



Oregon

Kate Brown, Governor

Department of State Lands

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The State Land Board met in regular session on December 13, 2016, in the Iris B Conference Room at the Keizer Community Center, 930 Chemawa Road, Keizer, Oregon.

State Land Board

Kate Brown
Governor

Present were:

Kate Brown
Jeanne P. Atkins
Ted Wheeler

Governor
Secretary of State
State Treasurer

Jeanne P. Atkins
Secretary of State

Land Board Assistants

Jason Miner & Richard Whitman
Molly Woon
Kristin Dennis

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

Ted Wheeler
State Treasurer

Department Staff

Jim Paul Bill Ryan Julie Curtis Stephanie Hallock Cummins
Chris Castelli Lorna Stafford Sabrina Foward Anne Friend

Department of Justice

Matt DeVore
Chris Matthews

Governor Brown called the meeting to order at 10:13 a.m. The topics discussed and the results of those discussions are listed below.

Governor Brown welcomed Jason Miner, who replaced Richard Whitman as her Land Board Assistant. She also thanked Richard Whitman for his service to the Board and his continued service at the Department of Environmental Quality as the Interim Director.

CONSENT AGENDA

1. a. **Request for approval of the minutes from the October 11, 2016 State Land Board meeting.**
- b. **Request for approval of a permanent bridge easement over the Willamette River on Broadway Street in Multnomah County.**
- c. **Request for approval of a permanent bridge easement over the Willamette River on Morrison Street in Multnomah County.**
- d. **Request for approval of a permanent bridge easement over the Willamette River on Burnside Street in Multnomah County.**

Director Paul reviewed the items on the consent agenda. He explained that the three requests for bridge easements are for existing bridges over the Willamette River in Portland. He explained that the requests are a continuation of the Department's effort to bring existing bridges under authorization.

Secretary Atkins made a motion to approve the consent agenda. Treasurer Wheeler seconded the motion. The consent agenda was approved.

Action Items

2. Report on the status of implementing the order of the State Land Board dated August 13, 2015 regarding the Common School Lands within the Elliott State Forest.

Director Paul updated the Board on the status of identifying potential comprehensive ownership transferees for the Elliott State Forest, and requested input and direction on proceeding with developing an offer of direct sale to a potential comprehensive ownership transferee and possible additional partners.

Director Paul provided background information related to the Elliott State Forest and the issues the Board has faced over the past several years. He explained that since the early 1990s, when the spotted owl and marbled murrelet were listed under the Endangered Species Act, the revenues from the forest significantly declined. He noted that the Department worked with the Department of Forestry and the federal government to obtain a habitat conservation plan (HCP) that went into effect in 1995. From 1995 to 2001, the HCP was in place. In 2000, the Department began work on updating the HCP because coverage for the murrelet had expired under the existing HCP.

In 2008, litigation was filed against the U.S. Fish and Wildlife Service (USFWS) opposing the existing HCP. In 2009, negotiations on a new HCP reached an impasse and, at their December 2009 meeting the Board was provided with options for moving forward. A few months later the Board directed the Department to continue working on a new HCP, but take no longer than two years. Agreement was not achieved and, in 2012, the Board approved a new management plan for the forest that would generate revenue at an appropriate level. Soon after the plan was adopted, a lawsuit was filed against the Department. In 2013, the Board gave approval for staff to perform due diligence on the sale of three parcels in the Elliott to see what the marketability might be, should the Board decide to pursue an ownership transfer. At the end of 2013 and into early 2014, the Department made adjustments to murrelet protections in the forest and the lawsuit against the Department was dismissed as moot. Revenue projections following these actions showed a deficit in future revenue.

In the spring of 2014, the Department initiated the Elliott Alternatives Project at the direction of the Board. This project examined a range of alternatives to resolve the issue. During implementation, the Department sought out extensive input in the spring of 2014 through August 2015. Four options were presented to the Board at its December 2014 meeting. Two options pursued continuation of ownership and management by the Department; and two looked at the potential transfer of ownership. In December 2014, the Board also directed the Department to make one final effort with the federal services to determine if an HCP might be possible. That effort was unsuccessful. At its August 2015 meeting, the Board determined that the transfer of the Elliott property was appropriate because it was in the best interest of the Common School Fund and its beneficiaries.

The Elliott Transfer Opportunity and Protocol, approved by the Board in August 2015 included five key requirements for proposed acquisition plans. First and second, a plan must be for the purchase of the entire property, at fair market value, in all cash closing. Third, the proposed offer must be made by a lead participant. Fourth, the plan must include specific commitments with enforceable mechanisms to protect public benefits. And, fifth the plan must be without any contingencies for the benefit of the transferee.

Several meetings were held and 49 expressions of interest were received. A comprehensive timber and resource inventory was conducted and shared with the public. An extensive title review was also conducted and a tour of the property was held. The Department also contracted with multiple,

certified, independent timberland appraisers to conduct a comprehensive appraisal of the property to determine the fair market value, which was made public in July 2016.

One proposal was received by the deadline of November 15, 2106. The proposal was submitted by Lone Rock Timber Management Company as the lead participant; the Cow Creek Band of Umpqua Tribe of Indians; and the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians; with the support and advice of The Conservation Fund; Dr. John Gordon with the College of Forestry at Oregon State University; the Oregon Department of Forestry; the Confederated Tribes of Siletz Indians; and the Confederated Tribes of the Grand Ronde.

Director Paul stated that the Department has reviewed the plan and found that the primary goal of the protocol was achieved and that it contains both clear demonstrations of financial viability, as well as proposals for enforceable mechanisms for enhanced public benefits sufficient to demonstrate responsiveness. He explained that this finding was based on three general areas: 1) the plan demonstrates adequate equity investment and financing to acquire the property at the established fair market value; 2) it proposes enhanced public benefits that exceed those required by law; and 3) the plan recites enforceable mechanisms required for providing the enhanced public benefits in perpetuity.

Director Paul noted that the plan does have some gaps, uncertainties and ambiguities. However, he said that, under section seven of the protocol, he has deemed the plan responsive, despite these concerns. The rationale for his decision are: 1) only one proposal was received and therefore, fairness between competitors is not an issue; 2) the Board's discretion has placed a priority on moving forward in a timely fashion due to the ongoing economic losses associated with the property; and 3) the plan meets the basic requirements of the protocol and the gaps, uncertainties and ambiguities can, and will be addressed prior to a future offer of direct sale.

Director Paul provided an overview of the proposed plan. The owner would be a limited liability company (LLC) called the Elliott Forest LLC. The Elliott LLC would have two members at closing, Lone Rock and the Umpqua Indian Development Corporation. The plan proposes to meet the fair market value price of \$220.8 million in all cash at closing with a combination of equity investments for half the value and the other half provided by Northwest Farm Credit Services, PCA. He added that the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians has expressed interest in holding a conservation easement as the enforceable mechanism for three of the four enhanced public benefits. The lead participant has also identified a diverse team of supporters and advisors.

Director Paul went through the proposed public benefits required by the protocol. First, the plan proposes free public recreational access in perpetuity on at least 41,250 acres. He noted that the map included with the proposal indicates public access on the entire property and the plan states the condition of having the right to close certain areas at certain times. Second, the plan proposes to provide 40 jobs per year from the property over a 10-year period. Third, the plan proposes to manage 20,625 acres (25% of the forest) for older forest characteristics. The plan also proposes that adjustments can be made to the protection areas in the future. Fourth, the plan proposes to protect and enhance all streams where Coho salmon, steelhead and bull trout occur on the property. In addition, the lead participant has expressed interest in opportunities for developing ecosystem services and continuing conversations with others interested and experienced in diverse ecosystem service markets.

Director Paul discussed the gaps, uncertainties and ambiguities related to the public protection requirements. The Department needs more details regarding:

- how the proposal will ensure public access on at least fifty percent of the property in perpetuity, and the potential closure of portions of the forest;
- potential adjustments to harvest protection areas protected for older forest structure; and
- allowable activities in riparian management areas.

Director Paul discussed the proposed enforceable mechanisms and additional information that is needed. The plan proposes two mechanisms: 1) a conservation easement for three of the four required public benefits; and 2) an easement in gross for the fourth. The Department needs the following:

- confirmation that there will be one conservation easement over the entire property addressing the public recreational access, the harvest protection and riparian management areas;
- firm identification of the conservation easement holder and terms of the easement ensuring that they are enforceable to the satisfaction of the state;
- if proceeding with the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, pursuant to their letter of intent, additional issues need to be clarified that are included in the staff report; and
- details regarding reporting processes under the conservation easement, including the level of public involvement and oversight.
- Identifying a holder of the easement in gross to ensure the required number of jobs to satisfy the economic benefit requirement

Director Paul told the Board that the Department proposes to work under the protocol toward developing an offer of direct sale. The offer will seek to close the gaps, clarify uncertainties and resolve the ambiguities identified. Director Paul will also direct staff to commence discussions with the proposers of the plan and possible additional partners prior to making an offer of direct sale. He said his expectation is to return to the Board in February 2017 to update them before making an offer and prior to finalizing a purchase and sale agreement.

Director Paul stated the recommendation from staff, which was that the Land Board provide input and direction on proceeding with the development of an offer of direct sale for a comprehensive ownership transfer of the Elliott property; and on exploring additional options with the potential comprehensive ownership transferee and possible additional partners.

Michael Rondo, CEO of the Cow Creek Band of Umpqua Tribe of Indians; Toby Luther, President and CEO of Lone Rock Timber Management Company; and Chief Warren Brainard of the Coos, Lower Umpqua and Siuslaw Indians spoke to the Board. Chief Brainard said the partnership reflects the multiple perspectives and values shared by the organizations. He said this partnership worked long and hard to develop the proposal and is committed to working with the Department through the process that the Board has outlined.

Michael Rondo explained the Cow Creek Tribe's rich connection to Southern Oregon as being the reason for participating in the proposal. He told the Board that the Cow Creek Tribe was one of the first two treaty tribes to secure a treaty with the US Government in the 1850s. However, like many treaties, this treaty was deficient and the result was that the Cow Creek became landless. The treaty was essentially ignored for more than 100 years until the official termination act of the 1950s that caused federal relations with more than 60 tribes and bands in western Oregon to cease to exist. The Cow Creek never received the reservation that the treaty promised, but they remained in their homeland and continued to hold council.

In the early teens and twenties, the Cow Creek were successful in getting bills entered into Congress for recognition. However, it wasn't until the 1950s that the Cow Creek was again recognized, but only for the purpose of termination. In the 1970s the Tribe began the path toward restoration, and in 1982, the Cow Creek was the second Oregon tribe to receive recognition from the federal government. The Act, however, did not restore any of the Tribe's ancestral lands. Since that time, the Tribe has pursued a land restoration policy and economic development strategy that focuses both on the direct purchase of land, as well as repatriation through Congressional acts. They are currently trying to restore the reservation that was originally promised in the Treaty of 1953.

Mr. Rondo told the Board that the Cow Creek were interested in the purchase of the Elliott State Forest property because it aligned with their long-term land acquisition management and investment goals. They wanted to see that ownership of the forest remained local. He explained that after the fair market value was announced, the Tribe began looking for investment partners that shared their commitment and values. They met with many parties, but when they met with Lone Rock Timber Management Company, they knew they were the right entity to join efforts. He stated that Lone Rock is a local company with a record of sustainable and responsible forest management. They are committed to upholding ecological and environmental protections and their roots in Oregon are deep. He also said that the Cow Creek was pleased to partner with the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians.

Toby Luther discussed the history of Lone Rock Timber Management Company that started as a sawmill in 1950. They sold their mills in 2001, and have since focused on managing timberland sustainably. Lone Rock manages 130,000 acres of timberland in southwest Oregon. Their logging operations have been recognized by the Oregon Department of Forestry as Operator of the Year on three separate occasions. Mr. Luther said they take managing their lands seriously and manage them to the highest of standards. In addition, their lands are certified as sustainable, which requires a review on an annual basis. Mr. Luther explained that Lone Rock will use their staff to manage the Elliott lands, but it will be done in conjunction with the partners and the others listed as supporters and advisors. He said they are still talking with other interested parties and experts to form the best coalition to meet the needs specified by the Land Board.

Chief Brainard discussed the proposed conservation easement and the protections that would be ensured under the easement.

Secretary Atkins thanked the proposers for bringing a plan forward. Governor Brown added her appreciation and thanked them for their hard work and time spent on the proposal.

The Board received public comments from approximately seventy people, including beneficiaries of the Common School Fund and local county commissioners, who expressed support for the proposal. Other commenters expressed concern for keeping the forest under public ownership and open to the public, as well as protecting the wildlife, habitats and other natural resources in the forest. Regional economic prosperity and employment were also discussed.

Governor Brown thanked the Cow Creek Band of Umpqua Tribe of Indians and the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians for their leadership in seeking out a possible partnership for managing the forest to preserve its public values while also meeting the needs of Oregon's schoolchildren. She clarified that the Board would not be making any decisions at the meeting. She noted that this was the last meeting for the Treasurer and Secretary of State and asked them for their input before leaving the Board.

Treasurer Wheeler thanked everyone for their participation; and Lone Rock Timber Company and the Tribes for bringing forth a proposal. He summarized what he has heard during his tenure on the Board. He said he heard clear testimony from a broad spectrum of stakeholders that the Elliott State Forest represents a very unique asset for the state. He particularly appreciated testimony related to the history and traditions on the public lands in the Elliott State Forest. He said that with leadership and vision, future generations of Oregonians can continue to benefit from the forest. Treasurer Wheeler commented that we are headed in the right direction, but are not there yet. He discussed the failed attempt to obtain an HCP, the management plan that was put in place as a result of the lack of an HCP, and the introduction of legislation during the 2015 session that did not succeed. Treasurer Wheeler said that the Board has heard a clear consensus from Oregonians that the Elliott should be separated from school funding. He also heard that Oregonians want public recreational access to the forest guaranteed and also want to maintain public control over the forest. He said that it is up to the majority to step forward with public funds in order to ensure these values remain. He discussed Governor Brown's offer of using general obligation bonding capacity and other proposals that are being developed.

Treasurer Wheeler said he supports the Governor and knows she is committed to finding a solution, but said she cannot do it alone. The public needs to contact the legislature to let them know they are serious about this issue. He said he is disappointed that the task of finding a solution for the Elliott was not completed during his tenure on the Board. However, he said that it is more important to do it right than to do it quickly. He added that this is a once in a multi-generational opportunity to bring Oregonians together in support of a grand vision that will protect the environmental, recreational and economic benefits for generations to come. He said he would continue to support the Governor and the incoming Board on this effort, in any way he can.

Secretary Atkins discussed how she has encouraged advocates for keeping the forest under public ownership, to focus their attention on legislative action. She noted that there is a lot of competition for bonding money and that people need to be diligent during the budget process. Secretary Atkins encouraged the Governor and incoming Board members to not allow the protocol process to die of discussion and debate. She said she admires the Cow Creek for seeking out partners for the proposal and that the Board should respect their leadership and decision and move the proposal forward. She specifically discussed the job creation requirement of the protocol and the means by which it will be measured. She noted that it can be a difficult thing to maintain and hopes that there is more clarity around how that will be enforced and measured. She discussed the disparity of opinions that range from the Board is neglecting their fiduciary responsibilities, to the Board is not protecting the intrinsic values of the forest enough. She said the Board has tried to come to a balance and appreciates the efforts of DSL staff for helping to find a balance.

Governor Brown thanked both Treasurer Wheeler and Secretary Atkins for their time on the Board.

Governor Brown asked that the Department worked towards the development of an offer of direct sale that will seek to close the gaps, clarify the uncertainties and resolve the ambiguities described in the staff report. In addition, she also asked the Department to commence discussions with the potential comprehensive ownership transferee and possible additional partners, prior to making an offer of sale. She said it is her expectation that the Department return to the Board in February 2017, prior to making any offer of direct sale and prior to finalizing a purchase and sale agreement.

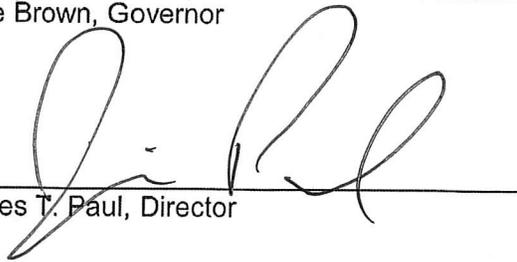
She said it is very clear that, in Oregon, our public lands are irreplaceable assets – our beaches, our forests, and our open spaces. And, in the face of very challenging public policy issues, she believes that these values that Oregonians hold so dear, must be protected. She also believes that natural resource jobs, that are critical to rural economies, must be protected as well.

Governor Brown said that it is appropriate for the Board to have another option to consider and proposed that the state use up to \$100 million in bonding authority to pay into the Common School Fund and relieve a portion of the Elliott from its fiduciary responsibility. She said this is only part of the solution and that she calls upon the public to use their creativity, passion and time to pursue options for the Elliott that will craft a solution that will balance public ownership, rural natural resources jobs, conservation and recreational values. Specifically, the option should decouple the purpose and ownership of the Elliott from the Common School Fund and should keep it in public ownership, which could be state or tribal ownership. This could include aspects of the proposal already submitted, including both tribal forest management, as well as private forest management. She said she is adamant about creating jobs, particularly in Coos and Douglas Counties, maintaining public access and preserving endangered species and their habitat. She told the audience that this is their opportunity to bring another option forward and encouraged thoughtful collaboration among everyone.

Governor Brown adjourned the meeting at 2:05 p.m.



Kate Brown, Governor



James T. Paul, Director