



Oregon

Kate Brown, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregonstatelands.us

The State Land Board met in regular session on August 13, 2015, in the Land Board Room at the Department of State Lands, 775 Summer Street NE, Salem, Oregon.

State Land Board

Present were:

Kate Brown
Governor

Kate Brown
Jeanne P. Atkins
Ted Wheeler

Governor
Secretary of State
State Treasurer

Jeanne P. Atkins
Secretary of State

Land Board Assistants

Richard Whitman
Rachele Altman
Kristin Johnson

Governor's Office
Secretary of State's Office
State Treasurer's Office

Ted Wheeler
State Treasurer

Department Staff

Mary Abrams
John Potter
Lanny Quackenbush

Jim Paul
Julie Curtis

Chris Castelli
Lorna Stafford

Cyndi Wickham
Stephanie Hallock Cummins

Department of Justice

Matt DeVore
Chris Matthews

Governor Brown called the meeting to order at 10:03 a.m. The topics discussed and the results of those discussions are listed below.

CONSENT AGENDA

1. a. **Request for approval of the minutes from the June 9, 2015 State Land Board meeting.**
- b. **Request for approval to initiate rulemaking related to the placement of renewable ocean energy devices in the territorial sea.**

Director Abrams reviewed the two items on the consent agenda. Treasurer Wheeler moved to adopt the consent agenda. There were no objections. The consent agenda was approved.

INFORMATIONAL AGENDA

2. Legislative summary.

Director Abrams provided a recap of the 2015 legislative session. She discussed the five legislative bills that were submitted by the Department. All five bills were approved, as well as the agency's budget bill. Director Abrams also discussed other legislation related to the work of the Department:

- SB 912 related to historically filled lands;

- SB 319 related to ocean renewable energy; and
- HB 3315 related to services provided to state agencies by the Oregon Department of Fish and Wildlife.

These three bills were approved by the legislature.

Director Abrams also discussed bills that did not make it through the legislative process that would have impacted the agency:

- HB 3474 and HB 3533 related to the Elliott State Forest;
- SB 830 related to motorized suction dredging; and
- HB 3217 that would have created a pilot project for general authorizations for artificial beaver dams.

She said that although, HB 3217 did not pass, the Department will be working with stakeholders and other state agencies to incorporate some of the restoration concepts from the legislation into current rulemaking efforts.

ACTION AGENDA

3. Elliott State Forest Alternatives Project Phase III Report.

Director Abrams provided a brief introduction to the agenda item saying that it was the final report for the Elliott Alternatives Project. She acknowledged Chris Mathews with the Oregon Department of Justice and project manager John Potter for their work on the project. She also thanked the Land Board Assistants for their support throughout the process.

Director Abrams first discussed the broad outreach efforts the Department conducted over the course of the project.

The following people provided comments to the Board:

- Tom Wolf, Trout Unlimited
- Micah Meskel, Audubon Society of Portland
- Grace Pettygrove, Coast Range Forest Watch
- Amanda St. Martin, Coast Range Forest Watch
- Janet Moore, Coast Range Forest Watch
- Josh Laughlin, Cascadia Wildlands
- Bob Van Dyk, Wild Salmon Center
- Christy Splitt, Oregon League of Conservation Voters
- Rhett Lawrence, Sierra Club
- Maria Farinacci, Cascadia Forest Defenders
- Shawn McMurtrey, Cascadia Forest Defenders
- Anna Fay, Cascadia Forest Defenders & environmental writer
- Marcia Dennison, Pacific Rainforest Wildlife Guardians
- Pete Shepherd, Confederated Tribe of Coos, Lower Umpqua, Siuslaw Indians
- Jennifer Haynes, Oregon League of Women Voters
- Peggy Lynch, Oregon League of Women Voters
- Jerry King, Carpenters Industrial Council
- Gordon Ross, private citizen
- Seth Barnes, Oregon Forest Industries Council
- David Gould, private citizen

- Ozzie Rose, Education Service Districts
- Chuck Bennett, Confederation of Oregon School Administrators
- Tricia Smith, Oregon School Employees Association
- Jim Green, Oregon School Boards Association
- Kelsey Reavis, Coast Range Forest Watch
- Dan Prah, Coast Range Forest Watch

In addition, the Department received written testimony from:

- John Lilly, private citizen
- Clair Klock, private citizen
- Lon Otterby, private citizen
- John Charles, Cascade Policy Institute
- Cameron La Follette, Oregon Coast Alliance (ORCA)
- Oregon Education Association

During the public comment period, Treasurer Wheeler asked speakers to state their definition of "old growth" when using the term, since not everyone uses the same definition.

Public comments were primarily focused on the following issues: stream buffers; public and recreational access; protection of older trees; ban on log exports; continued timber production; rural jobs; tribal interests; and the development of a trust land transfer program.

Governor Brown asked Mr. Pete Shepherd who represented the Confederated Tribe of Coos, Lower Umpqua, and Siuslaw Indians, for specific examples of the tribe's concerns with the proposed protocol.

Mr. Shepherd said their main concern is that the "as-is" requirement likely will limit potential buyers who need to get financing.

Governor Brown asked Mr. Seth Barnes with the Oregon Forest Industries Council, to reiterate the number of jobs per board feet he stated in his remarks.

Mr. Barnes told the Board that there are 11 direct jobs per million board feet of timber harvested.

After the public testimony, Director Abrams introduced Chris Matthews from the Oregon Department of Justice, to assist with answering questions from the Board. Director Abrams discussed the Elliott State Forest Alternatives Project, which included extensive research (legal, technical and economic); seeking out expertise from consultants, economists and attorneys; and receiving input from a wide variety of interested stakeholders.

Director Abrams discussed the three options presented to the Board in December 2014: 1) find a new manager for the forest, 2) secure a new habitat conservation plan (HCP), and 3) transfer the ownership of the forest in a way that would provide full market value to the Common School Fund while at the same time maintaining important public values on the forest.

Director Abrams told the Board that an updated economic analysis from Mason, Bruce and Girard had been received, which was provided to the Board at the meeting. This analysis was an update to their cost-benefit analysis from 2005. The updated analysis demonstrates that there would be a net incremental benefit from the sale of the property, which is a substantial

change from the 2005 report. The analysis also shows that under continued ownership, future returns would fall well below the industry standard for timberland investments.

Director Abrams summarized the staff report saying that neither a new manager nor a habitat conservation plan would adequately control legal risk, which would continue the uncertainty of generating revenue. Further legal challenges will also likely continue to negatively affect the asset value.

Director Abrams provided an overview of the proposed ownership transfer protocol and stated that staff believes the protocol is the best option for the Elliott. She said that low returns that are projected to continue in the foreseeable future, combined with the decreases in asset value make it appropriate for the Board to consider divesting of the asset at this time. It also demonstrates that by requiring the full market value in a transfer of the entire property, the protocol meets the Board's constitutional and admissions act trust obligations. The additional statutory direction for the Board to give due consideration to other resources, is also covered in the protocol.

She told the Board that the protocol is designed to be implemented within the existing authority of the Board. The protocol provides an opportunity for everyone who expressed an interest in the Elliott to work toward a balanced solution. Director Abrams noted successful examples in the staff report of timber, conservation, and community interests coming together over similar sales. She added that the protocol allows for additional time, should legislative action be needed.

She summarized by stating that the protocol minimizes legal risk; and has a structure and timeline for soliciting comprehensive ownership plans for implementing the ownership transfer option.

She discussed the requirements that must be included in any plan for it to be considered responsive under the proposed protocol. The first requirement is compensation to the Common School Fund for the fair market value of the Elliott. Secondly, a plan must make a proposition to acquire the entire property. Third, it must be submitted by a lead person or entity with authority to accept an offer of direct sale. And, fourth, any responsive plan must have commitments with enforceable mechanisms to protect enhanced public benefits as listed in the proposed protocol.

Director Abrams also went over the timeline outlined in the protocol saying it could take from twenty-eight months up to potentially an additional year, to address financing arrangements, if needed. She explained that fair market value will be determined by an independent industry standard appraisal of the property. There will be three separate appraisals and a review appraisal to ensure the amount is defensible. The appraised value will represent constraints from existing applicable local, state and federal laws – including the Endangered Species Act and cultural resource protections that are required under current laws. The appraised value will not include, and will not be reduced to compensate for the enhanced public benefits.

Director Abrams reviewed the recommended findings and actions for the Board's consideration.

- Neither the new manager, nor the HCP are viable options at this time;
- Transferring the ownership is an appropriate option to meet the Board's trust obligations; and

- The transaction-specific protocol achieves the dual outcomes of seeking to enhance protection of public benefits while ensuring full fair market value compensation to the Common School Fund.

Based on these findings, the Department recommended that the Board take the following actions:

- Direct the Department to cease work on the new manager and HCP options and instead direct the Department to focus solely on the ownership transfer option.
- Approve the protocol as a transaction-specific method to identify potential ownership transferees interested, willing and able to make commitments for these enhanced public benefits as a part of the acquisition plan.
- Approve a direct sale as a method of sale for the Elliott.
- Approve the limited release of surface soil, sand, stone and gravel resources for use on the Elliott property as part of the direct sale offer.
- Acknowledge the authority and adopt the supportive findings in Part 2 of the proposed resolution and order.
- Direct the Department to take all requisite actions per statutes and rules cited in Appendix C, Part I (J).
- Direct the Department to implement the protocol immediately and depending on the outcome proceed as follows in December of 2016:
 - If there is only one responsive plan, the Board would direct the Department to proceed to offer a direct sale at the Department's estimate of value – the appraised value – to that transferee.
 - Or, if there are two or more responsive plans, the Board would direct the Department to submit the responsive plans back to the Board for its ranking.
 - If there are no responsive plans received in December 2016, the Board would direct the Department to return to the Board for further instructions on an ownership transfer, which could include proceeding to sale without enhanced public benefit protections beyond those provided by existing laws.
- Direct the Department to deposit the proceeds from any direct sale resulting from the protocol into the corpus of the Common School Fund.
- Direct the Director of the Department to exercise full authority with respect to the disposition of the Elliott in accordance with the protocol and the proposed resolution and order, including but not limited to whether due diligence has been adequate; whether a proposed plan is responsive; and finally whether the Department should enter into a purchase and sale agreement.

Director Abrams summarized by saying that since the Endangered Species Act listings in the early 1990s, the Department and Board have tried to balance conservation concerns with their trust obligations. To date, that effort has been met with limited success. She said it is easy to criticize and challenge the failure to generate returns from the property or the inability of the Common School Fund to directly offer values that do not benefit schools. But, it is another thing altogether to come up with acquisition solutions that are in the interest of the state as a whole. Director Abrams stated that the Department recommends that the State Land Board adopt the Elliott State Forest Alternatives Project Supplemental Report and issue the proposed resolution and order.

Secretary Atkins asked for clarification on the meaning of "as is" in the protocol.

Assistant Attorney General Chris Mathews explained that the language means that there will be no price adjustments and that there will be no negotiations for discounts because of the commitment to get full fair market value for the Common School Fund. He said that the appraisal will be based on the property in its "as is" condition, so the price will be appropriate in that regard.

Secretary Atkins asked if these factors will be part of the appraisal and available for people to review.

Mr. Mathews answered that they will be.

Treasurer Wheeler asked how staff came up with the number of 25% for protection of older forest stands.

Director Abrams told the Board that staff looked at what is currently being done which is 20-25%, and decided to make that a starting point.

Treasurer Wheeler asked what the protection level is under the current Elliott State Forest Management Plan.

Assistant Director Jim Paul said that the current plan begins at the 20-25% range with projections showing an increase after around thirty years to a minimum of 46-50%.

Treasurer Wheeler asked what the current status of public access is in the Elliott.

Director Abrams explained that even though many other western states do not provide access to their constitutional lands, Oregon has historically always provided public access. She noted that the road system that provides access was developed for timber management, but people do use them for other purposes.

Treasurer Wheeler asked how staff came up with the 50% for public access.

Director Abrams explained that it was intended to be a minimum and anyone can propose a higher amount in their acquisition plan.

Treasurer Wheeler asked Director Abrams to discuss further the issue of financing before closing and whether or not it would preclude a long-term funding strategy.

Director Abrams told the Board that there is a fairly robust market for bridge financing. Using this system, a third party would purchase the property and then interested parties would purchase the property over time through the third party.

Treasurer Wheeler asked if someone could potentially finance some management model over a long period of time.

Director Abrams said yes, but not with the Department.

Mr. Mathews added that if the Department financed the transaction and there was a default on the loan, the Department would get the property back, with possible damage or legal issues, and it would not completely divest the property from the Common School Fund.

Treasurer Wheeler clarified that parties would need to find the bridge financing on their own to pay the full price in order for the Common School Fund to be held whole. He then asked who might serve as the financing mechanism for that bridge.

Director Abrams explained that there are investors who are willing to do this kind of transaction.

Treasurer Wheeler asked if a proposal could include using broad baseline standards rather than a percentage for upstream protections since a percentage is stated in the protocol.

Director Abrams said that a responsive plan would have to address the percentages, but as long as there were enforceable mechanisms in place to show they met the minimum requirements, the plan would be considered responsive.

Treasurer Wheeler asked if the enforcement mechanisms need to be included in the acquisition plans or by some other means.

Director Abrams said they need to be part of the acquisition plans, including the possibility of a third party auditor.

Treasurer Wheeler asked if the tribes will lose their right to consult under different ownership.

Richard Whitman, Governor Brown's Natural Resource Policy Director told the Board that it depends on who participates. If there is a federal agency that participates, there is a federal trust obligation to confer on a government-to-government basis with federally recognized tribes. If there is a state entity involved, there is a similar requirement under state law. If it is a local government or private entity that acquires the property, there is no statutory requirement to consult on tribal issues. So, it would have to be a matter of agreement between that private purchaser and the state.

Governor Brown asked if those requirements would still stand even if it is a mixed ownership of public and private entities.

Mr. Whitman said that it would depend on how the purchase is structured. For example, if the federal government has an undivided interest in the entire property – it owns 25% of all the geography – then there would have to be consultation on everything. If it's divided vertically so that the federal government owns one quarter of the area, the consultation requirement would only apply to that one quarter.

Governor Brown asked why a slow decoupling approach is not provided under the proposed protocol.

Director Abrams explained that the Board expressed an interest in reaching a resolution for the entire property. Slowing down the sale or selling the forest in pieces rather than as a whole will continue to drain money from the Common School Fund. And, interest would need to be added to the price, which would make it more prohibitive to some buyers.

Mr. Mathews added that a partial decoupling would not provide the desired result for the Common School Fund.

Director Abrams stated that slowing down the process to allow for legislative action over several biennia would be unpredictable and risky.

Governor Brown asked why the protocol does not contain a requirement that logs from the forest not be exported.

Mr. Mathews told the Board that federal constitutional law does not allow for it. He said that it would be favorable though for it to be included in a proposal, but the Board cannot mandate it.

Governor Brown asked if the Board moves forward with the staff recommendations and the state legislature decides in the 2016 session to create a trust land transfer program, would the Board be prevented from implementing the trust land transfer program.

Director Abrams said that, if approved, a trust land transfer program could be submitted as a proposed acquisition plan and would then be considered along with all other plans submitted by the end of December 2016. However, it would need to be responsive to the protocol as laid out.

Mr. Mathews cautioned that the trust land transfer concept is not a magic pill – it is the funding that makes it work. If a trust land transfer plan can make the Common School Fund whole, it would absolutely work. If it does not include that element, it would not be a responsive plan.

Governor Brown asked why the Department is not acting as the entity bringing everyone to the table to come up with a proposal or proposals to purchase the Elliott.

Director Abrams explained that after the discussion at the December 2014 Land Board meeting regarding the need to decouple the Common School Fund from timber harvest, staff expected parties to come forward wanting to work together. Unfortunately, there was no communication from any of the interested parties or stakeholders. So, staff believes that some pressure needs to be put on those who want to see the management of the forest change. She continued to say that if the Department takes on the role as negotiator, it would draw out the process and perhaps never come to a resolution. She said that it is time for the people who have expressed an interest to step forward.

Treasurer Wheeler asked if the possibility of a robust carbon market in the future be included in the appraisal.

Director Abrams said the appraisers will be given instructions to consider various components, but are looking to have this appraisal be an industry standard appraisal. So, if an industry standard appraisal includes the future potential for the carbon markets, it will be included in the appraisals.

Treasurer Wheeler stated that he would like to have carbon market potential be included in the appraisals.

Secretary Atkins moved that the Land Board adopt the Elliott State Forest Alternatives Project Supplemental Report in Appendix A of the agenda item and issue the proposed resolution and order as presented in Appendix C.

Secretary Atkins expressed her belief that the Common School Fund needs the Board's primary attention at this point in history. She pointed out that the need to move now rather than delay is in order to incentivize action on the part of interested parties. She commented that the Board cannot be a neutral party in determining what should happen to the Elliott State Forest. It has a specific point of view and constitutional duty to the Common School Fund. So, leading

negotiations is not an appropriate role for the Board. She urged people to talk with their legislators and congressional delegation. She said she believes the protocol is an appropriate vehicle to begin the process of an ownership transfer.

Treasurer Wheeler seconded Secretary Atkins' motion. He added that he was impressed with the quantity and the quality of the testimony provided from the beginning of the process. He said that he has heard unanimously that the status quo is not working and we need to do something different. It is not serving anybody's interests particularly well.

Treasurer Wheeler said that he was a proponent of the Elliott State Forest Management Plan because it was a compromise. Everybody compromised at some level and in that regard, it appeared to move the ball well ahead of today's situation.

Treasurer Wheeler commented on a remark given during testimony asking, "Is everything always about money?" His response was that it is not just about the Board's fiduciary and trust obligations, it is also about Oregon. The Elliott State Forest Management Plan was Oregonians coming together to find an Oregon Compromise to move the ball forward on a very contentious and thorny issue. He asked that Oregonians get together to forge a compromise and reach a consensus to bring back to the Board. He cautioned that if that does not happen, Oregonians are potentially ceding their ability to make the decision to a judge, which he hopes does not happen.

Treasurer Wheeler thanked everyone for their attendance and participation in the process.

Governor Brown asked if there was any opposition to the motion presented. There was none. The motion was approved.

Director Abrams announced that the kickoff meeting for implementing the protocol will be on September 17, 2015 at 10:00 a.m. in the Veterans Department Auditorium.

Governor Brown thanked everyone for their participation in the meeting. The meeting was adjourned at 12:37 p.m.



Kate Brown, Governor



Mary M. Abrams, Director