs and maps and on generally accepted property data resources, such as the United States Department of Agriculture — Natural Resources Conservation Service, county assessor tax lot information, multiple listing services, and similar resources. Field inspections of the property and of the properties used as comparison to the property are not required as part of the desk appraisal.

(4) For purposes of this section, a "letter opinion of value" is a written statement from a real estate professional licensed under ORS 696 setting forth an opinion as to the market value of the lands prepared in accordance with the requirements of OAR 863-015-0190(3).

~~(2) For land sales, purchases or exchanges where the estimated fair market value of the lands or interest in lands is \$100,000 or less, the Department may utilize a "summary appraisal" as the appraisal required under these rules.~~

~~(3) A summary appraisal conducted for land sales, purchases or exchanges shall comply with the following requirements:~~

~~(a) The summary appraisal must be conducted by an employee of the Department. A summary appraisal must be prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).~~

~~(b) Unless directed otherwise by the Department, the summary appraisal shall estimate the fair market value of the property based on its Highest and Best use, taking into account the contributory value of all offered interests in the property such as water rights, minerals, or timber to the extent that such interests are consistent with the Highest and Best use of the property.~~

~~(c) The summary appraisal must include a sufficient description of the characteristics of the property, a highest and best use analysis, a description of the valuation methodology, and a description of the support materials utilized to fully document and justify the estimate of fair market value. The description of the characteristics of the property, and description of the characteristics of properties used as comparison to the property, may be based on aerial and topographic photographs and maps and on generally accepted property data resources, such as the United States Department of Agriculture — Natural Resources Conservation Service, county assessor tax lot information, multiple listing services, and similar resources.~~

FINAL RULE WITH TRACK CHANGES FOR LAND BOARD CONSIDERATION

NOTE: The proposed revisions to the enacted rules are indicated in underlined red type.

DIVISION 67

RULES GOVERNING THE SALE, EXCHANGE AND PURCHASE OF LAND

141-067-0130

Purpose and Applicability

These rules:

(1) Establish procedures for the sale, exchange, and purchase of certain~~all~~ types and classifications of land and other interests including mineral and geothermal resource rights in land managed or to be managed by the State Land Board and the Department of State Lands in order to comply with all Constitutional and statutory requirements including, but not limited to: Oregon Constitution Article VIII, Section 5(2), and ORS 270, 271, 272, 273, and 274.

(2) Do not pertain to the leasing of lands or the granting of easements across lands managed by the State Land Board and the Department of State Lands, which are governed by other Department administrative rules.

(3) Apply to all land transactions (for example, sales, exchanges and purchases) for the South Slough National Estuarine Research Reserve as established in ORS 273.553.

(4) Do not apply to:

(a) The sale of submerged, submersible or new lands fronting upon the Pacific Ocean, or

(b) Land sold by the Department under the administrative rules of Procedure for the Recovery of Escheat Property (OAR chapter 141 division 030) or the Administration of Estates -- Probate (OAR chapter 141 division 035)

(c) Contracts for the sale of timber or other forest products.

(d) The sale of historically filled lands or new lands as administered through OAR 141-068.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 -

274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

141-067-0150

Definitions

- (1) "**Abutting**" means immediately adjacent to or facing.
- (2) "**Apparent Successful Purchaser**" is the person who is the highest acceptable bidder and who has agreed to the terms and conditions of a land sale prior to the final approval of the sale by the State Land Board.
- (3) "**Applicant**" is any person who submits a written request to the Department to purchase or exchange state land or interests in land.
- (4) "**Appraisal**" or "**Appraisal Report**" means a written statement setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s) prepared by a qualified appraiser in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP) standards.
- (5) "**Asset Management Plan**" or "**AMP**" is the plan adopted by the State Land Board that provides the policy direction and management principles to guide both the short and long term management by the Department of State Lands of its real estate assets.
- (6) "**Bargain**" is a process by which the Department and another person attempt to agree to a final sale price of state land or interests in state land.
- (7) "**Bargain and Sale Deed**" is a form of a deed that conveys real property from a seller to a buyer but does not guarantee clear title.
- (8) "**Bid**" means a written or oral monetary commitment to purchase land or interest in land offered at the specified time and place by a person determined by the Department as provided in OAR 141-067-0220 of these rules to be eligible to participate in an auction process.
- (9) "**Deed**" means a written, legal instrument that conveys an estate or interest in real property when it is properly executed and delivered.
- (10) "**Director**" means the Director of the Oregon Department of State Lands or designee.
- (11) "**Department**" means the Department of State Lands.
- (12) "**Department Estimate of Value**" is the monetary value of a land parcel established by the Department and approved by the State Land Board based on a critical review of the appraisal report; any review appraisal information; and other relevant or supporting data. The value may be derived, at the discretion of the Director, by considering factors or costs as are appropriate and applicable to the transaction.

(13) "**Easement**" is an authorization granted by the Department that gives a person the use of a specifically designated parcel of state-owned land for a specific purpose and length of time. An easement does not convey any proprietary or other rights of use to the holder other than those specifically granted in the easement authorization.

(14) "**Filled Lands**" as defined in ORS 274.705 (1) means submerged and submersible lands reclaimed artificially through raising such lands above the highest probable elevation of the tides to form dry land, by placement of a fill or deposit of earth, rock, sand or other solid imperishable material.

(15) "**Formerly Submerged and Submersible Lands**" are lands such as de-watered channels that once were part of the submerged and submersible lands of a navigable body of water but are no longer part of the waterway due to the dynamic forces of the waterway.

(16) "**Geothermal Resources**" as defined in ORS 522.005 means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or that may be extracted from, the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam in whatever form, found below the surface of the earth, exclusive of helium or of oil, hydrocarbon gas or other hydrocarbon substances, but including, specifically:

(a) All products of geothermal processes, including indigenous steam, hot water and hot brines;

(b) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(c) Heat or other associated energy found in geothermal formations; and

(d) Any by-product derived from them.

(17) "**High Bid**" means the highest monetary commitment to purchase land offered by a person eligible to participate in a land sale auction.

(18) "**Highest and Best Use**" means the reasonably probable and legal use of vacant or an improved property which is physically possible, appropriately supported, financially feasible, and that results in the highest value.

~~(19) "**Historical Filled Lands**" are new lands created by the federal government on land owned by the state before October 5, 1973 and the adjoining or opposite upland or riparian land on the same side of the body of water is owned by other than a public body (i.e. a nonpublic riparian owner).~~

~~(1920) "**Individual Person**" means a natural person and does not include such entities as a corporation, public agency, political subdivision or association.~~

~~(201) "**Land Acquisition Evaluation**" is an analytical review of land or interest being considered for acquisition by the Department to determine whether or not the land or interests should be acquired by purchase or exchange. The review includes:~~

(a) An examination of the physical, land management, financial, natural resource, recreational and cultural resource aspects of the land or interest; and

(b) A comparison of the information from (a) above, with the acquisition criteria and strategies of the Asset Management Plan.”

(212) “**Land Disposal Evaluation**” is an analytical review of state land or interest being considered for sale or exchange to determine whether or not the land or interest should be retained or disposed. The review includes:

(a) An examination of the physical, land management, financial, natural resource, recreational and cultural resource aspects of the land or interest; and

(b) A comparison of the information from (a) above, with the disposal criteria and strategies of the Asset Management Plan.

(223) “**Land Exchange**” means a simultaneous conveyance of land or interest in state land for land or interest in land of another entity of equal value (either appraised or Department-estimate of value).

(234) “**Land Exchange Agreement**” is a non-binding agreement between the Department and another party that sets out the terms of the exchange proposal and the responsibilities of each party to complete the exchange. The agreement, at a minimum, describes the lands to be exchanged; assigns responsibility for completion of and payment for appraisals, surveys, land use applications, advertising, closing and any special studies including environmental audits; and establishes a reasonable time schedule for completion.

(245) “**Lease**” means a valid enforceable contract executed by the Department and signed by the lease applicant (called lessee) allowing the use of a specific area of state land for a specific use under specific terms and conditions specified in the lease contract and these rules.

(256) “**Lessee**” refers to any person having a valid lease issued by the Department.

(267) “**Market Value**” or “**Fair Market Value**” means the most probable price in cash, or terms equivalent to cash, which land or interests in land should bring in a competitive and open market under all conditions requisite to a fair sale, where the buyer and seller each acts prudently and knowledgeably, and the price is not affected by undue influence.

(278) “**Mineral and Energy Resource Potential Analysis**” is an analysis of the mineral and geothermal interests of a parcel to determine if any minerals or energy resources exist in commercially valuable and extractable abundance.

(289) “**Mineral and Geothermal Resource Rights**” are all mineral rights as defined in ORS 273.775(1), including soil, clay, stone, sand, and gravel, and all geothermal resources, as defined in 273.775(2), together with the right to make use of the surface as may be reasonably necessary for prospecting for,

exploring for, mining, extracting, reinjecting, storing, drilling for, and removing, such minerals, materials, and geothermal resources.

~~(2930)~~ "**Minimum Bid**" is the lowest monetary commitment to purchase land offered from a person eligible to participate at a land sale auction that the Department will accept.

~~(31) "New Lands" as defined in ORS 274.905 means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian land on the same side of the body of water, which have been created upon submersible or submerged lands by artificial fill or deposit and not including bridges, wharves and similar structures constructed upon submersible or submerged lands by other than artificial fill or deposit.~~

~~(302)~~ "**Non-Trust Land**" or "**Statutory Land**" is state-owned land managed by the Department other than Trust Land. Examples of Non-Trust Land include state-owned Swamp Land Act Land, and submerged and submersible land (land below the line of ordinary high water) under navigable waterways.

~~(313)~~ "**Person**" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or Indian Tribe.

~~(324)~~ "**Public Body**" means the State of Oregon or any port organized under the laws of Oregon or dock commission of any city of this state.

~~(335)~~ "**Public Trust Values**" are the rights and interests held by the public to use and enjoy submerged and submersible lands and waters of the state for fishing, navigation, recreation and commerce (also termed "jus publicum rights").

~~(346)~~ "**Qualified Appraiser**" is a person who is a state-certified appraiser, or a salaried public employee of the federal government, the State of Oregon or a political subdivision of the federal government or the State of Oregon engaged in the performance of the duties of the employee as defined in ORS 674.100(2)(h).

~~(357)~~ "**Quitclaim Deed**" is a form of deed in which any interest the grantor possesses in the property described in the deed is conveyed to the grantee without warranty of title.

~~(368)~~ "**Rangelands**" means Trust and Non-Trust Lands that are classified by the Department for management primarily for livestock grazing largely on uncultivated forage areas with limited improvements or development.

~~(379)~~ "**Reserved Interest**" means an interest in the land that is retained by the Department from a conveyance of the title to the state land.

~~(3840)~~ "**South Slough National Estuarine Research Reserve**" is a component of the National Estuary Reserve System situated at South Slough (Coos County) established under ORS 273.553.

(~~3941~~) "**South Slough Management Commission**" is the public body established in ORS 273.554 for the purpose of directing the management of the South Slough National Estuarine Research Reserve.

(~~402~~) "**State Forester**" is as described in ORS 526.005(03).

(~~413~~) "**State Land**" means real property, including improvements, or any interest in real property (for example, timber or minerals) managed by the State Land Board and the Department of State Lands as Trust or Non-Trust Land.

(~~424~~) "**State Land Board**" or "**Board**" means the constitutionally created body consisting of the Governor, Secretary of State and the State Treasurer that is responsible for managing the assets of the Common School Fund as well as for additional functions placed under its jurisdiction by law.

(~~435~~) "**Submerged Land**" means land lying below the line of ordinary low water of all title navigable and tidally influenced waters within the boundaries of the State of Oregon.

(~~446~~) "**Submersible Land**" means land lying between the line of ordinary high water and the line of ordinary low water of all title navigable and tidally influenced waters and all islands, shore lands or other such lands held by or granted to this state by virtue of her sovereignty, wherever applicable within the boundaries of the State of Oregon.

(~~457~~) "**Trust Lands**" or "**Constitutional Lands**" is all land granted to the state for the use of schools upon its admission into the Union, or obtained by the state as the result of an exchange of Trust Land, or obtained in lieu of originally granted Trust Land, or purchased with trust funds, or obtained through foreclosure of loans using trust funds.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

141-067-0155

Policies

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board has a constitutional responsibility to manage all land (Trust and Non-Trust) 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."

(2) In order to achieve the constitutional mandate described above and to maximize the financial return to the Common School Fund from Trust Lands, the Department will seek to obtain the full fair market value for any land or interests in land sold or exchanged.

(3) Trust Lands will be sold or exchanged in a manner that complies with state law while ensuring absolute adherence to both constitutional and Admission Act trust responsibilities as determined by the State Land Board and subject to review by the courts.

(4) The Department will follow the guiding principles and resource-specific management prescriptions contained in the Asset Management Plan.

(5) In order to carry out the directives of the Asset Management Plan the Department may initiate efforts, subject to approval of the State Land Board, to purchase, sell or exchange Trust and/or Non-Trust Lands.

(6) Any Trust Land or interest in Trust Land may be exchanged for other land or interest in land, of equal or superior value. The newly acquired land or interest in land shall become Trust Land.

(7) The Director may, with State Land Board approval, purchase, sell or exchange lands in any such size, configuration or class (e.g. forest, agriculture, commercial).

(8) The State Forester may initiate and process land exchanges involving Common School Forest Lands under its management as allowed in the management agreement between State Land Board, the Department of State Lands and the State Forester. Such land exchanges require the approval of the State Land Board.

(9) Qualified persons and agencies may apply to purchase or exchange state land or interests in state land at any time. An application fee, as required by these rules, shall be included with each application. The Department reserves the right to accept or reject any application as well as to prioritize land sale and exchange projects according to available agency funds and income potential.

(10) The Department will not sell or exchange state-owned submerged land except to facilitate remedial action conducted pursuant to a plan approved by the Oregon Department of Environmental Quality (DEQ) or the U.S. Environmental Protection Agency (EPA) and with DEQ or EPA oversight. In instances when the Department chooses to sell or exchange submerged lands under circumstances as stated in these rules, such transaction shall occur only upon a finding that the transaction will provide a net gain in public trust values to the people of Oregon when viewed alone or in conjunction with other nearby or related sites. The State Land Board must approve all sales or exchanges of state-owned submerged land.

(11) The Department recognizes that uncertainty exists as to the extent of the State's ownership of ~~filled lands and~~ some formerly submerged and submersible lands. Actions to determine and assert the State's interest, if any, in ~~filled lands or~~ formerly sub-merged and submersible land should be done in a prompt and orderly manner and as funding allows. The State Land Board authorizes the Department to negotiate settlements in lieu of litigation, when and where appropriate, with regard to the ownership of ~~filled lands and~~ formerly submerged and submersible lands.

(12) The Department may exchange or sell submersible lands subject to the approval of the State Land Board, based on its finding that the proposed transaction will accrue a net gain of public trust values to the people of Oregon when viewed alone or in conjunction with other nearby or related lands within the control of the applicant.

(13) The State Land Board authorizes the Director or designee to issue such certificates of sale, deeds or conveyances as are necessary to carry out the land transactions approved by the State Land Board in conformance with these rules. Such instruments shall include, but not be limited to bargain and sale, limited warranty and quitclaim deeds, and be drawn in a manner to transfer any and all rights and interests to the buyer/exchange partner that the Department may hold or has agreed to convey.

(14) Land or interest in land sold to another state agency or political subdivision under the provisions of ORS 270.100 shall be used for public purpose or benefit, and not be sold for resale to a private purchaser. Restrictions to further this policy shall be included in the deed and be enforceable through such terms as, but not limited to, reversionary clauses.

(15) The State Land Board shall recognize and adhere to all terms and conditions of valid existing leases and easements as they affect proposed land sales or exchanges.

(16) The State Land Board shall retain all mineral and geothermal resource rights (as defined) except as allowed under OAR 141-067-0320.

(17) The Department will seek certification of these rules by the Department of Administrative Services (DAS) as permitted under OAR 125-045-0210. These rules are intended to carry out land transactions in a manner consistent with DAS rules for the Disposition and Acquisition of Real Property Interests (OAR 125-045).

(18) DAS approval is not required for:

(a) Sale of Non-Trust Land (except those lands sold at less than the appraised value);

~~(b) Sale of New Land, where ORS 274.905 to 274.940 gives a person or public body a right to purchase New Lands;~~

~~(b)~~ (b) Sale of Trust Land;

~~(c)~~ (c) Any land exchange;

~~(d)~~ (d) Any release, sale or exchange of mineral and geothermal resource rights.

Stat. Auth.: OAR 141-167-0005 – 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 -

274.940, 274.960 - 274.985

Hist.: DSL 6-2009, f. & cert. ef. 7-1-09

141-067-0160

Eligibility to Apply to Purchase or Exchange Land

Unless otherwise indicated in these rules, any person who is at least 18 years of age and who is a citizen of the United States or who has declared an intention to become a citizen, may apply to purchase or exchange state land

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

141-067-0165

Application and Application Processing Fees

- (1) An application to buy or exchange land subject to these rules must be submitted on a form provided by the Department.
- (2) Each land sale applicant must submit with the application a correct and concise description of the land(s) involved in the requested transaction.
- (3) A single application may include multiple land parcels.
- (4) The appropriate application fee must be included with the application.
- (5) The application fee for all land sales or land exchanges is \$750 per application. However, the Director may determine additional application fees are necessary for applications covering multiple parcels.
- (6) The fee for the assignment of a certificate of sale is \$750.
- (7) The application fee for the release of mineral or geothermal resource rights to a qualified owner under OAR 141-067-0320 of these rules is \$150.
- (8) All application processing fees are non-refundable except as noted in these rules.
- (9) Incomplete applications or those received from ineligible applicants will be returned.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960

- 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 6-2009, f. & cert. ef. 7-1-09

141-067-0170

Land Exchanges

(1) Except as provided in OAR 141-067-0300 or as limited by 141-067-0155, the Department may exchange any lands or interests in lands (~~including New Lands and submerged and submersible lands~~) for any other lands to meet objectives of the Asset Management Plan or the South Slough National Estuarine Research Reserve Management Plan. Exchanges shall be made on the basis of value. The Department may accept a monetary payment or reserve rights as part of the consideration to the extent required for a fair transaction.

(2) The Department may initiate a land exchange without requiring that an application be submitted.

(3) Any person, eligible to do so, may submit an application to the Department to initiate a land exchange. The application must be submitted on a form provided by the Department.

(4) The Department will notify the lessee, if any, by registered or certified mail and the applicant of receipt of the land exchange application. Within a reasonable time after receipt of the land exchange application, the Director will conduct an initial review of the application and determine the action to be taken including but not be limited to:

(a) Rejecting the application. A rejected application shall be returned to the applicant with the reasons for its rejection clearly stated. The lessee, if any, will also be notified. An additional non-refundable application fee will not be required for an application that is resubmitted within 120 calendar days of its rejection.

(b) Accepting the application for further processing; or

(c) Requesting more information.

(5) Following initial review and acceptance of the application, the Department will:

(a) Complete a Land Disposal Evaluation and Land Acquisition Evaluation of the lands involved in the exchange;

(b) Initiate the applicable elements of the public interest review process.

(6) If the Director determines to proceed with the land exchange proposal, the Department will negotiate a Land Exchange Agreement with the applicant. The State Land Board shall approve the Land Exchange Agreement.

(7) The Department may group together similar land exchange applications for more efficient processing. The willingness of applicants or other interested parties to pay for or share in the cost of appraisals, surveys, public notices or other expenses may be a factor in the Department's prioritization of land exchange proposals.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

141-067-0180

Public Interest Review Process; Public Meetings and Hearings

(1) After an application has been accepted for further processing or at anytime the Department decides to sell or exchange land the Department will notify, in writing, all affected lessees (by registered or certified mail) and adjacent lessees of a potential land sale or land exchange.

(2) Lessees affected by a land exchange proposal will be given notice that if a written protest is submitted by an affected lessee to the Department within 20 calendar days of the mailing a public hearing will be held on the exchange proposal. Such a hearing will be scheduled as described in OAR 141-067-0180(7).

(3) Notify, in writing, all adjacent landowners, and all affected school districts, city and county governments, including the county board of commissioners of a potential land sale or land exchange. The notice will offer all entities and persons an opportunity to comment on the proposal.

(4) Notify, in writing, those individuals and public interest groups that have indicated, through prior contact with the Department, an interest in potential land sales or land exchanges.

(5) Notify the Department of Administrative Services as described in OAR 141-067-0190.

(6) The Department may hold a public meeting on any land sale or exchange proposal to solicit public comment and explain the proposal. The Department will give 45 calendar days notice of any such meeting(s) to adjacent land owners, lessees, interested parties, agencies and local governments by mail and press releases or public notice in a newspaper of general circulation within the county in which the proposal is located. The public meeting information will also be posted on the Department's website.

(7) The Department will hold a public hearing on the proposal if it receives a timely written protest of a land exchange proposal from an affected lessee. The hearing will be cancelled or not scheduled if, anytime after the lessee's written protest is received, the Department rejects the land exchange proposal or the applicant withdraws the application. The hearing will be held at least 45 calendar days,

but not more than 90 calendar days, after the written protest has been received by the Department. All affected lessees of land considered for exchange will be notified of the hearing by certified or registered mail. All others will be given notice in the same manner as described in OAR 141-067-0180(6). All comments by the lessees or their representatives and all other interested parties will be recorded and compiled in the hearing record for review by the State Land Board or Director. The affected lessee and all registered public hearing attendees will be notified of any decision of the Director or the State Land Board resulting from the public hearing.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

141-067-0190

Compliance with the Department of Administrative Service (DAS) Rules for the Disposition and Acquisition of Real Property

(1) Before acquiring any land by purchase or exchange or selling or exchanging any land or interests in land, the Department will notify the Department of Administrative Services Facilities Division (DAS) on an approved form. DAS will notify all state agencies and political subdivisions of the anticipated transaction.

(2) The Department will seek certification of these rules (OAR 141-067) as permitted by 125-045-0210.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

141-067-0195

Resolving Ownership of ~~Filled Lands or~~ Formerly Submerged and Submersible Lands

(1) Any person interested in resolving ownership of ~~filled lands or~~ formerly submerged and submersible lands may meet with the Department to discuss the facts concerning the creation and ownership of the lands in question.

(2) Based on the facts presented, as well as the Department's own investigation, the Department may do the following:

- (a) Agree that the Department has no interest in the ~~filled land or~~ formerly submerged or submersible land;
- (b) Determine who is entitled to purchase the ~~formerly submerged or submersible land~~filled lands under these rules;
- (c) Enter into litigation to resolve the ownership issue, including but not limited to a suit to quiet title;
- (d) Enter into negotiation in lieu of litigation with the person to resolve the ownership question;
- (e) Request more information from the landowner or person; or
- (f) Pursue other actions aimed at resolving the ownership question.

(3) Factors the Department may weigh in determining its course of action include but are not limited to:

- (a) The chronological history of the creation of the ~~formerly submerged or submersible land~~filled lands;
- (b) The identity of the person(s) who created the ~~formerly submerged or submersible land~~filled lands;
- (c) The past actions of the Department regarding the sale of submersible lands;
- (d) The identity of the current riparian owner;
- (e) The cause for the change in the location of the waterway; and
- (f) The relative strength of the Department's ownership claim.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 6-2009, f. & cert. ef. 7-1-09

~~141-067-0200~~

~~Sale of New Lands~~

- ~~(1) The provisions of OAR 141-067-0200 apply to those New Lands described in ORS 274.905 to 274.940.~~
- ~~(2) New Lands will be sold in a manner consistent with ORS 274.905 to 274.940 after review of each application and approval of the State Land Board.~~

(3) Any public body or person, as defined in these rules with rights to purchase New Lands, as provided for in ORS 274.905 to 274.940, must submit an application on a form provided by the Department. A non-refundable application fee in the amount shown in OAR 141-067-0165 must be included with the application.

(4) Following receipt of the application, the Department will notify the applicant of receipt of the application. Within a reasonable time after receipt of the application, the Department will review the application for completeness and determine if the applicant qualifies under ORS 274.905 to 274.940 to purchase the New Lands and make a preliminary estimation of the extent of the State's ownership. Next the Department will take, but not be limited to, the following actions:

(a) Reject the application. A rejected application will be returned to the applicant with the reasons for its rejection clearly stated. An additional non-refundable application fee will not be required for an application that is resubmitted within 120 calendar days of its rejection;

(b) Accept the application for further processing; or

(c) Request more information.

(5) Upon acceptance of the application for further processing, the Department will:

(a) Complete a Land Disposal Evaluation including an analysis of the Public Trust Values of the New Lands and vicinity and a determination of the State's ownership; and

(b) Complete the applicable elements of the public interest review, including notifying DAS in accordance with OAR 141-067-0190.

(6) If the results of the Department's Land Sale Evaluation and analysis of Public Trust Values do not justify the sale of the New Lands, the Director shall notify the applicant and cease processing the application.

(7) If the Department's Land Sale Evaluation and analysis of Public Trust Values justify the sale of the New Lands, the Department will meet with the applicant to negotiate the following items to be included in a sales agreement to be approved by the State Land Board:

(a) The area of New Lands to be purchased;

(b) The schedule for the completion of appraisals, surveys and other aspects of the transaction as required by ORS 274.905 to 274.940; and

(c) The costs to be borne by the applicant and those administrative costs to be reimbursed to the Department by the applicant.

(8) In determining the final value for the sale of the New Lands, the Department may adjust the appraisal by considering factors or costs it deems appropriate, including:

(a) The relative strength of the state's ownership claim;

~~(b) The environmental condition of the property;~~

~~(c) The cost of various alternatives for addressing environmental or other conditions of the property;~~

~~(d) Access or lack of; and~~

~~(e) The amount of any property taxes based on the assessed value of the New Lands, excluding that portion of the annual tax assessment attributed to improvements, paid by the applicant in support of K-12 public schools during the duration of the applicant's use of the New Lands.~~

~~(9) The Department will not convey any rights to minerals, oil, gas or sulfur on New Lands.~~

~~(10) The State Land Board may reserve New Lands from sale, transfer, lease or exchange if upon notice and hearing it determines that the public interest requires such land to be preserved for recreational, conservation of fish and wildlife, or the development of navigation facilities, but in case of such reservation, the adjoining or opposite upland or riparian owner shall be allowed reasonable access across such reserved New Lands to navigable water.~~

~~Stat. Auth.: OAR 141-167-0005-141-067-0120, 125-045, ORS 270.005-270.190, 273.045, 273.245-273.247, 273.251-273.311, 273.316-273.321, 273.413-273.456, 274.040, 274.905-274.940, 274.960-274.985~~

~~Stats. Implemented: OAR 141-167-0005-141-067-0120, 125-045, ORS 270.005-270.190, 273.045, 273.245-273.247, 273.251-273.311, 273.316-273.321, 273.413-273.456, 274.040, 274.905-274.940, 274.960-274.985~~

~~Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09~~

141-067-0215

Sale of Submerged and Submersible Lands, ~~and New Lands Not Qualifying For Sale under the New Land provisions of OAR 141-067-0200 and ORS 274.905 to 274.940 including Historical Filled Lands~~

(1) Any person may submit an application to purchase submerged and submersible land. ~~land and New Lands that do not qualify for sale under the new land provisions of OAR 141-067-0200 and ORS 274.905 to 274.940 including Historical Filled Lands.~~ The application must be submitted on a form provided by the Department. A non-refundable application fee in the amount shown in OAR 141-067-0165 must be included with the application.

(2) The sale of submerged lands is limited to lands subject to remedial environmental action pursuant to a plan approved by DEQ or EPA.

(3) Applications will be processed in accordance with the applicable provisions of OAR 141-067-0220 and 141-067-0155.

(4) The applicant will be required to acknowledge the character of the land being applied for and the title interest in the land held by the Department. Further, the applicant must waive all claims against the

State, including but not limited to claims for the return of the purchase price, if all or part of the land are determined to not belong to the Department.

(5) Following notice that the land is available for sale, the applicant, at their own expense, shall have a survey of the land prepared. The survey must:

(a) Be prepared by a registered land surveyor approved by the Department in writing before the start of the survey work;

(b) Connect and conform to adjacent surveys acceptable to the Department, to the extent reasonably practicable; and

(c) Be notarized and submitted to the Department along with a hard copy map that is also notarized and electronic file in a format of the Department's choosing.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - RS 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 6-2009, f. & cert. ef. 7-1-09

141-067-0220

General Procedures for Land Sales (Except OAR 141-067-~~0200~~ and 0215)

(1) These general procedures apply to the processing of all land sale applications, except ~~sales of New Lands (under ORS 274.905 to 274.940 and OAR 141-067-0200)~~, sales of formerly submerged and submersible land (under 141-067-0300), and release of mineral and geothermal resource rights to owners of residential real property (under 141-067-0320). The Department may offer land for sale at any time without having first received an application from an individual or person. (Refer to 141-067-0230 for additional requirements for the sale of rangelands.)

(2) Any person who is eligible to do so as described in OAR 141-067-0160, may submit an application to purchase state land.

(3) Upon receipt of the application, the Department will conduct an initial review of the land sale application, including but not limited to:

(a) A determination whether or not the land described in the land sale application is a legal lot of record as described in ORS Chapter 92;

(b) A determination, of the Department's rights and interests in the land or interests in land described in the land sale application, based, if necessary, on a preliminary title report by the Department or its agent;

- (c) A Land Disposal Evaluation of the lands described in the land sale application;
 - (d) The results of the DAS notice process, if applicable, as described in OAR 141-067-0190;
 - (e) The applicable elements of the public interest review process as described in OAR 141-067-0180 of these rules; and
 - (f) A determination of whether the proposal is consistent with the policies set forth in OAR 141-067-0155.
- (4) The Department will notify the lessee, if applicable (by registered or certified mail) and the applicant of receipt of the land sale application. Within a reasonable time after receipt of the sale application and following completion of the initial review, the Director will determine the action to be taken including, but not limited to:
- (a) Rejecting the application. A rejected application shall be returned to the applicant with the reasons for its rejection clearly stated. The lessee, if any, will also be notified. An additional non-refundable application fee will not be required for an application that is resubmitted within 120 calendar days of its rejection;
 - (b) Accepting the application for further processing; or
 - (c) Requesting more information.
- (5) The Department may group together similar land sale applications for more efficient processing and to attract more buyer interest. The willingness of applicants or other interested parties to pay for or share in the cost of appraisals, surveys, advertising or other expenses may be a factor in the Department's prioritization of land sales applications for processing.
- (6) If following the initial review of the land sale application is accepted for further processing, the Director will within a reasonable time:
- (a) Classify as "available for sale" the land under consideration; or
 - (b) Not classify the lands under consideration as "available for sale." If the decision is to not classify the land as "available for sale" the Department will terminate further processing of the land sale application. As soon as possible after the Director's determination, the Department will notify the applicant and, if applicable, the lessee (by registered or certified mail) of the Director's decision.
- (7) If the lands are classified as "available for sale":
- (a) The Director will determine the method of sale for the land as described in OAR 141-067-0270 and request the State Land Board's approval of the land sale;
 - (b) The Department, its agent, or the applicant will, take such action as is necessary to obtain a legal lot of record determination as described in ORS 92 before the final closing of the sale;

(c) The Department will exercise its authorities under any applicable lease contract provisions allowing for the land to be sold without the encumbrance of the lease;

(d) The Department, its agent, or the applicant, will obtain a land appraisal in accordance with the provisions of OAR 141-067-0310; and

(e) The Department will determine the Department Estimate of Value as the minimum bid, reserve price or final purchase price, as applicable, depending on the approved method of sale.

(8) The Department will conduct the sale in accordance with the method of sale established by the Director and approved by the State Land Board.

(9) The Department, its agent or the applicant will give public notice of the proposed land sale by publication in a local newspaper of general circulation within the county where the proposed land sale is located and on the Department's website. The newspaper notice will be published for at least one day per week for at least three consecutive weeks prior to the sale. The Department will notify all landowners and lessees of land adjacent to the land being offered for sale of the sales procedure and all pertinent information concerning the proposed land sale.

(10) The Department may, at any time prior to the closing, withdraw from the sale process any or all of the lands subject to the land sale. If lands are withdrawn from sale under these rules, any monetary deposit on the land withdrawn will be refunded to the owner.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

141-067-0230

Sale Procedures for Rangelands/Common School Grazing Lands

(1) After rangeland is determined to be "available for sale" as described in OAR 141-067-0220, if a forage lessee of the land has not already done so, the forage lessee may apply, on a form prescribed by the Department, to purchase the lands.

(2) A forage lessee is qualified to purchase rangeland it leases if the forage lessee meets all of the following requirements:

(a) The forage lessee is an individual person;

(b) The forage lessee is a resident of Oregon; and

(c) The forage lessee owns, in fee simple, land immediately adjacent to the land classified as "available for sale" (lands are considered to be adjacent if their boundaries are common or intersect at a common point); and

(A) The forage lessee is in compliance with all lease terms and conditions; or

(B) The forage lease affords the lessee an opportunity to purchase the leasehold.

(3) Based on the forage lessee's representation of eligibility as shown on the application form, the Director will certify that the forage lessee is qualified to purchase rangeland under OAR 141-067-0230(2). The Department will promptly notify the forage lessee of the Director's decision by registered or certified mail. The Director will advise the forage lessee of deficiencies in the event the forage lessee is not certified as eligible in the land sale process as described in 141-067-0230(2).

(4) If a qualified eligible forage lessee does not respond to the Department's notice as described in OAR 141-067-0220(4) within 90 calendar days of the sending date of the registered or certified mail notice, then the forage lessee will be ineligible to participate in the land sale process described in 141-067-0270(2)(e).

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

141-067-0250

Type of Deed; Payments for Land Purchases; Contracts; Default Issuance of Deed; Certificates of Sale; Assignments; Recording

(1) The Department will offer the type of deed (for example: quitclaim deed or bargain and sale deed) it deems to be the most legally defensible and best represents the known rights and interests held by the State Land Board in the land or interest in land being conveyed in the transaction.

(2) The Department may impose additional requirements or conditions on the issuance of the deed, including but not limited to indemnification of and waiver of claims against the Department and State of Oregon.

(3) When the land sale or land exchange process has been completed, including the payment of the purchase price or fulfillment of the terms of the land sale or land exchange agreement, the Director will execute and deliver to the purchaser a deed in a manner and form prescribed by these rules. The Department may choose to conduct closing through an escrow agent.

(4) When a purchaser of land (other than rangeland) desires to make payments in installments the Department or its agent shall, upon receipt of one-fifth or 20 percent of the purchase price of the land, deliver to the purchaser a certificate that the purchaser has contracted to purchase the land. Upon performance under the contract or payment of three-fifths or 60 percent of the purchase price and the receipt and documentation of a note or loan, and upon surrender of the certificate of sale, the purchaser, or their heirs or assigns of the purchaser, shall be issued a deed for the property by the Department or its agent.

(5) A purchaser of rangeland deemed eligible under OAR 141-067-0230 must pay at least 10% of the purchase price at the time of purchase, and may then enter into a 10-year land sale contract with the Department to pay the remainder in 10 equal annual installments with the interest rate fixed by the Department in accord with ORS 327.425.

(6) All assignments of certificates of sale shall be executed and acknowledged in the same manner as a deed to land or real property. All requests for assignment of certificates shall be in writing. Written consent of the Department is required for any assignment. The Department shall issue the deed to the assignee upon full payment of the purchase price or the remaining balance of the land sale contract, and receipt of the certificate of sale.

(7) The Department will record, in the appropriate county office, any and all deeds it receives as a result of a land exchange or purchase.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

141-067-0260

Disposition of Funds Received for Trust Land Sales and Funds from Trust Land Exchanges

The proceeds of any Trust land sale or from land exchange equalization payments for Trust lands shall be deposited in the land revolving fund of the Common School Fund as established in ORS 273.413, unless directed otherwise by the Director.

Stat. Auth.: OAR 141-167-0005 – OAR 141-067-0120, OAR 125-045, ORS 270.005 – ORS 270.190, ORS 273.045, ORS 273.245 – ORS 273.247, ORS 273.251 – ORS 273.311, ORS 273.316 – ORS 273.321, ORS 273.413 – ORS 273.456, ORS 274.040, ORS 274.905 – ORS 274.940, ORS 274.960 – ORS 274.985

Stats. Implemented: OAR 141-167-0005 – OAR 141-067-0120, OAR 125-045, ORS 270.005 – ORS 270.190, ORS 273.045, ORS 273.245 – ORS 273.247, ORS 273.251 – ORS 273.311, ORS 273.316 – ORS 273.321, ORS 273.413 – ORS 273.456, ORS 274.040, ORS 274.905 – ORS 274.940, ORS 274.960 – ORS

(3) The Department reserves the right, but not the obligation, to offer all property to lessees, followed by adjacent landowners and others when the Director determines that doing so will provide the greatest benefit for the people of the state and not conflict with the Department's constitutional and statutory obligations.

(4) The Director will report to the State Land Board the land sale method chosen for each sale and the reasons supporting the choice of sale method. The land sale method must be approved by the State Land Board.

(5) If the sale method selected involves an auction, the Department will establish the sale procedures to be followed including, but not limited to: the form and schedule for bid submittals; the amount of deposit required; the time and location of the bid openings and/or oral auction; the minimum bid or reserve price; preliminary terms and conditions of sale; payment options and any additional costs to be borne by the successful purchaser. The Department will fully disclose these procedures and all other pertinent information to the public as well as give ample advance public notice of the auction.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

141-067-0300

Procedures for Resolving Claims to Formerly Submerged or Submersible Land (does not apply to lands described in OAR 141-067-~~0200~~ or 0215)

(1) The Director may issue a quitclaim deed to resolve a cloud of title over formerly submerged and submersible land. Such land may be, but is not limited to, areas that once were submerged or submersible land but are no longer connected to or a part of a state-owned (navigable) body of water due to the dynamic forces of the waterway. Such lands may be disposed of after the Department has completed a review of the facts and determined the extent, if any, of the state's ownership interest in the land.

(2) Any person may submit an application to resolve a claim to formerly submerged and submersible land. The application must be submitted on a form provided by the Department and include the appropriate application fee. Upon receipt of the application, and in order to determine the extent, if any, of the state's ownership claim, the Department will conduct an initial review of the application, including but not limited to:

(a) A determination whether or not the parcel(s)/lot(s) described in the land sale application are legal lots of record as described in ORS Chapter 92;

(b) A determination, based, if necessary, on a preliminary title report conducted by the Department or its agent, of the Department 's rights and interests in the land or interests in land described in the land sale application; and

(c) A Land Sale Evaluation of the lands involved in the application;

(d) The results of the DAS notice process, if applicable, as described in OAR 141-067-0190;

(e) The applicable elements of the public interest review process as described in OAR 141-067-0180.

(3) The Department will notify any lessees (by certified or registered mail) and the applicant of the receipt of the sale application within 90 calendar days. Based on the initial review of the application, the Director will take, but not be limited to, the following actions:

(a) Reject the application. A rejected application will be returned to the applicant with an explanation of the reasons for its rejection clearly stated. An additional non-refundable application fee will not be required for an application that is resubmitted within 120 calendar days of its rejection;

(b) Accept the application for further processing; or

(c) Request more information and later determine the merit of the application based on the information submitted.

(4) Upon acceptance of the application for further processing the Department and the applicant will meet to negotiate an agreement establishing the terms and conditions of the transaction, the responsibilities of each party and the transaction schedule. The Department may impose additional requirements or conditions on the issuance of the deed, including but not limited to indemnification of waiver of claims against the Department and the State of Oregon.

(5) The Department may, where feasible and deemed to be in the best interests of the public to do so, require the quitclaim grantee to issue a similar quitclaim to the Department for the existing submerged and submersible land fronting and abutting the grantee's land on the waterway as it exists at the time of the transaction.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

141-067-0310

General Requirements for Appraisals

(1) Appraisals conducted for land sales, purchases or exchanges shall comply with the following requirements:

(a) Be conducted by a State of Oregon-licensed appraiser familiar with the type of property to be appraised and in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) standards.

(b) Unless directed otherwise by the Department, the appraisal shall estimate the fair market value of the property based on its highest and best use, taking into account the contributory value of all offered interests in the property such as water rights, minerals, or timber to the extent that such interests are consistent with the highest and best use of the property.

(c) The appraisal report must include sufficient description of the property, highest and best use analysis, valuation methodology and support materials to fully document and justify the appraiser's estimate of fair market value.

(d) The Department may, based on the particular use of the appraisal, impose additional requirements or conditions on the appraisal.

(2) For land sales, purchases or exchanges where the estimated fair market value of the lands or interest in lands is \$100,000 or less, the Department may utilize a "desk appraisal" or a "letter opinion of value" as the Appraisal required under these rules.

(3) For purposes of this section, a "desk appraisal" is a written statement setting forth an opinion as to the market value of the lands or interest in lands as of a specific date. A desk appraisal conducted for land sales, purchases or exchanges shall comply with the following requirements:

(a) The desk appraisal must be conducted by an employee of the Department. A desk appraisal need not be prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP), as desk appraisals performed by an employee of the Department are not required to be performed by State of Oregon-licensed appraiser pursuant to ORS 674.100(2)(h).

(b) Unless directed otherwise by the Department, the desk appraisal shall estimate the fair market value of the property based on its highest and best use, taking into account the contributory value of all offered interests in the property such as water rights, minerals, or timber to the extent that such interests are consistent with the highest and best use of the property.

(c) The desk appraisal must include a sufficient description of the characteristics of the property, a highest and best use analysis, a description of the valuation methodology, and a description of the support materials utilized to fully document and justify the estimate of fair market value. The description of the characteristics of the property, and description of the characteristics of properties used as comparison to the property, may be based on aerial and topographic photographs and maps and on generally accepted property data resources, such as the United States Department of Agriculture — Natural Resources Conservation Service, county assessor tax lot information, multiple listing services,

and similar resources. Field inspections of the property and of the properties used as comparison to the property are not required as part of the desk appraisal.

(4) For purposes of this section, a “letter opinion of value” is a written statement from a real estate professional licensed under ORS 696 setting forth an opinion as to the market value of the lands prepared in accordance with the requirements of OAR 863-015-0190(3).

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09; DSL 1-2013, f. 2-14-13, cert. ef. 3-1-13

141-067-0320

Procedures for the Sale, Exchange or Release and Transfer of Mineral and Geothermal Resources

(1) For the purposes of OAR 141-067-0320(2) and (3):

(a) “Owner” means:

(A) The record holder of the fee title interest in residential real property; or

(B) The contract purchaser of residential real property.

(b) “Residential Real Property” means real property that is sold by the Department for the State Land Board and is located:

(A) Inside an urban growth boundary; or

(B) Within an area zoned for residential use on a lot or parcel that is three acres or smaller in size.

(2) An owner may apply to the Department for the release and transfer to the owner the reserved right to mineral and geothermal resources. Upon application by the owner, the Department will release and transfer to the owner the reserved rights to mineral and geothermal resources within 30 calendar days after the first Land Board meeting that is at least 60 calendar days after the Department received the completed application for the release and transfer of the rights, unless the Land Board finds that a significant mineral or geothermal resource exists. If the Land Board finds that a significant mineral or geothermal interest exists, the owner may:

(a) Offer to purchase the resource for the value of the resource; or

(b) Withdraw the application.

(3) If the Land Board finds that a significant mineral or geothermal resource exists and the owner offers to purchase the resource for the value of the resource:

(a) The Land Board will determine the value of the resource on the basis of an appraisal conducted by a state certified appraiser under ORS 674.310 or by a geologist who is registered under 672.505 to 672.705 and qualified to assess the value of mineral and geothermal deposits.

(b) The Land Board may not:

(A) Require an owner to obtain an appraisal, as described in (a) above; or

(B) Require an owner to pay the cost of an appraisal conducted at the request of the Land Board.

(4) The Department will charge a fee of \$150 to process mineral resource release and transfer applications for owners.

(5) Except as provided in subsections (1) through (4), if the rights to mineral and geothermal resources are to be included in a proposed land sale or land exchange, or the owner of the surface interest requests that the Department release and transfer its reserved right to mineral or geothermal resources, the Department will determine the mineral or geothermal potential of the property.

(6) The Department of Geology and Mineral Industries may conduct the mineral and geothermal potential analysis for the Department.

(7) For proposed land exchanges, the mineral and geothermal potential of both the land exchange partner's land and the Department's land are to be evaluated.

(8) When the Department deems it necessary, a mineral and geothermal appraisal may be required for a land exchange or land sale.

(9) The State Land Board may approve of the release and transfer of mineral and geothermal resources when the mineral potential evaluation (including an appraisal of values as required by the Director) reveals no or extremely limited resource potential in any lands being considered for sale or exchange; and the State Land Board deems that the disposal of mineral and geothermal resources is in the long term best interests of the Trust.

(10) When mineral or geothermal resources are part of a land exchange, the lands to be exchanged must have roughly equivalent mineral or geothermal resource potential.

(11) When mineral or geothermal resources are included in any sale they shall be accorded a monetary value and the Department shall be compensated for their sale.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045,

273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

141-067-0330

Procedures for Purchases including Donations of Land or Interests in Land

(1) Land or interests in land to be purchased for addition to the South Slough National Estuarine Research Reserve must be approved by the South Slough Commission and the State Land Board.

(2) Land or interests in land to be acquired by the Department through either purchase or donation must be approved in advance by the State Land Board and must be consistent with the policies set forth in the Asset Management Plan and OAR 141-067-0140.

(3) In acquiring land or interests in land by purchase, the Department will pay an amount equal to the price a prudent purchaser would pay under similar circumstances.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

141-067-0340

Appeals

Any applicant may request reconsideration of a decision of the Department or the State Land Board relating to 141-067.

(1) The request must be received by the Director no later than 30 calendar days after the delivery of the decision.

(2) The Director will review the request within 60 calendar days after the date of delivery of the request.

(3) The Director may recommend to the State Land Board either that the decision be modified based on the merits of the request, or that the Land Board authorize initiation of a contested case proceeding.

(4) There is no opportunity to request reconsideration of a land sale or State land exchange after the transaction has occurred and title has passed from the State of Oregon to the purchaser or land exchange partner.

(5) If the Director recommends that the State Land Board initiate a contested case proceeding, the State Land Board will select a hearing officer and proceed pursuant to ORS 183.413 through 183.470.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

78th OREGON LEGISLATIVE ASSEMBLY--2015 Regular Session

Enrolled Senate Bill 912

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to land that was formerly submerged or submersible land; creating new provisions; amending ORS 274.905, 274.910, 274.915, 274.929 and 274.940; repealing ORS 274.960, 274.963, 274.965, 274.967, 274.970, 274.975, 274.977, 274.980, 274.983 and 274.985; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

AMENDMENTS TO NEW LANDS STATUTES

SECTION 1. ORS 274.905 is amended to read:

274.905. As used in ORS 274.905 to 274.940, unless the context requires otherwise:

(1)(a) **“Historically filled lands” means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian lands on the same side of the body of water, that were created upon submersible or submerged lands by artificial fill or deposit before May 28, 1963.**

(b) **“Historically filled lands” does not include bridges, wharves and similar structures constructed upon submersible or submerged lands by other than artificial fill or deposit.**

[(1)] (2)(a) “New lands” means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian lands on the same side of the body of water[, *which have been*] **that were** created upon submersible or submerged lands by artificial fill or deposit **on or after May 28, 1963.**

(b) “New lands” does not include bridges, wharves and similar structures constructed upon submersible or submerged lands by other than artificial fill or deposit.

[(2)] (3) “Public body” means the State of Oregon or any port organized under the laws of this state or any dock commission of any city of this state.

SECTION 2. ORS 274.910 is amended to read:

274.910. (1) ORS 274.905 to 274.940 [*shall*] **do** not apply to submersible, submerged or new lands fronting upon the Pacific Ocean.

[(2)] *The provisions of ORS 274.905 to 274.940 apply to new lands created before, on or after May 28, 1963.*

[(3)] (2) Nothing contained in ORS 274.905 to 274.940 shall divest the State of Oregon of its rights to minerals, oil, gas and sulfur.

SECTION 3. ORS 274.915 is amended to read:

274.915. (1) Except as otherwise provided in ORS 274.905 to 274.940, the Department of State Lands may sell, lease or trade submersible or submerged lands owned by the state in the same manner as provided for submersible lands in this chapter or ORS chapter 273.

(2) Except as otherwise provided in ORS 274.905 to 274.940, the department may sell, lease or trade new lands created upon submersible or submerged lands owned by the state in the same manner as provided for lands acquired as an investment for the Common School Fund in ORS 274.085 or ORS chapter 273.

(3) Except as otherwise provided in ORS 274.905 to 274.940 and sections 7 to 10 of this 2015 Act, the State Land Board shall adopt rules under which the department may sell, lease or trade historically filled lands owned by the state.

SECTION 4. ORS 274.929 is amended to read:

274.929. (1) Whenever the United States, while engaged in the promotion of navigation, creates new lands upon submersible or submerged lands owned by the state and the adjoining or opposite upland or riparian land on the same side of the body of water is owned by other than a public body, the nonpublic riparian owner has the right to purchase the new lands as provided in this section.

(2) A nonpublic riparian owner entitled to purchase the new lands under subsection (1) of this section shall pay to the Department of State Lands for the new lands a sum equal to the difference between the value of the tract, consisting of the new lands and the adjoining or opposite upland on the same side of the body of water, and the value of the adjoining or opposite upland before the creation of the new lands and an amount prescribed by the department to pay its administrative costs incurred with respect to the new lands. Such payment shall be made by the nonpublic riparian owner within six months after the date of the receipt by the nonpublic riparian owner of actual official notice by the department of the creation of the new lands, the sum equal to the difference between the value of the tract, consisting of the new lands and the adjoining or opposite upland on the same side of the body of water, and the value of the adjoining or opposite upland before the creation of the new lands and administrative costs incurred by the department with respect to the new lands. If the nonpublic riparian owner fails to make payment for the new lands as provided in this subsection, the department, after the expiration of the six-month period, may dispose of the new lands as provided in ORS 274.915.

(3) If a nonpublic riparian owner and the department cannot agree on the sum to be paid under subsection (2) of this section, the sum to be paid shall be determined by three appraisers, one appointed by the nonpublic riparian owner, one by the department, and the third by the first two, and their determination shall be final. The cost of the third appraiser shall be borne equally by the nonpublic riparian owner and the department.

(4) Notwithstanding ORS [274.910 (2)] **274.905 (2)**, this section applies only to new lands created on or after October 5, 1973.

SECTION 5. ORS 274.940 is amended to read:

274.940. (1) Notwithstanding [ORS 274.905, 274.915 to 274.925, 274.929, 274.932 and 274.937] **any contrary provision of ORS 274.905 to 274.940**, the Department of State Lands may reserve **historically filled lands or** new lands from sale, transfer or lease where upon notice and hearing [it] **the department** determines that the public interest requires [such] **the** lands to be preserved for recreation, conservation of fish and wildlife or the development of navigation facilities. [, but in case of such reservation]

(2) If lands are reserved from sale, transfer or lease under this section, the adjoining or opposite upland or riparian owner shall be allowed reasonable access [across such reserved new lands] to navigable water **across the reserved historically filled lands or new lands**.

(3) A determination that the public interest requires historically filled lands or new lands to be reserved under this section is not a final agency order.

REPEAL OF FORMERLY SUBMERGED OR SUBMERSIBLE LANDS PROVISIONS

SECTION 6. ORS 274.960, 274.963, 274.965, 274.967, 274.970, 274.975, 274.977, 274.980, 274.983, and 274.985 are repealed.

**IDENTIFICATION AND NOTIFICATION OF STATE'S INTEREST
IN HISTORICALLY FILLED LANDS**

SECTION 7. (1) Except as provided in subsection (2) of this section, the State Land Board may not in any manner assert title to historically filled lands, as defined in ORS 274.905, unless, prior to December 31, 2025:

(a) The board makes a declaration under section 9 of this 2015 Act that asserts title to the historically filled lands; and

(b) Notice of the board's declaration was given as required under section 10 of this 2015 Act.

(2) Subsection (1) of this section does not apply to:

(a) Historically filled lands, as defined in ORS 274.905, over which the State Land Board asserted title prior to January 1, 2016;

(b) Historically filled lands fronting upon the Pacific Ocean; or

(c) Lands in that portion of the Lower Willamette River that includes the Portland Harbor Superfund Site.

(3) Nothing contained in sections 7 to 10 of this 2015 Act shall divest the State of Oregon of its rights to minerals, oil, gas and sulfur.

SECTION 8. (1)(a) The State Land Board shall direct the Department of State Lands to determine whether any interest remains or is vested in the State of Oregon with respect to historically filled lands, as defined in ORS 274.905, in:

(A) Waterways of the state subject to tidal influence;

(B) Waterways of this state that have been administratively or judicially determined navigable pursuant to ORS 274.400 to 274.412; and

(C) Waterways in which the state has asserted ownership prior to the enactment of ORS 274.402 on September 9, 1995.

(b) Nothing contained in paragraph (a)(C) of this section is intended to affect the ability of a court of competent jurisdiction to make a determination with respect to a private claim to or interest in real property.

(c) In directing a determination by the department under this subsection, the board may designate a specifically described area of land within which the department shall make its determination.

(2) Upon direction by the board under subsection (1) of this section, the department shall conduct a study to make the determination. In completing the study, the department shall comply with the following procedures:

(a) The department shall provide prompt public notice to affected property owners that the department is beginning the study.

(b) Upon completion of a study directed under subsection (1) of this section, the department shall prepare and submit to the board a draft report setting forth the department's findings and conclusions as to whether any historically filled lands, as defined in ORS 274.905, are located within the area under study and, if so, the extent of the State of Oregon's interest in the historically filled lands.

(c) The department shall provide appropriate prior public notice to affected property owners and other interested parties concerning the draft report. The notice shall provide an opportunity for a public hearing in the area of the affected lands and an opportunity for the public to submit written comments on the draft report and to submit testimony or other evidence concerning the presence of historically filled lands, as defined in ORS 274.905, or the State of Oregon's interest in the historically filled lands.

(3) Following the public hearing under subsection (2) of this section, the board may adopt the draft report submitted by the department as final if substantial evidence in the record supports the report's findings and conclusions, or the board may refer the report to the department for further action as determined by the board.

SECTION 9. (1) Upon the adoption of a final report by the State Land Board under section 8 of this 2015 Act, the board shall declare the nature and extent of the state's claim to any interest that remains or is vested in the State of Oregon with respect to historically filled lands described in the report.

(2) A declaration made by the board pursuant to subsection (1) of this section shall be binding upon the State of Oregon with respect to the interest, if any, of the State of Oregon in historically filled lands described in the declaration.

(3) A declaration under this section is not a final order as defined in ORS 183.310.

(4) Nothing contained in this section is intended to affect the ability of a court of competent jurisdiction to make a determination with respect to a private claim to or interest in real property.

SECTION 10. Immediately following a declaration made by the State Land Board pursuant to section 9 of this 2015 Act, the board shall:

(1) Cause reasonable public notice of the declaration to be given to interested parties. The notice shall describe the land or waterway affected and the nature and extent of the state's claim. Notice under this section need not describe the land or waterway in legal terms, but by the use of common descriptions or maps shall be designed to identify the land or waterway in a manner intelligible to the layperson and useful in establishing the exact location of the state claim in relation to existing legal descriptions.

(2) Give notice to each owner of record of land described in the declaration by transmitting by registered mail or by certified mail, return receipt requested, a copy of the declaration made with respect to the land and a statement informing the owner of record of a point of contact at the Department of State Lands, and of options available to the owner of record based on the notice.

NOTE: Section 11 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 12. The Department of State Lands shall submit a report on the department's progress in implementing sections 7 to 10 of this 2015 Act, and may include recommendations for legislation, to the interim committees of the Legislative Assembly related to the environment and natural resources in the manner provided under ORS 192.245 on or before September 15, 2017.

SECTION 13. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of State Lands, out of the General Fund, the amount of \$328,228 for the purpose of carrying out the duties, functions and powers conferred on the department by sections 7 to 10 of this 2015 Act. This appropriation is available continuously until expended for the purpose specified in this section. On January 1, 2026, any unobligated balance of the appropriation made by this section reverts to the General Fund.

MISCELLANEOUS

SECTION 14. The unit captions used in this 2015 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2015 Act.

SECTION 15. Sections 7 to 13 of this 2015 Act and the amendments to ORS 274.905, 274.910, 274.915, 274.929 and 274.940 by sections 1 to 5 of this 2015 Act become operative on January 1, 2016.

SECTION 16. The Department of State Lands, under the direction of the State Land Board, may take any action before the operative date specified in section 15 of this 2015 Act that is necessary for the department to exercise, on and after the operative date specified

in section 15 of this 2015 Act, all of the duties, functions and powers conferred on the department by sections 7 to 13 of this 2015 Act and the amendments to ORS 274.905, 274.910, 274.915, 274.929 and 274.940 by sections 1 to 5 of this 2015 Act.

EMERGENCY CLAUSE

SECTION 17. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by Senate July 1, 2015

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House July 3, 2015

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

.....
Jeanne P. Atkins, Secretary of State



Oregon

Kate Brown, Governor

Department of State Lands

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State Land Board

State Land Board

Kate Brown
Governor

Regular Meeting
April 12, 2016
Agenda Item 3

Jeanne P. Atkins
Secretary of State

Ted Wheeler
State Treasurer

SUBJECT

Request for approval of the sale of historically filled lands, new lands and historically filled submersible lands in Coos County.

ISSUE

Whether the State Land Board should authorize the sale of historically filled, new and historically filled submersible lands to Ocean Terminals Co. in North Bend, Coos County.

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

ORS 273.281 and ORS 273.285; relating to the payment for state lands.

ORS 274.040; relating to the sale of submersible lands

ORS 274.920; relating to the creation of new lands upon submersible or submerged lands.

ORS 274.937; relating to the right of an individual to purchase new lands created by the individual.

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

SUMMARY

Background

At its meeting of December 13, 2011, the State Land Board authorized the Director of the Department of State Lands (DSL) to issue the appropriate permits to create new

lands for future sale to Ocean Terminals Co. in North Bend. ORS 274.920 states that no entity (other than the United States promoting navigation), shall artificially create new lands by fill or deposit upon submerged or submersible lands without the approval of the owner of those lands and the owner of the upland adjacent to the proposed fill. In this case, Ocean Terminals owns the uplands adjacent to the proposed fill, and the state owns the submerged/submersible lands.

The 2011 report also noted that Ocean Terminals had long been in discussions with DSL over the ownership of historically filled lands occupied by Ocean Terminals. Since that time, DSL has been in discussions with Ocean Terminals about the historically filled lands. Additionally, Ocean Terminals has recently completed the creation of the new lands. Ocean Terminals and DSL have reached agreement (Appendix A) on the price of the historically filled and new lands (pending an “as-built” survey at project completion).

In Summer 2015, Ocean Terminals requested that additional submersible lands be added to the sale, citing Homeland Security reasons. The area to be added would total about 0.7 acres between the historically filled lands and ordinary low water. After consulting with the Department of Justice (DOJ), it was determined that this sale of submersible lands could occur under existing DSL and State Land Board authorities.

Sale

Ocean Terminals and DSL have agreed on a total purchase price of \$258,434, based on an agreed-upon per-acre value (confirmation of final value subject to the final survey of “new lands” and the submersible lands fronting the historically filled lands—see Appendix B). The land values were determined as follows:

Historically Filled Lands: OAR 141-067-0200(8)(a)-(e) provides five factors to adjust the appraised value of historically filled lands. The appraised value of the historically filled lands was \$780,800 (\$61,000 per acre for 12.8 acres). The factors and related values for this sale include:

- Strength of State’s Ownership Claim. The parties agreed on a 30% discount to the appraised value: a discount of \$234,240.
- Environmental Condition of the Property. The parties agreed that no discount should be applied for this factor.
- Cost of various alternatives for addressing environmental or other conditions of the property. The parties agreed no discount should be applied for this factor.
- Access or lack of access. The parties agreed on a discount of 35% based on lack of access to the historically filled lands: a discount of \$273,280.
- Property taxes paid by the applicant in support of K-12 schools. The parties agreed on a discount of \$160,115 based upon property tax information in support of K-12 schools provided by Ocean Terminals.

Based on these factors and the negotiated discounts, the price for the historically filled lands was set at \$113,165 (\$8,841/acre).

New Lands: Ocean Terminals was issued a Removal/Fill permit to create 3.8 acres of new lands adjacent to the historically filled lands. ORS 274.937 provides that a party that creates new lands has the right to purchase the new lands. The language in the Statute states the following:

“The individual shall pay to the Department of State Lands for the new lands the value of the state-owned submersible or submerged lands upon which the new lands were created immediately prior to the creation of the new lands thereon and a reasonable portion of the private benefit realized from the creation of the new lands as an addition to the adjoining or opposite upland in front of which the new lands were created.”

The statute does not provide any additional guidance on interpreting the above language. However, legislative research conducted by the DOJ determined that the intent of the language was to provide a partial offset to the full appraised upland value. In the spirit of acting consistent with this intent, the parties agreed that 60% of the appraised value was a reasonable value to be applied to the new lands in order to satisfy the statutory language cited above. Thus, using the same original appraised upland value as was utilized for the historically filled lands (\$61,000/acre), the appraised value of the new lands was established at \$231,800 ($\$61,000 \times 3.8$). 60% of that value is \$36,600 per acre, for a total of \$139,080. This total may be adjusted based upon the final survey to confirm the precise acres of the new lands.

Submersible Lands: As noted above, in the summer of 2015 Ocean Terminals requested that additional submersible land be added to the sale, based on Homeland Security concerns. The land in question totals about 0.7 acres. The parties agreed that the price for the submersible land would be the same adjusted price per acre as the historically filled land (\$8,841/acre), or a total of \$6,189. This total may be adjusted based upon the final survey of the property, along with the new lands.

Final Sale: The final sale, pending State Land Board approval and confirmation of final value subject to the final land survey, should be completed in the near future. The total price, including the historically filled lands (\$113,165), the new lands (\$139,080) and the submersible lands (\$6,189) is estimated at \$258,434. The parties will exchange Quit Claim deeds to memorialize the final boundaries.

RECOMMENDATION

The Department recommends that the State Land Board authorize staff to complete the direct sale of the lands described above to Ocean Terminals for a value of \$36,600 per acre for new lands, and \$8,861 per acre for the other lands (estimated total of \$258,434, pending a final survey to confirm the precise acres of the new and submersible lands), and to exchange Quit Claim deeds to memorialize the sale.

APPENDICES

- A. Draft settlement agreement
- B. Site map

Martha O. Pagel
Schwabe, Williamson & Wyatt
530 Center Street, Suite 400
Salem, Oregon 97301

Re: Settlement of Historically Filled Lands and New Lands Claim with Ocean Terminals Co.

Dear Martha:

The purpose of this correspondence is to outline the settlement of our clients' respective claims to certain historically filled lands and new lands adjacent to Ocean Terminals' real property commonly known as Tax Lots 100, 500, and 600 in Township 25S, Range 13W, Section 10 (Tax Lots 500 and 600) in Coos County, Oregon. This correspondence has been prepared for you to counter-sign so that both parties may proceed with confidence to implement the terms of the settlement addressed below.

Settlement Regarding Historically Filled Lands and New Lands

Historically Filled Lands

The State's claim relative to historically filled lands fronting or within the above-referenced tax lots will be resolved by payment from Ocean Terminals to the State in the sum of \$113,165.00. Although the parties disputed the quantity of historically filled lands at issue, the parties agreed to determine compensation on the basis that the State's claim consists of 12.8-acres. An appraisal commissioned by the State determined that the fair market value of the filled lands is \$61,000.00 per acre, resulting in a total appraised value of the historically filled lands of \$780,800.00. The appraised value of the historically filled lands was then adjusted downward following application of the factors identified in OAR 141-067-0200(8)(a)-(e) as follows:

Strength of the state's ownership claim. The parties agreed on a discount for strength of State's claim of 30%, the sum of \$234,240.00.

Environmental condition of the property. The parties agreed that no discount should be applied for this factor.

Cost of various alternatives for addressing environmental or other conditions of the property. The parties agreed that no discount should be applied for this factor.

Access or lack of access. The parties agreed on a discount of 35% based on lack of access, the sum of \$273,280.00.¹

¹ Although the parties have agreed on application of a flat percentage discount relative to lack of access to the historically filled lands, the parties acknowledge that the State's agreement shall have no precedential value and will not bind the State in future negotiations for the settlement of claims to historically filled lands.

Property taxes paid by the applicant in support of K-12 public schools. The parties agreed on a discount of \$160,115.00, based on the amount of property taxes paid by Ocean Terminals on the historically filled lands that were in support of K-12 public schools.

Based on these discounts, the settlement value was calculated as follows:

\$780,800.00 – Appraised Value
- \$234,240.00 – Strength of Claim
- \$273,280.00 – Lack of Access
- \$160,115.00 – Property Taxes
\$113,165.00 – Settlement Value

In order to address site security needs for operation of a maritime industrial facility and in recognition of Ocean Terminals' need to comply with security requirements imposed by United States Office of Homeland Security, the State agrees to include all filled lands that are currently submersible lands up to the line of ordinary low water fronting the historically filled lands in the quit claim deed that will be issued to Ocean Terminals under this settlement agreement. The parties have estimated a total of 0.7 acres of submersible lands to be quit-claimed pursuant to this provision. The exact amount of acreage will be determined by a survey to be obtained and provided by Ocean Terminals prior to closing. The amount of compensation to be paid to the State for the submersible lands will be determined on the basis of the same per-acre settlement value price to be paid for the historically filled lands (\$8,841.00 per acre.) The estimated payment amount is \$6,189.00.

New Lands

Ocean Terminals holds a Removal/Fill Permit to create 3.8-acres of new lands adjacent to the historically filled lands adjacent to or within the above referenced tax lots. The parties have agreed that Ocean Terminals will pay the State the sum of \$139,080.00 for the State's interest in the new lands to be created.

ORS 274.937 provides that when an individual creates new lands upon submersible or submerged lands owned by the state, the individual has the right to purchase the new lands. The compensation due to the State in such cases is "the value of the state-owned submersible or submerged lands upon which the new lands were created immediately prior to the creation of the new lands thereon and a reasonable portion of the private benefit realized from the creation of the new lands as an addition to the adjoining or opposite upland in front of which the new lands were created." The statute provides no further guidance as to how the purchase price is determined. The parties have agreed that the formula set forth in ORS 274.937 is difficult to apply. The parties agree that 60% of the appraised value of the new lands approximates the "the value of the state-owned submersible or submerged lands upon which the new lands were created immediately prior to the creation of the new lands thereon and a reasonable portion of the private benefit realized from the creation of the new lands as an addition to the adjoining or opposite upland in front of which the new lands were created." An appraisal commissioned by the State determined that the fair market value of the new lands is \$61,000.00 per acre, resulting in a total

appraised value of the historically filled lands of \$231,800.00 (\$61,000.00 x 3.8-acres). The sale price is 60% of the appraised value, the sum of \$139,080.00.

It is anticipated that the creation of the new lands by Ocean Terminals will be completed by the end of February 2016. Upon completion, the actual acreage of the new lands will be determined and the sale price adjusted according to the above formula if necessary.

Documenting the Sale of Historically Fill Lands and New Lands

The parties' agreement with respect to resolution of the State's claim to the historically filled lands and the sale of the new lands will be reduced to writing in the form of a Purchase and Sale Agreement (the "Agreement") prepared by the State and subject to review by the Oregon Department of Justice. Among other things, the Agreement will provide for:

- (1) A total purchase price to be paid to the State in the sum of \$258,434.00 (subject to final adjustment, if necessary for the actual surveyed acreage of "new lands" created by fill and submersible lands fronting the historically filled lands).
- (2) The conveyance of State's interest in the historically filled lands and in the new lands to Ocean Terminals by Quit Claim Deed. The legal description will describe the waterward boundary of the lands conveyed as the line of ordinary low water after creation of the new lands;
- (3) A Quit Claim Deed from Ocean Terminals to the State for all submerged lands waterward of line of ordinary low water after creation of the new lands;
- (4)
- (5) Pre-closing possession of the historically filled lands and new lands by Ocean Terminals pursuant to the terms of an Access Permit to be issued by the State;
- (6) Closing of the transaction contingent on approval of the State Land Board, and
- (7) Closing of the transaction on or before April 30, 2016.

Withdrawal of Order to Cease and Desist

On November 9, 2012, DSL issued a Cease and Desist Order to Ocean Terminals (7325-ENF), directing it to coordinate with DSL's proprietary section for resolution of issues relating to the "historically filled lands" described above before conducting any further work under a removal-fill permit (30681-EP) issued for creation of the "new lands." Ocean Terminals objected to issuance of the order on the basis of its on-going dispute with DSL concerning ownership of the historically filled lands. On December 27, 2012, DSL determined that Ocean Terminals was in compliance with the removal-fill permit and rescinded the order. Pursuant to Ocean Terminal's agreement to purchase the disputed lands, DSL agrees there was no violation of the removal-fill permit and it will not use the Cease and Desist Order in 7325-ENF, or any of the allegations contained therein, as evidence of a violation for any purpose in connection with current or future actions by Ocean Terminals under the Removal-Fill Program. In addition, Ocean Terminals agrees to waive any and all rights to appeal or seek remedies in court for DSL's issuance of the November 9, 2012 Cease and Desist Order 7325-ENF or its rescission.

Wharf Certification

The parties acknowledge that following creation of the new lands and the closing of the transaction Ocean Terminals will submit a wharf certification pursuant to OAR 141-082-0270 for its structure occupying state-owned submerged and submersible lands.

Sincerely,

Mark F. Schumock
Senior Assistant Attorney General

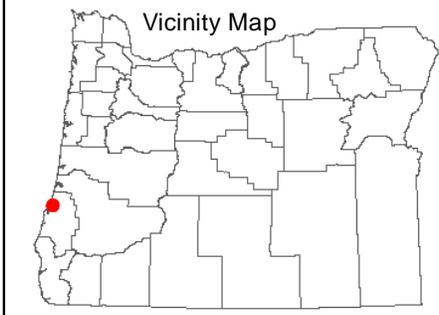
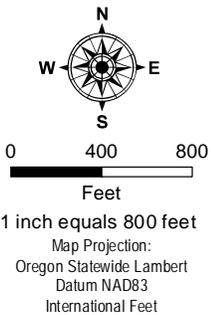
Term of Settlement are approved and agreed to by Ocean Terminals Company, Inc., an Oregon corporation by and through:

Martha O. Pagel, attorney for Ocean Terminals Co.

State of Oregon Department of State Lands



Sources: Esri, DeLorme, USGS, NPS, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community



- 1904 High Water from USACE
- Submersible Lands
- New Lands
- Historic Fill

Appendix B

State of Oregon
Department of State Lands
1645 NE Forbes Road Suite 112
Bend, OR 97701
www.oregon.gov/DSL

Date: 3/10/2016

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Oregon

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State Land Board

State Land Board

Kate Brown

Governor

Regular Meeting

April 12, 2016

Agenda Item 4

Jeanne P. Atkins

Secretary of State

Ted Wheeler

State Treasurer

SUBJECT

Request for approval to sell a recently-acquired in-lieu land parcel known as Shot Pouch Creek Tract totaling approximately 120 acres in Linn County, to satisfy a longstanding debt to the Baldwin-Herndon Trust.

ISSUE

Whether the State Land Board should authorize the direct sale of the Shot Pouch Creek Tract to satisfy a longstanding debt to the Baldwin-Herndon Trust, per the terms of a three-party Memorandum of Agreement with the Trust and Giustina Tree Farms.

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 273.356 to 273.370; relating to adjusting certain erroneous sales.

ORS 273.620; (prior to its June 19, 1967 repeal) relating to the right to select new lands by those who previously selected state land with defective title.

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

In 1859, the Oregon State Admissions Act granted to the state the 16th and 36th sections of every township to support its public schools. If those lands were already vested to private parties, then lands in-lieu of the original lands were granted to the state. In the late 1800s and early 1900s, the state sold some of these granted school sections to private citizens. It was later discovered that the state did not in-fact have title to some of these sold sections because they were either not surveyed or were located in national forests, and that such sections were erroneously conveyed by the state to private parties.

ORS 273.620 provided that parcels of land in Sections 16 or 36 which were erroneously conveyed prior to 1916, could be conveyed back to the state by the successors in interest in exchange for federal lands. ORS 273.620 was repealed on June 19, 1967 and replaced with ORS 273.356 et. seq. Under ORS 273.370 (3), a grantee is able to receive a refund of the estimated current market value to the department of the indemnity selection rights re-conveyed to the state.

Sec. 8 of Chapter 422 (1967) Oregon Laws, provided that grantees who had complied with ORS 273.620 prior to June 19, 1967, would continue to have the right to select lands pursuant to the provisions of the former statute. The Baldwin Trust applied to receive replacement land prior to June 19, 1967.

In 1968, the state applied for indemnity land from the Bureau of Land Management (BLM) on behalf of itself and three applicants, including the Baldwin-Herndon Trust (which was then known as the Baldwin Trust). In 1991, a final judgment was filed by the U.S. District Court in favor of the state which granted the state an entitlement of 5,202.29 acres of land in lieu of the original school sections land grant.

DSL has worked with the Trust since 1991 to find available public domain land through the BLM that would be acceptable to the Trust to replace all of the land erroneously sold to them in the early 1900s. A portion of this land has already been replaced, with the most recent transaction being completed in 2009.

In spring 2012, the Trust found a potentially acceptable tract of BLM land in Linn County for the remaining 67.21 acres still owed. However the forestland tract is 120 acres (see Appendix A) and the zoning ordinance for the parcel does not allow division of parcels less than 80 acres. The Trust has been working with Giustina Tree Farms (a.k.a. Giustina Resources), which offered to purchase the entire tract with a proportionate amount of the purchase price going to the Trust and the remainder going to DSL. On July 23, 2012, DSL, the Trust and Giustina Tree Farms signed a Memorandum of Agreement regarding the selection and sale of the Linn County in-lieu tract with acceptable terms for how this three-way transaction could occur.

In August 2012, DSL made formal application to acquire the 120-acre tract from the BLM as a portion of the land owed. As part of their due diligence the BLM had the property appraised with a timber cruise that came to a value of \$2,515,000 for the parcel, which the buyer has accepted. The BLM completed the Clear List that formally transferred the property to DSL in November 2015.

Public Outreach and Comment

Notice was sent to the adjacent landowners to inform them of the potential sale of the parcel. Local, state and federal agencies and tribal interests were also notified and given the opportunity to offer information concerning their areas of interest. Two inquiries were made to which the Department responded. The first inquiry was from an adjacent property owner inquiring about some of the physical characteristics of the property (including access), and the second inquiry was a request from Linn County to purchase the property.

Linn County dropped its request to purchase the property upon hearing of the Department's fiduciary and statutory responsibilities to the Baldwin-Herndon Trust, and of the specific details in the proposed three-way transaction documented in the Memorandum of Agreement.

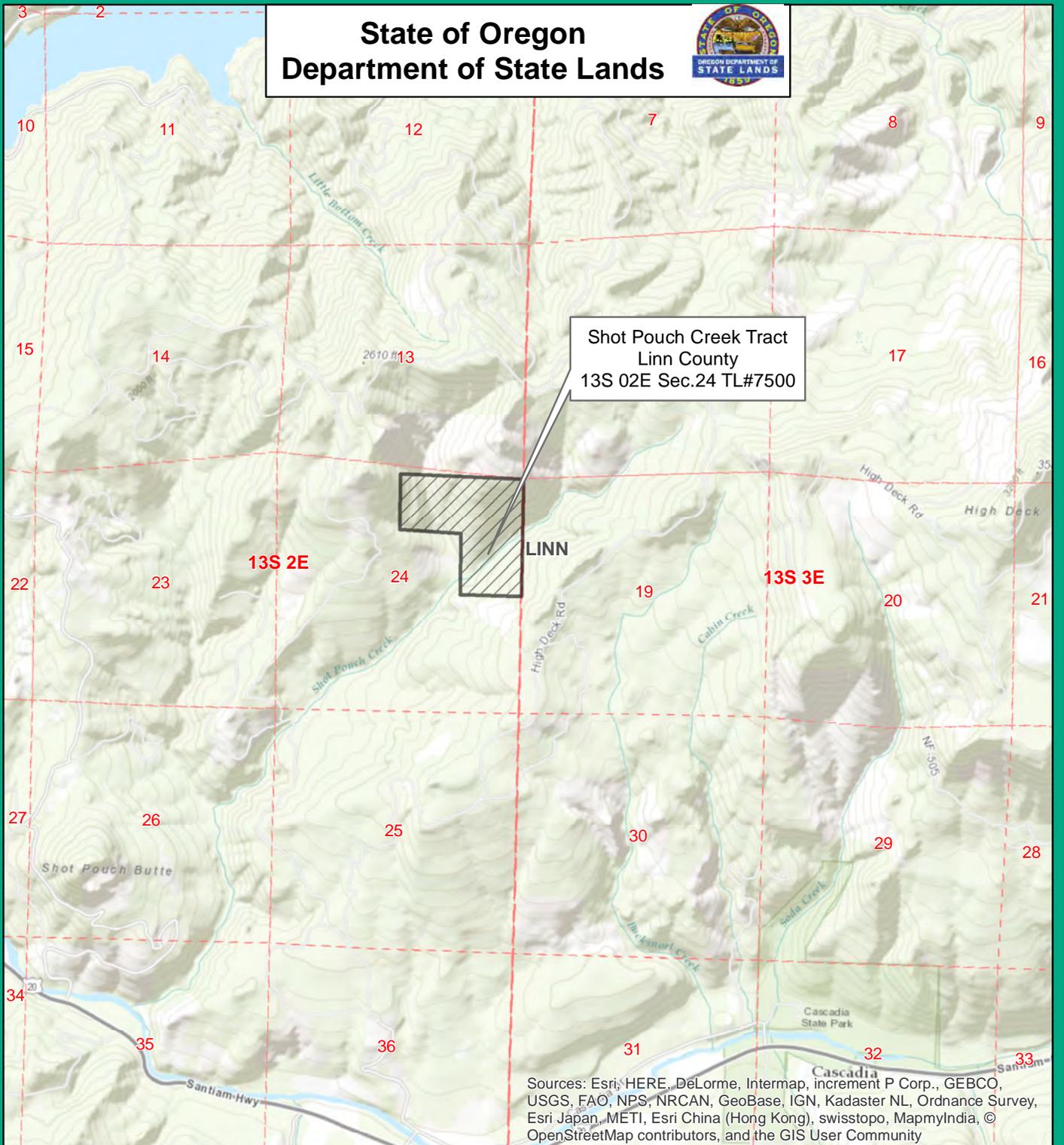
RECOMMENDATION

The Department recommends that the State Land Board authorize 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.

APPENDICES

A. Site map

State of Oregon Department of State Lands



Shot Pouch Creek Tract
Linn County
13S 02E Sec.24 TL#7500

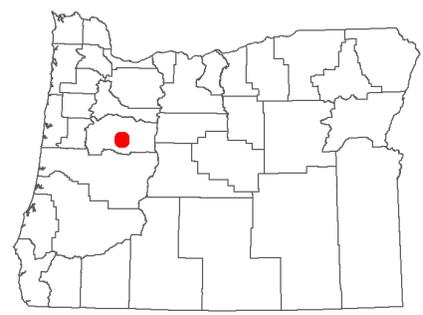
Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community



0 0.25 0.5
Miles

1 inch = 2,933 feet

Map Projection:
Oregon Statewide Lambert
Datum NAD83
International Feet



 Shot Pouch Creek Tract

Exhibit A

State of Oregon
Department of State Lands
775 Summer St, NE, Suite 100
Salem, OR 97301
503-986-5200
www.oregon.gov/DSL
Date: 3/21/2016

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Oregon

Kate Brown, Governor

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State Land Board

State Land Board

Kate Brown

Governor

Regular Meeting

April 12, 2016

Agenda Item 5

Jeanne P. Atkins

Secretary of State

SUBJECT

2015-17 Common School Fund Distribution

Ted Wheeler

State Treasurer

ISSUE

Whether the State Land Board should authorize an increase in the Common School Fund distribution to Oregon's K-12 public schools for the 2015-17 biennium.

AUTHORITY

Section 2(2), Article VIII of the Oregon Constitution; authorizing the CSF to be invested as provided by law; authorizing the Land Board to apply income from the investment of the CSF to its constitutional land management expenses; and directing the remainder of the investment income to be applied to the support of primary and secondary education as prescribed by law.

Section 4, Article VIII of the Oregon Constitution directing that, "Provision shall be made by law for the distribution of the income from the common school fund among several Counties of this state in proportion to the number of children resident therein between the ages, four and twenty years."

ORS 273.105: establishing the Distributable Income Account within the CSF to be administered in accordance with Section 4, Article VIII of the Oregon Constitution and directing what moneys within the CSF shall be credited to the Distributable Income Account.

SUMMARY

The 2015-17 Governor's Balanced Budget assumed a 4% Common School Fund distribution in accordance with the Land Board's current distribution policy (Appendix A). In the budget report for Senate Bill 5507, the 2015 Legislature recognized a need for increased funding for the state school fund. The additional funding was proposed to be

met by the Land Board increasing the distribution from 4% to 5% for the 2015-17 biennium, and the legislatively adopted budget reflected that increase.

The draft resolution before the State Land Board today would support the budget report by authorizing the agency to distribute 5% of the three-year rolling average balance for the 2015-17 biennium (Appendix B).

RECOMMENDATION

The Department recommends that the State Land Board determine whether to increase the Common School Fund distribution to 5% for the 2015-17 biennium, and direct the Department to implement their determination.

APPENDICES

- A. Common School Fund distribution policy
- B. Draft resolution

**OREGON STATE LAND BOARD
COMMON SCHOOL FUND DISTRIBUTION POLICY
Adopted April 14, 2009**

Effective with the December 31, 2009 distribution, the amount of the distribution shall be equal to 4% of the average balance of the preceding 3 years. If the average balance of the fund has increased by 11% or more, the distribution amount shall be 5% of the average balance of the preceding 3 years.

The average value of the Fund will be determined as of December 31 for the three preceding years (e.g., to determine average value for distributions in FY 2010, average value of the Fund would be determined as of December 31 for the calendar years 2006, 2007, 2008).

Fund growth is determined on the basis of a 3-year rolling average, comparing the most recent 3-year period to the 3-year period ending on the previous December 31 (e.g., to determine the Fund value for distributions in FY 2010, average value of the Fund would be determined as of December 31 for the calendar years 2006, 2007, 2008 and compared to the average value of the Fund for calendar years 2005, 2006, and 2007).

**OREGON STATE LAND BOARD
RESOLUTION**

}
} In the matter of the Common
} School Fund distribution in
} 2015-17
}

WHEREAS, the State Land Board recognizes that the approved K-12 education budget does not contain adequate revenue for the desired funding levels in the 2015-17 biennium; and

WHEREAS, the State Land Board desires to demonstrate its commitment to helping reach the funding levels for 2015-17; and

WHEREAS, the State Land Board has the authority to determine the amount of the Common School Fund distribution for Oregon's K-12 public schools; now therefore,

BE IT RESOLVED, THAT THE STATE LAND BOARD DIRECTS:

The 2015-17 Common School Fund distribution be increased by an additional 1% over the policy distribution of 4% of the three-year average balance.

Adopted this ____ day of April 2016.

Kate Brown
Governor

Jeanne P. Atkins
Secretary of State

Ted Wheeler
State Treasurer

State Land Board Common School Fund Annual Portfolio Review

Purpose

To provide the State Land Board an update on the performance, structure, and asset allocation of the Common School Fund for periods ended December 31, 2015.

Market Performance Overview

(Provided by Callan Associates, Oregon Investment Council consultant)

Macroeconomic Environment

The 2015 calendar year will be remembered for the long-awaited first Fed hike in nine years as well as a year of disappointing returns across asset classes, with plunging commodity and oil prices and uncertainty over the pace of China's slowdown being key forces. Painfully, no year since 1990 has seen more negative returns across equity and fixed income indices, and declining oil and gold prices. While losses in 2008 were sharper, losses in 2015 were more broad-based. Despite the poor investment results, the US economy remained a relatively bright spot in the global economy.

Real GDP growth in the US for 3Q15 was a reasonable, while not spectacular, +2.0% (annualized). After a slow start to the year (1Q15 real GDP: +0.6%), the 2nd quarter print was more robust (2Q15: +3.9%) as weather-related headwinds abated. However, GDP forecasts from the Fed have been declining given global headwinds and the persistent strength of the US dollar. Fed expectations for growth in 2016 were 2.5% to 3.0% as of December, 2014 and have since been revised downward to 2.3% - 2.5%. Growth outside the US remained stagnant in spite of continued accommodative policies from central banks (Japan 3Q15 GDP +1.6%; Europe 3Q15 GDP +1.6%). While China's growth rate remains high (3Q15: +6.9%), its slowdown has been apparent and weighed on economies elsewhere. China's growth rate was the slowest since the 1st quarter of 2009 and to further highlight the magnitude of the deceleration, its growth averaged 10.88% from 1989 until 2015.

Central banks remained accommodative across the developed world. The "Big 4" central banks (US, UK, Europe, Japan) expanded their collective balance sheet to \$11 trillion. Among developed countries, the US stands alone (with the UK close behind) on a path of what are likely to be gradual rate hikes from the current 0.25% to 0.50% Fed Funds target. In December, the US Federal Reserve imposed its first policy rate increase since 2006. Employment, residential investment and auto sales were bright spots in the US while manufacturing continued to contract. Manufacturers, which account for roughly 12% of the US economy, have suffered from weak global demand, a strong dollar and reduced capital spending from the energy sector. Conversely, low gas prices and a strengthening labor market propelled car sales to 17.5 million in 2015, surpassing the peak hit 15 years ago. Unemployment continued to trend lower through 2015 from a 5.7% reading in January to 5.0% in November. Real wages firmed from very weak levels in recent years with year-over-year real wage growth up to nearly 2% as of November, 2015.

Inflation continued to fall short of the Fed's 2% target for the Personal Consumption Expenditures Index (+1.3% 3Q) but trended higher over the course of the year. The trailing 12-month Core CPI was +1.6% in January of 2015 and by November, it had accelerated to +2.0%. Of course, the energy influence was enormous in 2015, as evidenced by the far more muted 0.4% reading for the Headline CPI, which includes food and energy. However, if/when energy prices stabilize, they will cease to have a disinflationary impact and begin to add volatility to Headline CPI. Across the pond, Europe saw more muted inflation with some countries experiencing deflation.

Oil prices continued to play a key role in market sentiment as well as performance. While much of the decline from the \$105/barrel level to today's (1/12/16) close at \$30.5/barrel (WTI crude) occurred in the 2nd half of 2014, prices continued to fall in 2015. To start the year, spot prices were around \$52/barrel and have fallen about 40% to current levels. At this point, oil price forecasts are no more than guesses but the pain felt by the industry is certain and regardless of the path from here, the effects of the decline are readily apparent and will likely be felt for some time.

Equity Results

US equities suffered their worst performance post 2008. News out of China played a pivotal role in stock market performance in 2015. The five worst performing days for the S&P 500 in 2015 came alongside negative news from China. Returns were highly concentrated both among names and by date in 2015. Without the now-famed "FANGNOSH" (Facebook, Amazon, Netflix, Google, Nike, O'Reilly Auto Parts, Starbucks and Home Depot), the S&P 500 would have been down for the year. Amazon and Netflix were the star performers, up more than 120% for the year. This performance belies much weaker results from the broader constituency. The S&P 500 Index declined 0.8% on a price-only basis, up 1.3% with dividends.

Large caps performed best (R1000: +0.9%) and results worsened as one went down the capitalization path (Rmidcap: -2.4%, R2000: -4.4%, Rmicro: -5.2%). Growth outperformed value across capitalization, and in large caps, growth outperformed value by the widest margin since the financial crisis (R1000G: +5.7%, R1000V: -3.8%). High quality outperformed low quality by more than 6% in 2015 (the most since 2011) with the vast majority of the margin coming in the turbulent 3rd quarter. From a sector perspective, Consumer Discretionary (+10.1%) and Health Care (+6.9%) performed best while Energy (-21.1%) and Materials (-8.4%) suffered the most.

Outside of the US, developed markets outperformed domestic by a wide margin when measured in local terms (MSCI EAFE Local: +5.3%); however, the strength of the US dollar pushed returns for unhedged US investors into negative territory (MSCI EAFE US\$: -0.8%). As in the US, growth sharply outperformed value in the developed world (MSCI EAFE Growth: +4.1%, Value: -5.7%). Developed markets small cap was the top performer (MSCI EAFE SC: +9.6%). Conversely, emerging markets were a disaster and represented the worst performing area of global equities (MSCI EM US\$: -14.6%). EM was also hurt by the US dollar strength (MSCI EM Local: -5.6%).

Fixed Income Results

Yields rose throughout the 4th quarter as investors grew increasingly certain that the Fed would hike rates before year-end. Sentiment proved correct as the Fed raised the fed funds target from its 7-year "near zero" target to 0.25% to 0.50% at its December meeting. The yield on the 10-year Treasury rose 21 bps over the quarter and closed the year at 2.27%, up 11 bps from 12/31/2014. The Barclays Aggregate Index was down modestly for the quarter (-0.6%) but up slightly for the year (+0.6%), thanks to coupon payments. Investment grade credit and mortgages outperformed like-duration US Treasuries for the quarter but underperformed for the full year. Declining commodity prices and negative sentiment continued to take a toll on high yield corporates. The Barclays High Yield Index was down 2.1% for the quarter bringing its 2015 loss to 4.5%. The Energy component, which comprises 11% of the Index, bore the brunt of the pain with returns of -12.9% for the quarter and -23.6% for the full year. Municipal bonds outperformed taxable bonds for the quarter and the year. A favorable technical picture contributed to the results as supply was down 10% from the 3rd quarter while flows into mutual funds attracted inflows for thirteen consecutive weeks. The Barclays Municipal Bond Index returned 1.5% for the quarter

bringing the full year return to 3.3%. The shorter duration Barclays 1-10 Year Blend posted a 0.8% 4th quarter return and was up 2.5% for 2015.

Outside of the US, the strength of the US dollar was reflected in the outperformance of hedged indices versus their unhedged counterparts. The US dollar climbed nearly 3% versus the euro and pound with more modest appreciation (+0.4%) relative to the yen. Versus a trade-weighted basket of major currencies, the dollar was up 2.3% for the quarter and 8.2% for the year. Yields dropped in Italy, Spain and Japan but were otherwise flat to modestly higher in other developed markets. The Barclays Global Aggregate Index (unhedged) returned -0.9% in the 4th quarter. Hedged in US dollars, the Index was up 0.1%. Results for the year were +1.0% and -3.2% (hedged and unhedged, respectively). Emerging markets debt staged a comeback in the 4th quarter with the dollar-denominated JPM EMBI Global Diversified Index up 1.3%. The local currency-denominated JPM GBI-EM Global Diversified Index was flat for the quarter but remained down nearly 15% for the year, far worse than the +1.2% return for the dollar-denominated Index.

Other Asset Classes

Commodity returns were no less than terrible in 2015, led lower by the energy complex. Indeed, all major groups suffered substantial declines. The energy-heavy S&P GSCI fell nearly 33% while the more balanced Bloomberg Commodity Index (BCI) slipped 25%. Brent Crude and WTI Crude fell 45.6% and 44.4%, respectively. Cotton was the only contract within the BCI to post a gain in 2015, a muted +3.0%. Gold fell 11% to close the year at around \$1,060/oz, near a 6-year low.

Hedge funds failed to provide a bright spot for investors. The HFRI Fund Weighted Composite underperformed both stocks and bonds in 2015 (HFRI FWC: -0.85%). Hedge Fund of Funds performed slightly better; however, still ended the year with a loss (HFRI FoF: -0.36%). Volatility was the year's big winner from a strategy perspective (HFRI RV Volatility: +7.0%) while Yield Alternatives were the worst performers (HFRI RV Yield Alternatives: -16.5%) due in large part to heavy exposure to MLPs.

CSF Performance

The Common School Fund had a calendar year return of 0.46 percent, outperforming the fund's policy benchmark by 1.39 percent (Exhibit 1). Over 10 years period ending 12/31/15, the fund has returned 5.3 percent annually, in line with the CSF policy benchmark albeit lower than the long-term objectives of the fund. For the fiscal year ended June 30, 2015, the CSF's 3.5 percent advance also beat the 2.4 percent (net of fees) return from the 2015 NACUBO¹-Commonfund Study of Endowments (a composite comprised of 812 U.S. Colleges and Universities). Over the five-year trailing period, the CSF returned 11.5 percent, compared to the average NACUBO endowment return of 9.8 percent.

¹ National Association of College and University Business Officers, a global membership organization representing more than 2,500 colleges, universities, and higher education service providers.

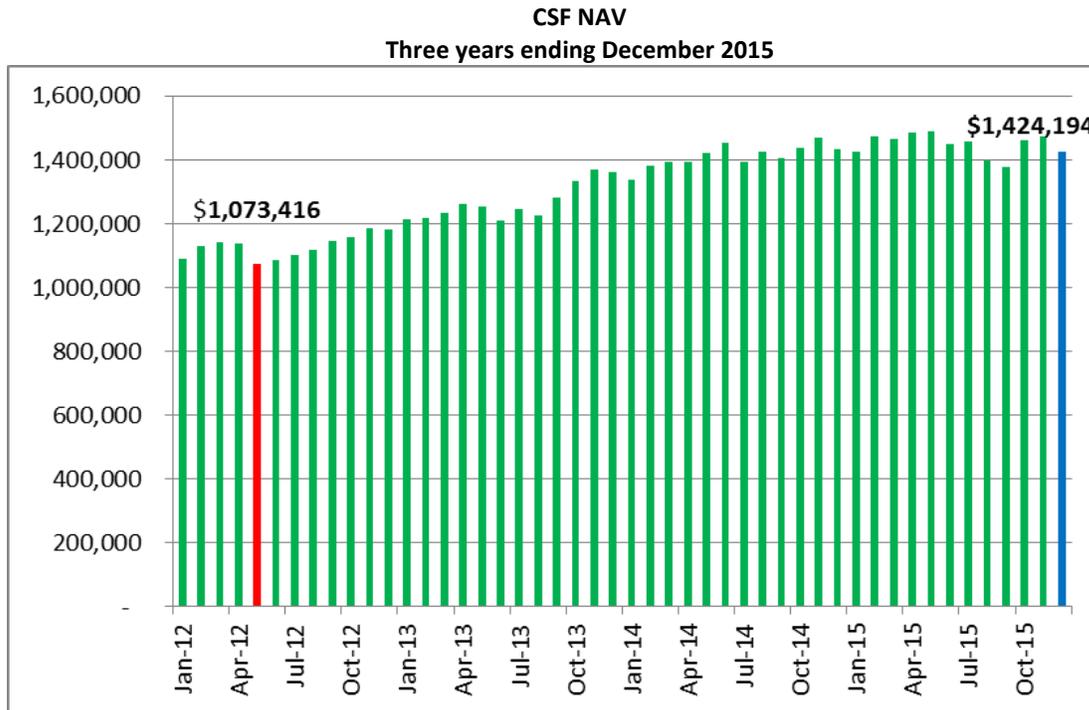
Exhibit 1

	EMV							
	\$(000'S)	%	1 YEAR	3 YEARS	5 YEARS	7 YEARS	10 YEARS	
TOTAL COMMON SCHOOL FUND	1,424,195	100.0%	0.46	8.11	7.39	11.22	5.37	
OREGON CSF POLICY INDEX			-0.93	6.98	6.84	10.16	5.34	
TOTAL FIXED INCOME - CSF	417,968	29.3%	-0.03	1.74	4.14	7.09	5.16	
BC UNIVERSAL			0.43	1.51	3.46	4.71	4.68	
WELLINGTON MANAGEMENT	205,846	14.5%	0.19	1.53	4.12	6.91	5.27	
WESTERN ASSET MANAGEMENT	212,122	14.9%	-0.20	1.95	4.37	7.43	5.15	
TOTAL DOMESTIC EQUITY	383,392	26.9%	1.53	14.76	11.99	14.81	6.70	
RUSSELL 3000			0.48	14.74	12.18	15.04	7.36	
BLACKROCK S&P 500 INDEX	122,425	8.6%	1.42	15.14	12.61			
S&P 500			1.38	15.13	12.57			
MFS ADVISORS	97,395	6.8%	-0.29	14.68	12.15	13.43		
RUSSELL 1000 VALUE			-3.83	13.08	11.27	13.04		
CLEARBRIDGE INVESTMENTS	31,288	2.2%	2.36					
RUSSELL MIDCAP			-2.44					
BOSTON COMPANY	30,342	2.1%	-5.82	9.67	9.05	13.46		
RUSSELL 2000 VALUE			-7.47	9.06	7.67	0.00		
JACKSON SQUARE PARTNERS	101,942	7.2%	5.57					
RUSSELL 1000 GROWTH			5.67					
TOTAL INTERNATIONAL EQUITY	347,843	24.4%	-2.24	5.26	4.05	11.03	4.54	
OREGON CSF CUSTOM INTL INDEX			-5.66	1.5	1.06	7.48	2.58	
PYRAMIS SELECT	137,061	9.6%	-1.42	4.84	3.80	8.42		
MSCI WORLD EX US (NET)			-3.04	3.93	2.79	7.61		
ARROWSTREET	153,082	10.7%	2.57	11.17	8.08	8.20		
MSCI WORLD EX US IMI (NET)			-1.95	4.43	3.00	5.75		
GENESIS ASSET MANAGEMENT	29,024	2.0%	-15.21	-5.54	-2.80	10.79		
MSCI EMERGING MARKETS IMI INDEX (NET)			-13.86	-6.12	-4.59	8.13		
ARROWSTREET EMERGING MARKETS	28,676	2.0%	-13.96	-5.60				
MSCI EMERGING MARKETS			-14.92	-6.76				
BLACKROCK ACWI IMI INDEX	83,758	5.9%	-1.822	8.268	6.495			
MSCI ACWI IMI (NET)			-2.187	7.861	6.111			
CSF PRIVATE EQUITY	167,267	11.7%	7.39	15.70	14.94	11.65		
RUSSELL 3000+300 BPS QTR LAG			2.49	15.87	16.64	13.62		
CSF-CASH INVESTED IN OSTF	23,968		0.50	0.56	0.69	0.95	1.83	
91 DAY TREASURY BILL			0.05	0.05	0.08	0.1	1.26	

CSF Market Value

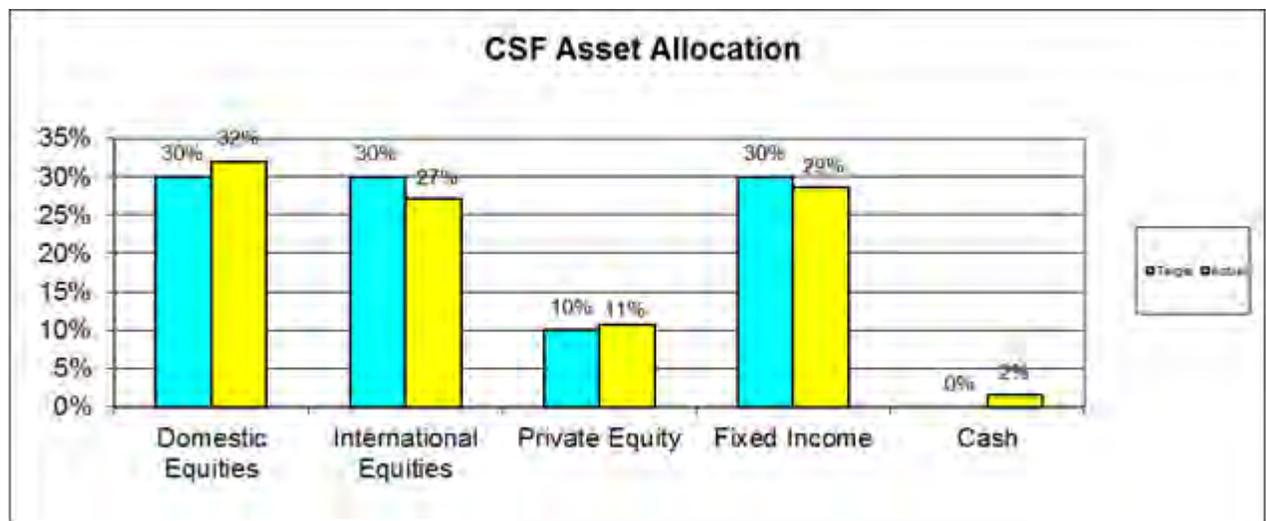
Net of contributions and distributions, the fund has grown by 31 percent over the past three years, from \$1.09 billion in January 2012, to \$1.42 billion at year end 2015 (Exhibit 2). The fund hit its low of \$1.07 billion in May 2012 (highlighted in red below) before continuing a steady upward trend.

Exhibit 2



CSF Asset Allocation

CSF asset allocation is managed relative to a 70/30 equity-to-fixed income target. As of year-end 2015, the CSF's actual allocations relative to established targets were within policy tolerances.



In 2007, OIC approved a target allocation of 10% in private equity for the Common School. The objective was to increase expected returns while simultaneously gaining diversification benefits, and remaining sufficiently liquid in order to meet bi-annual distribution requirements. In 2008, in efforts to further diversify alpha sources, changes to the public equity structure were made. These included moving towards a more global benchmark allocation to reduce home country bias, expanding the manager line-up, and including an allocation to emerging markets.

While the above changes have been additive, staff and the OIC's consultant will continue to monitor the performance and risk of the plan, as well as regularly assess the prudence of CSF's asset allocation with the objective of holding a diversified portfolio aimed at seeking highest returns possible. To this end, a formal asset allocation study is planned for calendar year 2016.



MEMORANDUM

State Land Board

April 12, 2016

Kate Brown
Governor

To: Governor Kate Brown
Secretary of State Jeane Atkins
State Treasurer Ted Wheeler

Jeanne P. Atkins
Secretary of State

From: James T. Paul, Director

Ted Wheeler
State Treasurer

Subject: Annual Report on Common School Fund Real Property for Fiscal Year 2015 (July 1, 2014 to June 30, 2015).

The purpose of this report is to provide the State Land Board a year-end summary of the financial performance of the Common School Fund trust lands under the Department of State Lands oversight. Included in the summary are the overall revenues and expenditures associated with these lands, which are the result of a broad range of real property management activities including leases, easements, licenses, special uses and land sales and exchanges. This annual report presents outcomes from the 2015 fiscal year (July 1, 2014 to June 30, 2015), and includes some discussion of future real property management direction and priorities.

Status of Real Property Asset Classes

Under the direction of the 2012 Real Estate Asset Management Plan, DSL manages approximately 2.8 million acres of state-owned lands, which includes both “trust” and “statutory” lands. These lands are further categorized into seven different real property land classifications: Forestlands; Agricultural Lands; Rangelands; Industrial, Commercial, Residential (ICR) Lands; Mineral and Energy Resource Lands; Waterways; and Special Stewardship Lands (Appendix A shows a map of the distribution of these across the state):

Table 1. Summary of total acres of state land ownership administered by DSL, by land classification and land type (trust vs. statutory lands), as of January 2015.

	Trust Lands (acres)	Statutory Lands (acres)	Total
Forestlands	121,973	119	122,092
Agricultural Lands	5,726	111	5,837
Rangelands	601,031	23,569	624,600
Industrial/Commercial/Residential	6,668	369	7,037
Mineral and Energy Resources	767,092		767,092
Waterways		1,264,558	1,264,558
Special Stewardship Lands	5,526	7,686	13,212
Total	1,508,016	1,296,412	2,804,428

Trust Lands

Trust lands (Table 1) are those lands granted by the federal government to Oregon “for the use of schools” upon its admission into the Union – also known as “Admission Act” lands. Trust lands make up 96% of all the uplands managed by DSL for the Land Board, and also include sub-surface minerals and energy resources. The Land Board is directed by Oregon’s Constitution to manage these lands for the primary purpose of generating revenues for K-12 public education. This mandate places a trust obligation on the Board to maximize revenue to benefit multiple generations of K-12 students, and requires obtaining market value from the sale, rental or use of Admission Act lands.

Statutory Lands

Statutory lands (Table 1) – also referred to as “non-trust” lands – includes 1,263,650 acres of waterways (navigable waters, tidally influenced waters, and the territorial sea). These lands are held and managed by the Land Board for the greatest benefit of all Oregonians. The Land Board has considerably more latitude in managing statutory lands than it does in managing trust lands. Neither the Oregon Constitution nor statutes require that statutory lands be managed principally for generating revenue for the Common School Fund, and allows such lands to be used for a variety of purposes. Revenues produced from statutory lands, however, are used to protect the public trust values on these lands, in accordance with the Oregon Public Use Doctrine. Additionally, the state’s management of these waterways is conducted so as to avoid unreasonable interference with public navigation, recreation, fisheries and commerce¹.

FY 2015 Revenue and Expenditures By Land Class from Authorizations

Appendix B includes a summary of revenues and expenditures organized by land classification for Fiscal Year 2015 (FY2015).

FY 2015 Land Sales and Exchanges

In FY2015, the Department conducted a total of five land sale/exchange transactions, generating a total of \$1,179,746 in gross revenues. These transactions resulted in a total net divestment of 459 acres of Common School Fund trust lands.

2012 REAMP Asset Management Performance Measures

Summarized below are the four different financial performance measures identified in the 2012 Real Estate Asset Management Plan (REAMP). The stated aim of the REAMP is to show improvement in these measures over the ten-year timeframe of the plan. In addition, the REAMP recognizes that year-to-year fluctuations will likely occur that may deviate from a long-term positive trend for these measures:

¹ DSL’s Aquatic Resource Management Program is responsible for managing all authorizations in the “statutory” category of state-owned lands, and for updating the State Land Board regarding activities on these lands separate from this report.

1. Return on Asset Value (ROAV)

Appendix C includes an estimate (by land class) of total asset value for the Common School trust Lands. This market value estimate allows a Return on Asset Value (ROAV) to be calculated for four trust land classes (forestlands, agricultural lands, rangelands, and ICR Lands), and for these land classes combined.

In FY2015, the ROAV for all trust lands averaged 0.10% (see Appendix C). This measure was significantly affected this year by continued negative revenues from forestlands within the Elliott State Forest, as well as negative revenues from rangelands this year. For the forestlands, this reduced performance reflects adjustments in timber harvest plans on the Elliott State Forest that resulted from litigation concluded in January 2014, concerning lands managed for DSL by the Oregon Department of Forestry. For the rangelands, this reduced performance reflects FY2015 costs associated with fire protection that totaled \$211,976, as well as reductions in lease revenues related to eastern Oregon drought conditions during this year.

2. Annual Increase in Net Operating Income (NOI)

The total NOI for FY2015 was \$645,896, an increase of \$229,208 (or 55%) from FY2014. This increase was primarily due to a single timber sale on the “other” forestlands (trust lands not on the Elliott) that generated approximately \$1.3 million, which more than offset reduced performance from range, industrial-commercial-residential, and mineral & energy resource lands as compared to FY2014. When considering land classifications other than forestland, the NOI for FY2015 decreased by \$596,737, or –57%, as compared to FY2014. (Appendix B)

3. Annual Increase in Gross Annual Revenue (AR) 5% to 7%

The FY2015 Gross Annual Revenue was approximately \$6.5 million, an increase of about \$0.4 million as compared to FY2014. A decrease of \$0.3 million, or –11%, occurred for all land classifications when excluding forestlands. (Appendix B)

4. Annual Land Value Appreciation (LVA) 3% to 5%

This performance measure is not reported for FY2015 due to the uncertainty of forestland values for Common School Forestlands within the Elliott State Forest (ESF), and also due to the general nature of the methodology used by DSL in the past to assess land values for other land classifications. Within the ESF, land values are believed to have been negatively affected in recent years by the presence of federally listed threatened and endangered species. However, the absolute degree of this reduction and resulting market value remains speculative. In December 2014, DSL contracted a report from Evergreen Economics (see December 2014 State Land Board agenda), that provided an estimated market value of those Common School Lands within the Elliott State Forest. Land values for other land classes were last reported in FY2014, based on general market assessments in the recent past by DSL (Appendix C).

2012 Real Estate Asset Management Plan (REAMP) Implementation

Information on the general implementation categories defined in the 2012 REAMP, or asset performance categories, and the distribution of the trust lands across these categories are summarized in Table 2 (excludes waterways and sub-surface mineral rights).

As of January 2015, approximately 120,000 acres of trust lands (or 16%) were generating minimal or no revenues for the Common School Fund, and its estimated these acres make up at least 60% of the total asset value of the Common School Fund trust lands. The large majority of these acres are forestlands managed for DSL by the Oregon Department of Forestry, also referred to as “certified” forestlands. Current projections do not anticipate a change in this low performance in the future. The 2012 REAMP Implementation Outcomes include “a rebalanced portfolio through acquisition of assets with high performance potential and the strategic disposal of selected non- or lower-performing assets.” Therefore, moving forward, DSL will continue to be evaluating all of these non-performing lands in the “none/minimal” category for potential sale. Net proceeds from trust land sales are deposited into the land revolving account (a sub-account of the Common School Fund).

In the near-term, however, the focus for DSL land sale efforts will be on the 5,536 acres in this category classified as agriculture, rangelands, and ICR land. For the approximately 84,000 acres of lands within the Elliott State Forest, the Department continues to move forward with the Elliott Protocol and the potential transfer of ownership of these forestlands by December 2017. The remaining acres of forestlands in the “none/minimal” revenue category will generally not be actively considered for sale until DSL has adequately examined the potential to increase revenues through alternative approaches to managing those lands.

Table 2. Summary of trust lands administered by DSL, by land classification type and asset performance category (APC), excluding mineral and energy resources and waterways ownership (as of January 2015).

<u>LAND CLASSIFICATION</u>	<u>PROPERTY REVENUE POTENTIAL (acres)</u>				Total Acres
	Long-term ¹ Potential	Short-term ² Potential	Current ³	None/ Minimal ⁴	
Forestlands		458	19,021	102,615	122,094
Agricultural Lands		275	5,368	193	5,836
Rangelands	716	3,556	616,503	3,825	624,600
Industrial/Commercial /Residential	476	1,911	3,132	1,518	7,037
Special Stewardship Lands			891	12,321	13,212
Total Acres	1,192	6,200	644,912	120,472	772,776

¹ Not currently producing revenue, but with strong potential to produce revenue within 10 years.

² A strong potential to produce revenue within two years, but not presently generating revenue.

³ Currently producing annual revenues for the Common School Fund.

⁴ Generating minimal or no annual revenue, and low potential for generating revenue in the future.

About 7,400 acres across four of the five upland land classes are currently classified as having either short- or long-term potential to generate revenues. DSL will continue to actively pursue opportunities to manage those lands in the future to convert them to higher-performing assets. If at a future point in time it's determined these acres are unlikely to be able to generate revenues, they would then be reclassified as "none/minimal" category lands and shifted into the pool of acres to be evaluated for possible divestment.

The balance of the remaining lands—about 645,000 acres—are currently generating revenue, and DSL will continue to manage these lands accordingly (also see Appendix B, and 3-year average net revenues). DSL will look for opportunities to increase revenues and decrease expenditures from these lands, consistent with the REAMP Implementation Outcome for "a more aggressively managed portfolio, including evaluation of all lands, with a focus on ICR and agricultural lands and mineral and energy resources to generate new revenues." A current example of this is the Eastern Region's continued efforts to identify opportunities to develop rangelands into irrigated agricultural production, which can result in as much as a 30-fold increase in per-acre income.

The primary factors affecting the reduced performance in FY2015 of the rangelands that make up the large majority of these 645,000 acres are leasing rates, drought conditions, and fire protection costs. Depending on how future conditions change relative to these three factors, rangelands have the potential to see improved performance in the future. Fire protection costs are unique in that there are potential steps that can be taken to reduce such costs in the future, and thereby improve the performance of these lands. The Department will be exploring various options towards reducing fire protection costs where prudent and feasible, in order to improve the net revenues generated by these lands in the future.

Finally, DSL will continuously re-evaluate the entire portfolio of trust lands to ensure the revenue generating status is properly categorized (Table 2). The Real Property unit will make on-going adjustments as needed to reflect changes in our knowledge of the lands, any physical changes to the lands (ex. infrastructure investments), and any changes to potential revenue-generating opportunities.

Current and Future Real Property Management Priorities

Moving forward, the Department will continue implementing the 2012 REAMP's General Management Principles, which include the following (pp.17-18):

1. The Land Board and Department will continue to meet their obligations on Trust Lands.
2. The Land Board and Department will continue to manage CSF lands to create a sustained and consistent stream of revenue to assist in building the principal of the CSF, thereby increasing annual distributions to schools.
3. The plan balances revenue enhancement and resource stewardship.

4. Consistent with the legacy of the Admission Act, the Land Board will maintain a real property asset portfolio of CSF lands. The allocation of land among land classifications may change over time based on management, reinvestment and disposal [i.e. divestment] strategies.
5. The Land Board and Department will actively strive to increase the total annual revenues from the real property asset portion of the CSF portfolio through the disposal of Trust lands that are not actively managed or are low revenue producers.

The Common School Fund's real property portfolio, with an estimated value of approximately \$678 million (Appendix C), is a substantial asset of the Common School Fund as a whole. This asset has historically generated hundreds of millions of dollars in revenue for the Common School Fund, and continues to be a very significant portion of the total asset value of the Fund portfolio (equivalent in value to almost half of the Common School Fund investment holdings, currently valued at approximately \$1.42 billion).

That said, the trust-land portion of this real property asset holds a unique position in its primary role of providing revenue for Oregon's public schools. A key element of ensuring the mandate of these trust lands is maintaining an accurate and comprehensive inventory of all real property assets and asset values, and continually evaluating their current and potential revenue-generating status. The primary framework for this will be the regular asset performance category (APC) review as discussed in the previous section of this report. These reviews are intended to further fine-tune the evaluation of the various APCs for these lands.

For example, consider the overall performance of lands in the "current" category (see Table 2). Although they are presently providing a net positive benefit to the Common School Fund, the relative performance of these lands is currently low. In FY2015, the three-year average return on asset value for agricultural, rangelands and ICR lands is 0.81%, 0.02% and 0.31%, respectively. Given this is an average, there are parcels performing both at a higher and lower level than this, and others possibly even at a net deficit to the Common School Fund. To the extent that DSL can develop a more sophisticated approach to the asset performance category review of these lands in the future, there is the potential to parse out sub-categories within land classification categories to allow for a more refined assessment of specific lands that are higher-versus lower-performing. This would better inform future Department and Land Board decision-making concerning land retention and divestment.

A major focus and timely issue for the Land Board and the Department over the past few years has been the net deficit to the Common School Fund resulting from forestland management activities. Over the past three fiscal years (FY2013 thru FY2015), the forestlands category of the trust lands portfolio has cost the Common School Fund about \$3.28 million. Revenue projections are currently showing a likelihood of deficits from these lands continuing into the future, although the magnitude of those deficits is uncertain.

These deficits have occurred primarily as a result of federal Endangered Species Act litigation involving Common School Fund trust lands on the Elliott State Forest. Forest management changes made in the course of managing the litigation led to drastically reduced timber sales and a continued net revenue deficit on the Elliott in FY2015. The management constraints on these lands has raised the question of their compatibility – now and in the future – with the primary trust obligations of the Land Board to maximize revenues to benefit multiple generations of K-12 students.

Addressing this issue in the near term and for the foreseeable future is a high priority for DSL. In August of 2015, the State Land Board approved the Elliott Opportunity Protocol, directing the Department to move forward with an approach towards the potential transfer of ownership of the Elliott State Forest (ESF) out of the Common School Fund by December 2017.

Also, in light of the continued low return on asset value (ROAV) – nearly a decade after the adoption of the prior 2006 Asset Management Plan – it may be appropriate to evaluate the need for a change in approach towards managing the Common School Fund real property portfolio as a whole. This could be in the form of a substantive revision to the Real Estate Asset Management Plan aimed towards an alternative approach with a higher likelihood of improved financial performance in the future.

Summary

In FY2015, Common School Fund forestlands on the Elliott continued to produce a net loss to the Common School Fund (CSF), with only modest relative returns being generated by other forestlands and the other categories of trust lands (rangeland, industrial-commercial-residential, agriculture, and mineral & energy resources). Depressed forestland revenues are projected to continue given the current management constraints intended to protect federally listed threatened and endangered species on forestland lands. Given the primary mandate of trust lands to produce revenue for Oregon's public schools, and the fact that a majority of forestlands are currently a liability to the CSF, the Department will continue with the careful evaluation of alternative approaches to this category of trust land assets. The implementation of the Elliott Protocol adopted by the Land Board in August 2015 is a central piece of this work. This effort, in addition to the continuous evaluation of the entire real property asset portfolio and the potential revisiting of the 2012 REAMP, will be important to ensuring prudent financial practices in support of the State Land Board's trust obligations.

APPENDICES

- A. Map of all lands under the authority of the Department of State Lands, by Land Use Class
- B. FY 2013 – 2015 Real Property Revenue, Expenditures, and Net Operating Income by Land Class
- C. FY 2015 Financial Performance by Land Class

**State of Oregon
Department of
State Lands**

This product is for informational purposes 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.

Land Use Class

- Agriculture
- Forest
- ICR
- Mineral & Energy
- Rangeland
- Special Stewardship
- Waterway
- Navigable Rivers
- Territorial Sea & Meandered Lakes

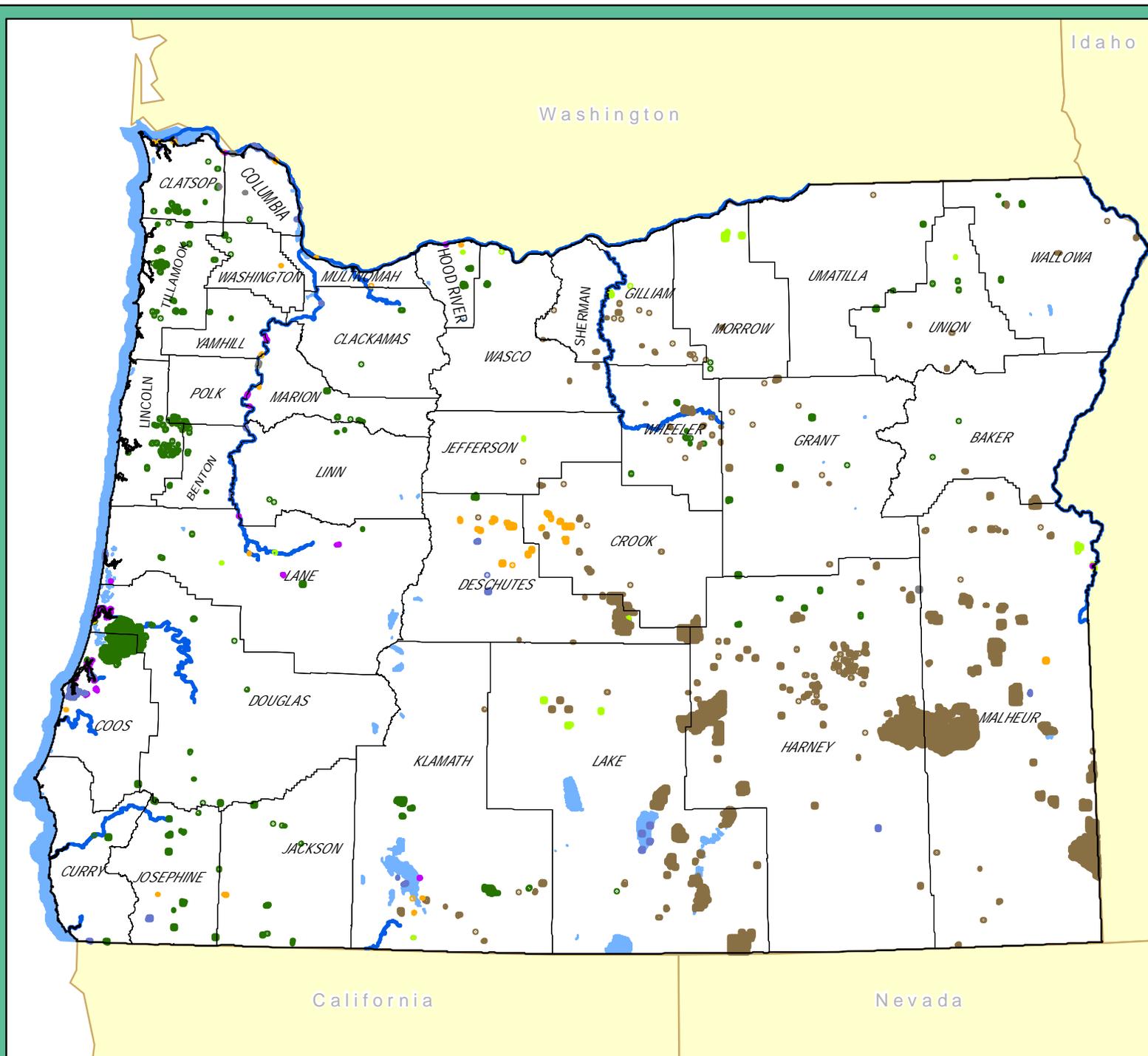


Printing Date: December 20, 2012

Map Projection:
Oregon Lambert Conformal Conic
Datum NAD83
International Feet



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APPENDIX B

FY2013-FY2015 Real Property Revenues, Expenditures (Direct only) and Net Operating Income by Land Class

(Does not include land sales/exchanges, South Slough expenditures/revenues, or capital expenditures.)

Land Classification	Fiscal Year 2013			Fiscal Year 2014			Fiscal Year 2015			<i>3-Year Avg.</i>
	Gross Revenue (\$)	Expenditures (\$)	<u>Net Operating Income (\$)</u>	Gross Revenue (\$)	Expenditures (\$)	<u>Net Operating Income (\$)</u>	Gross Revenue (\$)	Expenditures (\$)	<u>Net Operating Income (\$)</u>	<i>Annual Net Operating Income (\$)</i>
Agricultural Land	220,363	106,000	<u>114,363</u>	\$ 225,398	\$ 119,772	<u>\$ 105,626</u>	\$ 237,244	\$ 127,229	<u>\$ 110,015</u>	<i>\$ 110,001</i>
Rangeland	668,994	616,764	<u>52,230</u>	\$ 578,940	\$ 420,391	<u>\$ 158,549</u>	\$ 586,907	\$ 716,223	<u>\$ (129,316)</u>	<i>\$ 27,154</i>
ICR	999,038	820,062	<u>178,976</u>	\$ 1,139,053	\$ 826,819	<u>\$ 312,234</u>	\$ 1,037,108	\$ 849,944	<u>\$ 187,164</u>	<i>\$ 226,125</i>
Forestland	2,305,411	5,142,914	<u>(2,837,503)</u>	\$ 3,573,368	4,208,891	<u>\$ (635,523)</u>	\$ 4,270,904	4,080,482	<u>\$ 190,422</u>	<i>\$ (1,094,201)</i>
Mineral & Energy Resource	477,239	131,832	<u>345,407</u>	\$ 559,291	\$ 86,650	<u>\$ 472,641</u>	\$ 352,726	\$ 70,509	<u>\$ 282,217</u>	<i>\$ 366,755</i>
Special Stewardship	12,403	10,575	<u>1,828</u>	\$ 13,672	\$ 10,511	<u>\$ 3,161</u>	\$ 14,875	\$ 9,481	<u>\$ 5,394</u>	<i>\$ 3,461</i>
	Revenues do not include land sales or mineral releases.									
Totals	4,683,448	6,828,147	<u>(2,144,699)</u>	6,089,722	5,673,034	<u>416,688</u>	6,499,764	5,853,868	<u>645,896</u>	<i>\$ (360,705)</i>
Totals without Forestlands	2,378,037	1,685,233	<u>692,804</u>	2,516,354	1,464,143	<u>1,052,211</u>	2,228,860	1,773,386	<u>455,474</u>	<i>\$ 733,496</i>

APPENDIX C: FY2015 Financial Performance by Land Classification

Land Classification	Total Acres	Approximate Market Value (millions)	% of Total Market Value	Annual Net Operating Income (NOI)	3-year Average Annual Net Operating Income (NOI)	Annual Return on Asset Value (ROAV)	3-year Average Return on Asset Value (ROAV)
Forestlands: Elliott State Forest	84,000	\$285.0 – 442.6 ⁽¹⁾	54%	(\$820,109) ⁽²⁾	(\$1,094,201)	-0.23%	-0.23%
Forestlands: Other	38,000	\$103.3 – 113.9 ⁽³⁾	16%	\$1,010,531 ⁽⁴⁾		0.93%	
Agricultural Lands	5,800	\$13.4 – 13.9 ⁽³⁾	2%	\$110,015	\$110,001	0.81%	0.81%
Rangelands	624,600	\$109.5 – 125.1 ⁽³⁾	17%	(\$129,316)	\$27,154	-0.11%	0.02%
ICR Lands	7,000	\$72.2 – 75.2 ⁽³⁾	10%	\$187,164	\$226,125	0.25%	0.31%
Special Stewardship Lands	13,200	(5)	(5)	\$5,394	\$3,461	(5)	(5)
Mineral and Energy Resources (sub-surface ownership)	767,100	(5)	(5)	\$282,217	\$366,755	(5)	(5)
Totals	1,540,000	\$678	100% ⁽⁶⁾	\$645,896	(\$360,705)	0.10% ⁽⁷⁾	-0.05% ⁽⁸⁾

Notes:

- (1) Based on values reported in the November 19, 2014 "Elliott State Forest—Analysis of Alternatives" report, submitted to the State Land Board at their December 9, 2014 meeting.
- (2) The "Forestlands: Elliott State Forest" NOI value listed here was calculated using the "Coos District/Elliott" revenue and expenditure numbers from the FY2015 ODF Annual Report to the State Land Board (see February 2016 Board agenda item); 70% of the ODF "Fire Protection Assessment" costs listed in that report; and \$394,727 in DSL expenditures associated with the Elliott Alternatives project work in FY2015.
- (3) These are values reported in the FY 2011 Annual Report, with the exception of ICR Lands. For the ICR value range, \$2.9 million was added to the value reported in FY 2011 to account for the Helvetia property purchased after FY 2011. In the case of "Forestlands: Other", per acre-equivalent is used. (These are the most recent estimated values with reported DSL methodology.)
- (4) The "Forestlands: Other" NOI value listed here was calculated using the combined revenue and expenditure numbers from the eight remaining ODF districts (excluding the Elliott) listed in the FY2015 ODF Annual Report to the State Land Board (see February 2016 Board agenda item); and 30% of the ODF "Fire Protection Assessment" costs listed in that report.
- (5) Data unavailable.
- (6) Total of individual Land Classification % of Total Market Value may not total 100% due to rounding.
- (7) The total ROAV does *not* include NOI derived from special stewardship lands, since the asset value of those lands are not reported here. The NOI for mineral and energy resources is included here because those revenues are derived from parcels in one of the other surface land classifications. Excluding forestlands, the total ROAV increases to 0.2 %.
- (8) The total ROAV does *not* include NOI derived from special stewardship lands, since the asset value of those lands are not reported here. The NOI for mineral and energy resources is included here because those revenues are derived from parcels in one of the other surface land classifications. Excluding forestlands, the total ROAV increases to 0.1 %.



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State Land Board

M E M O R A N D U M

Kate Brown
Governor

Date: April 12, 2016

Jeanne P. Atkins
Secretary of State

To: Governor Kate Brown
Secretary of State Jeanne Atkins
State Treasurer Ted Wheeler

Ted Wheeler
State Treasurer

From: James T. Paul, Director

Subject: Cultural Resource Considerations in State Land Transactions

PURPOSE

This informational brief describes generally how the Department of State Lands addresses cultural resources when considering land management activities, particularly when considering possible divestment of lands through sale or exchange.

There are a number of statutes related to protection of archaeological resources in the state, including ORS 97.740 to 97.760; ORS 358.605 to 358.622; ORS 358.905 to 358.961; and ORS 390.235 to 390.240.

The most significant to this topic is the policy statement in ORS 358.910 Policy (1): “. . . [A]rchaeological sites and their contents located on public land are under the stewardship of the people of Oregon to be protected and managed in perpetuity by the state as a public trust.”

BACKGROUND

When considering the sale or exchange of state-owned lands, the concept of ensuring the achievement of the state's policy goals regarding cultural resources through the use of deed restrictions, for example, creates potential concerns because it would result in an obligation to monitor and enforce protections in perpetuity on lands no longer in public ownership. Thus, in order to respond adequately to cultural resource concerns, the agency hired a professional archaeologist in 2010. As a result, the Department's commitment to protecting cultural resources has improved significantly.

In 2010, a registered professional archaeologist was added to the DSL staff in the Bend office. This is significant because only a fully qualified archaeologist has access to the confidential records of known sites maintained by SHPO. In addition to conducting field surveys of proposed ground-disturbing activities initiated by the Department (including proposed land sales or exchanges), the archaeologist reviews all proposed authorizations for other parties to use constitutional uplands and statutory aquatic lands.

THE PROCESS

A cultural resources assessment begins with review of the confidential records retained by SHPO for previous surveys of known and recorded sites on or within two miles of the parcel. Physical features on the parcel are compared to those of recorded sites *not* on the parcel to assess the likelihood of similar sites occurring on the parcel.

Next, a field and office inventory form is used to document known sites on the parcel, the probability of cultural resources being found on the parcel, and known sites within two miles including type and general description. No confidential information is revealed concerning actual locations. This form was used in the second Central Oregon Area Management Plan approved in 2011, but was expanded and made a separate and confidential report with the John Day Basin Area Plan approved in 2014.

Finally, general recommendations are included for each parcel. Where no known sites exist within the parcel, the recommendation may be: "No pre- or post-sale notice of cultural resources is necessary." Where a known site exists, a recommendation takes the general form of: "It is recommended that prior to sale of this property it is communicated to prospective buyers that there are known cultural resources on this property and that there are certain legal responsibilities under state law to protect these resources." It is further recommended that upon closing the sale, formal documentation is signed by both parties acknowledging that the cultural resource information and legal responsibilities have been communicated and understood, and are acceptable to the buyer.